



**Article 9:**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

**1995 Beijing Statement of Principles of the Independence of the Judiciary in the Law Asia Region**

2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(l)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent Judiciary is indispensable to the implementation of this right.
8. To the extent consistent with their duties as members of the Judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.
13. In the selection judges there must be no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

**1990 Basic Principles on the Role of Lawyers**

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

***B) Cambodian Laws and Regulations***

**1993 Cambodian Constitution (CC)**

**Article 31:**

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizens shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

**Article 32:**

Every Khmer citizen shall have the right to life, personal freedom, and security. There shall be no capital punishment.

**Article 34:**

Citizens of either sex shall enjoy the right to vote and to stand as a candidates for the election.



Citizens of either sex of at least eighteen years old, have the right to vote. Citizens of either sex of at least 25 years old, have the right to stand as candidates for the election.

Provisions restricting the right to vote and to stand for the election shall be defined in the Electoral law.

**Article 38:**

The law guarantees there shall be no physical abuse against any individual.

The law shall protect life, honor, and dignity of the citizens.

The prosecution, arrest, or detention of any person shall not be done except in accordance with the law.

Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law.

Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.

Any case of doubt, it shall be resolved in favor of the accused.

The accused shall be considered innocent until the court has judged finally on the case.

Every citizen shall enjoy the right to defense through judicial recourse.

**Article 39:**

Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties.

The settlement of complaints and claims shall be the competence of the courts.

**Article 41:**

Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security.

The regime of the media shall be determined by law.

**Article 45:**

All forms of discrimination against women shall be abolished.

The exploitation of women in employment shall be prohibited.

Men and women are equal in all fields especially with respect to marriage and family matters.

Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.

**Article 51:**

The Kingdom of Cambodia adopts a policy of Liberal Democracy and Pluralism.

The Cambodian people are the master of their own country.

All powers belong to the people. The people exercise these powers through the National Assembly, the Royal Government and the Judiciary.

The Legislative, Executive, and the Judicial powers shall be separate.

**Article 82:**

The National Assembly shall hold its first session no later than sixty days after the election upon notice by the King.

Before taking office, the National Assembly shall decide on the validity of each member's mandate and vote separately to choose a Chairman, Vice-Chairmen and members of each Commission by a 2/3 majority vote.

All National Assembly members must take oath before taking office according to the text contained in Annex 5.

**Article 92:**

Laws adopted by the National Assembly which run counter to the principles of preserving national independence, sovereignty, territorial integrity, and affect the political unity or the administration of the nation shall be annulled. The Constitutional Council is the only organ which shall decide upon this annulment.



**Article 126:**

Each member of the Royal Government shall be punished for any crimes or misdemeanors that he/she has committed in the course of his/her duty.

In such cases and when he/she has committed serious offenses in the course of his/her duty, the Assembly shall decide to file charges against him/her with the competent court.

The assembly shall decide on such matters through a secret vote by a simple majority thereof.

**Article 128:**

The Judicial power shall be an independent power

The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

The Judiciary shall cover all lawsuits including administrative ones.

The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels.

**Article 129:**

Trials shall be conducted in the name of Khmer citizens in accordance with the legal procedures and laws in force.

Only judges shall have the right to adjudicate. A judge shall fulfill this duty with strict respect for the laws, wholeheartedly, and conscientiously.

**Article 130:**

Judicial power shall not be granted to the legislative or executive branches.

**Article 131:**

Only the Department of Public Prosecution shall have the right to file criminal suits.

**Article 132:**

The King shall be the guarantor of the independence of the Judiciary. The Supreme Council of the Magistracy shall assist the King in this matter.

**Article 133:**

Judges shall not be dismissed. The Supreme Council of the Magistracy shall take disciplinary actions against any delinquent judges.

**Article 134:**

The Supreme Council of the Magistracy shall be chaired by the King. The King may appoint a representative to chair the Supreme Council of the Magistracy.

The Supreme Council of the Magistracy shall be chaired by the King. The King may appoint a representative to chair the Supreme Council of the Magistracy.

The Supreme Council of the Magistracy shall make proposals to the King on the appointment of judges and prosecutors to all courts.

The Supreme Council of Magistracy shall meet under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court to decide on disciplinary actions against judges or prosecutors.

**Article 135:**

The statutes of judges and prosecutors and the functioning of the judiciary shall be defined in separate laws.

**Article 136:**

The Constitutional Council shall have the duty to safeguard the respect of the Constitution, interpret the Constitution, and laws passed by the National Assembly and finally reviewed by the Senate.

The Constitutional Council shall have the right to examine and decide on contested cases involving the election of the National Assembly members and Senate members.

**Article 137:**

The Constitutional Council shall consist of nine members with nine-year mandates. One-third of the members of the Council shall be replaced every three years. Three members (3) shall be appointed by the



King, three (3) members shall be appointed by the National Assembly and three (3) others by the Council of the Magistracy.

The members of the Constitutional Council shall elect the Chairman. The Chairman of the Senate shall have a casting vote in cases of equal votes.

**Article 138:**

Members of the Constitutional Council shall be selected from among the dignitaries with a higher-education degree in law, administration, diplomacy, or economics and who have considerable work experience.

**Article 139:**

The function of the Constitutional Council member shall be incompatible with that of a member of the Senate, member of the National Assembly, member of the Royal Government, in-post judges, any position in the public service, President and Vice-president of a political party, President or Vice-president of a trade union.

**Article 140:**

The King, Prime Minister, President of the National Assembly, one-tenth (1/10) of the National Assembly members, President or one-fourth (1/4) of the Senate may forward the laws passed by the National Assembly to be reviewed by the Constitutional Council before the promulgation of such law.

The internal regulations of the National Assembly, internal regulations of the Senate, and organic laws shall be forwarded to the Constitutional Council for reviewed before their promulgation. The Constitutional Council shall decide within no later than thirty (30) days whether the laws and internal regulations are constitutional.

**Article 141:**

After a law is promulgated, the King, President of the Senate, President of the National Assembly, Prime Minister, one-fourth (1/4) of the Senate or the court may ask the Constitutional Council to examine the constitutionality of that law.

Citizens shall have the rights to appeal against the constitutionality of laws through their representatives or President of the National Assembly or member or President of the Senate as stipulated in the above paragraph.

**Article 142:**

Provisions in any article ruled by the Constitutional Council as unconstitutional shall not be promulgated or implemented.

The decision of the Constitutional Council shall be final.

**Article 143:**

The King shall consult with the Constitutional Council on all proposals for amendments to the Constitution.

**Article 144:**

An organic law shall specify the organization and operation of the Constitutional Council.

**Article 150:**

The Constitution shall be the Supreme Law of the Kingdom of Cambodia.

All laws, and decisions made by the State Organs shall be strictly consistent with the Constitution.

**Article 151:**

Any initiative to review or amend the Constitution shall be the prerogative of the King, Prime Minister, and the President of the National Assembly at the suggestion of one fourth of all members.

Revision or amendment to the Constitution shall be enacted by a constitutional law, adopted by two-thirds majority of all members of the National Assembly.



## 1992 UNTAC Criminal Code

### **Article 2:**

Judges and prosecutors both are magistrates. Only judges may adjudicate. Prosecutors are responsible for penal actions, which only they may initiate. They file indictments in court and in all other forums provided for in this text. The Attorney General pleads before the Supreme Court in the interest of the law, reviews the legality of indictments by provincial prosecutors, and organizes and supervises their work.

### **Article 7:**

1. Attorneys are authorized to establish a Bar Association, which will take the form of a non-profit association with disciplinary and regulatory authority over its members. The Bar Association shall neither receive nor accept any directives from any political party, nor from any legislative authority or executive authority acting for any of the Cambodian parties to the Agreement. During the transitional period, any person holding a degree equivalent at least to the university law degree or having five years of legal or judicial experience at a sufficiently high level of responsibility may be admitted to practice law.
2. Due to the small number of attorneys in Cambodia, during the transitional period, any Cambodian holding a diploma of completion of secondary school education may represent an accused person in court, provided he or she is not an executive-level official or an elected official of the existing administrative structures or of a recognized political party. Furthermore, accused persons may ask a member of their family to represent them, regardless of level of education.
3. The representative of an accused party shall have the same rights in judicial proceedings as an attorney and be able to have access to any document, to file motions or to plead. In the present text the term "counsel" refers without distinction either to an attorney or to any other person representing an accused.
4. Foreign attorneys shall be allowed to appear in Cambodian courts, provided they furnish proof that they are members of a Bar in their own country or are officially authorized to practice in their country. The existing administrative structures agree to facilitate the granting of visas to attorneys coming to practice their profession in Cambodia.

### **Article 13:**

1. No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by this time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available.
2. The public prosecutor petitions the judge to indict and possibly to detain a suspect, based on the police file, by preparing an introductory indictment making reference to specific facts and legally characterizing the infraction according to the present text.
3. The judge may thus decide, by a decision setting out the reasons:
  - to charge the suspect, with or without incarceration;
  - to release the suspect because the evidence is insufficient;
  - to continue the investigation without disclosing the name of the suspect
4. Within the same time limit of 48 hours after arrest, extended if appropriate for the additional period mentioned in the sub-paragraph (1) above to allow for transportation, counsel must receive a copy of the file of accusation against the suspect.

### **Article 17:**

1. If a judge decides that additional investigation is necessary, counsel of the accused shall, throughout the investigation, be immediately advised of new evidence presented against his or her client.
2. Counsel shall have access to the file of the person charged upon simple written request at any time during the proceeding, and shall obtain from the judge any results of investigation, expert testimony or hearings which he or she considers useful in the defense of his or her client.

### **Article 24:**

1. Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor.
2. All evidence, including police reports, is rebuttable and may be challenged during the trial.



3. Confessions by accused persons are never grounds for conviction unless corroborated by other evidence. A confession obtained under duress, of whatever form, shall be considered null and void. Nullification of a confession must be requested from the judge by counsel for the accused prior to the sentencing hearing.
4. The defense may call its own witnesses, and present its own evidence to the court.
5. All witnesses, whether for the prosecution or for the defense, may be summoned to appear before the court by subpoena and are subject to a fine of 100,000 to 1,000,000 Riels for failure to appear.

**Article 25:**

All suspects indicted and accused persons benefit from the most complete presumption of innocence.

**Article 57:**

Any public agents, including police or military agents, who deliberately infringe upon rights of physical integrity and the inviolability of the home, as protected by the present text, shall be liable to a punishment of one to five years in prison.

**1994 Law on the Supreme Council of Magistracy**

**Article 1:**

Pursuant to article 113 and 115 of the constitution of the kingdom of Cambodia a Supreme Council of Magistracy shall be established to assist His Majesty the king in guaranteeing the independence of the judiciary, discipline of judges, and the good functioning of the adjudicate courts of the Kingdom of Cambodia.

**Article 2:**

The Supreme Council of Magistracy shall have the composition as hereunder:

- His majesty the king of the Kingdom of Cambodia, as ----- President;
- Minister of Justice, as ----- Member;
- President of the Supreme Court, as ----- Member;
- General Prosecutor to the Supreme Court, as ----- Member;
- President of the Appeal Court, as ----- Member;
- General Prosecutor to the Appeal Court, as ----- Member;
- Three (3) judges elected by the judges, as ----- Member.

The Supreme Council of Magistracy shall have three (3) other reserved members, who will be elected by judges of the whole country for substituting the elected members who are absent.

All members shall be appointed by Preah Reach Kret (Royal Decree).

In case there is an incompatibility of function, the Minister of Justice shall be replaced by a senior official of the Minister of Justice.

**Article 3:**

His Majesty the King who is the President of the Supreme Council of Magistracy may nominate a royal representative to preside over the meetings of the Supreme Council of Magistracy.

**Article 4:**

Members of the Supreme Council of Magistracy who have been elected shall have a five (5) year term and may stand as candidates for re-election in the subsequent mandates.

**Article 5:**

In case any elected member is resigned or absent for more than six (6) months shall be replaced by a reserved member who is the most senior in age. In this case, an election shall be proceeded to elect additional a reserved member to fill it up.

**Article 6:**

The procedure and organization of elections of the full fledge and reserved/substitute members, shall be determined by a Prakas (Ministerial Proclamation) of the Minister of Justice.

**Article 7:**

The meeting of the Supreme Council of Magistracy shall be convened by the Minister of Justice,



following the order of the King. The meeting may be proposed by at least 3 members.

**Article 8:**

A meeting of the Supreme Council of Magistracy shall not be considered as valid, unless attended by at least seven (7) members.

**Article 9:**

The decision of the Supreme Council of Magistracy shall be done with respect to the majority of the members present and through a secret ballot vote. The chairperson of the meeting shall not participate in this vote. However, in case of equal votes, the chairperson of the meeting shall make a decision.

**Article 10:**

The Supreme Council of Magistracy shall necessarily be consulted in order to have its opinions/comments on the proposed laws or draft laws which are related to the organization of the judicial field and functioning of this field.

The opinions/comments of the Supreme Council of Magistracy shall be given within a period of no later than thirty (30) days, from the date of reception of such proposed law or draft law from the Minister of Justice.

If it is urgent, this period may be decreased to only ten (10) days.

**Article 11:**

The Supreme Council of Magistracy shall decide and raise its recommendations to His Majesty the King regarding the matters of appointment, transfer, disruption from function, suspension from job, placement outside of the cadre (framework) or removal of title of all judges and prosecutors.

The Supreme Council of Magistracy shall give recommendations on matters of promotion of steps and ranks (grades) of all judges and prosecutors.

The Minister of Justice shall prepare and submit the drafts of Preah Reach Kret (Royal Decree) to His Majesty the King concerning the above matters.

**Article 12:**

Concerning the matter of imposition of the disciplinary sanctions against judges and prosecutors, the Supreme Council of Magistracy shall meet in the form of a Disciplinary Council, and under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court, depending on whether such case of disciplinary sanction is concerning with a judge or prosecutor.

In such above case, His Majesty the King and the Minister of Justice shall not be participated.

When any elected member is absent, shall be replaced by a reserve member.

In case of imposing a disciplinary sanction against the President of the Supreme Court or General Prosecutor to the Supreme Court, the Disciplinary Council shall be presided over by His Majesty the King or his royal representative.

All documents related to the concerned person who is subject to the disciplinary sanction, shall be sent to all members of the Disciplinary Council for examining at least fifteen (15) days before the meeting will take place.

**Article 13:**

The President of the Disciplinary Council shall be set the meeting date and convene the meeting.

**Article 14:**

The decision of the Disciplinary Council shall be made with respect to the same process as of the Supreme Council of Magistracy as stated in Article 9.

**Article 15:**

The decision of the Disciplinary Council shall be submitted to the Supreme Council of Magistracy for consideration and approval. This decision shall not open access for further appeal.

**Article 16:**

Members of the Supreme Council of Magistracy and all participants shall maintain the confidentiality of the meetings.



**Article 17:**

The Supreme Council of Magistracy shall select a judge and a clerk to undertake the function as secretaries who shall have duty to make up reports, minutes, keep files, and to perform other works.

**Article 18:**

The Supreme Council of Magistracy shall be entitled to receive the remuneration for the meeting at hourly rate which shall be determined by a Joint-Prakas (Joint-Proclamation) of the Minister of Justice and Minister of Finance.

**Article 19:**

The expenses for the functioning of the Supreme Council of Magistracy shall be planned in the budget of the Ministry of Justice.

**Article 20:**

After this law enters into force, the Minister of Justice, upon there is an agreement from the President of the Supreme Court, shall request to His Majesty the King to appoint three (3) judges for temporary members of the Supreme Council of Magistracy, for the period when it is yet not possible to organize the election of judges as its members according to the provisions of the article 4 above.

The above temporary appointed judges shall automatically terminate their duties when upon the elected judges who are members take their office.

**Article 21:**

The organization of an election of judges as members of the Supreme Council of Magistracy shall be done after the law on Statutes of enters into force, and after the appointment of judges into the cadre (framework) of judges have been already proceeded.

**Article 22:**

Judges who are to receive the assigned functions as pursuant to the article 20 above, shall be eligible to vote and to stand as candidates for the election, to be voted by their colleague judges.

But these judges shall resign from membership of the Supreme Council of Magistracy from the date of submission of their applications as candidates.

**Article 23:**

Any Provision which is contrary to this law shall be hereby abrogated.

## **Cambodian Code of Judicial Conduct**

The following rules apply to all judges and any other persons holding positions of any type in any court.

1. A first violation of any rule shall result in a suspension without pay for a period of time determined by the Supreme Council of the Magistracy, dependent on the severity of the offense.
2. A second violation shall result in permanent disqualification from all judicial office or other employment in the Supreme Council of the Magistracy.
3. In addition, any person who receives any money or other thing of value in violation of these rules shall pay a fine to the Ministry of Justice equal to three times the amount received.
4. A judge or other court staff who knows of any violation of these rules by any person must report that violation immediately. Failure to do so shall be treated as a knowing and willful participation in the violation.
5. A judge or other court staff must respect and observe the law at all times. The conduct and manner of a judge or other court staff must promote public confidence in the integrity and impartiality of the judiciary.
6. A judge or other court staff may not accept any money, gift, bequest, favor, loan or thing of value from anyone, apart from his/her salary. A judge or other court staff may not permit any family member to accept any money, gift, bequest, favor, loan or thing of value from anyone, apart from his/her salary. Any such offer must be reported immediately and in full detail to the Supreme Council of the Magistracy.
7. A judge or other court staff must disqualify him/herself from any matter in which a party or lawyer appears who has at any time had a business or personal association with the judge or other court staff.



8. A judge or other court staff shall not initiate, permit, or consider private communications made to the judge or other court staff outside the presence of all of the parties concerning a pending proceeding. Any such contact must be reported immediately to the Supreme Council of the Magistracy.
9. A judge or other court staff must not use the office to advance personal business interests or those of others.
10. A judge or other court staff must not allow activity as a member of an organization to cast doubt on the judge or other court staff's ability to perform impartially.
11. A judge or other court staff must avoid financial and business dealings that interfere with the proper performance of judicial duties, or exploit the position of the judge or other court staff.
12. A judge or other court staff must disqualify him/herself from any matter about which the judge or other court staff has received any information whatsoever from any party or lawyer before its filing. Any such contact must be reported immediately to the Supreme Council of the Magistracy.
13. A judge or other court staff may not participate in any political party.
14. A judge or other court staff must not practice law for compensation.
15. A judge or other court staff must dispose promptly of the business of the court.
16. A judge or other court staff must abstain from public comment about a pending or impending proceeding in any court.
17. A judge or other court staff must take or initiate appropriate disciplinary measures against a judge or other court staff or lawyer for unprofessional conduct of which the judge or other court staff may become aware.
18. A judge or other court staff must report the date, place, source and nature of any and all income received by the judge or other court staff and amount received. The judge or other court staff's report shall be made at least annually and shall be filed as a public document with the Supreme Council of the Magistracy.

## **1993 (SOC) Law on Organization and Activities of the Adjudicate Courts**

### ***Article 6:***

Provincial and municipal courts shall have competence to proceed trials and to open access for appeals in all the criminal, civil, commercial cases, and litigations of administrative or labour cases. Provincial and municipal courts when proceed hearings, shall be headed by a judge, complemented by a prosecutor or a deputy prosecutor and a court clerk.

### ***Article 7:***

Court's Judgement is contradictory (made in the presence of the parties), may open access for an appeal within a period of two (2) months, from the date of decision. Judgement by default (made in the absence of the parties/party), may open way for an opposition (refusal complaint) within a period of 15 days, from the date of notification thereof. If upon the period permitted for opposition is expired, an appeal may then be made against the judgement within a period of 2 months, from the expiry of the date permitted for opposition.

### ***Article 8:***

The appeal complaint may have power to cease/suspense for temporary the implementation of the court judgement.

Appeal complaints which are relating to decisions of the courts, judges or prosecutors, shall not have power to cease/suspense for temporary those decisions, except only when those appeal complaints are made by the prosecutors in the cases of detaining or releasing for temporary out of detention.

Appeal complaint shall be made in the adjudicate courts which have issued the judgement.

Person whom shall be entitled to make an appeal or opposition/refusal complaint, are the prosecutor or whoever whom has interests in the lawsuit, who will include the party , plaintiff of the civil lawsuit, person responsible in civil case, convicted person, lawyer or defender.

Apart from criminal cases, the prosecutor may not make appeal complaint, unless he/she determined himself/herself to be a plaintiff.

### ***Article 9:***

The military court shall have competence to adjudicate and shall be subjected to appeals for those cases of military offenses.



Military offenses are those committed by military members in the army and which concerned with military discipline or effected properties of military armed forces.

In case when a military member committed normal criminal offence, he/she shall be prosecuted by the provincial/municipal court.

The procedure of the military court shall be the same as what of the provincial and municipal court.

**Article 10:**

The Appeal court shall have competence to proceed hearings of appeal complaints against judgements of the provincial and municipal courts and military court, by opening access for grievance complaints.

**Article 11:**

The appeal court shall consist of 3 magistrates, where one of them is president. The composition of this adjudicate court shall be completed by a general prosecutor or a deputy general prosecutor or a prosecutor from the General Prosecutors' office, and a court clerk.

In case of a hearing for revision of a decision, 3 magistrates shall sit, in which one of them shall be president, and all of these magistrates should be those who did not participate in the previous hearing (of this same case) .

**Article 12:**

The Judgement by default of the Appeal court, may be subjected to an appeal by a grievance complaint against it within a period of 2 months from the day of judgement.

The Judgement by default (made in absence of a party/parties) of the appeal court, may be subjected to an opposition /refusal complaint within a period of 15 days. If this period permitted for opposition is expired, may then be subjected to a grievance complaint within 2 months from the date of expiry of the delay permitted for filing opposition/refusal complaint.

**Article 13:**

The grievance complaint shall have power to cease/suspense for temporary of the implementation of the Appeal court's judgement.

But the grievance complaint which concerned with temporary detaining, temporary released out of detention ( pending trial ), suspension of file case without further proceeding and acquitted from charges, ... may not have power to cease/suspense for temporary the implementation of judgement of the Appeal court. A grievance complaint shall be made in the adjudicate court which has issued such judgement.

Person who shall have rights to file a grievance or an opposition/refusal complaint, is the general prosecutor to the Appeal court or whoever has interest in the lawsuits, who will include: the parties/party, plaintiff in the civil cases, the responsible in the civil cases, convicted person, lawyer or defender.

**Article 14:**

The Supreme court shall have competence to proceed hearings on grievance complaints against judgements of the Appeal court by considering only on erroneous of law but not of facts.

But in the lawsuits where there is a n grievance complaint submitted, such court shall proceed a hearing in joint groups, by considering at the same time on both the erroneous of law as well as of facts.

**Article 15:**

Revision complaints may be made against judgements (of the lower courts ) or final judgements of the appeal court and which have already had absolute power.

Revision complaint may be permitted for the cases of misdemeanour and crime and in other cases which have been provided for by the law.

Revision complaint may not be made against judgement of the lower court or appeal court which was made to acquit from charges.

Persons who shall be entitled to make revision complaints are:

- Minister of Justice,
- convicted person or legitimate representative of the convicted person if such person has no capability,
- spouse, parents(mother or father), children of the convicted,...or generally speaking, those persons whom will be receiving material or spiritual/moral interest if the convicted is deceased or disappeared.



**Article 16:**

Composition when in the hearing of the Supreme court shall consist of 5 magistrates, one of whom is president. In case when proceeding a hearing in joint groups the composition of this court shall consist of 9 judges, in which one of them shall be president. This above court's composition shall be complemented a general prosecutor or deputy general prosecutor or a prosecutor and a court clerk.

## 1994 Law on Civil Servants

**Article 51:**

Any civil servant who is alleged of misdemeanour or crime before the courts, may not be prosecuted unless after there is authorization for prosecution before hand from the Council of Ministers following the request of the Ministry of Justice, for those civil servants with a salary equal or above the salary of the superior ranking officer of the 3<sup>rd</sup> class or who have their titles as Deputies of the Royal Government to the royal capital city or provinces, provincial or municipal governors. For those civil servants with lower salary than that of the superior ranking officers of the 3<sup>rd</sup> class, such authorization in advance for prosecution shall only be decided by the head of such concerned institution.

In case of flagrant delicto/crime, the court may order to detain the person immediately without waiting for authorization for prosecution, but shall inform this case immediately to the head of the concerned person.

## 1995 Law on the Bar

**Article 1:**

The legal profession is an independent and autonomous profession involved in serving justice and may only be pursued from within the framework of the Bar Association.

**Article 2:**

The lawyer may represent clients with agreement from the clients or defend clients in adjudicatory bodies and in all stages of judicial proceedings, unless otherwise provided by law, especially in Civil, Commercial, Administrative, Labor, and Social Action cases. In criminal cases, the lawyer can defend the accused but cannot represent (stand in for) the accused in court, other than by special provision of the law. The lawyer may represent defendants or plaintiffs in civil actions.

**Article 3:**

The lawyer may advise and prepare documents in the judicial field. The lawyer may be assigned by the parties or the judge to fulfill the function of conciliator or mediator. The lawyer may be assigned as an arbitrator only where permitted by law.

**Article 4:**

Apart from those lawyers who are members of the Bar Association, no one may perform this profession or provide legal consultation or prepare legal documents for compensation, except when such legal consultation or preparation of documents is an ancillary job to their profession or is a function permitted by law.

**Article 8:**

The Bar Association of the Kingdom of Cambodia is an organization bringing together all lawyers who establish offices in the Kingdom of Cambodia. Each individual lawyer, upon having registered his or her name in the Bar List, shall become a full member of the Bar Association.

**Article 29:**

The Bar Fund is derived from dues paid by all members and other contributions. A special account shall be established in this Fund for providing income to lawyers who defend poor people.

This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people.

All lawyers are obligated to defend poor people according to the same procedures and internal rules and in the same manner as the defense of their own clients.



**Article 31:**

A person may engage in the profession as a lawyer, provided that he or she has fulfilled the conditions hereunder:

1. Shall have Khmer nationality.
2. Shall have a Bachelor of Law degree (Licence en Droit) or a law degree declared equivalent.
3. Shall have a Certificate of Lawyer's Professional Skill. This Certificate of Lawyer's Professional Skill shall be issued by a Center for Training of the Legal Profession. The organization and the functioning of this center shall be determined by sub-decree.
4. Shall never have been convicted of any misdemeanor or felony, nor received any disciplinary action or administrative penalty, such as removal from any function, or dismissal for any act contrary to honor or any act of moral turpitude. Shall not have been declared personally bankrupt by a court.

**Article 32:**

Neither the Certificate of Lawyer's Professional Skill nor the Bachelor of Law degree (Licence en Droit) shall be required for:

- judges who have served their profession for over 5 years and former judges who have a Secondary Certificate in Law (Certificate de la Capacite en Droit) and have served their profession for over 2 years. The Certificate of Lawyer's Professional Skill shall not be required for:
  - those who have received a Bachelor of Law degree (Licence en Droit) and who have been working in the legal or judiciary field for over 2 years.
  - those lawyers who originally had Khmer nationality and who have been registered in the Bar of a foreign country.
  - those who have received a Doctorate of Law degree.

**Article 33:**

A decision by the Bar Council to accept an application to engage in the legal profession shall occur following a determination that all the conditions have been fulfilled in conformity with the specifications of this law and in view of the opinion of the General Prosecutor to the Appeal Court.

Such decision shall be communicated to the concerned person and the General Prosecutor to the Appeal Court.

The Bar Council may not decide to disapprove without first having summoned the concerned person at least 10 days in advance to be present before it to state his or her opinion. This summons shall be done through registered mail or delivered directly by hand with the acknowledgment of receipt.

Such decision of the Bar Council may be appealed with the conditions as provided for in Article 25 above.

**Article 34:**

Lawyers who have been accepted to engage in the legal profession shall first take a sworn oath at the Appeal Court, in the presence of the President of the Bar Association. This oath shall state as follows:

"I swear that I shall implement my profession with dignity, conscientiousness, honesty, humanity, and with an independent mind, and in observance of the Constitution and Laws of the Kingdom of Cambodia."

**Article 35:**

Those lawyers whose names have just been registered in the Training List shall attend a one year training course in accordance with the procedures set forth in the Internal Rules of the Bar Association, except for any lawyer who has received authorization to be exempted from attending the training. The procedure for the training shall primarily consist of:

- additional training organized by the Bar Association;
- engagement in work as a real associate in a Lawyer's Office.

**Article 36:**

The training shall be carried out under supervision of a Lawyer assigned by the Bar Association to be the chief responsible for such training course.

**Article 37:**

Upon the termination of the training, the Bar Council shall make a decision to register in the Bar list based on a report of the chief responsible for the training. The Bar Council may decide to order continuing training, not to exceed one year, for a trainee who does not have sufficient competence. A decision not to register the name on the Bar List shall be considered a rejection of such lawyer. A decision



to refuse registration into the Bar List or onto the Continuing Training List cannot take effect without the convening the concerned person in order to state his or her opinion in accordance with the conditions as set forth in the Article 33. An appeal may be made against this decision, according to the conditions stated in Articles 24 and 25.

**Article 38:**

Every year the Bar Council shall draw up the Bar List and the Training List and send them to General Prosecutor and all adjudicate courts. These lists shall include:

- The names of lawyers who have been registered in the Bar List with their addresses;
- The names and the addresses of lawyers under training.

**Article 39:**

The order of registration of lawyers in the Bar List shall be determined according to the date when the lawyers took their oaths and the decision by the Bar Council to authorize the registration.

**Article 53:**

The legal profession shall be incompatible with the performance of public functions and commercial businesses, whether directly or indirectly.

**Article 54:**

Lawyers given functions in the Royal Government, or given mandates as deputies in the National Assembly, may remain as members of the Bar Association, but shall cease to perform the legal profession until the termination of such function or mandate.

**Article 57:**

All the activities for attracting clients, individual advertisements, or persistent unsolicited offers to clients for legal defense are prohibited. Only advertisements made collectively are authorized. These advertisements shall be proper and shall not adversely affect the dignity of lawyers.

**Article 58:**

Lawyers shall maintain absolute confidentiality. Lawyers shall determine by their own conscience and the with the consent of the client what issues to be raised in order to defend the interests of the client.

Lawyers may not abuse the confidentiality of the profession and may not be forced to abuse the confidentiality of their professions, even before the court.

The following shall be considered as confidential: consultation, advice, and non-official documents prepared by the lawyer for his or her client, and correspondence sent between the lawyer and his or her client.

**Article 68:**

Lawyers shall receive compensation according to the terms agreed upon between them and their clients and depending on the volume of the work, the extent of their ability as demonstrated in the course of the work, the difficulty of the task, the result obtained, or according to an hourly rate of fees as specified in the Chart list which is to be established by the Bar Association every year. The Lawyer shall issue a receipt to the client upon receiving the compensation.

**1995 Code of Ethics for Lawyers Licensed with the Bar Association of Cambodia**

**Article 7:**

The lawyer is absolutely bound by professional confidentiality. Confidentiality may not be waived by anyone, not even the client.

The lawyer determines, according to his or her conscience, the elements necessary to the needs of the defense.

There is no obligation of confidentiality when the lawyer have to respond to a [legal] action by his or her client, within the strict limits necessary for his or her defense.

**Article 19:**

If the lawyer is retained by multiple clients for the same case or process, the lawyer is prohibited from favoring the interests of any one of them. The lawyer informs the parties of the situation.



The lawyer may not advise, assist, represent, or defend multiple parties if a conflict of interest arises between them.

If such a conflict arises while the lawyer is or was counsel to multiple parties, the lawyer may not represent the interests of one of the parties until after he or she has advised the others while remaining under the strict obligation to compromise neither tact nor professional confidences.

**Article 22:**

A prior agreement may be concluded determining either a fee schedule or the method of establishing remuneration.

In case of disagreement, the President may be designated as arbiter by the parties. In this case, the President shall establish the rules of arbitration specifying the necessary dates of the proceedings. The President shall issue his or her award within six months following his or her appointment.

**Article 24:**

The lawyer who appears for the first time before a judge presents himself or herself to the judge.

The lawyer preserves for the judges, in independence and dignity, the respect due to their position.

The lawyer observes the procedural rules and practices of the jurisdiction. He or she is strictly prohibited from engaging in disloyal and disruptive conduct, especially with regard to objections. The lawyer has the right to express all that which he or she deems useful to the interests of his or her client.

In case of conflict with a judge, the lawyer may seek the intervention of the President.

Problems arising among lawyers, outside the context of procedural regulations, give rise to the mediation of the President.

## **1995 Internal Regulation of the Bar Association of Cambodia**

**Article 9:**

The Professional Training Center defines the substance upon which the CAPA shall be based, as well as the modalities of the examination.

The examination takes place each year in the month of November.

The Council of the Association determines at the beginning the maximum number of lawyers to recruit.

The President shall constitute the jury of examiners, comprised of:

- 1 lawyer whom he or she designates,
- 1 professor designated by the Dean of the University of Law and Economic Sciences of Phnom Penh,
- 1 judge designated by the Minister of Justice

The jury may call upon specialized examiners to correct written tests.

## **1998 Law on the Organization and Functioning of the Constitutional Council**

**Article 3:**

All the 9 members of the Constitutional Council shall be selected from amongst dignitaries who have Khmer nationality from birth of at least 45 years old and at least a superior education degree in law, administration, diplomacy or economics and who have at least 15 years of work experiences.

Three (3) members of the Constitutional shall be appointed by His Majesty the King, three (3) the Supreme Council of Magistracy and three (3) other members shall be elected by the National Assembly by an absolute majority of votes of members of the whole National Assembly.

This above election by the National Assembly may be proceeded into two times.

During the first mandate, if it is failed to obtain an absolute majority after the first vote, then a second vote shall be proceeded, for which 5 of the members who received most of the votes, shall be voted again. During this second vote, (the National Assembly) shall adopt by a comparative majority of votes. Who received a highest majority in the vote, shall be appointed for a 9 year term, who received a second majority in the vote, shall be appointed for a 6 years term and who received next majority in the vote, shall be appointed for a 3 years term.

During the next mandate, if it is failed to obtain an absolute majority after the first vote, a second vote shall be proceeded, for which two (2) of the members who received most of the votes, shall be voted again. During this second vote, (the National Assembly) shall adopt by a comparative majority of votes.



In case when candidates received equal votes, one of the candidates who has the oldest age shall then be elected.

Each candidate who is elected by the National Assembly shall be required to have supporting signatures in advance from 1/10 of the whole members of the National Assembly. One member of the National Assembly may have right to support only one sole candidate.

**Article 5:**

Functions of the members of the Constitutional Council are incompatible with those of the members of the Royal Government and the National Assembly, Presidents and Deputy-presidents of political parties, Presidents or Deputy-Presidents of trade unions and sitting judges.

During their terms, members of the Constitutional Council shall not hold any other position or professional occupation.

Before assuming their positions on the Constitutional Council, persons appointed to the Council shall resign for temporary from all the positions or professional occupations as stated in the above paragraph.

The President of the Constitutional Council shall inform in writing to those members of the Constitutional Council who are holding the positions or occupations as above that they must immediately resign from those positions or occupations.

Members of the Constitutional Council shall refuse themselves from all cases in which their personal interests could be affected by the outcome of the cases. Any request for refusal or requirement of refusal, shall be decided by the Constitutional Council, by an absolute majority of its whole members.

**Article 14:**

Meetings of the Constitutional Council shall be convened by the President of the Council or, if the President is busy and unable to do it, by an oldest member.

Meetings of the Constitutional Council shall not be valid unless attended by 7 members.

**Article 15:**

The Constitutional Council has competence in guaranteeing the protection and respect for the Constitution, interpretation of the Constitution and laws which have been adopted by the National Assembly, within a framework of controlling the constitutionality of laws.

**Article 16:**

Organic laws, Internal Rules of the National Assembly and all amendments of organic laws and Internal Rules of the National Assembly, after adopted by the National Assembly, shall be submitted by the President of the National Assembly to the Constitutional Council to determine whether they conform or not with the Constitution, prior to promulgation.

**Article 17:**

The King, President of the National Assembly, Prime Ministers or 1/10 of the members of Parliament, may submit other laws which have been adopted to the Constitutional Council for consideration, prior to promulgation.

**Article 18:**

After promulgation of any law, His Majesty the King, President of the National Assembly, Prime Ministers or 1/10 of members of the Parliament or court, may request to the Constitutional Council to determine whether it conforms with the Constitution.

Citizens may have right to appeal against the unconstitutionality of laws through the President or members of the National Assembly as stated in the above paragraph.

**Article 19:**

Any person who involves in any suit at court, may request to the court of an unconstitutionality of any provisions of a law or any decision of a State's Institution which he/she affirms of affecting any of his/her fundamental rights-freedoms.

If the court determines that the above request has sufficient basis, it shall refer the case to the Supreme Court within a period of 10 days.

The Supreme Court shall proceed to consider and complain to the Constitutional Council within a period of 15 days, except when Supreme Court determines that such request is not acceptable.



**Article 21:**

The Constitutional Council may have right to invite one or more persons to clarify or provide relevant documents.

Every individual, State or private institution shall abide by the invitation and request of the Constitutional Council.

**Article 22:**

The Constitutional Council shall make decisions in writing on all cases submitted within a period of 30 days. In case if it is urgent, this above period shall be reduced to only 8 days.

The Constitutional Council determines on the constitutionality based on a report made by a member that the President has assigned duty to him/her for considering and making such report (for the Council).

The Constitutional Council takes decisions based on an absolute majority of all members of the whole Council. In case when there are two equal voices in the vote, the voice of the president shall then be preponderant.

In all decisions of the Constitutional Council shall contain reasons.

**Article 23:**

Decisions of the Constitutional Council are decisions which close access for further appeals and have binding force to all powers as stated in the Constitution.

**Article 24:**

Decisions of the Constitutional Council shall be submitted to His Majesty the King, President of the National Assembly, Prime Ministers and President of the Supreme Court and besides, shall be published in the "Official Journal".

The President of the National Assembly shall inform of the above decisions to all members of the National Assembly.

The Prime Ministers shall inform (of the above decisions) to all members of the Royal Government.

The President of the Supreme Court shall inform (of the above decisions) to the concerned courts.

**Article 25:**

The Constitutional Council decides on disputes related to the elections of members of the National Assembly.

**Article 26:**

The Constitutional Council determines and decides on:

1- requests of political parties or contests of candidates against any decision of the National Election Committee (N.E.C.) which rejected the contests against any candidacy or any candidate list. Such requests shall be made within 7 days after the reception of a letter of notice from the National Election Committee.

2- requests of individuals contesting against the decisions of the National Election Committee (N.E.C.) which rejected the requests for registration (in the voter register). Such requests shall be made within 5 days after the reception of a letter of notice from the National Election Committee.

3- requests of individuals or their representatives who contest against the decisions of the National Election Committee which decided to reject the contests regarding the missing names, opposition against any registration or retention in the voter list of any person's name who is considered as not appropriately in conformity with the conditions as stated in the Election Law. Such above request shall be made within five (5) days, after the reception of a letter of notice from the National Election Committee (N.E.C.).

The Constitutional Council shall take decision on the above cases, within thirty (30) days, after the reception of the requests.

4- requests of political parties, which contested against the rejection from registering it in the political party register. Such above requests shall be submitted to the Constitutional Council within five (5) days, after the reception of a letter of notice from the Ministry of Interior.

The Constitutional Council shall take decisions on the above cases within thirty (30) days, after the reception of the requests from the concerned political parties.

**Article 27:**

The Constitutional Council determines and decides on:

1- direct requests contesting against the election result of which the individuals or political parties which are running for election are disagreeing with . Such above requests shall be made within seventy two (72) hours after the proclamation of a temporary result of the election.



2- Requests of the individuals or political parties, contesting against the decisions of the National Election Committee (N.E.C.) which rejected the contests against the election result. Such above requests shall be made within 48 hours, after the reception of a letter of notice from the National Election Committee. The Constitutional Council shall take decision on the above case within twenty (20) days, after the reception of the requests.

**Article 28:**

Any individual or political party who wishes to contest against a decision of the National Election Committee (N.E.C.) or an election result, shall submit a written request to the Constitutional Council. On such request must mention:

- 1- the name of the individual or political party making the request,
- 2- legal status of the person making the request ( who is a person whose name is in the voter register or a candidate or representative of a political party).
- 3- name of the electoral constituency in which the contested election took place.
- 4- name of an individual or political party proclaimed to have won the election and against whom the contest is made.
- 5- all documents or evidence in support of the request for the annulment.

At its discretion, the Constitutional Council may accord to such individual or political party who/which is the contestant, a 5 days extension to produce evidence.

The Constitutional Council may decide not to carry out an investigation on any request, if such request fails to comply with specified conditions under this article.

In all cases, when submitting a request to the Constitutional Council, it is required to pay no fees.

**Article 29:**

A request has no effect to stop the implementation. However, pending a final decision, the Constitutional Council may, if deems necessary, issue a preliminary order to suspend for temporary a contested election result of any member of the National Assembly or political party. This above order shall be cease its effect, upon a final decision is issued by the Constitutional Council.

**Article 30:**

In order to investigate on disputes related to the election of members of the National Assembly, the Constitutional Council shall be divided into 3 Sections. Each Section composes of 3 members, in which one (1) member is appointed by the King, one (1) member is elected by the National Assembly and one (1) member is appointed by the Supreme Council of Magistracy. Individual members of these 3 Sections shall be assigned to Sections according to a random selection presided over by the President of the Council.

**Article 31:**

After the reception of a request, the President of the Constitutional Council shall delegate the responsibility to one of the Sections to undertake an investigation. That Section shall immediately inform in writing to the person making the request and to the person or political party whose/which election is contested that he/she has in maximum 10 days to review on the request and the evidence submitted to the Council by the parties, and to produce a written response.

**Article 32:**

After the reception of the above letter of response or expiry of the 10 days period and after completion of the investigation, the Section which is responsible shall submit the result of the investigation conducted by the Section and its recommendation to the full Constitutional Council Session. The Constitutional Council may order to conduct further investigation and may offer opportunity for a direct hearing of the person making the request and the person whose election is contested.

**Article 33:**

The Constitutional Council or the Sections may, in conducting an investigation, inquire into all issues, demand all documents and reports and subpoena any person related to the election.

The Constitutional Council or the Sections may assign its staff members or other persons to assist in the investigation of a contested election particularly in the reception of testimonies of witnesses upon they took an oath. The written minutes of such testimonies of witnesses shall be made available for all parties. If the investigator or any member of the Section found out that a witness has fear of persecution, the



name of such witness shall then be kept secret from all but the Constitutional Council and only the substance of his/her testimony is revealed.

**Article 34:**

The Constitutional Council takes decisions in case when there are requests concerning the (ir)regularity of an election, eligibility of a person for an election or eligibility of a candidate proclaimed to have won the contested election.

The Constitutional Council may express approval or disapproval on a decision of the National Election Committee (N.E.C.), proclaim the nullification of the contested election or proclaim that a candidate is legitimately elected.

The Constitutional Council shall take decision by an absolute majority of all members of the whole Council. In every decision of the Constitutional Council shall indicate of the reasons.

Decisions of the Constitutional Council are final decisions and which close access for further appeal.

This above decision shall be submitted to His Majesty the King, National Assembly and Royal Government and moreover shall be published in the "Official Journal".

**4 December, 2001 Anukret n° 505 granting additional competency as notary to lawyer of the Bar Association of the Kingdom of Cambodia (by Hun Sen)**

**Article 1:**

In addition to his duty as lawyer, member of the Bar Association, licencen°54, Mr Benson Samay is appointing by this Anukret as lawyer/notary.

**Article 2:**

Mr Benson Samay is a public Officer and granted with public powers according to the nomination by this Anukret.

**Article 3:**

Mr Benson Samay has jurisdiction in family, movable and immovable property, *interalia*, to:

1. Receive, produce or certify and affix seal to any letter, legal document and contract, in order for it to meet the requirements of the Law, which in most cases have a (supporting) document from public authority.
2. Certify dates of documents, conserve documents in archives and issue original copy or certified copy of documents and contracts, according to his duty;
3. The parties shall read carefully, completely and signed all the documents in front of the lawyer/notary, before he signs and affixes his seal.

**Article 4:**

The lawyer/notary shall deposit Riels 600,000,000 at the National Bank of Cambodia to cover his responsibility according to his duty.

**Article 5:**

The Senior Minister, Minister of the Office of the Council of Ministers, all Ministers, Secretaries of State and Institutions concerned are responsible for the implementation of this Anukret, from the date of signature.

**1993 Law on Criminal Procedure**

**Article 7:**

Public action may not be settled by any arrangement.

The court of repressive jurisdiction provided in further articles; when seized upon knowledge of any penal infraction, shall decide on the case. The non-compliance to this principle shall be considered as a miscarriage of justice and punishable of a disciplinary measures or imprisonment from 6 days to 1 month.

**Article 8:**

The exercise of penal action and putting it into process are the responsibilities of the prosecution department.



In principle, at the prosecution department, the deputy general prosecutor and prosecutor perform their duties on behalf and under the responsibilities of the prosecution department.

In principle, at the prosecution department, the deputy general prosecutor performs his/her duties on behalf and under the responsibilities of the general prosecutor, whether or not in his/her presence.

At the municipal and provincial prosecution department, the deputy prosecutor performs his/her duties on behalf and under the responsibilities of the prosecutor, whether or not in his/her presence.

**Article 9:**

The person who believes to be injured by an infraction may lodge a complaint along with the prosecution proceedings in order to obtain award.

**Article 13:**

It is not sufficient to just have criminal offence and damages caused by the offence but there shall also be relationship between the two elements: cause and effect, or in other words the damage is the direct result of the offence and it really and currently occurs.

**Article 47:**

The officers of the judiciary police have the rights to offenders only in cases of crimes or misdemeanours caught red-handed in the act. They shall bring the alleged offenders to the competent jurisdiction within 48 hours without counting necessary transportation time by the quickest transportation means possible.

**Article 55:**

Once the perpetration of any crime or any misdemeanour is known, the prosecutor shall proceed immediately to the investigation measures which are provided to him/her by the law and which are necessary to find the truth. In case where the committed crime or misdemeanour is exceptionally serious, the prosecutor shall inform immediately the general prosecutor at the appeal court and the Minister of Justice. The Prosecutor shall carry out the instruction he/she receives from them in this matter.

In case where the prosecutor is unavailable because of the sickness or other reason, the assistant prosecutor shall be in charge in his/her place. If there are many assistant prosecutors, the one who is senior in the rank shall replace the prosecutor.

If there is no assistant prosecutor the Minister of Justice shall decide immediately any judge from the jurisdiction to replace the prosecutor. In case of extreme emergency, the president of the jurisdiction may designate a judge to temporary replace the prosecutor and shall inform immediately the Minister of Justice.

**Article 56:**

The prosecutor has the duty:

- to receive the complaint and the denunciation related to the crime or the misdemeanour even though the complaint is from any person, from any officer of the judicial police or from any official competent for the penal action.
- to receive the report made by the officer of the judiciary police who ascertains crimes, misdemeanours or the minor offenses.
- to proceed to preparatory investigation by himself/herself in case where the offense is a crime or a flagrante delicto misdemeanour.
- to call out the public force for the performance of his/her duty.

**Article 61:**

In case of misdemeanour, the prosecutor may accuse the offender and send him/her directly to the penal court for judgement or proceed the same way as described in article 60 above.

The prosecutor accuses and sends the offender to the court for judgement when the file is completed and there are sufficient factors that constitute the offense.

The prosecutor has also the right to make additional inquiry before sending the case to the court. In this case, he/she may ask necessary information from the judiciary police officer. Once all the information is obtained, the prosecutor sends the case to the court for judgement which is based on the full knowledge of the facts.

**Article 62:**

In the case where the committed crime is flagrante delicto, and if the investigating judge did not receive the case, the prosecutor may issue order to the suspect to appear through arrest.



The prosecutor shall interrogate immediately that person. If that person is accompanied by a human right defender, the prosecutor shall interrogate him in the presence of his human right defender. The prosecutor may interrogate the witness who is present and issue an order to take temporary measures, in order to ensure the sufficiency of the evidence.

The prosecutor may search the criminal offender's house and confiscate the object produced in evidence necessary for finding the truth.

The prosecutor may interrogate any person who may provide useful information but may not order him/her to have witness or order to take an oath. The prosecutor has right to assign an expert to evaluate the object produced in evidence that the prosecutor thinks necessary.

The prosecutor has the right to forbid any person from leaving the scene of the crime. If the prohibition is not respected, the prosecutor may issue a requisition to detain that person for 24 hours.

Once the report on the place of the accident is completed, the prosecutor shall send immediately the file and the introductory requisition to the judge who will continue to gather some more information or reviewed all the documents if he/she feels there is a need. When the investigating judge receives the case and is present at the scene of the offense, the prosecutor or the judiciary police officer shall give the whole investigation process to the judge.

### **Article 63:**

The prosecutor shall examine immediately whether or not the charge on the offender is sufficiently established. If the offender is detained a proper report should be sent to him.

If the charge is related to a flagrante delicto offense punishable by imprisonment, the prosecutor interrogates the offender the following firstly:

- Identity card with the surname and name, age profession, the domicile place and date of birth of the offender
- Surname and name of the offender's parents
- Summary of the offender's biography especially on the past judiciary record.

After that, the prosecutor asks the questions on:

- The offense that is charged on the offender
- All circumstances related to the offense

The prosecutor shall make and sign the report written by a clerk.

This report shall also be signed by the offender. If the offender does not know how to sign the prosecutor shall mention it in the report and have the offender's to fingerprint.

### **Article 67:**

The prosecutor shall apply the procedure directly to the court in case where the convicted person is liable to a punishment of imprisonment not more than one year as the maximum term, if not, the prosecutor shall send the case to the investigating prosecutor.

### **Article 76:**

At this first appearance and after recording the identity and informing his/her accused act, if the accused tells the judge that he/she chooses a lawyer, or requests that a lawyer shall be automatically appointed by the government for his/her defence, then the investigating judge shall suspend the interrogation and call the counsel shortly in order to interrogate the accused in the presence of the counsel.

The automatic appointment of a lawyer shall be made by the presiding judge in the following cases:

- the victim is a minor without defence,
- the accused person is a minor without defence,
- the accused person is mute, deaf, blind, or has mental disorder,
- the accused of committing any crimes and is not able to afford a defender.

In other cases as mentioned above, the investigating judge may interrogate the accused person when he/she accepts to defend by him/herself.

### **Article 98:**

In principle, there is an absolute incompatibility of office between a judge and a representative of the prosecution department.

The representative of the prosecution department who performs his/her duty in any proceeding may not be a judge in the same case.

There is also incompatibility of office between an investigating judge and a trial judge.



**Article 126:**

In any criminal jurisdictions, the clerk shall be responsible for writing a summary report of the hearing for allowing the appeal court to control the effectively the lawfulness of the proceeding, and to have a knowledge as compete as possible of the oral investigation during the hearing. The clerk shall try the best he/she can to carefully write down the progress of the proceedings, and all statements of the witness and the answers of the offender.

The above summary report shall be signed by the clerk, and certified by the judge after a detailed review in the period of ten days after the hearing during which the judgement was pronounced. The clerk will receive an administrative discipline, if he/she fails to perform this task.

**Article 127:**

The summary report signed by the clerk and certified by the judge is considered a valid of its content until there is evidence to the contrary. In the case of a discrepancy between the summary report and the original judgement, the latter will be considered as valid.

**Article 128:**

The investigation during the hearing shall be in public, if not, it will be considered as null and void. The proceedings in open court are required not only for the pronouncement of the judgement, but, also for the investigation, and the hearing. Therefore, the judgement shall mention the proceedings in open court, because without it, the judgement shall be considered as null.

**Article 129:**

Nevertheless, the hearing can be conducted in camera, if the proceedings in open court might deem dangerous to the public order and good tradition. The in camera hearing may only conducted on part of the investigation. In another sense, the time for the in camera proceeding is limited to the investigation of the case. The pronouncement of the judgement shall be in public, if not it shall be considered as null.

## **1995 Law on the Press**

**Article 10:**

If any person believes that any article or text, even if the meaning of the article or text is implied, or any picture, drawing or photograph of any press is false and harms his or her honor or dignity, that person has the right to demand a retraction from or the right to reply to the publisher of the statement and the

right to sue on the charge of defamation, libel or humiliation which harms his or her honor or dignity. A retraction or reply shall be published within seven days or in the next issue after receiving a demand for a retraction or reply.

In the case of a public figure, any false allegation or imputation which the journalist publishes or reproduces with malicious intent against such public figure is libel and is prohibited.

If following a complaint by a plaintiff in a civil action the court finds that a publication is false the court may order the press to:

- Publish a retraction
- Pay compensation, or
- Publish a retraction and pay compensation.

A retraction that the press is obliged to publish shall be published on the same page with the same size of type as the text believed to have affected the honor or dignity of others.

In addition, the court may impose a fine of 1,000,000 to 5,000,000 riels.

In addition, in cases in which a judgment is made under the above paragraph the court may order the posting of its decision at specified locations and the publication of its judgment in one or more newspapers at the expense of the accused, not to exceed a maximum of 1,000,000 riel.

## **1997 Law on Political Parties**

**Article 38:**

Shall be subject to a fine penalty in cash of 3,000,000 (three million) Riels for any political party which violates the article 31 of this Law.



In case of repeated offenses, shall be subject to pay in double the amount of above fine and, may in addition, be punishable to temporary cease the activities of such political party.

## ***C) Draft Laws***

### **2003 Draft Law on Civil Procedure**

#### ***Article 28:***

1. ...
2. Any party may challenge a judge where circumstances exist with respect to the judge that would hinder the impartiality of the judge's adjudication.

### **2003 Draft Law on Criminal Procedure**

#### ***Article 476:***

The party who wishes to refuse a judge must file a petition at the time he is aware of grounds for refusal. Failure to do so shall cause it a petition for refusal to be dismissed. In no case whatsoever can a petition for refusal be made after closure of cross-examinations.

#### ***Article 477:***

The party shall file the petition to:

- The president of the appellate court when the refusal complaint related to him or a judge of the court first instance.
- The president of the Supreme Court when the refusal complaint related to a judge of the supreme court, the president or judge of the appellate Court.

The petition shall clearly indicate the ground for refusal and shall be followed by specific evidence.

#### ***Article 478:***

The judge who is requested to be refused shall be notified of the petition for refusal shall be notified to. This judge shall suspend his interrogation or other participation in the case. In an emergency, this judge shall be replaced by another judge to be appointed by the president of the court to which he/she belongs.

#### ***Article 479:***

Within eight (8) days of such notification, the relevant judge shall indicate in a report with a response indicating his/her agreement or objection to refusal. This report shall be submitted to the president of the appellate court or president of the Supreme Court, as the case may be, to decide the refusal complaint.

If the judge agrees to the refusal petition, he/she shall be immediately replaced by another judge.

If the judge objects to the refusal petition, the petition shall be decided on the Merits of the petition.

#### ***Article 480:***

The petition shall be reviewed without hearing the parties or the relevant judge.

If the refusal is approved, a substitution appointment shall be made.

If the petition for refusal is denied, a person who filed the petition for refusal shall be fined 200,000 riels in addition to any other damages payable to the judge who was asked to be refused.

#### ***Article 481:***

The authority provided in Article 474 shall make the decision and a conclusive order. The relevant judge and the person who filed the refusal petition shall be notified of the order by the court clerk.