



# FACTSHEET – UPR 2019 – Cambodia

## 3rd CYCLE UNIVERSAL PERIODIC REVIEW

### Access to Justice: Independence and Impartiality of the Judiciary

Despite continued recommendations in previous UPR cycles, an independent, impartial judiciary is still not a reality in Cambodia. The national framework does not, in practice, guarantee the independence of the judiciary; the executive hold excessive control over the judiciary with multiple high-level members of the judiciary also belonging to the ruling party. As a result, the judicial system is used as a tool to target political opponents, human rights defenders, trade unionists and journalists, whilst allegations of wrongdoing against public officials rarely lead to meaningful investigation or prosecution.

**Joint submission by:** Destination Justice (DJ), the Cambodian Center for Human rights (CCHR), and the Cambodian Human Rights and Development Association (ADHOC). Supported by Transparency International Cambodia (TI), the Advocacy and Policy Institute (API) and IFEX.

#### SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

25 of the 205 total recommendations received in Cambodia's 2<sup>nd</sup> UPR cycle were related to the administration of justice (8%); 17 of these recommendations were specifically related to the independence of the judiciary. During Cambodia's 3<sup>rd</sup> UPR cycle 198 recommendations were made, 25 of which broadly related to access to justice (13%), with 9 relating specifically to independence of the judiciary (36%). These include recommendations to: *"Adhere to international standards on the independence of institutions, notably the judiciary..."* (Ireland) and *"Amend the Laws on the Organisation of the Courts, the Statute of Judges and Prosecutors, and the Organisation and Functioning of the Supreme Council of the Magistracy, to guarantee and protect the independence of the judiciary"* (Belgium).

#### NATIONAL FRAMEWORK

Cambodia is a party to most key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR); in 2007, the Constitutional Council ruled that such treaties were directly applicable in Cambodian domestic law. The importance of an independent and impartial judiciary is highlighted in Article 14 of the ICCPR, stating that: *"In the determination of any criminal charges against him, of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"*. In addition, the Constitution of Cambodia provides for the separation of powers and for an independent judiciary (Arts. 51, 128, 130 & 132). The Law on the Organization and Functioning of the Courts, the Law on the Organization and Functioning of the Supreme Council of the Magistracy, and the Law on the Statute of Judges and Prosecutors ("laws on the judiciary") also contain fundamental protections to ensure the independence of the judiciary in Cambodia.

## CHALLENGES & IMPACTS

- In November 2017 the main opposition party was dissolved by the Supreme Court on the basis of allegations that its leader, Kem Sokha, committed treason, despite the fact that he has not yet been convicted and remains under effective house arrest.
- Prosecution of political opponents and political analysts for defamation, the criminal convictions of Facebook users for negative comments about the ruling party, and the absence of any prosecution in cases where public officials use violent rhetoric against protesters or political opponents.
- The arrest, detention and charges of treason of two journalists working on social and corruption issues and who were working for a news outlet critical of the government.
- In 2019, Cambodia ranked 125 out of 126 countries in the World Justice Project Rule of Law Index.
- The 2014 laws on the judiciary give the executive excessive control over the judiciary.
- High-level actors such as the Supreme Court's President and Appeal Courts President are members of the ruling party's central committee.
- The judicial system is used as a tool to target political opponents, rights activists, journalists and critical social media users. Between April 2017 and March 2018, legal actions were taken against at least 36 human rights defenders as a result of their work.
- The judiciary's lack of independence has fostered impunity, with crimes against environmental defenders, land activists, garment workers, trade unionists, and journalists often not investigated, or investigated without transparency, independence and impartiality.
- Allegations of wrongdoings by those connected to the government are rarely thoroughly investigated or prosecuted.

## RECOMMENDATIONS

### Recommendations made by Member States during the 3<sup>rd</sup> cycle of UPR:

- I. Complete the process of judicial reform, safeguarding the independence and impartiality of the court system, court personnel and judges, in accordance with international standards (**Norway**).
- II. Strengthen the independence and functioning of the judiciary, in particular by repealing or significantly amending the Law on the Organization of Courts, the Law on the Statute of Judges and Prosecutors and the Law on the Organization and Functioning of the Supreme Council of the Magistracy (**Austria, Belgium and Germany**).
- III. Take all steps necessary to strengthen the rule of law and to guarantee full judicial independence, consistent with international human rights standards (**Lithuania, Ireland and Italy**).
- IV. Further advance judiciary reforms and establish an independent justice system that is trusted and utilized by the people; to this end, make maximum use of the Extraordinary Chambers in the Courts of Cambodia as a model (**Japan**).
- V. Ensure accountability for human rights violations through independent investigations and the prosecution of perpetrators (**Ukraine**).

### Our further recommendations:

- I. Create a **publicly accessible grievance mechanism** where individuals alleging a lack of independence or impartiality, or alleging corruption or bribery of judicial officials (including police officers and members of the Bar Association of the Kingdom of Cambodia) can file a complaint, and ensure that prompt, thorough and impartial investigations follow, and that victims are given an effective remedy, in accordance with SDGs 16.5 and 16.6.
- II. Guarantee the effective and **impartial** application of the Constitution, legislation and court rulings, through the formal judicial system, in accordance with SDG 16.3.
- III. Amend the appointment procedure for judges, especially at the Supreme Court, to **ensure that judges are independent**, apolitical and have no conflict of interest.

*For additional details and full recommendations, please refer to the full Access to Justice submission.*