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HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the independence of judges and lawyers.**

REFERENCE: AL G/SO 214 (3-3-16)  
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28 February 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights resolution 17/2.

In this connection, I wish to draw to the attention of your Excellency's Government information received regarding **the criminal case against Judge XY**. Mr. XY, judge at Kandal Provincial Court, was arrested on corruption charges and is currently under investigation reportedly by a judge from the same court.

According to the information received:

On 20 January 2012, Judge XY was arrested by the Anti-Corruption Unit. Judge XY was allegedly caught taking a 5,000 USD bribe from a provincial land management official involved in a land dispute. Two days later, he was charged by Kandal Provincial Court with accepting a bribe (article 517 of the Penal Code). Judge XY is currently detained at Correctional Centre 1 (CC1) near Phnom Penh.

Judge Y of Kandal Provincial Court is in charge of the investigation. On 27 January 2012, he reportedly claimed that it was not unusual for the court to investigate their own. He added that the Anti-Corruption Unit did not request a change of venue for the investigation of the case. He allegedly said that "this case was not changed to another court because the Anti-Corruption Unit did not make a request to the Justice Ministry."

I would like to commend the positive steps undertaken by your Excellency's Government in combating corruption, notably the accession to the United Nations Convention Against Corruption on 5 September 2007, and the passing of the anti-corruption law in 2010, as recommended at the Universal Periodic Review (UPR) held in 2009 (Report of the Working Group, A/HRC/13/4, 4 January 2010, para. 82, sub-paras. 35-38; 40-42 and 45).

I also welcome the decision by your Excellency's Government to accept all the recommendations formulated at the Universal Periodic Review, including those requesting to strengthen efforts to guarantee the independence and impartiality of the judiciary (Report of the Human Rights Council on its thirteenth session, A/HRC/13/56, 8 February 2011, para. 356).

In the present case, the measures taken to investigate the allegations of bribery, which Judge XY has been charged with, are also commendable. I am however concerned about the fact that the investigation against Judge XY is being carried out by a judge from the same court. Please allow me to explain the reasons why I believe that cases of corruption against members of the judiciary should be referred to a court other than the one where they are exercising their judicial function.

The independence of the judiciary requires judges to "decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" in accordance with principle 2 of the United Nations Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985). A similar provision is also enshrined in principle 1.1. of the Bangalore Principles of Judicial Conduct adopted in The Hague on 26 November 2002.

The independence of the judiciary also requires judges to be independent from each other and free from any undue influence which may come from within the judiciary. This idea is embodied in principle 1.4 of the Bangalore Principles which stipulates that "In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently."

Furthermore, impartiality is essential to the proper discharge of the judicial office. Impartiality requires judges to perform their function "without favour, bias or prejudice" (Bangalore Principles 2.1). This implies that the judge should be free from any influence by factors such as the judge's relationship with a party or interest in the outcome. The fact that both judges used to discharge their judicial office in the same court carries in itself the high risk that the judge adopts an attitude or embraces a point of view which may sway or colour the outcome of the judgement, thereby rendering the judge unable to decide impartially. There may be indeed a potential conflict of interest.

Therefore, I would respectfully appeal to your Excellency's Government to seriously consider adopting measures to ensure that in all criminal cases involving members of the judiciary, including corruption, such as the present one, the case should be referred to another court to avoid possible lack of impartiality.

While measures taken to prosecute cases of corruption among the judiciary are important, I would like to recall that, as required by the United Nations Convention Against Corruption article 11(1), the fight against corruption among members of the judiciary also implies to "take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary." In this regard, I would like

to express my support in your Excellency's Government's efforts in developing legislation on the status of judges and prosecutors, as envisaged in article 135 of the Cambodian Constitution. I stand ready for any assistance in this regard.

I would appreciate a response within sixty days, and undertake to ensure that your Excellency's Government's response to the present letter is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers