



KINGDOM OF CAMBODIA

Nation Religion King

Permanent Mission of the Kingdom of Cambodia
to the United Nations Office, the World Trade Organization
and other International Organizations at Geneva

Ref: 12/5/ 269

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office, the World Trade Organisation and other International Organisations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, Special Procedures of the Human Rights Council, and with reference to the letter dated 28 February 2012 by Ms. Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, has the honour to attach herewith the clarification (in Khmer with translated text in English) from H. E. Mr. Om Yentieng, Senior Minister and Head of the Cambodian Human Rights Committee of the Royal Government of Cambodia concerning the communication on the alleged criminal case against Judge [REDACTED]

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office, the World Trade Organisation and other International Organisations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 21 May 2012

To: Office of the United Nations High Commissioner
for Human Rights (Palais des Nations)

cc: Special Procedure of the HRC

Ms. Gabriel Knaul

Special Rapporteur on the Independence of Judges and Lawyers



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Royal Government of Cambodia
Cambodian Human Rights Committee
No. 052/12 Koor.Sor.Mor.Kor

Phnom Penh, 04 April 2012

Ms. Gabriela Knaul
UN Special Rapporteur on the Independence of Judges and Lawyers

I am very pleased to receive your letter KHM1/2012 dated 28 February 2012 and I would like to extend my gratitude for your support to the Royal Government of Cambodia in its efforts to fight corruption, especially in the case of [REDACTED] judge at the provincial court of Kandal, in January 2012.

Meanwhile, I also acknowledge your explanation on the investigation process in the case of Judge [REDACTED] and your good recommendation for the court to ensure its neutrality in making decisions.

We have also considered your proposal that all criminal cases concerning members of judiciary, including corruption cases as in the present case, should be referred to a different court in order to avert a possible lack of neutrality.

While considering your proposal, we would also like to brief you about some principles which Cambodia implements in criminal cases. Such principles include:

1. Equality before laws: this is a principle enshrined in the Constitution of the Kingdom of Cambodia. Mr. [REDACTED] is an individual whose position as a judge cannot be used as a basis to make an exception because according to the legal principle:

Article 39 of the Code of criminal procedure: the following prosecutors shall have territorial competence:

- The Prosecutor at the site where the offense was committed.
- The Prosecutor in the place of the residence of the person who is suspected for committing an offense.
- The Prosecutor of the territory in which the suspect for commission of an offense was arrested.

Judge [REDACTED] was arrested at the crime site which is Kandal provincial court; thus it is the territorial competence of Kandal court to press charges.

Article 123 of the Code of criminal procedure: competent judges are:

- the investigating judge at the place of a criminal offense;
- the investigating judge at the place of residence of a suspected offender;

- the investigating judge at the place where a suspected offender was arrested.

Judge [REDACTED] was arrested at the crime site which is Kandal court; thus the investigating judge of Kandal court shall have jurisdiction over this case.

Article 290 of the Code of criminal procedure: court 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.

[REDACTED] was arrested at the crime site in Kandal court of first instance; thus Kandal court of first instance shall have jurisdiction over this case.

2. Independence of judges:

Adjudication shall be conducted in the name of Cambodian citizens according to the procedure and laws in force. Only judges shall have the right to adjudicate. Judges shall carry out this duty by abiding by the laws strictly, wholeheartedly and in their own conscience.

The Kingdom of Cambodia grants independent power to courts of all levels including independent power of judges to make decisions as well.

We also have the same concern as you do in granting investigating powers in [REDACTED]'s case to a judge of the same court; nonetheless, according to the rule on territorial jurisdiction, we believe in the independence and neutrality of the judge who will decide on this case impartially without external influence and decide on the basis of the discretion provided by the law.

3. Experience:

The present case is not the first of its kind; we have already had one precedent. Prior to this case, our anti-corruption unit also arrested a prosecutor of Pursat court in connection with corruption, and we handed the case over to the prosecution at that court and the court of Pursat processed the case successfully; the Pursat court of first instance did its job very well. This experience has bolstered our confidence in the discretion of judges who have independent power to adjudicate.

However, transferring the case of [REDACTED] to a court other than Kandal court is also a proper measure which is also permitted by Cambodia law if there are proper reasons.

The accused himself, if he perceives with proper reason that the court which is processing the case is not able to provide justice to him for any reason, may submit a request to transfer jurisdiction to another court with competent authority to examine and decide on his case.

Regarding the present case, if any malpractice as you aforementioned emerges, the competent authority will examine and decide on transferring this case to a different court on the basis of proper reasons.

With regard to ██████████'s case, no malpractice has emerged so far. Therefore, we maintain our belief in the impartiality, independence and discretion of the judge who is handling the case.

In conclusion, as we have briefed above, we will take your good recommendation into consideration if necessary. For the time being, we would like to ask that you trust and support what our court is doing in ██████████'s case which is progressing.

Please accept the assurance of our highest consideration.

**Senior minister and
Head of Cambodia Human Rights Committee**

Om Yentieng