

## **CHAPTER I**

### **INTRODUCTION**

#### **A. BACKGROUND**

Cambodia is a country located in Southeast Asia with Phnom Penh as its capital city. It is 181,035 square meters in size with a total population of 16.7 million (BBC, 2011). It is a country that consists of 20 provinces, 3 of them have quite short maritime boundaries, 2 municipalities, 172 districts, and 1.547 communes. It also has a 435 km coastline and a very large area of mangrove forest. Like most Southeast Asian countries, Cambodia is also a tropical climate country (Tourism Cambodia, 1999a). The language that is being used in Cambodia is Khmer which was influenced by Indic languages Pali and Sangkrit from India. Not only that, the Khmer language is also influenced by spoken and written Thai. Some of the technical languages are also influenced by French. Even so, English is also being used especially in hotels and business areas in the modern days. The Khmer language has a lot of influence from various countries because in the past, Cambodia was being occupied by various countries including French and Japan. Khmer language consists of 33 consonants and 26 vowels (Tourism Cambodia, 1999b).

Cambodia once suffered from a tragical history of genocidal regime that occurred in 1975-1979. During that time, out of 7 million of the population, 3 million died. After 5 years of civil war, a communist party named The Communist Party of Kampuchea (CPK) also known as Khmer Communist Party which was led by Pol Pot made their way towards Phnom Penh. Sihanouk was the king of Cambodia during 1941-1955 before Pol Pot took over his position to rule Cambodia. Pol Pot strived to realize the vision he had for Cambodia. He wanted the country to become an agricultural society and the first thing he did was closing the border of Cambodia from other countries (Feinberg, 2009). After the arrival of the CPK, the people of Cambodia were taken to the countryside in order to perform agricultural task to produce massive amount of rice to be exported to other country. The people, regardless of age, gender,

and ethnicity were forced into doing labor which results in a large amount of people died during this period because they were being over-worked and underfed so they suffer from malnutrition and exhaustion (David P Chandler, 2018). All these suffering resulted in severe human rights violations such as torture, round up, and murder, and also the collapse of the economy. There was also a widespread sickness, severe cases of human degrading, and the law was completely abandoned and destroyed.

The ruling of CPK lasted for 5 years before finally collapsed because Vietnam invaded by attacking the border created by the Communist Party during their rule. Vietnam was also concerned about the constant human rights violations and the horrible conditions that happened in Cambodia. Eventually, Vietnam controlled Cambodia for about 20 years after (Feinberg, 2009). During the shift of authority, there were a few challenges faced by Vietnam including the lack of intellectual resources and skilled people which was necessary for rebuilding its economy and also choose the political leader, the lack of teachers and scholars, and the increasing amount of corruption in every sectors of the government (Curtis, 1998; Gottesman, 2003).

As time passed, corruption in Cambodia continued to rise. After the genocidal regime and civil war that happened in Cambodia, many people were forced to move their homes to the countryside. After the war ended, they were asked to return to their places, but the situation was concerning. Corruption occurred mainly because of a few reasons such as lack of development, poor living standards, and the lack of people that can be hired in order to develop the economy in Cambodia. Another reason corruption happens in Cambodia is because of the poverty. People in poverty needs money, sometimes they smuggle or even rob things in order to fulfill their needs which is also a form of corruption. There were no institutions nor law that has the power to arrest all the public officials that were corrupt. The United States once provided economic and military aid towards Cambodia, but instead, the public officials used it for their private gain instead of using it for economic growth (Slocomb, 2010).

Various cases of corruption have occurred in Cambodia in various sectors. One of the most common places where corruption happens is among the public officials. In 2006, the Asian Human Rights Commission found that in the northeast of Cambodia,

Rattanakiri, a judge at the provincial court took a bribe over USD\$ 13,000 in favor of the release on bail of seven men who were arrested for murder and promised to drop the charges against them. The judge that received this bribe was Nong Sok, a judge in at the provincial court of Rattanakiri. One of the defendants told a radio journalist that Nong Sok made a deal with the court prosecutor after being offered the money. Later, the radio journalist arranged an interview with judge Nong Sok and the judge admitted that he took the money but claimed that the money is not a form of “bribe” but rather it was form of gratitude from the defendants because the judge did not put any pressure nor ask for it. The defendants only wished to get bail and the judge and the prosecutor agreed then received the money. In Cambodian law, murder is a form of criminal activity which is non-bailable. According to the Article 38 of the criminal law of 1992 also known as UNTAC law, Judge Nong Sok was found guilty of extortion which carries a sentence of three to seven years in prison and a fine equal to double the amount of money extorted. The prosecutor that participated in the crime must be punished equally. Prime Minister Hun Sen instituted an “iron fist” policy in March 2004 aiming at purging corruption from the judiciary. Due to this policy, three judges, two deputy prosecutors, and two court clerks were sentenced to prison for accepting money from alleged armed robbers. Several other magistrates faced disciplinary action as a result of it as well. A lot of people have praised this strategy, especially after witnessing judges being convicted and imprisoned for corruption (Asian Human Rights Commission, 2006).

Another example that can be considered as a form of corruption is human trafficking. Cambodia is considered to be a source, transit, and destination country for human trafficking. These traffickers are reportedly highly organized crime syndicates, parents, relatives, friends, intimate partners, and neighbors (Chêne, 2009). Victims are trafficked for the purpose of commercial sexual exploitation and forced labor. Women and girls are trafficked to Thailand and Malaysia for exploitative labor as domestic workers and forced prostitution. According to the Ministry of Women’s and Veteran’s Affairs, approximately 88,000 illegal Cambodian immigrants’ who are women are in Thailand. As many as 40-60% of the sex workers (14,000) in Cambodia were forced

into the business (Ministry of Women's and Veteran Affairs, 2003). Another source stated that there are at least 15,000 women sex workers active in Cambodia. These women have been trafficked and forced to work in brothels, massage parlors, karaoke bars, etc. while children are mostly trafficked for sexual exploitation in Cambodia and Vietnam (Takamatsu, 2004).

According to the 2006 US Department of State Human Rights, a few law enforcement and government officials are believed to have received bribes to facilitate the trafficking and sex trade. The Cambodian Ministry of Interior reports 65 people caught for human trafficking and several other prosecutions of police officials for trafficking-related corruption charges in 2006. One perpetrator was the former Deputy Director of the Police Anti-Human Trafficking and Juvenile Protection Department was convicted for complicity in trafficking and sentenced to five years in prison. In addition, two of the official workers who worked for him were found guilty and given seven years in prison. Human trafficking can be considered as a form of corruption because of a few reasons. First, human trafficking is caused by poverty (Chêne, 2009). In 2003, approximately 90% of Cambodians were still living in poverty in rural areas and most of them were women. This caused pressure towards the parents' consent to allow their daughters to go with traffickers. Lack of education is also one of the reasons of human trafficking because there is a gender gap in education. Plenty of Cambodians have limited opportunity for education and vocational trainee. Lastly, debt slavery is a form of oppression when women are forced to repay money to traffickers, smugglers, brothel owners, or agencies. This money can also be used to pay for travel documents, food, housing, and other services (Sari, 2010).

According to Transparency International Corruption Perspective Index, Cambodia is one of the Southeast Asian country that ranked the lowest in corruption with the score range from 18 to 23 out of 100 as the maximum score with 0 as highly corrupt and 100 being very clean.

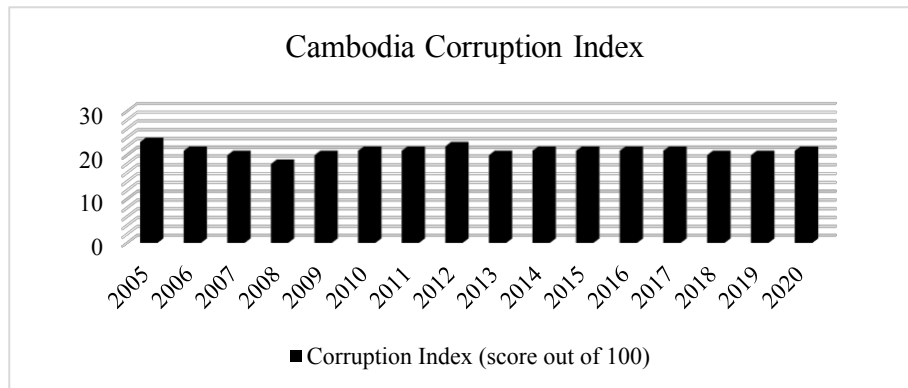


Figure 1: Cambodia Corruption Index (source: Transparency International)

According to the research conducted by the Economic Institute of Cambodia, the cases of corruption in Cambodia can occur in two sectors, public and private sectors. Firstly, corruption in public sector are concentrated in three public services including the commune office, schools, and health center services such as hospitals. In these three public services, the most common corruption behavior is bribery or so-called “unofficial fees” which means the people are paying a certain amount of money not for the country or the government but for the public officials’ private needs. A lot of people that are using the service from the public service mostly does not know the difference between the “official fees” and “unofficial fees” but choose to pay it all. There are reasons to pay these unofficial fees. For the commune office in most cases, people often offer the fees with their own intention as a form of expressing gratitude to the commune officials for providing service and quickening the process of handling something. However, in some cases, the public officials ask people to pay for the unofficial fees. For school and health service, both of them are similar for having people pay extra money to get better services. The main reason why this keeps happening is because of the low salaries of the public officials (Deline et al., 2006).

Meanwhile, in private sector, corruption happens often during the inspections by the public officials. The corruption mostly occurred in tax inspections as they just ask for money. Some entrepreneurs are often being asked to pay a certain amount of money during tax inspections but the amount can differ from time to time, meaning the money they pay is the unofficial fees. On average, the private sector pays approximately 330 million USD for the unofficial fees which is about 2.8 percent of their annual revenue (Hach, 2006).

Corruption in Cambodia consists in various forms:

1. Bribing to employers: Happens when one needs a job, one has to give a special fee in order to be hired.
2. Selling or renting their children: Family from lower economic classes struggle to live with large number of families, thus they “sold” their child to gangs or even send the older girls into prostitution.
3. Bribing tax agents and customs officers: Business owner or public officials often bribe the tax agents in order to avoid paying higher tax or this is often called as tax evasion.
4. Land-grabbing: There are lot of unowned real estate and property in Cambodia due to Pol Pot’s rule where they were forced to immigrate to countryside and a genocide that happened back then which made a lot of people being separated from their own family, thus, dispute about ownership of the land is happening and people with money can easily gave money to the authorities in order to obtain legal ownership of the land or property.

There are five factors why corruption happens in Cambodia. First, the low salaries of the public officials. Second, the absence of independent judiciary. Third, the lack of constructive anti-corruption mechanisms. Fourth, the spread of corruption culture. Lastly, the weak law implementation (Feinberg, 2009).

In order to combat corruption, The Royal Government of Cambodia has put a lot of attention to the issue. Cambodia adopted a criminal law in which three of its articles were related to corruption (embezzlement, bribe taking, and bribe giving)

in 1992. In 1994, Cambodia drafted an anti-corruption law, but the law was not able to be passed to the National Assembly. Cambodia also first established an anti-corruption mechanism named Unit Against Corrupt Practices in 1999 which was later restructured and renamed as Anti-Corruption Unit in 2006. The Prime Minister of Cambodia, Samdech Techo Hun Sen, also stated that *“Fighting corruption is to make each individual not want to corrupt (education), cannot corrupt (prevention), and dare not corrupt (law enforcement)”* (Ear, 2007; Nuon, 2012). Hun Sen also stated that he would force his ministers to answer questions given by the National Assembly and threaten any official who do not stop their corrupt activities to bring it to the court. Prime Minister Hun Sen also offer incentives to those who are able to arrest smugglers and also vows that he will be re-arresting hundreds of armed robbers who were able to escaped out of jail because they bribe the police and arresting the corrupt judges and prosecutors (SEAPAC, 2004).

In 5 September 2007, Cambodia ratified the UNCAC in order to optimize in combatting corruption in the state. United Nations Convention against Corruption or also known as UNCAC is an anti-corruption instrument adopted by the UN General Assembly on 31 October 2003 and gain its force in 14 December 2005. The secretariat of UNCAC is housed in the UNODC (United Nations Office on Drugs and Crime) in Vienna. UNCAC is the only universal legally binding anti-corruption instrument. As of October 2023, there are 190 parties that are participating the convention, 140 of whom have signed the convention. There are three main purposes of this Convention as stated in the Text of Convention: (UNODC, 2005)

- 1. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;*
- 2. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;*
- 3. To promote integrity, accountability and proper management of public affairs and public property.*

UNCAC represents an achievement which is as a global response to a global issue. This convention is unique because of its worldwide coverage and provisions. It also acknowledges the importance of preventive and punitive measures. Countries that have ratified the convention are obligated to help each other in order to prevent and combat corruption through technical support in various range including financial and human resources, training, and research. UNCAC also urges for the participation of citizens and civil society organizations in its processes and emphasizing the importance of citizens' access to all information related to the process. In UNCAC, there are a few provisions are mandatory, and some of them are either "encouraged" or optional. A few provisions in the Convention are based on the principal of the domestic law of a country, which gives a room for different interpretations of the Convention's specification in any country. First, states parties are obligated to adopt policies to prevent corruption and appoint a body or bodies to coordinate and supervise their implementation. These prevention policies include actions for public and private sectors such as transparency and proper financial management, effective access to public information, auditing, and other standards for private sectors, independent judiciary, and involvement of the citizen in private sectors. It also includes efforts to prevent and combat corruption, and efforts to prevent money-laundering. Second, state parties have to criminalize bribery, as well as embezzlement of public funds. State parties are required to criminalize a few actions including obstruction of justice and concealment, conversion, or transferring results of crime. Those who are involved or attempted to commit corruption will have to be punished. Third, state parties are obligated to help each other in cross-border criminal matters including helping in gathering and transferring evidence of corruption in order to use it in court. Fourth, the right to have back the stolen public assets, this is actually one of the main "favorite" points of the Convention that convinced many developing countries ratified the Convention. Lastly, technical assistance which is aimed to help the countries in the Convention including provisions on training, material, and human resources, research, and information sharing. State parties should be helping each other by conducting



evaluations and studies on the forms, causes, and costs of corruption in various context in order to develop better policies for combatting the issues (Hechler, 2010).

## **B. RESEARCH QUESTION**

Based on the background explained above, the research question that will be discussed in this thesis is: **How does Cambodia's ratification of the United Nations Convention against Corruption (UNCAC) affect the anti-corruption measures in its country?**

## **C. THEORETICAL FRAMEWORK**

In order to help the writer to understand and analyze the topic of the thesis, the use of theories and concepts will be needed. This thesis will be using International Regime as the theory and Corruption as the concept.

### **International Regime Theory**

In accordance with Stephen D. Krasner, international regimes are defined as “principles, norms, rules, and decision-making procedures where actors’ expectations come together in a certain issue-area”. Principles are a form of beliefs of the truth, cause and effect, and fact. Norms are the standard of how we should behave according to rights and our obligation. Rules are a certain guidelines and/or prohibition for our behavior. Decision-making procedures are process for creating and carrying out collective choice. Another definition of regime by Oran Young, Raymond Hopkins, and Donald Puchala sees regimes as “a characteristic that is tightly related with international system”. Meanwhile, Susan Strange argues that regime is “a misleading concept that made the relation between basic economic and power relationship became vague and unclear”. It needs to keep in mind that regime is something that is more temporary which can be revised or changed by the time and when there is shift in power or interest (Krasner, 1982).

There are also a lot of other definitions of regime by other scholars and figures but it can be concluded that regime is a set of regulation or rules that are created with

a collective discussion that is temporary. A lot of arguments are made discussing the differences between agreements and regimes. Agreements are made when needed, while regimes are to facilitate agreements, also most of the regimes are short-run or it can only last for a short period of time. This happened because regime is made based on interest and goals between states that created the regime, while interest can change anytime. According to Kaplan, regime is a situation in which balance requires commitment to rules that constrain immediately, short-term power maximization. Changes in principles and norms are changes of the regime itself (Krasner, 1982).

In International Regime, there are a few processes involved in it. First, each state involved needs to discuss and decide whether the policies are beneficial to their own state before deciding to ratify it. Prior to ratification, there is negotiations period, each state needs to observe each other's policy by adjusting in order to get the best result. In the earlier process of negotiation, unsureness may make it difficult for states to implement the treaty. When a state is not sure yet whether the treaty will be beneficial or useful for its state, the next thing to do is to increase the possibility of ratification by doing more negotiations and making sure the treaty is focusing on something significant for the state's domestic people because the government is responsible for the negotiations after all (Putnam, 2017).

Regimes could also affect a state behavior during and after negotiations. When a treaty has big effect to a state during negotiations, the treaty may have less effect after the treaty is ratified. Thus, there is a possibility in implementation of a treaty prior to ratification. Treaties often force legally binding responsibility towards states, so they cannot proceed unless the states involved implement the policies that are necessary for its states. It is possible for a state to implement treaties upon ratification. If a state has ratified a treaty, there is high possibility for them to implement the policies according to the agreement terms with other partner states preferences (Baccini & Urpelainen, 2014). In relevance during the negotiation period, a state may implement policies during the negotiation period instead of waiting for signature, if the executives of the state are signaling to implement then they do not need to wait until the treaty being

signed and ratified. They consider the negotiation process as a sign of willingness to cooperate and the signature and ratification is a process of reassurance (Kydd, 2007).

According to the Vienna Convention on the Law of Treaties 1969, ratification defines as the international act where a state indicates its consent to be bound to a treaty if the state parties intended to show their consent by such an act. In multilateral treaties, the usual procedure is for the depositary to collect the ratifications of all state in order to keep all parties informed of the situation, while ratification is usually accomplished by exchanging required instruments. After ratification happened, the convention will give the state a certain amount of time to seek the required approval for the treaty to the domestic level and to enact the necessary legislation to give domestic effect to the treaty (United Nations Treaty Collection, 1969). Ratification means that the state has signed to a certain treaty and has agreed to be bound by it by affirming and making it clear that it will be approved afterward (Waldock, 1962).

International regime results in treaties, laws, rules, and policies. According to Cambridge Dictionary, policy is a set of idea or plan of what to do in a specific situation which has been agreed by a group of people, government, or a political party that has the same goal or purpose (Cambridge Dictionary, 2010). There are two types of policy, monitoring and incentives program and programs that change the rules of the system. (Hanna et al., 2011). In this thesis, the policy is the Convention itself which consists of a few Articles that has the role of guidance of measures to its State Members.

### **Concept: Corruption**

Corruption comes from Latin term *corrumpo*, which means “to bribe, to damage, destroy, and digest”. According to Chinenye Leo and Edet Patrick, these days, corruption has become a global issue all over the world and there is no country in the world that can escape from the threat of corruption (Ochulor & Bassey, 2010). Ata and Arvas argued that corruption should be considered as a social aberration instead of considering it as an individualistic action. In accordance with the studies conducted by Ata and Arvas, corruption is a multi-dimensional and complicated concept which can be affected by a few factors such as economic factors (economic development, economic freedom, inflation, and distribution of income, etc.), and also political, social

and cultural factors (democracy, political stability, gender, and ethnolinguistic diversity) (Ata & Arvas, 2011).

According to Transparency International, there are 3 types of corruption. First, petty corruption, which is an abuse of power by low, mid, and high-level public officials during their interaction with average citizens that are often attempting to access basic goods or services in several places such as hospitals, schools, police station, etc (Transparency International, 2019a). Petty corruption is the type of corruption that can be found easily in daily life, one simple example of petty corruption is when a citizen giving “tip” or “money” to a police officer in order to avoid being ticketed by the police. Another example of petty corruption is when someone is about to make an important document such as driver’s license, but wanted to avoid the test and regulation, so they “pay” the police officer to get the driver’s license ready without doing any test. These behaviors are actually considered as petty corruption which happens very often and being normalized in our society, that is why we sometimes are not aware of it.

Second, grand corruption is high-level abuse of power that benefits a few people but causing way a lot of lost and harm. The difference of grand corruption and petty corruption is the huge amount of money involved in the corruption which can cause a great loss to the state.

Lastly, political corruption, which is corruption that occurs between political decision makers who abuses their position to benefit and maintain their power, wealth and status by manipulating the policies, institutions, and rules (Transparency International, 2019b). There are a few forms of political corruption, such as: bribery, which is used to maintain their power and influence in the public bureaucracy by giving money or gifts; trading of influence, which happens if public officials offers or accept requests from other parties to use their political influence and position to intervene in certain decision making process; buying and selling votes by politician and/or political parties, in order to win the election and maintain their power and influence; and nepotism, which is giving special treatment to relatives or family in certain political power it can be in the legislature, executive, or judiciary.

This situation often happens in political parties when the party leaders are filled by the family members of the party leader. Lastly, campaign financing which is funding political parties or legislative candidate for their campaign, even though it is still being argued whether this is considered as corruption or just considered as a political support. Political corruption has badly impacted the democracy system and also reduce the public trust in political parties and election organizers, not only that, political corruption also affecting the quality of the high state and government institutions because the country is being occupied or handled by people who are in power not because of their ability and ambition towards the country but because of corruption (AKSI-INFORMASI, 2022). Similar to grand corruption, political corruption involves high-level officials of state administration in effort to state capture, their role is actually to represent the people in the country but instead they betray the people for their own interest (AKSI-INFORMASI, 2023).

There are a few ways to combat corruption, but because corruption is a systematic issue, it needs a comprehensive and systemic way to destroy or combat it. A few ways to combat corruption are by strengthening the law regarding corruption, giving proper sanction to the people that are corrupt, allowing transparency in any process, and establishing an anti-corruption program that are focusing on investigating any act of corruption (Brock, 2018; BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT AFFAIRS, 2017).

#### **D. HYPOTHESIS**

According to the background and the theoretical framework that has been explained above, the hypothesis for this thesis is the ratification of the UNCAC in 2007 encouraged Cambodia to develop and implement comprehensive anti-corruption policies and measures in its country.

#### **E. RESEARCH METHOD**

For this research, the researcher will use a descriptive qualitative method as the research method. Qualitative method is used mainly to describe a non-numerical

research. The data collection process will be using secondary data obtained from journals, books, news, UNCAC reports, statement from Cambodia, and/or articles. The researcher decided to use this method because the data gathered in this research will be explained and analyzed using theories.

#### **F. SCOPE OF RESEARCH**

As mentioned in the title of this research is, the scope of this research will be limited from 2007 to 2020 in order to have enough and also updated data of the research to help elaborate and explain the research.

#### **G. WRITING SYSTEM**

This thesis will be divided to three chapters as follows:

**Chapter I:** This chapter consists of the background of the topic, research question, theoretical framework, hypothesis, research methodology, scope of research, and writing system.

**Chapter II:** This chapter will explain about Cambodia's strategy in combatting corruption.

**Chapter III:** This chapter will summarize the research and give a conclusion to the result of the research.