

តួនាទីរបស់តុលាការ

ក្នុងចំណោមច្បាប់ពាក់ព័ន្ធនឹងបរិស្ថាន

**Role of Judiciary**

**In their area of Environmental Law**

ដោយ គង់ តារាឆាត ចៅក្រមតុលាការកំពូល

**By Justice Kong Tarachhath,  
Supreme Court of Cambodia**

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- Judiciary power
- Legislation about environment

## References

- The Constitution of the Kingdom of Cambodia, adopted on 21. 9. 1993
- Law on the Organization of the Court, promulgated on 16.7.2014
- Law on the Organization and functioning of the Supreme Council of Magistracy, promulgated on 16.7.2014
- Law on the Statute of Judges and Prosecutors, promulgated on 10.8.2007
- Criminal Procedure Code, promulgated on 10.8.2007
- Civil Procedure Code, promulgated on 06.7.2006
- Laws relevant to environment as shown in each slide.

# Judiciary Power

- ✎ Like other countries in the world, Cambodia grants the decision making power relevant to dispute cases to judiciary body.
- ✎ ? Paragraph 4, Article 51 (new), of the Constitution states:  
“The powers shall be separated between the legislative power, the executive power and the judicial power.”

## ☛ **Article 128 (new) of the Constitution states:**

- The Judicial power is an independent power.
- The Judicial power is the guarantor of impartiality and the protector of the citizens' rights and liberties.
- The Judicial power covers all litigations, including administrative litigation.
- This power is entrusted to the Supreme Court and to the Jurisdictions of the various categories and at all the degrees.

☛ **Article 129 (new) of the Constitution states:**

- Justice is rendered in the name of Khmer people in accordance with the legal procedures and the laws in force.
- Only the judges are vested with the judicial function. The judges shall fulfill their duties in strict respect of the law, in all honesty and conscientiousness.

☛ **Article 130 (new) of the Constitution states:**

- No organ of the Legislative Power or of the Executive Power can exercise any judicial power.

☛ **Article 132 (new) of the Constitution states:**

- The King is the Guarantor of the independence of the Judiciary. The Supreme Council of Magistracy assists the King in this task.

☛ **Article 133 (new) of the Constitution states:**

- The Magistrates are irremovable. However, the Supreme Council of Magistracy shall pronounce disciplinary sanctions against the Magistrates committing misdeeds.

# Court Structure

☛ Court is divided into two levels:

➤ Lower court

~ Provincial/municipal court of first instance

➤ Higher court

~ Court of appeal

~ Supreme court

(Article 3 of the Law on the Organization of the Court)

➤ Military court is also a lower level court.



☛ The lower court is comprised of four specialized courts:

- Civil court
- Criminal court
- Commercial court
- Labour court

(Article 14 of the Law on the Organization of the Court)

\*Each specialized court shall be comprised of: president of the court, judges and court clerks. (Article 15 of the Law on the Organization of the Court)

☛ The higher court (court of appeal) is composed of five specialized chambers as follows:

- Criminal chamber
- Civil chamber
- Investigation chamber
- Commercial chamber
- Labour chamber

(Article 37 of the Law on the Organization of the Court)

\*Each specialized chamber shall be comprised of: president of the chamber, judges and court clerks. (Article 38 of the Law on the

Organization of the Court)

☛ The higher court (supreme court) is composed of four specialized chambers as follows:

- Criminal chamber
- Civil chamber
- Commercial chamber
- Labour chamber

(Article 57 of the Law on the Organization of the Court)

\* Each specialized chamber shall be comprised of: president of the chamber, judges and court clerks.

(Article 58 of the Law on the Organization of the Court)

## What is environment?

Environment: All living and non-living things including all of their physical, biological, social, spiritual and cultural forms and characteristics including, but not limited to, soil, air, water, plant, animal and other non-human living beings, humanity and their community as well as the strongly constructed surrounding environment and other physical or non-physical relations between or among any or all components of those things. Natural resources of environment is composed of all living and non-living environmental components that feeds into the flow of goods and services valuable to human.

## Legislations relevant to environment

- ✦ The constitution, 1993
- ✦ International treaties and conventions
- ✦ Law on Environmental Protection and Natural Resource Management
- ✦ Law on natural protected areas
- ✦ Law on Forestry
- ✦ Law on Fishery
- ✦ Law on mineral resource management and exploitation
- ✦ Law on water resources management
- ✦ Law on Management of Factories and Handicrafts

## Legislations relevant to environment (Cont.)

- Law on the protection of cultural heritage
- Law on Land Management, Urban Planning and Constructions
- Sub-decree on economic land concession
- Sub-decree on environmental impact assessment process
- Sub-decree on water pollution control
- Sub-decree on solid waste management
- Sub-decree on air pollution control and noise disturbance
- Prakas on procedure for the preparation of the environmental impact assessment report

## Roles of Court in the Laws Related to Environment

### ☛ Article 129 (new) of the Constitution states:

- Justice is rendered in the name of Khmer people in accordance with the legal procedures and the laws in force.
- Only the judges are vested with the judicial function. The judges shall fulfill their duties in strict respect of the law, in all honesty and conscientiousness.

### ☛ Article 130 (new) of the Constitution states:

- No organ of the Legislative Power or of the Executive Power can exercise any judicial power.

## Roles of Court in the Laws Related to Environment (Cont.)

### ☛ Article 59 of the Constitution states:

The State shall preserve and protect the environment and the balance of natural resources, by organizing a precise planning for the management, especially of the land, water, atmosphere, air, geology, ecological systems, mines, energy, petroleum and gas, rocks, sand, gems, forests and forest by-products, wildlife, fish and aquatic resources.

### ☛ Article 70 of the Constitution states:

Any offence affecting or relating to cultural heritage and artistic heritage shall be severely punished.



## Roles of Court in the Laws Related to Environment (Cont.)

### ☛ **The Rio declaration, 1992:**

The 1992 UN Declaration on Environment and Development in Rio, reaffirmed in Stockholm in 1972, states: “**environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.**”

### ☛ **Article 1(9) of the ASEAN Charter:**

To promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples.

## **Roles of Court in the Laws Related to Environment (Cont.)**

### **☛ 2011 Jakarta Joint vision:**

“...ASEAN faces common environmental challenges and it requires good governance to solve these issues. The foundation of good governance is the state of law. Presidents of the supreme court and the higher courts are responsible bodies in charge of supporting and protection of the state of law.

### **☛ 2014 Hanoi Action Plan and**

### **☛ 2015 Angkor Declaration**

## Roles of Court in the Laws Related to Environment (Cont.)

- ☛ To ensure the rights to access to the court;
- ☛ To ensure the principle of just and speedy decision;
- ☛ To solve complaint on administrative decision;
- ☛ Interim order
- ☛ Prosecutor : Introductory Submission.
- ☛ Investigation judge: full investigation, inculpatory and exculpatory evidences

## Roles of Court in the Laws Related to Environment (Cont.)

- ☛ Judgment must be proportional to the offense;
  - Imprisonment punishment
  - Monetary fine
  - Restorative order for what was damaged
  - Compensation for damage
  - Court fee
  
- ☛ Disseminate and share knowledge about relevant laws and final decisions
  
- ☛ Increase cooperation with other law enforcement authorities through meetings or workshops, etc.



**THANK YOU**