



THE RIGHT TO BE TRIED BY A COMPETENT, INDEPENDENT, AND IMPARTIAL TRIBUNAL

Definition

In the criminal context, anyone charged with a criminal offense has the right to have those charges determined in a fair and public hearing by **a competent, independent, and impartial tribunal established by law.**

A tribunal is defined as a “designated body, regardless of the denomination that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature.”

Tribunals must have been established by law and fulfill the following three requirements to be able to adjudicate criminal cases:

Competence: A competent tribunal is a tribunal that **has jurisdiction** to hear cases, meaning that it has been given the power to make decisions over subject matters defined by law. Tribunals must also be staffed by **suitably qualified and experienced persons.**

Independence: To ensure its independence the judiciary must be **protected against conflicts of interests and intimidation and from political interference** by the executive or legislative branches in its proceedings and decision-making.

Impartiality: Judges must **not let personal biases or prejudices sway their judgment** or have **preconceptions** about the particular case. In addition, the tribunal must **appear impartial** in a reasonable observer’s eyes.

Legal Framework

International Law

The right to be tried by a competent, independent, and impartial tribunal is enshrined in Article 10 of the Universal Declaration of Human Rights which states, “Everyone is entitled in full equality to a fair and public hearing by an **independent and impartial tribunal.**” This right is further protected by Article 14(1) of the International Covenant on Civil and Political Rights.



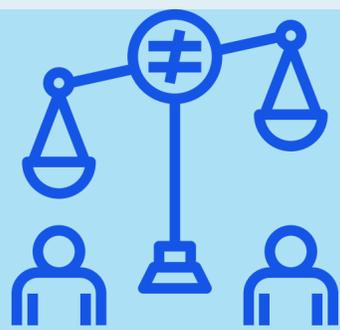
Cambodian Law

The requirements of competence, independence, and impartiality of tribunals are also enshrined in Article 128 of the Cambodian Constitution which states, "The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens [...]" and in other provisions of the Constitution and other Cambodian laws.



Importance

The right to be tried by a competent, independent, and impartial tribunal is a **cornerstone of the right to a fair trial**. It serves as a procedural means to ensure proper administration of justice and safeguard the rule of law. The requirements of competence and impartiality assure that the judicial officers who adjudicate criminal cases have **adequate legal expertise and integrity** to make **objective and neutral decisions** based solely on the evidence and applicable laws.



The requirement of independence ensures that political or personal motives do not corrupt judgments rendered by the judicial branch. This requirement is **rooted in the principle of the separation of powers**, providing checks and balances between the executive, legislative and judicial branches. It prevents any of them from becoming too powerful and abusing their power, thus enabling the rule of law to thrive by guaranteeing that the parties to the proceedings in question are treated equally, without discrimination.

Limitations

The right to be tried by a competent, independent, and impartial tribunal is **an absolute right** that cannot be subject to any exception, not even during public emergency situations.



The requirements of competence, independence, and impartiality further **apply to all courts that fit the definition of a tribunal**, whether ordinary or specialized, civil or military.

They also apply to religious courts or courts based on customary law recognized by a State and entrusted with judicial tasks.

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