



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of Cambodia**

Review by Togo and Myanmar of the implementation by Cambodia of articles 15 - 42 of Chapter III. “Criminalization and law enforcement” and articles 44 - 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Togo and Myanmar of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Cambodia and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Togo and Myanmar by means of emails and meetings and involving Mr. Poyodi ESSOLISSAM and Mr. Balakibawi Paka from Togo, Mrs Thida Oo and Mr. Thant Sin U from Myanmar.
6. A country visit, agreed to by Cambodia was conducted in Phnom Penh, Cambodia, from 15 to 18 September 2015.

## **III. Executive summary**

### ***1. Introduction: Overview of the legal and institutional framework of Cambodia in the context of implementation of the United Nations Convention against Corruption***

*Cambodia acceded to the United Nations Convention against Corruption following the deposit of its instrument of accession with the Secretary-General on 5 September 2007.*

*Cambodia is a kingdom whose monarch reigns but does not rule. The constitution was enacted in 1993 but had been amended seven times as of 2014. The Constitutional Council safeguards respect for the Constitution.*

*The Cambodian legal system follows the civil law tradition. The legislative power is exercised by a bicameral parliament consisting of the National Assembly and the Senate. A member of the majority party or majority coalition is named Prime Minister by the Chair of the National Assembly and is appointed by the King.*

*The judicial power is independent from the Government. The Constitution mandates that the King should guarantee the independence of the judiciary, together with the support of the Supreme Council of Magistracy.*

*Cambodia is a full member of the Association of Southeast Asian Nations (ASEAN) and has acceded to a number of regional multilateral treaties and memorandums of understanding, including the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN member countries, of 29 November 2004, and the Memorandum of Understanding of the South-East Asia Parties against Corruption.*

*Cambodia is a dualist country. Nevertheless, it can directly apply self-executing provisions of international treaties once they have been approved by the parliament and ratified by the King. That is practised in the case of bilateral extradition treaties (see art. 567 of the Criminal Procedure Code) but not yet for the Convention. In the absence of international treaties, Cambodia can still provide assistance on the basis of reciprocity.*

## **2. Chapter III: Criminalization and law enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

*The criminalization of the bribery of national public officials is governed by articles 605 and 594 of the Cambodian Penal Code. As to the active and passive corruption of judges, it is specifically dealt with under articles 518 and 517 of the Penal Code. However, a reference to third party beneficiaries is missing.*

*The criminalization of the active and passive bribery of foreign public officials and officials of public international organizations is stipulated under articles 34 and 33 of the Law on Anti-Corruption. However, a reference to third party beneficiaries is missing.*

*The criminalization of active and passive trading in influence of public officials is stipulated under articles 606 and 595 of the Penal Code. However, references to third-party beneficiaries and to trading in influence when it involves any other person are missing.*

*The criminalization of active and passive bribery of employees and administrators is stipulated under articles 278, 279 and 280 of the Penal Code. References to the direct or indirect character of the bribery and to third-party beneficiaries are missing. In addition, the bribery of employees is only criminalized in cases when it occurs without the knowledge of the employer.*

#### *Money-laundering, concealment (arts. 23 and 24)*

*The Law on Anti-Money-Laundering and Combating the Financing of Terrorism, dated 24 June 2007, and the Law dated 3 June 2013 amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering deal with the preventive and repressive aspects of money-laundering and the financing of terrorism in Cambodia. The Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering gives a definition under amended article 3 of the elements constituting money-laundering, including the conversion, transfer, concealment, acquisition, possession and use of property or proceeds of crime. Those provisions also cover participation by providing assistance in the commission of an offence.*

*Cambodian legislation provides a list of predicate offences, which covers all offences and crimes (art. 404 of the Penal Code and article 1 (under art. 3, para. (e)), of the Law amending arts. 3, 29 and 30 of the Law on Anti-Money-Laundering).*

*Cambodian legislation does criminalize self-laundering in article 1 (under arts. 3, 29 and 30) of the Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering and 404, 405, 406, 136, 137 and 138 of the Penal Code.*

*Cambodia delivered to the secretariat a copy of its legislation on money-laundering in December 2014.*

*Article 399 of the Penal Code generally criminalizes concealment, as does article 37 of the Law on Anti-Corruption, pursuant to the provisions of article 24 of the Convention.*

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

*Articles 592, 593, 597, 598 and 601 of the Penal Code criminalize the embezzlement of public funds, the unlawful exploitation of a company or the wilful misappropriation of documents, securities, private or public funds. However, a reference to third-party beneficiaries is missing.*

*Article 35 of the Law on Anti-Corruption and article 586 of the Penal Code criminalize the abuse of power; however, there is no reference to third-party beneficiaries or to the abstention of carrying out an act in the exercise of one's functions.*

*Article 36 of the Law on Anti-Corruption considers that illicit enrichment is an increase in the wealth of an individual for which the individual cannot provide a reasonable explanation regarding the increase in comparison to his or her legal income. Illicit enrichment is, however, only criminalized when it is done at the same time as a declaration of assets and debts.*

*Articles 391, 392 and 393 of the Penal Code criminalize breach of trust committed by any individual but also by company directors.*

*Obstruction of justice (art. 25)*

*Articles 546 and 548 of the Penal Code criminalize any act of intimidation and the bribery of witnesses to not make a statement or to give a false statement.*

*Article 607 of the Penal Code and article 40 of the Law on Anti-Corruption criminalize the intimidation of public officials and obstruction of the work of the Anti-Corruption Unit.*

*Liability of legal persons (art. 26)*

*Article 42 of the Penal Code confirms the general principle of criminal responsibility of legal entities, which does not preclude the criminal responsibility of physical persons who have committed such offences.*

*Article 46 of the Law on Anti-Corruption and articles 283, 409, 519, 559, 625 and 644 of the Penal Code provide for criminal responsibility for various corruption acts, therefore including the offences contained in the Convention. Those provisions enforce a wide range of sanctions including pecuniary sanctions.*

*Participation and attempt (art. 27)*

*Articles 26, 28 and 29 of the Penal Code criminalize participation in the commission of a crime or an offence as accomplice, instigator or assistant. Attempt is also included in those same articles and is sanctioned in article 27 of the Penal Code. Article 44 of the Law on Anti-Corruption also criminalizes attempt. Cambodia has confirmed that the preparation of an offence is implicitly embedded in those articles.*

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

*The Penal Code and the Law on Anti-Corruption establish a sentence proportionate to the seriousness of an offence, comprising a range of prison sentences and fines.*

*Articles 80 and 104 of the Constitution grant immunity to the members of the National Assembly and the Senate. Such immunity may only be lifted by the same bodies, as well as in the case of flagrante delicto.*

*The Cambodian judicial system uses the principle of opportunity. However, Cambodia has confirmed that the Code of Criminal Procedure (arts. 40 and 41) provides that a closing order must always be justified by the Prosecutor. The closing order may also be reviewed by the Chief Prosecutor attached to the Court of Appeal at the plaintiff's request. Besides, the investigating judge is not obliged to conform to the final submission of the Prosecutor.*

*The Criminal Procedure Code defines provisional detention as an exceptional measure and it governs the framework of provisional release for any individual who has been charged, while taking into account the necessity to guarantee their appearance in later procedures (arts. 203, 204, 205, 216, 217 and 223 of the Code).*

*Cambodia has confirmed that its legislation contains provisions for conditional or early release for corruption offences, while taking into account the gravity of such offences (arts. 512-521 of the Criminal Procedure Code).*

*The Law on the Common Statute of Civil Servants provides for disciplinary sanctions such as the temporary suspension of duties during a judicial procedure. Other disciplinary measures encompass automatic position change and removal from post (arts. 40 and 52).*

*Article 53 of the Law on the Common Statute of Civil Servants provides for the removal of a civil servant in the case of a final conviction. Cambodian legislation also provides for deprivation of the right to be a public official in the case of a criminal conviction (art. 55 of the Penal Code). Such deprivation of rights may be temporary or final.*

*Cambodian legislation does not refer explicitly to the fact that a public official convicted of an offence contained in the Convention may be deprived of his/her right to exercise his/her public function in an enterprise owned in whole or in part by the State.*

*Article 35 of the Common Statute of Civil Servants provides for the application of disciplinary sanctions without prejudice to potential criminal procedures.*

*Chapter 7 of the Law on Prisons provides for education, correction, provisional training and rehabilitation for prisoners.*

*Articles 93, 94 and 95 of the Penal Code provide for provisions that grant the accused mitigating circumstances in the implementation of the sentence imposed on him/her. However, Cambodian legislation has no specific measures promoting cooperation with law enforcement services.*

*Protection of witnesses and reporting persons (arts. 32 and 33)*

*The Penal Code, Criminal Procedure Code, the Law on Anti-Corruption and sub-decree No. 5, dated 10 January 2011, on the organization and functioning of the Anti-Corruption Unit, provide general measures for ensuring the protection of witnesses, experts and victims, without making any reference to their parents or other individuals close to them, or to agreements made for the relocation of witnesses, experts and victims. Article 13 of the Law on Anti-Corruption also provides, to a certain extent, for the protection of reporting persons.*

*Cambodia is in the process of preparing a new draft law implementing more specifically and more fully the protection of witnesses, experts, victims and reporting persons.*

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Article 404 of the Penal Code gives a definition of money-laundering, whereas article 408 provides for additional penalties, such as confiscation. Article 48 of the Law on Anti-Corruption also provides for confiscation measures. Article 1 (under art. 30, new paras. 2 and 3) of the Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering provides for the confiscation of assets, which are the proceeds of the predicate offence, including property intermingled with or exchanged for such proceeds. They also provide for the confiscation of assets constituting the income and other benefits obtained from the proceeds of the predicate offence, the property of the perpetrator of the offence the value of which corresponds to that of the proceeds of the predicate offence and the instrumentalities and materials used in carrying out the criminal offence.

Article 1 (under art. 30, new para. 1) of the Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering and the Law on Anti-Corruption (arts. 28, 30 and 48) provide measures for the freezing and seizure of assets which are the proceeds of the predicate offence. Article 12 of the Law on Anti-Money-Laundering provides for measures for reporting cash or suspicious transactions to the Financial Intelligence Unit.

Cambodia has pointed out that in practice, the administration of seized or confiscated property is carried out by the relevant authorities at the request of the competent court (art. 48 of the Law on Anti-Corruption and arts. 119, 120, 161 and 354 of the Criminal Procedure Code).

Article 12 of the Law on Anti-Money-Laundering provides for the obligation of reporting suspicious transactions to the Financial Intelligence Unit. Article 27 of the Law on Anti-Corruption provides for the Anti-Corruption Unit to check and order the delivery of banking, financial and commercial documents; it also confirms that banking secrecy may not be invoked in the event of a corruption offence.

Article 1 (under art. 30, new para. 4) of the Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering provides that a person opposing a confiscation order for an asset has the onus to prove the legal origin of such asset. Article 36 of the Law on Anti-Corruption regarding illicit enrichment also provides for the same measure.

Article 1 (under art. 30, new para. 3 and new para. 4) of the Law amending articles 3, 29 and 30 of the Law on Anti-Money-Laundering also provides measures protecting the rights of third parties who are in good faith. Article 179 of the Penal Code provides that confiscation may not be ordered if it affects the rights of third parties.

*Statute of limitations; criminal record (arts. 29 and 41)*

Article 10 of the Criminal Procedure Code provides for a statute of limitations for bringing a criminal action of 15 years for felonies, 5 years for misdemeanour and 1 year for petty offences. Article 11 of the Criminal Procedure Code provides for the interruption of the statute of limitations if there is an act of prosecution or investigation. Cambodia has confirmed that the interruption of the period of limitation by the initiation of legal proceedings applies and that such rules do not require the presence of an alleged offender who has evaded justice or fled the country.

As for the implementation of article 41 of the Convention, Cambodia has explained that in practice, it is implemented, even though Cambodia does not have specific legislation that requires the taking into account of foreign sentences in respect of offences pursuant to the Convention. Cambodia has explained that this can be covered by articles 84 and 85 of the Penal Code.

*Jurisdiction (art. 42)*

*Jurisdiction for offences committed on Cambodian territory, also with regard to vessels and aircraft, arises from articles 12-16 of the Penal Code. Cambodia applies both the active (art. 19 of the Code) and passive (art. 20 of the Code) personality principle. Jurisdiction to prosecute in lieu of extradition is therefore also established with regard to nationals. Cambodia has not established other optional bases for jurisdiction.*

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

*Article 66 of the Public Procurement Law provides for the rejection of an ongoing procurement or the termination of a contract and the adding of any entrepreneur involved in corruption acts onto a blacklist.*

*Article 5 of the Criminal Procedure Code enables victims of a crime to file a complaint as plaintiffs of a civil action before the investigating judge. Article 355 of the Criminal Procedure Code provides that in a criminal judgment, the court shall also decide upon civil remedies.*

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

*The Law on Anti-Corruption established the Anti-Corruption Institution, which is composed of the National Council against Corruption and the Anti-Corruption Unit. The Unit has a mandate for the prevention, regulation, detection, investigation and repression of corruption.*

*Article 29 of the Law on Anti-Corruption provides for cooperation between the Anti-Corruption Unit and public authorities. Article 26 of the Law on Anti-Money-Laundering also provides for cooperation between the Financial Intelligence Unit and governmental authorities.*

*Article 12 of the Law on Anti-Money-Laundering provides for the obligation of several private sector entities, such as financial institutions, to report suspicious transactions to the Financial Intelligence Unit.*

*The role of the Anti-Corruption Unit is to receive and examine all complaints relating to corruption (art. 13 of the law on Anti-Corruption). A hotline is also available to citizens.*

## **2.2. Successes and good practices**

*Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:*

- *The open and inclusive manner in which the Cambodian self-assessment checklist was prepared, seeking input from all stakeholders and taking into account the opinions of all components of Cambodian society.*
- *The signature of a memorandum of understanding for cooperation between the Anti-Corruption Unit and private entities (art. 39, para.1, of the Convention).*

## **2.3. Challenges in implementation**

*The following steps could further strengthen existing anti-corruption measures in relation to the articles of the Convention:*

- *Article 15*

*Amend legislation to include third-party beneficiaries as possible recipients of undue advantage.*

- *Article 16*

*(Para. 1) Amend legislation to include third-party beneficiaries as possible recipients of undue advantage.*

*(Para. 2) Consider amending legislation to include third-party beneficiaries as possible recipients of undue advantage.*

- *Article 17*

*Amend legislation to include third-party beneficiaries as possible recipients of undue advantage.*

- *Article 18*

*Consider amending legislation to include third-party beneficiaries as possible recipients of undue advantage.*

- *Article 19*

*Consider amending legislation to include third-party beneficiaries as possible recipients of undue advantage and to include the abstention of carrying out an act in the exercise of one's functions.*

- *Article 21*

*Consider amending legislation in order to be fully compliant with the Convention.*

- *Article 31*

*(Para. 3) Take additional measures to regulate the administration of frozen, seized or confiscated assets by the competent authorities.*

- *Article 32*

*Adopt the draft law on the protection of witnesses, experts and victims.*

- *Article 33*

*Consider adopting the draft law on the protection of reporting persons.*

- *Article 37*

*(Para. 1) Adopt appropriate measures to encourage the cooperation of individuals who take part or have taken part in the commission of an offence.*

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

- *(Articles 23, 24, 31, 32, 33, 36, 37, 39 and 40) Capacity-building.*
- *(Article 23) Build a mechanism to share and analyse information and design a mechanism to strengthen cooperation between local and regional authorities.*
- *(Articles 23, 32, 37, 39, 40 and 41) Legal advice.*
- *(Articles 25, 26 and 27) Data-collecting system for statistical purposes.*
- *(Article 25) Human resources.*
- *(Articles 32, 33, 37, 40 and 41) Summary of good practices.*
- *(Articles 32, 37 and 41) Model legislation.*
- *(Articles 32 and 37) Model agreement.*
- *(Articles 39 and 40) On-site assistance by a relevant expert.*

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

*Cambodia has extradition treaties with four countries (China, Lao People's Democratic Republic, Republic of Korea and Thailand). Domestically, extradition is regulated in a chapter of the Criminal Procedure Code (arts. 566-595).*

*In extradition matters, Cambodia generally requires dual criminality. However, in line with article 43 (2) of the Convention, the principle of dual criminality is applied flexibly, i.e. the underlying conduct is decisive for the assessment of dual criminality.*

*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 (art. 586 of the Criminal Procedure Code). 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 (art. 589 of the Criminal Procedure Code).*

*Cambodia does not allow "accessory" extradition, i.e. extradition for connected offences, as laid down in article 44 (3) of the Convention. Offences under the Convention are not considered political offences.*

*Cambodia makes extradition conditional on the existence of a treaty. However, Cambodia could in theory use the Convention as the legal basis of extradition for corruption offences. Finally, reciprocity is also observed in practice in extradition proceedings.*

*Articles 571-594 of the Criminal Procedure Code lay down the requirements for extradition, including a two-year minimum penalty requirement and the reasons for refusing extradition. The fact that the offence involves fiscal matters is not a ground for refusal.*

*Cambodia can take a person whose extradition is sought and who is present in its territory into provisional custody or detention.*

*Cambodia largely complies with the principle of *aut dedere aut judicare*. While Cambodian nationals cannot be extradited (art. 33 of the Constitution), Cambodia has jurisdiction over its nationals on the basis of the active personality principle. However, since prosecution follows the principle of opportunity (art. 40 of the Criminal Procedure Code), the prosecutor enjoys a large margin of discretion. Moreover, for prosecution on the basis of article 19 of the Penal Code, a complaint by the victim or formal information from the country where the offence was committed is required (art. 21 of the Penal Code).*

*Cambodia cannot enforce a sentence imposed by a foreign court, as that is incompatible with the Constitution and Cambodian law.*

*Articles 31 and 38 of the Constitution contain guarantees that are directly applicable in all law enforcement procedures. The decision to extradite can be appealed in a court of law (art. 590 of the Criminal Procedure Code). The extradition treaties of Cambodia stipulate as mandatory grounds for refusal of extradition the institution of criminal proceedings against the person sought on account of sex, race, religion, nationality or political opinion.*

*While there is nothing in the legislation, the obligation to consult with the requesting State before refusing extradition is observed in practice.*

*Cambodia has signed three bilateral treaties on the transfer of sentenced persons. The transfer of criminal proceedings has not yet been considered.*

*Mutual legal assistance (art. 46)*

*Cambodia does not yet have a mutual legal assistance law but the Ministry of Justice is currently drafting one.*

*Apart from the Anti-Corruption Law, there is no domestic legislation that governs mutual legal assistance in Cambodia. The United Nations Convention against Transnational Organized Crime and the Convention against Corruption are therefore the only legal bases for mutual legal cooperation. However, Cambodia does not require a treaty to render mutual legal assistance and the principle of reciprocity is also applied. Cambodia applies the principle of dual criminality when fulfilling judicial assistance requests.*

*Mutual legal assistance can be afforded in relation to offences committed by legal persons. Cambodia can, in principle, afford all the forms of legal assistance listed in article 46, paragraph 3, of the Convention (art. 51 of the Law on Anti-Corruption). The Anti-Corruption Unit has access to bank records without the need for a court order.*

*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 practised in relations between the Financial Intelligence Unit and the police and their foreign counterparts.*

*Cambodia can provide for the confidentiality of information. The confidentiality of the information provided will not prevent Cambodia from disclosing it when such information is exculpatory for an accused person. Mutual legal assistance will not be refused solely on the grounds of bank secrecy or that the offence is also considered to involve fiscal matters. That is explicitly stipulated in the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN member countries.*

*In the absence of internal mutual legal assistance legislation, the transfer of a person being detained or serving a sentence for the purpose of testimony is possible on the basis of bilateral treaties and the Convention. Safe conduct is granted on the same basis. The Criminal Procedure Code does not exclude the possibility of hearings taking place by videoconference.*

*The Ministry of Justice has been designated as the central authority for receiving requests for mutual legal assistance. However, in practice, requests are still transmitted through diplomatic channels. Requests and related documents have to be submitted in writing in Khmer or English. For outgoing requests for mutual legal assistance, Cambodia follows the procedure specified by the receiving country. Cambodia fulfils requests in accordance with the procedure specified in the request, unless such procedure conflicts with national law. The rule of specialty is observed in practice. Requests can be treated confidentially.*

*In the absence of national legislation on mutual legal assistance, Cambodia would only refuse requests for mutual legal assistance on the basis of article 3 of the Treaty on Mutual Legal Assistance in Criminal Matters or article 46, paragraph 21, of the Convention. No request for mutual legal assistance has been refused so far. However, Cambodia would provide reasons for doing so, if it were ever to refuse a request and, prior to that, consultations would be held, although there is no direct legal basis for this. Assistance may be postponed by Cambodia on the grounds that it interferes with an ongoing investigation. Safe conduct can be granted on the basis of article 16 of the Treaty.*

*Ordinary costs related to rendering mutual legal assistance are borne by Cambodia. Documents in the public domain can be provided upon request.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

*Cambodia does not consider the Convention as a basis for mutual law enforcement cooperation.*

*Cambodia is a member of the International Criminal Police Organization (INTERPOL). It shares information via INTERPOL and uses the I-24/7 secure network. Cambodia is also a member of ASEANAPOL (the ASEAN Association of Chiefs of Police) and the South-East Asia Parties Against Corruption. However, the memorandum of understanding of the South-East Asia Parties Against Corruption is not a binding international treaty and does not provide a legal basis for operational measures.*

*The Financial Intelligence Unit became a member of the Asia Pacific Group of Financial Intelligence Units in 2004. In 2015 it became a full member of the Egmont Group. It has memorandums of understanding with its counterparts in a number of countries, including Bangladesh, Japan, Indonesia, the Lao People's Democratic Republic and Thailand. The exchange of confidential information is stipulated in the various memorandums. The Financial Intelligence Unit also uses the Egmont secure web.*

*The memorandums of understanding signed so far do not contain any provisions on joint investigations. Neither does the Treaty on Mutual Legal Assistance in Criminal Matters.*

*Article 27 of the Law on Anti-Corruption allows for the use of special investigative techniques. Evidence obtained through the use of such techniques is admissible in court.*

### **3.2. Successes and good practices**

*Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:*

- The flexible approach to dual criminality (underlying conduct is decisive).*
- The comprehensive legal framework for extradition in the Criminal Procedure Code.*
- The explicit referral to international treaties (art. 567 of the Criminal Procedure Code for extradition and art. 53 of the Law on Anti-Corruption for mutual legal assistance).*

### **3.3. Challenges in implementation**

*The following steps could further strengthen existing anti-corruption measures under the articles of the Convention:*

- Article 44*

*(Para. 3) Consider granting extradition if the request for extradition includes several separate offences, at least one of which is extraditable under the article and some of which are not extraditable by reason of their period of imprisonment, but are related to offences established in accordance with the Convention.*

*(Para. 6 (a)) Cambodia is encouraged to actually use the Convention in practice for extraditions and to notify the Secretary-General of that possibility.*

*(Para. 8) Consider drafting guidelines and templates for the handling of extradition requests.*

*(Para. 11) Ensure that nationals who are not extradited are actually prosecuted in Cambodia and consider adopting guidelines for the prosecution to ensure compliance with that obligation.*

*(Paras. 14 and 15) Include in the Criminal Procedure Code a reference to the constitutional guarantees on due process and non-discrimination.*

*(Para. 17) Include in the Criminal Procedure Code the obligation to hold consultations before refusing an extradition request.*

- *Article 46*

*Cambodia is encouraged to continue working on the draft mutual legal assistance law, prioritize its swift adoption, ensure its full compliance with article 46 of the Convention, including for asset recovery, and in particular include the following points in the draft:*

*(Para. 3) Ensure that all investigation and law enforcement measures that could be taken in a purely domestic context can also be used in fulfilling requests for mutual legal assistance.*

*(Para. 3 (h)) Make provisions for facilitating the voluntary appearance of persons in the requesting State party.*

*(Para. 4) Allow for the spontaneous sharing of information without prior request.*

*(Paras. 5 and 20) Make provisions for guaranteeing the confidentiality of information.*

*(Para. 9) Clarify that dual criminality is not required for rendering mutual legal assistance and clarify that mutual legal assistance will not be declined owing to the de minimis nature of the matter.*

*(Para. 13) Allow and use direct communication between central authorities and use a central authority as the entry point for requests for mutual legal assistance.*

*(Para. 14) Notify the Secretary-General of the central authority, acceptable languages and the use of the Convention as the legal basis for rendering mutual legal assistance, and specify that English can be used in requests for mutual legal assistance.*

*(Para. 17) Clarify that requests can be executed in accordance with the procedures specified in the request, unless such procedures conflict with domestic law.*

*(Para. 26) Include the obligation to hold consultations before refusing a request.*

- *Article 47*

*Consider the possibility of transferring to another State party proceedings for the prosecution of an offence established in accordance with the Convention.*

- *Article 48*

*The Anti-Corruption Unit is encouraged to continue its close cooperation with counterparts in the region, to conclude more memorandums of understanding with them and to provide for ways to exchange case-related information.*

- *Article 49*

*Consider concluding agreements whereby the competent authorities concerned may establish joint investigative bodies or undertake joint investigations on a case-by-case basis.*

### ***3.4. Technical assistance needs identified to improve implementation of the Convention***

- *Article 44*

*Cambodia has requested the secretariat to provide guidelines on the application of discretionary prosecution in the case of an extradition request which is denied (in particular with regard to Cambodian citizens who cannot be extradited).*

- *Article 46*

*Assistance has been requested for drafting a law on mutual legal assistance.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. Cambodia acceded to the Convention on 5 September 2007.

8. Cambodia has made the following depositary notifications:

“In accordance with, paragraph 13 of Article 46 the central authority designated in pursuance of this article is the Ministry of Justice of Cambodia.

Pursuant to Article 46.14, the Government of Cambodia declares that requests and annexed documents should be addressed to it accompanied by a translation in English or Khmer.

Pursuant to Article 44.6, the Government of Cambodia declares that it takes this convention as the legal basis for cooperation on extradition with other State Parties.”

### **B. Legal system of Cambodia**

9. Cambodia is a Kingdom, whose the monarch reigns but not rules. It has a bicameral legislature, the National Assembly and the Senate; the legislative term of the National Assembly shall be 5 years and the legislative term of the Senate shall be 6 years. The national assembly shall consist of at least 120 members who shall be elected universally every 5 years. At the presence, there are 123 members of the fifth legislature of the national assembly. The senate consists of members whose number shall not exceed half of the number of the members of the national assembly where some senators shall be nominated and some shall be elected non-universally every 6 years. At the presence, the senate consists of 61 members.

10. Members of the national assembly shall be elected by a free, universal, equal, direct and secret ballot. The election uses a capital-provincial proportional election system by which the capital and provinces are used as the polling stations. Political parties which were established in accordance with the Law on Political Parties can stand for the election and shall register in Political Election List and prepare the candidate list of a political party to register to national election committee (NEC) in compliance with the procedures stated in Law on Political Parties and Law on the Election of Law Makers. Voters choose a party which they like; candidates’

names are not shown and independent candidates are not permitted. After the election, the seats in national assembly shall be divided in respected to the formula of highest average in capital and each province based on numbers of seats in capital and each province and results of the elections in which each party gets in capital and each province. A political party with the most seats is responsible for the setting up and governing the government.

11. Public administration management in the kingdom of Cambodia is implemented in accordance with decentralization and de-concentration policies and consists of national administration (central administration) and sub-national administration (local administration):

a. National administration (central administration) refers to ministries, institutions, and other public entities. National administration also refers to autonomous institutions, statutory public authorities, and other government's entities with particular statutes and provisions but under the control of the government such as public establishments, public enterprises (public universities and autonomous ports etc.).

b. Sub-national administration (local administration) refers to capital, provinces, municipalities, districts, khan, and communes-sangkat.

Public officials and citizens vested with public office through election who serve in ministries and other public institutions are service providers to the citizens. Other entities such as autonomous entities and independent bodies such as National Election Committee, National Audit Authority, and Anti-Corruption Unit are also staffed by civil servants (Public Officials).

In general, government's administration entities are responsible by the ministries or state secretariat and receive direct budget support by government's annual budget which means that all the income is not kept. Other entities with autonomous statutes can keep income they earn to support their work partly or the whole.

Most of the civil servants are recruited by ministry of public functions in accordance with bodies which are divided in to grades and classifications. Other public entities which autonomy is granted in staff management shall have particular statutes.

Members of the government who govern the ministries or state secretariat are the head of the institution who are responsible for directing the tasks and supervising the staffs, civil servants, and ministries' subordinate units. Central units under the ministries or state secretariat may consist of a general secretariat ( in special case), general department(s) (which there are departments in it), general inspectorate or inspectorate. Local entities under the ministries or state secretariat may consist of skill departments (divided into offices and may have other small units) at capital- provincial level and offices (divided in to sections) at municipality-district-khan level. Ministries and institutions are governed and led by ministers, secretary of state, undersecretary of state, and civil servants who are nominated, changed, and out of office by Kret, Anukret, and Prokas. National police and royal armed forces are also units under public administrations but there are particular provisions which are different from civil servants.

12. The capital, provinces, municipalities, districts and khans are legal entities of public laws which are represented by the councils. The council shall have roles to undertake activities necessary to achieve the purpose of establishing, promoting and sustaining democratic development and to perform functions and duties that have been assigned and delegated to it through laws. The council shall have the authority to make legislative and executive decisions. Each council shall have its personnel. The capital, provincial, municipal and district councils shall have their own budget which is referred to as budget of the sub-national administrations.

13. A board of governors shall be established for the Capital, Province, Municipality, District and Khan. A board of governors shall have a chairperson called the Governor and a certain number of deputy governors. The governor shall represent ministries and institutions of the Royal Government in supervising, coordinating and directing all line departments and units of the government ministries and institutions that operate within the jurisdiction of the council. The governor shall also represent the Royal Government, relevant ministries and institutions on issues related to security, social and public order, law, and human rights within its jurisdiction.
14. The relation between the council and board of governors:
  - The board of governors shall provide comments and advice to the council, report to the council and implement decisions of the council. The board of governors shall support the council to fulfil its functions, authorities, and the duties.
  - The council shall monitor activities and performance of the board of governors and governor.
15. Cambodia's current Constitution, enacted in 1993, is the sixth Constitution, but it has been amended seven times as of 2014. The Constitution was made under the influence of the United Nations and the International Community and reflected not only universal and modern constitutional characteristics such as democracy, human rights and rule of law, but also its own historical and traditional characters in an attempt of restoring historical continuity: kingship, state religion (Buddhism), and state institutions.
16. Cambodian legal system is civil law which is dualistic. By law, international treaties to which Cambodia wants to accede or ratify can be ratified or acceded to by way of both executive acts and legislative acts. Either by executive or legislative act, the act of accession or ratification alone does not enable the rules of the international treaties to be applied in Cambodia; they need to be incorporated first into those of the domestic law or the existing domestic law needs to be amended so that it is compatible with the acceded or ratified international treaties.
17. Cambodia is a member of the regional body, known as the Association of the Southeast Asian Nations (ASEAN), which comprises of 10 Southeast Asian Countries. Although countries within ASEAN are increasingly integrated economically culturally and politically into one another, legally speaking each nation is independent from one another and that they do not have common legal systems that apply to all members and thus domestic legislation is not affected by the status of being a member of this association.
18. The Judiciary is explicitly established as an independent branch of government. Its power covers all lawsuits including administrative cases. The Constitution also protects the Judiciary from interference by other branches of government by expressly prohibiting the dismissal of judges.
19. The Constitution mandates that the King is the guarantor of the independence of the Judiciary with the assistance of the Supreme Council of Magistracy (SCM). The Constitution also identifies three distinct components of the Judiciary: (1) the SCM (2) the Courts and (3) the Prosecutors.
20. The Constitutional Council is not a part of the Judiciary. The Constitutional Council holds the constitutional duty to safeguard respect for the Constitution by interpreting the Constitution and

all laws passed by the National Assembly and reviewed by the Senate. The Council is also empowered to decide cases involving the election of Assembly and Senate members.

21. The Supreme Council of Magistracy (SCM) is the prime guardian of the independence of the Judiciary. Only the SCM is empowered to discipline judges and forward proposals to the King on appointment of all judges and prosecutors. The SCM must be consulted on any draft laws concerning the functions and organization of the Judiciary.
22. The Courts are divided into the higher courts, which consist of Supreme Court and the Appellate court and lower court, which comprises of provincial/municipal courts and the military court. Cambodia also has a hybrid court which is known as the Extraordinary Chambers in the Courts of Cambodia, known as the Khmer Rouge Tribunal.
23. The Supreme Court hears only matters of law, except in the case of a joint trial of the second grievance complaint the Supreme Court may render a final decision on both law and facts. The Appellate Court reviews both matters of fact and matter of law. The Military court has jurisdiction only over military offenses involving military personnel, either enlisted or conscripted, concerning military discipline, property and security. Any appeal against the decision of the Military Court has to be made with the Appellate Court as well. All ordinary offences committed by military personnel, as well as members of the public as a whole, are tried in ordinary courts, namely provincial/municipal courts. In the coming future, labour court, the commerce court and juvenile court will be established.
24. The following implementing policies and legislations were cited by Cambodia:
  1. Constitution of the Kingdom of Cambodia which was promulgated on 24 September 1993
  2. Provisions on judiciary, penal code, and code of criminal procedure which were implemented in Cambodia in the transitional period ( Transitional penal code) which was promulgated by the decision dated 10 September 1992
  3. Law on the Common Statute of Civil Servants of the Kingdom of Cambodia which was promulgated by royal kram no 06NS/RKM/0197/01 dated 24 January 1997
  4. Law on Drug Control which was promulgated by royal kram no NS/RKM/0197/01 dated 24 January 1997
  5. Law on General Statute of Royal Armed Forces which was promulgated by royal kram no CS/RKM/1197 dated 06 November 1997
  6. Law on Organization and Function of the Constitutional Council which was promulgated by royal kram no CS/RKM/0498/06 dated 08 April 1998
  7. Law on Finance and Banking Establishment which was promulgated by royal kram no NS/RKM/1199/13 dated 18 November 1999
  8. Law on Amendment of the Law on Drug Control which was promulgated by royal kram no NS/RKM/0505/014 dated 09 May 2005
  9. Law on Anti-Money Laundering and Combating Financing of Terrorism which was promulgated by royal kram no NS/RKM/0607/014 dated 24 June 2007
  10. Code of Criminal Procedure which was promulgated by royal kram no NS/RKM/0807/024 dated 10 August 2007 Penal Code which was promulgated by royal kram no NS/RKM/1109/022 dated 30 November 2009
  11. Law on Anti-Corruption which was promulgated by royal kram no NS/RKM/0410/004 dated 17 April 2010
  12. Law on Amendment of Law on Anti-Corruption which was promulgated by royal kram no

- NS/RKM/0811/017 dated 01 August 2011
13. Law on Prison which was promulgated by royal kram no NS/RKM/1211/021 dated 21 December 2011
  14. Law on Drug Control which was promulgated by royal kram no NS/RKM/0112/001 dated 02 January 2012
  15. Law on Public Procurement which was promulgated by royal kram no NS/RKM/0112/004 dated 14 January 2012
  16. Law on Amendment Article 3, Article 29, and Article 30 of the Law on Anti-Money Laundering and Combating Financing of Terrorism which was promulgated by royal kram no NS/RKM/0613/006 dated 03 June 2013
  17. Sub Decree 05 RNKR.BK dated 10 January 2011 on Organization and Function of Anti-Corruption Unit
  18. Sub Decree 06 RNKR.BK dated 10 January 2011 on Organizing and Managing Budget of Anti-Corruption Institution
  19. Prokas no 62/08 dated 06 October 2008 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims / Witnesses
  20. Anti-Corruption Strategic Plan 2011-2015 of National Council Against Corruption dated 21 September 2010
  21. Anti-Corruption Strategic Plan 2015-2020 of National Council Against Corruption dated 03 August 2015
  22. Action Plan 2011-2013 of Anti-Corruption Unit dated 21 September 2010
  23. Action Plan 2015-2020 of Anti-Corruption Unit dated 03 August 2015
  24. Letter No. 3273 RNKR.BK dated on 03 June 2011 of Ministry of Economics and Finance on Anti-Corruption Incentive (Incentive for Particular Function) for Anti-Corruption Institution
  25. Memorandum of understanding between the Anti-corruption Bureau of Brunei Darussalam, the Corruption Eradication Commission of the Republic of Indonesia, the Anti-corruption Agency of Malaysia, and the Corrupt Practices Investigation Bureau of the Republic of Singapore on cooperation for preventing and combating corruption (SEA-PAC)
  26. Memorandum of understanding on the Cooperation between Ministry of Interior of Cambodia and Ministry of Public Security of People's Republic of China dated 22 August 2008
  27. Memorandum of Understanding on The Exchange of Information related to Money laundering and terrorism financing (MOU) between Cambodian Financial Intelligence Unit (CAFIU) and 1).Bank Negara Malaysia dated 03 April 2009 2).Srilankar dated on 26 October 2009 3).Bangladesh dated on 26 October 4).Japan dated on 19 July 2011 5).State Bank of Vietnam dated on 28 March 2012 6).South Korea dated 27 August 2013 7).Financial Intelligence Unit of Thailand dated on 30 January 2014 8).Financial Intelligence Unit of Laos dated on 24 March 2015
  28. Memorandum of Understanding between Cambodian Financial Intelligence Unit (CAFIU) and other national authorities, including 1). National Police Commission of Ministry of Interior on “the Exchange of financial information” dated on 22 December 2011 2). General department of custom and excise of Ministry of Economics and Finance on “the Exchange of financial information” dated on 09 July 2012 3). Cambodian Anti-Corruption Unit on “the Exchange of financial information” dated on 26 December 2014 4). General Department of Control of Cambodian National Bank on “Cooperation to anti-money laundering and combating the financing of terrorism” dated on 09 January 2015
  29. Memorandum of Understanding on Cooperation between Anti-Corruption Unit and Private

- Sectors, including Coca-Cola, European Chamber of Commerce, and local businesses
30. Treaty on Extradition between Government of the Kingdom of Cambodia and 1).Kingdom of Thailand dated on 06 May 1998 2).Government of People's Republic of China dated on 09 February 1999 3).Government of Lao People's Democratic Republic dated on 21 October 1999 4).Government of the Republic of Korea dated on 22 October 2009
  31. Treaty on Mutual Legal Assistance in Criminal Matters Among ASEAN Member Countries dated on 29 November 2004
  32. Agreement between the Government of the Kingdom of Cambodia and 1).Government of the Commonwealth of Australia on the Transfer of sentenced persons dated on 11 October 2).Government of the Republic of India on the Transfer of sentenced persons dated on 08 December 2007 3).Government of the Kingdom of Thailand on the Transfer of sentenced persons and on cooperation in the enforcement of penal sentences dated on 05 August 2009

25. Cambodia provided the following anti-corruption assessment initiatives:

- Cambodia joined the ADB/OECD anti-corruption initiative for Asia and the Pacific in 05 March 2003 and has been evaluated on specific themes since then.
- Cambodia became a member of the APG in 2004. Cambodia has been developing anti-money laundering and combating the financing of terrorism system. Cambodia has passed an anti-money laundering and combating the financing of terrorism legislation. Cambodia has established a Financial Intelligence Unit in the Central Bank. Cambodia underwent its first APG Mutual Evaluation in February 2007 (evaluated by the World Bank and APG). The full report was adopted by APG members in July 2007.
- Cambodia joined the ADB/OECD anti-corruption initiative for Asia and the Pacific in 05 March 2003 and has been evaluated on specific themes since then.

## C. Implementation of selected articles

### III. Criminalization and law enforcement

#### Article 15. Bribery of national public officials

##### Subparagraph (a) of article 15

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### (a) Summary of information relevant to reviewing the implementation of the article

26. Cambodia considered that it has fully implemented this provision of the Convention through articles 605 and 518 of Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009).
27. Though those articles stipulate without the element of "...promise, giving or offering undue advantage to another person or entity...", in addition, four other articles of Cambodian Penal Code (Article 25: Definition of perpetrator, Article 26: Definition of co-perpetrator, Article 28: Definition of instigator, Article 29: Definition of accomplice) and an article of Law on Anti-Corruption (Article 37: Corruption proceeds offences) cover this element.
28. Penal code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

##### Article 605: Proffering of bribes

Unlawfully proffering, directly or indirectly, any gift, offer, promise or interest, in order to induce a public official or a holder of public elected office:

- (1) to perform an act pertaining to or facilitated by his or her function;
  - (2) to refrain from performing an act pertaining to or facilitated by his or her function;
- shall be punishable by imprisonment from five to ten years.

##### Article 518: Bribery of Judge

The direct, indirect or unlawful giving of a gift, offer, promise or benefit to a judge with a view to obtaining from such a judge:

- (1) the performance of an act pertaining to his or her function;
  - (2) the non-performance of an act pertaining to his or her function;
- shall be punishable by imprisonment from five to ten years.

##### Article 25: Definition of perpetrator

The perpetrator of an offence shall be any person who commits the relevant criminally prohibited act. The definition of perpetrator includes any person who attempts to commit a felony or, in the cases provided for by law, a misdemeanour.

##### Article 26: Definition of co-perpetrator

The co-perpetrators of an offence shall be any persons who, by mutual agreement, commit the relevant

criminally prohibited act.

The definition of co-perpetrator includes any persons who, by mutual agreement, attempt to commit a felony or, in the cases provided for by law, a misdemeanour.

Article 28: Definition of instigator

An instigator of a felony or a misdemeanour shall be any person who:

- (1) gives instructions or order to commit a felony or misdemeanour;
- (2) provokes the commission of a felony or misdemeanour by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power.

An instigator may only be punishable if the felony or misdemeanour was committed or attempted.

An instigator of a felony or misdemeanour shall incur the same penalties as the perpetrator.

Article 29: Definition of accomplice

An accomplice shall be any person who knowingly, by aiding or abetting, facilitates an attempt to commit a felony or a misdemeanour, or its commission.

An accomplice may only be punishable if the felony or misdemeanour was committed or attempted.

29. Law on Anti-Corruption Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010

Article 37: Corruption proceeds offences

Corruption proceeds is an act to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in this law. Acts that can also be counted as corruption proceeds are as follows:

1. Act as intermediary for transporting items with the knowledge that they are corruption proceeds; or
2. The act that benefits from corruption proceeds with clear knowledge.

Act that benefits from corruption proceeds shall be punishable by imprisonment from two (2) to five (5) years and fine from four million Riel (4,000,000) to ten million Riel (10,000,000). Act benefits from corruption proceeds shall be punishable by imprisonment from five (5) to ten (10) if the offences are committed:

1. Habitually
2. By the comfort/convenience results from professional duty
3. By organized group.

30. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials, judges, prosecutors, and other entities. Capacity building for specific skills to relevant officials is also a priority tasks done by Royal Government of Cambodia. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

31. Cambodia added that according to Cambodian Laws, it is an offense if there is an agreement between parties, the briber and the official, whether any form of undue advantage is given to an official him/herself or to another person or entity.

32. Cambodia also cited the below texts:

Anti-Corruption Law

Article 4: Definition

The technical terms in this law are as follow:

2. Public official shall mean: a. Any person holding office in legislative, executive institutions, or judicial institution, who is appointed by legal letter, whether permanent or temporary, whether paid or unpaid, regardless of his or her status or age. b. Other persons holding a public office, including public agency or public enterprise as well as other public institutions as stated in the law of the Kingdom of Cambodia.

5. Citizen vested with public office through election shall mean a member of the Senate, National Assembly, Municipal Council, Provincial Council, City Council, and District Council, Khan Council and members of Sangkat/Commune Councils as well as citizen vested with a public office through election for the performance of other public functions.

9. Benefits shall mean: a. any gift, loan, fee, reward or commission, which is not legally permitted, in cash or any valuable objects or other property of any description. b. Any job, position, function or any agreement or any contract; c. Any payment, exemption, discharge, or liquidation of any loan, obligation or liability, whether in whole or in part; d. Any other service or favour, including protection against any penalty of any action or proceedings of a civil or criminal punishment though the punishment is already defined or not. e. The exercise or forbearance from the exercise of any rights, any power or duty; and, f. Any offer or promise of any advantage, whether conditional or unconditional, as defined within the spirit of the preceding paragraphs a, b, c, d and e.

10. Gift shall mean any property or service given to or for the benefit of a person, that is not regarded as an agreement and given as a gift in accordance with custom or tradition.

Penal code:

Article 528: Omission to file complaint against a felony or misdemeanour by public official

Any public official or holder of public elected office who, having knowledge of a felony or a misdemeanour through the exercise or on the occasion of his or her function, omits to inform the judicial authority or other competent authorities, shall be punishable by imprisonment from one to three years and a fine from two million to six million Riels.

Article 529: Omission to file complaint against a felony and exceptions

Any person who, having knowledge of a felony the consequences of which is still possible to prevent or limit, omits to inform the judicial authority or other competent authorities, shall be punishable by imprisonment from one month to one year and a fine from one hundred thousand to two million riels.

However, the following persons are exempted from penalty:

- (1) the ascendant and descendant, and the brothers and sisters of the perpetrator, co-perpetrator, instigator or accomplice to the felony;
- (2) the spouse of the perpetrator, co-perpetrator, instigator or accomplice to the felony;
- (3) persons bound by a legal obligation of professional secrecy.

Article 625: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for the offences defined in article 605 (Proffering of bribes), Article 606 (Active trading in influence) and Article 607 (Intimidation) of this Code.

Legal entities shall be punishable by a fine from ten million to fifty million Riels and by one or more of the following additional penalties:

- (1) dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
- (2) placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
- (3) prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
- (4) disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
- (5) prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
- (6) confiscation of the items or funds which were the subject of the offence pursuant to Article 178

(Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;

(7) confiscation of the proceeds or property arising out of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;

(8) publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;

(9) publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio-visual communication) of this Code.

33. Cambodia also explained that the Cambodian Legal System follows civil law and thus usually a certain provision on legislation does not attempt to cover everything. Usually on the application of certain provision, one needs to take other provisions into account.

34. On the question of another person or entity, Cambodia explained that the important thing is to prove the connection of the benefit between the public official and the third party.

Cambodia provided the following scenarios to consider (In all scenarios, the briber will be charged for giving bribe and the official him/herself will be charged for receiving bribe).

35. Eg. Briber gives the gift to the third party of the official. There are 4 scenarios for this case:

1. The third party is not aware of the benefit. In this case, he/she will not be held accountable (unconscious keeper). For example, a briber and a public official make an arrangement for the public official's son to go to college on the scholarship which only possible by the help of briber in exchange that the public official act or refrain from acting in the exercise of his or her official duty.

2. The third party is aware of the benefit. In this case, he/she will be held accountable if he/she himself accepts the benefit with intent; or not be held accountable if he/she is under the influence or force without his/her own intent (article 32 of penal code).

3. The third party aids or facilitates the commission of the crime. In this case, he/she will be charged as accessory of bribe receiving offense (article 29 of Penal Code).

4. The third party receives the gift with the knowledge that the gift is the bribe and act as the intermediary for transferring the gift or benefits from that gift. In this case, he/she will be charged with receiving corruption proceeds offense (article 37 of Anti-corruption Law).

36. In any case, if the third party is aware of the crime, but he/she does not report to the competent authority, he/she will be charged with article 528, 529 of Penal Code.

37. In case the third party is a legal person, he/she will be dealt with article 625 of the penal code.

38. Cambodia explained that when they were to answer "Yes" and "Yes in part" in their responses, this was mainly related to the fact to have or not to have "examples, data or statistics"

39. Cambodia explained it will work to create a database on court cases. Cambodia also explained that it will conduct further law dissemination and capacity building on the fight against corruption for relevant stakeholders.

**(b) Observations on the implementation of the article**

40. The criminalization of the active bribery of national public officials is governed by article 605 of the Cambodian Penal Code. As to the active corruption of judges, it is specifically dealt with under articles 518 of the penal code. However, the reference to third party beneficiaries is missing.
41. Cambodia is partially in accordance with the legislation under review. The reviewers encourage Cambodia to amend its legislation to include third party beneficiaries as possible recipients of the undue advantage.

**Subparagraph (b) of article 15**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*[...]*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

42. Cambodia provided that it has partially implemented the provision under review through articles 594 and 517 of Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009).
43. Though those articles stipulates without the element of promise, giving or offering undue advantage to another person or entity, in implementation, other 4 Articles of Cambodian Penal Code (Article 25: Definition of perpetrator, Article 26: Definition of co-perpetrator, Article 28: Definition of instigator, Article 29: Definition of accomplice) and an article of Law on Anti-Corruption (Article 37: Corruption proceeds offences) cover this element.
44. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

**Article 594: Acceptance of bribery**

The direct or indirect request for or acceptance of gifts, offers, promises or interests, without authorization, by a public official or a holder of public elected office shall be punishable by imprisonment from seven to fifteen years where it is committed:

- (1) perform an act related to or facilitated by his or her function;
- (2) to refrain from performing an act related to or facilitated by his or her function.

**Article 517: Bribery by judges**

The direct or indirect request or unlawful acceptance of a gift, offer, promise or interest by a judge:

- (1) to perform an act pertaining to his or her function;
  - (2) to refrain from performing an act I pertaining to his or her function;
- shall be punishable by imprisonment from seven to fifteen years.

45. Cambodia provided the following examples of cases to illustrate this provision :

#### 46. Cases:

Case 1: The judgment of Criminal Case No. 484 dated 30th November, 2010, the trial conducted on 27th April, 2011 and the public judgment made on 12 May, 2011

On 24 June 2010, a former prosecutor attached to Pursat Provincial Court of First Instance and his other 3 accomplices had detained a car which carried the illegal logging. In this mission, he and his accomplices had detained 2 people and requested the payment of 8000 dollars and finally reached the agreement of paying 3000 dollars. After the money was paid, the two victims were released and the money were shared.

The former prosecutor attached to a Provincial Court of First Instance was sentenced to 19 years imprisonment and required to pay 4.000.000,00 Riel to the plaintiff of civil case on the ground of kidnapping, illegal detention, and taking the bribe committed on 24 -25th June, 2010 in compliance with article 7, section 3 on Law on Aggravation Circumstance of Felony and article 38 of Criminal Law and Procedure applicable in Cambodia under the Transitional Period.

Case 2: The judgment of Criminal Case No. 53 dated 26th September, 2012 of a court of the first instance on the case of a former investigating judge

Verdict No.08 Kr IV T/18-01-2013 dated January 18th, 2013

A former investigating judge of a Provincial Court of First Instance was accused of illicit enrichment (article 36 of Law on Anti-Corruption) and Bribery of the Judge (article 517 of Penal Code) which was committed at the court of the first instance on 20<sup>th</sup> January 2012. This investigating judge abused their function by threatening for the payment of 5000 dollars in return of holding the file without processing while that person was actually a witness in a case.

That former investigating judge of a Provincial Court of First Instance was sentenced to 5 years imprisonment in accordance with articles 517 and 94 of penal code, legally required to one -year execution of sentence starting from 20 January, 2012. The remaining period of sentence shall be suspended in accordance with article 104 and 108 of penal code.

Case 3: Verdict of Criminal Case No. 09 “KH” dated on 5th January, 2012 of a Provincial Court of First Instance

A former Secretary General of National Authority for Combating Drug and the Director of a Provincial Unit for Combating Drug and his other 2 accomplices illegally used the workplace to commit crime and set up an organized drug criminal group. They are the masterminds in retaining the drug, drug trafficking, and falsifying the documents to release the offenders or mitigate the penalties of the offenders.

They were accused of taking the bribe and instigating or masterminding the organized criminal group, committing offences as stipulated in New Article 31-33 and New Article 39 on criminal offences stipulated and sentenced in accordance with Article 38 of Criminal Law and Procedure Applicable in Cambodia during the Transitional Period and New Article 34 of Law on the Amendment of Law on Drug Control for many-time offences committed since 2007 till early 2011. The verdict gave punishment to the accused as follows:

That former judge was sentenced to life-imprisonment and was fined. Some of his properties were confiscated.

47. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials, judges, prosecutors, and other entities. Capacity building for specific skills to relevant officials is also a priority tasks done by Royal Government of Cambodia. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

48. Cambodia made a reference to the responses provided for under article 15 (a) of the UNCAC.

**(b) Observations on the implementation of the article**

49. The criminalization of the passive bribery of national public officials is governed by article 594 of the Cambodian Penal Code. As to the passive corruption of judges, it is specifically dealt with under article 517 of the PC. However, the reference to third party beneficiaries is missing.

50. Cambodia's legislation is partially in accordance with the legislation under review. The reviewers encourage Cambodia to amend its legislation to include third party beneficiaries as possible recipients of the undue advantage.

**Article 16. Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

**(a) Summary of information relevant to reviewing the implementation of the article**

51. Cambodia provided that it has partially implemented the provision under review.

52. The measure described above is defined as a crime under Cambodian Law on Anti-Corruption (Promulgated by Royal Kram No.NS/RKM/0410/004 dated 17 April 2010) in Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization.

53. Though those articles stipulate without the element of promise, giving or offering undue advantage to another person or entity, in implementation, other 4 Articles of Cambodian Penal Code (Article 25: Definition of perpetrator, Article 26: Definition of co-perpetrator, Article 28: Definition of instigator, Article 29: Definition of accomplice) and an article of Law on Anti-Corruption (Article 37: Corruption proceeds offences) cover this element. The definitions of Foreign Public Official and Official of a Public International Organization are also defined in article 4 of Law on Anti-Corruption.

54. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 4: Definition**

The technical terms in this law are as follow:

3.Foreign Public Official shall mean any person holding a legislative, executive, or judicial office of a foreign country, whether appointed or elected; and any foreigner exercising a public function for a foreign country, including for a public agency or public enterprise.

4.Official of a Public International Organization shall mean an international servant or any person who is authorized by such an organization to act on behalf of that organization.

#### Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization

Any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

55. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials, judges, prosecutors, and other entities. Capacity building for specific skills to relevant officials is also a priority tasks done by Royal Government of Cambodia. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

56. Cambodia made a reference to the responses provided for under article 15 (a) of the UNCAC.

#### **(b) Observations on the implementation of the article**

57. Cambodia's legislation is partially in accordance with the provision under review. The reviewers encourage Cambodia to amend its legislation to include third party beneficiaries as possible recipients of the undue advantage.

#### **Paragraph 2 of article 16**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

58. Cambodia provided that it has partially implemented the provision under review through article 33 (Bribe taking by Foreign Public Officials or Officials of Public International Organizations) of Cambodian Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010) complies with this provision.

59. Though those articles stipulate without the element of promise, giving or offering undue advantage to another person or entity, in addition, four other articles of Cambodian Penal Code are applicable (Article 25: Definition of perpetrator, Article 26: Definition of co-perpetrator, Article 28: Definition of instigator, Article 29: Definition of accomplice) and article 37 of the Law on Anti-Corruption (Article 37: Corruption proceeds offences) cover this element.

60. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 33: Bribe taking by Foreign Public Officials or Officials of Public International Organization  
Foreign public officials or officials of public international organizations shall be sentenced from 7 years to 15 years for unrightfully asking for, demanding or accepting, directly or indirectly, gift, donation, promise or any benefit in order to:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

61. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to the public and law enforcement officials and has been strengthening the effectiveness of law enforcement.

62. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

63. Cambodia made a reference to the responses provided for under article 15 (a) of the UNCAC.

**(b) Observations on the implementation of the article**

64. Cambodia's legislation is partially in accordance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation to include third party beneficiaries as possible recipients of the undue advantage.

**Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

**Article 17**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

65. Cambodia considered that it has fully implemented this provision of the Convention through articles 592, 593, 597, 598 and 601 of Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009).

66. In order to cover the element of promise, giving or offering undue advantage to another person or entity, in implementation, article 25, 26, 28: Definition of instigator, Article 29: Definition of accomplice) and an article of Law on Anti-Corruption (Article 37: Corruption proceeds offences) cover this element.

67. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 592: Definition of misappropriation of public funds

The misappropriation of public funds is an act committed by a public official or a holder of public

elected office:

1. to demand or receive as entitlements, duties or taxes of any sum known not to be due, or known to exceed the due amount;
2. to grant, in any form and for any reason, any exoneration or exemption from duties or taxes in breach of law.

Article 593: Applicable penalty

Misappropriation of public funds shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

Article 597: Definition of unlawful exploitation

"Unlawful exploitation" is the act committed, either directly or indirectly, by a public official or a holder of public elected office to take, receive or keep any interest in:

1. an enterprise by such a public official or a holder of public elected office who has the duty of ensuring, in whole or in part, its supervision, management or liquidation;
2. an operation by such a public official or a holder of public elected office who has the duty of ensuring, in whole or in part, its supervision or liquidation

Article 598: Applicable penalty

Unlawful exploitation shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

Article 601: Intentional destruction and embezzlement

The intentional destruction or embezzlement of a document or security, of private or public funds, or of any other item entrusted to him or her, committed by a public official or a holder of public elected office shall be punishable by imprisonment from five to ten years.

68. Cambodia provided the following examples of cases to illustrate this provision :

The Criminal Case No. 2547 dated 8 August, 2012: the trial was conducted on 14 March, 2013 and the public announcement of the verdict was done on 22 March, 2013.

4 officials of a ministry were accused of unlawful exploitation committed in the implementation of the project on "granting social concession land and building houses for former militants in 6 provinces" in Phnom Penh in 2011 and early 2012. The offences were stipulated in article 32 of the Anti-Corruption Law and articles 597 & 598 of the Criminal Code. The verdict hereby decided that all the 4 accused should receive a four-year imprisonment, but this sentence could be suspended and then they were required to pay the fine of 10,000,000.00 Riel to the national budget. Moreover, the 4 accused were required to pay another 1,000,000.00 USD to the State through the Anti-Corruption Unit.

69. Cambodia cited this additional legislation:

Cambodian Penal Code

Article 608: Destruction and embezzlement

The destruction, embezzlement or purloining of a document or security, of private or public funds, or of any other item entrusted to a public official or a holder of public elected office, by reason of his or her function, shall be " punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

**(b) Observations on the implementation of the article**

70. The reviewers note that articles 592,593, 597, 598 and 601 of the penal code criminalize the embezzlement of public funds, the unlawful exploitation of a company or the willful misappropriation of documents, securities, private or public funds. However, they note that the reference to third parties' beneficiaries is missing.

71. Cambodia's legislation is partially compliant with the provision under review. The reviewers encourage Cambodia to amend its legislation to include third party beneficiaries as possible recipients of the undue advantage.

## **Article 18. Trading in influence**

### **Subparagraph (a) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

72. Cambodia provided that it has partially implemented the provision under review through article 606: of Cambodian Penal Code.

73. This article provides for the crime of active trading in influence, referring to unlawfully proffering, directly or indirectly, any gift, offer, promise or interest, in order to induce a public official or a holder of public elected office so that such a person may unlawfully use his or her real or supposed influence with a view to obtaining public tenders, emblem or any other favourable decision from a State institution.

74. Penal code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 606: Active trading in influence

Unlawfully proffering, directly or indirectly, any gift, offer, promise or interest, in order to induce a public official or a holder of public elected office so that such a person may unlawfully use his or her real or supposed influence with a view to obtaining public tenders, emblem or any other favourable decision from a State institution shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

75. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials, judges, prosecutors, and other entities. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

76. Cambodia provided these additional provisions:

## Cambodian Penal Code

### Article 28: Definition of instigator

An instigator of a felony or a misdemeanour shall be any person who:

- (1) gives instructions or order to commit a felony or misdemeanour;
- (2) provokes the commission of a felony or misdemeanour by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power.

An instigator may only be punishable if the felony or misdemeanour was committed or attempted.

An instigator of a felony or misdemeanour shall incur the same penalties as the perpetrator.

### Article 387: Improper bidding

In a public auction, the rejection of a bid or tampering with bids by gifts, promises, understandings or any other fraudulent means, shall be punishable by imprisonment from six months to two years and a fine from one to four million Riels.

### Article 609: Unlawful interference in the discharge of public functions

Any person acting without authority who interferes in the discharge of a public function by performing an act reserved for the holder of this office shall be punishable by imprisonment from one to three years and a fine from two million to six million Riels.

## Anti-Corruption Law

### Article 40: Obstruction or Interference offenses in the work of the Anti-Corruption Unit

Public servants, soldiers, national police or citizens invested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

## Public Procurement Law

### Article 68

An ill-will act in the process of public procurement to dissipate bidders, or destroy bidding, either through donations, pledge, agreement, or all other dishonest means shall be subject to 6 (six) months to 2 (two) years imprisonment and a fine of 1,000,000 (one million) riels to 4,000,000 (four million) riels.

### Article 69

An ill-will act in the process of public procurement through bidding to create obstacles to the freedom of bidding by violence, coercion, or threat, shall be imprisoned from 1 (one) year to 3 (three) years and shall be subject to a fine from 2,000,000 (two million) riels to 6,000,000 (six million) riels.

### Article 72

A legal person can be declared to take criminal responsibility based on the condition set forth in Article 42 (Criminal Responsibility of a Legal Person) of the Criminal Code for misdemeanour that is specified under articles 68 and 69 of this Law. A legal person shall be convicted and charged a fine from 20,000,000 (twenty million) riels to 100,000,000 ( a hundred million) riels and shall be subject to one or more additional charge as specified under Article 168 (additional charge applied to legal person) of the Criminal Code.

## **(b) Observations on the implementation of the article**

77. Cambodia provided the below explanations:

The person who abuses his/her real or supposed influence is a public official, he/she will be punished by article 595, 596 of penal code. The briber will be charged of 606 of penal code.

78. The person who abuses his/her real or supposed influence is not a public official, the following circumstances should be taken into consideration:

1. Procurement: the 3 parties involved namely the instigator, the person who abuses his/her real or supposed influence, and the person who is in charge of administration or public authority will be charged with offences concerning public procurement (For example: article 387 of Penal Code, article 68, 69, 72 of Public procurement law).

2. In General: the person who abuses his/her real or supposed influence will be charged of article 609 of penal code or article 40 of Anti-Corruption Law and the instigator will be charge of article 28 of penal code.

79. As for the undue advantage receive, Cambodia explained that it does not matter if the original instigator of the act or any other person received it, as long as it can be proved that there is a connection of benefit between the instigator and any other person as in the case of article 15 (a) of UNCAC.

80. The reviewers note that the criminalization of active trading in influence of public officials is stipulated under article 606 of the penal code. However, the reference to third party beneficiaries and to trading of influence when it involves any other person are missing.

81. Cambodia's legislation is partially in compliance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation to include third party beneficiaries as possible recipients of the undue advantage.

### **Subparagraph (b) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

[..]:

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

82. Cambodia provided that it has partially implemented the provision under review through article 595 of Cambodian Penal Code.

83. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 595: Definition of Passive trading in influence

"Passive trading in influence" is the act committed by a public official or a holder of public elected office to directly or indirectly request or accept, without authorization, gifts, offers, promises or interests so that such a person may unlawfully use his or her real or supposed influence with a view to obtaining

public tenders, emblem or any other favourable decision from a State institution.

**Article 596: Applicable penalty**

Passive trading in influence shall be punishable by imprisonment from five to ten years.

In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials, judges, prosecutors, and other entities. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

84. Cambodia made a reference to the responses provided for under article 18 (a) of the UNCAC.

**(b) Observations on the implementation of the article**

85. The reviewers note that the criminalization of passive trading in influence of public officials is stipulated under article 565 of the penal code. However, the reference to third party beneficiaries and to trading of influence when it involves any other person are missing.

86. Cambodia's legislation is partially in compliance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation to include third party beneficiaries as possible recipients of the undue advantage.

**Article 19. Abuse of functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

87. Cambodia considered that it has fully implemented this provision of the Convention through article 35 of the Law on Anti-Corruption.

88. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 35: Abuse of functions**

An act committed by public servants or citizens invested with public office through election, in the exercise of his or her duty or in the course of exercising his or her duty such as taking action to hinder law enforcement in order to take any illegal advantage, shall be punishable from two (2) to five (5) years in prison and fine from four million Riel (4,000,000) to ten million Riel (10,000,000).

This offence shall be punishable by imprisonment from five (5) to ten (10) years when such offence goes into effect.

89. Cambodia provided the following examples of cases to illustrate this provision :

- Letter No.002/12(Case No. 007/12) dated on 03 November 2012 issued by ACU on the case of a gendarmerie who threatened an official of the forestry administration in his duty to crack down the crime on the night of 3<sup>rd</sup> November 2012 in a province.

- The verdict order for the provisional detention No.351 dated on 3 November, 2012 issued by a Provincial Court of First Instance.
- Letter No.017/12 RBK/ACU on the conclusion report on the case submitted to Prosecutor attached to a Provincial Court of First Instance dated on 3 November, 2012.

**(b) Observations on the implementation of the article**

90. Cambodia made a reference to the responses provided for under article 15 (a) of the UNCAC.
91. According to Cambodian Penal code, Cambodia explained that according to article 586, abuse of functions is an offense even without the element of “Taking any illegal advantage in exchange of the act of abuse of functions”. Cambodia also referred to the following additional provisions:

92. Penal code:

Article 586: Measures to obstruct law enforcement and aggravating circumstances

The taking of measures designed to obstruct law enforcement, committed by a public official or a holder of public elected office, in the discharge or on the occasion of his or her function, shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

It shall be punishable by imprisonment from five to ten years where the act was effective.

Article 592: Definition of misappropriation of public funds

The misappropriation of public funds is an act committed by a public official or a holder of public elected office:

1. to demand or receive as entitlements, duties or taxes of any sum known not to be due, or known to exceed the due amount;
2. to grant, in any form and for any reason, any exoneration or exemption from duties or taxes in breach of law.

Article 593: Applicable penalty

Misappropriation of public funds shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

93. Cambodia’s legislation is partially in accordance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation to include third party beneficiaries as possible recipients of the undue advantage and to include the abstention of carrying out an act in the exercise of one’s functions.

**Article 20. Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

94. Cambodia considered that it has fully implemented this provision of the Convention article 36 of the Law on Anti-Corruption.
95. According to Cambodian legislation, in comparison to his or her legal income, any unexplainable wealth increase shall face confiscation and, if it is connected to any corruption offense, the wealth owner shall be punished in accordance with that offense.
96. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 36: Illicit Enrichment**

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide reasonable explanation of its increase in comparison to his or her legal income.

After the first assets and liabilities declaration, every person as described in article 17 (people required to declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property.

If the unexplainable wealth increase is connected to any corruption offense as stated in this law, the wealth owner shall be punished in accordance with this law.

97. Cambodia provided the following examples of cases to illustrate this provision.
98. The judgment of Criminal Case No. 53 dated 26th September, 2012 of a court of the first instance on the case of a former investigating judge:  
Verdict No.08 Kr IV T/18-01-2013 dated January 18th, 2013  
A former investigating judge of a Provincial Court of First Instance was accused of illicit enrichment (article 36 of Law on Anti-Corruption) and Bribery of the Judge (article 517 of Penal Code) which was committed at the court of the first in stance on 20<sup>th</sup> January 2012. This investigating judge abused their function by threatening for the payment of 5000 dollars in return of holding the file without processing while that person was actually a witness in a case. That former investigating judge of a Provincial Court of First Instance was sentenced to 5 years imprisonment in accordance with articles 517 and 94 of the penal code, legally requiring one year execution of the sentence starting from 20 January, 2012. The remaining period of sentence could be suspended in accordance with articles 104 and 108 of the penal code.

**(b) Observations on the implementation of the article**

99. During the country visit, Cambodia stressed that article 36 of the Law on Anti-Corruption considers that illicit enrichment is an increase in the wealth of an individual for which the individual cannot provide a reasonable explanation regarding the increase in comparison to his or her legal income. Illicit enrichment is however only criminalized when it is done at the same time as a declaration of assets and debts.

**Article 21. Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

**(a) Summary of information relevant to reviewing the implementation of the article**

100. Cambodia provided that it has partially implemented the provision under review through articles 279 and 280 of Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/ dated on 30 November 2009).

101. It is noted that the act of offering any gift, promise, or reward to an employee for him or her to perform or refrain from performing an act pertaining to his or her duties is considered as a crime only when it is committed without the knowledge of or agreement from his or her employer.

102. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 279: Giving bribes to employees

Any person who offers any donation, gift, promise, or reward to an employee, unknown to his or her employer or without his or her authorization, to perform or refrain from performing an act pertaining to his or her duties shall be punishable by imprisonment from six months to two years and a fine from one million to four million Riels.

Article 280: Bribery by administrators

1. If any person referred to in paragraphs 393(1) and (2) (Breach of trust specifically by administrators or other persons) of this Code or an inspector accepting an unlawful request receives a material benefits or demands or promises to receive benefits from illegal request shall be punishable by imprisonment from five to ten years.
2. The same penalty is applicable to anyone who furnishes, offers or promises a benefit within the meaning of paragraph (1).
3. Any material benefit within the meaning of paragraph (1) shall be confiscated. If the benefit cannot be confiscated in whole or in part, the shortfall shall be paid by the recipient.

103. In order to ensure the full implementation of the provision under review, the Cambodian government is committed for more engagement with the private sector with a view to ensure that the private sector plays a more preventive role in fighting corruption is being planned. According to the Five Year Strategic Plan (2011-2015), in 2014, the Anti-Corruption Unit has initiated a cooperative anti-corruption plan with private sector which is called “Anti-Corruption Unit - Private Sector Anti-Corruption Program Initiative”.

104. The initiative centres on the partnership strategy and builds from good collaboration with the PS with the objective to encourage PS to collaborate with law enforcement agency, conduct clean business, & to be responsible corporate citizen. With the timeframe of around 3-4 years, there are 4 steps in this initiative as the following:

1. Develop a Guide on Anti-Corruption Program for Business in Cambodia.
2. Conduct serial workshops with PS on a regular basis eg. once a month or every two months. The PS players could also be invited to share their experience on Anti-Corruption program.
3. Encourage PS players to develop their own Anti-Corruption Program via various means (with incentives).

4. Demand PS to have in-house Anti-Corruption Program at least in a certain degree. (Taking the company & local context into consideration).

105. ACU stays flexible with initiative as receiving more inputs from PS partners. This initiative is built with the 3 Principles of work “voluntary, encouraging, demanding”. This should happen in tandem. ACU is committed to work with PS and other stakeholders to build trust to achieve favourable outcome in the fight against corruption. As of 2014, in the 1 step, ACU has held 3 meetings (15 August 2014 & 9 September 2014) to disseminate the initiative and the draft “Guide on Anti-Corruption Program for Business in Cambodia” to the stakeholders in private sector to get the input and comment. Private sectors from various fields such as education, banks, insurance, audit, small & medium enterprise, real estate, international business chamber, and food & beverage are invited to the meetings. In additions, ACU has signed Memorandum of Understanding on Cooperation with 8 national and international companies such as Cambodia Beverage Company Ltd. (CoCa CoLa) and Prudential (Cambodia) Life Assurance Plc., European Chamber of Commerce, Cambodian Higher Education Association, etc. More companies are interested in and planned to come on board.

106. Cambodia further provided the following provisions:

#### Cambodian Penal Code

##### Article 283: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for the offences defined in Article 279 (Giving bribes to employees) of this Code.

Legal entities shall be punishable by a fine from five million to twenty million Riels and by one or more of the following additional penalties:

- (1) dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
- (2) placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
- (3) prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
- (4) - disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
- (5) prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
- (6) confiscation of any instruments, materials or items which were used or intended to be used to commit the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
- (7) publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;
- (8) publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio- visual communication) of this Code.

#### **(b) Observations on the implementation of the article**

107. Cambodia further explained during the country visit that according to Cambodian Laws, it is an offense if there is an agreement between parties, the briber and the employee, whether any form of undue advantage is given to employee him/herself or to another person (As in the case explained in responses to article 15 (a) of UNCAC).

108. Concerning the point that “it is not an offense if there is an agreement or consent of the employers”, Cambodian legislation recognizes the rights of private sector in setting out their internal regulations and policies as long as it complies with domestic law. In additions, the law recognizes the principle of accountability of both natural person and legal person.

109. Cambodia further provided the following scenarios:

- An employee in charge of human resource recruitment demands undue advantage from the applicant in exchange for the position, without the knowledge of his employers, he/she will be liable for his/her act under article 278 of Penal code. It is illogical to think that the employer would permit his employee to commit such an act with his full knowledge; this is because as an employer he would simply prefer to recruit competent staff with the level playing field for all applicants.

-In private procurement circumstances, if a subcontractor offers undue advantage to a person in charge of procurement of the company which opens the procurement bidding, an employee of the subcontractor would be punishable with article 279 or article 280 of penal code while the subcontractor would be liable as a legal person under article 283 of penal code. For the person in charge of procurement of the company that opens for bidding, he/she would be charged of article 278 or article 280 of penal code, depending on whether he/she holds the rank of governor in the company or not.

110. The reviewers note that the criminalization of active bribery of employees and administrators is stipulated under articles 279 and 280 of the penal code. The reference to the direct or indirect character of the bribery as well as the reference to third party beneficiaries are missing. Besides, the bribery of employees is only criminalized in cases when this occurs without the knowledge of the employer.

111. Cambodia’s legislation is partially in compliance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation in order to be compliant with article 21(a) of the Convention.

#### **Subparagraph (b) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*[...]*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

112. Cambodia provided that it has partially implemented the provision under review.

113. The applicable provision are article 278 and 280 of Cambodian Penal.

114. It is worth mentioning that the act of requesting or accepting any gift, promise, or reward for an employee to perform or refrain from performing an act pertaining to his or her duties is considered as a crime only when it is committed without the knowledge of or agreement from his or her employer.

115. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 278: Requesting or accepting bribes by employees

An employee who requests or accepts, unknown to his or her employer or without his or her authorization, any donation, gift, promise, or reward for performing or refraining from performing an act pertaining to his or her duties, shall be punishable by imprisonment from six months to two years and a fine from one million to four million Riels.

Article 280: Bribery by administrators

1. If any person referred to in paragraphs 393(1) and (2) (Breach of trust specifically by administrators or other persons) of this Code or an inspector accepting an unlawful request receives a material benefits or demands or promises to receive benefits from illegal request shall be punishable by imprisonment from five to ten years.
2. The same penalty is applicable to anyone who furnishes, offers or promises a benefit within the meaning of paragraph (1).
3. Any material benefit within the meaning of paragraph (1) shall be confiscated. If the benefit cannot be confiscated in whole or in part, the shortfall shall be paid by the recipient.

116. In order to ensure the full implementation of the provision under review, the Cambodian government is committed for more engagement with the private sector with a view to ensure that the private sector plays a more preventive role in fighting corruption is being planned.

**(b) Observations on the implementation of the article**

117. Cambodia made a reference to the information provided under article 21 (a) of the Convention.

118. The reviewers note that the criminalization of passive bribery of employees and administrators is stipulated under articles 278 and 280 of the penal code. The reference to the direct or indirect character of the bribery as well as the reference to third party beneficiaries are missing. Besides, the bribery of employees is only criminalized in cases when this occurs without the knowledge of the employer.

119. Cambodia's legislation is partially in compliance with the provision under review. The reviewers encourage Cambodia to consider amending its legislation in order to be compliant with article 21(b) of the Convention.

**Article 22. Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

120. Cambodia considered that it has fully implemented this provision of the Convention through articles 391, 392 and 393 of the Cambodian Penal Code.

121. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 391: Definition of breach of trust

"Breach of trust" is committed when a person, to the prejudice of other persons, misappropriates funds, valuables or any property that were handed over to him or her and that he or she accepted subject to the condition of returning, redelivering, presenting or using them in a way.

Article 392: Applicable penalty

Breach of trust shall be punishable by imprisonment from six months to three years and a fine from one million to six million Riels.

Article 393: Breach of special trust by administrators or other persons

Breach of trust shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels if it is committed by a director or, manager of a limited liability or stock corporation or a judicially appointed official or a person who is authorized by a legal entity with the intention to make a personal gain or a profit for a third party or with the intention to causing damage to a legal entity and damages have been made to the property.

The provisions of Paragraph 1 shall also be applicable where a liquidator of a limited liability or a joint stock corporation or a judicially appointed official acting on behalf of the liquidator committed an offence within the meaning of Paragraph I and caused damage to the property of the legal entity.

An attempt to commit the offences provided for in Article 393(1) and 393(2) shall be punishable by the same penalties.

122. Cambodia provided the following examples of cases to illustrate this provision :

Verdict No.01 Kr III "N"/12-03-2012 dated on 12th March 2012 of Appellate Court on the case of a former vice executive director of a Company and a former executive director of another company which was on trial on 12<sup>th</sup> March 2012

A former vice executive director of a Company and a former executive director of another company were sentenced to 3 years imprisonment on the offence of breach of trust of a tycoon ( the Civil Plaintiff) which were committed in Phnom Penh from 2008 till 07 September 2010 according to Article 10, 391, 392 of Penal Code.

**(b) Observations on the implementation of the article**

123. The reviewers note that articles 391, 392 and 393 of the penal code criminalize the breach of trust committed by any individual but also by company directors.

124. Cambodia's legislation is in compliance with the provision under review.

**Article 23. Laundering of proceeds of crime**

**Subparagraph 1 (a) (i) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

**(a) Summary of information relevant to reviewing the implementation of the article**

125. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 406 of Penal Code.
126. Thus, the newly amendment law defines money laundering as the conversion or transfer of property, knowing that such property is the proceeds of any predicate offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of any predicate offence to evade the legal consequences of his or her action; and imposes heavier punishment (longer imprisonment and more severe fine) for money laundering offence.
127. Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism (Promulgated by Royal Kram No. NS/RKM/0613/006 dated 03 June 2013)

Article 3 New - Definition

Notwithstanding any other provision of law, the terms:

(a) Money laundering shall mean:

- (i) the conversion or transfer of property, knowing that such property is the proceeds of any predicate offence, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of any predicate offence to evade the legal consequences of his or her action;
  - (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of any predicate offence;
  - (iii) the acquisition, possession or use of property, knowing that such property is the proceeds of any predicate offence; or
  - (iv) any form of participant in, and attempts to commit, aiding and forcing somebody to commit any of the acts defined in accordance with article 3 of the present law.
- (b) Proceeds of offence shall mean any property derived from or obtained, directly or indirectly, through the commission of any predicate offences, which include any felony or misdemeanour
- (c) Property shall mean assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. Property shall include instruments of and proceeds from money laundering, terrorist financing and all other serious crime. Property shall also include substitute property of the person or entity of equal value to the property that would be subject of freezing, seizure and confiscation.
- (d) "Supervisory authority" shall mean the National Bank of Cambodia, the Securities Commission and any other authority having oversight over a reporting entity.
- (e) Predicate offense mean any felony or misdemeanour, even if committed abroad, as a result of which proceeds have been generated that many become the subject of money laundering as defined above under article 3 new (a) of the present law.

In order to be used as a basic for proceedings in respect of money laundering, a predicate offense committed abroad must have the nature of offense in the country where it was committed and under the laws of Cambodia, unless there is special agreement stated otherwise.

Predicate offence shall include the followings:

- Participation in an organized criminal group and racketeering;
- Terrorism, including terrorist financing;
- Trafficking in human beings and migrant smuggling;
- Sexual exploitation, including sexual exploitation of children;

- Illicit trafficking in narcotic drugs and psychotropic substances;
  - Illicit arms trafficking;
  - Illicit trafficking in stolen and other goods;
  - Corruption and bribery;
  - Fraud;
  - Counterfeiting currency;
  - Counterfeiting and piracy of products;
  - Environmental crime or illegal logging;
  - Murder, grievous bodily injury;
  - Kidnapping, illegal restraint and hostage taking;
  - Robbery or theft;
  - Smuggling;
  - Extortion;
  - Forgery;
  - Piracy;
  - Tax evasion;
  - Inside trading and market manipulation.
- (f) “Financing of terrorism” shall mean the wilful provision or collection of financial or other services with the intention that such services be used or in the knowledge that they are or may be used, in full or in part, for the purpose of supporting terrorism, terrorist acts or terrorist organizations.
- (g) “Suspicious transaction” shall mean a transaction that involves funds suspected to be the proceeds of offense, or funds related to the financing of terrorism.
- (h) “Financial Intelligence Unit” shall mean a central body responsible for receiving, analyzing and disseminating reports on suspicious transactions, as defined in article 3(g) of Law on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT law), cash transactions as defined in article 12(1) of the AML/CFT Law and other information regarding money laundering or financing of terrorism.
- (i) “Ultimate beneficial owner” shall mean a person who ultimately owns or controls a customer on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over a legal person or arrangement.
- (j) “Politically exposed persons” shall mean any individual who is or has been entrusted with prominent public functions in a foreign country, such as head of state or of government, senior executive of state-owned corporation or important party official.
- (k) “Trust” means a legal entity established by a person known as trustor. The trustor transfers legal title of property to the trustee, who manages it for the benefit of the named beneficiaries.
- (l) “Invalidate” shall mean to make null and void.

#### Article 29 New-1.-Money Laundering offence

Money laundering is punishable by an imprisonment from 2 (two) years to 5 (five) years and a fine from 40.000.000 (forty million) riels up to 100.000.000 (one hundred million) riels, or up to the value of fund or property which was the subject of money laundering.

The provisions of articles 406 (aggravation circumstances) to 408 (additional penalties: categories and duration) of the Criminal Code shall apply.

The legal entity may be declared as being criminally responsible under conditions as stipulated in article 42 (criminal responsibility of a legal entity) of the Criminal Code for money laundering offences.

The legal entity shall be subject to a fine from 100.000.000 (one hundred million) riels to 500.000.000 (five hundred million) riels and any one or more additional sanctions as stipulated in article 29 New-6 (additional penalties for legal entities) of the present law.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 406: Aggravating circumstances

Money laundering shall be punishable by imprisonment from five to ten years if it is committed:

1. habitually;
2. by using the facilities conferred by the exercise of a profession; by an organised criminal enterprise.

128. Cambodia provided the following examples of cases to illustrate this provision: there is an order for preliminary inquiry issued by a prosecutor of a court of the first instance in 2013.

**(b) Observations on the implementation of the article**

129. Cambodia's legislation is in compliance with the provision under review.

**Subparagraph 1 (a) (ii) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*[ ...]*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

130. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 406 of Penal Code (references previously cited).

**(b) Observations on the implementation of the article**

131. Cambodia's legislation is in accordance with the provision under review.

**Subparagraph 1 (b) (i) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*...*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

132. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 406 of Penal Code (references previously cited).

**(b) Observations on the implementation of the article**

133. Cambodia's legislation is in accordance with the provision under review.

**Subparagraph 1 (b) (ii) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*[...]*

*(b) Subject to the basic concepts of its legal system: ...*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

134. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 25, 26, 27, and 406 of Penal Code.

**Penal Code**

**Article 25: Definition of perpetrator**

The perpetrator of an offence shall be any person who commits the relevant criminally prohibited act.

The definition of perpetrator includes any person who attempts to commit a felony or, in the cases provided for by law, a misdemeanour.

**Article 26: Definition of co-perpetrator**

The co-perpetrators of an offence shall be any persons who, by mutual agreement, commit the relevant criminally prohibited act.

The definition of co-perpetrator includes any persons who, by mutual agreement, attempt to commit a felony or, in the cases provided for by law, a misdemeanour.

**Article 27: Definition of attempt**

An attempt to commit a felony or, in the cases provided for by law, a misdemeanour, shall be punishable if the following conditions are met:

- the perpetrator started to commit the offence, that is, he or she has committed acts which lead directly to the commission of the offence;
- the perpetrator did not stop his or her acts voluntarily, but was interrupted solely circumstances beyond his or her control.

A preparatory act which does not directly lead to the commission of the offence does not constitute a commencement of execution.

An attempt to commit a petty offence shall not be punishable.

**Article 28: Definition of instigator**

An instigator of a felony or a misdemeanour shall be any person who:

- (1) gives instructions or order to commit a felony or misdemeanour;
- (2) provokes the commission of a felony or misdemeanour by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power.

An instigator may only be punishable if the felony or misdemeanour was committed or attempted.

An instigator of a felony or misdemeanour shall incur the same penalties as the perpetrator.

Article 29: Definition of accomplice

An accomplice shall be any person who knowingly, by aiding or abetting, facilitates an attempt to commit a felony or a misdemeanour, or its commission.

An accomplice may only be punishable if the felony or misdemeanour was committed or attempted.

135. Cambodia provided the following examples of cases to illustrate this provision: please see answers provided for in article 23(1)(a)(i).

**(b) Observations on the implementation of the article**

136. Cambodia's legislation is in accordance with the provision under review.

**Subparagraphs 2 (a) and 2 (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

137. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 406 of Penal Code (references previously cited).

**(c) Observations on the implementation of the article**

138. Cambodia's legislation is in accordance with the provision under review.

**Subparagraph 2 (c) of article 23**

*1. For purposes of implementing or applying paragraph 1 of this article:*

*[...]*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

139. Cambodia considered that it has fully implemented this provision of the Convention through article 3 New and 29 New-1 of Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism and article 25, 26, 27, and 406 of Penal Code.

**(b) Observations on the implementation of the article**

140. Cambodia's legislation is in compliance with the provision under review.

### **Subparagraph 2 (d) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*[...]*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

141. Cambodia indicated that it has not furnished copies of its laws to Secretary-general of the United Nations.

142. The Royal Government of Cambodia indicated that it will send the Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007) and Law on Amendment of Article 3, Article 29, and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism (Promulgated by Royal Kram No. NS/RKM/0613/006 dated 03 June 2013)

#### **(b) Observations on the implementation of the article**

143. Cambodia delivered to the Secretariat a copy of its legislation on money laundering in December 2014. Cambodia's legislation is in accordance with the provision under review.

### **Subparagraph 2 (e) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

144. Cambodia indicated that it has not implemented this provision of the Convention.

145. The applicable provisions are set forth in article 136, 137 138 and 405 of the Cambodian Penal Code.

146. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 136: Concurrent offences

Offences are said to be concurrent where an offence is committed by a person who has not yet been finally tried for another offence.

Article 137: Single prosecution

If, in the course of a single prosecution, the accused is found guilty of several concurrent offences, each of the penalties incurred may be imposed. However, if several penalties of a similar nature are incurred,

only one such penalty not exceeding the highest maximum penalty allowed by law shall be imposed, Each penalty imposed shall be deemed to be common to the concurrent offences to the extent of the maximum penalty allowed by law that is applicable to each offence.

**Article 138: Separate prosecutions**

If, in the course of separate prosecutions, the accused is found guilty of several concurrent offences, the sentences imposed shall run cumulatively to the extent of the highest maximum penalty allowed by law. However, the last court dealing with the matters may order that all or part of the sentences of a similar nature shall run concurrently.

For the purposes of this Article, if an accused is liable to life imprisonment, the highest maximum sentence of imprisonment allowed by law shall be thirty years if the accused has not be sentenced to life imprisonment.

The fact that one of the sentences imposed for concurrent offences is wholly or partially suspended shall not be an impediment to the enforcement of the non-suspended sentences of a similar nature.

**Article 405: Applicable penalty**

Money laundering shall be punishable by imprisonment from two to five years and a fine of four million Riels. The maximum fine may be raised to amount to the value of the funds or property which was the subject of the money laundering.

Where the offence which produced the property or funds which was the subject of the money laundering is punishable by imprisonment sentence higher than that imposed in paragraph 1 above, the offence of money laundering shall be punishable by the penalties applicable to the offence known to the perpetrator, and if the offence was accompanied by aggravating circumstances, by such penalties known to him or her.

**(b) Observations on the implementation of the article**

147. Cambodian legislation does criminalize self-laundering in articles 3, 29 and 30 of the Anti-Money Laundering and Combating the Financing of Terrorism Law dated 3 June 2013 and amending articles 3, 29 and 30 and articles 404, 405, 406, 136, 137 and 138 of the Penal Code.

148. Cambodia's legislation is in accordance with the provision under review.

**(c) Challenges, where applicable**

149. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Limited capacity
- Limited resources for implementation

**(d) Technical assistance needs**

150. Cambodia expressed the following technical assistance needs:

- provide the capacity building program for the authority which is responsible for Anti-Money Laundering and other relevant authorities
- build mechanism/data system to share and analyse the information
- design the mechanism to strengthen the cooperation between local and regional authorities.
- advise from the expert

**Article 24. Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

151. Cambodia considered that it has fully implemented this provision of the Convention. Cambodian legislation complies with the above provision by criminalizing as an offense the act of concealment or continued retention of property knowing that such was obtained by a felony or misdemeanour in articles 399 and 400 of the Penal Code and article 37 of the Law on Anti-Corruption

152. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 399: Definition of receiving stolen goods

"Receiving stolen goods" is the receiving, concealment, retention or transfer of an item, knowing that that item was obtained by a felony or misdemeanour.

"Receiving stolen goods" shall also mean:

1. serving as intermediary in order to transfer an item, knowing that that item was obtained by a felony or I misdemeanour;
2. knowingly benefiting from the proceeds of a felony or misdemeanour.

Article 400: Applicable penalty

Receiving stolen goods shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

153. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 37: Corruption proceeds offences

Corruption proceeds is an act to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in this law. Acts that can also be counted as corruption proceeds are as follows:

1. Act as intermediary for transporting items with the knowledge that they are corruption proceeds;
2. The act that benefits from corruption proceeds with clear knowledge.

Act that benefits from corruption proceeds shall be punishable by imprisonment from two (2) to five (5) years and fine from four million Riel (4,000,000) to ten million Riel (10,000,000).

Act benefits from corruption proceeds shall be punishable by imprisonment from five (5) to ten (10) if the offences are committed:

1. Habitually
2. By the comfort/convenience results from professional duty
3. By organized group.

**(b) Observations on the implementation of the article**

154. The reviewers note that article 399 of the penal code generally criminalizes concealment as well as article 37 of the Law on Anti-Corruption, pursuant to the provisions of article 24 of the

Convention.

155. Cambodia's legislation is in accordance with the provision under review.

**(c) Challenges, where applicable**

156. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Limited capacity
- Limited resources for implementation

**(e) Technical assistance needs**

157. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Provide capacity building program.

**Article 25. Obstruction of justice**

**Subparagraph (a) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

158. Cambodia considered that it has fully implemented this provision of the Convention through articles 545, 546 and 548 of the Penal Code.

159. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 545: Providing false testimony and exceptions

False testimony made under oath before any court of law or before a judicial police officer acting under the authority of a rogatory letter shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

However, such witness is exempted from penalty where he or she retracts his or her testimony spontaneously and only speaks the truth before the decision to terminate the investigation or trial procedure has been made.

Article 546: Intimidating witness

Any act of intimidation committed by a perpetrator alone or in concert with a third party to persuade a witness not to make a statement or to provide a false oral or written testimony shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

It shall be punishable by imprisonment from five to ten years where the act was effective.

Article 548: Bribery of witness

The direct or indirect giving of a gift, offer, promise or interest by a person to a witness in order:

1. not to testify;
  2. to provide a false testimony;
- shall be punishable by imprisonment from five to ten years.

160. Cambodia provided the following examples of cases to illustrate this provision : Verdict of the Criminal Case No. 80 dated 17 February 2006 (The verdict No.81 “K” dated on 1 September 2006 issued by Kampongcham Provincial Court of First Instance).

**(b) Observations on the implementation of the article**

161. The reviewers note that articles 546 and 548 of the PC criminalize any act of intimidation as well as the bribery of witnesses so that they do not make a statement or give a false statement.

162. Cambodia’s legislation is in accordance with the provision under review.

**Subparagraph (b) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*[...]*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

163. Cambodia considered that it has fully implemented this provision of the Convention through articles 520, 586 and 607 of the Penal Code and article 40 of the Law on Anti-Corruption.

164. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 520: Refusal to enforce judicial decisions

Refusal by a public official to enforce judgment, decision or order of the judicial authority in the exercise of his or her function shall be imprisonment from two to five years and a fine from four million to ten million Riels.

Article 586: Measures to obstruct law enforcement and aggravating circumstances

The taking of measures designed to obstruct law enforcement, committed by a public official or a holder of public elected office, in the discharge or on the occasion of his or her function, shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

It shall be punishable by imprisonment from five to ten years where the act was effective.

Article 607: Intimidation

Intimidating a public official or a holder of public elected office:

(1) to perform an act pertaining to his or her function;

(2) to refrain from performing an act pertaining to his or her function; (3) to use his or her real or supposed influence with a view to obtaining public tenders, emblem or any other favourable decision; shall be punishable by imprisonment from two to five years and a fine from four million to ten million Riels.

165. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 40

Obstruction or Interference offenses in the work of the Anti-Corruption Unit Public servants, soldiers, national police or citizens vested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

**(b) Observations on the implementation of the article**

166. The reviewers note that article 607 of the penal code and article 40 of the Law on Anti-Corruption criminalize intimidation of public officials as well as obstruction in the work of the anti-corruption unit.

167. Cambodia's legislation is in accordance with the provision under review.

**Article 26. Liability of legal persons**

**Paragraphs 1 and 2 of article 26**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

**(a) Summary of information relevant to reviewing the implementation of the article**

168. Cambodia considers that various articles of the Penal Code and of the Law on Anti-Corruption are applicable.

169. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 42: Criminal responsibility of legal entities

Where expressly provided by law and statutory instruments, legal entities, with the exception of the State, may be held criminally responsible for offences committed on their behalf by their organs or representatives.

The criminal responsibility of legal entities shall not preclude that of natural persons for the same acts.

Article 409: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for the offences defined in Article 404 (Definition of money laundering) of this Code.

Legal entities shall be punishable by a fine from one hundred million to five hundred million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision of

this Code;

3. prohibition from carrying on one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this code;
5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
6. confiscation of any instruments, materials or items which were used or intended to be used to commit the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 ( Confiscation and rights of third parties) of this Code;
7. confiscation of the proceeds or property arising out of the offence according Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 ( Confiscation and rights of third parties) of this Code;
8. publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this code;
9. publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio-visual communication) of this Code.

#### Article 283: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for the offences defined in Article 279 (Giving bribes to employees) of this Code.

Legal entities shall be punishable by a from five million to twenty million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
3. prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
6. confiscation of any instruments. materials or items which were used or intended to be used to commit the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
7. publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;
8. publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio- visual communication) of this Code.

#### Article 519: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for the offences defined in Article 518 (Bribery of judges) of this Code.

Legal entities shall be punishable by a fine from ten million to fifty million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
3. prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;

5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
6. confiscation of the items or funds which were the subject of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
7. confiscation of the proceeds or property arising out of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
8. publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;
9. publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio- visual communication) of this Code.

#### Article 559: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) for offences defined in Article 548 (Bribery of witness), Article 554 (Bribery of interpreter/translator) and Article 556 (Bribery of expert) of this Code.

Legal entities shall be punishable by a fine from twenty million to two hundred million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
3. prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code;
6. confiscation of the items or funds which were the subject of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
7. confiscation of the proceeds or property arising out of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
8. publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;
9. publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio- visual communication) of this Code.

#### Article 625: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) of this Code for offences defined in Article 605 (Proffering of bribes), Article 606 (Active trading in influence) and Article 607 (Intimidation) of this Code. Legal entities shall be punishable by a fine from ten million to fifty million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
3. prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public offering) of this Code:

6. confiscation of the items or funds which were the subject of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
7. confiscation of the proceeds or property arising out of the offence pursuant to Article 178 (Ownership, sale and destruction of items confiscated) and Article 179 (Confiscation and rights of third parties) of this Code;
8. publication of sentencing decision pursuant to Article 180 (Publication of decisions) of this Code;
9. publication of sentencing decision in the print media or broadcasting of sentencing decision by any audio-visual communication pursuant to Article 181 (Broadcasting of decision by audio- visual communication) of this Code.

Article 644: Criminal responsibility of legal entities

Legal entities may be found criminally responsible under Article 42 (Criminal responsibility of legal entities) for the offences defined in Article 638 (Bribery of authorized person to issue falsified attestation) and Article 640 (Bribery of member of board of medical practitioners to issue falsified attestation) of this Code.

Legal entities shall be punishable by a fine from ten million to one hundred million Riels and by one or more of the following additional penalties:

1. dissolution pursuant to Article 170 (Dissolution and liquidation of legal entities) of this Code;
2. placement under judicial supervision pursuant to Article 171 (Placement under judicial supervision) of this Code;
3. prohibition from exercising one or more activities pursuant to Article 172 (Prohibition from carrying on activities) of this Code;
4. disqualification from public tenders pursuant to Article 173 (Disqualification from public tenders) of this Code;
5. prohibition from making a public offering pursuant to Article 174 (Prohibition from making a public.

170. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 46: Accessory Penalty applicable to certain Legal Entities

The legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties as follows:

1. Dissolution.
2. Placement under the court's watch.
3. Baring of operation of an activity or activities.
4. Expulsion from public procurement.
5. Prohibition on public saving appeal.
6. Prohibition on issuing cheque besides the cheque certified by any banks.
7. Prohibition on issuing payment vouchers.
8. Closure of the institution which being used to organize or commit offences.
9. Prohibition of the business establishment open to the public or used by the public.
10. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
11. Confiscation of objects or funds which are subject of committing offence.
12. Confiscation of capital or property that derives from offence.
13. Confiscation of proceeds, material and furniture in building where an offence is committed
14. Posting of conviction judgment.
15. Publication of the conviction judgment on print media or the announcement on non-print media outlets.

**(b) Observations on the implementation of the article**

171. Article 42 of the penal code confirms the general principle of criminal responsibility of legal entities which does not preclude the criminal responsibility of physical persons who have committed such offences.

172. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 3 of article 26**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

173. Cambodia considered that it has fully implemented this provision of the Convention through Article 42 of the Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009).

174. This provision stresses that legal person may be held criminally responsible for offences committed on their behalf by their organs or representatives but this responsibility shall not preclude that of natural persons for the same acts.

175. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 42: Criminal responsibility of legal entities

Where expressly provided by law and statutory instruments, legal entities, with the exception of the State, may be held criminally responsible for offences committed on their behalf by their organs or representatives.

The criminal responsibility of legal entities shall not preclude that of natural persons for the same acts.

**(b) Observations on the implementation of the article**

176. Article 42 of the penal code confirms the general principle of criminal responsibility of legal entities which does not preclude the criminal responsibility of physical persons who have committed such offences.

177. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 4 of article 26**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*

**(a) Summary of information relevant to reviewing the implementation of the article**

178. Cambodia considered that it has fully implemented this provision of the Convention.

179. Cambodia referred to the answers provided for in article 26 paragraphs 1 and 2.

**(b) Observations on the implementation of the article**

180. The reviewers note that article 46 of the Law on Anti-Corruption as well as articles 409, 283, 519, 559, 625 and 644 of the penal code provide for such criminal responsibility for various corruption acts therefore including the offences contained in the Convention. These provisions enforce a wide range of sanctions including pecuniary sanctions.

181. Cambodia's legislation is in accordance with the provision under review.

**Article 27. Participation and attempt**

**Paragraph 1 of article 27**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

182. Cambodia considered that it has fully implemented this provision of the Convention through articles 28 and 29 of the Penal Code.

183. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

**Article 26: Definition of co-perpetrator**

The co-perpetrators of an offence shall be any persons who, by mutual agreement, commit the relevant criminally prohibited act.

The definition of co-perpetrator includes any persons who, by mutual agreement, attempt to commit a felony or, in the cases provided for by law, a misdemeanour.

**Article 28: Definition of instigator**

An instigator of a felony or a misdemeanour shall be any person who:

1. gives instructions or order to commit a felony or misdemeanour;
2. provokes the commission of a felony or misdemeanour by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power.

An instigator may only be punishable if the felony or misdemeanour was committed or attempted.

An instigator of a felony or misdemeanour shall incur the same penalties as the perpetrator.

**Article 29: Definition of accomplice**

An accomplice shall be any person who knowingly, by aiding or abetting, facilitates an attempt to commit a felony or a misdemeanour, or its commission.

An accomplice may only be punishable if the felony or misdemeanour was committed or attempted.

184. Cambodia provided the following examples of cases to illustrate this provision: the Case of the former clerk of a Provincial Court of First Instance (Verdict No. 53 "L" dated on 26th September 2012 of a Provincial Court of First Instance)

**(b) Observations on the implementation of the article**

185. The reviewers note that articles 26, 28 and 29 of the penal code criminalize the participation to the commission of a crime or an offense as accomplice, instigator and assistant.

186. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 2 of article 27**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

187. Cambodia considered that it has fully implemented this provision of the Convention through articles 27 of the Penal Code and article 44 of the Law on Anti-Corruption.

188. These provisions have pointed out the definition of attempt and criminalized it as an offence.

189. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 27: Definition of attempt

An attempt to commit a felony or, in the cases provided for by law, a misdemeanour shall be punishable if the following conditions are met:

- the perpetrator started to commit the offence, that is, he or she has committed acts which lead directly to the commission of the offence;
- the perpetrator did not stop his or her acts voluntarily, but was interrupted solely circumstances beyond his or her control.

A preparatory act which does not directly lead to the commission of the offence does not constitute a commencement of execution.

An attempt to commit a petty offence shall not be punishable.

190. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 44: Attempt

Attempt to commit a misdemeanour as stated in article 278 (bribe taking by employees), article 279 (bribe offered to employees) article 387 (improper bidding), article 404 (definition of money laundry), article 405 (sentence to be served), article 406 (aggravating circumstance), article 592 (definition of misappropriation), article 593 (sentence to be served), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 638 (bribe offered to person who has competence to issue a fake document), article 640 (bribe offered to member of medical board to issue a fake document) of the criminal code and article 35 (power abuse) and article 40 (Obstruction or Interference in the work of the Anti-Corruption Unit) of this law, shall face the same punishment as a misdemeanour.

191. Cambodia provided the following examples of cases to illustrate this provision: the verdict of criminal case No.03 "Kr.VI R" dated on 30th March 2012 of Appellate Court

**(b) Observations on the implementation of the article**

192. Attempt is also included in articles 26, 28 and 29 of the penal code and it is sanctioned in article 27 of the Penal Code. Article 44 of the Law on Anti-Corruption also criminalizes attempt.

193. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 3 of article 27**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

194. Cambodia indicated that it has implemented this provision of the Convention.

**(b) Observations on the implementation of the article**

195. Cambodia confirmed that the preparation of an offence is implicitly embedded in the above cited articles under paragraphs 1 and 2 of article 27.

196. Cambodia's legislation is in accordance with the provision under review.

**Article 29. Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

197. Cambodia provided that it has partially implemented the provision under review. The applicable provisions are provided for in articles 10 and 11 of the Code of Criminal Procedure and articles 144 and 145 of the Penal Code and article 21 of the Law on Anti-Corruption.

198. There is no legislation providing for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice but the starting point of statute of limitation is when the offence committed and the ending point is when the judicial procedure has been processed.

199. Legislations:

Code of Criminal Procedures

Article 10: Statute of Limitations of Crime

Except as provided for in Article 9 (Crimes without Statute of Limitations) of this Code, the time limitation for bringing a criminal action is as follows:

- fifteen years for a felony;

- five years for a misdemeanour; and
- one year for a petty offense

**Article 11: Interruption of Statute of Limitations**

The duration of the statute of limitations commences at the time the offense was committed. The statute of limitations is interrupted by an act of prosecution or investigation. The end of any such act of prosecution or investigation restarts a new period of the statute of limitations pursuant to the provisions of Article 10 of this Code (Statute of Limitations of Crime). The new time period applies to everyone involved in the case.

200. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

**Article 144: Applicability of statute of limitations**

The statute of limitations for a felony shall be twenty years.

The statute of limitations for a misdemeanour shall be five years.

The statute of limitations for a petty offence shall be one year.

**Article 145: Commencement of limitation period**

The twenty-year, five-year and one-year limitation period provide for in Article 144 (Applicability of statute of limitations) shall start to run from the date when the conviction becomes final.

201. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 21: Procedure for corruption offences**

Procedure for corruption offences which is stated in the penal code and corruption offences which is stated in this law, shall be implemented as stated in the penal procedure code if there is no separate procedure in this law.

202. The Cambodian government indicated that no action should be taken as the starting point of statute of limitation is when the offence committed and the ending point is when the judicial procedure has been processed.

**(b) Observations on the implementation of the article**

203. Article 10 of the criminal procedure code provides for a statute of limitations for bringing a criminal action of fifteen years for felonies, five years for misdemeanour and one year for petty offences. Article 11 of the criminal procedure code provides for the interruption of the statute of limitations if there is an act of prosecution or investigation.

204. Cambodia confirmed that the interruption of the period of limitation by the initiation of legal proceedings applies and that such rules do not require the presence of the alleged offender who has evaded justice or fled the country.

205. Cambodia's legislation is in accordance with the provision under review.

**Article 30. Prosecution, adjudication and sanctions**

**Paragraph 1 of article 30**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

206. Cambodia considers that various articles of the Penal Code and of the Law on Anti-Corruption are applicable.

207. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**CHAPTER 6: CORRUPTION OFFENSES AND PUNISHMENT**

**Article 32: Corruption offenses stipulated in the Criminal Code**

In addition to the offenses stipulated in this law, the offenses in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (Criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (Criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (Criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity), article 592 (definition of misappropriation), article 593 (sentence to be served), article 594 (bribe taking), article 595 (definition of passive business influence), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 601 (intentional destruction and dishonest embezzlement), article 605 (bribe offering), article 606 (active business influence), article 607 (extortion), article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity), article 637 (bribe offered to person who has competence to issue false certificate), article 639 (bribe taking by member of professional board of medicine to issue false certificate), article 640 (bribe offered to member of professional board of medicine to issue false certificate), article 641 (execution of misdemeanour of articles 639 and 640 for all medical professions), article 644 (criminal responsibility by legal entity), of the Criminal Code are corruption offenses to be implemented as part of this law.

**Article 33: Bribe taking by Foreign Public Officials or Officials of Public International Organizations**

Foreign public officials or officials of public international organizations shall be sentenced from 7 years to 15 years for unrightfully asking for, demanding or accepting, directly or indirectly, gift, donation, promise or any benefit in order to:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

**Article 34: Bribes offered to Foreign Public Officials or Officials of Public International Organization**

Any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

**Article 35: Abuse of Power**

An act committed by public servants or citizens invested with public office through election, in the exercise of his or her duty or in the course of exercising his or her duty such as taking action to hinder

law enforcement in order to take any illegal advantage, shall be punishable from two (2) to five (5) years in prison and fine from four million Riel (4,000,000) to ten million Riel (10,000,000). This offence shall be punishable by imprisonment from five (5) to ten (10) years when such offence goes into effect.

#### Article 36: Illicit Enrichment

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide reasonable explanation of its increase in comparison to his or her legal income.

After the first assets and liabilities declaration, every person as described in article 17 (people required to declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property.

If the unexplainable wealth increase is connected to any corruption offense as stated in this law, the wealth owner shall be punished in accordance with this law.

#### Article 37: Corruption proceeds offences

Corruption proceeds is an act to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in this law. Acts that can also be counted as corruption proceeds are as follows:

1. Act as intermediary for transporting items with the knowledge that they are corruption proceeds; or
2. The act that benefits from corruption proceeds with clear knowledge.

Act that benefits from corruption proceeds shall be punishable by imprisonment from two (2) to five (5) years and fine from four million Riel (4,000,000) to ten million Riel (10,000,000). Act benefits from corruption proceeds shall be punishable by imprisonment from five (5) to ten (10) if the offences are committed:

1. Habitually
2. By the comfort/convenience results from professional duty
3. By organized group

#### Article 38: Punishment for not declaring assets and liabilities

Any person who does not declare their assets and liabilities or who improperly declares his or her assets in accordance with provisions stated in article 17 (people required to declare assets and debt), article 18 (regime of assets and debt declaration) and article 19 (other people required to declare assets and debt) of this law, shall be sentenced from one (1) month to one (1) year in prison and fined from one hundred thousand Riel (1,00,000) to two million Riel (2,000,000), and is forced to make asset declaration to Anti-Corruption Unit. In case of resisting the declaration, double punishment shall be applied.

The Chairman of the Anti-Corruption Unit shall inform leaders of the civil society in writing before this article is enforced.

#### Article 39: Leakage of Confidential Information on Corruption

Any person who leaks the confidential information on corruption shall be sentenced from one (1) to five (5) years in prison.

The absolute confidentiality cannot be an obstacle to the right of self-defence.

#### Article 40: Obstruction or Interference offenses in the work of the Anti-Corruption Unit

Public servants, soldiers, national police or citizens invested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

#### Article 41: Defamation and disinformation

Defamation or disinformation complaints on corruption lodged with the Anti-corruption Unit or judges, which lead to useless inquiry, shall be punishable by imprisonment from one (1) month to six (6) months and fine from one million Riel (1000,000) to ten million Riel (10,000,000).

#### Article 42: Abuse of the assets which are the subject of seizure

Any unauthorized person who transfers, assigns or changes the assets which are subject to confiscation in violation of provisions stated in article 30 (seizure) of this law, shall be sentenced from one (1) year to five (5) years in prison and fined from two (2) million riels to ten (10) million riels.

#### Article 43: Petty corruption offences and punishment

Any person who commits petty corruption stipulated in this law shall be sentenced from seven (7) days to five (5) years, and the petty corruption shall meet the following criteria:

- Offences committed for daily survival
- Offences committed in petty manner
- Offences which is not harmful to society
- Evaluation/description by the Anti-corruption Unit as petty corruption offences.

#### Article 44: Attempt

Attempt to commit a misdemeanour as stated in article 278 (bribe taking by employees), article 279 (bribe offered to employees) article 387 (improper bidding), article 404 (definition of money laundry), article 405 (sentence to be served), article 406 (aggravating circumstance), article 592 (definition of misappropriation), article 593 (sentence to be served), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 638 (bribe offered to person who has competence to issue a fake document), article 640 (bribe offered to member of medical board to issue a fake document) of the criminal code and article 35 (power abuse) and article 40 (Obstruction or Interference in the work of the Anti-Corruption Unit) of this law, shall face the same punishment as a misdemeanour.

#### Article 45: Accessory Penalty applicable to certain Corruption Offences

In addition to felony or misdemeanour punishment stated in this law, the accessory penalty may be as follows:

1. Deprivation of certain civic rights, either permanently or for a certain period, not exceeding five (5) years.
2. Disbarring from profession, either permanently or for a certain period, not exceeding five (5) years when this offence is committed in the conduct of his or her profession or during the conduct of his or her profession.
3. Prohibition of staying for a period not exceeding ten (10) years for a felony and not exceeding five (5) years for misdemeanour offence.
4. Baring of the entrance and staying of convicted foreigner in the territory of the Kingdom of Cambodia, either permanently or for a period not exceeding five (5) years.
5. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
6. Confiscation of objects or funds that are subject of committing offence.
7. Confiscation of capital or property which derives from offence.
8. Confiscation of proceeds, material and furniture in the building where an offence is committed.
9. Confiscation of a vehicle or vehicles of the convict.
10. Prohibition of the possession or the carrying of explosives either permanently or for a period not exceeding five (5) years.
11. Closure of the institution which being used to organize or commit offences either permanently or for a period not exceeding five (5).
12. Prohibition of the business establishment open to the public or used by the public, either permanently

or for a period not exceeding five (5) years.

13. Expulsion from public procurement.

14. Posting of the conviction judgment for a period of not exceeding two (2) months. 15. Advertisement of the conviction judgment on print media.

16. Announcement of the conviction judgment on non-print media outlets for a period not exceeding eight (8) days.

#### Article 46: Accessory Penalty applicable to certain Legal Entities

The legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties as follows:

1. Dissolution.

2. Placement under the court's watch.

3. Barring of operation of an activity or activities.

4. Expulsion from public procurement.

5. Prohibition on public saving appeal.

6. Prohibition on issuing cheque besides the cheque certified by any banks.

7. Prohibition on issuing payment vouchers.

8. Closure of the institution which being used to organize or commit offences.

9. Prohibition of the business establishment open to the public or used by the public.

10. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.

11. Confiscation of objects or funds which are subject of committing offence.

12. Confiscation of capital or property that derives from offence.

13. Confiscation of proceeds, material and furniture in building where an offence is committed

14. Posting of conviction judgment.

15. Publication of the conviction judgment on print media or the announcement on non- print media outlets.

#### Article 47: The Release of Bank Records

Credit entities or financial institutions shall be relieved of responsibility and no criminal complaint will be filed against the leader or trustee of that entity or institution should such operation has been carried out in accordance with the provisions of law, unless otherwise it is found that there is a pre-agreement with the fund owner or transactional operator to forge it.

#### Article 48: Seizure

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, instrument that is derived from corruption act and the proceeds shall be transformed into state property.

If the above seized asset is transferred/changed into different property from the original asset nature, this transformed asset will become the subject of seizure at the place where it locates.

If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well.

If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

#### Article 49: Repatriation of the proceeds of Corruption

In case assets and corruption proceeds are found kept in foreign states, the competent authority of the kingdom of Cambodia shall take measure to claim that asset and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia.

Article 83: Subsequent offences: penalties

Committing a subsequent offence shall result in aggravating, in accordance with this Sub-section, the maximum sentence of imprisonment incurred for a felony or a misdemeanour.

Article 85: Subsequent felonies

If a person against whom final judgment has already been entered for a felony commits a new felony within ten years, the maximum sentence of imprisonment incurred for the new felonies shall be aggravated as follows:

1. if the maximum sentence of imprisonment incurred for the new felony does not exceed twenty years, the maximum sentence of imprisonment shall be doubled;
2. if the maximum sentence of imprisonment incurred for the new felony is thirty years, the maximum sentence of imprisonment shall be life imprisonment.

Article 86: Committing a misdemeanour after sentencing for a felony

If a person against whom final judgment has already been entered for a felony commits a misdemeanour within five years, the maximum sentence of imprisonment incurred for the misdemeanour shall be doubled.

If, by reason of committing a subsequent offence, the maximum term of imprisonment incurred exceeds five years, the legal qualification of the offence shall remain a misdemeanour despite the aggravation of the penalty.

Article 87: Committing a felony after sentencing for a misdemeanour

If a person against whom in a final judgment of imprisonment of three years or more has already been entered for misdemeanour commits a felony within five years, the penalty incurred for the felony shall be aggravated as follows:

1. if the maximum sentence of imprisonment incurred for the felony does not exceed twenty years, the maximum sentence of imprisonment shall be doubled;
2. if the maximum sentence of imprisonment incurred for the felony is thirty years, the maximum sentence of imprisonment shall be life imprisonment.

Article 88: Committing a misdemeanour after sentencing for a misdemeanour

If a person against whom final judgment has already been entered for a misdemeanour commits the same misdemeanour within five years, the maximum sentence of imprisonment incurred for the new misdemeanour shall be doubled.

If, by reason of committing a subsequent offence, the maximum sentence of imprisonment incurred exceeds five years, the legal qualification of the offence shall remain a misdemeanour despite the aggravation of the penalty.

209. Cambodia provided the following examples of cases to illustrate this provision: The judgment of Criminal Case No. 53 dated 26th September, 2012 of a court of the first instance on the case of a former investigating judge.

Verdict No.08 Kr IV T/18-01-2013 dated January 18th, 2013

A former investigating judge of a Provincial Court of First Instance was accused of illicit enrichment (article 36 of Law on Anti-Corruption) and Bribery of the Judge (article 517 of Penal Code) which was committed at the court of the first instance on 20<sup>th</sup> January 2012. This investigating judge abused their function by threatening for the payment of 5000 dollars in return of holding the file without processing while that person was actually a witness in a case.

That former investigating judge of a Provincial Court of First Instance was sentenced to 5 years imprisonment in accordance with article 517 and 94 of penal code, legally required to one -year execution of sentence starting from 20 January, 2012. The remaining period of sentence shall be suspended in accordance with article 104 and 108 of penal code.

210. Cambodia provided the following information on criminal and non-criminal sanctions imposed:

- Criminal Sanctions: Case of a former Judge
- Non-criminal Sanctions: Case of Embezzlement in a province

**(b) Observations on the implementation of the article**

211. The reviewers note that the Penal Code as well as the Law on Anti-Corruption establish a sentence proportionately to the seriousness of the offence and it comprises a range of prison sentences and fines.

212. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 2 of article 30**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

213. Cambodia provided that it has implemented the provision under review.

214. Immunity is given to assembly members and senators and can be taken after getting the consent from National Assembly/Senate or from National Assembly/Senate Permanent commission in the meeting session except in case of flagrante delicto (the competent authority has to report to national assembly/senate or permanent commission).

215. The applicable provisions are provided for in the Constitution and the Law on organization and functioning of constitutional council (Dated 08 April 1998).

216. Cambodian Constitution

Article 80

The deputies shall enjoy parliamentary immunity.

No assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his (her) duties.

The accusation, arrest, or detention of an assembly member shall be made only with the permission of the National Assembly or by the Standing Committee of the national Assembly between sessions, Except in case of flagrante delicto. In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee for decision.

The decision made by the Standing Committee of the National Assembly shall be submitted to the National assembly at its next session for approval by a 2/3-majority vote of the assembly members.

In any case, detention or prosecution of a deputy shall be suspended by a 3/4-majority vote of the National Assembly members.

Article 104 (New)

The Senate member shall not be subject to any prosecution, detention or arrest because of opinions

expressed during the exercise of his/her function. Any accusation, arrest or detention of any member of the Senate may be made only with permission from the Senate or the Permanent Committee (Standing Committee) of the Senate, in periods between the Senate sessions, except in the case of flagrante delicto. In this latter case, the competent authority shall immediately report to the Senate or to the Permanent/ Standing Committee of the Senate for decision.

The decision made by the Permanent/Standing Committee of the Senate shall be submitted to the Senate at its next session for approval by a 2/3 majority vote of the whole Senate members.

In all the above cases, the detention or prosecution of any Senate member shall be suspended, after the Senate so expressed by a 3/4 majority vote of the members of the entire Senate.

217. Law on organizing and functioning of constitutional council (Dated 08 April 1998)

Article 11

Members of Constitutional Council shall not be responsible in criminal or civil for the decision made holding this position.

**(b) Observations on the implementation of the article**

218. The reviewers note that articles 80 and 104 of the Cambodian Constitution grant immunity to the members of the National Assembly and of the Senate. Such immunity may only be lifted by the same bodies as well as in the case of flagrante delicto.

219. Cambodia's legislation is in accordance with the provision under review but hasn't provided any case law.

**Paragraph 3 of article 30**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

220. Cambodia provided that it has implemented the provision under review.

221. The applicable provisions are provided for in article 131 of the Cambodian Constitution and in articles 27, 40, 41, 44, 45, 46, 47 and 247 of the Code of Criminal Procedure.

222. Cambodian Constitution

Article 131: (Former article 112)

Only the Department of the Public Prosecution shall have the right to file criminal suits.

223. Code of Criminal Procedure (dated 10 August 2007)

Article 27: Roles of Prosecution

The Prosecution brings charges of criminal offenses against charged persons and asks for the application of laws by the Court. Prosecutors are responsible for the implementation of orders of the criminal court on criminal offenses, including the dissemination of arrest warrants. In performing his duties, a

Prosecutor has the right to directly mobilize public forces. A Prosecutor shall attend all hearings of the trial court in criminal cases.

#### Article 40: Processing of Criminal Proceedings

The Royal Prosecutor shall consider written complaints and protests that have been received by him or that have been directly submitted by judicial police officers.

He can decide to either hold a file without processing or to conduct proceedings against the offenders. Before making the decision, a Prosecutor can conduct preliminary investigations or order supplemental investigations.

In case of a serious offense, the Prosecutor shall make a report on the case to the General Prosecutor attached to the Court of Appeal who also shall submit that report to the Minister of Justice.

#### Article 41: File without Processing

In the case that the complaint is filed without processing, the Prosecutor shall inform the plaintiff about that decision within the shortest possible period, in any case of not more than two months starting from date of the registration of the complaint as provided for in Article 50 (Registry of Complaints) of this Code.

Filing the case without processing shall be based on grounds of law and fact. Filing without processing does not have the effect of *res judicata*.

The Prosecutor may always change his decision as long as the criminal action has not been extinguished. If the plaintiff is not satisfied with the Prosecutor's decision to hold the file without processing, the plaintiff may appeal that decision to the General Prosecutor attached to the Court of Appeal.

The appeal shall be lodged within two months, commencing from the date on which the plaintiff received the decision to hold the file without processing. The appeal shall be lodged in a standard complaint in the relevant Prosecutor's office. The un-processed file shall then be immediately submitted by the representative of the Prosecutors' office of the Court of First Instance to the General Prosecutor.

If correct reasons for the appeal are found, the General Prosecutor shall instruct the Prosecutor to proceed. The instruction shall be in writing. In all other cases, the General Prosecutors shall affirm the decision of the Prosecutor as a valid decision. The General Prosecutor shall inform the plaintiff of his decision of affirmation.

#### Article 44: Opening of Judicial Investigation

In the case of a felony, the Prosecutor shall open a judicial investigation. The judicial investigation shall be based upon the initial submission provided to the investigating judge. The judicial investigation may be opened against identified or unidentified individuals.

The initial submission (to be prepared by the Prosecutor) includes:

- A summary of the facts;
- A legal qualification of the facts;
- The indication of relevant provisions of the criminal law and sanction for offense;
- The name (s) of the suspect, if known. The initial submission shall be dated and signed.

These formalities shall be strictly complied with or the initial submission shall be void.

#### Article 45: Proceedings in Case of Misdemeanours

In the case of a misdemeanour, the Prosecutor may:

- open a judicial investigation as provided in Article 44 (Opening of Judicial Investigation) of this Code;
- directly summons the accused to appear before the Court of First Instance by following the procedure stipulated in Article 46 (Citations) of this Code; or
- order the accused to immediately appear before the Court of First Instance in accordance with Article 47 (Immediate Appearance) and Article 48 (Procedure of Immediate Appearance) of this Code.

#### Article 46: Citations

A citation is an order made to the accused to appear before the Court of First Instance. A citation shall

include:

- The identity of the accused;
- A summary of the facts;
- A legal qualification of the facts;
- The indication of relevant provisions of the criminal law and sanction for the offense.

A citation shall include the relevant court, its location, and the date and time of trial. The citation shall specify that the accused may be defended by a lawyer.

#### Article 47: Immediate Appearance

Prosecutors may order the accused to appear before the Court of First Instance immediately if all of the following requirements are satisfied:

- The offense is flagrant in accordance with Articles 86 (Definition of Flagrant Felony or Misdemeanour) and 88 (Flagrant Felony or Misdemeanour) of this Code.
- The offense carries a sentence of imprisonment for not less one year and not greater than five years;
- The accused reaches a legal age; and - There are substantial facts to be tried.

#### Article 247: Closing Order

An investigating judge terminates the judicial investigation by a closing order. This order may be an indictment or a non-suit order. If the judge considers that the facts constitute a felony, a misdemeanour or a petty offense, he shall decide to indict the charged person before the trial court. The order shall state the facts being charged and their legal qualification. The investigating judge shall issue a non-suit order in the following circumstances:

1. The facts do not constitute a felony, misdemeanour or petty offense;
2. The perpetrators of the committed acts remain unidentified;
3. There is insufficient evidence for a conviction of the charged person.

A closing order shall always be supported by a statement of reasons. The investigating judge is not obliged to conform with the final submission of the Prosecutor. The order may combine an indictment for certain facts and a non-suit order for other facts. The Royal Prosecutor, the charged person and the civil parties shall be informed of a closing order without delay.

### **(b) Observations on the implementation of the article**

224. The reviewers note that the Cambodian judicial system uses the principle of opportunity. However, Cambodia confirmed that the Code of Criminal Procedure (articles 40 and 41 of the code of criminal procedure) provides that a closing order must always be justified by the Prosecutor. The closing order may also be reviewed by the Chief Prosecutor to the Court of Appeal on the plaintiff's request. Besides, the investigating judge is not obliged to conform with the final submission of the Prosecutor.

225. Cambodia's legislation is in accordance with the provision under review.

### **Paragraph 4 of article 30**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

226. The reviewers note that the code of criminal procedure defines provisional detention as an exceptional measure and it governs the framework of provisional release for any charged

individual whilst taking into account the necessity to guarantee their appearance in later procedures (articles 203, 204, 205, 215, 216, 217 and 223 of the code of criminal procedure).

227. Cambodia provided that it has implemented the provision under review. Various articles of the Code of Criminal Procedure comply with this provision.

228. Code of Criminal Procedure (dated 10 August 2007)

**Article 203 Principle of Provisional Detention**

In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section.

**Article 204 Cases of Provisional Detention**

Provisional detention may be ordered only in case of a felony or of misdemeanours involving a punishment of imprisonment of one year or more.

**Article 205 Reasons for Provisional Detention**

Provisional detention may be ordered when it is necessary to:

1. stop the offense or prevent the offense from happening again;
2. prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices;
3. preserve evidence or exhibits;
4. guarantee the presence of the charged person during the proceedings against him;
5. protect the security of the charged person;
6. preserve public order from any trouble caused by the offense.

**Article 215: Release of Charged Person by Investigating Judge**

The investigating judge may order the release of the charged person at any time. If an investigating judge intends to release a charged person, he shall immediately inform the Royal Prosecutor to request his opinion and send the case file to him for examination. The Royal Prosecutor shall make his observations without delay. The investigating judge shall decide within a maximum of 5 days after forwarding the case file to the Royal Prosecutor.

In urgent cases, the investigating judge may order the immediate release of a charged person, without waiting for the Prosecutor's observations. The investigating judge shall indicate the reasons of the urgency in his order.

**Article 216: Release of Charged Person upon Request of Prosecutor**

The Royal Prosecutor may request the release of a charged person at any time. The investigating judge shall make a decision within 5 days after receiving the request.

If the investigating judge fails to decide within 5 days, the Royal Prosecutor may directly seize the Investigation Chamber to decide instead of the investigating judge

An order not to release a charged person shall contain a statement of reasons.

**Article 217: Release upon Request of Charged Person**

The charged person may submit a request for release at any time. The investigating judge shall send the application to the Royal Prosecutor immediately for his examination of the case file and observations. The Prosecutor shall make his observations without delay. The investigating judge shall decide on the application within a maximum of 5 days after forwarding the case file to the Royal Prosecutor.

The charged person may re-submit a request for release to the investigating judge or to the Investigation Chamber within one month after a decision denying the previous application. The

investigating judge or the Investigation Chamber shall decide on such request within 5 days from the date the request was received.

An order not to release a charged person shall contain a statement of reasons.

If the investigating judge fails to decide within 5 days, the charged person may directly seize the Investigation Chamber which shall decide instead of the investigating judge.

#### Article 223: Obligations Under Judicial Supervision

An investigating judge may place a charged person under judicial supervision if the charged person is under investigation for an offense punishable by imprisonment. Judicial supervision has the effect of subjecting a charged person at liberty to one or more of the following obligations:

1. not to go outside the territorial boundaries determined by the investigating judge;
2. not to change residence without the authorization of the investigating judge;
3. not to go to certain places determined by the investigating judge;
4. to present himself personally on fixed dates at the police office or military office specified by the investigating judge;
5. to respond to a summons from any person appointed by the investigating judge;
6. to provide all identity documents to the clerk's office;
7. not to drive motor vehicles;
8. not to receive or meet certain people identified by the investigating judge;
9. to deposit a bail in an amount and for a duration of payment determined by the investigating judge based on the wealth of the charged person;
10. not to possess or bear any weapon and shall turn in all weapons under his possession to the clerk of the court;
11. to undergo a medical examination and/or treatment under the medical supervision in the hospital;
12. to refrain from certain specified professional activities.
13. In implementing item 12 above, the investigating judge may not prohibit parliamentary activities or any kind of union activities.

229. Cambodia provided the following examples of cases to illustrate this provision : verdict No. 10285 dated on 14th August 2012 placing a charged person under judicial supervision. Record of the present of a charged person dated on 24th August 2012.

#### **(b) Observations on the implementation of the article**

230. The reviewers note that the code of criminal procedure defines provisional detention as an exceptional measure and it governs the framework of provisional release for any charged individual whilst taking into account the necessity to guarantee their appearance in later procedures (articles 203, 204, 205, 215, 216, 217 and 223 of the code of criminal procedure).

231. Cambodia's legislation is in accordance with the provision under review.

#### **Paragraph 5 of article 30**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

232. Cambodia indicated that it has implemented this provision of the Convention.

233. Cambodia believes that it **should go even further and that there** should be no early release

or pardon for persons convicted of 1. Terrorism offences 2. Drug offences 3. Corruption offences due to the severity of the offences and the condition not to commit a subsequent offence by the offenders but there should be no touched on the paroles or pardons which are the rights of the king, the discretion of the judge and the privilege of the head of the government.

Code of criminal procedure (dated 10 August 2007)

**Article 512: Conditions Relative to Behaviour**

Any convicted person who is serving one or more imprisonment sentences may be paroled, provided that he has shown good behaviour during imprisonment and appears to be able to reintegrate into society.

**Article 513: Conditions Relative to Duration of Sentence Already Served**

Parole may be granted to a convicted person who has served: – Half of his sentence if the duration of the sentence is less than or equal to one year; – Two-thirds of the sentence in other cases. A convicted person who has served at least 20 years of a life imprisonment sentence is also eligible for parole.

**Article 514: Authority Competent to Grant Parole**

The President of the Court of First Instance at the place of detention has the authority to grant parole to a convicted person. He shall make this decision after having received the opinion from a national commission which meets at the Ministry of Justice. The national commission shall be composed of: – Two members appointed by the Minister of Justice – one of whom shall serve as chairperson of the commission; – The Chief of the Prison Administration or his representative – as a member.

**Article 515: Opinion of National Commission**

After an application for parole has been filed, the President of the Court of First Instance shall deliver to the national committee: – the application; – the sentencing judgment; – all other sentencing judgments if the convicted person had been subject to several penalties; – Bulletin No. 1 of the criminal record; – the opinion of the Royal Prosecutor; – All other useful documents. The national commission shall issue its opinion without delay. This opinion shall be in writing and include reasons. The opinion shall be submitted to the President of the Court of First Instance immediately.

**Article 516: Decisions on Parole**

The President of the Court of First Instance shall not be bound by the opinion of this national commission. The decision made by the court president shall include reasons. The decision of the court president may be appealed to the President of the Court of Appeal within 5 days. This appeal may be made by the General Prosecutor attached to the Court of Appeal or the Royal Prosecutor of the court that made the decision. When the President of the Court of First Instance has granted parole, the decision shall not take effect in the first 5 days as stated in paragraph 3 of this Article. If there is an appeal, the parole decision shall not take effect until the decision of the President of the Court of Appeal is issued. The President of the Court of Appeal shall make a decision including reasons and this decision cannot be appealed.

**Article 517: Enforcement and Conditions of Parole**

A decision granting parole shall designate the means by which it should be enforced and the requirements the convicted person has to follow. This decision shall determine a probation period, which shall not exceed the term of the sentence which is not yet served.

**Article 518: Revocation of Decision**

Where a new sentence is imposed or if the convicted person violates the requirements determined in the decision to grant parole, the President of the Court of First Instance may revoke his decision.

**Article 519: Arrest of Released Convicted Person**

In cases of urgency, the Royal Prosecutor of the court which issued the parole decision may issue a special order to re-arrest the released convicted person. The Royal Prosecutor shall immediately inform the President of the Court of First Instance.

**Article 520: Revocation of Parole**

Where parole is revoked, the convicted person shall serve the remaining sentencing term. The remaining sentencing term shall be calculated from the date of which the convicted person has received the parole decision. If the convicted person has been arrested based on the enforcement of Article 519 (Arrest of Released Convicted Person) of this Code, the period from the date of the arrest to the date of the revocation of parole shall be deducted from the remaining sentencing term.

**Article 521 Consequence of Non-Revocation**

If parole is not revoked during the probation period, as specified in Article 517 (Enforcement and Conditions of Parole) of this Code, the release shall become definitive. In that case the sentence shall be considered served from the date the parole has been granted.

**(b) Observations on the implementation of the article**

234. Cambodia has confirmed that its legislation contains provisions for conditional or early release for corruption offences whilst taking into account the gravity of such offences (articles 512 up to article 521 of the code of criminal procedure).

235. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 6 of article 30**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

236. Cambodia provided that it has fully implemented the provision under review through articles 52 and 53 of the Cambodian Civil Servant General Statute (Promulgated by Royal Kram No. NS/RKM/1094/006 dated 30 October 1994).

237. Civil Servant General Statute (Promulgated by Royal Kram No. NS/RKM/1094/006 dated 30 October 1994)

**Article 52**

If necessary, the civil servant brought before the court may be relieved of his/her duties during the judicial proceedings.

In the event of suspension of duties with placement on leave without pay status, the civil servant acquitted by the court shall be reintegrated into the civil service with retroactive effect.

**Article 53**

Any criminal or penal condemnation without a suspended sentence shall result in the removal of the civil servant, commencing from the day when the judgment became final.

In the event of an appeal, the civil servant shall be automatically placed on leave without pay.

238. Cambodia provided the following examples of cases to illustrate this provision: verdict of Criminal case No. 2547 dated on 8th August 2012 issued by a court of the first instance which was on trial on 14th March 2013 and publicly was announced on 22nd March 2013.

**(b) Observations on the implementation of the article**

239. The reviewers note that the Common Statute of Civil Servants provides for disciplinary sanctions such as the temporary suspension of duties during the judicial procedure, the mutation or revocation in articles 52 and 40.

240. Cambodia's legislation is in accordance with the legislation under review.

**Subparagraph 7 (a) of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office;*

**(a) Summary of information relevant to reviewing the implementation of the article**

241. Cambodia considered that it has fully implemented this provision of the Convention.

242. Cambodian legislations state that any criminal or penal condemnation without a suspended sentence shall result in the removal of the civil servant, commencing from the day when the judgement became final. Rehabilitation could be granted by Judicial rehabilitation (upon requested and decide by the Criminal Chamber of the Court of Appeal) and rehabilitation by law.

243. Cambodia indicated that various articles of are applicable.

244. Common Statute of Civil Servants (Promulgated by Royal Kram No. NS/RKM/1094/006 dated 30 October 1994)

Article 52

If necessary, the civil servant brought before the court may be relieved of his/her duties during the judicial proceedings.

In the event of suspension of duties with placement on leave without pay status, the civil servant acquitted by the court shall be reintegrated into the civil service with retroactive effect.

Article 53

Any criminal or penal condemnation without a suspended sentence shall result in the removal of the civil servant, commencing from the day when the judgment became final.

In the event of an appeal, the civil servant shall be automatically placed on leave without pay.

245. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 55: Forfeiture of rights

The rights that may be forfeited under Article 53(1) (Additional penalties) are:

- (1) the right to vote;
- (2) the right to stand for election;
- (3) the right to be a public official;
- (4) the right to be appointed as an expert, an arbitrator or to be a judicially appointed official;
- (5) the right to receive official decorations and honours;
- (6) the right to testify under oath in court.

The penalty of forfeiture of certain rights may be permanent or temporary. In the latter case, the period of forfeiture may not exceed five years.

246. Code of criminal procedure (dated 10 August 2007)

Article 534: Competent Court to Decide Rehabilitation

Judicial rehabilitation may be granted or rejected by the Criminal Chamber of the Court of Appeal in whose territorial jurisdiction the sentence has been announced.

Article 535: Time Conditions Relative to Application for Rehabilitation

The application for rehabilitation may be submitted to the Criminal Chamber of the Court of Appeal only after the following duration is expired:

- Five years for a felony;
- Three years for a misdemeanour;
- One year for a petty crime. This duration shall commence:
  - From the date of completion of sentence;
  - From the date of completion of imprisonment in lieu of payment as provided in paragraph 2 of Article 536 (Provision of Necessary Evidence) of this Code.

Article 541: Rehabilitation by Law

The convicted person shall by law automatically obtain rehabilitation in the following cases:

- After five years calculated from the date of serving the sentence or from the expiry date of the statute of limitations of the conviction if the sentence did not exceed five years or was a fine.
- After ten years calculated from the date of serving the sentence or from the expiry date of the statute of limitations of the conviction if the sentence exceeded five years.

247. Law on common statute for military personnel of Royal armed forces (dated 06 November 1998)

Article 40

The status of being a personnel of Royal armed forces will be removed when the military personnel quits with the consent from the competent authority or when the military personnel gets the permanent employment in civil service or when the military personnel is found guilty by the court (any criminal or penal condemnation).

The removal military personnel as stated in part 4 of Article 38 shall be integrated in reserved military personnel and the previous military personnel's class will be kept.

The military personnel who is convicted of offences (any criminal or penal condemnation) shall not be integrated in reserved military personnel.

248. Sub-decree No. 25 RNKr dated on 15th June 1994 on duties and general hierarchy of Royal Gendarmerie

Article 3

Royal Gendarmerie is a part of Royal armed forces which have the autonomy in law enforcement and have some duties like the police and deal mostly with inter-ministries/institutions. The competent of Royal Gendarmerie shall be applied to throughout the country on the civil citizen and military personnel.

**(b) Observations on the implementation of the article**

249. The reviewers note that article 53 of the Common Statute of Civil Servants provides for the resignation of the civil servant in case of a final conviction. Cambodian legislation also provides for the deprivation of the right to be a public official in case of a criminal conviction (art. 55 of the PC). Such deprivation of rights may be temporary or final.

250. Cambodia's legislation is in compliance with the provision under review.

**Subparagraph 7 (b) of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*[...]*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

251. Cambodia considered that it has fully implemented this provision of the Convention through articles 52 and 53 of the Common Statute of Civil Servants and article 55 of the Penal Code.

252. Please refer to the answers provided for in article 30 paragraph 7 a.

253. Cambodia provided the following examples of cases to illustrate this provision :

- The judgment of Criminal Case No. 484 dated 30th November, 2010 of a court of the instance.
- Verdict No.98 X dated November 15th, 2010 on the criminal case No. 672 dated 16th December 2010 of a court of the first instance.

**(b) Observations on the implementation of the article**

254. Cambodian legislation does not refer explicitly to the fact that a public official convicted of an offence contained in this Convention may be deprived of his right to exercise his/her public function in an enterprise owned in whole or in part by the State.

**Paragraph 8 of article 30**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

255. Cambodia considered that it has fully implemented this provision of the Convention through articles 35 and 50 of the Common Statute of Civil Servants.

256. Common Statute of Civil Servants (Promulgated by Royal Kram No. NS/RKM/1094/006 dated 30 October 1994)

Article 35

It shall be strictly forbidden for civil servants:

- to undertake work for personal purposes during the hours of service,
- to use the prerogatives and authority of their position for personal profits or to threaten or violate the rights of citizens,
- to undertake an activity that undermines the honour and integrity of their position,
- to be a member of a board of directors or to manage directly or indirectly a private company or enterprise,
- to publish, without the prior authority of the Minister under whom they are employed, or to make public facts related to their position,
- to exercise at the same time a profession forbidden by the particular statute of their body.

Any violation of the provisions of this article may result in the application of disciplinary sanctions provided in Article 40 of this law, without prejudice to possible penal proceedings.

Article 50

After receipt of the report, the disciplinary council may request that the reporter draft supplementary information.

The President may either postpone to a later date the meeting of the council or take under his/her responsibility any other measure useful to demonstrate the truth, provided that he/she does not contradict the authority of a judicial decision that has been previously entered.

The procedures implementing the provisions above shall be prescribed by anukret.

**(b) Observations on the implementation of the article**

257. The reviewers note that article 35 of the Common Statute of Civil Servants provides for the application of disciplinary sanctions without prejudice to potential criminal procedures.

258. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 10 of article 30**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

259. Cambodia provided that it has partially implemented the provision under review.

260. Cambodia indicated that various articles of the Law on prison and the Code of Criminal Procedures are applicable.

261. Law on Prison (Promulgated by Royal Kram No. NS/RKM/1094/006 dated 30 October 1994)  
Chapter 7: Education, Correction, Provisional Training and Rehabilitation for Prisoners

Article 66

The prisoners are assigned to participate in legal and social morality education programs conducted at the prisons.

#### Article 67

The prisoners are provided with ways to participate in the general knowledge education programs and provisional trainings at the prisons.

Education and provisional training programs are integrated into the national education and provisional training programs

The juvenile prisoners are particularly considered in relation to the needs for education, provisional trainings, rehabilitation and integration by collaborating with the Ministry of Social Affairs, Veterans and Youth Rehabilitation and the Ministry of Education, Youth and Sports.

The Ministry of Education, Youth and Sport and the Ministry of Labour and Vocational Training shall collaborate with the Ministry of Interior in designing the programs and implementing education and vocational training programs for the prisoners in the prison.

#### Article 68

Prisoners with low level of security and have been assessed that they are physically capable are assigned to do the daily work in the prison or any work for the interests of the community and public interests or assigned to participate in industrial, handicraft, agriculture programs in the prison.

#### Article 69

Industrial, handicraft, agriculture programs are organized at each prison in order to provide opportunity to the prisoners to gain the ability for making their own livings after they have been integrated into the society.

#### Article 70

Prisoners participating in the industrial, handicraft, agriculture programs in the prison are equipped with safety equipment during working.

#### Article 71

After the agreement of the Minister of Interior, Director General of the prison has the right to sign the contract with natural person, legal person or national, international organizations to generate the industrial, handicraft, agriculture programs in the prison and has the right to sell the industrial, handicraft, agricultural products of the prison.

#### Article 72

The management and use of the profits obtained from industrial, handicraft, agriculture programs in the prison shall be stipulated by the Sub-Decree pursuant to the request of the Minister of Interior and the Ministry of Economic and Finance.

The procedure for the management of industrial, handicraft, agriculture programs in the prison shall be stipulated by the Declaration of the Minister of Interior.

#### Article 73

Within 6 (six) months in prior to the date of release, the prisoners shall be provided with integration program arranged by the prison in order to get them become good citizens who can live in the society and community.

### 262. Criminal Code of Procedure (dated 10 August 2007)

#### Article 534: Competent Court to Decide Rehabilitation

Judicial rehabilitation may be granted or rejected by the Criminal Chamber of the Court of Appeal in whose territorial jurisdiction the sentence has been announced.

#### Article 535: Time Conditions Relative to Application for Rehabilitation

The application for rehabilitation may be submitted to the Criminal Chamber of the Court of Appeal

only after the following duration is expired:

- Five years for a felony;
- Three years for a misdemeanour;
- One year for a petty crime. This duration shall commence:
- From the date of completion of sentence;
- From the date of completion of imprisonment in lieu of payment as provided in paragraph 2 of Article 536 (Provision of Necessary Evidence) of this Code.

Article 541: Rehabilitation by Law

The convicted person shall by law automatically obtain rehabilitation in the following cases:

- After five years calculated from the date of serving the sentence or from the expiry date of the statute of limitations of the conviction if the sentence did not exceed five years or was a fine.
- After ten years calculated from the date of serving the sentence or from the expiry date of the statute of limitations of the conviction if the sentence exceeded five years.

263. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials and other entities. Capacity building for specific skills to relevant officials is also a priority tasks done by Royal Government of Cambodia. The establishment of systems for managing, collecting, and analysing of information and data in relevant ministries-institutions has to be done and strengthened by making it systematic, linked, and advanced in order to be used as the ground for analysis, investigate, share, and design the strategic plan for the entities.

**(b) Observations on the implementation of the article**

264. Chapter 7 of the Law on Prison provides for education, correction, provisional training and rehabilitation for prisoners.

**(c) Challenges, where applicable**

265. Cambodia identified the following challenges in the implementation of this measure:

- Limited resources for implementation
- Inter-agency co-ordination
- Limited capacity

**(d) Technical assistance needs**

266. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Model legislation
- Legal advice
- Need to be provided capacity building program

**Article 31. Freezing, seizure and confiscation**

**Subparagraph 1 (a) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

**(a) Summary of information relevant to reviewing the implementation of the article**

267. Cambodia provided that it has partially implemented the provision under review.

268. Cambodia indicated that various articles of the Penal Code, the Law on Money-Laundering, the Law on Anti-Corruption and Law on Control of Drugs are applicable. In additions, for confiscation, Cambodia is considering to draft specific law or regulation allowing convicted and non-convicted confiscation with clear conditions.

269. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 404: Definition of money laundering

"Money Laundering" is the act of facilitating by any means the false justification of the origin of the direct or indirect proceeds of a felony or misdemeanour.

"Money laundering" shall also include providing in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanour.

Article 408: Additional penalties (nature and duration)

The following additional penalties may be imposed in respect of the offences defined in this Section:

- (1) forfeiture of certain rights. either permanently or for a period not exceeding five years;
- (2) prohibition from practicing a profession in the practice of or in connection with which the offence was committed, either permanently or for a period not exceeding five years;
- (3) confiscation of ally instruments, materials or items which were used or intended to be used to commit the offence;
- (4) confiscation of the items or funds which were the subject of the offence; (5) confiscation of the proceeds or property arising out of the offence;
- (6) confiscation of the utensils. materials and furnishings in the premises in which the offence was committed;
- (7) confiscation of one or more vehicles belonging to the convicted person;
- (8) publication of sentencing decision for a period not exceeding two months
- (9) publication of sentencing decision in the print media;
- (10) broadcasting of sentencing decision by any audio-visual communication for a period not exceeding eight days.

270. Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)

Article 12: Reporting Cash or Suspicious Transactions to the FIU

(1) Reporting entities referred to Article 4 of the present Law shall report to the FIU any cash transaction exceeding the amount of the threshold as defined by supervisory authority, as well as such transaction, which involve several connection cash transactions whose total value exceeds the same amount.

(2) Irrespective of the reporting obligation set forth by paragraph 1 of this Article, if a reporting entity suspects or has reasonable grounds to suspects that funds are the proceeds of offense, or are related to the financing of terrorism, it shall promptly, within 24 hours, report its suspect ions to the FIU.

(3) Reports of suspicions shall be transmitted to the FIU by any expeditious means of communication, such as facsimile or, failing which, by any other written means. Reports communicated by telephone shall be confirmed by facsimile or any other written means within the shortest possible time. The FIU shall acknowledge receipt of the upon receipt thereof.

(4) A reporting entity that has made a report to the FIU, as well as any other entity that holds information related to the transaction or customer involved in the report, shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information or contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

(5) If the FIU has reasonable grounds to suspect that a transaction or a proposed transaction may involve a money laundering offense or an offense of financing of terrorism and for reasons of the seriousness or the urgency of the case it considers necessary, it may direct the reporting entity in writing or by telephone to be followed up in writing, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the FIU, which may not exceed 48 hours, in order to allow the FIU:

- to make necessary inquiries concerning the transaction; and
- if the FIU deems it appropriate, to inform and advise a law enforcement agency.

271. Law on Amendment of Article 3, Article 29 and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism (Promulgated by Royal Kram No. NS/RKM/0613/006 dated 03 June 2013)

Article 29 New -1: Money Laundering offence

Money laundering is punishable by an imprisonment from 2 (two) years to 5 (five) years and a fine from 40.000.000 (forty million) riels up to 100.000.000 (one hundred million) riels, or up to the value of fund or property which was the subject of money laundering.

The provisions of articles 406 (aggravation circumstances) to 408 (additional penalties: categories and duration) of the Criminal Code shall apply.

The legal entity may be declared as being criminally responsible under conditions as stipulated in article 42 (criminal responsibility of a legal entity) of the Criminal Code for money laundering offences.

The legal entity shall be subject to a fine from 100.000.000 (one hundred million) riels to 500.000.000 (five hundred million) riels and any one or more additional sanctions as stipulated in article 29 New-6 (additional penalties for legal entities) of the present law.

Article 30 New -1: Freezing and Seizure of property

The designated member of the National Coordination Committee on Anti-Money Laundering and Combating of Terrorism shall freeze property and take appropriate provisional measures, when they have a suspicion or have a reasonable ground to suspect that such property is related or suspected to be involved with the offences or the proceeds of a predicate offence, before applying as soon as practicable for court order for the purpose of keeping property which is the subject of confiscation as defined in article 30 new 2 (Confiscation of property) of the present law:

Upon becoming aware of the existence of any property related or suspected to be involved with the offences or the proceeds of a predicate offence, the enforcement authorities must seize that property without delay and as soon as practicable, and sue to the court to freeze such property.

Article 30 New -2: Confiscations of Property

In the event of conviction for money laundering or a predicate offence of financing of terrorism, an order shall be issued by the court for the confiscation of:

- (a) property constituting the proceeds of a predicate offence, including property intermingled with or exchanged for such proceeds;
- (b) property constituting income and other benefits obtained from the proceeds of a predicate offence;
- (c) the instrumentalities; materials or any subjects being used in carrying out of criminal offence or commit offense;
- (d) property referred to in paragraph (a), (b) and (c) of this Paragraph that has been transferred to any

party, unless the court finds that the owner of such property acquired them by paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds, and that he was unaware of its illicit origin; or

(e) property of the perpetrator of the offence the value of which corresponds to that of the proceeds of the predicate offence.

If, in case where an offence involving money laundering or a predicate offence, or financing of terrorism, is established by the court and the perpetrator thereof cannot be convicted because he is unknown, he absconded or died, the court may nevertheless order the confiscation of the seized property if sufficient evidence is adduce that it constitutes proceeds of a predicate offence.

In addition to the confiscation of property defined in (a), (b), (c), (d) and (e) of this article, the confiscation of property stipulated in Criminal Code of the Kingdom of Cambodia is also applied.

#### Article 30 New -3: Mingled Property

Where the property that is or is reasonably suspected of being related to the offence or the proceeds of a predicate offence, is mingled with other property that is not related to the offence or the proceeds of a predicate offence, the value of the frozen, seized or confiscated property to which an order under article 30 New-1 (freezing and seizure of property) or article new-2 (confiscation of property) applies, must not exceed the value of the property that is or is reasonably suspected of being related to the offence or the proceeds of a predicate offence.

#### Article 30 New -4: Onus on person opposing order

A person opposing an order article 30 new-1 (freezing and seizure of property) or article 30 new-2 (confiscation of property), seeking to exclude property from such an order or seeking to overturn such an order must satisfy the court that such person is entitled to that property and that such property is not related to the offence or the proceeds of predicate offence.

#### Article 30 New -5: Freezing of Funds Associated with Financing of Terrorism

Notwithstanding any other provision of law, funds, of terrorists, of those who finance terrorism and of organizations designated by the United Nations Security Council Resolutions 1267 and 1373 and Successor Resolutions shall be frozen without delay pursuant to mechanisms and procedures defined by a legislative regulation.

### 272. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

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

Upon the request by the chairman of ACU, the Royal Government can order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in this law and corruption offences stated in penal code.

The individual assets, stated in the above first paragraph, includes the funds received or which forms asset belonging to the individual.

#### Article 30: Seizure

The seizure shall be implemented in accordance with the code of criminal procedure.

#### Article 48: Seizure

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, instrument that is derived from corruption act and the proceeds shall be transformed into state property.

If the above seized asset is transferred/changed into different property from the original asset nature, this transformed asset will become the subject of seizure at the place where it locates.

If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages

will be seized as well.

If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

**Article 49: Repatriation of the proceeds of Corruption**

In case assets and corruption proceeds are found kept in foreign states, the competent authority of the kingdom of Cambodia shall take measure to claim that asset and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia.

**273. Law on Control of Drugs (Promulgated by Royal Kram No. NS/RKM/0112/001 dated 02 January 2012)**

**Article 70: Definition of Money Laundering**

The conversion, transfer, acquisition, possession or use of property, the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing that such property is the proceeds of any predicate offence which stated in art. 39 (Illegally produced of psychotropic substances) to art. 42 (illegally used of psychotropic substances), from art. 47 (illegally produced of psychotropic substances) to art. 50 (illegally used of psychotropic substances) art. 54 (Produced, keeping, transportation or illicit trafficking in chemical substances) and art. 56 (Illicit produces, keeping, transportation or trafficking instruments or material in producing or using of psychotropic substances) of this law for the purpose of concealment or disguise of the true nature of those property or help any individual involving in the offence for that individual to escape from the law constitute as money laundering.

Also be considered as money laundering to the actions which assist to the venture operations of the concealment or changes of the result directly or indirectly as stated in the paragraph 1 above.

**Article 71: Money laundering offence**

Money laundering is punishable by an imprisonment from 2 (two) years to 5 (five) years and additional penalty which is a fine from 4.000.000 (four million) riels or up to the value of fund or property which was the subject of money laundering.

In case where an offence that the source of the property or the fund that the object of money laundering is punishable by imprisonment heavier than the punishment stated in paragraph 1 above, money laundering is punishable by an imprisonment same as the offence that perpetrator have known and in the case where some offences come with aggravating circumstances, perpetrator is punishable in accordance with aggravating circumstances that one have known.

**Article 72: Aggravating circumstances**

Money laundering is punishable by an imprisonment from 5 (five) years to 10 (ten) years and additional penalty which is a fine from 10.000.000 (ten million) riels or up to the value of fund or property which was the subject of money laundering in the case where the committing of the offence are under the circumstances :

- the offence has been done many times
- by using the advantages provided by the professional

**Article 88: Immediate measure for confiscation**

In the case where there is an investigation to accused any offence stated in this law, the measure of seizure or freezing the property of the suspects or the accused which derives from the offence or in the suspects of using or intended to use for committing the offence must conform with this regulation.

**Article 89: Seizure of the property**

Prosecutor has to seize the property that derives from the offences or in the suspect of using or intended to use in committing the offence and immediately made a complaint to the investigating judge or the

court based on the accused to seize those property.

#### Article 90: Freezing the property

Investigating judge or the court may order by themselves or based on the complaint made by prosecutor to freeze the property when there is a reasonable reason or suspect that the property derive from the offence or in the suspect that the property is used or intended to use in committing the offence.

#### Article 91: Intermingle property

When the property which derives from the offence or in the suspect with reasonable reason that it derives from the offence or in the suspect of using or intended to use in committing the offence is placed with other assets, the value that seize based on art 89 (Seize of the property) or freeze based on art 90 (Freezing the property) above cannot exceed the value of the property that derives from the offence or in the suspect of using or intended to use in committing the offence.

#### Article 92: Burden of proof against the order

Individual who asked to withdraw the property that has been seize based on art 89 (Seize of the property) or freeze based on art 90 (Freezing the property) has to find the proof to indicate the legality of the property that has been seized or freeze to the judge in charge of the case.

Individual who refused to the decision of freezing the property issued by the investigating judge based on art 90 (Freezing the property) of this law may appeal this decision to investigating jury.

#### Article 93: Obligatory Confiscation

The confiscated drug which has not been destroyed or handed over to the competent authority shall obligatorily confiscate though the accused is not convicted, exempted from conviction, or release without criminal proceeding.

The provision of the return of the seized items as stated in Code of Criminal Procedure shall be applied in all stages of the procedure.

#### Article 94: Confiscation of Items

When it is found guilty of any offences as stated in this law, the court shall:

- (1) confiscate any instruments, materials, or items which were used or intended to be used to commit the offence;
- (2) confiscate the items or funds which were the subject of the offence;
- (3) confiscate the proceeds of crimes.

Out of what have been stated in paragraph 1 above, if there is evidence to prove the guilt of the accused who is dead in any stage of trial in committing any crime as stated in from article 39 (Illegally produced of psychotropic substances), to art. 42 (illegally used of psychotropic substances), from art. 47 (illegally produced of psychotropic substances) to art. 50 (illegally used of psychotropic substances), art. 54 (Produced, keeping, transportation or illicit trafficking in chemical substances) and art. 71 (Money Laundering Offence), and art. 72 (Aggravating Circumstances) of this law, the court shall confiscate the inheritances of the deceased accused though they have been shared or not yet within the period of 5 years after the dying date of the accused with the sufficient evidence or reasonable evidence that all the inheritances are relevant to the crime.

However, confiscation shall not be ordered if it affects the rights of third parties.

#### Article 95: Burden of Poof Against the Confiscation Order

Third party whose benefits are affected by the order of article 94 (Confiscation) above has the rights to appeal in accordance with provisions as stated in Code of Criminal Procedure to the confiscation order and is obligated to show the evidence to prove the rightfulness of the confiscated properties.

#### Article 96: Confiscation of the Properties

In case where the conviction cannot be done due to the dead of the accused, the prosecutor can conduct

the proceeding to the criminal court in order to confiscate the instruments, materials, items, fund or other properties which are suspected to be relevant to the crime.

In case of exemption from the conviction due to the death of the accused or the identity of the accused is unknown, investigating judge can conduct the proceeding to criminal court in order to confiscate the instruments, materials, items, fund or other properties which are suspected to be relevant to the crime.

However, confiscation shall not be ordered if it affects the rights of third parties. The third party whose benefits are affected or who claims the ownership of the properties which are the subject of confiscation shall have the rights to be in at any stage of court procedure and can appeal against the order in accordance with the provisions in the Code of Criminal Procedure.

**Article 97: Sale of confiscated properties by the state**

Ministry of Economic and Finance shall manage the disposition of the confiscated properties. In case of sale of those properties, it shall be implemented in accordance with the procedure for the sale of state property.

Cash got from the sale in accordance with the 1 paragraph above and including other confiscated cash shall be kept in nation fund which shall be used as following:

- to pay legal debts and expenses which are derived from the confiscation process including the expenses on confiscation, transportation, management, and maintenance and
- to compensate to the victims if there is any or
- to keep in the fund account of national authority to fight against drug.

The national authority allocates the fund account to state organizations or to private associations which mandate are relevant to the fight against the use of drug and drug crime.

Criteria for the organization and functioning of the above fund account shall be stated in a sub-decree.

**Article 98: Appeal against the final confiscation judgement**

Third party whose benefits are affected or who claims the ownership of the properties has the rights to appeal to the civil court for the confiscated properties in the final confiscation judgment of criminal court in accordance with the Code of Civil Procedure.

The rights to appeal as stated in paragraph 2 above shall be extinguished if it is over the period of 10 years noted from the date the final judgement is in effect.

**Article 99: Actions of barriers to the freezing and confiscating are to be null and void**

Court shall consider any actions which are conducted with the purpose to converse the properties from freezing or confiscating to be null and void though actions are taken with payment or non-payment.

Individual who gets the properties due to the action without payment shall not have this rights because the actions are considered to be null and void. However, individual who gets the properties with the rightfulness is obliged to return back only the benefits in which the individual get.

The null and void as stated in paragraph 1 above is not applied if the individual gets the properties in the rightfulness and are paid.

If an addict of poisonous substance commits an offense which is not serious enough to be sentenced to prison and if such person has never been sentenced to imprisonment with or without suspension of punishment during the past 3 years, the court may then decide not to punish him/her, but must compel such person to go for a treatment.

274. Cambodia provided the following examples of cases to illustrate this provision:

Verdict of Criminal Case No. 09 “KH” dated on 5th January, 2012 of a Provincial Court of First Instance

A former Secretary General of National Authority for Combating Drug and the Director of a Provincial Unit for Combating Drug and his other 2 accomplices illegally used the workplace to commit crime and set up an organized drug criminal group. They were the masterminds in retaining the drug, drug trafficking, and falsifying the documents to release the offenders or mitigate the penalties of the offenders.

They were accused of taking the bribe and instigating or masterminding the organized criminal group, committing offences as stipulated in New Article 31-33 and New Article 39 on criminal offences and sentenced in accordance with Article 38 of the Criminal Law and Procedure Applicable in Cambodia during the Transitional Period and New Article 34 of the Law on the Amendment of Law on Drug Control for many-time offences committed since 2007 till early 2011. The verdict gave punishment to the accused as follows: That former judge was sentenced to life-imprisonment and was fined . Some of his properties were confiscated.

**(b) Observations on the implementation of the article**

275. Cambodia also indicated that when there is a final judgment, freezing, seizure, and confiscation are stated clearly in the code of criminal procedure, but this could not be implemented properly due to fear and inconsistent implementation. Cambodia further stated that it will develop mechanisms for implementation in which all the relevant stakeholders, such as the Ministry of Justice, the Ministry of Economic and Finance, etc will participate. As for freezing, seizure, and confiscation, Cambodia indicated that there is no legal framework for sale without final judgment. Thus, Cambodia will amend relevant laws and will state clearly about the conditions for sale as well as the responsibilities of relevant authorities.

276. The reviewers note that article 404 of the penal code gives a definition of money laundering whereas article 408 provides for additional penalties such as confiscation. Article 48 of the Law on Anti Corruption also provides for confiscation measures. Furthermore, Articles 30 New -2 and 30 New -3 of Law on Amendment of Article 3, Article 29 and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 03 June 2013 provide for the confiscation of assets which are the proceeds of the predicate offence including property intermingled with or exchanged for such proceeds. They also provide for the confiscation of assets constituting the income and other benefits obtained from the proceeds of the predicate offence, property of the perpetrator of the offence the value of which corresponds to that of the proceeds of the predicate offence as well as the instrumentalities and materials used in carrying out the criminal offence.

277. Cambodia's legislation is in accordance with the provision under review.

**Subparagraph 1 (b) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*[..].*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

278. Cambodia provided that it has partially implemented the provision under review. Cambodia indicated that various articles of are applicable.

279. Please refer to the answers provided for in article 31 paragraph 1 (a).

**(b) Observations on the implementation of the article**

280. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 2 of article 31**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

281. Cambodia provided that it has partially implemented the provision under review.

282. Cambodia indicated to refer to the answers provided for in article 31 paragraph 1 (a).

**(b) Observations on the implementation of the article**

283. The reviewers note that article 30 New -1 of the Law on Amendment of Article 3, Article 29 and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 03 June 2013 and article 48 of the Law on Anti-Corruption provide measures for the freezing and seizure of assets which are the proceeds of the predicate offence. Article 12 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 24 June 2007 provides for measures on reporting cash or suspicious transactions to the Financial Intelligence Unit (FIU).

284. Cambodia's legislation is in compliance with the provision under review.

**Paragraph 3 of article 31**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

285. Cambodia provided that it has partially implemented the provision under review. By laws and in practice, the court issue the order to freeze, seize, or confiscate property covered in paragraph 1 & 2, whereas the relevant competent authorities are usually asked by the court to administer such property.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April

2010)

**Article 48: Seizure**

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, instrument that is derived from corruption act and the proceeds shall be transformed into state property.

If the above seized asset is transferred/changed into different property from the original asset nature, this transformed asset will become the subject of seizure at the place where it locates.

If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well.

If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

**Code of Criminal Procedure (dated 10 August 2007)**

**Article 119: Competent Authority to Order Return of Seized Items**

The royal prosecutor can order the return of an item seized during a preliminary inquiry. He will do so if those items are not necessary as exhibits and there is no serious dispute over the ownership of such item. However, any item that is dangerous to persons or to property, such as weapons or explosives, or any item which is illegally held may not be returned. Such item shall be seized and deemed as property of the state or be destroyed.

In case a prosecutor refuses to return a seized item, a complainant may appeal to the general prosecutor. The royal prosecutor and the general prosecutor are not competent to return seized items during a judicial investigation or trial court proceedings. The royal prosecutor and the general prosecutor regain their competence if a judicial investigation is completed by a final non-suit order.

**Article 120: Return of Seized Items**

If a case has been finally decided by the trial court, but the court fails to make a decision on the return of a seized item, the royal prosecutor or the general prosecutor can decide at his discretion on the return as long as there is no serious dispute over the ownership of such item.

**Article 161: Return of Items Seized by Investigating Judge**

Even before the issuance of the closing order, the investigating judge has the authority to return the seized items if the ownership is not seriously in dispute. The investigating judge shall make a decision by a reasoned order after receiving an opinion from the royal prosecutor. This order shall be notified to the plaintiff or his appointed lawyer without delay.

No item shall be returned to the owner if this measure would conflict with the aim of ascertaining the truth.

Items which are dangerous to a person or property, such as weapons, any type of explosives, or items of which the possession is illegal, shall not be returned. Such items automatically become state property.

**Article 354: Return of Seized Items**

The court has the competence to decide on the return of seized items.

**(b) Observations on the implementation of the article**

286. Cambodia pointed out that the relevant competent authorities are usually required by the Tribunal in order to administer such assets (article 48 of the Law on Anti Corruption and articles 119,120,161 and 354 of the code of criminal procedure).

287. The reviewers encourage Cambodia to take additional measures in order to regulate the administration of the frozen, seized or confiscated assets by the competent authorities.

#### **Paragraph 4 of article 31**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

288. Cambodia provided that it has implemented the provision under review. Cambodia referred to the answers provided under article 31 paragraph 1 (a).

##### **(b) Observations on the implementation of the article**

289. Cambodia's legislation is in accordance with the provision under review.

#### **Paragraph 5 of article 31**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

290. Cambodia provided that it has implemented the provision under review.

291. Cambodia referred to the answers provided under article 31 paragraph 1 (a).

##### **(b) Observations on the implementation of the article**

292. Cambodia's legislation is in accordance with the provision under review.

#### **Paragraph 6 of article 31**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

293. Cambodia provided that it has implemented the provision under review.

294. Cambodia referred to the answers provided under article 31 paragraph 1 (a).

**(b) Observations on the implementation of the article**

295. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 7 of article 31**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

296. Cambodia provided that it has implemented the provision under review. Cambodia referred to the answers provided under article 31, paragraph 1(a).

**(b) Observations on the implementation of the article**

297. The reviewers note that article 12 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 24 June 2007 provides for the obligation of reporting suspicious transactions to the financial intelligence unit. As to article 27 of the Law on Anti-Corruption, it provides for the Anti Corruption Unit to check and order the delivery of banking, financial and commercial documents; it also confirms that the banking secret may not be invoked in the event of a corruption offence.

298. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 8 of article 31**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

299. Cambodia provided that it has implemented the provision under review.

300. Cambodia made a reference to the answers provided under article 31 paragraph 1(a).

301. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 36: Illicit Enrichment**

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide reasonable explanation of its increase in comparison to his or her legal income.

After the first assets and liabilities declaration, every person as described in article 17 (people required to

declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property.

If the unexplainable wealth increase is connected to any corruption offense as stated in this law, the wealth owner shall be punished in accordance with this law.

**(b) Observations on the implementation of the article**

302. The reviewers note that article 30 New - 4 of the Law on Amendment of Article 3, Article 29 and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 03 June 2013 provides for a person opposing a confiscation order for an asset to have the onus to prove the legal origin of such asset. Article 36 of the Law on Anti-Corruption regarding illicit enrichment also provides for the same measure.

303. Cambodia's legislation is in accordance with the provision under review.

**Paragraph 9 of article 31**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

304. Cambodia provided that it has implemented the provision under review. Cambodia referred to the answers provided under article 31, paragraph 1(a).

305. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 36: Illicit Enrichment**

Illicit enrichment is an increase in the wealth of an individual and the individual cannot provide reasonable explanation of its increase in comparison to his or her legal income.

After the first assets and liabilities declaration, every person as described in article 17 (people required to declare assets and debt) and article 19 (other people required to declare assets and debt) of this law, who cannot provide a reasonable explanation of the wealth increase in comparison to his or her legal income, shall face confiscation of the unexplainable property. All of the confiscated property will become state property.

If the unexplainable wealth increase is connected to any corruption offense as stated in this law, the wealth owner shall be punished in accordance with this law.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

**Article 179: Confiscation and rights of third parties**

Confiscation may be ordered in respect of the following items:

- (1) any instruments, materials or items which were used or intended to be used to commit the offence;
- (2) the items or funds which were the subject of the offence;
- (3) the proceeds or property arising out of the offence;
- (4) the utensils, materials and furnishings in the premises in which the offence was committed.

However, confiscation may not be ordered if it affects the rights of third parties.

**(b) Observations on the implementation of the article**

306. The reviewers note that articles 30 New - 3 and 30 New - 4 of the Law on Amendment of Article 3, Article 29 and Article 30 of Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 03 June 2013 provide measures protecting the rights of third parties who are in good faith. Article 179 of the penal code provides that confiscation might not be ordered if it affects the rights of third parties.
307. Cambodia's legislation is in accordance with the provision under review.

**(c) Challenges**

308. Cambodia identified the following challenges in the implementation of this measure:
- Limited resources for implementation
  - Inter-agency co-ordination
  - Specificities in our legal system
  - Limited capacity

**(d) Technical assistance needs**

309. Cambodia expressed the following technical assistance needs:
- Capacity-building programmes for authorities responsible for identifying and tracing such property or instrumentalities
  - Capacity-building programmes for authorities responsible for the establishment and management of systems for the administration of frozen, seized or confiscated property
  - Summary of good practices/lessons learned
  - Legal advice
  - Model legislation

**Article 32. Protection of witnesses, experts and victims**

**Paragraph 1 of article 32**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

310. Cambodia provided that it has partially implemented the provision under review.
311. For the general offences, there is no general program designed to protect witness and expert who are given testimony in court, their relatives, or other individuals who are close to them. However, article 83 of Code of Criminal Procedure (dated 10 August 2007) and Article 314 of Penal Code (dated 30 November 2009) which are stipulated about the Professional Secrecy of the competent authorities and the offences for the Breaches of Professional Secrecy are contributed to the protection of the groups of people who are notify in this paragraph. In additions, in the

anti-corruption sector, article 13 of anti-corruption law (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010) and article 3, 13, 16, 19 of Sub-Decree No. 05 dated 10 January 2011 on the organization and functioning of the Anti-Corruption Unit also notify the roles and responsibilities in protection of witnesses and other relevant informants too.

312. Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 314: Breaches of Professional Secrecy

Any person who, by reason of his or her position or profession, or his or her duties or mission, is entrusted with secret information, shall be punishable by imprisonment from one month to one year and a fine from one hundred thousand to two million Riels, if he or she discloses such information to a person not qualified to receive the information.

There shall be no offence if the law authorises or imposes the disclosure of the secret.

313. Code of Criminal Procedure (dated 10 August 2007)

Article 83: Confidentiality of Inquiry

The inquiry is confidential. Persons who participate in the inquiry, especially Prosecutors, lawyers, court clerks, police and military police officers, civil servants, experts, interpreters/translators, medical doctors and other persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, shall maintain professional confidentiality.

However, such professional confidentiality may not be used as an obstacle to the right of self-defence.

Moreover, the Royal Prosecutor is entitled to make a declaration in public if he considers that false information in a case has been published.

A breach of confidentiality regarding an inquiry is an offense punishable under the Criminal Law in force.

314. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 13: Duties of the Anti-corruption Unit

The Anti-corruption Unit shall perform the following duties:

- Keep absolute confidentiality of corruption-related information sources
- Take necessary measures to keep the corruption whistle blowers secure.....

Article 39: Leakage of Confidential Information on Corruption

Any person who leaks the confidential information on corruption shall be sentenced from one(1) to five (5) years in prison.

The absolute confidentiality cannot be an obstacle to the right of self-defence.

315. Sub-Decree No. 05 dated 10 January 2011 on the organization and functioning of the Anti-Corruption Unit

Article 3

Duties of Anti-Corruption Unit are as follows:

- Take necessary actions to secure those providing information related to corruption ...

Article 13

Department of Security is responsible for the following work:

- Keep safety for witness, complainants and those who provide information related to corruption
- Request for intervention and cooperation from competent authority, armed forces if necessary in

fulfilling its mission, especially in protecting the witnesses and complainants

Article 16

Department of legal, complaints and international affairs is responsible for the following work:

- Keep secret information on complainant and witness.

Article 19

Department of Investigation and Intelligence is responsible for the following work:

- Collaborate with department of security to provide security and safety for witnesses, plaintiffs and whistle blowers.

316. Cambodia provided the following examples of implementation: The application of this was on the criminal case No. 001 whose offender is the former Secretary General of National Authority for Combating Drug and the Director of Provincial Unit with two other accomplices. In every stages of the procedure, important witnesses who were the colleagues of the offenders had been inquired and hidden the identities with very top confidentiality. This act had made the witnesses felt relieved and secured so they could provide a lot of information for the investigation.

317. Cambodia could not provide information on the cost of such a program. It indicated that a separate budget will be available after the procedure for the protection of witnesses has been established. For now, this expense has been used on the case's budget.

318. In order to ensure the full implementation of the provision under review, the Anti-corruption law has stated about the protection of witness, the person who files the complaint, and other individuals who provide information related to the corruption but, it has not stated about the procedure for the protection of those people yet.

319. Cambodia will draft the bills on Protection of Witnesses, Experts, Victims and Reporting Persons for all general offences and particularly for corruption offences.

320. Cambodia will develop the mechanisms to implement the protection procedures as there is no law on these, and the mechanisms will be issued by the Ministry of Justice.

**(b) Observations on the implementation of the article**

321. The reviewers note that the penal code, the code of penal procedure and the Law on Anti Corruption as well as the Sub-Decree No5 dated 10 January 2011 on the organization and functioning of the Anti-Corruption Unit provide general measures in order to ensure the protection of witnesses, experts and victims without making any reference to their parents or other individuals close to them nor to agreements made for the relocation of witnesses, experts and victims. In practice though, these measures are used if they are feasible.

322. Cambodia explained that it is in the process of preparing a new draft law implementing more specifically and more fully the protection of witnesses, experts, victims and reporting persons.

323. Cambodia's legislation is partially in compliance with the provision under review.

**Subparagraph 2 (a) of article 32**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the*

*rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

324. Cambodia provided that it has not implemented the provision under review.

325. Cambodia indicated that there is no specific legislation stipulated about the point raised in the above provision yet. However, for the implementation, the information, identity, and the place of the witness and victim have been put on top secret. This mechanism will be developed latter on.

**(b) Observations on the implementation of the article**

326. Cambodia's legislation is not in compliance with the provision under review.

**Subparagraph 2 (b) of article 32**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

...

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

327. Cambodia provided that it has not implemented the provision under review.

328. The Ministry of Justice issued the Prokas on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims/Witnesses for the implementation but this prokas focuses on the protection of Child/Vulnerable Victims/Witnesses in which the experts are not included.

329. Prakas No. 62/08 dated on 06 October 2008 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims / Witnesses

**Item 1**

The purpose of a court screen and a courtroom TV-linked testimony for children and vulnerable victims is to provide a safe, supportive environment in which a child/vulnerable victim or witness can share information regarding his/her experience; to elicit accurate information in a non-leading manner but appropriate to the developmental level of the child; to obtain as much information as possible regarding the offence; to facilitate the trial process in the court, to reduce the trauma to the child/vulnerable victim or witness by minimizing the number of interviews and interviewers, and to mitigate threats to the child/vulnerable victim's or witness' personal safety by reducing exposure to the offender.

**Item 2**

1. In principle, court screens should be used as a primary protective measure in all cases involving a child/vulnerable victim or witness.

2. In case the child/vulnerable victim or witness needs special protection that a court screen cannot serve, a TV-linked testimony may be used.

3. A court screen and TV-linked testimony should be used:

a- in a criminal case when taking testimony from a child/vulnerable victim or witness;

b- and the alleged perpetrator is present in court;

c- and where testifying in the presence of the accused in the courtroom would cause undue stress or trauma to the child/vulnerable victim or witness.

unless the child/vulnerable victim or witness does not want to use the court screen and TV-link and such is deemed by the judge to be in the best interests of the child/vulnerable victim or witness after consultation with the child/vulnerable victim or witness, his/her lawyer, and/or social worker.

#### Item 6

1. The testimony of a child or vulnerable victim shall be held in camera.

2. To protect and create a more comfortable environment for the child/vulnerable victim or witness, the court may also direct the location and movement of all the persons allowed inside the courtroom, including the parties, prosecutor, lawyers, court staff, witnesses and support persons, provided that the child/vulnerable victim or witness, judge, prosecutor and lawyers can see and hear each other and that the defence lawyer can observe the demeanour of the child/vulnerable victim or witness.

#### **(b) Observations on the implementation of the article**

330. Cambodia's legislation is not in compliance with the provision under review.

#### **Paragraph 3 of article 32**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

331. Cambodia indicated that it has not implemented this provision of the Convention.

332. Cambodia declared that this procedure will be discussed and will be included in the witnesses and victims protection procedure.

333. In order to ensure full compliance with the provision under review, the Ministry of Justice has made an initiative to draft bill on Protection of Witness and Victims. This procedure will be included in this draft.

#### **(b) Observations on the implementation of the article**

334. Cambodia's legislation is not in compliance with the provision under review.

#### **Paragraph 4 of article 32**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

335. Cambodia provided that it has partially implemented the provision under review.

336. Cambodia did not cite the applicable legislation.

337. Cambodia provided the following examples of cases to illustrate this provision: the criminal case No. 1066 dated on 06 November 2012 about the offenders, a former judge, and a former clerk. The victims of this offence filed the complaint to ACU when the both offenders abused their position by requesting 5000\$ from the victim in exchange for the reduced of penalties on the case related to land issues. They both were caught when the victim came to be the witness and was protected by ACU.

338. Cambodia will draft the bills on Protection of Witnesses, Experts, Victims and Reporting Persons for all general offences and particularly for corruption offences.

339. Cambodia will develop the mechanisms to implement the protection procedures while there is no law on these, and the mechanisms will be issued by the Ministry of Justice.

**(b) Observations on the implementation of the article**

340. Cambodia's legislation is partially in accordance with the provision under review.

**Paragraph 5 of article 32**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

341. Cambodia considered that it has fully implemented this provision of the Convention through articles 31 and 39 of Cambodian Constitution and Article 2 and 6 of the Criminal Procedure (dated 10 August 2007) which allow the victims to show their opinion and concerns in all stages of the procedure.

342. Cambodian Constitution

**Article 31**

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, The Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language religious belief political tendency, birth origin, social status, wealth or other status.

The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

**Article 39**

Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.

343. Code of Criminal Procedure (dated 10 August 2007)

Article 2: Criminal and Civil Actions

Criminal and civil actions are two separate kinds of legal actions. The purpose of a criminal action is to examine the existence of a criminal offense, to prove the guilt of an offender, and to punish this person according to the law. The purpose of a civil action is to seek compensation for injuries to victims of an offense and with this purpose to allow victims to receive reparation corresponding with the injuries they suffered.

Article 6: Complaints by Victims

Any person who claims to be a victim of an offence can file a complaint. An ordinary complaint does not automatically initiate criminal proceedings. In case the Prosecutor does not respond to the claim or keeps the file without processing, the victim may bring a request to the General Prosecutor attached to the Court of Appeal in accordance with Article 41 (File without Processing) of this Code.

344. Cambodia provided the following examples of implementation:

345. The criminal case No. 484 dated 30th November 2010: The former Prosecutor had been accused on the offences of kidnapping, illegal detention, and taking the bribes. The plaintiff of civil case requested for the compensation and the judge issued the verdict that the offender required to give reparation to the victim.

**(b) Observations on the implementation of the article**

346. Cambodia's legislation is in compliance with the provision under review.

**(c) Challenges**

347. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Inadequacy of existing implementing normative measures (laws, regulations, etc.): Law on Anti-corruption and Sub-Decree No. 05 dated 10 January 2011 on the organization and functioning of the Anti-Corruption Unit do not state about the detail of victim and expert protection procedure. In addition, the code of criminal procedure and penal code stipulate only some points about the victim and expert protection procedure which are not detailed enough for the implementation.
- Limited capacity
- Limited awareness of state-of-the-art programmes and practices for witness and expert protection giving testimony through TV is not applied in all the courts throughout the country yet.
- Limited resources for implementation.

**(d) Technical assistance needs**

348. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned: Witness, victim, and expert protection procedure is a new procedure for Cambodia. Thus, Cambodia needs to learn good practices from other countries which are successful in this task.
- Legal advice

- Model legislation: Cambodia needs good model legislations for the development of drafted bill on witness, victim, and expert protection act.
- Capacity-building programmes for authorities responsible for establishing and managing witness and expert protection programmes
- Model agreement(s)/arrangement(s)
- Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection programmes: the officers of the competent authorities who are responsible for the protection of witness, victim, and expert need more training such as psychological supporting, relocation for the witness, victim, and expert etc. on this task.

349. Cambodia indicated that a technical assistance has been provided in this field by USAID, UNICEF, CCJAP and GTZ.

350. Cambodia declared that an extension and/or expansion of such assistance would help in adopting the measure described in the article under review.

### **Article 33. Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

351. Cambodia provided that it has partially implemented the provision under review.

352. Cambodian law does not stipulate directly on reporting persons or Whistle blowers. In implement, they apply the same. All investigations on cases must be done secretly. The Competent authorities have to keep confidentiality as obligation in their functions. Otherwise, the case investigations shall be failed and dangers can happen to the victims. The competent investigators have to keep their professional confidentiality. Although Anti-Corruption Law and Law on the amendment of Anti-Corruption Law stipulates about the punishment on disloyal or with bad-will reporting persons or whistle blowers, in practice, the competent authorities apply this Article only when there is a repeated act of false complaint.

353. Cambodia cited the applicable legislation:

354. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 13: Duties of the Anti-Corruption Unit

The Anti-Corruption Unit shall perform the following duties:

- Keep absolute confidentiality of corruption-related information sources
- Take necessary measures to keep the corruption whistle blowers secure.....

Article 22: Officials competent to investigate corruption offences

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as

judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

355. In order to ensure the full implementation of the provision under review, the anti-corruption law has stated about the protection of witness, the person who files the complaint, and other individuals who provide information related to the corruption (reporting person) but, it has not stated about the procedure for the protection of those people yet.

356. Cambodia will draft the bills on Protection of Witnesses, Experts, Victims and Reporting Persons for all general offences and particularly for corruption offences.

357. Cambodia will develop the mechanisms for implementation the protection procedures while there is no law on these, and the mechanisms will be issued by the Ministry of Justice.

**(b) Observations on the implementation of the article**

358. The reviewers note that article 13 of the Law on Anti Corruption also provides, up to a certain extent, for the protection of reporting persons of such information.

359. Cambodia indicated that it is in the process of preparing a new draft law implementing more specifically and more fully the protection of witnesses, experts, victims and reporting persons.

360. Cambodia's legislation is partially in accordance with the provision under review.

**(c) Challenges, where applicable**

361. Cambodia identified the following challenges in the implementation of this measure:

- Specificities in our legal system
- Limited awareness of state-of-the-art systems and programmes to protect reporting persons
- Limited capacity
- Inter-agency co-ordination
- Limited resources for implementation
- Insufficient existed mechanisms

**(d) Technical assistance needs**

362. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Capacity-building programmes for authorities responsible for establishing and managing protection programmes for reporting persons
- Legal Advise
- Model Legislation

**Article 34. Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in*

*accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

363. Cambodia provided that it has implemented the provision under review.

364. Cambodia considers that various articles of the Code of Criminal procedure and of the Law on Anti-corruption are applicable.

365. Code of Criminal Procedure (dated 10 August 2007)

**Article 119: Competent Authority to Order Return of Seized Items**

The Royal Prosecutor can order the return of an item seized during a preliminary inquiry. He will do so if those items are not necessary as exhibits and there is no serious dispute over the ownership of such item.

However, any item that is dangerous to persons or to property, such as weapons or explosives, or any item which is illegally held may not be returned. Such item shall be seized and deemed as property of the state or be destroyed.

In case a Prosecutor refuses to return a seized item, a complainant may appeal to the General Prosecutor. The Royal Prosecutor and the General Prosecutor are not competent to return seized items during a judicial investigation or trial court proceedings.

The Royal Prosecutor and the General Prosecutor regain their competence if a judicial investigation is completed by a final non-suit order.

**Article 248: Return of Seized Items**

In a closing order, the investigating judge decides whether any seized property be returned to the owner by applying paragraph 2 of Article 119 (Competent Authority to Order Return of Seized Items) of this Code.

**Article 354: Return of Seized Items**

The court has the competence to decide on the return of seized items.

366. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 45: Accessory Penalty applicable to certain Corruption Offences**

In addition to felony or misdemeanour punishment stated in this law, the accessory penalty may be as follows:

1. Deprivation of certain civic rights, either permanently or for a certain period, not exceeding five (5) years.
2. Disbarring from profession, either permanently or for a certain period, not exceeding five (5) years when this offence is committed in the conduct of his or her profession or during the conduct of his or her profession.
3. Prohibition of staying for a period not exceeding ten (10) years for a felony and not exceeding five (5) years for misdemeanour offence.
4. Barring of the entrance and staying of convicted foreigner in the territory of the Kingdom of Cambodia, either permanently or for a period not exceeding five (5) years.
5. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
6. Confiscation of objects or funds that are subject of committing offence. 7. Confiscation of capital or property which derives from offence.

8. Confiscation of proceeds, material and furniture in the building where an offence is committed.
9. Confiscation of a vehicle or vehicles of the convict.
10. Prohibition of the possession or the carrying of explosives either permanently or for a period not exceeding five (5) years.
11. Closure of the institution which being used to organize or commit offences either permanently or for a period not exceeding five (5).
12. Prohibition of the business establishment open to the public or used by the public, either permanently or for a period not exceeding five (5) years.
13. Expulsion from public procurement.
14. Posting of the conviction judgment for a period of not exceeding two (2) months.
15. Advertisement of the conviction judgment on print media.
16. Announcement of the conviction judgment on non-print media outlets for a period not exceeding eight (8) days.

Article 46: Accessory Penalty applicable to certain Legal Entities

The legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties as follows:

1. Dissolution.
2. Placement under the court's watch.
3. Baring of operation of an activity or activities.
4. Expulsion from public procurement.
5. Prohibition on public saving appeal.
6. Prohibition on issuing cheque besides the cheque certified by any banks.
7. Prohibition on issuing payment vouchers.
8. Closure of the institution which being used to organize or commit offences.
9. Prohibition of the business establishment open to the public or used by the public.
10. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
11. Confiscation of objects or funds which are subject of committing offence.
12. Confiscation of capital or property that derives from offence.
13. Confiscation of proceeds, material and furniture in building where an offence is committed
14. Posting of conviction judgment.
15. Publication of the conviction judgment on print media or the announcement on non- print media outlets.

367. In order to ensure the full implementation of the provision under review, the Royal Government of Cambodia plans to further disseminate this law to law enforcement officials and other entities. Capacity building for specific skills to relevant officials is also a priority tasks done by Royal Government of Cambodia.

368. Cambodia further referred to articles 45 and 46 of the Anti Corruption Law. and provided additional legislations.

369. Public Procurement Law

Article 66

In the event that a bidder, contractor, supplier is found to have been involved with corrupt, fraudulent, collusive or coercive practices or providing fake or wrong evidence in submitting complaint during the process of procurement, they shall be immediately dismissed from the ongoing procurement or have their ongoing contract immediately terminated and be recorded into the blacklist.

This punishment is not an obstacle for criminal prosecution and conviction in accordance with the effective rules and regulations of the Kingdom of Cambodia.

### 370. Concession Law

#### Article 42

Willful or gross negligent violation of any material provision of this law is punishable in accordance with the Cambodian laws in force.

Complicity is punishable in the same way.

In case that the employees agencies or personal acting an activities under the scope and authorization of a legal persons, are punishable according to the paragraph 1 above, the legal person shall be liable or punishable.

Government officers, who have willful violate or neglect in its duties related to the concession, shall be punishable with additional administration measures according to the Co-Statue of Civil Servants of the Kingdom of Cambodia.

### 371. Civil Code

#### Section III Invalidity and Rescission

##### Article 356: Definition of Act

An Act under Section 3 (Nullity and Recession) shall refer to any contract or a unilateral legal act.

##### Article 357: Nullity

Any person may seek to nullify an Act should the provisions of said Act be inconsistent with the mandatory provisions of law, public order and good morals. Any person may seek to nullify an act should the act be inconsistent with the forms required by this law or other laws.

##### Article 358: Voidable acts

- (1) Avoidable act shall be effective until the person bearing the right of rescission exercises said right.
- (2) Should a person having a right of rescission rescind a voidable act, said act shall be deemed void retroactively.
- (3) Should a person bearing the right of rescission ratify a voidable act, such act shall be deemed valid definitively.

##### Article 359: Person having right of rescission

- (1) Should an act be rescindable based on the grounds of a defective Declaration of Intent as set forth in Article 346 (Mistake) through Article 351 (Conduct resulting in excessive benefits) of this code. Such rescission may be effected by the person who made the defective Declaration of Intent or his/her legal representative. This right of rescission may also be executed his/her heir or the person who has succeeded him/her status under the contract.

(2) A rescission of an act based on the incapacity or minority or other limitation on the capacity to act may be carried out by the relevant person through his/her legal representative or curator. The heir or general legatee of such person may also exercise their right of rescission.

#### Article 360: Method of rescission or ratification

Should another party to a voidable act be identified, the rescission or ratification shall be carried out with notification to said party. Such rescission or ratification shall come into effect upon the notification thereof reaching said party.

#### Article 361: Person Bearing right of ratification and conditions of ratification

(1) Ratification of a voidable act shall be carried out by a person bearing a right of rescission. Should the rescission be of an act that was based on a defective Declaration of Intent, the ratification may be carried out once the person bearing said rescission right learns of the cause of the rescission, or should the rescission be based on an act of an General Ward, the ratification shall be carried out once the circumstances giving rise to the rescission are no longer present.

(2) Sentence 2 of paragraph (1) shall not apply where ratification has been carried out by a legal representative of the General Ward or a curator.

#### Article 362: Statutory ratification

A voidable act shall be deemed ratified should any of the following actions have occurred subsequent to the time for ratification pursuant to the provisions of Article 361 Person bearing right of ratification and conditions of ratification):

- a. Full or partial performance of an Obligation arising due to a voidable act or the giving of security for such obligation ;
  - b. Exercising of a right obtained through a voidable act or a demand for performance by another party; or
  - c. Total or partial transfer, or other such disposition, of a right obtained through a voidable act.
- This shall not apply should it be specifically stated upon such fact occurring that ratification has not been carried out.

#### Article 363: Extinctive prescription of right of rescission

(1) A right of rescission, as well as the right to demand the return of unjust enrichments that accompanies the exercising of the rescission, shall be extinguished if it is not exercised within three years of the date on which ratification has been performed. Provisions regarding the interruption of prescription shall not apply to this period.

(2) Notwithstanding the provisions of paragraph (1), a right of rescission shall be extinguished ten years from the date of the occurrence of act subject to rescission.

(3) Should multiple people have the right of rescission for the same act, the provisions of paragraphs (1) and (2) above shall apply to each person's right of rescission.

### **(b) Observations on the implementation of the article**

372. Article 66 of the Public Procurement Law provides for the rejection of an ongoing procurement or the termination of a contract and the registration onto the blacklist of any entrepreneur involved in corruption acts.

373. Cambodia's legislation is in accordance with the provision under review.

## **Article 35. Compensation for damage**

### **Article 35**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

374. Cambodia considered that it has fully implemented this provision of the Convention through articles 39 of the Convention and articles 5, 6 and 355 of the Code of Criminal Procedure (dated 10 August 2007).

375. Constitution

##### Article 39

Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.

376. Code of Criminal Procedure (dated 10 August 2007)

##### Article 5: Criminal Actions initiated by Victims

Victims of a felony or misdemeanour can file a complaint as plaintiffs of a civil action before the investigating judge. The complaint of plaintiffs in a civil action has the power to seize an investigating judge with a criminal action under conditions stipulated in Articles 139 (Delivery of Request to Prosecutor) and 140 (Payment of Deposits) of this Code.

Criminal jurisdictions can also receive complaints from government officials or other public agents who are authorized under separate laws.

##### Article 6: Complaints by Victims

Any person who claims to be a victim of an offence can file a complaint. An ordinary complaint does not automatically initiate criminal proceedings. In case the Prosecutor does not respond to the claim or keeps the file without processing, the victim may bring a request to the General Prosecutor attached to the Court of Appeal in accordance with Article 41 (File without Processing) of this Code.

##### Article 355: Judgment on Civil Remedy

In the criminal judgment, the court shall also decide upon civil remedies. The court shall determine the admissibility of the civil party application and also decide on the claims of the civil party against the accused and civil defendants. If a judgment for remedies in the civil matter cannot yet be made, the court may attribute a tentative amount of compensation and adjourn the final decision to a subsequent hearing. Persons who are found liable for the same offense shall have joint liability for compensation of damages.

**(b) Observations on the implementation of the article**

377. The reviewers note that article 5 of the code of criminal procedure enables victims of a crime to file a complaint as plaintiffs of a civil action before the investigating judge. Article 355 of the code of criminal procedure provides that in a criminal judgment, the court shall also decide upon civil remedies.
378. Cambodia's legislation is in accordance with the provision under review.

**Article 36. Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

379. Cambodia provided that it has implemented the provision under review.
380. Anti-Corruption Institution was established with administrative and investigative characteristics and has the duty to fight against corruption through 3 prongs (education, prevention and law enforcement). This institution holds monopoly on investigation of corruption cases. This institution can perform their functions independently with duties, competent, privileges and enough resources (budgets, human resources, equipment, and technical knowledge). However, while performing their duties, the senior leaders and officials who serve at Anti-Corruption Institution are not granted immunity (special rights) from criminal and civil proceedings, and there is no separate statute on recruiting and managing Anti-Corruption Institution's officials. However, the term "Immunity" is controversial as it encourages wrong doing and can weaken the entity as there are internal investigators in ACU which can lead to the punishment for the ACU officials who have committed offences. In the context of continuous development of knowledge, science, and technology, capacity and skill of the officials and equipment used in the institution have to be updated and upgraded.
381. Cambodia cited the following applicable legislation:
382. Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 3: Scope**

This law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect.

**Article 5: Anti-Corruption Institution**

The Anti-Corruption Institution is composed of the National Council Against Corruption and the Anti-Corruption Unit.

The Anti-Corruption Institution has its own logo and stamp for official use which will be determined in a sub-decree.

#### Article 6: Establishment of National Council Against Corruption

The National Council Against Corruption is created to provide guidance and recommendations on anti-corruption work. The National Council Against Corruption is composed of 11 members as follows:

1. One dignitary appointed by HM. the King
2. One dignitary selected by the Senate through absolute majority of votes of the whole Senate
3. One dignitary selected by the National Assembly through absolute majority of votes of the whole National Assembly
4. One dignitary selected by the Royal Government
5. One dignitary selected by or from the National Audit Authority
6. One dignitary selected by or from the Ministry of National Assembly-Senate Relations and Inspection
7. One dignitary selected by or from the Council of Magistracy, and
8. One dignitary selected by or from the Council for Legal and Judicial Reform
9. One dignitary selected by or from the Supreme Council of Magistracy
10. One dignitary selected by Cambodia Human Rights Committee
11. Chair of Anti-Corruption Unit.

Each member of the National Council Against Corruption must meet the following requirements:

- Khmer nationality from birth;
- Possessing highest moral conduct and good reputation;
- Never committing a misdemeanour or felony and not declared bankrupt; - Holding a higher education degree or higher;
- At least 10-years of work experience in society;
- At least 45 years of age.

#### Article 10: Duties of National Council Against Corruption

The National Council Against Corruption shall perform duties as follows:

- Develop strategies and policies for fighting corruption
- Provide consultation and recommendations to the Anti-corruption Unit regarding anti- corruption work.
- Oversee the operation of the Anti-corruption Unit
- Ask the Anti-corruption Unit for reports and clarifications
- Report to the Prime Minister on the operations of Anti-corruption Unit - Report semi-annually and annually to Prime Minister
- Develop and adopt internal regulations for performing its own work.

#### Article 11: The establishment of the Anti-Corruption Unit

The Anti-corruption Unit is established to independently undertake its duties. The Anti-corruption Unit is led by one chairperson with the rank of senior minister, and a number of vice-chairpersons with the rank of minister as his assistants.

The chairman and vice-chairman are appointed by the Royal decree at the request of the Prime Minister. The organization and function of the Anti-Corruption Unit is defined by sub-decree.

#### Article 12: Qualification of the Chairperson and Vice-chairperson of the Anti-corruption Unit

Chairperson and Vice-chairperson must meet the following requirements:

- Khmer nationality from birth;
- Possessing highest moral conduct and good reputation;
- Never committing no misdemeanour or felony and not declared bankrupt; - Holding higher education degree or higher;
- At least 7-years of work experience in society; - At least 35 years of age.

#### Article 13: Duties of the Anti-corruption Unit

The Anti-corruption Unit shall perform the following duties:

- Implement law, orders and regulations (which are in force) related to corruption.
- Develop anti-corruption action plan in accordance with the strategies and policy of the National Council Against Corruption
- Direct the work of preventing and combating corruption
- Monitor, investigate, check, and do research as well as propose measures related to corrupt practices in ministries, institutions, public and private units, in conformity with the procedures in force
- Receive and review all complaints on corruption and take action accordingly
- Search, review and compile the documents and information related to corruption
- Keep absolute confidentiality of corruption-related information sources - Take necessary measures to keep the corruption whistle blowers secure
- Manage the system of assets and debt declaration as stipulated in this law
- Conduct mass education and awareness with regard to the negative impact of corruption and encourage public participation in preventing and combating corruption
- Prepare and propose annual budget for the National Council Against corruption and for Anti-corruption Unit
- Answer verbally or in writing the questions raised by members of National Council Against corruption or members of National Assembly
- Provide work services to National Council Against corruption
- Make appointment, transfer, supervision or propose appointment or transfer of officials under Anti-corruption Unit
- Cooperate with national, regional and international organizations in order to combat cross order corruption
- Report all activities of Anti-corruption Unit to the National Council Against corruption
- Empowered to warn suspects who initially fail to obey the laws and regulations in force in order to prevent corruption.

#### Article 14: Officials of the Anti-corruption Unit

The officials of the Anti-corruption Unit include the persons appointed or 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 the voluntary or contractual basis, to provide technical expertise on anti- corruption.

#### Article 15: Branches of the Anti-corruption Unit

The Anti-corruption Unit may have its offices in the Capital and all provinces of the Kingdom of Cambodia to serve as its branches. The Offices for Anti-corruption perform their work under the leadership of Chairperson of Anti-corruption Unit. The Office for Anti-corruption is led by one chairperson and a number of vice-chairpersons as his assistants.

#### Article 22: Officials competent to investigate corruption offences

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

#### Article 25: Investigative power of Anti-corruption Unit

Officials of Anti-corruption Unit who are appointed as judicial police take charge of investigating corruption offences. If during the course of a corruption offence investigation different offenses are

found whose facts are related to the offence being investigated by Anti- corruption Unit, officials of Anti-Corruption Unit can continue the investigation of the offences to the final stage.

The Anti-corruption Unit cannot investigate other offences except corruption ones unless the unit is ordered by the court to do so.

The court can order the Anti-corruption Unit to undertake forensic inquiries in order to facilitate the work of the court.

In the framework of these investigations and contradictory to article 85 (power of judicial police officials in flagrant offence investigation), article 91 (searching), article 94 (subpoena in the case of flagrant offence investigation) and the article 114 (subpoena for preliminary investigation) of the code of criminal procedure, the Chairman of Anti-corruption Unit or officially assigned representative has the duty to lead, coordinate and control the mission of those officials instead of the role of prosecutor to the point of arresting a suspect.

After the arrest, 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 to the prosecutor for further action in conformity with the provisions of the code of criminal procedures.

#### Article 26: Special Privileges of Anti-corruption Unit

The Chairman 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 case of corruption offence.

If the suspect flees to a foreign country, the chairman of the Anti-corruption Unit can ask the competent authority to undertake an extradition in accordance with the provisions in force.

The Anti-corruption Unit can reserve some appropriate spaces, permanently or temporarily, as detention rooms, in accordance with the code of criminal procedure. When the Anti-corruption Unit cannot afford to have the appropriate permanent or temporary place for detention, the Anti-corruption Unit can ask the competent institution to detain the suspects arrested by the Anti-Corruption Unit.

#### Article 27: Privileges of Anti-corruption Unit related to monitoring

Being contradictory to article 105 (prohibition from wire-tapping), and article 172 (wire tapping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

- a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all 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.g. Conduct operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not be served as justification for not providing evidence related to corruption offences in the provisions of this law.

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

Upon the request by the chairman of ACU, the Royal Government can order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in this law and corruption offences stated in the code of criminal procedure.

The individual assets, stated in the above first paragraph, includes the funds received or which forms asset belonging to the individual.

#### Article 29: Privileges of ACU in cooperation with public authority

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

**Article 31: Procedures at criminal court**

With regards to the criminal case related to corruption offence, the judge, after receiving the complaint, shall open the trial as soon as possible.

**Article 40: Obstruction or Interference offenses in the work of the Anti-Corruption Unit**

Public servants, soldiers, national police or citizens invested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

**383. Law on the Amendment of Anti-Corruption Law (Promulgated by Royal Kram No. NS/RKM/0811/017 dated 01 August 2011)**

**Article 10: Double. Prakas of President of National Anti-Corruption Council**

President of National Anti-Corruption Council shall be entitled to issue the announcement on organizing the structure of Anti-Corruption Unit from under department levels and to appoint, change, terminate the position of officials of Anti-Corruption Institution ranking from under department director with the request of President of Anti-Corruption Unit.

**Article 16: New. Budget and resource of Anti-Corruption Institution**

Anti-Corruption Institution shall have separate budget for its own operations under the national budget. Anti-Corruption Institution shall receive necessary resources from the Royal Government and have the right to receive donation or assistance from local and international organizations. Anti-Corruption Institution shall not receive any donation which will result in conflicts of interest.

President of Anti-Corruption Unit is the budget-authorizing officer.

Managing and allocating budget of Anti-Corruption Institution shall be determined by the sub-decree.

**384. Sub-Decree No. 05 dated 10 January 2011 on the organization and functioning of the Anti-Corruption Unit**

**Article 27**

The Anti-Corruption Unit shall be entitled to accept reward for its successful operations to motivate staff and collaborators and to strengthen its own instrumental base.

Exact reward is defined by Prakas of the minister of economy and finance in reference to the request of the President of Anti-Corruption Unit.

**Article 28**

The Anti-Corruption Unit shall be entitled to use weapons for their mission.

The President of the Anti-Corruption Unit shall issue weapon licenses to its officers and collaborators after having them registered with and having obtained their permanent licenses from ministry of interior.

**385. Sub-Decree No. 06 dated 10 January 2011 on Budget Management and Allocation of Anti-Corruption Unit**

**Article 2**

Anti-Corruption Institution has separate budget for its own operation.

#### Article 3

Separate budget for operations of Anti-Corruption Institution shall be accounted for 0.2% to 0.3% of National budget current expenditure. This rate shall be re-examined every three year. In special case, Anti-Corruption Unit can propose an additional budget proposal from the Royal Government as per necessity.

#### Article 4

Anti-Corruption Unit examines and proposes annual budget plan of Anti-Corruption Institution to Ministry of Economy and Finance.

Documents of expense on special missions, intelligence and clandestine investigations of Anti-Corruption Unit shall not be disclosed.

#### Article 5

Leaderships and public servants of Anti-Corruption Institution and Anti-Corruption Unit shall be provided with annual remuneration known as separate function remuneration in addition to the basic wage and petty cash of monthly salary of the civil servants.

In response to the request of president of Anti-Corruption Unit, Minister of Economy and Finance shall undertake the preparation for anti-corruption remuneration and propose to the Prime Minister for approval.

386. Letter No.3273 MEF.HK dated 03 June 2011 on the organizing of Anti-Corruption Allowance (Extra functional allowance) for Anti-Corruption Institution.

387. Cambodia provided the following examples of implementation: the Anti-Corruption Institution has organized its own institution and has performed its function in accordance with the law and other legal instruments. Anti-Corruption Institution has guaranteed its independence in performing its duties with resources and providing the training as needed. The Examples for the investigation power of Anti-Corruption Unit were shown in many cases in which ACU collected the evidence and arrested the suspects by itself and then transferred the case to the court for prosecution.

388. The Anti-Corruption Unit is continuing to provide skill training to its staff and to further equip any needed equipment in order to guaranty its independent and efficient performance.

Every year, with the request from ministries-institutions, ministry of public functions has to plan the number of the annual civil servant to be recruited to get the approval from the government (council of ministers). After getting the approval, ministry of public functions has to draft an announcement letter to respective ministries-institutions about the number of the annual civil servant to be recruited. After getting this announcement, the respective ministries-institutions implement accordingly by setting up a competitive recruitment exam in compliance with in-force procedures. Common statute for civil servants points out that the respective ministries-institutions have to issue decision/prokas on competitive recruitment exam and publicly announce the establishment of committee and sub-committees, as required by each will have representatives from ministry of public functions participate. According to Article 13 and 62 of Common statute for civil servants, there is exception for procedure of recruitment exam for some cases, for example (1) the process of recruiting "Civil servant student" which graduates from Royal School Administration (2) for the national interest, the appointment at any time within a civil service body of the administration a dignitary or a person with a degree without taking into consideration age limitations.

389. To comply with its Anti-corruption activity plan, Anti-Corruption Unit (ACU) has organized the trainings and workshops both locally and abroad. Trainings and workshops can be organized in the cases as the following:

- when there is any legal instrument issued or amended/changed, general department of administration and security (department of staff and training) will invite guest speaker to give lecture to all leaders and civil servants serve in ACU in order to update their knowledge
- by noticing the needs in accordance with the real situation, ACU will organized various targeted trainings
- any department in ACU can also raise a proposal to organize any training related to their work to general department of administration and security (department of staff and training)
- when there is training/workshop organized by ministry-institution locally or abroad, ACU leaders will select the participants by their skill and the topic of the training/workshop.

390. In order to ensure further implementation of the provision under review, the Anti-Corruption Unit is continuing to provide skill training to its staff and to further equip any needed equipment in order to guaranty its independent and efficient performance.

391. Cambodia further indicated that the use of the word «Immunity» could lead to confusion thus it should be replaced by the phrase “the rights given by the laws”

392. Cambodia also indicated that it will study good practices of other countries on giving the privileges to the leaders and officials of anti-corruption agency and will take this as the ground for implementation in Cambodia.

393. Cambodia will also consider giving the privileges to leaders and officials of the Anti Corruption Unit on protection while and after performing the tasks in an appropriate time but these privileges will not be encouraged for the wrong doing against the laws or code of ethics.

394. Finally, Cambodia also stated that it will study good practices of other countries in particular regarding the statute for recruiting and managing officials of anti-corruption agencies.

**(b) Observations on the implementation of the article**

395. The reviewers note that the Law on Anti Corruption establishes the Anti-Corruption Institution which is composed of the National Council Against Corruption and the Anti-Corruption Unit (ACU). The ACU has a mandate for the prevention, regulation, detection, investigation and repression of corruption.

396. Cambodia’s legislation is in accordance with the provision under review.

**Article 37. Cooperation with law enforcement authorities**

## **Paragraph 1 of article 37**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

397. Cambodia has not fully implemented this provision of the Convention through articles.
398. Cambodian legislations have stipulated about the mitigating circumstances if warranted by the nature of the offence or the character of the accused. In practice, the competent authority could also request the court to consider about the mitigating circumstances for the offenders who are cooperated in collecting and providing the information regarding the offence.
399. The mitigating circumstances could be granted in 2 cases:
- (1) The case of not yet processing of criminal proceedings: The prosecutor could use the principle of opportunity in accordance with article 40 of Code of Criminal Procedure. The prosecutor could hold a file without processing (depending on the consideration of the prosecutor)
  - (2) The case of conducting the proceedings against the offenders: The prosecutor could grant the accused the benefit of mitigating circumstances in accordance with article 93, 94, and 95 of Penal Code.
400. Cambodia cited the following applicable legislation:

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

#### Article 93: Definition of mitigating circumstances

The court may grant the accused the benefit of mitigating circumstances if warranted by the nature of the offence or the character of the accused.

The accused may also benefit from mitigating circumstances, notwithstanding that he or she has a previous conviction.

#### Article 94: Effect of mitigating circumstances

If the court grants an accused the benefit of mitigating circumstances, the minimum principal penalty incurred for a felony or a misdemeanour shall be reduced as follows:

1. if the minimum sentence of imprisonment incurred is ten years or more, it shall be reduced to two years;
  2. if the minimum sentence of imprisonment incurred is five years or more, but less than ten years, it shall be reduced to one year;
  3. if the minimum sentence of imprisonment incurred is two years or more, but less than five years, it shall be reduced to six months;
  4. if the minimum sentence of imprisonment incurred is six days or more, but less than two years, it shall be reduced to one day;
- the minimum fine incurred shall be reduced by half.

#### Article 95: Life imprisonment and mitigating circumstances

If the penalty incurred for an offence is life imprisonment, the judge granting the benefit of mitigating circumstances may impose a sentence of between fifteen and thirty years imprisonment.

#### Code of Criminal Procedure (dated 10 August 2007)

##### Article 40: Processing of Criminal Proceedings

The prosecutor shall consider written complaints and protests that have been received by him or that have been directly submitted by judicial police officers.

He can decide to either hold a file with processing or to conduct proceedings against the offenders. Before making the decision, a prosecutor can conduct preliminary investigations or order supplemental investigations.

In case of a serious offence, the prosecutor shall make a report on the case to the General Prosecutor attached to the Court of Appeal who also shall submit that report to the Minister of Justice.

#### Law on Control of Drugs (Promulgated by Royal Kram No. NS/RKM/0112/001 dated 02 January 2012)

##### Article 31: Acquittal/remission from punishment

Any person who are culpable for joining in a group of offenders to commit any offence as specified in this law, may be acquitted/remitted from punishment as stated in article 59 (Joining in a group of offenders) of this law if such culprits had reported to the administrative or court authority before the offence is taking place by such above constipation with the group, in order that the latter could have sufficient time to prevent the successful achievement of such offence, or if such culprits had reported of their knowledge of other persons involved.

##### Article 32: Attenuation of punishment

Apart from those cases as stated in this above article, for any perpetrator, co-perpetrator, accomplice, or instigator of the offences which are specified in Chapter 4 (Criminal Provision) of this law who had reported for enabling to identify other culprits, before he/she is prosecuted or, who had help facilitating for the arrest of culprits after he /she was prosecuted, the punishment shall be mitigated as follows:

- (1) The maximum sentence of imprisonment incurred shall be reduced by half
- (2) If the penalty incurred for an offence is life imprisonment, the maximum sentence shall mitigate to twenty years imprisonment.
- (3) If the minimum sentence of imprisonment incurred is more than a day, the minimum sentence of imprisonment shall be reduced by half.
- (4) The minimum and maximum fine incurred shall be reduced by half.

In case of felony offences, if the provision of this article shall mitigate the maximum sentence of imprisonment incurred to 5 or less than 5 years, the convicted offence is still felony.

##### Article 33: Application of mitigating circumstances

The provision of article 93 (definition of mitigating circumstances) to article 95 (sentence of life imprisonment and mitigating circumstances) of Penal code shall not be applied to all the offences as stated in this law.

For misdemeanour offences stated in this law, the court can decide if the accused shall be granted mitigating circumstances in accordance with the criteria as stated in Penal Code. In this case, the minimum sentence of imprisonment of the offence shall be reduced by half if the minimum sentence of imprisonment incurred is more than a day.

#### 401. Cambodia provided the following examples of implementation: verdict of Criminal Case No. 53 “I” dated on 26th August 2012

A former investigating judge of Kandal Provincial Court of First Instance was convicted on Illicit Enrichment (Article 36 of Anti-Corruption Law) and Bribery taken by judges (Article 517 of

Penal Code) and was sentenced to 2 years imprisonment, legally required to one -year execution of sentence starting from 20 January, 2012. A former clerk, was convicted as an accomplice of the offence Bribery taken by judges (Article 517 of Penal Code) and was sentenced to 2 years imprisonment, legally required to one - year execution of sentence. According to Article 517 Bribery taken by judges of penal code, the offender shall be punishable by imprisonment from seven to fifteen years. However, both offenders had been cooperated in investigation and had confessed on their illegal act, so the punishment had been mitigated to only 2 years imprisonment, and legally required to one - year execution of sentence. The remaining period of sentence shall be suspended.

**(b) Observations on the implementation of the article**

402. The reviewers note that articles 93, 94 and 95 of the penal code provide for provisions which grant the accused mitigating circumstances in the implementation of the sentence imposed on him/her. However, the Cambodian legislation has no specific measures promoting cooperation with law enforcement services.
403. Cambodia explained that it will draft a whistle blower protection law which will cover the obligation contained in article 37, paragraph 1 of the Convention.
404. Cambodia's legislation is partially in accordance with the provision under review. The reviewers encourage Cambodia to adopt appropriate measures in order to encourage the cooperation of individuals who take part or have taken part in the commission of an offence.

**Paragraph 2 of article 37**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

405. Cambodia considered that it has fully implemented this provision of the Convention through articles.
406. Cambodian legislations stipulate that the mitigating circumstances if warranted by the nature of the offence or the character of the accused. In practice, the competent authority could also request the court to consider about the mitigating circumstances for the offenders who are cooperated in collecting and providing the information regarding the offence.
407. Please refer to the applicable legislation and examples of implementation provided for in article 37 paragraph 1 Please see question 144 referring to sub paragraphed (37.1).

**(b) Observations on the implementation of the article**

408. The reviewers note that articles 93, 94 and 95 of the penal code provide for provisions which grant the accused mitigating circumstances in the implementation of the sentence imposed on him/her. They do not explicitly refer to granting these mitigating circumstances when there is a substantial cooperation from the offender in the investigation or prosecution of the offence.

409. Cambodia is partially in compliance with the provision under review.

### **Paragraph 3 of article 37**

*3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

410. Cambodia indicated that it has not implemented this provision of the Convention.

411. Cambodian legislation does not grant immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence.

412. If Cambodia grants immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention, it will require the amendment of the anti-corruption law and drafting the bill on protection of reporting person and whistle blower.

#### **(b) Observations on the implementation of the article**

413. Cambodia's legislation is not in accordance with the provision under review. Cambodia indicated that it will study good practices of other countries on giving the privileges to the person who has provided substantial cooperation for implementation in Cambodia. Cambodia indicated that it will draft and adopt relevant laws in order to comply with this provision (Law on Whistle Blower Protection).

### **Paragraph 4 of article 37**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

414. Cambodia provided that it has partially implemented the provision under review.

415. Cambodian legislation does not grant immunity to witness, experts, and victims. The protection provided to persons who are stipulated in article 32 of this Convention will be considered when developing the protection's mechanism and procedure. However, it is noticeable that law implementation in accordance with the order of legal entity as below shall not be considered as offence.

416. Cambodia cited the following applicable legislation:

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 32: Authorisation by law or authority

A person shall not be criminally responsible if he or she performs an act prescribed or authorised by law. A person shall not be criminally responsible if he or she performs an act ordered by a lawful authority, unless the act was manifestly unlawful.

The perpetrator, co-perpetrator, instigator, or accomplice of genocide, or of a crime against humanity, or a war crime shall not, under any circumstances, be excused from criminal responsibility on the ground that:

1. he or she committed an act prescribed, authorised or not prohibited by the law in force
2. he or she acted by order of a lawful authority.

417. Cambodia provided the following examples of cases to illustrate this provision: Case No. 002 of the former Secretary General of National Authority for Combating Drug and his accomplices were accused of committing offences in their working place such as taking bribe for releasing the offenders, modifying the case from drug trafficking to other trafficking, stealing and distributing drug etc. in total 38 offences. In this case, his inferiors were not accused as they were ordered by legal entity and were cooperating in case investigation by providing information and evidences. They were the witnesses in this case.

418. Cambodia will draft the bills on Protection of Witnesses, Experts, Victims and Reporting Persons for all general offences and particularly for corruption offences.

Cambodia will develop the mechanisms for implementation the protection procedures while there is no law on these, and the mechanisms will be issued by Ministry of Justice.

**(b) Observations on the implementation of the article**

419. Cambodia's legislation is partially in accordance with the provision under review. Cambodia indicated that it will draft and adopt the bills on Protection of Witnesses, Experts, Victims and Reporting Persons for all general offences and particularly for corruption offences in order to be in line with articles 32 and 33 of the Convention.

**Paragraph 5 of article 37**

*12. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

420. Cambodia indicated that it has not implemented this provision of the Convention.

**(b) Observations on the implementation of the article**

421. Cambodia is not in accordance with the provision under review.

**(c) Challenges, where applicable**

422. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Limited capacity
- Limited resources for implementation
- Limited awareness of state-of-the-art protection programmes and systems

**(d) Technical assistance needs**

423. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Legal advice
- Capacity-building programmes for authorities responsible for establishing and managing protection programmes
- Model agreement/arrangement
- Model legislation

**Article 38. Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relevant to reviewing the implementation of the article**

424. Cambodia considered that it has fully implemented this provision of the Convention.

425. Cambodian legislation has complied with this provision by requiring the cooperation between the authorities in investigation and accusation. Juridical police and relevant authority have to cooperate in reporting about the offense and juridical police commences the investigation and after that transfer the case to the prosecutor office for criminal proceedings.

426. The Cambodian Financial Intelligence Unit has signed many Memoranda of Understanding with other national authorities as the following:

- (1). National Police Commission of Ministry of Interior on “the Exchange of financial information” signed on 22 December 2011
- (2). General department of custom and excise of Ministry of Economics and Finance on “the Exchange of financial information” signed on 09 July 2012
- (3). Cambodian Anti-Corruption Unit on “the Exchange of financial information” signed on 26 December 2014
- (4). General Department of Control of Cambodian National Bank on “Cooperation to anti-money laundering and combating the financing of terrorism” dated 09 January 2015

427. Cambodia indicated that various articles are applicable.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 22: Officials competent to investigate corruption offences

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

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

Upon the request by the chairman of ACU, the Royal Government can order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in this law and corruption offences stated in the code of criminal procedure. The individual assets, stated in the above first paragraph, includes the funds received or which forms asset belonging to the individual.

Article 29: Privileges of ACU in cooperation with public authority

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)

Article 21: Functions

The FIU shall:

- (a) receive suspicious and cash transaction and cash transaction reports made pursuant of Articles 12 of the present Law and information provided to the FIU about suspicions of money laundering or financing of terrorism;
- (b) collect information that the FIU considers relevant to its activities with regard to money laundering or financing of terrorism and that is publicly available, including commercially available database, as well as other information necessary to carry out its functions, such as information collected maintained and stored in the database by the reporting entity;
- (c) have access on a basis to financial, administrative and law enforcement as authorized by law that is necessary to undertake its functions set forth by its Article, including information collected and maintained by, or stored in the database of, any public agency;
- (d) analyse and assess all suspicious transaction reports and related information in order to determine whether there are reasonable grounds to believe that a money laundering offense or an financing of terrorism has been committed and in such cases refer the matter to the relevant law enforcement law enforcement authority for criminal investigation;
- (e) compile statistics and records on suspicious and cash transaction reports received, analysed and forwarded to the law enforcement authorities and disseminate information to other public agencies on related matters as required;
- (f) provide feedback to reporting entities and other relevant agencies regarding the outcome of suspicious transaction reports or information provided to it under the present Law;
- (g) ensure that personal information under its control is protected from unauthorized disclosure;

act to enhance public awareness and understanding of matters related to money laundering and financing of terrorism.

**Article 26: Internal Coordination**

FIU, law enforcement authorities, supervisory authorities as well as other competent Government agencies entrusted with the prevention or control of money laundering and financing of terrorism shall establish their own permanent and senior-level mechanism for:

(h) ensuring information exchange and coordination among these authorities and with the relevant private sector associations,

(i) providing guidance as to the implementation of the present Law, and (j) formulating policy for various areas falling under its scope.

The role and functions of this coordination mechanism shall be regulated by sub-decree.

**Law on Public Procurement (Promulgated by Royal Kram No. NS/RKM/0112/004 dated 17 January 2012)**

**Article 73**

Corruption offences which are stipulated in this law and other Cambodian in force regulations shall be taken charge of by anti-corruption unit which is the sole entity authorized to investigate and transfer the case to the prosecutor office for criminal proceedings in corruption cases.

Other units or persons that are aware of corruption offenses as stipulated in this law and other Cambodian in force regulations shall file the complaints to anti-corruption unit or its offices in provinces on the cases.

**Code of Criminal Procedure (dated 10 August 2007)**

**Article 27: Roles of Prosecution**

The Prosecution brings charges of criminal offenses against charged persons and asks for the application of laws by the Court. Prosecutors are responsible for the implementation of orders of the criminal court on criminal offenses, including the dissemination of arrest warrants. In performing his duties, a Prosecutor has the right to directly mobilize public forces. A Prosecutor shall attend all hearings of the trial court in criminal cases.

**Article 40: Processing of Criminal Proceedings**

The Royal Prosecutor shall consider written complaints and protests that have been received by him or that have been directly submitted by judicial police officers.

He can decide to either hold a file without processing or to conduct proceedings against the offenders. Before making the decision, a Prosecutor can conduct preliminary investigations or order supplemental investigations.

In case of a serious offense, the Prosecutor shall make a report on the case to the General Prosecutor attached to the Court of Appeal who also shall submit that report to the Minister of Justice.

428. Cambodia provided the following examples of implementation: in practice, after getting suspicious transaction reports (STRs), Cambodian Financial Intelligence Unit (CAMFIU) will analyse the reports and collect further information from other sources such as national police through memorandum of understanding which were signed between them. After analysing and found that it might relevant to money laundering or financing of terrorism, CAMFIU will send intelligence report to national police for investigation. In case there is more information to proof that it is suspicious, national police could seek for more information from CAMFIU in accordance with article 21 of law on anti-money laundering and combating the financing of terrorism and the MOU.

429. Cambodia provided the following information on the number of times and cases in which such information has been shared from the Cambodian financial intelligence unit (CAMFIU):
- in 2009 CAMFIU received 64 suspicious transaction reports (STRs) from 4 banks and financial institutions, and in that 9 STRs were sent to national police, got feedback on 4 cases.
  - in 2010 CAMFIU received 101 suspicious transaction reports (STRs) from 7 banks and financial institutions, and in that 4 STRs were sent to national police.
  - in 2011 CAMFIU received 138 suspicious transaction reports (STRs) from 11 banks and financial institutions, and in that 3 STRs were sent to national police, got feedback for 11 cases.
  - in 2012 (by October) CAMFIU received 65 suspicious transaction reports (STRs) from 16 banks and financial institutions, and in that 3 STRs were sent to national police, got feedback for 1 case.

**(b) Observations on the implementation of the article**

430. The reviewers note that article 29 of the Law on Anti Corruption provides for cooperation between the Anti Corruption Unit and public authorities. Article 26 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 24 June 2007 also provides for cooperation between the financial intelligence unit and governmental authorities.
431. Cambodia's legislation is in accordance with the provision under review.

**Article 39. Cooperation between national authorities and the private sector**

**Paragraph 1 of article 39**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

432. Cambodia considered that it has fully implemented this provision of the Convention.
433. Cambodia has law and other measures state about the requiring of cooperation between national authorities and private sector in combating corruption offenses. All of these measures require the private sectors to report the corruption cases which they are aware of and the competent authorities could do their operation without the obstruction from private sector even in the case of bank privacy.
434. Cambodia provided the following applicable legislation:

Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)

Article 12: Reporting Cash or Suspicious Transactions to the FIU

(1) Reporting entities referred to at Article 4 of the present Law shall report to the FIU any cash transaction exceeding the amount of the threshold as defined by supervisory authority, as well as such

transaction, which involve several connection cash transactions whose total value exceeds the same amount.

(2) Irrespective of the reporting obligation set forth by paragraph 1 of this Article, if a reporting entity suspects or has reasonable grounds to suspects that funds are the proceeds of offense, or are related to the financing of terrorism, it shall promptly, within 24 hours, report its suspect ions to the FIU.

(3) Reports of suspicions shall be transmitted to the FIU by any expeditious means of communication, such as facsimile or, failing which, by any other written means. Reports communicated by telephone shall be confirmed by facsimile or any other written means within the shortest possible time. The FIU shall acknowledge receipt of the report upon receipt thereof.

(4) A reporting entity that has made a report to the FIU, as well as any other entity that holds information related to the transaction or customer involved in the report, shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information or contained in the report, any further information that it has about to the transaction or attempted transaction or the parties to the transaction if requested to do so by the FIU or the law enforcement agency.

(5) If the FIU has reasonable grounds to suspect that a transaction or a proposed transaction may involve a money laundering offense or an offense of financing of terrorism and for reasons of the seriousness or the urgency of the case it considers necessary, it may direct the reporting entity in writing or by telephone to be followed up in writing, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the FIU, which may not exceed 48 hours, in order to allow the FIU:

- to make necessary inquiries concerning the transaction; and
- if the FIU deems it appropriate, to inform and advise a law enforcement agency.

#### Article 14: Exemption from Liability for Reporting Cash or Suspicious Transactions in Good Faith

The persons, directors or employees of the reporting entities:

(1) Who in good faith transmit information or submit reports to the FIU in accordance with the provisions of the present Law shall not be subject to any proceedings instituted against them for breach of any restriction on disclosure of information or of banking or professional secrecy.

(2) Who in good faith transmit information or submit reports in accordance with the provisions of the present Law, there is no civil or criminal liabilities action may be neither brought, nor any professional sanction taken against them, even if there are investigations, do they not give rise to a conviction.

(3) Are not hold responsible for civil or criminal actions that may be brought against them by reason of any material and/or non-material loss, resulting from the suspension of a transaction as provided for in Article 12, paragraph 5 of the present Law.

#### Article 26: Internal Coordination

FIU, law enforcement authorities, supervisory authorities as well as other competent Government agencies entrusted with the prevention or control of money laundering and financing of terrorism shall establish their own permanent and senior-level mechanism for:

- (a) ensuring information exchange and coordination among these authorities and with the relevant private sector associations,
- (b) providing guidance as to the implementation of the present Law, and (c) formulating policy for various areas falling under its scope.

The role and functions of this coordination mechanism shall be regulated by sub-decree.

### Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

#### Article 22: Officials competent to investigate corruption offences

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law

and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

**Article 29: Privileges of ACU in cooperation with public authority**

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

**Article 47: The Release of Bank Records**

Credit entities or financial institutions shall be relieved of responsibility and no criminal complaint will be filed against the leader or trustee of that entity or institution should such operation has been carried out in accordance with the provisions of law, unless otherwise it is found that there is a pre-agreement with the fund owner or transactional operator to forge it.

435. Cambodia provided the following examples of implementation: nowadays, Cambodia has laws and other legal instruments ground for implementing and has signed the MOU locally and internationally related to the exchange of information especially regarding money-laundering and terrorism financing. Until now, for about 4 years, CAFIU received 368 suspicious transaction reports (STRs), from 38 banks and financial institutions, and sent 19 reports to national police, received 16 feedbacks. In addition, the ACU has signed an MOU on cooperation with a number of companies and business associations.

436. The MOU has 6 key points :

1. The Company commits to be a clean entity - build a transparency culture - comply with all applicable Cambodia laws and regulations
2. The Company continues not to participate in any acts of corruption or bribery in order to set examples to private sector encourage other companies to join in fighting against corruption
3. The Company continues to educate all of its employees and workers to promote a clean environment in dealing with government officials, suppliers, customers, and other organizations or individuals
4. The Company takes a proactive approach in keeping the ACU informed of any challenges the company may face such as solicitations of improper payment
5. ACU will keep absolute confidentiality of corruption-related information sources and evidence submitted by the company and will commence the investigation
6. ACU and the Companies will establish the fast, swift, and confident channel for communication at any necessary circumstance and at all times.

Cambodia indicated that according to the statistic in which CAFIU sent to Police, by October in 2012, there are 3 cases and CAFIU has got the feedback for a case.

**(b) Observations on the implementation of the article**

437. The reviewers note that article 12 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism dated 24 June 2007 provides for the obligation of several private sector entities such as financial institutions to report suspicious transactions to the FIU.

438. Cambodia's legislation is in accordance with the provision under review.

**(c) Successes and good practices**

439. The reviewers note as a success the signature of memorandum of understanding for the cooperation between the Anti-Corruption Unit and private entities.

**Paragraph 2 of article 39**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

440. Cambodia provided that it has implemented the provision under review. The Royal Government of Cambodia sets up many mechanisms for the public to conveniently report about the corrupt cases to the competent authority and sets up the mechanisms for protection of whistle blowers but there is no incentive given to the whistle blowers.

441. The Cambodian legislation that encourages the public to report about the corruption offence are:

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 13: Duties of the Anti-Corruption Unit

The Anti-Corruption Unit shall perform the following duties:

- Receive and review all complaints on corruption and take action accordingly
- Keep absolute confidentiality of corruption-related information sources - Take necessary measures to keep the corruption whistle blowers secure
- Conduct mass education and awareness with regard to the negative impact of corruption and encourage public participation in preventing and combating corruption

Article 22: Officials competent to investigate corruption offences

The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

Law on Public Procurement (Promulgated by Royal Kram No. NS/RKM/0112/004 dated 17 January 2012)

#### Article 73

Corruption offences which are stipulated in this law and other Cambodian in force regulations shall be taken charge of by anti-corruption unit which is the sole entity authorized to investigate and do criminal proceeding in corruption cases.

Other units or persons that are aware of corruption offenses as stipulated in this law and other Cambodian in force regulations shall file the complaints to anti-corruption unit or its offices in provinces on the cases.

442. Cambodia provided the following examples of implementation: at the present, ACU designed the complaint form for the public who want to file the complaint. Statistic for the complaints which ACU received is: 2012:761 complaints (391 anonymous complaints), from January-April 2013: 282 complaints (128 anonymous complaints).

443. Cambodia indicated that there in Cambodia hotlines to report general offences and corruption offences. In 2012, ACU received 761 complaints and in 2013, ACU received 282 complaints.

444. The public could report on general offence to ministry of interior through:

- Hot lines: 117, 118
- Telephone: (855) 23 727 104, (855) 23 727 105
- Fax: (855) 23 727 104
- 1630 Complaint Box throughout the country (One complaint box per Commune)
- 24 hours guarding police.

445. In case of corrupt offence, report to ACU through:

- Come directly to ACU: the address is ““#54, Preah Norodom Blvd., Sangkat Phsar Thmey III, Khan Daun Penh, Phnom Penh, Cambodia””
- Telephone: (855) 23 221 653
- Fax: (855)23 223 954
- E-mail: [complaint@acu.gov.kh](mailto:complaint@acu.gov.kh) <mail to:complaint@acu.gov.kh>
- Website: [www.acu.gov.kh](http://www.acu.gov.kh) <<http://www.acu.gov.kh>>
- 8 Complaint Boxes along some main streets
- Complaint box at the post office: 626 (Free of Charge)
- Hotline: 1282 (Free of Charge)

446. There is currently no financial incentive given to the whistle blower for encouraging to report the crime.

447. Cambodia provided the following statistics: in general, ACU has the hotline to receive the complaints from the public from all walks of life. Although some complaints are anonymous, if there is a trace, ACU will commence the investigation in due course. In 2012, ACU received 391 anonymous complaints and 128 anonymous complaints in 2013. The statistics which the department of investigation and intelligence commenced the operations are 41 cases in 2012 and 343 cases from January-May 2013.

#### **(b) Observations on the implementation of the article**

448. The reviewers note that the role of the Anti Corruption Unit is to receive and examine all complaints relating to corruption (article 13). A hotline is also available to citizens.

**(c) Challenges, where applicable**

449. Cambodia identified the following challenges in the implementation of this measure:

- Specificities in their legal system
- Limited capacity

**(d) Technical assistance needs**

450. Cambodia expressed the following technical assistance needs:

- Legal advice: legal advice is needed for drafting the new law and amendment of the law.
- On-site assistance by a relevant expert: it could be a great help for officials' capacity building and could reduce the expenses.
- Other assistance: more training courses are needed to strengthen the skill for the officials and more technical equipment is also required.

**Article 40. Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

451. Cambodia provided that it has implemented the provision under review.

452. The Cambodian Financial Intelligence Unit was established in 2008 as a unit under the control of Cambodian national bank with the administrative characteristic and has played a role as a centre for receiving, analysing, and disseminating the confidential report to law enforcement authority.

453. Cambodia provided the following applicable legislation:

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 27: Privileges of Anti-corruption Unit related to monitoring

Being contradictory to article 105 (prohibition from wire-taping), and article 172 (wire taping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

- a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all bank, 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 operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not be served as justification for not providing evidence related to corruption offences in the provisions of this law.

Article 29: Privileges of ACU in cooperation with public authority

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

**Article 40: Obstruction or Interference offenses in the work of the Anti-Corruption Unit**

Public servants, soldiers, national police or citizens invested with public authority through election, civil society employees, foreign public officials, or officials of public international origination who make threat, cause obstruction or interfere in the performance of duty by the officials of Anti-Corruption Unit shall be sentenced from two (2) to five (5) years in prison and fined from four million Riel (4,000,000) to ten million Riel (10,000,000).

**Law on Banking and Financial Institution (dated 18 November 1999)**

**Article 40**

The Central Bank supervises the banking system and its related activities such as the money market, the interbank settlement system, and financial intermediation. To this end the Central Bank shall :

7. it may require that covered entities, public offices, auditors, and any other individual or legal entity disclose information considered as useful for its mission,

**Article 47**

No person who participates in any capacity in the administration, direction, management, internal control, or external audit of a covered entity, and no employee of the latter, may provide to any person any confidential information pertaining to statements, facts, acts, figures or the contents of accounting or administrative documents of which he might have become aware through his functions.

Any person who fails to observe this obligation of professional secrecy shall be liable to the sanctions laid down in Article 55 of this law.

However, the obligation of professional secrecy may not be used as a ground for nondisclosure vis-à-vis the supervisory authority, auditors, provisional administrators, liquidators, or a court dealing with criminal proceedings.

**Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)**

**Article 6: Banking and Professional Secrecy**

Banking or professional secrecy shall not inhibit the implementation of the present Law and may not be invoked as a ground for refusal to provide information to the FIU and supervisory authority, whether for domestic or for international cooperation purposes, or as required in connection with an investigation which relates to money laundering or financing of with an ordered by or carried out under the supervision of a judicial authority.

**Article 11: Record-keeping by Reporting Entities**

Reporting entities referred to at Article 4 of the present Law shall maintain, at least for 5 years after the account has been closed or the business relations with the customer have ended, and shall hold at the disposal of the competent authorities any records of customer identification and records of transaction conducted by customers by a manner that they are sufficient to permit the reconstruction transactions, including the amounts and types of currency involved if any, so as to provide, if appropriate, evidence for the prosecution of offense.

**Article 15: Prohibition of Tipping Off**

In no circumstance shall persons required to disclose the information and submit reports referred to in

Article 13, or any other individual having knowledge thereof, communicate such information or reports to any natural or reports to any natural or legal persons other than the FIU, except where so authorized by the FIU.

**Article 19: Organization**

1. A financial intelligence unit hereinafter referred to as the FIU shall be established as a unit under the control of the National Bank of Cambodia.

2. The FIU shall have adequate financial resources and independent decision-making authority on matters coming within its sphere of responsibility.

454. Cambodia provided the following examples of implementation:

- The judgment of Criminal Case No. 484 dated 30th November, 2010, the trial conducted on 27th April, 2011 and the public judgment made on 12 May, 2011
- Verdict No.08 Kr IV T/18-01-2013 dated January 18th, 2013
- Verdict of Criminal Case No. 09 “KH” dated on 5th January, 2012 of Banteay Meanchey Provincial Court of First Instance

455. CAFIU received request and cooperated to provide feedback in 2012 for a case to Malaysian FIU and in 2013 for a case to Japanese FIU.

456. CAFIU requested information from Cambodian national police for a case in 2012 and from general department of custom and excise a case in 2013.

**(b) Observations on the implementation of the article**

457. Cambodia’s legislation is in accordance with the provision under review.

**(c) Challenges, where applicable**

458. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Specificities in our legal system
- Limited capacity
- Limited resources for implementation

**(d) Technical assistance needs**

459. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Legal advice
- On-site assistance by a relevant expert
- Capacity-building programmes for relevant legislative and investigating authorities

**Article 41. Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence*

*established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

460. Cambodia provided that it has implemented the provision under review.

461. Cambodia indicated that various articles of the Penal Code are applicable.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 83: Subsequent offences: penalties

Committing a subsequent offence shall result in aggravating, in accordance with this Sub-section, the maximum sentence of imprisonment incurred for a felony or a misdemeanour.

Article 84: Applicability of subsequent offences

A subsequent offence is said to have been committed:

- (1) if a person against whom final judgment has already been entered for a felony commits a new felony within ten years
- (2) if a person against whom final judgment has already been entered for a felony commits a misdemeanour within five years;
- (3) if a person against whom a final judgment of imprisonment of three years or more has already been entered for a misdemeanour commits a felony within five years;
- (4) if a person against whom final judgment has already been entered for a misdemeanour commits the same misdemeanour within five years.

The time limits of ten years and five years shall be computed from the day the conviction for the first offence becomes final.

Article 85: Subsequent felonies

If a person against whom final judgment has already been entered for a felony commits a new felony within ten years, the maximum sentence of imprisonment incurred for the new felonies shall be aggravated as follows:

- (1) if the maximum sentence of imprisonment incurred for the new felony does not exceed twenty years, the maximum sentence of imprisonment shall be doubled;
- (2) if the maximum sentence of imprisonment incurred for the new felony is thirty years, the maximum sentence of imprisonment shall be life imprisonment.

Article 86: Committing a misdemeanour after sentencing for a felony

If a person against whom final judgment has already been entered for a felony commits a misdemeanour within five years, the maximum sentence of imprisonment incurred for the misdemeanour shall be doubled.

If, by reason of committing a subsequent offence, the maximum term of imprisonment incurred exceeds five years, the legal qualification of the offence shall remain a misdemeanour despite the aggravation of the penalty.

Article 87: Committing a felony after sentencing for a misdemeanour

If a person against whom in a final judgment of imprisonment of three years or more has already been entered for misdemeanour commits a felony within five years, the penalty incurred for the felony shall be aggravated as follows:

- (1) if the maximum sentence of imprisonment incurred for the felony does not exceed twenty years, the maximum sentence of imprisonment shall be doubled;
- (2) if the maximum sentence of imprisonment incurred for the felony is thirty years, the maximum sentence of imprisonment shall be life imprisonment.

Article 88: Committing a misdemeanour after sentencing for a misdemeanour

If a person against whom final judgment has already been entered for a misdemeanour commits the same misdemeanour within five years, the maximum sentence of imprisonment incurred for the new misdemeanour shall be doubled.

If, by reason of committing a subsequent offence, the maximum sentence of imprisonment incurred exceeds five years, the legal qualification of the offence shall remain a misdemeanour despite the aggravation of the penalty.

Article 90: Previous offences and prosecution

A court may only consider a previous conviction and use it as grounds for aggravating the sentence of imprisonment if it is expressly stated in the indictment.

Article 91: Previous offences and final decisions

A decision is considered final where it is no longer subject to appeal.

For the purposes of the rules pertaining to subsequent offences, only final decisions in respect of the criminal prosecution shall be taken into account.

Article 92: Specific provisions

A previous conviction may be taken into account notwithstanding the application of the statute of limitations to the relevant sentence.

A previous conviction may not be taken into account where pardon is granted with respect to the sentence under Article 90 new (2)(4) of the Constitution of the Kingdom of Cambodia.

**(b) Observations on the implementation of the article**

462. As for the implementation of article 41 of the Convention, Cambodia explained that in practice, it is implemented even though Cambodia does not have specific legislation that requires the taking into account of foreign sentences in respect of offences pursuant to the Convention. Cambodia explained that this can be covered by articles 84 and 85 of the penal code. It is deemed to be helpful for the judge to make a discretionary judgment based on the information concerning the past behaviour and characteristic of the offender.

**(c) Challenges, where applicable**

463. Cambodia identified the following challenges in the implementation of this measure:

- Inter-agency co-ordination
- Specificities in our legal system
- Limited capacity
- Limited resources for implementation

**(d) Technical assistance needs**

464. Cambodia expressed the following technical assistance needs:

- Summary of good practices/lessons learned
- Model legislation
- Legal advice
- Capacity building for investigating and law drafting authorities

## Article 42. Jurisdiction

### Subparagraph 1 (a) of article 42

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

465. Cambodia has confirmed that it is in full compliance with this article.

466. Jurisdiction for offences committed on Cambodia territory arises from Art. 12 PC.

#### Penal Code

Article 12: Meaning of territory of the Kingdom of Cambodia

In criminal matters, Cambodia is applicable to all offences committed in the territory of the Kingdom of Cambodia.

The territory of the Kingdom of Cambodia includes its corresponding air and maritime spaces.

Anti-corruption law (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

#### Article 3 Scope

This law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect.

467. Cambodia provided the following examples:

1. The judgment of Criminal Case No. 484 dated 30th November, 2010, the trial conducted on 27th April, 2011 and the public judgment made on 12 May, 2011

A former prosecutor attached to a Provincial Court of First Instance was sentenced to 19 years imprisonment and required to pay 4.000.000,00 Riel to the plaintiff of civil case on the ground of kidnapping, illegal detention, and taking the bribe committed on 24 -25th June, 2010 in compliance with article 7, section3 on Law on Aggravation Circumstance of Felony and article 38 of Criminal Law and Procedure Applicable in Cambodia under the Transitional Period. That former prosecutor and his other 3 accomplices had illegally detent two people and asked them to pay 8000 dollars and came to the agreement of 3000 dollars. Upon receiving the money, both victims were released and the received money was shared for their own benefits.

2. Verdict No.08 Kr IV T/18-01-2013 dated January 18th, 2013

A former investigating judge of a Provincial Court of First Instance was sentenced to 5 years imprisonment, legally required to one -year execution of sentence starting from 20 January, 2012. The remaining period of sentence shall be suspended. The case was related to the bribery taken by judge in compliance with article 517 of Criminal Code where the offence was committed on 20 January, 2012. That former judge had threatened the victim to pay 5000 dollars in return to hold the file without processing while that victim was just a witness in a case.

3. Verdict of Criminal Case No. 09 “KH” dated on 5th January, 2012 of Banteay Meanchey Provincial Court of First Instance

A former Secretary General of National Authority for Combating Drug and the Director of a Provincial Unit for Combating Drug and his other 2 accomplices were accused of taking the bribe and instigating or masterminding the organized criminal group, committing offences as stipulated in New Article 31-33 and New Article 39 on criminal offences stipulated and sentenced in accordance with Article 38 of Criminal Law and Procedure Applicable in Cambodia during the Transitional Period and New Article 34 of Law on the Amendment of Law on Drug Control for many-time offences committed since 2007 till early 2011.

They illegally used the workplace to commit crime and set up an organized drug criminal group. They are the masterminds in retaining the drug, drug trafficking, and falsifying the documents to release the offenders or mitigate the penalties of the offenders.

The verdict gave punishment to the accused as follows:

- That former judge was sentenced to life-imprisonment and was fined. Some of his properties were confiscated.

**(b) Observations on the implementation of the article**

468. Cambodia applies the principle of territoriality.

469. It was concluded that Cambodia law is in compliance with Art. 42(1)(a) UNCAC.

**Subparagraph 1 (b) of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

...

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

470. Cambodia has confirmed that it is in compliance with this article.

**Penal Code**

Article 14: Offences Committed on board Cambodian vessel

In criminal matters, Cambodia is applicable to all offences committed on board vessel flying the Cambodian flag, regardless of where they are.

Article 15: Offences Committed on board a foreign flagged vessel

In criminal matters, Cambodia is applicable to all offences committed on board foreign vessels which is Cambodian authorities are authorized to inspect or board by international agreement.

Article 16: Offence committed on board a Cambodian registered aircraft

In criminal matters, Cambodian law is applicable to offences committed on board an aircraft registered in the Kingdom of Cambodia, regardless of where it is.

471. There are no examples of corruption offences but there are some general criminal cases including:

Vessel: Criminal Case No. 84 dated on 01st February 2008, the verdict No.11 dated on 10th February 2010 (Drug trafficking which was detected by Australian authority)

A Vietnamese man holding Australian nationality trafficked the illegal drug from Cambodia to Australia through the vessel and was detected by Australian authority which was resulted in detaining the containers and confiscating the 24 kg heroines which were packed in the fish balls. Cambodian court gave the sentence of 20 years imprisonment and fined 40millions riel.

Aircraft: There is no case regarding this.

**(b) Observations on the implementation of the article**

472. Cambodia applies the principle of territoriality, also with regard to its vessels and aircraft.

473. It was concluded that Cambodia law is in compliance with Art. 42(1)(b) UNCAC.

**Subparagraph 2 (a) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

474. Cambodia has confirmed that it has adopted measures to establish its jurisdiction as described above.

**Penal Code**

Article 20: Where the victim is a Cambodian national

In criminal matters, Cambodian Law is applicable to any felony committed by a foreign national outside the territory of the Kingdom of Cambodia, if the victim is a Cambodian national at the time of the offence.

475. There are no examples of corruption offences but there are some general criminal cases including:

Criminal Case No. 125 dated on 29<sup>th</sup> June 2010

Verdict No.176 C dated on 04<sup>th</sup> November 2011

A Cambodian citizen committed premeditated murder on another Cambodian citizen in Thailand. Cambodian court sentenced the offender to 12 years imprisonment.

**(b) Observations on the implementation of the article**

476. Cambodia applies the passive personality principle.

477. The reviewing experts concluded that Cambodia law is in compliance with Art. 42(2)(a) UNCAC.

**Subparagraph 2 (b) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

478. Cambodia has confirmed that it has adopted measures to establish its jurisdiction as described above.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 19: Felony or misdemeanour committed by a Cambodian national

In criminal matters, the Cambodian Law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.

Cambodian Law is applicable to misdemeanours committed by the Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country.

These provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed.

Article 20: Where the victim is a Cambodian national

In criminal matters, Cambodian law is applicable to any felony committed by a Cambodian or foreign national outside the territory of the Kingdom of Cambodia, if the victim is a Cambodian national at the time of the offence.

Code of Criminal Procedure (dated 10 August 2007)

Article 39: Territorial competence of royal prosecutors

The following royal prosecutors shall have territorial competence:

- The prosecutor at the site where the offence was committed.
- The prosecutor in the place of the residence of the person who is suspected for committing an offence.
- The prosecutor of the territory in which the suspect for commission of an offense was arrested.

Article 290: Conflict of jurisdiction between the court of the first instance

Courts with territorial jurisdiction are:

- The court located in the area where the crime occurred;
- The court located in the area where the accused resides; or
- The court located in the area where the accused was arrested.

In case two or more courts belonging to the same jurisdiction of a Court of Appeal have been seized with the same case, the President of the Court of Appeal shall assign a court to be in charge of the case. Conflicts of jurisdictions between several courts of the same degree shall be decided by the president of the higher court.

The decision in this regard shall not be subject to appeal.

The jurisdiction of a court over an accused shall extend to all co-perpetrators, instigators and accomplices.

If the court which was seized with a case finds that it does not have territorial jurisdiction, it shall issue an order stating it has no territorial jurisdiction over the case and return the case file to the Royal Prosecutor. The Prosecutor shall then seize the court that has territorial jurisdiction over the case. The court shall decide whether it is appropriate for the charged person to continue to be detained or placed under judicial supervision, if applicable.

479. There are no examples of corruption offences but there are some general criminal cases including:

The case of Cambodian citizen committing the crime:

The Criminal Case No. 125 dated on 29th June 2010

The verdict No.176 C dated on 04th November 2011

A Cambodian citizen committed premeditated murder on another Cambodian citizen in Thailand. Cambodian court sentenced the offender to 12 years imprisonment.

The case of stateless person committing the crime: There is no case regarding this.

**(b) Observations on the implementation of the article**

480. Cambodia applies the active personality principle.

481. It was concluded that Cambodia law is in compliance with Art. 42(2)(b) UNCAC.

**Subparagraph 2 (c) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

482. Cambodia has adopted measures to establish its jurisdiction as described above.

Penal Code

Article 13: Place where the offence is committed

An offence shall be deemed to have been committed in the territory of the Kingdom of Cambodia if one of the ingredients of the offence was committed in the territory of the Kingdom of Cambodia.

Article 19: Felony or misdemeanour committed by a Cambodian national

In criminal matters, the Cambodian Law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.

Cambodian Law is applicable to misdemeanours committed by the Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country.

These provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed.

483. Cambodia provided the following examples:

The Case (Article 23. 1 (b) (ii) of UNCAC): Investigation Unit “CHH” No. 1954 D.CH.R of Phnom Penh Municipal Court of First Instance

The offender named Ngoun Soeu, Khmer origin, French national, on instigating the act of illegal detention with aggravation circumstance (with the purpose of kidnapping to demand the money) and illegal use of weapons.

The Criminal Case (Article 23.1 (a) (i) of UNCAC) No. 01/05-01-2004, the verdict No.69”E” of Court of Appeal dated 1 July, 2008:

Many offenders committed the armed robbery and receiving stolen goods where those offenders regarded as perpetrator and the accomplice and the court gave a sentence of 5 to 6 years imprisonment.

**(b) Observations on the implementation of the article**

484. The reviewing experts concluded that Cambodia law is in compliance with Art. 42(2)(c) UNCAC.

**Subparagraph 2 (d) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

485. Cambodia has adopted measures to establish its jurisdiction as described above.

**Penal Code**

Article 22: Special jurisdiction for specific felonies

In criminal matters, Cambodian law is applicable to any felony committed outside the applicable to any felony committed outside the territory of the Kingdom of Cambodia if it is characterised as:

- (1) an offence against the security of the Kingdom of Cambodia;
- (2) counterfeiting the seal of the Kingdom of Cambodia;
- (3) counterfeiting the national currency and banknotes being legal tender in the Kingdom of Cambodia;
- (4) an offence against diplomatic or consular agents of the Kingdom of Cambodia;
- (5) an offence against diplomatic or consular premises of the Kingdom of Cambodia.

**(b) Observations on the implementation of the article**

486. It was concluded that Cambodia law is in compliance with Art. 42(2)(d) UNCAC.

**Paragraph 3 of article 42**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

487. Cambodia has confirmed that it is in compliance with this article.

Penal Code

Article 19: Felony or misdemeanour committed by a Cambodian national

In criminal matters, the Cambodian Law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.

Cambodian Law is applicable to misdemeanours committed by the Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country.

These provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed.

Article 20: Where the victim is a Cambodian national

In criminal matters, Cambodian law is applicable to any felony committed by a Cambodian or foreign national outside the territory of the Kingdom of Cambodia, if the victim is a Cambodian national at the time of the offence.

Article 21: Initiation of prosecution

In the cases specified in Article 19 (Felony or misdemeanour committed by a Cambodian national) and Article 20 (Where the victim is a Cambodian national), prosecution may only be initiated by the Prosecuting Authority. It must be preceded either:

- by a complaint by the victim or his or his or her assigns; or
- by a formal information by the authorities of the country where the offence was committed.

**(b) Observations on the implementation of the article**

488. In the cases of felony or misdemeanour committed by a Cambodian national or if the victim is a Cambodian national, prosecution may only be initiated by the Prosecuting Authority. It must be preceded either by a complaint by the victim or his or her assigns; or by a formal information by the authorities of the country where the offence was committed (article 21 of the Penal Code). In addition, the processing of criminal proceedings is followed the principle of opportunity; after the consideration, the prosecutor can decide to either hold the file without processing or to conduct the proceedings against the offenders (article 40 of the Code of Criminal Procedure).

489. It was concluded that Cambodia law is in compliance with Art. 42(3) UNCAC.

#### **Paragraph 4 of article 42**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

490. Cambodia has confirmed that it has not adopted and implemented these measures.

491. Cambodia shall not draft a new bill or make any amendment to the existing law to establish its jurisdiction over the offences when the alleged offender is not of its national, committed the crime out of its territory, and Cambodian government does not receive any request for extradition or does not agree with the request for extradition as this contradicts the constitution, penal code, and code of criminal procedure. However, Cambodian government can exercise Law on Immigration if the foreign alleged offender commits wrongful act against this law as the following:

- a. If a foreigner illegally comes to Cambodia, Cambodian government will send him/back to his/her country.
- b. If a foreigner legally comes to Cambodia, but stays until the visa is expired and refuses to pay fine, Cambodian government will send him/back to his/her country.
- c. If a foreigner disrupts Cambodian security, Cambodian government will send him/back to his/her country even though he/she legally comes to Cambodia (in accordance with sub decree 75 point 14).

492. Cambodia will continue to study the good practices of other countries to consider their implementation in Cambodia.

##### **(b) Observations on the implementation of the article**

493. If there is no request for extradition, Cambodian law has no jurisdiction on this case, except the implementation through international Interpol.

494. It was noted that Cambodia has not implemented the optional provision of Art. 42(4) UNCAC.

#### **Paragraph 5 of article 42**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

495. Cambodia has confirmed that it is in compliance with this provision.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 21: Initiation of Prosecution

In the cases specified in Article 19 (Felony or misdemeanour committed by a Cambodian national) and Article 20 (Victims who are Cambodian national), prosecution may only be initiated by at the Prosecuting Authority. It must be proceeded either:

- by complaint by the victim or his or her assigns; or
- by a formal information by the authorities of the country where the offence was committed.

Article 23: Prohibition against cumulative charging and convictions

No one may be prosecuted for the same for which he or she has already been finally tried abroad and who, in the event of conviction, establishes that he or she has already served the penalty or that the penalty has been extinguished by statute of limitation.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 51: Mutual Legal Assistance

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

1. Collect evidence/proof or answer/response through court means.
2. Inform about documents of the court.
3. Search, arrest and confiscate.
4. Examine objects and crime scene.
5. Provide information and exhibit.
6. Issue original process-verbal or its authentic copies and dossier, including bank statement, accounting transactions, records of concerned institution, records of concerned company and trade records, as well as authentic and private documents;
7. Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings.
8. Identify or seek resources, property, equipment, and materials that derive from offence and offence means.
9. Place under temporary holding the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences.
10. Enforce the decision of confiscation, seizure or repatriation of products, properties, equipment, material derived from offence.
11. Order to confiscate all objects as stated above.
12. Inform about the criminal charge.
13. Interrogate the accused based on criminal procedure.
14. Find out and identify witnesses and suspects.

Article 52: Cambodians holding more than one nationality

Anti-Corruption Institution and competent authorities concerned have obligation to seek international cooperation and mutual legal assistance in terms of the property's status of Cambodians holding more than one nationality.

Article 53: Mutual Legal Assistance Procedure

Procedures for Implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multi-lateral agreements, and national law in force.

**(b) Observations on the implementation of the article**

496. It was concluded that Cambodia law is in compliance with Art. 42(5) UNCAC.

## **Chapter IV: International Cooperation**

497. According to Art. 26 of the Constitution of Cambodia, “[t]he King shall sign and ratify international treaties and conventions after they have been approved by the National Assembly and the Senate”. These treaties, once ratified, rank below the Constitution but above ordinary laws. Art. 31 provides in particular that “[t]he Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights”.

498. However, the government can also conclude governmental agreements which do not need approval by the National Assembly. The Constitution does not specify which treaties need ratification and which only need governmental approval. In practice, the large majorities of treaties are approved by Parliament.

499. Cambodia follows a dualist approach with regard to the relationship between international and domestic law. However, once a treaty has been approved by Parliament and ratified by the King, it can be applied directly. In practice, though, it appears that this is rarely done.

### **Article 44. Extradition**

500. Extradition is based on the following legal bases:

- the extradition provisions in the Code of Criminal Procedure (dated 10 August 2007) (‘the **CPC**’) (Art. 566-595);
- Art. 50 of the Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010) (‘the **AC Law**’), which refers to the CPC;
- four bilateral treaties (with China, Korea, Laos and Thailand);
- the principle of reciprocity.

501. The use of UNCAC as a legal basis for extraditions is discussed below under para. 5.

502. The extradition procedure is a mixed judicial-executive procedure. The extradition decision is made by the Investigation Chamber of the Phnom Penh Court of Appeal (Art. 586 CPC). 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 (Art. 589 CPC).

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

### **Paragraph 1 of article 44**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

**(a) Summary of information relating to the review of implementation of the article**

504. Cambodia indicated that its laws comply with this provision. Article 50 of the Law on Anti-Corruption refers to the CPC for extradition. Article 569 CPC lays down all the conditions for extradition, which include the condition of dual criminality.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 50: Extradition Provisions

Provisions of Chapter 2, content 1, part/section 9 of Penal Procedure Code shall be applicable in terms of the extradition of the case related to corruption offenses.

Code of Criminal Procedure (dated 10 August 2007)

Article 569: Conditions of Extradition

An extradition may be made only if the prosecuted facts against the wanted person constitute an offense under the laws of both the requesting State and the Kingdom of Cambodia, even though:

- The type of offense might be defined differently; or
- The legal qualification of the offense, the use of terminology, the definition or the determination of characteristics of the offense is different; or
- Elements characterizing the offense under the laws of the requesting State are different from those under the laws of the Kingdom of Cambodia, provided that the whole set of elements of the facts presented by the requesting State constitute an offense under the provisions of the laws in force in Cambodia.

505. Cambodian laws comply with this provision but no corruption offence has been requested for extradition yet. At present, Cambodia has signed treaties for extradition with four countries (China, Korea, Laos, Thailand) and will further sign more with other countries. Cambodia will also develop a database system to make it easier to obtain data on any case.

**(b) Observations on the implementation of the article**

506. It was noted that, in compliance with Art. 43(2) UNCAC, the dual criminality requirement is handled flexibly; i.e. the use of terminology is not decisive (cf. the second part of Art. 569 CPC).

507. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 2 of article 44**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relating to the review of implementation of the article**

508. Cambodia noted that its laws comply with this provision. In general, the possibility which is mentioned in this provision is not applicable, but article 567 CPC allows extradition if there are provisions of international conventions and treaties ratified by the Kingdom of Cambodia.

Code of Criminal Procedure (dated 10 August 2007)

Article 567: International Conventions and Treaties

The extradition of a foreign resident who has been arrested in the territory of the Kingdom shall be governed by the provisions of international conventions and treaties ratified by the Kingdom of Cambodia. If there is no such treaty or convention, the provisions of this Chapter shall apply, unless otherwise provided in a separate law.

509. Cambodian laws comply with this provision but there is no example for corruption offence.

**(b) Observations on the implementation of the article**

510. For extradition, Cambodia generally requires dual criminality. However, Art. 567 CPC refers to the provisions of international conventions and treaties ratified by the Kingdom of Cambodia which take precedence over the rules in the CPC. These treaties could thus provide for exceptions to the rule.

511. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 3 of article 44**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relating to the review of implementation of the article**

512. Cambodia indicated that its laws comply with this provision. The CPC does not state clearly on this but article 571 of this code stipulates about the condition relative to imprisonment sentence in the case for extradition. An extradition order may be issued if under the law of the requesting state the punishment against the wanted person amounts to at least two year imprisonment. However, an extradition order may also be issued if the wanted person has been finally sentenced by the court of the requesting state to at least six month imprisonment, regardless of the maximum length of imprisonment provided by the law.

Code of Criminal Procedure (dated 10 August 2007)

Article 571: Conditions Relative to Imprisonment Sentence

An extradition order may be issued if under the law of the requesting state the punishment against the wanted person amounts to at least two year imprisonment.

However, an extradition order may also be issued if the wanted person has been finally sentenced by the court of the requesting state to at least six month imprisonment, regardless of the maximum length of imprisonment provided by the law.

**(b) Observations on the implementation of the article**

513. Cambodia clarified that a request for extradition which includes several separate offences shall be granted only for the offences which are extraditable under Cambodian Law and could be prosecuted by the requesting state for only extraditable offences as stated in the request.

514. It was concluded that Cambodia does not grant accessory extradition. It was recommended that Cambodia consider granting extradition if the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention.

#### **Paragraph 4 of article 44**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

#### **(a) Summary of information relating to the review of implementation of the article**

515. Initially, Cambodia indicated that it is not fully compliant with this paragraph:

516. It is not possible to make all the offences in the anti-corruption law extraditable since some offences in this law could not comply with the condition of the article 571 of code of criminal procedure especially regarding condition relative to imprisonment sentence. According to this article, an extradition order may be issued if under the law of the requesting state the punishment against the wanted person amounts to at least two year imprisonment. However, an extradition order may also be issued if the wanted person has been finally sentenced by the court of the requesting state to at least six month imprisonment, regardless of the maximum length of imprisonment provided by the law. In addition, Cambodian government cannot extradite its national as it is against constitution, but there will be criminal proceeding according to Cambodian law.

#### **(b) Observations on the implementation of the article**

517. During the country visit, it was explained that the minimum penalty requirement relates to the upper limit of the range of imprisonment. Since even petty corruption offences can be punished with up to 5 years imprisonment, all Convention offences are extraditable offences.

518. Cambodian laws do not consider any corruption crime as a political crime in accordance with UNCAC.

519. It was concluded that Cambodia is in compliance with this provision of the Convention.

#### **Paragraph 5 of article 4**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relating to the review of implementation of the article**

520. Cambodia stated that Cambodian legislation requires the existence of a treaty as a basis for extradition.

521. Article 567 CPC allows Cambodia to use international convention and treaties as the basis for extradition. Thus, Cambodia can use UNCAC as the basis for extradition.

Code of Criminal Procedure (dated 10 August 2007)

Article 567: International Conventions and Treaties

The extradition of a foreign resident who has been arrested in the territory of the Kingdom shall be governed by the provisions of international conventions and treaties ratified by the Kingdom of Cambodia. If there is no such treaty or convention, the provisions of this Chapter shall apply, unless otherwise provided in a separate law.

522. The examples of corruption offences are not yet available but there are some general criminal cases including:

Criminal Case No.230 dated on 11 August, 2011

Criminal Verdict No. 67 “KR.VI S.V” dated on 31 August, 2011

Cambodia extradited a French man back to France because this offender committed an offence of buying alcoholic and addicted drinks without permission( drug trafficking) in France where the court in France gave him a two-year imprisonment but the offender escaped to Cambodia. Until now, Cambodia and France have not yet reached an agreement to have the Convention of Extradition.

**(b) Observations on the implementation of the article**

523. Cambodia makes extradition conditional on the existence of a treaty.

524. During the country visit, there was a long discussion whether Cambodia can use UNCAC as a legal basis for extradition. It was underlined that the Cambodian legal system is dualist. Therefore, the application of any treaty, convention, or agreement shall be incorporated in provisions of domestic law. However, in the end it was concluded that Art. 567 CPC provides the domestic legal basis for using UNCAC as the legal basis for extradition in respect of Convention offences. Indeed there is no reason why Cambodia should be able to use bilateral extradition treaties (as is the case with regard to China, Korea, Laos and Thailand) but not a multilateral treaty (like UNCAC) once it has been approved by Parliament and ratified by the King.

525. Cambodia added that in practice, it also follows the principle of reciprocity in this matter, and that this principle could overcome the need for a treaty (i.e. an extradition could be carried out in the absence of the treaty on the basis of the principle of reciprocity).

526. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 6 of article 44**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

527. Cambodia makes extradition conditional on the existence of a treaty.

528. Cambodia can use UNCAC as the legal basis of extradition for corruption offenses. It has informed the Secretary-General of the United Nations that it considers the Convention as the legal basis for cooperation on extradition.

**(b) Observations on the implementation of the article**

529. During the country visit, it could not be verified if Cambodia has indeed informed the Secretary-General of the United Nations whether it takes the Convention as the legal basis for cooperation on extradition. After the country visit, Cambodia confirmed that such a notification has not been made.

530. Therefore, Cambodia was encouraged to actually use UNCAC in practice for extraditions; and to notify the UN SG about this possibility (if not done yet).

**Paragraph 7 of article 44**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relating to the review of implementation of the article**

531. Cambodia indicated that this paragraph is applicable. In general, Cambodia requires a treaty for extradition but Cambodia is also use the principle of reciprocity.

**(b) Observations on the implementation of the article**

532. Cambodia confirmed that it recognized Convention offences as extraditable offences.

**Paragraph 8 of article 44**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

533. Cambodia indicated that its laws comply with this provision. Article 571 & 572 of this code stipulate about the minimum imprisonment sentence for extradition. Article 2 of Treaty Between Korea and the Kingdom of Cambodia on Extradition also states about the extraditable offences.

Articles 573, 574, 575 CPC stipulate about the reasons for refusing extradition such as acts of political nature, extinction of criminal actions etc.

534. Cambodia referred to the following provisions:

**Article 571 Conditions Relative to Imprisonment Sentence**

An extradition order may be issued if under the law of the requesting state the punishment against the wanted person amounts to at least two year imprisonment.

However, an extradition order may also be issued if the wanted person has been finally sentenced by the court of the requesting state to at least six month imprisonment, regardless of the maximum length of imprisonment provided by the law.

**Article 572: Conditions Relative to Place of Commission of Offense**

If the act charged against the wanted person was committed in the territory of the requesting state, an extradition order may be issued whether or not the wanted person is a citizen of the requesting state.

If the act charged against the wanted person was committed outside the territory of the requesting state, an extradition order may be issued only if the wanted person is a citizen of the requesting state.

**Article 573: Acts of Political Nature**

An extradition order may not be issued where the prosecuted facts are of political nature. However, violent acts involving the risk of death or injury to life, body or to individual freedom shall not be deemed political.

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

An extradition order may not be issued where the prosecuted facts were committed in the territory of the Kingdom of Cambodia and a trial has been concluded by final judgment.

**Article 575: Extinction of Criminal Actions**

An extradition order may not be issued where the offenses cannot be prosecuted anymore under the law of the requesting State (Article 7: Extinction of Criminal Actions).

If the prosecuted acts were committed in the territory of the Kingdom of Cambodia, an extradition may not be made if the offenses cannot be prosecuted anymore under the laws of the Kingdom of Cambodia (Article 7: Extinction of Criminal Actions).

**Article 579: Validation of Extradition Request**

All extradition requests shall be submitted to Royal Government of Cambodia through the diplomatic channel. Each request shall contain the 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 offense and the possible sentence; and - A copy of the sentence decision, if any.

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

**Article 580: Forwarding of Extradition Request**

The Minister of Foreign Affairs of the Kingdom of Cambodia shall forward the request together with the supporting documents to the Minister of Justice. The Minister of Justice shall examine the regularity of the request and then forward it to the General Prosecutor attached to the Court of Appeal of Phnom Penh.

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

In case of arrest, the wanted person shall be brought without delay before the Prosecutor who has territorial competence and who shall notify such person of the special detention order and take that person's statement.

The wanted person shall be transferred to a Phnom Penh prison for detention. He may request the General Prosecutor attached to the Phnom Penh Court of Appeal to take his statement.

**Article 584: Filing Case with Investigation Chamber**

The General Prosecutor shall bring the case file up to date and seize the Investigation Chamber of the Phnom Penh Court of Appeal.

**Article 585: Proceedings before Investigation Chamber**

The wanted person shall appear before the Investigation Chamber. He may be assisted by a lawyer of his choice or by a lawyer appointed pursuant to the Law on the Bar.

The hearing shall be conducted in camera. The Investigation Chamber may call on an interpreter/translator, if necessary.

After hearing the statement of the wanted person and the submissions of the General Prosecutor and the defense lawyer, the Investigation Chamber shall decide by an order, including reasons, on the extradition request.

**Article 586: Decision of Investigation Chamber**

The Investigation Chamber may issue an order rejecting the extradition request if it finds that the legal requirements for extradition are not met.

**Article 587: Application for Release of Wanted Person**

The wanted person may request to be released from detention.

The motion shall be made in writing.

The motion shall be submitted to the Investigation Chamber which will make its decision after hearing the wanted person's statement, the submissions of the General Prosecutor and the defense lawyer.

**Article 589: Effects of Decision of Investigation Chamber**

When the order of the Investigation Chamber becomes final, the Minister of Justice shall be immediately informed.

If the Investigation Chamber makes a rejection order, the extradition cannot be made by the Cambodian government. The wanted person shall be released immediately unless such person is subject to detention for another case.

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.

After the extradition has been ordered, the wanted person shall be handed over to the requesting State. The expenses of extradition shall be borne by the requesting State. The security and protection of the wanted person while he is outside the Kingdom of Cambodia shall be the responsibility of the requesting State.

**Article 590: Competence of Investigation Chamber**

The Investigation Chamber of the Phnom Penh Court of Appeal is the only body competent to examine the regularity of any extradition to the Cambodian government. The extradited person shall have fifteen days from the date on which he arrived in the Kingdom of Cambodia to raise the invalidity of such extradition.

The motion shall be made in writing.

**Article 591: Proceedings before Investigation Chamber**

The Investigation Chamber shall make a decision after hearing the statement of the wanted person, the submissions of the General Prosecutor and the defense lawyer.

**Article 592: No Suspending Effect of Motion to Invalidate Extradition Request**

The motion to invalidate an extradition shall not suspend the proceedings against the wanted person.

**Article 593: Effect of Invalidation of Extradition**

If the extradition is invalidated by a final decision of the Investigation Chamber, all proceedings against the wanted person shall be terminated. The extradited person shall be released and is free to leave the Kingdom of Cambodia.

However, at the expiration of a thirty day period after the release, the extradited person can be re-arrested, if he is still in the territory of the Kingdom of Cambodia and is subject to prosecution for the charges leading to the extradition.

#### Article 594: Consent of State That Has Delivered Foreign Resident to Cambodia

If the Kingdom of Cambodia receives an extradited foreign resident and later receives a request for extradition for the same person from another state, the Kingdom of Cambodia may agree to the extradition request only with the consent of the State that extradited the person to Cambodia.

However, the above consent is not necessary if the foreign resident has had the opportunity of leaving Cambodian territory in the thirty day period.

#### Treaty between Korea and the Kingdom of Cambodia on Extradition

##### Article 2: Extraditable Offences

1. For the purpose of this Agreement, extraditable offences are offences which are punishable under the laws of both Parties by imprisonment or other form of detention for a period of at least two years or a more severe penalty.
  2. Where the request for extradition relates to a person sentenced to imprisonment or other form of detention by a court of the requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in the sentence remains to be served.
  3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Parties, it shall not matter whether the laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology.
  4. If the request for extradition refers to several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the latter offences provided that the person is to be extradited for at least one extraditable offence.
  5. Where the offence has been committed outside the territory of the requesting Party, extradition shall be granted where the law of the requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the requested Party does not so provide, the requested Party may, in its discretion, grant extradition.
535. The examples of extradition of corruption offences are not yet available but there are some general criminal cases including:

Criminal Case No.66 dated on 25 April, 2012

Criminal Verdict No. 114 dated on 15 June, 2012 of the supreme court

Australian government requested Cambodia to extradite an Australian citizen who had Cambodian nationality by birth on the murder case committed in Australia and escaped to Cambodia. Cambodia court refused to extradite him as Australian government did not provide enough evidence and did not fulfil the conditions for extradition in accordance with Cambodian law (article 579 of code of criminal procedure) and the person who was requested for extradition had Cambodian nationality by birth.

The conditions are related to Imprisonment Sentence, Place of Commission of Offense, acts of political nature, Acts committed in Cambodia and Tried by Final Judgment, Extinction of Criminal Actions, and Cambodian nationality.

Criminal Case No.142 dated on 03 July, 2009

Criminal Verdict No. 67 “KR.VI S.V” dated on 31 August, 2011

Russian government requested Cambodia to extradite a Russian who committed sexual abuse on 3 different cases on the minors under the age of 15 years old but Cambodian court refused on the ground that all the cases are under criminal proceeding and the offender refused to go back to his home country.

#### (b) Observations on the implementation of the article

536. Articles 571-594 CPC lay down the requirements for extradition, including a two-year minimum penalty requirement and reasons to refuse extradition.
537. It was concluded that Cambodia is in compliance with this provision of the Convention. However, it was recommended to draft guidelines and templates for the handling of extradition requests.

#### **Paragraph 9 of article 44**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

538. Cambodia indicated that its laws comply with this provision. Article 579-594 of code of criminal procedure stipulate about procedure for extradition which is simple and easy. In addition, article 10 of Treaty on extradition Between Korea-Cambodia, Thailand-Cambodia, Laos-Cambodia states about the extradition procedure which is simple and is applicable when there is consent from the person who is wanted. This could make extradition faster.
539. Cambodia has simplified extradition procedure (article 10 of Treaty on extradition Between the Korea-Cambodia, Thailand-Cambodia, Laos-Cambodia) and the condition related to the agreement to extradition from the wanted person (article 588 of code of criminal procedure) but there is no such case occurred yet.

#### **Code of Criminal Procedure (dated 10 August 2007)**

##### **Article 588: Agreement to Extradition**

If the wanted person agrees to be extradited pursuant to the request of the requesting State after having been fully informed of the consequences of that agreement, the Investigation Chamber shall mention such agreement in its order.

#### **Treaty between the Korea and the Kingdom of Cambodia on Extradition**

##### **Article 10: Simplified Extradition**

When a person sought advises a court or other competent authority of the Requested Party that the person consents to an order for extradition being made, the Requested Party may take all necessary measures to expedite the extradition to the extent permitted by its laws.

#### **Treaty between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition**

##### **Article 10: Simplified Extradition Procedure**

If the person sought irrevocably agrees in writing to extradition after personally being advised by the competent authority of his right to formal extradition proceedings and the protection afforded by them, the Requested Party may grant extradition without formal extradition proceedings, and the provisions of Article 12 shall apply.

#### **Treaty between Laos and the Kingdom of Cambodia on Extradition**

##### **Article 10: Simplified Extradition Procedure**

If the person sought irrevocably agrees in writing to extradition after personally being advised by the competent authority of his right to formal extradition proceedings and the protection afforded by them,

the Requested Party may grant extradition without formal extradition proceedings, and the provisions of Article 12 shall apply.

**(b) Observations on the implementation of the article**

540. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 10 of article 44**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

541. Cambodia indicated that its laws comply with this provision. Articles 581 & 582 CPC allow Cambodian authority to provisionally arrest and detain the wanted person for extradition due to the urgency in request but the wanted person shall be automatically released if the Royal Government of Cambodia does not receive all the documents specified in Article 579 (Validation of Extradition Request) within two months from the date of the arrest. The provisional arrest is also allowed by article 9 of Treaty on extradition Between the Korea-Cambodia, Thailand-Cambodia, China-Cambodia, Laos-Cambodia.

542. Cambodia referred to the following provisions:

**Article 581: Request of Provisional Arrest**

The state requesting extradition may request the provisional arrest of the wanted person.

In case of urgency, the request for provisional arrest may be made prior to the extradition request provided in Article 579 (Validation of Extradition Request) of this Code.

The request for provisional arrest, which is aimed at preventing the wanted person from escaping, does not need to follow a special format.

The person detained under provisional arrest procedures shall be automatically released if the Royal Government of Cambodia does not receive all the documents specified in Article 579 (Validation of Extradition Request) within two months from the date of the arrest.

**Article 582: Special Detention Order against Wanted Persons**

The General Prosecutor attached to the Court of Appeal of Phnom Penh may issue a special detention order against the wanted person.

This order shall include:

- the identity of the wanted person;
- a reference to the request for provisional arrest made by the foreign State; - the full name and position of the Prosecutor who issued such order.

The above order shall be dated, signed and sealed by the General Prosecutor. The special detention order shall be enforceable within the entire territory of the Kingdom of Cambodia.

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

In case of arrest, the wanted person shall be brought without delay before the Prosecutor who has territorial competence and who shall notify such person of the special detention order and take that person's statement.

The wanted person shall be transferred to a Phnom Penh prison for detention. He may request the General Prosecutor attached to the Phnom Penh Court of Appeal to take his statement.

## Treaty between the People's Republic of China and the Kingdom of Cambodia on Extradition

### Article 9: Provisional Arrest

1. In case of urgency, one Contracting Party may request the other Contracting Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels or through the International Criminal Police Organization (INTERPOL).
2. The request shall contain:
  - a description of the person sought;
  - the location of that person, of known;
  - a brief statement of the facts of the case;
  - a statement of the existence of a warrant of arrest or judgment against that person, as referred to in Article 7; and
  - a statement that a request for extradition of the person sought will follow.
3. The Requesting Party shall be notified without delay of the result of its request.
4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents required by Article 7. The present paragraph does not preclude the possibility of the conditional release of the person prior to the expiration of the sixty days in the event that the requested Party learns of any grounds for a mandatory or discretionary refusal or if the Requesting Party revokes its request for extradition.
5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 7 are delivered at a later date.

## Treaty between the Korea and the Kingdom of Cambodia on Extradition

### Article 9: Provisional Arrest

1. In case of urgency, one Party may request the other Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels.
2. The request for provisional arrest shall be in writing and contain:
  - a. a description of the person sought, including information about the nationality of that person;
  - b. a statement of the location, if known, of the person sought;
  - c. a brief statement of the facts of the case, including, if possible, the time and place of the commission of the offence;
  - d. a description of the laws violated;
  - e. a statement of the existence of a warrant of arrest or the judgment of conviction of the person sought; and
  - f. a statement that a request for extradition of the person sought will follow.
3. The Requesting Party shall be notified without delay of the result of its request.
4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents required by Article 7. The present paragraph does not preclude the possibility of the conditional release of the person prior to the expiration of the sixty days in the event that the requested Party learns of any grounds for a mandatory or discretionary refusal or if the Requesting Party revokes its request for extradition.
5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

## Treaty between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition

### Article 9: Provisional Arrest

1. In case of urgency, one Contracting Party may request the other Contracting Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels or through the International Criminal Police Organization (INTERPOL).
2. The request shall contain: a description of the person sought; the location of that person, of known; a brief statement of the facts of the case; a statement of the existence of a warrant of arrest or judgment

against that person, as referred to in Article 7; and a statement that a request for extradition of the person sought will follow.

3. The Requesting Party shall be notified without delay of the result of its request.

4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents required by Article 7.

5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 7 are delivered at a later date.

## Treaty between Laos and the Kingdom of Cambodia on Extradition

### Article 9: Provisional Arrest

1. In case of urgency, one Contracting Party may request the other Contracting Party to take provisional arrest against the person sought. Such request may be submitted in writing through the diplomatic channels or through the International Criminal Police Organization (INTERPOL).

2. The request shall contain:

- a description of the person sought;
- the location of that person, of known;
- a brief statement of the facts of the case;
- a statement of the existence of a warrant of arrest or judgment against that person, as referred to in Article 7; and
- a statement that a request for extradition of the person sought will follow.

3. The Requesting Party shall be notified without delay of the result of its request.

4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition and the supporting documents required by Article 7. The present paragraph does not preclude the possibility of the conditional release of the person prior to the expiration of the sixty days in the event that the requested Party learns of any grounds for a mandatory or discretionary refusal or if the Requesting Party revokes its request for extradition.

5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 7 are delivered at a later date.

### **(b) Observations on the implementation of the article**

543. Cambodia can take a person whose extradition is sought and who is present in its territory into provisional custody.

544. It was concluded that Cambodia is in compliance with this provision of the Convention.

### **Paragraph 11 of article 44**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

545. Cambodia indicated that its law complies with this provision. Article 19 of Cambodian Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009) gives Cambodian authorities the jurisdiction over a Cambodian national who commits felony or misdemeanour in a foreign country.

Penal Code (Promulgated by Royal Kram No. NS/RKM/1109/022 dated 30 November 2009)

Article 19: Felony or misdemeanour committed by a Cambodian national

In criminal matters, the Cambodian Law is applicable to any felony committed by a Cambodian national outside the territory of the Kingdom of Cambodia.

Cambodian Law is applicable to misdemeanours committed by the Cambodian nationals in a foreign country if the conduct is also punishable under the law of that country.

These provisions shall be applicable even if the accused acquired Cambodian nationality after the acts which he or she is alleged to have committed.

**(b) Observations on the implementation of the article**

546. Cambodia largely complies with the principle *aut dedere aut iudicare*. While Cambodian nationals cannot be extradited (Art. 33 of the Constitution), Cambodia has jurisdiction over its nationals on the basis of the active personality principle.

547. However, since prosecution follows the principle of opportunity (Art. 40 CPC), it is not guaranteed that nationals will in fact be prosecuted in each and every case. Moreover, for prosecution on the basis of Art. 19 PC, a complaint by the victim or formal information of the country where the offence was committed is required (Art. 21 PC). Therefore, in order to ensure that nationals who are not extradited are actually prosecuted in Cambodia, it was recommended that Cambodia consider adopting guidelines for the prosecution to ensure compliance with this obligation.

**Paragraph 12 of article 44**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

548. Cambodia indicated that, with regard to Convention offences, there is no exception to the principle of non-extradition of its citizens.

549. Cambodia could not enforce the sentence imposed by the foreign court as it is against constitution and Cambodian law (Each state has its sovereign jurisdiction. The verdict issued by the court of one state cannot enforce in other state. In additions, laws of some states state about execution when some do not.).

**(b) Observations on the implementation of the article**

550. It was noted that Cambodian nationals cannot be extradited (Art. 33 of the Constitution). Therefore, this provision of the Convention is not applicable.

### **Paragraph 13 of article 44**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### **(a) Summary of information relating to the review of implementation of the article**

551. Cambodia indicated that there are no provisions in Penal Code that recognize the enforceable character of a foreign criminal sentence. Cambodia could not enforce the sentence imposed by the foreign court as it is against constitution and Cambodian law (Each state has its sovereign jurisdiction. The verdict issued by the court of one state cannot enforce in other state. In additions, laws of some states state about execution when some do not.

#### **(b) Observations on the implementation of the article**

552. It was noted that Cambodia could not enforce the sentence imposed by a foreign court as this is incompatible with the Constitution and Cambodian law.

### **Paragraph 14 of article 44**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

553. Cambodia indicated that it is compliant with this paragraph. Articles 579-589 CPC comply with this provision by guaranteed fair treatment at all stages of proceedings.

Articles 579 -589 (see para. 534 above)

#### **Constitution**

##### **Article 31**

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, The Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizens shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

##### **Article 38**

The law prohibits all physical abuse of any individual. The law protects the life, honour and dignity of citizens.

No person shall be accused, arrested, or detained except in accordance with the law.

The coercion, physical ill-treatment or any other mistreatment which imposes additional punishment on a detainee or prisoner is prohibited. Persons who commit, participate in or conspire in such acts shall be punished according to the law.

Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.

The accused shall have the benefit of any reasonable doubt.

Any accused shall be presumed to be innocent until they are finally convicted by the court.

Everybody shall have the rights to defend him/herself through the judicial system.

Code of Criminal Procedure (dated 10 August 2007):

Article 3: Purpose of Criminal Actions

Criminal actions apply to all natural persons or legal entities regardless of race, nationality, colour, sex, language, creed, religion, political tendency, national origin, social status, resources or other status.

**(b) Observations on the implementation of the article**

554. Art. 31 and 38 of the Constitution and article 3 of the Code of Criminal Procedure contain guarantees that are directly applicable in all law enforcement procedures. The decision to extradite can be appealed in a court of law (Art. 590 CPC).

555. It was concluded that Cambodia is in compliance with this provision of the Convention. However, for the sake of clarity, it was recommended to include in the extradition provisions of the CPC a reference to these constitutional guarantees on due process and non-discrimination.

**Paragraph 15 of article 44**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

556. Cambodia indicated that it is compliant with this provision (Articles 31 and 38 of the constitution). Article 3 of Treaty on extradition Between the Korea-Cambodia, Thailand-Cambodia, China-Cambodia, Laos-Cambodia prohibits extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person.

Constitution

Articles 31 and 38 (see above para. 14)

Treaty between the People's Republic of China and the Kingdom of Cambodia on Extradition

Article 3: Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. The Requested Party considers the offense for which the request for extradition is made by the Requesting Party as a political offense. Reference to a political offense shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family.

2. The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

#### Treaty between Korea and the Kingdom of Cambodia on Extradition

##### Article 3: Mandatory Grounds for Refusal

Extradition shall not be granted under this Agreement in any of the following circumstances:

1. The Requested Party considers the offense for which the request for extradition is made by the Requesting Party as a political offense. Reference to a political offense shall not include the following offences:

a. the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family; or

b. an offence in respect of which the Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both Parties, including, but not limited to, such agreements relating to genocide, terrorism or hostage-taking.

2. The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

#### Treaty between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition

##### Article 3: Grounds for Mandatory Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. The Requested Party considers the offense for which the request for extradition is made by the Requesting Party as a political offense. Reference to a political offense shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family.

2. The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

#### Treaty between Laos and the Kingdom of Cambodia on Extradition

##### Article 3: Mandatory Grounds for Refusal

Extradition shall not be granted under this Agreement in any of the following circumstances:

1. The Requested Party considers the offense for which the request for extradition is made by the Requesting Party as a political offense. Reference to a political offense shall not include the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family.

2. The Requested Party has well-founded reasons to suppose that the request for extradition made by the Requesting Party aims to institute criminal proceedings against or execute punishment upon the person sought on account of race, religion, nationality or political opinion of that person, or that the position of the person sought in judicial proceedings will be prejudiced for any of the reasons mentioned above.

### **(b) Observations on the implementation of the article**

557. It was noted that the extradition treaties of Cambodia prohibit as mandatory grounds for refusal extradition to institute criminal proceedings against or execute punishment upon the person sought on account of sex, race, religion, nationality or political opinion of that person.

558. It was concluded that Cambodia is in compliance with this provision of the Convention. However, for the sake of clarity, it was recommended to include in the extradition provisions of the CPC a reference to these constitutional guarantees on due process and non-discrimination.

#### **Paragraph 16 of article 44**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

559. Cambodia indicated that its law does not directly refer to fiscal offences. The grounds for extradition refusal are stipulated in articles 573,574,575 CPC (see above para. 534), but there is no ground involving fiscal matters. Thus, Cambodia will not refuse to extradite on the ground that the offence is relevant to fiscal matters.

##### **(b) Observations on the implementation of the article**

560. It was concluded that Cambodia is in compliance with this provision of the Convention.

#### **Paragraph 17 of article 44**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

561. Cambodia indicated that its laws comply with this provision. Articles 579-586 CPC concern the extradition procedure which allows the mutual discussion and exchange of information before refusing to extradite. Moreover, article 8 of Treaty on extradition between the Korea-Cambodia, Thailand-Cambodia, China-Cambodia, Laos-Cambodia states about time given which is enough for the requesting state to collect the relevant documents and information before the requested state refuses to extradite.

Treaty between the People's Republic of China and the Kingdom of Cambodia on Extradition

Article 8: Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

Treaty between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition

Article 8: Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

## Treaty between Laos and the Kingdom of Cambodia on Extradition

### Article 8: Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

## Treaty between the Korea and the Kingdom of Cambodia on Extradition

### Article 8: Additional Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Agreement to enable extradition to be granted, that party may request that additional information be furnished within such time as it specifies. If the Requesting Party fails to submit additional information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for the same purpose.

2. Where the person is released from custody in accordance with paragraph 1 of this Article, the Requested Party shall notify the requesting Party as soon as practicable.

### **(b) Observations on the implementation of the article**

562. It was concluded that Cambodia is in compliance with this provision of the Convention. However, for the sake of clarity, it was suggested to include in the extradition provisions of the CPC the obligation to hold consultations before refusing an extradition request.

### **Paragraph 18 of article 44**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

563. Cambodia indicated that it has signed four bilateral treaties on the matter:

#### ***a. Bilateral treaties***

Treaty between the People's Republic of China and the Kingdom of Cambodia on Extradition

Treaty between the Kingdom of Thailand and the Kingdom of Cambodia on Extradition

Treaty between Laos and the Kingdom of Cambodia on Extradition

Treaty between Korea and the Kingdom of Cambodia on Extradition

#### ***b. Multilateral treaties***

UNCAC

564. Cambodia is undertaking efforts to reach agreements on bilateral treaties on extradition with other countries such as Vietnam, Malaysia, Indonesia etc.

**(b) Observations on the implementation of the article**

565. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Article 45. Transfer of Sentenced Persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

**(a) Summary of information relating to the review of implementation of Article 45**

566. Cambodia has signed three bilateral treaties on transfer of sentenced persons. Currently, an agreement with Russia and Peru are being drafted.

1. Agreement between the Royal Government of Cambodia and the Government of the Republic of India on the transfer of sentenced persons
2. Agreement between the Royal Government of Cambodia and the Royal Government of Thailand on the transfer of sentenced persons and on the cooperation in execution of criminal sanction
3. Agreement between the Royal Government of Cambodia and the Government of Australia on the transfer of sentenced persons

567. The examples of corruption offences are not yet available but there are some general criminal cases including:

-Letter No. 157 KY.PRT/11 of Ministry of Justice dated 27 January, 2011: The Case of transfer an Austrian man receiving a sentence in Cambodia to be furthered receiving the execution of sentence in Austria.

An Austrian man committed an offence in Cambodia and the accused was sentenced by Cambodian court. Therefore, the Embassy of Austria to the Kingdom of Thailand requested Cambodia to send the accused to further execute the sentence in Austria.

- Letter No. 1301 KY.PRT/11 of Ministry of Justice dated 2 August, 2011: The case of transfer the Cambodian convict to receive the punishment in Cambodia.

Five Cambodian persons committed offences in Thailand and the court in Thailand gave a sentence to those offenders in Thailand. Cambodian authority requested for the transfer of those convicts from Thailand back to Cambodia for the purpose of further execution of sentence aiming to protect the interest of Cambodian citizens.

- Letter No. 908 MoJ.CC/11 of Ministry of Justice dated on 10 June, 2011: The case of transfer the Peruvian prisoner from the Prison of Cambodia to be furthered detained and executing the sentence back in Peru.

A Peruvian man committed an offense in Cambodia and he was given a sentence and imprisonment by the court of Cambodia. Therefore, the Embassy of Peru requesting for the transfer of this accused from Cambodia to receive the further execution of sentence in Peru.

Since Peru and Cambodia have not yet had the agreement on the transfer of prisoners, Cambodia officially rejected the request. This process can be done unless the agreement on the transfer of prisoners have been already made in place by the two countries

**(b) Observations on the implementation of the article**

568. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Article 46. Mutual Legal Assistance**

569. Cambodia has not concluded any bilateral treaties on MLA. MLA is provided based on:

- Art. 51 and 53 of the Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010);
- the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (AMLAT, 29 November 2004, Kuala Lumpur, Malaysia);
- Memorandum of Understanding of the South-East Asia Parties against Corruption (SEA-PAC MoU)
- the principle of reciprocity.

570. Currently, the Ministry of Justice is drafting an MLA Law.

571. Between 2012-2014, 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 States. Between 2012-2013, Cambodia sent 27 requests in criminal cases and 34 in civil cases.

**Paragraphs 1 and 2 of article 46**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relating to the review of implementation of the article**

572. With respect to paragraph 1, Cambodia indicated that it has both laws and other international instruments which comply with this provision. However, at the present Cambodian national laws do not state clearly on the procedure of mutual legal assistance. The procedure in the Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (29 November 2004, done at Kuala Lumpur, Malaysia) (AMLAT) is used.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 51: Mutual Legal Assistance

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

1. Collect evidence/proof or answer/response through court means.
2. Inform about documents of the court.
3. Search, arrest and confiscate.
4. Examine objects and crime scene.
5. Provide information and exhibit.
6. Issue original process-verbal or its authentic copies and dossier, including bank statement, accounting transactions, records of concerned institution, records of concerned company and trade records, as well as authentic and private documents;
7. Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings.
8. Identify or seek resources, property, equipment, and materials that derive from offence and offence means.
9. Place under temporary holding the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences.
10. Enforce the decision of confiscation, seizure or repatriation of products, properties, equipment, material derived from offence.
11. Order to confiscate all objects as stated above.
12. Inform about the criminal charge.
13. Interrogate the accused based on criminal procedure.
14. Find out and identify witnesses and suspects.

Article 52: Cambodians holding more than one nationality

Anti-Corruption Institution and competent authorities concerned have obligation to seek international cooperation and mutual legal assistance in terms of the property's status of Cambodians holding more than one nationality.

Article 53: Mutual Legal Assistance Procedure

Procedures for implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multi-lateral agreements, and national law in force.

#### ASEAN Mutual Legal Assistance in Criminal Matters (AMLAT)

Article 1: Scope of assistance

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.
2. Mutual assistance to be rendered in accordance with this Treaty may include:
  - (a) taking of evidence or obtaining voluntary statements from persons;
  - (b) making arrangements for persons to give evidence or to assist in criminal matters;
  - (c) effecting service of judicial documents;
  - (d) executing searches and seizures;
  - (e) examining objects and sites;
  - (f) providing original or certified copies of relevant documents, records and items of evidence;
  - (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
  - (h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
  - (i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;
  - (j) locating and identifying witnesses and suspects; and
  - (k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.
3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression "instrumentalities of crime" means property used in connection with the commission of an offence or the equivalent value of such property.

## SEA-PAC

### Article 2: Areas of Cooperation

The areas of the cooperation may include, subject to the Parties' respective domestic laws, regulations, and practices, within the limits of their competence the following:

- a. To exchange information in respect of methods and means of criminal acts of corruption and/or corrupt practices (including, money laundering and proceeds of crime of corruption);
- b. To exchange information in respect of methodology and modus operandi of their respective units dealing with financial intelligence where such units are maintained by the Parties;
- c. To conduct training, courses, exchange of expertise and human resources personal in the area such as forensic accounting, forensic computer, forensic engineering, polygraph and voice analyzer;
- d. To host and participate in forums, workshops, seminars, conventions, and conferences;
- e. To exchange information on community education, to enhancing public awareness on anti-corruption, including media campaign and promoting integrity as well as to strengthen public participation;
- f. To provide technical assistance in operational activities;
- g. To consider the necessity and appropriateness of a common methodology of evaluation on an anti-corruption index;
- h. To share information on relevant intelligence data, statistic, and corruption crime records;
- i. To perform other areas of cooperation as deemed necessary.

573. For Cambodia, the Central authority is the Ministry of Justice. There is no implementation yet on this as there is no case and this MLA has just been developed in 2010. The Cambodian government tries to develop a guideline on the implementation of Mutual Legal Assistance and provides trainings to law enforcement authority to improve their capacity.

574. In response to the request from Australian Embassy in Phnom Penh on the Cooperation in order to investigate on money laundering offence of two Australian suspects arrested on 23 May 2012 through Ministry of Foreign Affairs and International Cooperation, Ministry of Justice sent this request on 05 December 2012 to Phnom Penh Court of the First Instance to process and feedback to Ministry of Justice promptly to proceed further.

575. Cambodia is quite open in Mutual Legal Assistance cooperation which is relevant to the responsibility of legal persons.

Code of Criminal Procedure (dated 10 August 2007):

#### Article 600: Coercive Measures against Legal Entity

The representative of a legal entity may not, in his capacity of representative, be subject to any coercive measures other than those applicable to witnesses.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 46: Accessory Penalty applicable to certain Legal Entities

The legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties as follows:

1. Dissolution.
2. Placement under the court's watch.
3. Baring of operation of an activity or activities.
4. Expulsion from public procurement.
5. Prohibition on public saving appeal.
6. Prohibition on issuing cheque besides the cheque certified by any banks.
7. Prohibition on issuing payment vouchers.
8. Closure of the institution which being used to organize or commit offences.
9. Prohibition of the business establishment open to the public or used by the public.
10. Confiscation of instrument, material or any objects which are used to commit offence or aimed to commit offence.
11. Confiscation of objects or funds which are subject of committing offence.
12. Confiscation of capital or property that derives from offence.
13. Confiscation of proceeds, material and furniture in building where an offence is committed
14. Posting of conviction judgment.
15. Publication of the conviction judgment on print media or the announcement on non- print media outlets.

**(b) Observations on the implementation of the article**

576. Apart from the Anti-Corruption Law, there is no domestic legislation that governs mutual legal assistance (MLA) in Cambodia. However, the Ministry of Justice is currently drafting an MLA Law.
577. Cambodia is a party to the ASEAN Mutual Legal Assistance Treaty (AMLAT) and the Memorandum of Understanding of the South-East Asia Parties against Corruption (SEA-PAC MoU). However, the SEA-PAC MoU is not a binding international treaty and does not provide a legal basis for operational measures.
578. In practice, MLA request can be sent to the central authority, through diplomatic channels. The central authority will forward the request to the competent court.
579. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Sub-paragraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

*(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relating to the review of implementation of the article**

580. Cambodia referred to its previous answer relating to the review of the implementation of paragraph 1, in particular Art. 51 of the AC Law, and added the following provisions:

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 27: Powers of the Anti-corruption Unit related to monitoring  
Being contradictory to article 105 (prohibition from wire-taping), and article 172 (wire tapping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

- a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all bank, 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 operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not serve as justification for not providing evidence related to corruption offences in the provisions of this law.

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

Upon the request by the chairman of ACU, the Royal Government can order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in this law and corruption offences stated in the code of criminal procedure. The individual assets, stated in the above first paragraph, includes the funds received or which forms asset belonging to the individual.

Article 29: Powers of ACU in cooperation with public authority

The Chairman of the ACU can order public authorities, government officials, citizens who hold public office through election, as well as units concerned in private sector, namely financial institutions, to cooperate with officials of the ACU in the work of investigation.

The Chairman of the ACU can also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)

Article 6: Banking and Professional Secrecy

Banking or professional secrecy shall not inhibit the implementation of the present Law and may not be invoked as a ground for refusal to provide information to the FIU and supervisory authority, whether for domestic or for international cooperation purposes, or as required in connection with an investigation which relates to money laundering or financing of with an ordered by or carried out under the supervision of a judicial authority.

581. Cambodia provided the following example:

Referring to Mutual Legal Assistance in Criminal Matters, Ministry of Justice received a request from Belgium Embassy to Thailand through Cambodian Ministry of Foreign Affairs and International Cooperation to allow a Belgian Judge to investigate in Cambodia in the Case of a Netherland national, living in Belgium who was accused of distributing porn movies and rape Cambodian minors. On 20 May 2013, in a rogatory letter, the Belgian court allowed Cambodian authorities to interview/question instead and this letter was forwarded to Siem Reap Court of the first instance. However, the request to permit Belgium expert to investigate in Cambodia was not granted as each country is sovereign, so foreigners are not permitted to investigate in Cambodia.

**(b) Observations on the implementation of the article**

582. It was concluded that having regard to the measures listed in Art. 51 of the AC Law, Cambodia is in compliance with this provision of the Convention. However, it was recommended that the draft MLA Law should contain a provision which clarifies that all investigation and law enforcement measures that could be taken in a purely domestic context can also be used in fulfilling MLA requests. It should also make provisions for facilitating the voluntary appearance of persons in the requesting State Party.

**Sub-paragraphs 3 (j) and 3 (k) of article 46**

1. *Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

583. Cambodia referred to its previous answer, in addition to the following provisions:

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

**Article 48: Seizure**

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, instrument that is derived from corruption act and the proceeds shall be transformed into state property.

If the above seized asset is transferred/changed into different property from the original asset nature, this transformed asset will become the subject of seizure at the place where it locates.

If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well.

If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

**Article 49: Repatriation of the proceeds of Corruption**

In case assets and corruption proceeds are found kept in foreign states, the competent authority of the kingdom of Cambodia shall take measure to claim that asset and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia.

**(b) Observations on the implementation of the article**

584. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 4 of article 46**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relating to the review of implementation of the article**

585. Cambodia noted that its law does not provide clearly for the transmission of information relating to criminal matters without prior request, and referred to the provisions in the AC Law (Art. 51, 53).

586. In implementing Mutual Legal Assistance, the Cambodian Ministry of Justice has communicated with 5 countries so far: Belgium, Peru, France, Germany, Sweden. In practice, if the case is related to corruption, then it is under the competence of the Anti-corruption Unit only.

587. The Cambodian government will examine if the transmission of information relating to criminal matters without prior request could be stipulated more clearly in national law or other bilateral or multilateral treaties.

**(b) Observations on the implementation of the article**

588. It was noted that Cambodian domestic law does not clearly provide for the transmission of information relating to criminal matters without prior request. Therefore, it was recommended that the draft MLA Law should allow for the spontaneous sharing of information without prior request.

**Paragraph 5 of article 46**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relating to the review of implementation of the article**

589. Cambodia indicated that it is compliant with this provision.

Code of Criminal Procedure

#### Article 83: Confidentiality of Inquiry

The inquiry is confidential. Persons who participate in the inquiry, especially Prosecutors, lawyers, court clerks, police and military police officers, civil servants, experts, interpreters/translators, medical doctors and other persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, shall maintain professional confidentiality.

However, such professional confidentiality may not be used as an obstacle to the right of self-defense.

Moreover, the Royal Prosecutor is entitled to make a declaration in public if he considers that false information in a case has been published.

A breach of confidentiality regarding an inquiry is an offense punishable under the Criminal Law in force.

#### Article 121: Confidentiality of Judicial Investigation

The judicial investigation is confidential.

Persons who participate in the judicial investigation, especially prosecutors, judges, lawyers, court clerks, judicial police and military police officers, civil servants, experts, interpreters/translators, medical doctors and other persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, shall maintain professional confidentiality.

However, such professional confidentiality may not be used as an obstacle to the right of self-defense.

Moreover, the Royal Prosecutor is entitled to make a declaration in public if he considers that false information in a case has been published.

A breach of confidentiality regarding a judicial investigation is a misdemeanor punishable under the Criminal Law in force.

#### Anti-Corruption Law

##### Article 39: Leakage of Confidential Information on Corruption

Any person who leaks the confidential information on corruption shall be sentenced from one (1) to five (5) years in prison.

The absolute confidentiality cannot be an obstacle to the right of self-defense.

#### ASEAN Mutual Legal Assistance in Criminal Matters

##### Article 9: Protection of confidentiality

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -

(a) keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and

(b) ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

#### **(b) Observations on the implementation of the article**

590. It was concluded that Cambodia can provide for the confidentiality of information. The confidentiality of the information provided will not prevent Cambodia from disclosing it when such information is exculpatory for an accused person. It is in compliance with this provision of the Convention.

#### **Paragraph 8 of article 46**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relating to the review of implementation of the article**

591. Cambodia noted that its laws comply with this provision. Bank secrecy cannot be used as the ground to decline mutual legal assistance. In practice, Cambodia provides Mutual Legal Assistance through memorandums of understanding with the ministry of justice, ministry of interior, and Cambodian Financial Intelligence Unit etc. For example, FIU always responds to requests of the competent authority in compliance with existing regulation especially in the case of bank secrecy, but the information is provided in the form of intelligence not evidence.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 27: Powers of Anti-corruption Unit related to monitoring  
Being contradictory to article 105 (prohibition from wire-taping), and article 172 (wire taping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

- a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- b. Check and order the provision or copy of authentic documents or individual documents, or all bank, 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 operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not serve as justification for not providing evidence related to corruption offences in the provisions of this law.

Article 47: The Release of Bank Records

Credit entities or financial institutions shall be relieved of responsibility and no criminal complaint will be filed against the leader or trustee of that entity or institution should such operation has been carried out in accordance with the provisions of law, unless otherwise it is found that there is a pre-agreement with the fund owner or transactional operator to forge it.

ASEAN Mutual Legal Assistance in Criminal Matters

Article 3. Limitation on assistance

...

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

**(b) Observations on the implementation of the article**

592. Bank secrecy is not a ground for refusing to render MLA. This is explicitly stipulated in the AMLAT. The ACU can request bank documents directly without the need for a warrant.

593. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 9 of article 46**

*(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic*

*concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relating to the review of implementation of the article**

594. Cambodia indicated that its law does not state about the condition of dual criminality in Mutual Legal Assistance. A real case has not occurred yet. Cambodia will try to develop this point in its national law in the near future.

**(b) Observations on the implementation of the article**

595. It was recommended to clarify in the draft MLA Law that dual criminality is not required for rendering MLA; and to clarify that MLA will not be declined due to the *de minimis nature* of the matter.

**Paragraphs 10, 11, and 12 of article 46**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

596. Cambodia indicated that it is compliant with these paragraphs.

**ASEAN Mutual Legal Assistance in Criminal Matters**

**Article 15: Attendance of person in custody in the requesting party**

1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty.

4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

5. The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.

6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking -

(a) to bear and be responsible for all the expenses of the transfer of custody;

(b) to keep the person under lawful custody throughout the transfer of his custody; and

(c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

7. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

**Article 16: Safe conduct**

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;

(b) that person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or

(c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.

3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected

to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

**(b) Observations on the implementation of the article**

597. In the absence of internal MLA legislation, the transfer of a person being detained or serving a sentence for the purpose of testimony is possible on the basis of bilateral treaties and the Convention. Safe conduct is granted on the same basis.

598. It was concluded that Cambodia complies with these provisions of the Convention.

**Paragraph 13 of article 46**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

599. Cambodia noted that the Ministry of Justice has been designated as the central authority for receiving requests. In implementing Mutual Legal Assistance, Cambodia, through the Ministry of Justice, has cooperated with five countries: Belgium, Peru, France, Germany and Sweden.

**ASEAN Mutual Legal Assistance in Criminal Matters**

**Article 4: Designation of central authorities**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.
3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.

4. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

**(b) Observations on the implementation of the article**

600. It was concluded that Cambodia is in compliance with this provision of the Convention.

601. However, it was noted that despite the designation of the Ministry of Justice as Central Authority, in practice requests are still transmitted through diplomatic channels. Therefore, it was

recommended to allow and use direct communication between central authorities; and to use the central authority as entry point for MLA requests.

#### **Paragraph 14 of article 46**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

602. Cambodia noted that all requests for legal assistance must be submitted in writing. The State of Cambodia uses both Khmer and English languages in requests for legal assistance. The Secretary General has not been informed of the acceptable languages.

##### **ASEAN Mutual Legal Assistance in Criminal Matters**

##### **Article 5: Form of requests**

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.

2. Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the Southeast Asian Police Organization (ASEANAPOL).

#### **(b) Observations on the implementation of the article**

603. It was concluded that Cambodia is partially in compliance with this provision of the Convention.

604. It was recommended, to the extent not done yet, to notify the UN SG about the central authority, the acceptable languages and the use of UNCAC as legal basis for rendering MLA. In the draft MLA Law, it should be specified that English can be used in MLA requests.

#### **Paragraphs 15 and 16 of article 46**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

**(a) Summary of information relating to the review of implementation of the article**

605. Cambodia indicated that it is compliant with this provision.

**ASEAN Mutual Legal Assistance in Criminal Matters**

**Article 6: Contents of requests**

1. A request for assistance in criminal matters shall contain such information as the Requested Party requires to execute the request, including -

- (a) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;
- (b) the purpose of the request and the nature of the assistance sought;
- (c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;
- (d) a description of the offence to which the request relates, including its maximum penalty;
- (e) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
- (f) a description of the essential acts or omissions or matters alleged or sought to be ascertained;
- (g) a description of the evidence, information or other assistance sought;
- (h) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
- (i) specification of any time limit within which compliance with the request is desired;
- (j) any special requirements for confidentiality and the reasons for it; and
- (k) such other information or undertakings as may be required under the domestic laws of the Requested Party or which is otherwise necessary for the proper execution of the request.

2. Requests for assistance may also, to the extent necessary, contain the following information:

- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
- (b) the identity and location of any person from whom evidence is sought;
- (c) the identity and location of a person to be served, that person's relationship to the criminal proceedings and the manner in which service is to be made;
- (d) information on the identity and whereabouts of a person to be located;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
- (h) a statement as to whether sworn or affirmed evidence or statements are required;
- (i) a description of the property, asset or article to which the request relates, including its identity and location; and
- (j) any court order relating to the assistance requested and a statement relating to the finality of that order.

3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language and, if necessary, accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.

4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

**(b) Observations on the implementation of the article**

606. It was concluded that Cambodia is in compliance with this provision of the Convention.

#### **Paragraph 17 of article 46**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### **(a) Summary of information relating to the review of implementation of the article**

607. Cambodia indicated that it is compliant with this provision despite the absence of a law that organizes the provisions of mutual legal assistance.

608. Since Cambodian national law does not state clearly on the procedure in Mutual Legal Assistance. In practice the procedure is taken from the treaties of Mutual Legal Assistance in Criminal Matters to which Cambodia is a party (currently only AMLAT).

#### **ASEAN Mutual Legal Assistance in Criminal Matters**

##### **Article 7: Execution of requests**

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.

4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

#### **(b) Observations on the implementation of the article**

609. It was concluded that Cambodia is in compliance with this provision of the Convention. However, it was recommended to clarify in the draft MLA Law that requests can be executed in accordance with the procedures specified in the request unless such procedures conflict with domestic law.

#### **Paragraph 18 of article 46**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

610. Cambodia indicated that its laws do not explicitly permit hearings of individuals to take place by video conference.

611. No Cambodian law or MLAT to which Cambodia is a party regulates this. In practice, Cambodia could do video conference hearings but the resource to support this is are limited. Cambodia will try to apply this procedure in the future.

**(b) Observations on the implementation of the article**

612. During the country visit, Cambodia confirmed that in practice, hearings could take place by video conference.

613. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 19 of article 46**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

614. Cambodia indicated that it is compliant with this provision.

**ASEAN Mutual Legal Assistance in Criminal Matters**

**Article 3: Limitations on assistance**

1. The Requested Party shall refuse assistance if, in its opinion -

...

(h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;

**Article 8: Limitations on use of evidence obtained**

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence provided may be used, with the prior consent of the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is made out by the facts on which the request was made.

**(b) Observations on the implementation of the article**

615. During the country visit it was confirmed that the rule of specialty is observed in practice.

616. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Paragraph 20 of article 46**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

### **(a) Summary of information relating to the review of implementation of the article**

617. Cambodia indicated that it is compliant with this provision.

#### **Code of Criminal Procedure**

##### **Article 83: Confidentiality of Inquiry**

The inquiry is confidential. Persons who participate in the inquiry, especially Prosecutors, lawyers, court clerks, police and military police officers, civil servants, experts, interpreters/translators, medical doctors and other persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, shall maintain professional confidentiality.

However, such professional confidentiality may not be used as an obstacle to the right of self-defense.

Moreover, the Royal Prosecutor is entitled to make a declaration in public if he considers that false information in a case has been published.

A breach of confidentiality regarding an inquiry is an offense punishable under the Criminal Law in force.

##### **Article 121: Confidentiality of Judicial Investigation**

The judicial investigation is confidential.

Persons who participate in the judicial investigation, especially prosecutors, judges, lawyers, court clerks, judicial police and military police officers, civil servants, experts, interpreters/translators, medical doctors and other persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, shall maintain professional confidentiality.

However, such professional confidentiality may not be used as an obstacle to the right of self-defense.

Moreover, the Royal Prosecutor is entitled to make a declaration in public if he considers that false information in a case has been published.

A breach of confidentiality regarding a judicial investigation is a misdemeanor punishable under the Criminal Law in force.

#### **Anti-Corruption Law**

##### **Article 39 : Leakage of Confidential Information on Corruption**

Any person who leaks the confidential information on corruption shall be sentenced from one (1) to five (5) years in prison.

The absolute confidentiality cannot be an obstacle to the right of self-defense.

#### **ASEAN Mutual Legal Assistance in Criminal Matters**

##### **Article 9: Protection of confidentiality**

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -

(a) keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and

(b) ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

**(b) Observations on the implementation of the article**

618. Requests can be treated confidentially. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 21 of article 46**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

619. Cambodia referred to the following text:

**ASEAN Mutual Legal Assistance in Criminal Matters**

**Article 3: Limitations on assistance**

1. The Requested Party shall refuse assistance if, in its opinion -

(a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;

(b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;

(c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

(d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person -

(i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting or Requested Party; or

(ii) has undergone the punishment provided by the law of that Requesting or Requested Party, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

(e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;

(f) the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

(g) the Requesting Party fails to undertake that it will be able to comply with a future request of a similar nature by the Requested Party for assistance in a criminal matter;

(h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;

(i) the Requesting Party fails to undertake to return to the Requested Party, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;

(j) the provision of the assistance could prejudice a criminal matter in the Requested Party; or

(k) the provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.

2. The Requested Party may refuse assistance if, in its opinion -

(a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;

(b) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or

(c) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.

3. For the purposes of subparagraph 1 (a), the following offences shall not be held to be offences of a political nature:

(a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;

(b) an offence against the life or person of a Head of a central Government, or of a Minister of a central Government;

(c) an offence within the scope of any international convention to which both the Requesting and Requested Parties are parties to and which imposes on the Parties thereto an obligation either to extradite or prosecute a person accused of the commission of that offence; and

(d) any attempt, abetment or conspiracy to commit any of the offences referred to in subparagraphs (a) to (c).

4. The Requested Party may restrict the application of any of the provisions made under paragraph 3 according to whether the Requesting Party has made similar provision in its laws.

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.

7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

10. The Parties shall, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

620. Cambodia gave the following example:

Belgium government made a request to send its expert to investigate in Cambodia on the murder case of the Belgium couple who were murdered near Preah Vihear Temple in 1994. For this request, Cambodia government could not approve as the court of each country has its own independence and sovereignty on its own territory so the foreigners could not come to investigate. However, this could be permitted in the MLA in Criminal Matters framework.

**(b) Observations on the implementation of the article**

621. During the country visit, Cambodia confirmed that no MLA request has been refused yet. In the absence of national MLA legislation, Cambodia would only refuse MLA requests on the basis

of Art. 46(21) UNCAC and Art. 3 AMLAT. However, there may be requests for additional information if the request is not clear enough.

622. It was concluded that Cambodia is in compliance with this provision of the Convention.

#### **Paragraph 22 of article 46**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

623. Cambodia indicated that it is compliant with this provision.

ASEAN Mutual Legal Assistance in Criminal Matters

Article 3: Limitations on assistance

...

5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

##### **(b) Observations on the implementation of the article**

624. Cambodia does not refuse mutual legal cooperation on the sole ground that the offence is also considered to involve fiscal matters.

625. It was concluded that Cambodia is in compliance with this provision of the Convention.

#### **Paragraph 23 of article 46**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

626. Cambodia indicated that it is compliant with this provision. It referred to the following provisions:

ASEAN Mutual Legal Assistance in Criminal Matters

Article 3: Limitations on assistance

...

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

##### **(b) Observations on the implementation of the article**

627. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Paragraph 24 of article 46**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

628. Cambodia indicated that it is compliant with this provision. It also referred to the following provisions:

#### **ASEAN Mutual Legal Assistance in Criminal Matters**

##### **Article 7: Execution of requests**

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.
2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.
4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

### **(b) Observations on the implementation of the article**

629. During the country visit, Cambodia indicated that the average length of response to incoming MLA requests was between one month and one year or longer, depending on the nature of the request.

630. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Paragraph 25 of article 46**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

631. Cambodia indicated that it is compliant with this provision. MLA could be postponed by Cambodia for the reason that it interferes with the investigation, trial, and criminal proceedings. However, this case has not occurred in Cambodia yet.

ASEAN Mutual Legal Assistance in Criminal Matters  
Article 3. Limitations on assistance

...

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.

**(b) Observations on the implementation of the article**

632. Assistance may be postponed by Cambodia on the ground that it interferes with an ongoing investigation.

633. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 26 of article 46**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

634. Cambodia indicated that it is compliant with this provision.

ASEAN Mutual Legal Assistance in Criminal Matters

Article 3: Limitations on assistance

...

7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

**(b) Observations on the implementation of the article**

635. If Cambodia were to refuse a request, prior consultations would be held, although there is no direct legal basis for this.

636. It was concluded that Cambodia is in compliance with this provision of the Convention. However, for the sake of clarity, it was suggested to include in the draft MLA Law the obligation to hold consultations before refusing a request.

**Paragraph 27 of article 46**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the*

*witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

637. Cambodia indicated that it is compliant with this provision and referred to the following provisions:

ASEAN Mutual Legal Assistance in Criminal Matters

Article 16: Safe Conduct

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;

(b) that person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or

(c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.

3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

638. Cambodia provided the following example:

The Case of CFF:

A Cambodian citizen, American national, resided in the United States of America, was the mastermind of the movement to overthrow the Royal Government of Cambodia by distributing the funding to the CFF. A court of the United States of America sentenced the accused to life imprisonment and during the trial, Cambodia sent the representatives of the Royal Government from the Ministry of Justice and Ministry of Interior to provide testimony and other legal assistance to the United States of America through the evidences, and Cambodian national witnesses giving the testimony in the court in U.S.

**(b) Observations on the implementation of the article**

639. Safe conduct can be granted on the basis of Art. 16 AMLAT.

640. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Paragraph 28 of article 46**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

641. Cambodia indicated that it is compliant with this provision and referred to the following provisions:

ASEAN Mutual Legal Assistance in Criminal Matters

Article 25: Costs

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear -

(a) the fees of counsel retained at the request of the Requesting Party;

(b) the fees and expenses of expert witnesses;

(c) the costs of translation, interpretation and transcription;

(d) the expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and

(e) the expenses associated with conveying custodial or escorting officers.

2. The cost of establishing live video or television links or other appropriate communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

### **(b) Observations on the implementation of the article**

642. During the country visit it was confirmed that in practice, Cambodia has always borne the costs of complying with MLA requests.

643. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Paragraph 29 of article 46**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

644. Cambodia indicated that it is compliant with this provision and referred to the following text:  
ASEAN Mutual Legal Assistance in Criminal Matters

Article 13: Provision of publicly available documents and other records

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records in the possession of government departments and agencies.
2. The Requested Party may, subject to its domestic laws and practices, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

**(b) Observations on the implementation of the article**

645. Documents in the public domain can be provided upon request.

646. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 30 of article 46**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

647. Cambodia has signed one multilateral treaty and various MoUs:

- ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (AMLAT)
- Memorandum of understanding between the Anti-corruption Bureau of Brunei Darussalam, the Corruption Eradication Commission of the Republic of Indonesia, the Anti-corruption Agency of Malaysia, and the Corrupt Practices Investigation Bureau of the Republic of Singapore on cooperation for preventing and combating corruption
- Memorandum of understanding on the Cooperation between Ministry of Interior of Cambodia and Ministry of Public Security of People's Republic of China
- Memorandum of Understanding on The Exchange of Information related to Money laundering and terrorism financing (MOU) between Cambodian Financial Intelligence Unit (CAFIU) and Bank Negara Malaysia dated on 03 April 2009, and MOU between CAFIU and Srilankar dated on 26 October 2009, and MOU between CAFIU and Bangladesh dated on 26 October 2009, and MOU between CAFIU and Japan dated on 19 July 2011, and MOU between CAFIU and State Bank of Vietnam dated on 28 March 2012.

**(b) Observations on the implementation of the article**

648. It was concluded that Cambodia is in compliance with this provision of the Convention.

## **Article 47. Transfer of Criminal Proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

649. Cambodia indicated that this matter has not been considered yet. At the present, Cambodian law or regulation does not stipulate about the transfer of criminal proceedings.

650. The Cambodian government is considering drafting a bill on the transfer of criminal proceedings.

### **(b) Observations on the implementation of the article**

651. It was recommended that Cambodia consider the possibility of transferring proceedings for the prosecution of a Convention offence in cases where such transfer is considered to be in the interests of the proper administration of justice.

## **Article 48. Law Enforcement Cooperation**

### **Paragraph 1 of Article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

652. Cambodia does not consider the Convention as a basis for mutual law enforcement cooperation.
653. Cambodia indicated that it is a member of INTERPOL, ASEANAPOL and SEA-PAC.
654. Cambodia is a member of INTERPOL. The INTERPOL National Central Bureau (NCB) of Cambodia is located within the Ministry of the Interior, Department of International Police Cooperation. Cambodia shares information via Interpol and uses the I-24/7 secure network.
655. ASEANAPOL (<http://www.aseanapol.org/>) is a conference rather than an operational organization. The first formal meeting of the Chiefs of ASEAN Police was held in Manila, Philippines on the 21 to 23 October 1981. This annual meeting was called ASEANAPOL Conference. The current members of ASEANAPOL are Brunei, Cambodia, Indonesia, Lao People Democratic Republic, Malaysia, Myanmar, The Philippines, Singapore, Thailand and Vietnam. During the 29th ASEANAPOL Conference in Hanoi, Vietnam in 2009, the Terms of Reference on the establishment of a permanent ASEANAPOL Secretariat were endorsed. Kuala Lumpur was made the permanent seat of the Secretariat.
656. The South East Asia Parties Against Corruption (SEA-PAC, <http://www.sea-pac.org/>) were established to establish and strengthen collaborative efforts against corruption among the parties, and to increase capacity and institutional building among the parties in preventing and combating corruption. With the exception of Myanmar, which has yet to sign the MoU, SEA-PAC geographically covers the same region as the Association of South East Asian Nations (ASEAN). However, SEA-PAC is not accredited in the ASEAN framework but it has a similar strategic plan, a more flexible, informal structure and working system, based on information sharing and consensus.
657. The ACU has MoUs with the anti-corruption agencies of Lao PDR and Thailand.
658. The Cambodian Financial Intelligence Unit (CAFIU) became a member of the Asia Pacific Group (APG) of FIUs in 2004. In 2015 it became a full member of the Egmont Group. It has MoUs with its counterparts in Malaysia, Bangladesh, Lao, Thailand, Japan, Indonesia etc. The exchange of confidential information is stipulated in the various MoUs. The FIU also uses the Egmont Secure Web.
659. Database systems which could share information, especially general information, can be found at the ministries through website and printed news bulletin etc. Website of Ministry of Interior: [www.moi.gov.kh](http://www.moi.gov.kh) <<http://www.moi.gov.kh>> Website of Ministry of Justice: [www.moj.gov.kh](http://www.moj.gov.kh) <<http://www.moj.gov.kh>> Website of Anti-corruption Unit: [www.acu.gov.kh](http://www.acu.gov.kh) <<http://www.acu.gov.kh>> Website of Cambodian National Bank: [www.nbc.gov.kh](http://www.nbc.gov.kh) <<http://www.nbc.gov.kh>>

660. Cambodia has appointed liaison officers for MLA, SEA-PAC, Interpol, ASEANAPOL. The liaison officer positions within law enforcement authorities are:

1. Ministry of Justice

HE. PHOV SAMPHY, General Director of Research and Development on Justice General Department

2. Anti-Corruption Unit

Department of Legal, Complaint, and International Affairs

Law on Anti-money laundering and combating the financing of terrorism (Promulgated by Royal Kram No. NS/RKM/0607/014 dated 24 June 2007)

Article 25 Relationships with Foreign FIU

1. The FIU may, subject to a reciprocal arrangement, exchange information with foreign FIU, provided that they are subject to similar requirements of confidentiality and irrespective of the nature of those units. It may, for that purpose, conclude cooperation agreements with such units.

2. Upon receipt of a request for information or transmission from a counterpart foreign FIU, it shall comply with that request within the scope of the powers conferred upon it by the present Law.

SEA-PAC

Article 2 Areas of Cooperation

The areas of the cooperation may include, subject to the Parties' respective domestic laws, regulations, and practices, within the limits of their competence the following:

- a. To exchange information in respect of methods and means of criminal acts of corruption and/or corrupt practices (including, money laundering and proceeds of crime of corruption);
- b. To exchange information in respect of methodology and modus operandi of their respective units dealing with financial intelligence where such units are maintained by the Parties;
- c. To conduct training, courses, exchange of expertise and human resources personal in the area such as forensic accounting, forensic computer, forensic engineering, polygraph and voice analyzer;
- d. To host and participate in forums, workshops, seminars, conventions, and conferences;
- e. To exchange information on community education, to enhancing public awareness on anti-corruption, including media campaign and promoting integrity as well as to strengthen public participation;
- f. To provide technical assistance in operational activities;
- g. To consider the necessity and appropriateness of a common methodology of evaluation on an anti-corruption index;
- h. To share information on relevant intelligence data, statistic, and corruption crime records;
- i. To perform other areas of cooperation as deemed necessary.

Article 4 Technical Arrangement

Activities described in this Memorandum of Understanding may be implemented through the development of specific arrangements, programs or projects between the Parties. Such arrangements, programs or projects shall specify the objective, financial arrangement, and other details relating to specific undertakings of all the Parties involved.

Article 6 Implementation Mechanism

- a. The Parties shall hold annual meeting on rotational basis to review the implementation of this Memorandum of Understanding and to recommend programs of cooperation.
- b. Special meeting can be held on a date and venue as agreed and deemed necessary by the Parties.
- c. The Parties shall discuss to resolve any issues regarding the operation of this Memorandum of Understanding.
- d. Each Party shall designate its representative as Contact Person. Any change of Contact Person. Any change of Contact Person shall be communicated to all Parties concerned.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 49: Repatriation of the proceeds of Corruption

In case assets and corruption proceeds are found kept in foreign states, the competent authority of the kingdom of Cambodia shall take measure to claim that asset and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia.

**(b) Observations on the implementation of the article**

661. During the country visit, Cambodia added that it does not have liaison officers in other countries.
662. It was recommended that Cambodia should endeavour to establish and enhance channels of communication between competent law enforcement authorities, agencies and services. In particular, the ACU was encouraged to cooperate with its counterparts in the region and to conclude more MoUs with them; as well as to provide for ways to exchange case-related information.

**Paragraph 2 of article 48**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

663. Cambodia indicated that it considers the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.
664. Cambodia referred to its previous answer. Moreover, it cited the following provisions:
- ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
  - SEA-PAC Memorandum of understanding between the Anti-corruption Bureau of Brunei Darussalam, the Corruption Eradication Commission of the Republic of Indonesia, the Anti-corruption Agency of Malaysia, and the Corrupt Practices Investigation Bureau of the Republic of Singapore on cooperation for preventing and combating corruption
  - Memorandum of understanding on the Cooperation between Ministry of Interior of Cambodia and Ministry of Public Security of People's Republic of China
  - Memorandum of Understanding on the Exchange of Information related to Money laundering and terrorism financing (MoU) between the Cambodian Financial Intelligence Unit (CAFIU) and Bank Negara Malaysia dated 3 April 2009;
  - MOU between CAFIU and Sri Lanka dated on 26 October 2009;
  - MOU between CAFIU and Bangladesh dated 26 October 2009;
  - MOU between CAFIU and Japan dated 19 July 2011;

MOU between CAFIU and State Bank of Vietnam dated 28 March 2012;  
MOU between CAFIU and South Korea dated on 27 August 2013;  
MOU between CAFIU and Thailand dated 30 January 2014.

**(b) Observations on the implementation of the article**

665. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Paragraph 3 of article 48**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

666. Cambodia indicated that it attaches importance to the fight against crime committed with the use of modern technology. A unit dealing with this type of crime has been set up at the Office of the Attorney General; it is called the Telecommunications Unit. Besides, the police has a unit that monitors e-crime.

**(b) Observations on the implementation of the article**

667. It was concluded that Cambodia is in compliance with this provision of the Convention.

**Article 49. Joint Investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

668. Cambodia indicated that it is compliant with this provision, without citing any legal basis.

**(b) Observations on the implementation of the article**

669. During the country visit it was clarified that the MoUs signed so far do not contain any provisions on joint investigations. Neither does the AMLAT.

670. It was suggested that Cambodia consider concluding bilateral or multilateral agreements or arrangements whereby the competent authorities concerned may establish joint investigative

bodies; or, in the absence of such agreements or arrangements, to undertake joint investigations on a case-by-case basis.

## **Article 50. Special Investigative Techniques**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

671. Cambodia indicated that it is compliant with this provision.

Law on Anti-Corruption (Promulgated by Royal Kram No. NS/RKM/0410/004 dated 17 April 2010)

Article 27 Powers of the Anti-corruption Unit related to monitoring

Being contradictory to article 105 (prohibition from wire-tapping), and article 172 (wire tapping ordered by the court) of the criminal procedure code, in the case there is clear hint of corruption offence, the ACU can:

a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.

b. Check and order the provision or copy of authentic documents or individual documents, or all bank, 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 operations aimed at collecting real evidence.

The above measures shall not be considered as violations of professional secrets. The secret of banks shall not serve as justification for not providing evidence related to corruption offences in the provisions of this law.

### **(b) Observations on the implementation of the article**

672. Art. 27 of the AC Law allows for the use of special investigative techniques.

673. During the country visit it was added that these techniques also include controlled delivery. It was clarified that evidence can be used in court.

674. It was concluded that Cambodia is in compliance with this provision of the Convention.

UNODC