



**UNITED NATIONS HUMAN RIGHTS COUNCIL**

46<sup>th</sup> Session of the Working Group on the Universal Periodic Review

April – May 2024

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE  
UNIVERSAL PERIODIC REVIEW OF CAMBODIA**

Submitted on 11 October 2023

*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

P.O. Box 1270, Rue des Buis, 3, 1211 Geneva 1, Switzerland  
Tel: +41(0)22 979 3800 - Fax: +40(1)22 979 3801 – Website: <http://www.icj.org>  
E-mail: [info@icj.org](mailto:info@icj.org)

## **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF CAMBODIA**

### **Background**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Cambodia. With respect to this, the ICJ draws the attention of the HRC and the Working Group on the UPR to concerns relating to:
  - a. Freedom of expression; and
  - b. The independence of the judiciary and the right to a fair trial.

### **Freedom of expression**

2. Following its Third Review under the UPR, Cambodia accepted 22 recommendations relating to freedom of expression,<sup>1</sup> while simply noting nine others on the same topic.<sup>2</sup> Eight of the recommendations Cambodia accepted called upon it to amend or repeal certain legal provisions to bring them in compliance with international human rights standards on freedom of expression.
3. However, since 2019, Cambodia has not implemented these recommendations; instead, the authorities have escalated their arbitrary restrictions on the right to freedom of expression, contrary to international human rights law, including article 19 of the International Covenant on Civil and Political Rights (ICCPR). The authorities have continued using laws that are not human rights compliant to convict human rights defenders, journalists and perceived political opponents on spurious criminal charges, often as a result of criminal proceedings reportedly marred with violations of the right to a fair trial. The authorities have also passed new laws — and are contemplating passing additional ones — that are not compliant with international human rights law on the rights to freedom of expression and privacy or with general principles of criminal law and have engaged in undue media restrictions and blockages.

### Arbitrary convictions of human rights defenders, journalists and perceived political opponents

4. The authorities have invoked various vague and overbroad provisions in the Penal Code to arbitrarily convict human rights defenders, journalists and perceived political opponents. These provisions include:
  - a. Article 443, criminalizing acts of "conspiracy with a foreign power", carrying a term of imprisonment ranging from 15 to 30 years;
  - b. Article 453, criminalizing the act of "plotting", defined as "a resolution agreed upon by two or more persons to commit an attack where the resolution was put into effect by one or more material actions", which carries a term of imprisonment ranging from five to ten years; and
  - c. Articles 494 and 495, criminalizing "direct incitement to commit a felony or to disturb social security". There is no explicit requirement under either provision that there be a reasonable likelihood of the "felony" or "the disturbance to social security" purportedly "incited" would occur.<sup>3</sup> Those convicted of "offences" under article 494 or 495 are liable to "imprisonment from six months to two years and a fine from one million to four million riels" (approx. USD 250 to USD 1,000).<sup>4</sup>
5. These "offences" — which are based on overbroad and undefined terms in the abovementioned provisions — and the harsh criminal sanctions that may be imposed on those convicted of them, contravene the principles of legality,<sup>5</sup> harm,<sup>6</sup> legitimate purpose, necessity and proportionality under general principles of criminal law and human rights law.<sup>7</sup>
6. These "offences" have been used to target journalists, human rights defenders and perceived political opponents:

- a. In March 2023, the Phnom Penh Municipal Court sentenced Kem Sokha, leader of the arbitrarily dissolved opposition Cambodia National Rescue Party (CNRP), to 27 years in detention under house arrest, having convicted him under article 443 for a speech he made in Australia in 2013.<sup>8</sup> The ICJ has expressed concern that Sokha's conviction was unsubstantiated and ill-founded, and that the criminal proceedings against him were reportedly marred with violations of his right to a fair trial, compounding his plight and intending to make an example of him to suppress dissenting voices in Cambodia.<sup>9</sup>
- b. In June 2022, the Phnom Penh Municipal Court convicted at least 51 opposition politicians and human rights defenders in a mass trial based on politically motivated charges under articles 453, 494 and 495,<sup>10</sup> and sentenced them to prison terms between five and eight years.
- c. In August 2021, Rong Chhun, a human rights defender, was convicted under articles 494 and 495 by the Phnom Penh Municipal Court in connection with a Facebook post on the demarcation of border posts that had stripped several farmers of their land in Tbong Khmum Province.<sup>11</sup> The Court sentenced him to two years in prison and a fine of two million riel (approx. USD 500).

#### Enacting and drafting new laws that are not human rights compliant

7. Despite accepting eight recommendations calling on it to amend or repeal legal provisions not compliant with the right to freedom of expression, Cambodia has instead enacted and drafted new laws that do not comply with international human rights law, including because they curtail such a right.
8. An emblematic example of this is the Sub-Decree on the Establishment of the National Internet Gateway (NIG Sub-Decree), which "requires all internet traffic to be routed through a regulatory body charged with monitoring online activity before it reaches users".<sup>12</sup> The law was promulgated on 16 February 2021, and the NIG was to be implemented a year later, by February 2022. Then, in February 2022 the Cambodian government announced it was postponing the introduction of the NIG,<sup>13</sup> but fell short of withdrawing the NIG Sub-Decree. The NIG Sub-Decree poses risks to the exercise of the rights to freedom of expression and privacy, containing provisions endowing overbroad powers on government-appointed NIG operators to block or disconnect online connections (article 6); retain traffic data and provide network information requested by the authorities (article 14); and issue overbroad penalties for non-compliant telecommunications operators.<sup>14</sup>
9. The Cambodian authorities are also contemplating new laws on "cybercrime" and "cybersecurity" featuring provisions incompatible with the rights to freedom of expression and privacy. The ICJ has expressed concern that these draft laws confer overbroad powers to law enforcement authorities, while simultaneously failing to ensure any independent and impartial oversight of such powers and their use, coupled with a lack of procedural safeguards.<sup>15</sup> For instance, article 45 of the draft Cybercrime Law criminalizes making a "false statement or disinformation through information technology" with knowledge that the statement is likely to have an adverse effect on a broad range of areas, such as "national security", "relations with other countries", and, notably, "causing a loss of public confidence in the government or State institutions", in contravention of the principles of legitimate purpose, legality, necessity and proportionality under general principles of criminal law and human rights law.<sup>16</sup>

#### Arbitrary restrictions on media freedom

10. By arbitrarily revoking media licences and blocking access to the websites and social media accounts of independent outlets, the Ministry of Information has unduly restricted the ability of independent media to carry out their professional duties of investigating and imparting information to the public. For instance, at least five media outlets had their media licences revoked for their reporting on the COVID-19 pandemic.<sup>17</sup> In addition, the revocation of licences has lacked transparency and a clear appeal process.<sup>18</sup>

11. In February 2023, in the run up to the 2023 general elections, the Ministry of Information revoked the media licence of Voice of Democracy, an independent media outlet, without due process, a move decried by several UN independent human rights experts as having left “virtually no free media outlets operating in the country”.<sup>19</sup> In July 2023, the Telecommunications Regulator of Cambodia ordered internet service providers to block the websites and social media accounts of three independent media outlets, allegedly because they had broadcast information to “make confusion, affect the governments’ honour and prestige, and failed to fulfil the operating conditions of the Information Ministry”.<sup>20</sup>

### **Independence of the judiciary and right to a fair trial**

12. Following its third UPR review, Cambodia accepted seven recommendations relating to the independence of the judiciary.<sup>21</sup> Additionally, Cambodia simply noted two recommendations on this issue.<sup>22</sup> However, Cambodia has made limited progress on reforming the judiciary or on guaranteeing full judicial independence, let alone on strengthening the rule of law, all of which were key concerns at the centre of the UPR recommendations mentioned above.<sup>23</sup>
13. Despite its acceptance of certain UPR recommendations in this area and the guarantees outlined in its Constitution,<sup>24</sup> the lack of an independent and impartial judicial system remains one of Cambodia’s most enduring obstacles to ensuring access to justice and effective remedies for human rights violations and abuses,<sup>25</sup> among other things. This situation poses a risk of violating the principle of the separation of powers and the independence of the judiciary<sup>26</sup> and Cambodia’s international human rights obligations, including those under the ICCPR.

#### Institutional and individual independence

14. Since 2014, Cambodian laws have granted excessive power to the Minister of Justice, enabling the exercise of discretion and influence over almost every aspect of a judge’s career. This overbearing authority has been legitimized by three laws: the Law on the Organization of the Courts;<sup>27</sup> the Law on the Statute of Judges and Prosecutors;<sup>28</sup> and the Law on the Organization and Functioning of the Supreme Council of the Magistracy.<sup>29</sup> These laws feature many provisions that are generally considered to be inconsistent with international standards guaranteeing the independence of the judiciary.<sup>30</sup>
15. For example, the law entrusts the Supreme Council of the Magistracy (SCM) with direct responsibility for the appointment, transfer, discipline, discharge, suspension and removal of all judges and prosecutors. However, the SCM comprises nine members, including one seat designated for the Minister of Justice and two elected by the Senate and the National Assembly,<sup>31</sup> rather than independent members of the judiciary and legal professionals. As a result, the SCM’s composition and membership are inconsistent with the principle of the separation of powers and the independence of the judiciary.<sup>32</sup>
16. Several provisions of the abovementioned laws also grant the Minister of Justice, a member of the executive, extensive control over various aspects of the administrative affairs of the judiciary and courts, as well as the functioning of judges and prosecutors.<sup>33</sup> The Minister of Justice is the sole “legitimate budget authorizer”<sup>34</sup> and has the authority to “supervise and review the administrative works of all courts.”<sup>35</sup> Additionally, the Minister oversees the preliminary examination of disciplinary cases against judges and prosecutors,<sup>36</sup> has the power to change the composition of and appoint the Commission of Promotion in Rank and Grade,<sup>37</sup> and determines the form and process of entrance examinations for judge students.<sup>38</sup>
17. Several judges and prosecutors are known to operate under the influence of the ruling Cambodia People’s Party (CPP), which severely compromises their independence. For example, Justice Dith Munty, the former long-standing President of the Supreme Court, is reported to be a member of the CPP’s permanent committee,<sup>39</sup> albeit the party denies any

conflict of interest. It was reported that the Interim President of the Supreme Court, Justice Chiv Keng, is also a member of the CPP's Central Committee.<sup>40</sup> In light of the above, Cambodian courts have gained notoriety for being used as political tools by the ruling party.<sup>41</sup>

### Fair trial violations

18. Numerous violations of fair trial rights have been reported, including of the right to a public hearing, the right to defend themselves, the right to equality of arms, the presumption of innocence, and the right to a public and reasoned judgment, particularly in cases involving human rights defenders and perceived political opponents. According to credible reports collected by the ICJ, the following concerns have emerged:<sup>42</sup>
- a. A heavy reliance on confessions obtained by the police, which are generally considered credible and are not subject of an effective judicial scrutiny in court, even in cases where they are in practice the sole evidence against the defendant;
  - b. An effective presumption of guilt in cases involving political opponents and human rights defenders;
  - c. An unequal allocation of time between the prosecution and the defence for the examination of witnesses and evidence to the detriment of the defence;
  - d. Judicial decisions that, while reasoned, contain minimal or no analysis based on the evidence and are notably lacking in legal depth;
  - e. Oral handing down of judgments that omit explanations of the facts and laws supporting the conclusions. In some cases, written copies of judgments were delivered in prisons without bringing the accused to court;
  - f. Limited public access to judgments; the ones available online are only summaries of selected cases, and access requests can only be made lawyers involved in the case;
  - g. Limited reference to international law, with judges claiming its inapplicability to domestic cases, despite Cambodia's acknowledgment of the need to recognize and respect human rights as stipulated in covenants and conventions related to human rights under Article 31 of the Constitution;
  - h. Observers in politically sensitive cases are required to register, and some have been rejected due to limited space in the courtroom. In some cases, observers were also not allowed to take notes. In certain courts, court schedules were not posted on information boards or websites; and
  - i. In gender-related cases, despite Cambodia's acceptance of the recommendation during the third UPR Cycle urging the provision of training to law enforcement and judicial officers on prosecution procedures in cases of gender-based violence,<sup>43</sup> the presence of gender stereotypes and victim-blaming throughout judicial proceedings persists, with a generally limited number of female judges available to handle gender-sensitive cases.
19. Concerns over fair trial violations have been compounded by reports of the right to legal advice and representation being restricted in Cambodia, despite the notable progress made by the Bar Association of the Kingdom of Cambodia in increasing the number of volunteer lawyers providing free legal advice and representation to those in need.<sup>44</sup> According to the law, police may arrest and detain accused persons for a maximum of 24 hours before granting them access to legal counsel,<sup>45</sup> during which time they may be interrogated by the police. This deprives them of the right to legal representation during the first 24 hours of their detention, which is an important safeguard against torture and other ill-treatment in custody. Moreover, the assistance of a lawyer is only mandatory if the case involves a felony or if the accused is a minor,<sup>46</sup> leaving suspects in cases involving offences other than felonies, such as misdemeanors, without legal representation.

### **Recommendations**

20. In light of the above-mentioned concerns, the ICJ calls upon the HRC and the Working Group on the UPR to recommend:

### *On freedom of expression*

21. The legislature should repeal or substantially amend legal provisions that unduly restrict the right to freedom of expression – including article 443, 453, 494 and 495 of the Penal Code and the NIG Sub-Decree – to bring them in line with international human rights law and general principles of criminal law; the proposed draft Cybercrime Law and Cybersecurity Law should be withdrawn;
22. The prosecuting authorities and the judiciary should immediately cease ongoing criminal investigations, drop all existing charges and revoke or otherwise reverse criminal penalties imposed against individuals for “offences” under domestic provisions that are inconsistent with Cambodia’s obligations under international human rights law guaranteeing the rights to freedom of expression and information and under general principles of criminal law; and
23. Rescind the revocation of licences and access-blocking of independent media outlets that have been carried out arbitrarily without a thorough and transparent process, and refrain from imposing any further restrictions unless the revocation or blocking decision has been undertaken following a full analysis that applies international standards concerning legality, legitimate purpose, necessity, proportionality and non-discrimination, and has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process, and ensuring that there is a right to appeal against it.

### *On the independence of the judiciary and fair trial*

24. Safeguard, in law and in practice, the full independence and impartiality of judges and prosecutors from any form of political pressure and undue influence, including by amending the Law on the Organization of the 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, with the aim to eliminating executive influence on the administration and functioning of the judiciary; and
25. Ensure that fair trial rights are fully respected at both the investigation and trial stages in compliance with international law and standards, including the right to a public hearing, the right to defend themselves, the right to equality of arms, the presumption of innocence and the right to a public and reasoned judgment, all of which are rights guaranteed, *inter alia*, under the ICCPR.

### **ENDNOTES**

---

<sup>1</sup> Responses in UN Doc. A/HRC/41/17/Add.1. Accepted recommendations: 110.24 Take the necessary measures to re-establish an environment respectful of the rights of the civil society, in particular by revising the law on associations and non-governmental organizations (France); 110.105 Bring laws, regulations and policies on the freedom of expression, association and public assembly into compliance with the International Covenant on Civil and Political Rights (Denmark); 110.29 Revise the Penal Code as well as other laws, including the law on associations and non-governmental organizations, the future trade union law and the telecommunications law, in order to bring them into compliance with international human rights standards (Czechia); 110.81 Guarantee freedom of expression for all citizens and journalists, including on the Internet, by revising the latest constitutional amendment and the interministerial instruction of May 2018 allowing surveillance of Internet contents (France); 110.83 Ensure freedom of expression on the Internet by revoking interministerial decree No. 170 on “publication controls of websites and social media processing via the Internet” (Germany); 110.85 Take all measures to protect and support journalists, human rights defenders, trade union workers, land and environmental activists and other civil society actors, and members of the political opposition (Iceland); 110.86 Adopt measures aimed at ensuring freedom of expression and the enjoyment of civil and political rights by the population (Colombia); 110.87 Create the conditions necessary to allow all individuals to enjoy their fundamental rights, particularly freedom of expression, association and peaceful assembly (Costa Rica); 110.88 Restore democratic and political space, ensuring participation for political parties, civil society and independent media (Norway); 110.91 Create conditions conducive to free political debate and competition with a view to rebuilding a democracy in which the media and civil society, including human rights defenders, can freely carry out their work without interference or hindrance, as recommended by Ireland during the previous cycle, and in particular to ensure that their work is not hindered by

---

restrictions on freedom of assembly and expression, either online or offline (Ireland); 110.93 Protect the rights of human rights defenders, and bring laws, regulations and policies on freedom of expression, association and assembly into accordance with the State's international obligations (Italy); 110.94 Revise recent enactments and revisions of legislation that violate the rights to freedom of expression and association, including the vague and broad grounds for preventing publication on the Internet in the proclamation on publication controls of websites and social media (Sweden); 110.95 Ensure that all citizens may fully enjoy their rights to freedom of expression and peaceful assembly and association (Switzerland); 110.96 Amend the law on telecommunications, and adopt the law on access to information in line with international standards of the right to the freedom of expression and the right to privacy (Switzerland); 110.98 Immediately remove all undue restrictions on civil society and independent media, including by withdrawing the interministerial decision known as prakas No. 170 on digital expression (United States of America); 110.99 Take all measures necessary to ensure a safe environment to guarantee the full enjoyment of freedom of expression of journalists and of the general population, and investigate and sanction all forms of violence against them (Argentina); 110.101 Take measures to protect the freedom of expression online and offline, as well as freedom of association and assembly (Brazil); 110.103 Promote dialogue among political actors, freedom and the rights of the people and the democratic process, in order to unite the people towards development; in this process, ensure an environment in which the rights of all political actors, civil society, the media and others are respected and their activities are not constrained (Japan); 110.106 Redouble efforts to protect freedom of opinion and expression, both online and offline, to ensure and promote a safe environment for journalists, human rights defenders and the political opposition, and effectively and thoroughly investigate all attacks against them (Lithuania); 110.110 Ensure a free civic space, allowing human rights defenders and journalists to freely express themselves both offline and online, without fear of harassment or reprisal, and refrain from prosecuting persons for exercising their fundamental rights under the Criminal Code and the law on telecommunications (Netherlands); 110.114 Step up efforts to prevent the harassment of human rights defenders, journalists, trade union workers, protesters, land and other civil society actors, and protect their rights (Czechia); 110.118 Continue to implement measures to strengthen the independence of both the judiciary and the media (Italy);

<sup>2</sup> 110.78 Immediately and unconditionally reinstate the rights of members of the political opposition and release all persons who have been arbitrarily detained, including Kem Sokha (United States of America); 110.79 Amend laws and regulations, including the law on telecommunications and the interministerial prakas on publication controls of website and social media processing via the Internet, that effectively limit freedom of expression, and end all forms of interference in and surveillance of media channels and online speech (Finland); 110.82 Bring the Criminal Code into line with article 19 of the International Covenant on Civil and Political Rights by repealing or amending articles on insulting the king, defamation, insults, incitement, unlawful coercion of judicial authorities and the discrediting of judicial decisions (Germany); 110.84 Repeal the provisions of the Criminal Code that can be used to restrict freedom of expression, assembly and association, and decriminalize offences such as defamation (Iceland); 110.89 Release immediately from custody any individual detained for their peaceful exercise of freedom of expression and assembly, and drop all criminal charges against these individuals (Norway); 110.92 Reform the Criminal Code to ensure that freedom of expression, assembly and association are guaranteed, in addition to the protection of human rights defenders, and ensure the latter can go about their work without fear of intimidation (Spain); 110.97 Reverse the forced closure of media outlets, repeal provisions of the Criminal Code that criminalize defamation and restrict freedom of expression and assembly, and remove, without conditions, the ban on the 118 former members of the Cambodia National Rescue Party from engaging in political activities (United Kingdom of Great Britain and Northern Ireland); 110.108 Revoke trade union registration and reporting requirements that result in the restriction of freedom of association, assembly and expression (Greece); 110.117 Create an enabling environment for free and pluralistic media, including by ceasing judicial harassment against journalists and abuse of tax regulations to harass media outlets and associations (Greece).

<sup>3</sup> ICJ, "Dictating the Internet: Curtailing Free Expression and Information Online in Cambodia", November 2021, p. 36 – 37 ("ICJ Dictating the Internet Report on Cambodia").

<sup>4</sup> For a list of flawed laws that are not compliant with international standards on freedom of expression, see, ICJ Dictating the Internet Report on Cambodia, p. 21 – 39.

<sup>5</sup> See, for example, [The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty](#), published by the ICJ in March 2023. "Principle 1– Principle of Legality

No one may be held criminally liable for any act or omission that did not constitute a criminal offence, under national or international law, at the time when such conduct occurred. The principle of legality also requires that the law be publicly and sufficiently accessible and the criminal liability foreseeable and capable of being clearly understood in its application and consequences. Thus, crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offence with a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from conduct that is not criminally proscribed. Criminal law must not proscribe any act or omission in terms that are vague, imprecise, arbitrary or overly broad. Criminal law must not be construed broadly

---

to an accused person's disadvantage. In the case of ambiguity, the definition of a particular offence should be interpreted in favour of the accused."

<sup>6</sup> See, for example, [The 8 March Principles](#): "Principle 2 – Harm Principle

Criminal law may only proscribe conduct that inflicts or threatens substantial harm to the fundamental rights and freedoms of others or to certain fundamental public interests, namely, national security, public safety, public order, public health or public morals. Criminal law measures justified on these grounds must be narrowly construed, and the assertion of these grounds by the State must be continuously scrutinized."

<sup>7</sup> See, for example, [The 8 March Principles](#): "Principle 7 – Human Rights Restrictions on Criminal Law

Criminal law must be interpreted consistently with international human rights law. Criminal law may not restrict the exercise of any human right unless such a limitation is: a) in accordance with the law – the principle of legality;<sup>(b)</sup> in pursuit of one of the limited and narrowly defined, legitimate fundamental public interests allowed under international human rights law, namely, for the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals; c) strictly necessary to achieve these legitimate interests;<sup>(d)</sup> proportionate to the legitimate interest(s) it pursues, meaning that it must be the least intrusive or restrictive means to achieve the desired result;<sup>(e)</sup> appropriate to the legitimate interest(s) to be protected, including by being rationally and reasonably connected to it;<sup>(f)</sup> not arbitrary;<sup>(g)</sup> non-discriminatory; and<sup>(h)</sup> consistent with other rights recognized under international human rights law. To the extent that criminal law measures restrict or impair the exercise of human rights, they must be narrowly construed. The State must go beyond merely asserting an interest in the protection of the fundamental rights and freedoms of others, national security, public safety, public order, public health or public morals, including by showing concrete evidence of the necessity of a criminal law response to protect them, and its assertions must be continuously scrutinized. The substantial harm that the proscribed conduct is said to inflict or threaten must be foreseeable and not unreasonably remote. To be proportionate, criminal law may be applied only as a last resort, where other less restrictive means of achieving the above-mentioned legitimate interests are insufficient."; "Principle 8 – Legitimate Exercise of Human Rights Except as in accordance with the permissible limitations set forth in principle 7, criminal law may not proscribe any conduct that is protected under human rights law, namely, because this conduct constitutes the legitimate exercise and enjoyment of human rights guaranteed under international or domestic human rights law."; and "Principle 13– Criminal Law Sanctions

Criminal law sanctions must be consistent with human rights, including by being non-discriminatory and proportionate to the gravity of the offence. Custodial sentences may only be imposed as a measure of last resort."

<sup>8</sup> ICJ, "Cambodia: Kem Sokha's conviction is another assault on human rights, the rule of law and democracy", 3 March 2023, available at: <https://www.icj.org/cambodia-kem-sokhas-conviction-is-another-assault-on-human-rights-the-rule-of-law-and-democracy/>.

<sup>9</sup> ICJ, "Cambodia: Spurious "treason" charges against opposition leader Kem Sokha must be dropped", 15 January 2020, available at: <https://www.icj.org/cambodia-spurious-treason-charges-against-opposition-leader-kem-sokha-must-be-dropped/>. See also: UN Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018: Opinion No. 9/2018 concerning Kem Sokha (Cambodia)*, UN Doc. A/HRC/WGAD/2018/9, 5 June 2018, paras. 56 – 57.

<sup>10</sup> Thirty-one defendants were sentenced to prison for terms between five and eight years, among whom four were already in detention and one was taken into custody after the verdict. Twenty-seven of them were sentenced *in absentia* as they are currently in exile. Another twenty defendants were handed five-year suspended prison sentences. See: ICJ, "Cambodia: Mass convictions of opposition politicians and human rights defenders deepen rule of law crisis and must be reversed", 15 June 2022, available at: <https://www.icj.org/cambodia-mass-convictions-of-opposition-politicians-and-human-rights-defenders-deepen-rule-of-law-crisis-and-must-be-reversed/>.

<sup>11</sup> ICJ Dictating the Internet Report on Cambodia, pp. 41 – 44. In November 2021, Rong Chhun was granted bail and released early from jail. See: Frontline Defenders, "Cambodian Human Rights Defenders Released after More than One Year in Prison", November 2021, available at: <https://www.frontlinedefenders.org/en/case/cambodian-human-rights-defenders-released-after-more-one-year-prison-0>.

<sup>12</sup> ICJ, "Cambodia Should Scrap Rights-Abusing National Internet Gateway", 16 May 2022, available at: <https://www.icj.org/cambodia-should-scrap-rights-abusing-national-internet-gateway/>; ICJ, Dictating the Internet Report on Cambodia, pp. 25 – 27; Human Rights Watch, 'Cambodia: Internet Censorship, Control Expanded', 18 February 2021, available at: <https://www.hrw.org/news/2021/02/18/cambodia-internet-censorship-control-expanded>; Agence Kampuchea Presse, 'National Internet Gateway Established', 18 February 2021, available at: <https://akp.gov.kh/post/detail/227175>.

<sup>13</sup> The Diplomat, "Cambodia Puts Controversial National Internet Gateway Plan on Hold", 16 February 2022, available at: <https://thediplomat.com/2022/02/cambodia-puts-controversial-national-internet-gateway-plan-on-hold/>.

<sup>14</sup> ICJ, "Cambodia Should Scrap Rights-Abusing National Internet Gateway", 16 May 2022, available at: <https://www.icj.org/cambodia-should-scrap-rights-abusing-national-internet-gateway/>.



<sup>15</sup> ICJ Dictating the Internet Report on Cambodia, p. 31; ICJ, “Cambodia: Ministries should withdraw draft cybersecurity law which would threaten human rights and expose people to increased cyber threats”, 2 October 2023, available at: <https://www.icj.org/cambodia-ministries-should-withdraw-draft-cybersecurity-law-which-would-threaten-human-rights-and-expose-people-to-increased-cyber-threats/>.

<sup>16</sup> ICJ Dictating the Internet on Cambodia Report, p. 31.

<sup>17</sup> ICJ, “Cambodia: ICJ submission to the Committee on Economic, Social and Cultural Rights”, 17 January 2023, available at: <https://www.icj.org/cambodia-icj-submission-to-the-committee-on-economic-social-and-cultural-rights/>.

<sup>18</sup> ICJ, “Cambodia: ICJ submission to the Human Rights Committee”, 2 February 2022, available at: <https://www.icj.org/cambodia-icj-submission-to-the-human-rights-committee/>.

<sup>19</sup> UN OHCHR, “Cambodia: UN experts call for reinstatement of Voice of Democracy, say free media critical ahead of elections”, 20 February 2023, available at: <https://www.ohchr.org/en/press-releases/2023/02/cambodia-un-experts-call-reinstatement-voice-democracy-say-free-media>.

<sup>20</sup> Committee to Protect Journalists, “Cambodia blocks websites, social media accounts of 3 outlets ahead of Sunday election”, 20 July 2023, available at: <https://cpj.org/2023/07/cambodia-blocks-websites-social-media-accounts-of-3-outlets-ahead-of-sunday-election/>.

<sup>21</sup> Responses in UN Doc. A/HRC/41/17/Add.1. Accepted recommendations: 110.118 Continue to implement measures to strengthen the independence of both the judiciary and the media (Italy); 110.122 Take all steps necessary to strengthen the rule of law and to guarantee full judicial independence, consistent with international human rights standards (Lithuania); 110.123 Adhere to international standards on the independence of institutions, notably the judiciary and the national election commission, to ensure that electoral processes are free, fair and transparent (Ireland); 110.124 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); 110.125 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); 110.127 Amend the laws on the organization of courts, the statute of judges and prosecutors and the organization and functioning of the Supreme Council of the Magistracy to guarantee and protect the independence of the judiciary (Belgium); 110.133 Ensure accountability for human rights violations through independent investigations and the prosecution of perpetrators (Ukraine).

<sup>22</sup> Noted recommendations: 110.119 Cease excessive power of the executive branch to influence the work of judges and prosecutors by amending the law on 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 (Germany); 110.121 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).

<sup>23</sup> For example, Recommendations 110.118, 110.122-125, 110.127.

<sup>24</sup> Constitution, Articles 51 and 128

<sup>25</sup> See also: Special Rapporteur on the situation of human rights in Cambodia, Vitit Muntarbhorn, “Situation of human rights in Cambodia,” A/HRC/54/75, 20 July 2023.

<sup>26</sup> See also: Principle 1 of the UN Basic Principles on the Independence of the Judiciary; and Principle 1.3 of the Bangalore Principles of Judicial Conduct

<sup>27</sup> Available at: <https://www.arbitrationcouncil.org/download/law-on-the-organization-of-courts/?wpdmdl=2883&refresh=64f32dd5a1ea21693658581>

<sup>28</sup> Available at: [https://sithi.org/medias/files/projects/sithi/law/01\\_CCHR\\_Draft\\_Law\\_on\\_the\\_Statute\\_of\\_Judges\\_and\\_Prosecutors\\_English.pdf](https://sithi.org/medias/files/projects/sithi/law/01_CCHR_Draft_Law_on_the_Statute_of_Judges_and_Prosecutors_English.pdf)

<sup>29</sup> Available at: <https://data.opendevlopmentmekong.net/dataset/461ed1de-61a8-4f59-bd0d-9adc1bb7178b/resource/742ba9c9-48f3-45b0-826e-e3414ff5683f/download/draftlawontheorganizationandfunctioningofthesupremecouncilofmagistracyen.pdf>

<sup>30</sup> ICJ, “Briefing Paper: Key concerns over three judicial reform draft laws in Cambodia,” 2014, available at: <https://www.icj.org/wp-content/uploads/2014/07/Briefing-Paper-Cambodian-draft-laws.pdf>

<sup>31</sup> Law on the Organization and Functioning of the Supreme Council of Magistracy, Articles 4, 18 and 20.

<sup>32</sup> Several human rights bodies have repeatedly recommended that the bodies responsible for the appointment and promotion of judges, as well as those responsible for the discipline of judges be independent from the Executive, plural and are composed mainly (if not solely) of judges and members of the legal profession. For example, Concluding Observations of the UN Human Rights Committee on the Congo, CCPR/C/79/Add.118, para. 14; Concluding Observations of the Human Rights Committee on Liechtenstein, CCPR/CO/81/LIE, para. 12; Concluding Observations of the Human Rights Committee on Honduras, CCPR/C/HND/CO/1 (2006), para. 16. Also see Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 11; Universal Charter of the Judge, approved by the International Association of Judges on 17 November 1999, Article 9; Special Rapporteur on the independence of judges and lawyers, ‘Report to the Human Rights Council,’

---

A/HRC/11/41, 2009, paras. 28-29; ICJ, 'International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1,' 2007, at 45-48.

<sup>33</sup> See also: Beijing Statement of Principles of Independence of the Judiciary in LAWASIA Region, Principles 36 and 37

<sup>34</sup> Law on the Organization and Functioning of the Supreme Council of Magistracy, Article 15

<sup>35</sup> Law on the Organization of the Courts, Article 11

<sup>36</sup> Law on the Organization and Functioning of the Supreme Council of Magistracy, Article 23

<sup>37</sup> Law on the Statute of Judges and Prosecutors, Article 23

<sup>38</sup> Law on the Statute of Judges and Prosecutors, Article 22

<sup>39</sup> The CPP is headed by a 34-member Permanent Committee. Kamnotra, "Supreme Court Justice Dith Munty Retires, Generational Transition Proceeds," 15 August 2023, available at: <https://kamnotra.io/en/2023/08/supreme-court-justice-dith-munty-retires-generational-transition-proceeds/>; The Phnom Penh Post, "Analysis: Judge who will decide the fate of the CNRP is a trusted member of the CPP," 15 November 2017, available at: <https://www.phnompenhpost.com/national-post-depth-politics/analysis-judge-who-will-decide-fate-cnrp-trusted-member-cpp>

<sup>40</sup> Hul Reaksmey, "Ruling Party Adds Supreme Court Justices to Central Committee," VOA, 24 January 2018, available at: <https://www.voacambodia.com/a/ruling-party-adds-supreme-court-justices-to-central-committee/4221889.html>

<sup>41</sup> ICJ, "Achieving Justice for Gross Human Rights Violations in Cambodia Baseline Study," October 2017, at 19, available at: <https://www.icj.org/wp-content/uploads/2017/10/Cambodia-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2017-ENG.pdf> ("ICJ 2017 Report")

<sup>42</sup> ICJ interview with lawyers and members of civil society organizations, September 2023; See also: ICJ 2017 Report, at 19-20; CCHR, 'Fair Trial Rights Annual Report Outlining Key Findings from its Monitoring at the Phnom Penh Appeal Court,' 12 June 2023.

<sup>43</sup> Recommendation 110.182.

<sup>44</sup> ODC, "Bar association legal aid services," 21 September 2021, available at: <https://opendevelopmentcambodia.net/topics/bar-association-legal-aid-services/>

<sup>45</sup> Criminal Procedure Code, Article 98.

<sup>46</sup> Criminal Procedure Code, Article 301.