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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 104th session, 10–14 November 2025

Opinion No. 68/2025 concerning Koet Saray (Cambodia)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 60/8.

2. In accordance with its methods of work,[1] on 9 July 2025 the Working Group transmitted to the Government of Cambodia a communication concerning Koet Saray. The Government has not replied to the communication. The State is a Party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

* Mumba Malila did not participate in the discussion of the case.
[1] A/HRC/36/38.

1. Submissions

(a) Communication from the source

4. Koet Saray is a citizen of Cambodia, born in 1992, and his usual place of residence is Phnom Penh. He is a human rights defender and former President of the Khmer Student Intellectual League Association, a non-governmental organization that advocated for social development, good governance and the sustainable use of resources.

5. Since 2018, Mr. Saray has been involved with Mother Nature Cambodia, which advocates for human rights and sustainable development. He was ordained as a monk in 2002 but was defrocked in 2020 after being arrested for participating in a peaceful protest.

(i) Background

6. The source submits that the rights to freedom of expression and peaceful assembly are limited in Cambodia. Activists and political opponents are reportedly being targeted by the authorities for expressing dissent. Notably, in many instances, the authorities have charged activists under articles 494 and 495 of the Criminal Code, the same charges brought against Mr. Saray. In addition to articles 494 and 495 of the Criminal Code, the 2020 State of Emergency Act is also used to suppress dissent and grants officials broad powers to conduct digital surveillance, prohibit public assemblies and control the media.

7. According to the source, the judiciary lacks independence as the executive branch intervenes in judicial appointments, transfers, promotions, suspensions and disciplinary actions, which are supposed to be decided by the Supreme Council of Magistracy.[2] Further, defendants are reportedly not afforded adequate due process rights under the judicial system.

(ii) Arrest and detention

8. On 21 March 2024, Mr. Saray reportedly met with villagers from Preah Vihear Province, who faced eviction from their land to make way for a rubber plantation. Tear gas had been used against the villagers earlier in 2024, when they had protested their eviction.

9. After meeting with the villagers, Mr. Saray posted on social media about the meeting and spoke to the media. The social media post reportedly contained nine photos of Mr. Saray sitting with villagers. Also in the post, it was stated that the Khmer Student Intellectual League Association and four student human rights defenders had entered the forest to meet with representatives of residents in Srayang commune, Kulen district, Preah Vihear Province, who were in hiding from the authorities in relation to a land dispute.

10. The source submits that, on 5 April 2024, 15 days after the meeting and the above-mentioned post on social media, the Office of the Prosecutor at Phnom Penh Municipal Court of First Instance issued an order to question Mr. Saray on charges of "incitement to cause serious chaos to national security".

11. On the same day, at around 4 p.m., Mr. Saray was arrested by 10 plain-clothes officers outside the Khmer Student Intellectual League Association office in Phnom Penh.[3] He was taken to the Commissariat of Phnom Penh Municipal Police for questioning related to alleged incitement to commit a felony or disturb social security, based on an order from the Deputy Prosecutor of Phnom Penh Capital Court. He was questioned without a lawyer present and was detained for two nights.

12. On 7 April 2024, the Prosecutor referred the case to an investigating judge at Phnom Penh Municipal Court of First Instance, where Mr. Saray appeared without a lawyer. That same day, the court placed him in pretrial detention. He was immediately transferred to Prey Sar Prison for men in Phnom Penh, also known as Correctional Centre 1.

13. In the detention order, Mr. Saray's detention was justified on the basis of evidence that he had committed the offence for which he was being charged and on the basis of the possibility that he would abscond. Officials explained to the State-run media that Mr. Saray

[2] See https://news.un.org/en/story/2007/08/228972.

[3] See https://www.rfa.org/english/news/cambodia/student-leader-arrested-04052024165817.html.

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had been placed in pretrial detention to prevent unrest during the upcoming Khmer New Year. Mr. Saray was not given an opportunity to challenge his detention until his trial on 9 October 2024, six months after his arrest. Mr. Saray was initially charged under articles 494 and 495 of the Criminal Code. The source notes that articles 494 and 495 of the Criminal Code criminalize provocation to commit offences and have previously been found by the Working Group to be vague and violating the principle of legality.[4]

14. Mr. Saray faced double the maximum penalty, under article 88 of the Criminal Code, because of his prior convictions in 2020.

15. Mr. Saray's trial was held on 9 October 2024, at Phnom Penh Municipal Court of First Instance. He was represented by lawyers from the Cambodian Human Rights and Development Association and the Cambodian League for the Promotion and Defence of Human Rights. During the trial, the court reportedly heard from only one witness, namely the police officer who had arrested and detained him on 5 and 6 April 2024, who read out his report regarding the detention and questioning.

16. On 6 November 2024, Mr. Saray was convicted on all three charges (under articles 494 and 495 of the Criminal Code and recidivism under article 88) and sentenced to four years in prison. He is still being held at Prey Sar Prison.

17. On 26 November 2024, Mr. Saray appealed his sentence to Phnom Penh Appeal Court. No trial date has been set for his appeal and, on 3 July 2025, his legal team wrote a letter to the head of the court, urging him to set a date. On the same day, the court denied a request to release Mr. Saray. He remains in detention at Prey Sar Prison and still has not received a trial date.

18. The source adds that the Khmer Student Intellectual League Association was shut down following Mr. Saray's arrest due to continued targeting of its members.

(iii) Legal analysis

19. The source submits that Mr. Saray's case falls under categories I, II, III and V.

a. Category I

20. The source submits that Mr. Saray's deprivation of liberty lacks legal basis. It alleges violations of articles 2, 8, 9 and 11 (2) of the Universal Declaration of Human Rights, articles 2 (3), 9 (1), (3) and (4) and 15 (1) of the Covenant, principles 2, 32 (1), 36 (2) and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 38 of the Constitution of Cambodia.

21. The source submits that Mr. Saray was detained under a vague law, in violation of the principle of legality under article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant. He was detained under articles 494 and 495 of the Criminal Code, which criminalize incitement to commit crimes through speeches, writings or any form of communication. Articles 494 and 495 criminalize "incitement" to commit a felony or to "disturb social security" without defining the terms "incitement" or "social security". Article 494 broadly applies wherever "incitement" occurs in any public speech, public writing or picture or public communication. The broad terms allow the Government to target activists for any behaviour deemed to be "incitement" but prevent citizens from understanding how to comply with the vague and overly broad law.

22. The source notes that the Working Group has previously found that articles 494 and 495 are vaguely worded and overly broad, in violation of the principle of legality. Moreover, a group of special procedure mandate holders has previously raised serious concerns about the Government of Cambodia using the vaguely worded articles 494 and 495 of the Criminal Code to crack down on dissent and to stifle free expression.[5]

[4] Opinions No. 75/2021, paras. 63 and 66; and No. 5/2023, paras. 67–70.

[5] See https://www.ohchr.org/en/press-releases/2021/08/cambodia-un-experts-condemn-conviction-trade-union-leader-systematic.

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23. Further, also in relation to category I, the source asserts violation of the right to habeas corpus and the general rule against pretrial detention. Article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant establish the right to an effective remedy. Article 9 (4) of the Covenant provides that a detained person has the right to take proceedings before a court to determine the lawfulness of the detention. Principle 32 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person or his or her counsel is entitled at any time to take proceedings before a judicial or other authority to challenge the lawfulness of detention.

24. Article 9 (3) of the Covenant and principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that pretrial detention should not be the general rule. Instead, pretrial detention should be applied only when strictly necessary and according to the law (principle 36 (2) of the Body of Principles). The Human Rights Committee, in its general comment No. 35 (2014), stated that the court must conduct an individualized assessment when applying pretrial detention, considering any less restrictive means to ensure that the detained person appeared at trial (para. 38).

25. The source recalls that, on 7 April 2024, Phnom Penh Municipal Court of First Instance placed Mr. Saray in pretrial detention, two days after his arrest. State-run media reported that his pretrial detention was based on the need to prevent disruption during an upcoming holiday. He was unable to challenge his detention before a judicial authority for nearly six months while awaiting trial, and the court never conducted a re-examination of his detention to determine whether it was reasonable.

b. Category II

26. The source recalls that protected fundamental rights include the freedom of peaceful assembly and association, under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant, as well as the freedom of opinion and expression, under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Further, the source notes that article 31 of the Constitution provides that citizens are equal before the law and enjoy the same rights and freedoms "regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status". The Constitution also provides for the protection of the rights to freedom of expression and freedom of assembly under article 41 and the right to form associations under article 42.

27. According to articles 19 (3), 21 and 22 (2) of the Covenant, restrictions on the freedoms of expression, assembly and association may only be imposed when prescribed by law. Freedom of expression may be restricted only for the respect of the rights or reputations of others, for the protection of national security or public order or for the protection of public health or morals. Similarly, the freedoms of assembly and association may only be restricted when necessary in a democratic society, in the interests of national security or public safety, in order to protect public health or morals, or to protect the rights and freedoms of others. Restrictions must be precise enough to allow members of society to regulate their conduct to comply, and they should be necessary and proportionate in the context of a democratic society.[6]

28. Further, a heightened standard of review applies to cases of detention of a human rights defender and when an individual is detained for exercising the freedoms of expression, opinion, assembly or association.[7]

29. According to the source, Mr. Saray, a well-known human rights defender and environmental activist, was detained on charges of "incitement" for exercising the freedoms of expression and opinion, assembly and association by meeting with villagers who had recently been expelled from their homes and by sharing details about the meeting on social media. As part of his role as the President of the Khmer Student Intellectual League

[6] Human Rights Committee, general comments No. 34 (2011), para. 34; and No. 37 (2020), paras. 39 and 40.

[7] Opinions No. 30/2021, para. 66; No. 80/2021, para. 105; and No. 56/2025, para. 78. See also opinions No. 64/2011, para. 20; No. 54/2012, para. 29; No. 62/2012, para. 39; and No. 41/2017, para. 95.

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Association, an association dedicated to the promotion of human rights and sustainability, he discussed the loss of the villagers' homes and shared photos and a description of the meeting on the association's social media platforms. The authorities targeted him for his activism and subsequently arrested other members of the association, before shutting it down.

30. The source concludes that, because the authorities targeted Mr. Saray, a human rights defender, for exercising the freedoms of expression, association and assembly, and none of the limited exceptions mentioned above apply in the present case, the authorities violated his rights under articles 2, 7, 19 and 20 of the Universal Declaration of Human Rights, articles 19, 21, 22 and 26 of the Covenant and articles 31, 41 and 42 of the Constitution, giving his deprivation of liberty an arbitrary character under category II.

c. Category III

31. The source alleges multiple violations of the right to a fair trial that render the deprivation of liberty of Mr. Saray arbitrary under category III. It is submitted that these legal norms emanate from articles 8, 10 and 11 of the Universal Declaration of Human Rights, articles 2 (3), 9 (3) and (4), 14 (1) and (2) and 15 (1) of the Covenant and principles 32 (1), 36 (2), 37, 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

32. The source submits that Mr. Saray was denied the right to a hearing before an independent and impartial tribunal. Article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant guarantee the right to a fair hearing by a competent, independent and impartial tribunal. Principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that a person charged with a criminal offence is to be presumed innocent until proved guilty in a public trial at which he or she can present a defence.

33. The source submits that the executive branch of the Government exercises a high degree of control over the judicial nominating body and over the nomination process of members of the judiciary. Under these circumstances, it is argued that the authorities denied Mr. Saray's right to a hearing before an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, rendering his detention arbitrary under category III.

34. The source also submits that Mr. Saray was denied his right to be presumed innocent because he was convicted following a one-day trial, which the Working Group has previously found could indicate a violation of the presumption of innocence.[8]

35. The source highlights the fact that only one witness was heard at Mr. Saray's trial – the officer who was charged with his arrest – by a tribunal that lacked the requisite independence and impartiality. The authorities, therefore, violated article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rendering his detention arbitrary under category III.

d. Category V

36. The source notes that all persons should be seen as equal before the law, in line with articles 2 and 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. Status as a human rights defender is protected under article 26 of the Covenant. Article 41 of the Constitution also provides for equality before the law.

37. The source submits that Mr. Saray is a renowned human rights defender in Cambodia, who has been previously detained for his activism. Similarly to in the past, he was arrested, detained and charged for incitement regarding his exercise of the freedoms of expression, association and assembly. The source submits that the authorities targeted all the members of the Khmer Student Intellectual League Association, demonstrating a systematic attempt to quell criticism stemming from the organization.

[8] Opinions No. 75/2021, para. 71; and No. 82/2021, para. 80.

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38. The source submits that there is a strong presumption that Mr. Saray's detention is tied to his political opinions, and that his detention is likely based on his status as a human rights defender. A heightened standard of review applies to cases of detention of human rights defenders and when an individual is detained for exercising the freedom of expression.

39. Thus, the source alleges that the authorities violated Mr. Saray's rights under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, rendering his detention arbitrary under category V.

(b) Response from the Government

40. On 9 July 2025, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 8 September 2025, detailed information about the current situation of Mr. Saray and any comments on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify his arrest and continued detention and to provide details regarding the conformity of the relevant legal provisions and proceedings with international law, in particular with the human rights treaties that the State has ratified. Moreover, the Working Group called upon the Government to ensure Mr. Saray's physical and mental integrity.

41. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

2. Discussion

42. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

43. In determining whether Mr. Saray's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[9] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

(a) Category I

44. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

45. Mr. Saray was first brought before a judge at his one-day trial on 9 October 2024, which was about six months after his arrest on 5 April 2024. The Working Group therefore finds that Mr. Saray was not brought promptly before a judge, which, in accordance with the international standard,[10] is within 48 hours of arrest, barring absolutely exceptional circumstances, or afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention, in accordance with articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1), (3) and (4) of the Covenant and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

46. Mr. Saray was held in pretrial detention for about seven months, from his arrest on 5 April 2024 until his conviction on 6 November 2024. Article 9 (3) of the Covenant requires that pretrial detention be the exception rather than the rule and that release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and for execution of the judgment. A detainee must be entitled to meaningful periodic judicial review. Pretrial

[9] A/HRC/19/57, para. 68.

[10] Opinions No. 57/2016, paras. 110 and 111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 30/2019, para. 30; No. 22/2023, para. 50; No. 51/2024, para. 93; and No. 39/2024, para. 45. See also Human Rights Committee, general comment No. 35 (2014), para. 33; CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13.

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detention without an individualized determination of the risk of flight, interference with evidence or the recurrence of crime, as well as consideration of less intrusive alternatives, such as bail, electronic bracelets or other conditions in accordance with the principle of reasonableness, necessity and proportionality, is devoid of legal basis.[11] In the present case, in the absence of a response from the Government, the Working Group concludes that there was no periodic judicial review or individualized determination of Mr. Saray's circumstances and, as a result, his detention lacked legal basis and was ordered in violation of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) and (3) of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

47. The Working Group will elaborate upon the propriety of detention under articles 494 and 495 of the Criminal Code in view of the principle of legality. The principle of legality is one of the fundamental guarantees of due process, and includes: (a) the principle of non-retroactivity; (b) the prohibition against analogy; (c) the principle of certainty; and (d) the prohibition against uncodified, that is, unwritten, or judge-made criminal provisions. This means that an act can be punished only if, at the time of its commission, it was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.[12]

48. Articles 494 and 495 of the Criminal Code criminalize "incitement" to "disturb society security" by: (a) public speech; (b) public writing or picture; or (c) public audiovisual communication.

49. The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and regulate their conduct accordingly.[13] The Working Group reiterates its previous finding that vague and ill-defined terms and concepts such as "incitement" and "disturb society security" in articles 494 and 495 do not meet this standard.[14] They are worded in such vague and overly broad language as to invite abuse and misuse and are thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant. Mr. Saray's detention therefore cannot be considered to be prescribed by law. The Working Group recalls that the Human Rights Committee has recommended that Cambodia review and revise its current and pending legislation to avoid the use of vague terminology and overly broad restrictions.[15]

50. In the light of the above, the Working Group concludes that Mr. Saray's deprivation of liberty lacks a legal basis and is thus arbitrary under category I.

(b) Category II

51. The Working Group will now examine whether Mr. Saray's detention is arbitrary under category II, in relation to which the source submits that his arrest, detention and conviction stem from the legitimate exercise of his fundamental rights that are guaranteed by the Universal Declaration of Human Rights and the Covenant, and are in retaliation for his public criticism of government policy.

52. The source submits, and the Government does not contest, that Mr. Saray was arrested after he met with villagers facing land eviction from Preah Vihear Province, posted about the meeting on social media and spoke to the media as the President of the Khmer Student Intellectual League Association. After Mr. Saray's arrest and detention for "incitement" to "disturb society security" under articles 494 and 495 of the Criminal Code, the association was disbanded and its other members were also targeted by the authorities.

53. The Working Group recalls that the Human Rights Committee has recognized freedom of expression as a foundation stone for every free and democratic society and the right of peaceful assembly, together with other related rights, as constituting the very

[11] Opinions No. No. 61/2018, para. 50; and No. 72/2019, para. 47. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.
[12] Opinions No. 10/2018, para. 50; and No. 36/2019, para. 40.
[13] See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.
[14] Opinions No. 75/2021, paras. 63 and 66; and No. 5/2023, paras. 67–70.
[15] CCPR/C/KHM/CO/3, paras. 34 and 35.

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foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.[16] The Committee has reiterated that freedom of expression includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.[17] Even statements considered by the authorities to be unacceptable, disrespectful and in very bad taste are entitled to protection.[18]

54. Restrictions on the freedom of expression, assembly and association are permissible only when they meet the conditions listed in articles 19 (3), 21 and 22 (2) of the Covenant. Such limitations must not only have legal basis but should also be necessary and proportionate in achieving legitimate aims in a democratic society.

55. In the Working Group's view, the principle of necessity and proportionality inheres equally in all fundamental human rights. The Working Group, in its deliberation No. 9, confirmed that the notion of "arbitrary" *stricto sensu* included both the requirement that a particular form of deprivation of liberty was taken in accordance with the applicable law and procedure and that it was proportional to the aim sought, reasonable and necessary.[19] In its jurisprudence, with regard to the application of the principle of proportionality, the Working Group has applied the four-pronged test of: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.[20]

56. The Working Group recalls that the Human Rights Committee has expressed deep concern about the persistent violation of the freedom of expression within Cambodia, including reports of the closure of multiple national and international media outlets, the blocking of websites critical of the Government, the use of criminal and civil legal actions against journalists and human rights defenders and the widespread harassment and intimidation of online activists. The Committee has also noted with concern that some criminal offences contained in the Criminal Code and in the Act on Telecommunications, including defamation, incitement, insult and lèse-majesté, are often used to restrict freedom of expression disproportionately and excessively.[21]

57. In the present case, the source has established a prima facie case for deprivation of liberty arising from Mr. Saray's exercise of his rights and freedoms while the Government has provided no legitimate aim or objective in a democratic society that may justify interference with his rights and freedoms.

58. In this regard, the Working Group notes the observation by the Special Rapporteur on the situation of human rights in Cambodia that various civil society actors, such as human rights defenders, including environmental human rights defenders, have been harassed, arrested, detained and sentenced to imprisonment, with judicialized lawfare casting a wide shadow over those perceived to be dissidents and those actors continuing to be prosecuted for incitement and related offences in exercising their right to freedom of expression and peaceful assembly.[22]

59. Moreover, the Human Rights Council, in its resolution 60/33, expressed serious concern at the reported deterioration in the civil and political environment in Cambodia due to the perceived chilling effects of judicial prosecutions or alleged cases and of other actions,

[16] General comments No. 34 (2011), para. 2; and No. 37 (2020), para. 1.
[17] *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.
[18] Opinions No. 10/2018, para. 63; No. 61/2018, para. 56; No. 14/2020, para. 65; and No. 43/2020, para. 74.
[19] A/HRC/22/44, para. 61.
[20] Opinions No. 54/2015, para. 89; No. 41/2017, para. 86; No. 56/2017, para. 51; No. 58/2017, para. 48; No. 76/2017, para. 68; No. 82/2018, para. 38; No. 87/2018, para. 64; No. 32/2020, para. 49; No. 89/2020, para. 63; No. 92/2020, para. 63; No. 25/2021, para. 57; and 59/2024, para. 53.
[21] CCPR/C/KHM/CO/3, para. 34.
[22] A/HRC/60/86, para. 24.

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including arrests and alleged surveillance, harassment, violence and repressive activities, against members of political parties, trade unions and civil society, including human rights defenders, environmental organizations and the media.

60. The present case prompts the Working Group to reaffirm that the work of human rights defenders is fundamental to the strengthening of democracy.[23] According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights.[24]

61. The Working Group has noted with concern a rise in the arbitrary detention of environmental human rights defenders, who are defined as individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.[25] The Human Rights Council, in its resolution 40/11, strongly condemned the killing of and all other human rights violations or abuses against environmental human rights defenders by State and non-State actors, and urged States to take concrete steps to prevent and put an end to arbitrary arrest and detention, including of human rights defenders (paras. 1 and 8).

62. For these reasons, the Working Group concludes that Mr. Saray's detention resulted from the exercise of his right to freedom of expression, assembly and association, contrary to articles 19 and 20 (1) of the Universal Declaration of Human Rights and articles 19 (1) and (2), 21 and 22 (1) of the Covenant, with no legitimate aim or objective in a democratic society that may justify interference with his rights and freedoms. The Working Group adds that the actions for which he was deprived of his liberty also constituted the exercise of his right to freedom of thought and his right to take part in the conduct of public affairs under articles 18 and 21 (1) of the Universal Declaration of Human Rights and articles 18 (1) and 25 (a) of the Covenant, pursuant to which citizens have the right to exert influence through public debate and dialogue with their representatives or through their capacity to organize themselves.[26] The Working Group recalls that the Human Rights Committee, in its jurisprudence, has dismissed claims that activists have violated article 25 (a), on the ground that they participated in public debate through elected representatives and through their association's actions.[27]

63. The Working Group thus finds that Mr. Saray's deprivation of liberty is arbitrary and fall within category II.

(c) Category III

64. Given its finding that the deprivation of liberty of Mr. Saray is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Mr. Saray has been tried, convicted and imprisoned. In the light of the above, the

[23] Opinions No. 30/2024, para. 86; and No. 13/2025, para. 94.

[24] See also General Assembly resolutions 70/161 72/24774/146, 76/174 and 78/216, in which the Assembly called upon States to take concrete steps to prevent and put an end to arbitrary arrest and detention, including of human rights defenders, and strongly urged the release of persons detained or imprisoned, in violation of the obligations and commitments of States under international human rights law, for exercising their human rights and fundamental freedoms, such as the rights to freedom of expression, peaceful assembly and association. See further A/HRC/24/38, para. 52: "Juvenal's question *quis custodiet ipsos custodes* (who guards the guardians?) remains a central concern of democracy, since the people must always watch over the constitutional behaviour of the leaders and impeach them if they act in contravention of their duties. Constitutional courts must fulfil this need and civil society should show solidarity with human rights defenders and whistle-blowers who, far from being unpatriotic, perform a democratic service to their countries and the world."

[25] A/HRC/54/51, para. 55.

[26] Human Rights Committee, general comment No. 25 (1996), para. 8. See also Human Rights Committee, general comment No. 34 (2011), paras. 11 and 20; and the Declaration on Human Rights Defenders, art. 8.

[27] *Beydon et al v. France* (CCPR/C/85/D/1400/2005), para. 4.5; and *Brun v. France* (CCPR/C/88/D/1453/2006), para. 6.4.

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Working Group will now consider whether the alleged violations of the rights to a fair trial and due process were grave enough to give Mr. Saray's deprivation of liberty an arbitrary character, such that it falls within category III.

65. The source contends, and the Government does not dispute, that Mr. Saray was denied the right to a hearing before an independent and impartial tribunal in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

66. The Human Rights Committee, in *Olé Bahamonde v. Equatorial Guinea*, found that a situation where the functions and competences of the judiciary and the executive were not clearly distinguishable or where the latter was able to control or direct the former is incompatible with the notion of an independent and impartial tribunal within the meaning of article 14 (1) of the Covenant.[28] The Working Group has also held that the rights to an independent and impartial trial and to equality before the courts were violated when the President had the power to appoint and remove judges at the highest level, which prevented the courts from operating independently of the executive.[29]

67. According to the Human Rights Committee, the requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor must they harbour preconceptions about the particular case before them or act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.[30] A tribunal is not impartial if it does not consider evidence in favour of the defendant and unfairly favours the prosecution.[31]

68. At Mr. Saray's trial, the court heard only from the police officer who had arrested and detained him. His statement consisted of him reading out his report on the detention and questioning of Mr. Saray on 5 and 6 April 2024. The defendant was not given an opportunity to cross-examine the police officer or to present witnesses. This violated Mr. Saray's right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, in accordance with article 14 (3) (e) of the Covenant.

69. In this regard, the Special Rapporteur on the situation of human rights in Cambodia has expressed concern about the justice system being used to apply laws and policies to sanction decisions from the top.[32] States have recommended that Cambodia implement judicial reforms safeguarding the independence and impartiality of the court system, court personnel and judges, in accordance with international standards; and cease judicial harassment of civil society and independent media, and release those unjustly detained for exercising their human rights and fundamental freedoms.[33] The Working Group has noted international criticism of Cambodia for weaponizing its court system to methodically reduce the scope for citizen action.[34]

70. The Working Group therefore considers that Mr. Saray's right to a hearing before an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant was violated.

71. The source submits that Mr. Saray was convicted by Phnom Penh Municipal Court of First Instance on 6 November 2024 on the basis of a one-day trial held on 9 October 2024. It is unlikely that the court had sufficient time to assess evidence and information to decide the case in a fair and impartial manner. He was sentenced to four years in prison under articles 494 and 495 of the Criminal Code. As the Working Group has noted previously, a short trial for a serious criminal offence that carries a heavy sentence supports the conclusion

[28] CCPR/C/49/D/468/1991, para. 9.4.
[29] Opinion No. 90/2017, para. 29.
[30] General comment No. 32 (2007), para. 21; and *Karttunen v. Finland* (communication No. 387/1989), para. 7.2.
[31] Opinions No. 76/2018, paras. 63 and 64; and No. 5/2021, para. 54.
[32] A/HRC/60/86, para. 24.
[33] A/HRC/57/17, paras. 139.61 and 139.113.
[34] Opinions No. 75/2021, para. 74; and No. 5/2023, para. 82.

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that guilt was determined prior to the trial.[35] In the absence of an explanation from the Government, the Working Group finds that these factors undermined Mr. Saray's right to the presumption of innocence, as guaranteed in article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights.

72. Given the above observations, the Working Group concludes that the numerous violations of the rights to a fair trial and due process are of such gravity as to give Mr. Saray's deprivation of liberty an arbitrary character that falls within category III.

(d) Category V

73. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent him or her from exercising his or her human rights.[36]

74. With regard to these non-cumulative indicators, the Working Group notes a pattern of intimidation against Mr. Saray in relation to his activities as an advocate for human rights. According to the source, Mr. Saray was arrested and defrocked after participating in a peaceful protest in 2020. Following his arrest, his non-governmental organization, the Khmer Student Intellectual League Association, was disbanded.

75. Moreover, in the discussion above concerning category II, the Working Group established that Mr. Saray's detention resulted from the peaceful exercise of his human rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the ground of discrimination based on political or other views.[37]

76. For these reasons, the Working Group finds that Mr. Saray was deprived of his liberty on discriminatory grounds, on the basis of his political opinions and his status as a human rights defender. The deprivation of his liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and was arbitrary under category V.

(e) Concluding remarks

77. The Working Group recalls that international human rights bodies have recognized that the prohibition of arbitrary deprivation of liberty is a peremptory norm of international law (jus cogens).[38] The duties to comply with international human rights that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary deprivation of life and liberty, enforced disappearance and torture, rest with all bodies and representatives of the State, and all other natural and legal persons.[39]

3. Disposition

78. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Koet Saray, being in contravention of articles 2, 3, 7, 9, 10, 11 (1) and (2), 18, 19, 20 (1) and 21 (1) of the Universal Declaration of Human

[35] Opinion No. 75/2021, para. 71. See also opinions No. 75/2017, para. 53; No. 36/2018, para. 55; No. 82/2021, para. 80; No. 16/2023, para. 86; No. 39/2024, para. 62; and 51/2024, para. 109.

[36] A/HRC/36/37, para. 48.

[37] Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; No. 39/2024, para. 69; and No. 51/2024, para. 117.

[38] Human Rights Committee, general comment No. 29 (2001), para. 11. See also opinions No. 24/2010, para. 28; No. 15/2011, para. 20; No. 16/2011, para. 12; No. 29/2011, para. 29; No. 30/2011, para. 18; No. 31/2011, para. 16; No. 8/2012, para. 29; No. 22/2012, para. 44; No. 29/2012, para. 26; and No. 53/2012, para. 20. See further deliberation No. 9 (A/HRC/22/44), paras. 51 and 75.

[39] Opinions No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 33 and 35; No. 35/2013, paras. 35 and 37; No. 27/2021, para. 61; No. 59/2024, para. 117.

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Rights and articles 2 (1), 9 (1), (3) and (4), 14 (1), (2) and (3) (e), 15 (1), 18 (1), 19 (1) and (2), 21, 22 (1), 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

79. The Working Group requests the Government of Cambodia to take the steps necessary to remedy the situation of Mr. Saray without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

80. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Saray immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

81. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Saray and to take appropriate measures against those responsible for the violation of his rights.

82. The Working Group recommends that the Government ratify the two Optional Protocols to the Covenant.

83. The Working Group requests the Government to translate the present opinion and to publish and disseminate it through all available means and as widely as possible.

4. Follow-up procedure

84. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Saray has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Saray;

(c) Whether an investigation has been conducted into the violation of Mr. Saray's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Cambodia with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

85. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

86. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

87. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[40]

[*Adopted on 12 November 2025*]

[40] Human Rights Council resolution 60/8, paras. 6 and 9.

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