



## CCHR Legal Analysis - May 2014

### Three Draft Laws Relating to the Judiciary

#### **Executive Summary**

One of the fundamental principles of a democratic state is the principle of separation and independence of powers between the legislative, executive and judiciary. Independence of the courts is a key element of the rule of law and guarantees fair hearings. As such, the 1993 Constitution of the Kingdom of Cambodia (the “Constitution”) establishes the independence of the judiciary and guarantees the principle of the separation of powers. Independence means being free from control or influence. In this regard, the judiciary is independent when it can function separately from the legislative and executive. The judiciary should be protected from inappropriate interference and influence, as the judiciary also checks and balances the powers of the executive and legislative. According to the three draft laws, namely the draft Law on the Organization and Functioning of the Supreme Council of the Magistracy (the “SCM”), the draft Law on the Statute of Judges and Prosecutors, and the draft Law on the Organization and Functioning of the Courts,<sup>1</sup> it is the King, with the assistance of the SCM, who guarantees the independence of the judiciary.

This legal analysis<sup>2</sup> is conducted with an aim to examine the scope of powers of the legislative and executive bodies as enshrined in the three draft laws concerning the judiciary. The analysis includes opinions from concerned civil society organizations, and donor countries regarding the erosion of the independence of the judiciary that these three laws represent by means of:

1. Combining the powers of the legislature, executive [the Ministry of Justice (the “MoJ”)] in the structure, functioning and financing of the SCM;
2. The automatic appointment of the members of the SCM as members of the discipline committee instead of them being elected by an independent body;
3. Allowing the executive [the MoJ] to influence the grade and ranking promotion of judges and prosecutors; and
4. Providing the MoJ with the powers to administer and manage the funds of the courts at all levels.

For the purpose of this analysis, the Cambodian Center for Human Rights (“CCHR”) compared the draft laws with international standards and best practices, mainly opinions of the Consultative Council of European Judges (the “CCJE”) on the Council for the Judiciary. Based on this comparison,

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<sup>1</sup> The analysis of the three draft laws follows the approval of the draft laws by the Council of Ministers on 18 April, 2014 which.

<sup>2</sup> This analysis is based on the unofficial translation from Khmer to English done by CCHR which are available at: <http://bit.ly/1ouUxjM>

CCHR provides a series of detailed recommendations and amendments to the three draft laws, including the following key suggestions:

1. Members of the SCM, members of the disciplinary council of the SCM, and member of the Commission of promotion in rank and grade should be elected by judges and prosecutors. Candidates for elections should not be affiliated with the legislature and executive and should include non-judges;
2. The MoJ should not have managerial power over the General Department of Judicial Administration, it should be the power of the SCM;
3. The MoJ should not manage the finance of trial courts and prosecution offices, instead it should be the power of the SCM.

This analysis is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. For the purpose of this analysis, CCHR has consulted with a number of national and international stakeholders.

## Background

In June 2001 the Royal Government of Cambodia (“RGC”) released a statement presenting its legal and judicial system reform strategy with the draft of a core action plan,<sup>3</sup> which were finally adopted in June 2003.<sup>4</sup> In June 2004, the Council of Legal and Judicial Reform amended the prioritized short-term action plan (2004-2006) and the long-term action plan (2004-2008). The rearrangement of the structure of the SCM and the adoption of the Law on the Organization and Functioning of the Courts were included in the prioritized short-term action plan.<sup>5</sup> In 2005 the draft law concerning the judiciary was pushed back and forth between the Cabinet of Ministers and the MoJ.<sup>6</sup>

After long delays, in 2013, Mr. Surya P. Subedi, United Nations Special Rapporteur on the situation of human rights in Cambodia, urged the MoJ to expedite the adoption of the draft judiciary laws.<sup>7</sup> On 18 April, 2014 the three draft judiciary laws were adopted by the Cabinet of Ministers.<sup>8</sup> On 28 April, 2014 Prime Minister Hun Sen stated during the graduation ceremony at the Asia-Europe University that *“as stated in the Constitution, the Office of the Cabinet of Ministers shall forward the draft laws to the National Assembly instead of the Non-Governmental Organizations. Don’t claim for your rights too much. Actually we have gathered a lot of ideas which have already been included [in the draft laws] [...] we didn’t manage to [adopt these draft laws] during the Government’s fourth mandate. Now we are striving to adopt them in the fifth mandate and they [the civil society organizations] say that it is too soon to pass the law because we have not consulted with them.”*<sup>9</sup> On the same day, Mr. Cheam Yeap, Chairman of the National Assembly Commission on Finance and Auditing, stated that the National Assembly (“NA”) would openly discuss the three draft laws on 20 May, 2014.

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<sup>3</sup> The International Monetary Fund (IMF): *Cambodia: Selected Issues* Legal and Judicial Reform: Recent Developments and Prospects, 26 August 2004 pages 69-78.

<sup>4</sup> See *ibid.*

<sup>5</sup> See *ibid.*

<sup>6</sup> See The Cambodia Daily’s article: *Independence in Question as Courts Restructure* of 31 August, 2005.

<sup>7</sup> See The Cambodia Daily’s article: *Subedi Urges the Adoption of the Judicial Laws* of 24 May, 2013.

<sup>8</sup> See Radio Free Asia (FRA) Hun Sen warns NGOs not to interfere in the justice reform, 28 April, 2014.

<sup>9</sup> Unofficial Translation. See the Agence Kampuchea Press (AKP news) *Prime Minister: the Draft Laws concerning justice system will be adopted by the National Assembly*, dated 28 April, 2014.

### **The Draft Law on the Organization and Functioning of the Supreme Council of the Magistracy**

The draft law states that the SCM will assist the King with ensuring the independence of the judiciary as stated in the Constitution.<sup>10</sup> The SCM will have the power to decide and propose to the King the appointment, transfer, secondment, leave of absence, delineation of duties and termination of office of a judge<sup>11</sup> and disciplinary action against a judge.<sup>12</sup>

#### Composition of the SCM

*Concerns:* The inclusion of members of both the executive and legislature into the judiciary is a direct attack on the principle of the separation of powers. The executive and legislature effectively have decision making powers that jeopardize the impartiality of judges and prosecutors.

*International best practices:* In order to avoid the perception of self-interest, self-protection and cronyism, and to reflect the different viewpoints within the society, the SCM should have a mixed composition of judges and prosecutors and other individuals with legal capacity such as lawyers, and legal professors elected by an independent committee. They should not be active politicians or members of the RGC or legislative body.<sup>13</sup>

In addition, in order to guarantee the independence of the judiciary, every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, must be made by an authority independent of the executive and legislative powers within which at least one half of those who sit as judges shall be elected by their peers following methods guaranteeing the widest representation of the judiciary.<sup>14</sup> In this perspective this independent authority shall enjoy its autonomy to decide on its own operating methods.<sup>15</sup>

Given that the SCM draws power from a decision affecting the career of a judge who is an independent individual, a member of this institution shall not be appointed or elected by the legislature or the executive.<sup>16</sup> Furthermore in order to be depoliticized, a SCM candidate member shall not be a parliamentarian, senator, member of the Government, Under Secretary of State, other function obtained through mandated election or member of the Bar Association.<sup>17</sup>

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<sup>10</sup> Article 1 of the Draft Law on the Organization and Functioning of the SCM

<sup>11</sup> *Ibid*, article 18.

<sup>12</sup> *Ibid*, article 18.

<sup>13</sup> See *ibid*, recommendation [B(c)].

<sup>14</sup> See *para 38 of Opinion No. 2 (2001) of the Consultative Council of European Judges (CCJE) on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Right dated 23 September, 2001.* The CCJE was established by the Committee of Ministers of the Council of Europe to enhance judges' roles in Europe.

<sup>15</sup> See *para 13 of Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary at the service of society dated 23 November, 2007.* Paragraph 2 of Opinion no. 10 states that the Council for the Judiciary is entrusted with the protection of the independence of judges; therefore, this council functions as the SCM of the Kingdom of Cambodia. The difference is only in the terms used to define the body.

<sup>16</sup> See *ibid*, para 31.

<sup>17</sup> See *ibid*, para 29.

Provision in the Draft law	Alternative drafting recommended
<p><b>Article 4:</b> The SCM is under the royal presidency of His Majesty the King and has the following composition:</p> <ul style="list-style-type: none"> <li>- MoJ;</li> <li>- President of the Supreme Court;</li> <li>- General Prosecutor of the Supreme Court;</li> <li>- One member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector, elected by the senate in an absolute majority of all senators;</li> <li>- One Member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector elected by the National Assembly in an absolute majority of all members of parliamentary;</li> <li>- One member who is a judge of a higher trial court elected through votes by judges of the higher trial court;</li> <li>- One member who is a prosecutor of the a higher trial court or a prosecutor who works at the MoJ and elected by prosecutors of the higher trial court and at the MoJ;</li> <li>- One member who is the full-right judge of the court of first instance elected through votes by the full-right judges of the courts of first instance across the country;</li> <li>- One member who is a full-right prosecutor of the court of first instance elected through votes by the full-right prosecutors of the first instance courts across the country</li> </ul>	<p><b>Article 4:</b> The SCM is under the royal presidency of His Majesty the King and has the following composition:</p> <ul style="list-style-type: none"> <li>- One Supreme Court judge who shall be elected through votes by judges of the Supreme Court;</li> <li>- A prosecutor [general] of the Supreme Court who shall be elected through votes by prosecutors of the Supreme Court;</li> <li>- One Appellate Court judge who shall be elected through votes by judges of the Appellate Court;</li> <li>- A prosecutor [general] of the Appellate Court who shall be elected through votes by prosecutors of the Appellate Court;</li> <li>- One Court of First Instance judge who shall be elected through votes from judges and prosecutors of the Court of First Instance;</li> <li>- One lawyer who has 15 years of experience in legal disciplines and who shall be elected through votes by the Bar Association of the Kingdom of Cambodia;</li> <li>- Other members who are not parliamentarians, members of the Senate, members of the Government, Under Secretaries of State, people who hold mandatory office through elections or members of the Bar Association, and who shall comprise of equal number of men and women who shall be elected through votes by an Independent Commission.</li> </ul> <p>No member must have hold any position within the MOJ and/or other Government agencies within the past five consecutive years</p>

### Election of SCM member and conflict of interest

*Concerns:* Article 5 does not contain a provision preventing a member of the SCM of holding another position during their mandate. An elected member should not be promoted and/or designated with other functions during his/her mandate to prevent potential conflict of interest. In addition, elected members must be prevented from running for office again in order to maintain a system of fairness.

*International best practices:* A judge or prosecutor candidate member to the SCM should be someone who shall not have hold a position within the MoJ and/or other institutions of the Government within the past 5 (five) consecutive years and shall be selected through the election that guarantees the widest representation of judges and prosecutors from across the country.<sup>18</sup>

<b>Provision in the Draft Law</b>	<b>Alternative drafting recommended</b>
<p><b>Article 5:</b> The term of the elected member of the SCM shall be for five (5) years and shall be finished once new members elected have been appointed. Thereafter elected members of the SCM may run for continuous terms. [...]</p>	<p><b>Article 5:</b> The term of the elected member of the SCM shall be for five (5) years and shall be finished once new members elected have been appointed.</p> <p>Members of the SCM cannot be promoted or appointed/elected to hold another position during their mandate [...]</p>

### Function and Finance

*Concerns:* The control of the administration and budget by the executive puts the judiciary under the direct management of the executive which seriously undermines its independence. The judiciary therefore has to rely on the MoJ's budget allocation.

*International best practice:* The SCM should have an office space, General Secretariat, resources and freedom to manage its operation. It shall not be bound to report its activities to any political authority or any other authority. The SCM should have the power to freely manage its meeting and enjoy direct contacts with other courts regarding its operation. This institution should have all the personnel its needs for its operation.<sup>19</sup>

In addition, the General Secretariat of the SCM should remain and operate independently from the MoJ. The General Secretary and Deputy General Secretary of the SCM should be appointed directly by the members of the SCM or should be appointed upon the request of the MoJ after consulting with all members of the SCM with the MoJ bound by the opinion of the SCM. Finally, the SCM should receive enough financial resources to enable it to operate properly.

Furthermore **Article 15** of this draft law should be amended so that the General Secretariat of the SCM has the authority to manage the SCM's budget. The MoJ should not be the budget-authorizing

<sup>18</sup> See the Recommendation on the Composition of the Council for the Judiciary [B(a)(b)], the Consultative Council of European Judges' Opinion No. 10 (2007) on the Council for the Judiciary, dated 23 November, 2007.

<sup>19</sup> See para 38 of Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary, dated 23 November, 2007.

officer nor should it be involved in the financial resources of the SCM. The King should give proxy to his royal representative or a member of the SCM.

Provisions in the Draft law	Alternative drafting recommended
<p><b>Article 8:</b> The SCM shall have a General Secretariat under the central administration of the MoJ [...]</p> <p>The General Secretary and Deputy General Secretary of the SCM shall be appointed by the Royal Decree upon the request of the MoJ following a consultation with all members of the SCM [...]</p> <p><b>Article 15</b> The SCM shall have its own budget provided in the national budget. The MoJ is the legitimate budget authorizer, whose rights are delegated by His Majesty the King, the Royal Chairman of the SCM.</p>	<p><b>Article 8:</b> The SCM has a General Secretariat which operates independently [...]</p> <p>The General Secretary and Deputy General Secretary of the SCM shall be appointed by the Royal Decree upon the request of the MoJ following a consultation with all members of the SCM; the MoJ is bound by the opinion of the SCM [...]</p> <p><b>Article 15</b> The SCM shall have its own budget provided in the national budget. The royal representative or any member of the SCM is the legitimate budget authorizer, whose rights are delegated by His Majesty the King, the Royal Chairman of the SCM.</p>

#### Disciplinary Council

The draft law states that members of the SCM assume the role of the Disciplinary Council. The President of the Supreme Court acts as the president of the Council in disciplinary actions against judges; the General Prosecutor of the Supreme Court is president of the Council in disciplinary actions against prosecutors and the MoJ is involved in disciplinary actions concerning the President of the Supreme Court.

*Concerns:* The inclusion of the MoJ into the disciplinary process is seriously concerning. The involvement of an agent of the government into the resolution procedure regarding a disciplinary action against a judge or prosecutor severely impacts the principle of independence of the judiciary.

*International best practices:* In accordance with the provision proposed in Article 4 on the composition of the SCM, the President of the Supreme Court and the General Prosecutor of the Supreme Court should not automatically be Presidents of the Discipline Council. Members of the Disciplinary Council should be elected by all members of the SCM or by all judges and prosecutors. In order to avoid conflict of interest, the initial stage of a disciplinary action should be addressed by the disciplinary commission whose members should be elected by all judges and prosecutors or an

independent body.<sup>20</sup> The composition of this disciplinary commission should be different from the members of the SCM.<sup>21</sup>

### Complaints procedure

*International best practice:* It is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, MoJ or any other representative of political authorities should not take part in the disciplinary body.<sup>22</sup>

The CCEJ notes that the intervention of an independent authority with procedures guaranteeing full rights of defense is of particular importance in matters of discipline.<sup>23</sup> Likewise, the UN Basic Principles on the Independence of the Judiciary guarantee that a disciplinary procedure against a judge or prosecutor shall be processed fairly before an independent and impartial body.<sup>24</sup> For a matter concerning the independence of the judiciary, ethics and disciplining judges, the SCM can initiate an investigation even without a complaint being lodged first. A judge can also file a complaint seeking for explanation regarding issues concerning ethics. To avoid a complaint being rejected for lack of factual and legal ground, the scope of the complaint and terms for filing it should be set forth explicitly in the law.

<b>Provision in the Draft Law</b>	<b>Alternative drafting recommended</b>
<p><b>Article 23:</b> A complaint related to disciplinary actions against the judges and prosecutors shall be submitted to the General Secretariat of the SCM or the MoJ. The MoJ shall make a preliminary examinations and investigation to establish a disciplinary case file before deciding to forward it to the Disciplinary Council of the SCM for further procedures.</p>	<p><b>Article 23:</b> A complaint concerning a disciplinary matter involving a judge or prosecutor shall be filed with the General Secretariat of the SCM. The SCM can initiate an investigation into a case concerning the independence of the judiciary, ethics and a judge's discipline.</p>

### Public hearing

A hearing on ethics and disciplinary case should be conducted in public to ensure transparency except when such public hearing disrupts public order, privacy and special circumstances involving the interest of justice. The decision shall be made in public following either a public or close session

<sup>20</sup> See paragraph 71 of Opinion No. 3 of the Consultative Council of European Judges on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality, dated November 19, 2002.

<sup>21</sup> See para 64 of Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary, dated 23 November, 2007.

<sup>22</sup> See paragraph 63 of Opinion No. 10 (2007) of the Consultative Council of European Judges on the Council of the Judiciary, dated 23 November, 2007.

<sup>23</sup> See para 60(b) of the CCEJ's Opinion No. 1 (2001) on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, dated 23 November, 2001.

<sup>24</sup> See paras 17-20 of the Basic Principles on the Independence of the Judiciary, 1985.

hearing. The SCM decision shall have factual and legal reasoning and binding force and should be subject to an appeal or a judicial review.<sup>25</sup>

Provision in the Draft Law	Proposed provision
<p><b>Article 25:</b> [...]The meeting of the Disciplinary Council shall not be in public. The President of the Disciplinary Council may invite any concerned persons to attend its meeting, as deemed necessary. The members of the SCM as well as all persons who attend the meetings of the Disciplinary Council of the SCM shall keep the confidentiality of the meeting. [...]</p>	<p><b>Article 25:</b> [...] The meeting of the Disciplinary Council shall be held in public except when such public hearing disrupts public order, privacy and special circumstances involving the interest of justice [...]</p>

### **The Draft Law on the Statute of Judges and Prosecutors**

This Draft Law sets the statute of judges and prosecutors and principles regarding judges and prosecutors with the purpose of ensuring the independence of the judiciary.<sup>26</sup>

#### Composition of the Commission of promotion in rank and grade

*Concerns:* The Commission on promotion in grade and rank (the “Commission promotion”) is the body with the power to issue decision on career progress of judges and prosecutors. The Draft Law gives power to the MoJ, the Secretary of State of the MoJ, to influence the promotion and career of judges and prosecutors. Of further concerns is the fact that all members of the Commission are automatically appointed and that the MoJ can appoint additional members. As such, the MoJ has the power to promote judges and prosecutors and consequently creates a risk that judges or prosecutors partial to the MoJ will be promoted.

*International best practices:* The SMC should have the authority to recruit, appoint, and promote judges, independently from the legislative and executive.<sup>27</sup> The authority taking the decision on the selection and career of judges should be independent of the government and administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.<sup>28</sup> Judicial independence depends not only on freedom from undue external influence, but also freedom from undue internal influence.<sup>29</sup>

<sup>25</sup> See *ibid*, para 39. See also *ibid*, Rule 20 of the Basic Principles on the Independence of the Judiciary adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>26</sup> Article 1 of the Draft Law on the Statute of Judges and Prosecutors

<sup>27</sup> Recommendation D(b) on the Power of the Council for the Judiciary, CCEJ’s Opinion No. 10 (2007) on the Council of the Judiciary, dated 23 November, 2007.

<sup>28</sup> See paragraph 36 of Opinion No. 1 (2001) of the Consultative Council of European Judges on the Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, dated 23 November, 2001.

<sup>29</sup> See *ibid*, para 66.



Provision in the Draft law	Alternative drafting recommended
<p><b>Article 33:</b> The composition of the Commission of promotion in rank and grade comprises:</p> <ul style="list-style-type: none"> <li>- Secretary of State of the MoJ (Chairman)</li> <li>- Vice President of the Supreme Court (Vice-Chairman)</li> <li>- Deputy Prosecutor-General of the Supreme Court (Vice-Chairman)</li> <li>- President of the Court of Appeal (Member)</li> <li>- Prosecutor-General of the Court of Appeal (Member)</li> <li>- President of the Municipal Court (Member)</li> <li>- Prosecutor of the Municipal Court (Member)</li> <li>- The Secretary General of the SCM (Secretary)</li> </ul> <p>The Minister of Justice may appoint any other compositions if necessary to assist this Commission.</p>	<p><b>Article 33:</b> The composition of the Commission of promotion in rank and grade shall comprise people directly elected by all judges and prosecutors.</p> <p>A judge or prosecutor candidate shall not have held any position within the MoJ and/or other institutions of the Government for the past five consecutive years. Other candidate members shall not be a parliamentarian, senator, member of the Government, Under Secretary of State, or other function obtained through elections or member of the Bar Association.</p>

In addition, other articles in this Draft Law should be amended:

**Article 28** regarding the criteria to take into consideration for the promotion of judges should include that decisions should be also based on the objective assessment of a judge's integrity, independence, professional competence, and experience and commitment to uphold the rule of law.<sup>30</sup>

Paragraph 3 of **Article 50** and paragraph 4 of **Article 96** which read "*in political activities, judges shall absolutely adhere to a neutral attitude,*" represent a serious threat to judges' independence. Instead, clear sanctions should be imposed on judges or prosecutors who are involved in any political activities. In addition, regarding Article 96, like judges, prosecutors should enjoy their full right and freedom to express their opinion, such as publicizing their work in a responsible and ethical manner without having to ask for permission from the MoJ.<sup>31</sup>

### **The Draft Law on the Organization and Functioning of the Courts**

This draft law determines the organization and functioning of all kinds and levels of courts of law in Cambodia; the organization and functioning of all levels of prosecution offices attached to the tribunals; administer the management, administration and functioning of the courts.<sup>32</sup>

<sup>30</sup> See para 14 of the Singhvi Declaration.

<sup>31</sup> See para 8 of the UN's Guidelines on the Role of Prosecutors

<sup>32</sup> See article 2 of the Draft Law on the Organization of the Courts.

### Administration of the courts

According to international standards, the SCM should have jurisdiction over the administration and management of the tribunals to ensure the quality of justice.<sup>33</sup> The SCM should have jurisdiction over the administration of the tribunals in order to monitor the implementation of the principle of independence within every section of the judiciary.

<b>Provision in the Draft law</b>	<b>Alternative drafting recommended</b>
<p><b>Article 11:</b> The MoJ shall supervise all administrative affairs of all Courts/tribunals with the General Secretariat of the Administration of the Court as the executive body [...]</p> <p>When necessary, the MoJ may assign an inspection on specific issue and then report to the SCM for examination and decision. [...]</p>	<p><b>Article 11:</b> The SCM supervises all administration affairs of all Courts/tribunals with the General Secretariat of the Administration of the Court as the executive body [...]</p> <p>When necessary the SCM may assign inspection and reports on specific issues and then examine and decide upon them. [...]</p>

### Budget of the courts

According to the UN Basic Principles on the Independence of the Judiciary, it is the duty of each UN Member State to provide adequate resources to enable the judiciary to properly perform its functions.<sup>34</sup> Although the funding of courts is part of the State budget, such funding should not be subject to political fluctuations as decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence. The arrangements for parliamentary adoption of the judicial budget should include a procedure that takes into account the opinions of the judiciary.<sup>35</sup>

In addition, the CCEJ is of the opinion that the courts can only be properly independent if they are provided with a separate budget and administered by a body independent of the executive and legislature, whether it is a SCM or an independent agency.<sup>36</sup> It stresses that extended financial powers for the SCM imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public<sup>37</sup> particularly the effectiveness and quality of work performance by the judiciary.

<b>Provision in the Draft law</b>	<b>Alternative drafting recommended</b>
<p><b>Article 84:</b> The Courts of First Instance and the prosecution attached to the Courts of First Instance, the Appeal Courts and the general prosecution</p>	<p><b>Article 84:</b> The Courts of First Instance and the prosecution attached to the Courts of First Instance, the Appeal Courts and the general prosecution</p>

<sup>33</sup> Recommendation (f) of the CCEJ's Opinion No. 10 (2007) on the Council of the Judiciary, dated 23 November 2007.

<sup>34</sup> Rule 7 of the Basic Principles on the Independence of the Judiciary adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>35</sup> Para 73 of the CCEJ's Opinion No. 10 (2007) on the Council for the Judiciary, dated 23 November, 2007. See further on para 37 of the Beijing Statement of Principles of Independence of the Judiciary.

<sup>36</sup> *Ibid*, para 74.

<sup>37</sup> *Ibid*, para 75.

attached to the Appeal Courts and Supreme Court and general prosecution attached to the Supreme Court shall have separate budgets for functioning allocated from the budget of MoJ.  
[...]

attached to the Appeal Courts and Supreme Court and general prosecution attached to the Supreme Court shall have separate budgets for functioning [managed and controlled by the SCM](#).  
[...]

In addition, CCHR and the organizations consulted for the purpose of this analysis are also concerned by the following issues:

1. There should be clear indications regarding the qualification of a person who may become an advisor of the Commerce Court and the Chamber of Commerce;
2. An article stating a solution in case a recruited advisor has a conflict of interest with the parties to the proceedings should be included;
3. Articles relating to and establishing an Administrative Court or a Administration Chamber should be included.

### **Conclusion**

The civil society organizations, international legal experts and donor countries are already concerned by the lack of independence of the judiciary in Cambodia. The new three drafts laws will further place the judiciary and the SCM under the influence of the ruling party. Based on the above analysis the three draft laws have failed to meet the minimum standards set out by the Constitution and international law guaranteeing the independent of the judiciary.

The principle of the independence of the judiciary is enshrined in the Constitution and international law, to which the RGC must comply with. Therefore, all the draft laws must be amended in order to ensure the independence of the judiciary, the right to a fair trial and compliance with international standards.