

BEST PRACTICES IN ANTI-CORRUPTION IN THE KINGDOM OF CAMBODIA

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I. OVERVIEW

A. Institutional Framework

The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on 17th April 2010. 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) plays the role as an implementing body to independently undertake its duties.

B. Legal Framework and Anti-Corruption Strategy

The Royal Government of Cambodia (RGC) has a strong commitment to combating corruption. Prioritized policies and programmes on anti-corruption are clearly specified in the Rectangular Strategy Phase I, Phase II and Phase III¹ considering good governance as a core angle and anti-corruption is one of the priorities set. The RGC has supported and endeavoured to have the Anti-Corruption Law adopted along with other relevant laws and regulations for curbing corruption in Cambodia.

On 17th April 2010, the Anti-Corruption Law (ACL) was promulgated, and the law was based on the Code of Criminal Procedure 2007 and the Criminal Code 2009. 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 for social development and poverty reduction. However, fighting against corruption really needs the participation and support from all stakeholders both from the private and public sectors as well as international cooperation.

To be a truly independent institution, the Anti-Corruption Law was amended and promulgated on 1st August 2011, allowing the Anti-Corruption Institution (ACI)² to have an independent budget that is separate from the budget of the Office of the Council of Ministers, aiming to ensure that the institution can carry out its mandate effectively. It also provides the President of the National Council against Corruption (NCAC) the right to structure and nominate officials from the deputy director at the department level down upon the request made by the President of the ACU.

In 2012, the Public Procurement Law was promulgated, which establishes certain corruption offences and gives absolute competency to the ACU to investigate and file

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¹ The Rectangular Strategy (RS) is a dynamic document that lays out the political commitment to a socioeconomic development process in the coming five years (2013-2018). RS has undergone three changes in the last decade to keep up with the times.

² The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on 17th April 2010.

corruption-related cases in court. In order to succeed in curbing corruption, the NCAC set out a roadmap for the ACU in fulfilling its mission to bring more crucial achievements in the five identified areas, namely education, prevention and obstruction, law enforcement, national and international cooperation, and good governance and internal control.

Based on the strategic plan of the 2nd mandate of the NCAC (2015-2020), the ACU has set out its action plan to focus on three intertwined approaches: Education, Prevention and Obstruction, and Law Enforcement, which have been supported and encouraged by the government with the participation from the concerned authorities at all levels, the private sector, media, academia and civil society.

II. INTERTWINED MEASURES TO COMBAT CORRUPTION

Combating corruption in Cambodia has been undertaken through education, prevention and law enforcement with participation and support from the public and international cooperation.³ *Samdech Akka Moha Sena Padei Techo HUN SEN*, Prime Minister of the Royal Government of Cambodia, said that “Combating corruption is to make people not to wish to corrupt, cannot corrupt and dare not to corrupt”.

A. Education

The ACU has spent many of its resources, budget, time and ideas to provide education and to disseminate the anti-corruption law to civil servants, the private sector, civil society, as well as the general public across the country in order to raise awareness about the law, about what corruption is, and the negative impacts of corruption, aiming to make sure that the whole society begins to accept the new mind-set and perspective so that they all will jointly fight against corruption, which is a common enemy for all of us.

The education and dissemination tasks have been conducted through various means such as the dissemination of the Anti-Corruption Law directly at the workplace, stipulating the 9th of December as National Anti-Corruption Day, and setting out policies and anti-corruption education programmes aiming to instil younger generations with the feeling of disgust for corruption and to instil conscientiousness, clean mind-set, love of justice, integrity, abiding by laws, respecting themselves and others as they are the bamboo shoots and the future leaders of Cambodia.

B. Prevention and Obstruction

Prevention and obstruction of corruption have been conducted through many forms such as (i) declaration of assets and liabilities (ii) direct observation at bidding, public procurement, and fee bargaining at ministries and institutions as well as joining in the observation at the recruitment examination of a new cadre of officials at public institutions and the high school national examination (iii) signing Memorandums of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies as well as compiling and publishing a *Guidebook on Anti-Corruption Program for Business in Cambodia*, which is available for the private sector to be widely used as the supporting document and guidance and (iv) revising the standard of public services fees.

³ Anti-Corruption Law, 17 April 2010, art. 2.

The ACU has also focused on the support, promotion for the exchange of views and ideas as well as to strengthen career development aiming to work even closer with the private sector through the joint commitment and agreement under a form of signing the Memorandum of Understanding (MOUs) on anti-corruption cooperation between the ACU and private national and international companies. As a result, so far the ACU has signed 86 MOUs with private national and international companies. This has been used as an example in an effort to jointly fight against corruption and to establish the practice of clean business in Cambodia.

In order to maintain the integrity, ethical behaviour and legal compliance of the leaders and officials of the ACU as a whole, two internal bodies were established, namely, the Disciplinary and Internal Control Council and the Internal Investigation Body. The Disciplinary and Internal Control Council is mandated to ensure that each official had strictly complied with disciplinary, integrity, transparency and having to avoid all form of conflicts of interest set in the guidelines. In the process of the preparation of the internal regulations, disciplinary and internal control, the council has set out principle guidelines on the prevention of conflicts of interest, gift receiving, hospitality, and dining out with all concerned parties. In addition, the Internal Investigation Body is directly governed by the president of the ACU, and its duty is to observe and investigate the performance of officials of the ACU.

C. Law Enforcement

Regarding law enforcement, the ACU has the powers and privileges as stated in the articles below:

- Exclusive power to investigate corruption offences (Art. 25 ACL)
- Special Privileges of the Anti-Corruption Unit (Art. 26 ACL)
- Privileges of the Anti-Corruption Unit related to investigation (Art. 27 ACL)
- Privileges of the Anti-Corruption Unit related to freezing an individual's assets (Art. 28 ACL)
- Privileges of the Anti-Corruption Unit in cooperation with public authorities (Art. 29 ACL)
- Protection of the Complainant, Witness and Relevant Persons

III. POWERS AND PRIVILEGES OF THE ACU

A. Investigatory Power of the ACU

The ACU has exclusive power to investigate corruption offences.⁴ Officials of the ACU who are accredited as judicial police officials take charge of investigating corruption offences. If, during the course of a corruption offence investigation, different offences are found whose facts are related to the offence being investigated by the Anti-Corruption Unit, officials of the Anti-Corruption Unit may continue the investigation of the offences to the final stage. The Anti-Corruption Unit cannot investigate offences other than corruption unless the Unit is

⁴ Anti-Corruption Law, 17 April 2010, art. 22 and Public Procurement Law, 14 January 2012, art. 73.

ordered by the court to do so.⁵ In the framework of these investigations, the President of the Anti-Corruption Unit or the officially assigned representative has the duty to lead, coordinate and control the mission of those officials playing the role on behalf of the prosecutor until reaching the point of arresting the suspect. After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure.

At the end of each investigation, the Anti-Corruption Unit shall submit all facts and relevant documents about the case to the prosecutor for further action in conformity with the provisions of the Code of Criminal Procedure.

B. Special Privileges of the Anti-Corruption Unit

The President of the Anti-Corruption Unit can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a corruption offence. If the suspect flees to a foreign country, the President of the ACU can ask the competent authority to seek extradition in accordance with the provisions in force.

C. Privileges of the Anti-Corruption Unit Related to Investigation⁶

If there is a clear hint of a corruption offence, the ACU is empowered to:

- (i) Check and put under observation the bank accounts or other accounts which are described to be the same bank accounts.
- (ii) Check and order the provision or copying of authentic documents or individual documents, or all banking, financial and commercial related documents.
- (iii) Monitor, oversee, eavesdrop, record sound and take photos, and engage in phone tapping.
- (iv) Check documents and documents stored in an electronic system.
- (v) Conduct operations aimed at collecting real evidence.

The above measures will not be considered as violations of professional secrets. Bank secrecy is not sufficient justification for failing to provide evidence related to corruption offences in the provisions of the Law on Anti-Corruption.

D. Privileges of the Anti-Corruption Unit Related to Freezing an Individual's Assets

Upon the request by the President of the Anti-Corruption Unit, the Royal Government may order the General Prosecutor attached to the Court of Appeal or the Prosecutor attached to the Municipal or Provincial Court of First Instance to freeze the assets of individuals who commit corruption offences. Those above-mentioned assets include the funds received or any form of assets belonging to the offender.⁷

E. Privileges of the Anti-Corruption Unit in Cooperation with Public Authorities

The President of the Anti-Corruption Unit may order public authorities, government officials, citizens who hold public office through election, as well as units concerned in the private sector, namely financial institutions, to cooperate with officials of the Anti-Corruption

⁵ Anti-Corruption Law, 17 April 2010, art. 25.

⁶ Anti-Corruption Law, 17 April 2010, art. 27.

⁷ Anti-Corruption Law, 17 April 2010, art. 28.

Unit in an investigation. The President of the Anti-Corruption Unit may also ask the national and international institutions to cooperate in forensic examinations linked to an investigation.

F. Protection of the Complainant, Witness and Relevant Persons

Complainants, witnesses and relevant persons who provide information related to corruption are protected by law and by the Anti-Corruption Unit. The Department of Security is in charge of providing all kinds of protection to the above persons when necessary and in accordance with the order made by the management of the ACU. The office of intervention and witness protection under the Department of Security is in charge of protecting the witnesses, complainants and any persons providing information related to corruption, and this office can cooperate with the other relevant armed forces if necessary, when carrying out their mission to protect witnesses and complainants.

IV. INTERNATIONAL COOPERATION

A. UNCAC Review

Within the international framework, the ACU is a state party to the United Nations Convention against Corruption (UNCAC), setting the significant international standards on anti-corruption work and setting up a mechanism to review the implementation of the UNCAC for all state parties. Under this mechanism, Cambodia having the ACU as the key institution, prepared a self-assessment checklist which is very detailed and comprehensive about the implementation of the UNCAC review in Cambodia, with the participation from all stakeholders including the legislative, executive and legal and judicial bodies, the private sector, civil society, development partners and academia. Cambodia shall be reviewed by the UN together with two other state parties (Myanmar and Togo). According to the request of the UNODC, the ACU nominated its representative to present and share precious experience in preparing the UNCAC review and self-assessment checklist completion to Myanmar.

Cambodia also assigned its experts to review the implementation of the Convention in three countries including Malta (Europe), Palau (Asia) and Saudi Arabia (Middle East).

Drafting of the Witness Protection and Whistle Blower Protection Law

The ACU is drafting the Law on Witness Protection and the Law on Whistle Blower Protection. It is very important to consult with the existing legal framework, policy, programme, best practices and technical assistance. In the process of drafting the laws, the ACU has enthusiastically and openly cooperated with stakeholders including the Office of the High Commissioner for Human Rights (OHCHR Cambodia), Transparency International Cambodia (TI Cambodia) and Samrith Law firm from the first stage to gather input.

In addition, the content of the draft laws will cover relocation in a foreign country, which requires international cooperation for the successful enforcement of the laws. Thus, international cooperation is very crucial to achieve the draft as well as implement the laws especially for capacity building and relocation in a foreign country.

B. Bilateral and Multilateral Cooperation

Public participation and support and international cooperation are crucial to succeed in fighting against corruption. In order to perform its duty, the ACU can cooperate with national, regional and international organizations in order to combat trans-border corruption offences.⁸

⁸ Anti-Corruption Law, 17 April 2010, art. 2 and art.13.

1. Bilateral Cooperation

The ACU signed MOUs on anti-corruption with the State Inspectorate and Anti-Corruption Agencies of the Lao People's Democratic Republic (15 November 2013) and the National Anti-Corruption Commission of the Kingdom of Thailand (3 September 2014). The MOUs focus on promoting and developing international cooperation in the prevention of and fight against corruption through the efficient and effective sharing and exchange of information, intelligence, experience, knowledge, and best practices. In addition, the ACU collaborated with Singapore's CPIB, to organize two important trainings for its officials of the ACU on the topic of financial investigation and computer forensics.

The ACU also signed an MOU on the exchange of financial information with the Cambodian Financial Intelligence Unit (CAFIU) of the National Bank of Cambodia (26 December 2014).

2. Multilateral Cooperation

In order to strengthen and broaden the efforts of prevention and obstruction, and investigation as well as the facilitation and support of international cooperation, capacity building and Mutual Legal Assistance (MLA) in the prevention and combating of corruption, the ACU has been a full member of institutions or international instruments concerning anti-corruption as follows:

- (i) The ADB/OECD Anti-Corruption Initiative on 5 March 2003
- (ii) United Nations Convention Against Transnational Organized Crime (UNTOC) on 12 December 2005
- (iii) International Association of Anti-Corruption Authorities (IAACA) since 2006
- (iv) 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
- (vii) International Anti-Corruption Academy (IACA) on 14 December 2013

In 2014, the ACU also organized two major international conferences in Phnom Penh and Siem Reap in collaboration with the Asian Development Bank, the Organization for Economic Cooperation and Development (ADB/OECD) and the United Nations Office on Drugs and Crime (UNODC), with the participation of hundreds of experts and practitioners from around the world.

3. Mutual Legal Assistance (MLA)

Regarding MLA in the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of any foreign state and may also obtain power from the court authority of any foreign state, in order to:

- Collect evidence/proof or answer/respond through court means;

- Provide information about court documents;
- Search, arrest and confiscate;
- Examine objects and the crime scene;
- Provide information and exhibits;
- Issue original process-verbal or authentic copies and dossier, including bank statements, cash transactions, records of concerned institutions, records of concerned companies and business activity records, as well as authentic and private documents;
- Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or to participate in the legal proceedings;
- Identify or seek resources, property, equipment, and materials derived from the offence;
- Place under temporary hold the products and properties obtained from corruption offences as well as equipment and materials being used or kept for committing offences;
- Enforce orders of confiscation, seizure or repatriation of products, properties; equipment, material derived from an offence;
- Order confiscation of all objects as stated above;
- Inform about criminal charges;
- Interrogate the accused based on criminal procedure;
- Identify witnesses and suspects.⁹

In addition, reciprocity is also used in practice in MLA proceedings in case of the absence of international treaties.

Cambodian domestic law does not clearly provide for the transmission of information relating to criminal matters without prior request. However, the exchange of information is frequently practiced in relations between the Financial Intelligence Unit and the police and their foreign counterparts. Mutual Legal Assistance will not be refused solely on the grounds of bank secrecy or on the grounds that the offence is also considered to involve fiscal matters.

In implementing Mutual Legal Assistance, the Cambodian Ministry of Justice has communicated with five countries so far: Belgium, Peru, France, Germany and Sweden. In practice, if the case is related to corruption, then it is under the competence of the Anti-Corruption Unit only.

Between 2012 and 2014, Cambodia received 42 requests for MLA in criminal matters and 36 requests in civil cases from countries including the US, the UK and EU member

⁹ Anti-Corruption Law, 17 April 2010, art. 51-53

States. Between 2012 and 2013, Cambodia sent 27 requests in criminal cases and 34 in civil cases.¹⁰

(a) Formal Channels for MLA

The formal procedure and mechanism for MLA is clearly stated in bilateral or multilateral treaties or agreements as well as Cambodian domestic regulations currently in force. Up to now, Cambodia is a state party to the ASEAN Mutual Legal Assistance Treaty in Criminal Matters (AMLAT) and the South-East Asia Parties against Corruption (SEA-PAC). Furthermore, the Ministry of Justice of Cambodia is currently drafting the Mutual Legal Assistance Law.

Regarding the regulations in place, on the MLA procedure in Cambodia, the written requests and related documents from foreign states have to be submitted to the Ministry of Foreign Affairs and International Cooperation (MFA) in Khmer or in English. The Cambodian MFA will forward the request to the Ministry of Justice (MOJ) playing the role as the central authority. The MOJ then will send the request and related documents to the Court of Appeal to decide on further action. This similar legal process would also apply to the case of the request for repatriation of the assets or the arrests of the suspects.

(b) Informal Channels of MLA

Informal MLA procedure is particularly applied based on SEA-PAC and the MOU between the ACU and the State Inspectorate and Anti-Corruption Authority (SIAA) of Lao PDR (15 November 2013) and the MOUs between the ACU and the National Anti-Corruption Commission (NACC) of the Kingdom of Thailand (3 September 2014).

In practice, when MLA is needed, the anti-corruption agency of a foreign state can directly send informal requests to the ACU. Upon receiving the request, the ACU will undertake measures based on the actual case. Where there is a request for MLA, the ACU provides the following assistance:

- Prior to a formal request for MLA, once receiving a request from any party the ACU assists by providing intelligence in the investigation.
- The ACU then helps gather information and puts the suspects under surveillance.
- Once the formal request for MLA is made, the ACU will help facilitate the formal request.

Regarding informal MLA, the ACU collaborated with the Corruption Eradication Commission of Indonesia (KPK) and the Corrupt Practices Investigation Bureau (CPIB) of Singapore to exchange information through focal persons nominated by each agency. As a result of collaboration between the ACU and the KPK, the suspect was arrested and sent back to Indonesia. In addition, the ACU and the CPIB have cooperated for the exchange of information and support for the court procedure, the information gathering and evidence collection, and obtaining interviews and recorded statements so that the CPIB could use the evidence legally in the court proceeding.

¹⁰ Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 176.

(c) *Extradition*

The extradition conditions and procedures are stipulated in the Code of Criminal Procedure 2009 (article 566-595), the Law on Anti-Corruption (article 50), extradition treaties with four countries (China, Lao People's Democratic Republic, Republic of Korea and Thailand) and the principle of reciprocity. At the present time, Cambodia is in the process of negotiating extradition treaties with Viet Nam, Malaysia and Indonesia. In corruption cases, if the suspect flees to a foreign country, the President of the Anti-Corruption Unit may request the competent authority to extradite the suspect in accordance with the provisions in force.¹¹

In extradition matters, Cambodia generally requires some conditions such as dual criminality, a two-year minimum penalty, that the extradition request is not connected with a political offence, etc. The extradition treaties of Cambodia stipulate as mandatory grounds for refusal of extradition the institution of criminal proceedings against a person sought on account of sex, race, religion, nationality or political opinion, a political offence, a Cambodian national, etc.¹²

The extradition procedure is a mixed judicial-executive procedure. A decision on extradition is made by the Investigation Chamber of the Phnom Penh Court of Appeal.¹³ If the Investigation Chamber grants the extradition request, the Minister of Justice shall propose that the Royal Government issues a sub-decree ordering the extradition of the wanted person.¹⁴

Cambodia has handled 12 extradition cases since 2009 involving, *inter alia*, Russia, Germany and Israel. None of these requests were related to corruption offences. All extradition requests were granted except one where the person sought by another country also had Cambodian (dual) citizenship.¹⁵

V. ACTUAL CORRUPTION CASE

A. Fact Summary

On 13 July 2016, Mr. ECV, Chief of Bureau and Assistant to General Director, extorted 6,000 USD from *KTS Company*, which then reduced to 4,000 USD plus 100 USD (In total 4,100 USD) in order to obtain a VAT Exemption Letter for importing raw materials and chemical substances for the production of the company. This illegal claim started on 26 February 2016. At the same time, on 12 July 2016, Mr. ECV received an envelope from a customer with the amount of 800 USD and two other envelopes with the amount of 40 USD and 50 USD in exchange for letters to export old water tanks without the obligation to pay tax. He was detained by the Anti-Corruption Unit (ACU) in a hotel on 13 July 2016.

B. Investigatory Techniques

- Investigatory Process and the Red-Handed Offences
- ACU had traced his daily activities

¹¹ Anti-Corruption Law, 17 April 2010, art. 26.2.

¹² Code of Criminal Procedural, 10 August 2007, arts. 569-577.

¹³ Code of Criminal Procedural, 10 August 2007, art. 586.

¹⁴ Code of Criminal Procedure, 10 August 2007, arts. 586-589.

¹⁵ Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 153.

- ACU had searched for his residential address, office address and his vehicle information
- ACU had launched a special operation to record his voice, video and activities, especially while receiving the money.

C. Court Judgements

- Mr. ECV was sentenced to 2 years in prison and 2,000 USD of monetary fines for extortion committed in Phnom Penh on 13 July 2016 based on Art.-32 of Cambodia’s Anti-Corruption Law and Art. 592, Art.-107, and Art.-108 of Cambodia’s Criminal Code.
- Mr. ECV was ordered to pay back the amount of 72, 000 USD to the state
- All properties were seized as state property under Art. 62 and Art. 63 of the Criminal Code as follows:
 - First envelop with the amount of 800 USD
 - Second envelop with the amount of 50 USD
 - Third envelop with the amount of 40 USD.

VI. CONCLUSION

Since the establishment of the Anti-Corruption Institution, the Anti-Corruption Unit has gathered tremendous support from the public both nationally and internationally. Because of the trust in the ACU, more and more private-sector entities have signed MOUs with the ACU in order to participate in the fight against corruption and to conduct their businesses in a corruption-free environment. In terms of building legal frameworks, the ACU has been in the process of drafting two important laws: first, the draft law on the protection of witnesses and, second, the draft law on the protection of reporting persons. In addition, the ACU has also been in the process of drafting a code of conduct for public officials. As a result of the dissemination of the Anti-Corruption Law, public officials and ordinary citizens have a better understanding of the impact of corruption and actively take part in the fight against this universal social disease.

Even though there have been many remarkable achievements since the establishment of the ACU, there are still many more challenges for the ACU to overcome in the coming years. In this regard, the ACU is still looking forward to having more public support and public participation from every stakeholder including the international support, both theoretically and technically, from regional and international partners.

*“Together we can fight against corruption
And there is no safe haven for corrupt offenders”.*