

Chapter 12
Extradition and Mutual Assistance in relation to Terrorist Offences

Part 1

Preliminary

Article 91

Interpretation

Terminology in this Chapter:

- (1) **mutual assistance** means assistance requested by the Royal Government of Cambodia or by the Government of a foreign State in relation to:
- (a) the investigation of, or court proceedings for, an offence under this Law or an offence under the law of a foreign State that corresponds to an offence under this Law; or
 - (b) investigations or proceedings relating to tainted property.
- (2) **requesting State** means a State that requests the extradition of a person or makes a request for mutual assistance.

Article 92

When a foreign offence corresponds to an offence under this Law

- (1) An offence under the law of a foreign State corresponds to an offence under this Law if some or all of the acts or omissions constituting that offence would, if committed in the Kingdom of Cambodia, constitute an offence under this Law.
- (2) The requirements of paragraph (1) above are satisfied in relation to a request from a foreign State although:
- (a) the acts or omissions constitute the offence within a different category of offences; or
 - (b) denomination, use of terminology or definition or characterisation of the offence are different; and
 - (c) the constituent elements of the offence under the law of the requesting State are different from the constituent elements of the offence under this Law if, having regard to the totality of the acts or omissions presented by the requesting State, an offence under this Law would have been committed.

Article 93

Political and fiscal offences

An offence under this Law and a corresponding offence under the law of a foreign State are each not to be treated as a political offence, an offence connected with a political offence or an offence inspired by political motives, or as a fiscal offence for the purposes of extradition or mutual assistance.

Part 3

Mutual assistance

Article 103

Requests of a foreign State to Cambodia for assistance in investigations or court proceedings in a foreign State

- (1) This article applies if the Royal Government of Cambodia receives a request from a foreign State for assistance in relation to:
- (a) an investigation into an offence under a law of that State that corresponds to an offence under this Law; or
 - (b) court proceedings for such an offence; or
 - (c) investigations relating to tainted property; or
 - (d) proceedings for the freezing or forfeiture of tainted property in the requesting State; or
 - (e) the freezing or forfeiture of tainted property in the Kingdom of Cambodia.
- (2) The Royal Government of Cambodia, through the courts or other relevant competent authorities, may provide assistance in any of the following ways:
- (a) taking statements or evidence in written or oral form from persons;
 - (b) assisting in making persons including persons held in detention available, with their consent, to give evidence or to assist in investigations;
 - (c) serving judicial documents;

- (d) executing searches;
 - (e) assisting in tracing tainted property;
 - (f) investigating financial dealings;
 - (g) obtaining information or evidence which may assist in the recovery of tainted property for forfeiture;
 - (h) freezing of tainted property so as to prevent any dealing in, or transfer or disposal of, the property pending a determination on forfeiture;
 - (i) seizing tainted property, including documents;
 - (j) implementing a final decision of the foreign State to forfeit tainted property;
 - (k) examining objects and sites;
 - (l) providing information and evidentiary items to the foreign State;
 - (m) providing the originals, or certified copies, of relevant documents or records including bank, financial, corporate or business records to the foreign State.
- (3) Information and evidentiary items that may be provided to the foreign State in accordance with subparagraph (2) (l) include all lawfully obtained material including material obtained by the interception of telecommunications or by the use of listening devices.
- (4) For the purposes of executing a request for assistance from a foreign State, the procedures and processes in the Kingdom of Cambodia for the investigation or prosecution of an offence against the laws of Cambodia may be used for the provision of assistance to the foreign State.

Article 104

Assistance may be provided subject to conditions

The Royal Government of Cambodia may provide assistance to a foreign State under this Chapter, subject to conditions.

Article 105

Mandatory grounds for refusal of a request for assistance

The Royal Government of Cambodia must not grant a request for assistance under this Part if it is satisfied that:

- (a) the request has been made for the purpose of prosecuting or punishing the person because of his or her race, religion, nationality, ethnic origin or political opinion; or
- (b) the person's position may be prejudiced because of his or her race, religion, nationality, ethnic origin or political opinion; or
- (c) the request relates to the prosecution of a person for an offence, and:
 - (i) the person has been acquitted or pardoned by a competent tribunal or authority in the foreign State; or
 - (ii) the person has undergone the punishment provided by the law of that State, for that offence or for another offence constituted by the same conduct as that offence.

Article 106

Bank secrecy rules do not affect mutual assistance

A request for assistance under this Part must not be refused for reasons of bank secrecy.

Article 107

Requests for giving of evidence at hearings in foreign States

- (1) This article applies if:
- (a) a proceeding relating to:
 - (i) an offence under the law of a foreign State that corresponds to an offence under this Law; or
 - (ii) freezing or forfeiture of tainted property has commenced in a foreign State; and
 - (b) the foreign State requests the attendance of a person who is in the Kingdom of Cambodia at a hearing in connection with the proceeding; and
 - (c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceeding; and
 - (d) the person has consented to giving evidence in the foreign State.
- (2) The foreign State must give the following undertakings:

(a) that the person will not:

(i) be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person's departure from the Kingdom of Cambodia; or

(ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from the Kingdom of Cambodia, if the person could not be subjected to the civil suit if the person were not in the foreign State; or

(iii) be required to give evidence in any proceeding in the foreign State other than the proceeding to which the request relates;

unless the person has left the foreign State or the person has had the opportunity of leaving the foreign State and has remained in that State otherwise than for the purpose of giving evidence in the proceeding to which the request relates;

(b) that any evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign State other than the offence of perjury in relation to the giving of that evidence;

(c) that the person will be returned to Cambodia in accordance with arrangements agreed by the Royal Government of Cambodia;

(d) if the person is being held in custody in Cambodia and the Royal Government of Cambodia requests the foreign State to make arrangements for the keeping of the person in custody while the person is in the foreign State:

(i) that the State will make appropriate arrangements for that purpose; and

(ii) that the person will not be released from custody in the foreign State unless the Royal Government of Cambodia notifies an appropriate authority of the foreign State that the person is entitled to be released from custody under Cambodian law; and

(iii) if the person is released in the foreign State as mentioned in sub-subparagraph (ii), that the foreign State will pay the costs of the person's accommodation and expenses until the proceeding to which the request relates is completed.

Article 108

Request by Cambodia to a foreign State for assistance in investigations or court proceedings

(1) The Royal Government of Cambodia may request a foreign State to provide assistance in relation to:

(a) an investigation into an offence under this Law; or

(b) court proceedings for such an offence; or

(c) investigations relating to tainted property; or

(d) proceedings for the freezing or forfeiture of tainted property in the Kingdom of Cambodia;

or

(e) the freezing or forfeiture of tainted property in the requested State.

(2) The request may be for assistance in any matter listed in paragraph 2 of article 103 of this Law.

(3) Evidence lawfully obtained in the foreign State may be used in evidence in proceedings in the Kingdom of Cambodia.

(4) If a person who was being held in custody in the foreign State is made available to give evidence in the Kingdom of Cambodia and the foreign State requests the Royal Government of Cambodia to make arrangements for the keeping of the person in custody while the person is in the Kingdom of Cambodia, the Royal Government of Cambodia:

(a) must make appropriate arrangements for that purpose; and

(b) must not release the person from custody in the Kingdom of Cambodia unless the foreign State notifies an appropriate authority of the Royal Government of Cambodia that the person is entitled to be released from custody under the law of the foreign State; and

(c) must, if the person is released in the Kingdom of Cambodia as mentioned in subparagraph (b), pay the costs of the person's accommodation and expenses until the proceeding to which the request relates is completed.

(5) A person made available by a foreign State to give evidence in the Kingdom of Cambodia must be returned to that foreign State, without the need for extradition proceedings, in accordance with arrangements agreed with that foreign State.

Article 109

International Cooperation

The provisions of Part 3 of this law do not limit or prevent the giving or receiving of information or international cooperation in relation to an offence under this Law, or a corresponding offence under the law of a foreign State, by any other means.