

INTERNATIONAL COOPERATION MUTUAL LEGAL ASSISTANCE AND EXTRADITION IN CAMBODIA

*Khemlin Ku**

I. INTRODUCTION

The Ministry of Justice is delegated authority by the Royal Government to perform the mission of guidance and administration of justice in the Kingdom of Cambodia. **To achieve this goal, the MOJ has several functions namely to** assure justice for every one under the laws, to organize and monitor all levels of the administrative processes of tribunals and prosecution institutions, to ensure the functioning of all sectors and levels of tribunals and prosecution institutions, to ensure the functioning of the courts and all prosecutors and to prepare various laws governing, and conduct international relationships associated with, justice and relevant laws.

To fulfill these functions, the Ministry of Justice established the Central Authority in 2011 under the jurisdiction of the General Department of Research and Judicial Development to facilitate mutual legal assistance, the transfer of prisoners, and extradition in criminal, civil, and commercial matters.

II. ROLES OF THE CENTRAL AUTHORITY IN CAMBODIA

The Central Authority's mission, roles, and tasks are as follows:

- Receive, control, and facilitate requests for extradition, prisoner transfers and mutual legal assistance in criminal, civil, and commercial cases.
- Send requests received from the requesting state to the applicable Cambodian agency; and to return completed requests to requesting state;
- Organize information to be sent and monitor all received and sent requests to ensure effective and efficient communication;
- Act as the focal point to facilitate all legal assistance;
- Direct contact or diplomatic channels with national and international agencies to facilitate mutual legal assistance;
- Organize, review and facilitate the translation of requests, case files, evidence, and documents relevant to legal assistance;

* Deputy Director General of the Ministry of Justice, Kingdom of Cambodia.

- Manage data of requests on mutual legal assistance and organize legal documents, entering information into our database and submitted online to the Ministry of Justice's website;
- Keep confidential requests for assistance, their contents, and supporting documents contained in the request, as well as the fact of any assistance given and any action taken relative to the request;
- Ensure the information and evidence is protected from losing and using, changing, or revealing without authorization or other improper use;
- Develop an action plan to facilitate spending, study tours, workshops, and meetings at national and international levels;
- Contact donors in order to get support for human resource development;
- Improve cooperation with national and international agencies to facilitate mutual legal assistance.

III. PRINCIPLES GOVERNING RELATIONSHIPS BETWEEN CAMBODIA AND OTHER MEMBERS IN CASE THERE IS NO EXTRADITION OR MLA TREATY

Currently, there is no legal framework governing the issue. But in the future, this issue will be governed by Title IV of the New Code of Criminal Procedure. These provisions apply by default to relations between Cambodia and other countries in the absence of extradition or MLA treaties. Currently, Cambodia has existing bilateral treaties on extradition with Thailand, Lao PDR, China, and South Korea.

In the meantime, the current practice is that:

- *If Cambodia is the requested State:*

The diplomatic procedure precedes judicial procedure. The competent authorities of the requesting State must approach Cambodia by diplomatic channels (Embassy and Ministry of Foreign Affairs (MFA) by written request accompanied by supporting documents. Once the request is received, the MFA will forward this request to the Ministry of Justice (MOJ) which will verify the authenticity of the request. Upon verification, the MOJ may request the Prosecutor General of the Appellate Court to issue an arrest or detention order of the interested person staying in the territory of the Kingdom of Cambodia.

- *If Cambodia is the requesting State:*

The judicial procedure precedes the diplomatic procedure. The concerned court of Cambodia must send a request with supporting documents to the MOJ, which will refer the dossier to the MFA for diplomatic action. Once Cambodia's request is received, the competent authorities of the requested State will verify the authenticity of the request for further action. During implementation of the MLA process, the Cambodian CA has received a request from Vietnam, and is still processing the request. In addition, we have also received requests from South Korea.

IV. THE VALIDATION OF EXTRADITION REQUESTS

All extradition requests shall be submitted to the Royal Government of Cambodia through diplomatic channels. Each request shall contain supporting documents. The supporting documents shall include:

- Documents adequate for identifying the wanted person;
- A report of the acts for which the wanted person is prosecuted;
- The legal provisions applicable to such offence and the possible sentence; and
- A copy of the judgment or sentencing decision, if any.

All documents shall be signed, officially sealed and enveloped. If they are not in the Khmer, French or English languages, the request shall be accompanied by a certified translation of the documents into one of the three languages.

V. CONCLUSION

The procedure for international cooperation in the judicial sector in Cambodia is crucial, using diplomatic channels by forwarding the request to the Ministry of Foreign Affairs and then to the Ministry of Justice, which reviews the request for Cambodia and issues the final decision whether to agree or disagree.

INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

*Kuy Chhay**

I. INTRODUCTION

Cambodia supports anti-corruption measures in every aspect, at all levels and in all areas through education, dissemination, prevention and law enforcement. Fighting corruption, strengthening of public financial management and improving good governance are the key factors to alleviate poverty and promote people's welfare. Through global experiences, monitoring and eliminating corruption are the most difficult, complicated tasks, and are also time consuming, but it remains a high priority of the Royal Government of the fourth legislative mandate. It is generally known that anti-corruption law provides us with legal mechanisms which are necessary for fighting corruption effectively. In light of this, the Royal Government of Cambodia (RGC) has been committed to creating and adopting this law after having consulted enthusiastically with stakeholders and having reviewed existing laws.

The Anti-Corruption Unit has been mandated to pursue three vital roles: 1) Public education and prevention; 2) Law enforcement and suppressing corruption offences and 3) Mass support backed by strategic partnership for cooperation regionally and internationally. With respect to **Extradition** in General Criminal Offences and **Extradition** in Corruption Offences, the **Code of Criminal Procedure** (2007) has been applied.

II. ANTI-CORRUPTION LAW

The Anti-Corruption Law in Cambodia was adopted on 17 April 2010 and regarding the necessity the law was amended and thus, entered into force for full implementation on 2 August 2011. Its purpose is to combat all forms, all natures and all levels of corrupt practices, regardless of political position throughout the Kingdom of Cambodia.

The Anti-Corruption Law provides that it is the court's decision to confiscate corruption proceeds, including property, materials, and instruments derived from corrupt acts, and that the proceeds shall become State property when a person is found guilty of corruption.

Article 26 Special Privileges of Anti-Corruption Unit

Article 27 Privileges of Anti-Corruption Unit related to monitoring

Article 28 Privileges of ACU related to freezing an individual's assets

Article 29 Privileges of ACU in cooperation with public authority

* Assistant to Anti-Corruption Unit, Kingdom of Cambodia.

III. ACTIVITIES OF THE ANTI-CORRUPTION UNIT (ACU)

Development of Legal Framework:

- Prepared the decision made by the Royal Government of Cambodia to allow the ACU to be a mediator and liaison with international public authorities against corruption.
- Prepared sub-decrees on Organization and Functioning of ACU, on Budget Management and Allocation of ACU, on the Logo and Seal of ACU, and on the National Anti-Corruption Day (9 December).
- Prepared Proclamation on Organization and Functioning of the Offices reported to a department of the ACU.

1) Education and Dissemination Activities

- The ACU provided education on and disseminated the Anti-Corruption Law.
- The ACU produced an educational spot on anti-corruption.
- The ACU organized a drawing-completion event, educational proverbs and short stories at the national level.
- The ACU published legal documents and legal instruments regarding anti-corruption.
- The ACU organized a concert to celebrate National Anti-Corruption Day, 9 December. In year 2011, it was the 1st National Anti-Corruption Celebration.

2) Obstruction and Prevention Activities

- The ACU participated in observing the examination of government-official selection at the general Department of Taxation and the Ministry of Public Works and participated in public procurement of timbers.
- The ACU has disseminated legal instruments in effect related to corruption and led and educated the general public about the negative impacts of corruption.
- The ACU has prepared, set up and managed the information system and website of the anti-corruption unit.
- The ACU has encouraged and motivated the general public to provide corruption-related information.

- The ACU prepares and produces spots and videos and make announcement of successful operations.
- The ACU has collaborated with the Ministry of Education, Youth and Sports to incorporate anti-corruption-awareness education into the school curriculum.
- The ACU evaluated and made incentive grading and provided awards for education and corruption prevention work to ministries, institutions and all levels of administrative authorities as well as the public.
- The ACU will prepare exhibits, drawings, documents, and tools used by the Anti-Corruption Unit in fighting corruption for the public to see.
- The ACU has conducted studies identifying the priority areas so as to come up with preventive and obstructive actions to prevent corruption opportunities in ministries, institutions, the private sector and at all levels of local administrative authorities.
- The ACU gave warnings to any suspects who failed to carry out the law and regulations in effect.
- The ACU has recently announced an anti-corruption campaign related to unofficial fees for public services to be carried out at the commune levels all across the country and that the ACU is open and ready to work with civil society. As part of the Unit's recent work, information has been disseminated to all communes (1,633 communes) around Cambodia, assuring local government officials that they face punishment for corruption activities.

3) International Cooperation

- In 2007, the Royal Government of Cambodia (RGC) signed the United Nations Convention against Corruption (UNCAC) and became a member of the South East Asia Parties against Corruption (SEA-PAC).
- The mission of the Anti-Corruption Unit is to lead the activities of fighting against corruption in all forms, sectors and all levels through measures of education, prevention, obstruction and enforcement of the Law on Anti-Corruption with support from the public and international cooperation.
- The ACU closely cooperates with anti-corruption agents around the world, especially with the South East Asia Parties against Corruption (SEA-PAC), in combating corruption through the Mutual Legal Assistance Treaty (MLAT) of the ASEAN in order to develop their own countries.
- In cases where the assets and corruption proceeds are found and kept in foreign states, the competent authority of the Kingdom of Cambodia shall take

measures to claim those assets and proceeds and return them back to Cambodia through the means of international cooperation. The Kingdom of Cambodia shall cooperate with other requesting countries to return the corruption proceeds which are kept in Cambodia. In relation to the mutual legal assistance on corruption offences, the court of the Kingdom of Cambodia may delegate power to a competent court of any foreign state and may also obtain power from a court of any foreign state in order to compile all necessary documents required.

- Regarding regional cooperation, Cambodia is also a Party to the ASEAN Treaty on Mutual Legal Assistance of 29 November 2004, for the purpose to improving the effectiveness of the law enforcement authorities of the Parties in the prevention, obstruction, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters. The Treaty was already ratified on 26 January 2010.

4) Submission of Complaints and Corruption Cases to the Court

- Regarding drug trafficking corruption crime
- Regarding judicial corruption crime

IV. EXTRADITION

A. General Provisions of the Code of Criminal Procedure (CCP)

Article 566: Extradition of Foreign Resident in Cambodia Territory

Article 567: International Conventions and Treaties

Article 568: Definition: Requesting State and Wanted Person

SUB-SECTION 2: CONDITIONS OF EXTRADITION

Article 569: Conditions of Extradition Relative to Act

Article 570: Attempted Offenses and Conspiracy

Article 571: Conditions Relative to Imprisonment Sentence

Article 572: Conditions Relative to Place of Commission of Offense

Article 573: Acts of Political Nature

Article 574: Acts committed in Cambodia and Tried by Final Judgment

Article 575: Extinction of Criminal Actions

Article 576: Multiple Extradition Requests against Same Person

Article 577: Conditions of Extradition Relative to Request

Article 578: Suspension of Extradition

SUB-SECTION 3: EXTRADITION PROCEDURES

Article 579: Validation of Extradition Request

Article 580: Forwarding of Extradition Request

Article 581: Request of Provisional Arrest

Article 582: Special Detention Order against Wanted Persons

Article 583: Presentation of Wanted Person to Royal Prosecutor or General Prosecutor

Article 584: Filing Case with Investigation Chamber
Article 585: Proceedings before Investigation Chamber
Article 586: Decision of Investigation Chamber
Article 587: Application for Release of Wanted Person
Article 588: Agreement to Extradition
Article 589: Effects of Decision of Investigation Chamber

SECTION 2: EXTRADITION REQUESTED BY KINGDOM OF CAMBODIA TO FOREIGN STATE

Article 590: Competence of Investigation Chamber
Article 591: Proceeding before Investigation Chamber
Article 592: No Suspending Effect of Motion to Invalidate Extradition Request
Article 593: Effect of Invalidation of Extradition
Article 594: Consent of State That has Delivered foreign Resident to Cambodia

CHAPTER 3: TRANSIT

Article 595: Transit Request
B. Extradition under the Anti-Corruption Law (ACL)
Article 26: Special Privileges of Anti-corruption Unit

CHAPTER 7: EXTRADITION AND MUTUAL LEGAL ASSISTANCE

Article 50: Extradition Provisions
Article 51: Mutual Legal Assistance
Article 52: Cambodians holding more than one nationality
Article 53: Mutual Legal Assistance Procedure

V. MUTUAL LEGAL ASSISTANCE (MLA)

A. Principles Governing Relationships between Cambodia and Other Members in Cases Where There is No Extradition or MLA Treaty

Currently, there is no legal framework governing the issue. But in the future, this issue will be governed by Title IV of the New Code of Criminal Procedure.¹ These provisions apply by default to relations between Cambodia and other countries in the absence of extradition or MLA treaties. Currently, Cambodia has existing bilateral treaties on extradition with Thailand, Lao PDR, China, and South Korea.

In the meantime, the current practice is that:

- *If Cambodia is the requested State:*

The diplomatic procedure precedes judicial procedure. The competent authorities of the

¹ According to Article 50 (Extradition Provision) of the ACL, Extradition of cases related to Corruption offences, provision of Chapter 2, Content 1, Part/ Section 9 of Penal Code Procedure shall be applicable.

requesting State must approach Cambodia by diplomatic channels (Embassy and Ministry of Foreign Affairs (MFA) by written request accompanied by supporting documents. Once the request is received, the MFA will forward this request to the Ministry of Justice (MOJ) which will verify the authenticity of the request. Upon verification, the MOJ may request the Prosecutor General of the Appellate Court to issue an arrest or detention order of the interested person staying in the territory of the Kingdom of Cambodia.

- *If Cambodia is the requesting State:*

The judicial procedure precedes the diplomatic procedure. The concerned court of Cambodia must send a request with supporting documents to the MOJ, which will refer the dossier to the MFA for diplomatic action. Once Cambodia's request is received, the competent authorities of the requested State will verify the authenticity of the request for further action. During implementation of the MLA process, the Cambodian CA has received a request from Vietnam and is still processing the request. In addition, we have also received requests from South Korea.

B. The Validation of Extradition Requests

All extradition requests shall be submitted to the Royal Government of Cambodia through the diplomatic channels. Each request shall contain supporting documents. The supporting documents shall include:

- Documents adequate for identifying the wanted person;
- A report of the acts for which the wanted person is being prosecuted;
- The legal provisions applicable to such offence and the possible sentence; and
- A copy of the judgment or sentencing decision, if any.

All documents shall be signed, officially sealed and enveloped. If they are not in the Khmer, French or English languages, the request shall be accompanied by a certified translation of the documents into one of the three languages.

VI. CONCLUSION

The procedure for international cooperation in the judicial sector in Cambodia is crucial, using diplomatic channels by forwarding the request, firstly, to the Ministry of Foreign Affairs and International Cooperation, and, secondly, to the Ministry of Justice, and, lastly, to the Royal General-Prosecutor in the Appellate Court.