



DEMOCRACY

Elections and Reform in Cambodia (2017)



U-TURN ON THE ROAD TO DEMOCRACY WITH PLURALISM

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I. Introduction

COMFREL's concept and definition is drawn from both the letter and the spirit of the law manifest in the Constitution of 1993¹ which served as a social contract reflecting the Paris Peace Agreements and establishing the groundwork for government understood as legitimate for all stakeholders committed to peace. The principles and promise of democracy established in the constitution provide for a set of aims for which progress can be assessed. The express commitment to democracy is found in constitution's preamble which invokes popular sovereignty and representative government on the basis of a liberal multiparty system, guaranteed rights, and respect for law; Art. 1 which establishes that the head of state shall rule according to the principles of liberal democracy and pluralism; and Art. 50 which stipulates the duty of all citizens to respect the principle of liberal multiparty democracy, equal to and intimately related to the principle of national sovereignty. The recognition that effective separation of powers is essential to democracy is found in Art. 51 which sets out:

“The Kingdom of Cambodia adopts a policy of Liberal Democracy and Pluralism. The Cambodian people are the masters of their own country. All power belongs to the people. The people exercise these powers through the National Assembly, The Senate, the Royal Government and the Judiciary. The legislative, executive, and judicial powers shall be separate.”

The sanctity of the constitution and recognition of its importance as the basis for rule of law rather than rule by law, is emphasized in Art. 152 designating the constitution as Supreme Law **demanding conformity** of all other laws and institutions, and in Art. 155 which prohibits amendments to the Constitution which detract from liberal multiparty democracy. COMFREL's concept of democracy also follows from Art. 31 which sets out rule of law in terms of equality before the law, and citizenship as an ideal of equal rights and duties; from Arts. 32, 38 and 39 which recognize personal security rights are essential to the proper relation between state power and civilians and civil society; from the political rights in Arts. 34 and 42 which provide the necessary mechanisms for representative government; from Arts. 34 and 41 which guarantee the participation needed for a more inclusive and fulfilling community built on positive peace.

The 2017 report continues the framework and methods for the assessment of democracy set out in previous reports, as well as provides a description of the overall trends in democracy in Cambodia for the 5th mandate of the National Assembly. Following from the general research question of whether Cambodia democratic progress or regress in terms of three general categories: Democratic Governance, Democratic Public Sphere, and Democratic Elections.

Democratic Governance evaluates legislative and executive accountability and responsiveness on the basis of separation of powers and independence of the judiciary.

¹ See: <http://pressocm.gov.kh/en/archives/9539>

Democratic Public Sphere assesses free press, basic freedoms of expression, association, assembly and citizen political participation in terms of the enjoyment of universally recognized political rights.

Democratic Elections assesses the quality of the electoral mechanism on the basis of whether political party competition is fair and citizen participation and ballot casting is free.

The understanding of Democratic Governance is grounded on the ideal that government performance is responsive to the voice and interests of the public, and on the standard of an effective separation of powers. A democratic separation of powers entails real checks and balances between the branches of state which provide the institutional constraints on the executive needed for rule of law and constitutionalism, as well as for popular sovereignty through representation in the legislative branch.

The main contents of the report include a) Legislative branch representation and oversight, b) Accountability and transparency in the executive branch, c) the participatory rights needed for a robust political society, d) Freedom of expression, media, and access to information, e) freedoms of assembly and association, and f) Democratic elections assesses will look at the conduct and quality of the 2017 elections, the situation of women in politics and elections, the national election committee, and preparation and climate for national assembly elections.

II. Executive Summary: U-TURN ON THE ROAD TO DEMOCRACY WITH PLURALISM

THE LEGISLATIVE BRANCH – REPRESENTATION AND OVERSIGHT

In 2017 the strength of the legislative branch declined considerably. This contributed to an overall decrease in democracy through the consolidation of one party rule. Before November, the dialogue and debate in the parliament needed for real oversight over the executive was undermined by the end of the minority leader position, and political check and balance were undermined by the changes to the internal rule of the national assembly.

Not surprisingly, with the steady erosion of political opposition lawmakers and its final elimination in November of 2017, there has been a significant decline in parliamentary efficiency and vitality as observed in a decrease in the vitality of the legislature in the form of no debates in the plenary, less commission activities and less constituency engagement.

The sanctity of an electoral mandate as the standard for legitimate representation by lawmakers, considered constitutionally and universally as an essential minimum for categorizing democratic legislature, has been rejected by the government with the backing of its monopoly on the use of force. This corresponded with an overall rise in using scapegoating and rampant allegations of enemies of the state and national security threats.

The application of newly amended electoral laws and law on political party has resulted in a loss of representative lawmaking, given the fact that some MPs were not elected and those that were elected can no longer be represented by the will of voters and their constituencies to firmly adhere to the standard of an election-based mandate. Ultimately, eliminating the will of people with political opposition, in the national assembly have eroded the legitimacy the mandate provided by elections, while at the same time state discourse and policies have painted political opposition as a national security threat.

THE JUDICIAL BRANCH – INDEPENDENCE AND CONSTITUTIONALISM

Weaknesses in judicial reform carried out in 2017 have shown themselves in practice in 2017 as the judiciary appeared increasingly politicized and subservient to executive direction. Studies show Cambodia consistently ranks low in terms of rule of law, that corruption within the courts system is a big problem, and the public lack confidence in the judicial system. The qualitative analysis of the judiciary has found potential serious issues related to respect for due process rights and the use of the judiciary to punish those who challenge the ruling party or its leadership. The U-turn away from rule of law a decline in the neutrality of the judiciary with the use of the courts, rather than public debate, to constrain criticisms and alternative proposals on policy through a consistently widening application of detention and convictions for opposition party leaders. Contentious trials diminishing public confidence in judicial redress include the trial for the murder of Kem Ley, detention and charges for leaders of opposition parties including the KNUP, the KPP, and the CNRP, as well as the dissolution of the major opposition by the Supreme Court.

THE EXECUTIVE BRANCH

2017 saw a rapid intensification of the threats and intolerance in the rhetoric and policies of the executive branch. Executive discourse has sought to normalize the ideas that any change in government will lead to instability and war, and that any dissent or competition is national security threat. The executive has consolidated its monopoly over the government to the detriment of legislative oversight and judicial independence. The widespread labelling of enemies of the state any groups or individuals that mobilize to reform political policy and institutions in a democratic direction, treats democracy itself as a threat to the political order. There has movement away from democratic civil military relations which aims for separation of the military from domestic politics and the police from partisanism. The security services have vowed to use their capacities to prevent election-based change, mobilized against opposition parties and civil society groups as enemies and threats, and affirmed an absolute partisan support for the CPP.

The Royal Government of Cambodia was found to have fulfilled six of 16 political platform promises with precise indicators. Another six political platforms have only been partly fulfilled and/or implemented by the RGC. Cambodia continues to show little progress in tackling high levels of corruption, and an increase in misuse and state resources was

observed. The reserved/allocated fund improvements support the transparency of the national budget but comparatively the RGC budget transparency continues to perform poorly compared to other states. Important increases in spending on education and social welfare are evident in budget trends, but a peace dividend could be harnessed for improving equitable development by reducing military and public security spending. Advances have been made in reducing the national debt, and the RGC has maintained a decent debt-to-GDP ratio but increased borrowing has the potential to push it to excessive levels.

FREEDOMS OF EXPRESSION, PRESS, AND ACCESS TO INFORMATION

Speech was severely curtailed as high profile prosecutions coupled with pervasive announcements labelling online and public dissent as revolutionary, sharply intensified self-censorship and anxiety related to expression. Criticism is now often responded to with allegations of defamation, incitement and insurrection. Cambodian media space deteriorated with the elimination of independent outlets, the expansion of state media, and low quality and bias online news. Moreover, respect for privacy rights decreased as a large amount of hacks and leaks occurred, as well as a massive problem was uncovered of corrupted accounts through text message account recovery. Comparative studies show declines in press freedom and internet freedom. Journalists report being increasingly insecure and unable to conduct investigative reporting without risk of serious reprisals. Although alleging the existence of a broad-based rebellious conspiracy and foreign spies involving independent media outlets, no evidence was provided and they were actually closed down because of apolitical infractions (tax/license violations) in a manner that gave the appearance to many citizens and stakeholders of bias application of the law. The change in the media landscape has curtailed access to information for citizens on governance and election issues.

FREEDOMS OF ASSEMBLY AND CIVIL/POLITICAL ASSOCIATION

Although formally authorized and protected by law, assembly continued to be highly restricted in 2017. The suspicion and rapid policing of all events not specifically organized by or in support of the ruling party create conditions akin to a state of emergency as in practice such events were disallowed. Assembly was consistently criminalized and prosecution of those involved has increased in severity, with those involved facing serious charges. Organic peaceful social movements were treated as rebellious conspirators and no space for dialogue or responsiveness was afforded by an increasingly intolerant alienation of civil society by the state.

The year saw the application of the LANGO law to restrict advocacy, education, and oversight efforts of CSOs in the areas of election reform and monitoring, human rights,

human trafficking, corruption in resource extraction, and land rights. Sharp reductions in public trust and challenges to social capital have decreased overall capacities needed to support government in the implementation of policies, provide officials with information needed on sensitive issues, and engage with policymakers to ensure responsive outcomes.

The freedom of political parties dramatically deteriorated. Amendments to the Law on Political Parties, were adopted unilaterally by the ruling party in order to empower the executive to halt or suspend political activity of opposition political parties.

The end of 2017 and beginning of 2018 saw the enactment of legal changes which criminalize criticism of the monarchy and authorize the authority to remove legal entities and associations that has been convicted.

DEMOCRATIC ELECTIONS

Significant advances toward democratic consolidation occurred with the 2017 commune elections. The commune elections reflected and supported democratic transformation as the quality of the voter list was high, suffrage was significantly more universalized, the performance of voting officials was much improved and mostly non-partisan, the composition and policies of the NEC were in most ways better, parties adhered to the results and rules of the game more than in previous elections, and citizen enthusiasm and participation was extremely high. Nevertheless, the achievement of free and fair elections was significantly challenged a deterioration in the political climate prior to the election, which intensified after the poll. Despite an advance in gender equity for commune chiefs, the number of female commune councilors is a cause of serious concern. Female voters continued to face obstacles to pressures stemming from social prescribed roles, and increased risk of harassment.

The preparation climate for 2018 national elections (February senate election and July Elections) also severely deteriorated while eliminate election competition. The newly amended laws targeted the contesting political parties and resulted in the dissolution of the main opposition political party CNRP and 118 opposition politicians were banned from running in the elections. The composition of the National Election Committee NEC returned to control by the ruling party. The voter list for 2018 elections fell far short of expected outcomes for adding new eligible voters to the voter list.

III. Key Political Events and Trends 2013 to 2016

2013 saw a questionable election leading to highly contested results, and a parliamentary boycott by the main opposition party lasting a year. Following the election result there was a significant rise in people's dissatisfaction demonstrated in public protest, and essential components of democracy were temporarily suspended as assembly and expression rights were delimited and the legislative and executive operated on the basis of one party-rule. In that context, the legislative and judiciary became increasingly out of balance with the executive as it expanded the

use of the security sector institutions to contain and combat the political opposition. There was a corresponding decrease in executive responsiveness and accountability and no notable reforms of the legal, administrative or electoral systems in 2013. Without any policies for reconciliation, despite moderation by elements within the political parties, the international community, and the king tension increased.

In 2013, democracy in Cambodia moved farther from consolidation as limits increased on open/public discourse on key issues, spaces for public participation were reduced, political competition and the multiparty system were weakened, the security services was increasingly politicized and repressive, and key clauses of laws were interpreted in a restrictive manner. Whereas the ruling party failed to act inclusively and responsively by responding with force and governing unilaterally, the situation was worsened by the nationalist anti-Vietnamese populism and insults of RGC officials, providing the ruling party with a rationalization for further restrictions on popular participation.

At the same time, the huge amount of public enthusiasm in and after the 2013 election demonstrated that a large part of Cambodian society was changing, seeking new modes of empowerment, voice, and participation in the decision-making processes that affect the national community.

2014 began with crisis in the form of a parliamentary boycott, the suspension of and the right to assembly and the violent repression of public demonstrations in the Veng Sreng Boulevard shootings. A political agreement between the two major parties was finally reached in July 2014, however, concrete consensus on electoral reform still remained elusive at the end of the year. Democratic governance improved following the political agreement and legislative reform buttressed the separation of powers. Due to the boycott, for the first half of the year the opposition party was not involved in the parliament. The year was characterized by a lack of executive transparency and accountability and little or no judicial reform and independence.

The CPP-CNRP Joint Commission for Electoral Reform was the result of a reconciliation process which began officially in September of 2013 when the King met with leaders of the two major parties which lead a declaration of ‘mutual understanding’. A few days later the parties agreed to a mechanism for dialogue over electoral reforms, but the ruling party refused any investigation into electoral irregularities in the 2013 National Assembly election. As such, despite the preliminary steps toward reconciliation needed a return to political pluralism and democratic participation rights the opposition continued to reject the election results. At the end of December, the major opposition party resumed negotiations and added the issue of the minimum wage to the agenda. Labor strikes intensified and in turned violent with the death or injury of almost 50 demonstrators, and negotiations for reform did not resume until mid-February when the Joint Committee was formed. At that time, the opposition party dropped its demand for electoral investigation and the ruling party indicated its willingness to move forward with reform of the highest electoral body (the National Election Committee), the Law on

Elections for Members of the National Assembly (LEMNA), and Voter Registration. The watershed agreement set the foundation for the largest advance in democratic consolidation in Cambodia since the initiation of democracy in the 1993 elections. The agreement was fleshed out in seven principles, the most important of which were: an agreement to a political resolution through the National Assembly on the basis of democratic standards (principle 1) and the implementation of power sharing (principle 4); reform of the electoral body and voter list (principles 2 and 3); reform of national institutions so as to guarantee rule of law and liberal pluralism (principle 6).

The political agreement saw the return of liberal pluralism in the National Assembly and key changes to the internal regulations of the NA which were needed to further the checks and balances on the executive needed for real separation of powers. With the taking of seats by the opposition CNRP the composition of the NA changed significantly away from one-party rule. In the 4th mandate of the legislature (2008-2013) of 123 seats, the ruling CPP held 90, the Sam Rainsy Party held 26, and the Human Rights Party held 3; in 2013 the CPP lost 22 seats and the NA was divided between 68 seats for the ruling party and 55 seats for the major opposition party. Notably, in the 2013 election FUNCIPPEC party and the Norodom Ranariddh Party did not win a single NA seat.

As part of the reform, at the end of 2014 the MPs of both parties in the NA agreed unanimously to amend parliamentary regulations Art. 6 (new) and Art. 48 (new II). As a result of the reform, parties with 25 percent of NA seats could elect a minority leader with equal status to the Prime Minister—with an equal voice in the NA and with whom the ruling party was obligated to dialogue. PM Hun Sen defined the minority leader as the ‘dialogue partner for state leaders on national problems’. Moreover, a power sharing formula was established with the 10 NA commissions being equally divided and one Vice Presidency held by the opposition and the Presidency and one Vice Presidency held by the ruling party.

2015 began with the advancement of the political agreement and democratic bipartisanship achieved in 2014. Nevertheless, the year would see a significant shift away from liberal pluralism and the initiation of a trend of democratic regression, which continued at the time of publication of this report (despite some bright spots such as the 2017 commune elections), having significantly accelerated in the second-half of 2017. COMFREL identified 4 key areas of reform—the electoral body (NEC), electoral laws, voter registration and the voter list, and the composition and operation of the legislature. The ethos necessary to uphold and sustain these reforms was found in the spirit of a ‘culture of dialogue’ emphasizing an inclusive, collaborative and non-coercive orientation toward political competition. Democracy advanced with legislation reforming the electoral laws, and the bipartisan composition of the NEC. Parliamentary performance was observed to improve following the introduction of political competition into the National Assembly. The reformed NEC would make possible unprecedented cooperation between the electoral body, international stakeholders, and national civil society. This enabled

the successful adoption and implementation of a Modernized Voter Registration System (to be used in 2016).

Setting the foundation for what would be a trend of democratic regression in 2016 and 2017, during the second-half of 2015, judicial and legal harassment of opposition party members increased. The opposition Senator Hong Sok Hour was imprisoned, and the CNRP leader Sam Rainsy was hit with criminal charges for three separate crimes. Also, the opposition party First Vice President of the National Assembly was removed from his post. Protests orchestrated by the ruling party calling for his removal were partly directed by members of the PM's Bodyguard Unit which violently assaulted opposition MP's outside of the parliament (but were subsequently promoted in early 2017). The year saw the legislative reform process disrupted by the offensive against the opposition, the increased use of the judiciary as a tool by the executive to repress political/electoral competition, and a decrease in executive accountability due to a rise in threatening rhetoric and the politicization of the security services.

2016 entailed an escalation political tensions and an increasingly militant posturing by the executive, demonstrating the residual effect of the end of the culture of dialogue by the RGC. Although promised reforms partially advanced, opinion polls and stakeholders expressed dissatisfaction in most areas of governance other than economic growth. Freedom of expression was restricted and the use of the courts to hit critics with defamation charges normalized further, which intensified self-censorship. The year saw the passage of a telecommunications law which is highly controversial because of increased surveillance powers for RGC authorities and the potential or bias for the ruling party. Peaceful demonstrations were blocked and met with force by the security services. Violence against protestors was met with impunity while demonstrators themselves were treated as criminals, showing increasing disregard by the authorities for universal fundamental freedoms. The use of the Anti-Corruption Unit to persecute civil society and opposition members diminished public and stakeholder confidence in the criminal justice system. Civil society saw a massive setback with the arrest and long-term detention of human rights workers for attempting to provide legal support and advice in relation to the case of an investigation of Kem Sokha for 'soliciting prostitution', which most observers saw as a smear campaign.

Notably, the field of political competition and conditions of liberal pluralism were significantly diminished by the policy of containment employed against the major opposition party with Sam Rainsy driven into exile and Kem Sokha spending a large part of the year in house arrest. The increased politicization of the security services was most evident in the massive operation around the major opposition party headquarters by the PM's Bodyguard Unit which had a large-scale intimidation effect on opposition parties and the public. In addition, the daylight killing of prominent and charismatic government critic just days after his radio discussion of a report linking the PM's family to corruption, and the unconvincing criminal investigation that followed, drastically heightened the public sense of insecurity and anxiety. As an effect of these events

and the increased aggression against the major opposition party, liberal pluralism and political trust sharply declined.

Positive aspects of the year included an advancement of electoral reform through the solid foundation provided by the reformed NEC. The 2016 Voter Registration saw a crucial improvement in the voting rights through the creation of an inclusive and accurate voter list. Utilizing biometrics and procedures which allow for effective corrections on the basis of citizen's request, a high rate of voter participation in the registration was achieved, and this was reflected in the low level of irregularities in the 2017 elections related to the voter list. The major flaw (which continues) has been the inclusion of migrant workers, especially international migrants which continue to account for the large part of unregistered eligible voters.

IV. The Legislative Branch- Presentation and Oversight

In a democratic accountability, the legislature provides an essential check on the power of the executive and functions as a guarantor of the input and voice of the public in its diversity is included and protected according to liberal standards of individual liberties. Through popular accountability achieved through free and fair elections, and the equality of the one-person-one-vote standard, the government is ensured a legitimate mandate and the people are ensured that laws serve the interests of the population. A healthy parliament is able to serve as a multiparty forum able to give a voice to diverse social interest groups in debate, critical analysis of legislation, as well as for oversight of executive performance in policy implementation. For these tasks to occur a degree of independence from the executive is necessary which can only be achieved by genuine political competition.

After the dissolution of the CNRP and distribution of the parliamentarian's seats, the NA saw a change from political pluralism in the direction of single party dominance, a sharp decline in the quality of relevant laws, in political competition, and in the representativeness of the legislature.

This 'U-turn' has fractured political trust in the relevance of the legislature, erased political competition needed for parliamentary oversight of the executive (real separation of powers), and put into doubt the potential for a legitimate parliamentary based mandate for the government. In the competition through the debate over laws and policy implementation by the executive, the parties in a democratic legislature cooperatively demonstrate their commitment to the principle of liberal pluralism. For a democratic system to consolidate and endure, that commitment must be maintained by a majority that steadfastly rejects the use of lawmaking power to undo democratic procedures and institutions. That has not been the case since this short period of genuine bipartisan composition of the NA with an active minority party.

IV. 1-Parliamentary Performance

Before turning to the U-turn in democratic legislature and the pretense of representation, liberal pluralism, and political competition which would characterize the NA at the end of 2017, it is pertinent to briefly review the period since the 2013 NA elections to note key events and trends.

COMFREL's **2017 National Assembly and Parliamentary Watch** report² for year 4 of the 5th mandate found that National Assembly efficiency in 2017 has declined when compared with

² For over ten years COMFREL has been cooperating with elected members of the national assembly through a project entitled 'Parliament Watch'. With the support of the General Secretariat of the National Assembly (NA) the project closely follows the activities of elected parliamentarians. COMFREL believes it is crucial for voters to not only choose their elected representatives but also be aware of what they are doing and how they performing in the exercise of their duties and responsibilities in between election events. The first parliament watch annual report was produced during the 4th Legislature covering the time period September 24th 2008 to September 30 2009. The reports are available on COMFREL's website. In sum, the project gathers data on the performance of MPs inside the NA and field visits undertake by them in their respective constituencies. Parliamentary Watch is an

2016. Very serious concerns followed unilateral ruling party amendments to the Law on Political Parties. The change has enabled the RGC to suspend, ban or dissolve a political party, as well exclude members from politics. As the result of the amendment by the ruling party lawmakers, the Cambodia National Rescue Party (CNRP), which is the prominent opposition party in Cambodia, was dissolved. An amendment on formula of seat redistribution in the four electoral laws adversely affects NA efficiency and are seriously unfair to the will of the voters and to their representation as a number of votes will not be considered equally in the selection of members of parliament. With implementation, the 55 NA seats of the CNRP were redistributed to other political parties which did not earn the seat on the basis of a mandate from the electorate. Also, this has established restrictions on the activities of opposition lawmakers limiting their ability to carry out their functions guaranteed by law and stipulated in both the constitution and the NA internal regulations. Alarming, this has provided a green light for authorities to detain the opposition party president and remove all opposition party MPs and commune councilors (local level representatives).

As expected the vitality of the legislative branch has suffered, for example, the activities of NA expert committee have decreased if compared to the same period of second year (2015) and third year (2016) of the fifth term. Separately, the number of parliamentarians conducting a field visit has reduced while the number of parliamentarian activities in the field has also slightly decreased if compared to 2016. The number of lawmakers debating draft laws and the quantity of comments made at the NA plenary session have slightly increased (it has increased by 3 lawmakers), but it still less than 2015 when 43 lawmakers made comments.

A. The National Assembly's Planetary Sessions Process

The National Assembly carried out 3 plenary sessions in ordinary meetings and another 3 sessions in extraordinary meetings. Including both, the National Assembly held 13 meetings (including 14 shift times – 13 morning shifts and 1 afternoon shift). The three plenary ordinary sessions occurred, including the 7th continuing session (from later November 2016 to January 2017), the 8th session (from April, 2017 to July 2017) and the 9th session (beginning in October 2017). The three plenary extraordinary meetings took place on 31st January 2017, on 20th February, 2017 and 11th September 2017. Within those sessions, 29 agenda items were discussed and approved including two messages in the opening session from the King, two briefing reports on the NA activities between plenary sessions, twelve draft laws, seven proposed laws, two proposed amendments, an approval of parliamentary validity, a clarification of the

empirically based methodologically sound record and assessment of parliamentary performance based on monitoring and observation. COMFREL maintains at least two observers on hand during parliament plenary sessions in order to record agenda items, debates, and votes. The monitors utilize notes as well as an audio recording which gives an exact record of the discussion. In order to record commission activities, they liaise directly with the NA, and the record for constituency engagements or field visits is developed from information found with the NA province office, political party province offices, direct contact with MPs, social media of NA members, and the NA newsletter.

minister of justice, an election of constitutional council members, and a decision on the case of parliamentary immunity of Kem Sokha, lawmaker of Kampong Cham province.

Among the 13 ordinary and extraordinary meetings of National Assembly plenary sessions, 17 draft laws and proposed amendments were unilaterally adopted by parliamentarians from the ruling CPP, while the lawmakers from opposition CNRP boycotted six of those 13 sessions. At the same time, 12 draft laws and proposed amendments were also found adopted without debate in plenary sessions. It is noted that 11 of draft laws and proposed amendments adopted without debate. The reason given for not conducting debate was stated that draft and proposed laws had been studied and discussed completely by the National Assembly's Expert Committee.

As a result of observation, it was found that the number of representatives expressing comments and the total quantity of comments have both slightly increased compared with the same period of 3rd year (2016), but decreased if compared with the 2nd year (2015) when 43 representatives took the floor to make comments. During the observation in 2017, 21 parliamentarians (13 from the Cambodian People Party and 8 from the Cambodian National Rescue Party) expressed comments in the NA sessions. It is noted that CNRP's boycott of the National Assembly meetings resulted in the CNRP lawmakers' commenting less than the CPP lawmakers'. COMFREL observed that the lawmakers from the ruling party voted for approval on the draft and proposed laws without discussion and debate during the sessions, and from the months of July to October, every law enacted was approved without debate by CPP lawmakers.

B. National Assembly Commissions

In the 4th year (2017) of the 5th mandate of the NA, the expert commission activities decreased when compared to the 3rd year (2016) and 2nd year (2015). The observation found that the 10 NA expert commissions conducted their function for 56 activities in total, of which 32 of them were led by the CPP and others 24 of them were led by the CNRP. Because of its boycott of the NA, activities of CNRP-led NA commissions decreased. In 2017, 3 ministers were summoned by expert commissions to give information on issues relating to his/her responsibility. The information clarification by ministers clarifying before the commissions increased from 2016 when there was only one session. Among the 56 total activities of NA commissions, 4 were conducted by the first expert commission, 6 by the second commission, 6 by the third commission, 2 by the fourth commission, 14 by the fifth commission, 8 by the sixth commission, 7 by the seventh commission, 5 by the eighth commission, 2 by the ninth commission, and 2 by the tenth commission.

C. National Assembly Hearing for Clarification:

The National Assembly invited a minister from government's cabinet to give clarification in NA plenary session only one time in 2017, which was the same as in 2016. Besides the clarification in the plenary, NA expert commissions also invited ministers to give clarification 3 times. This number has increased if compared to 2016 when it only occurred one time.

D. National Assembly and Parliamentary Intervention:

COMFREL observed that there were several actions taken, including inviting ministers to give clarifications in National Assembly plenary session and in expert commission meetings, and a receiving and addressing complaints submitted by citizens. For the period of 2017, the National Assembly received 11 petitions from people. These concerned seeking resolutions for land conflicts or labor disputes, over inflation of domestic product and over and a release of Boeung Kak's land activist prisoner, Tep Vanny. In 2016, COMFREL found that 21 complaints were submitted to the NA, while 25 complaints had been found in 2015. During this period, 19 Parliamentary letters were issued, which was a decrease from 2016 when 24 letters were issued. Those letters were addressed to the King, Royal Government and parliament to call for immediate action on issues. 17 letters were written by CNRP parliamentarians. Through observation, it was found that at least 4 letters effectively elicited a response or reaction from stakeholders.

E. Parliamentary Constituency Engagement:

In 2017, the number of parliamentary field visits slightly decreased compared to 2016, however, it has increased when compared to 2014 and 2015. Similar to 2016, most of lawmakers conducted field visits in order to strengthen political preferences and networks, to support their party, and to greet and dialogue with voters in anticipation of the election in 2018. COMFREL found that 83 parliamentarians conducted 1795 field visits. Compared to 2016, both the number of field visits and the number of parliamentarians conducting field visits, have slightly decreased. 742 of field visits were conducted by 43 parliamentarians from the CPP, while 1053 field visits were conducted by 40 parliamentarians from CNRP.

F. The Most Active Parliamentarians:

Ten parliamentarians were found to be the most active in expressing comments **during the plenary sessions**. They included five parliamentarians from the CPP including H.E. Chheang Vun, H.E. HUN Mani, H.E. Moam Chim Huy, Samdech Hun Sen and Samdech Sar Kheng; and, five from the CNRP including H.E. Son Chhay, H.E. Ngeom Nheng, H.E. Lim Kim Ya, H.E. Eng Chhay Eang, and H.E. Mao Monyvun. In **conducting field visits**, COMFREL also found 10 parliamentarians most active. Seven of them were from the CNRP, including H.E. Ou Chanrith, H.E. Mao Monyvun, H.E. Riel Khemarin, H.E. Yaem Ponharith, H.E. Keo Sovanroth, H.E. Kem Sokha and H.E. Tuon Yakda. The 3 parliamentarians from the CPP were H.E. Men Som Orn, H.E. Ke Chanmony, and Samdech Hun Sen.

IV. 2- Parliamentary Budgeting Transparency

In this assessment of the different ASEAN states regarding good governance in the area of budgeting, the ASEAN Inter-Parliamentary Assembly -AIPA scored Cambodia with a 5.3 out of

10 for Parliament Budget Authority, and 2.6 out of 10 for Budget Transparency.³ For Budget Authority only Thailand, Malaysia, and Brunei ranked lower than Cambodia, and for Budget Transparency only Brunei ranked lower. AIPA looks at several sub-factors for each of 5 main areas of assessment: parliamentary institutions and procedures; authority of the parliament over the budget; clarity of the budget and budget information presented to parliament; comprehensiveness of annual budget and information presented to parliament; and, accountability of government to parliament for budget execution.

In terms of institutions and procedures, AIPA found Cambodia had no parliamentary regulations specific for the budget. Also, other parliamentary commission besides the budget are not able to make recommendations. Overall, the parliament was found to have insufficient support staff. Additional weaknesses noted by AIPA include limited input by the parliamentary budget commission, budget amendment powers of the commission were limited. The draft budget was insufficiently detailed to foment parliamentary oversight, and the budget settlement law (execution statement) was found to be issued to late.

In terms of authority of the parliament over the budget, AIPA found Cambodia demonstrated excess discretion on the part of the executive. It noted problems such as: the existence of reserve funds which can be spent without parliamentary approval; the government can propose supplementary budgets which change the initial budget; the government can spend excess revenues without parliamentary approval; and, the government does spend excess revenues without parliamentary approval. In addition, it noted that the reserve fund is too large and is contrary to best practices. Also, although the law refers to a balanced budget, it does not stipulate a clear concept, measure, or targets.

In terms of clarity of the budget and budget information presented to parliament, AIPA found: no rules approved by parliament for regulating fiscal balance, total spending, or public debt; no annual budget strategy provided to parliament explaining key targets, policy priorities, and the strategy to achieve them; no annual medium-term debt sustainability analysis provided to parliament; and not comprehensive information on sub-national debt provided to parliament. In terms of comprehensiveness AIPA found: parliament does not receive detailed information on sub-national budget execution; there is a significant amount of spending of extra-budgetary funds by government; the draft budget does not include at least 80% of donor funds (loans and grants); executed budget reports do not include at least 80% of donor funds (loans and grants); and, the financial risks of state-owned enterprises (SOEs) are not identified and made available to the public.

In terms of accountability of government to parliament for budget execution, AIPA concluded: the RGC does not produce a mid-year review for parliament, and the RGC does not produce

³ *Parliamentary Budgeting and Transparency in ASEAN States*. ASEAN Inter-Parliamentary Assembly, 2015. Available at: <http://www.aipasecretariat.org/publications/detail/8/3>

quarterly or monthly budget execution reports; annual financial statements are not produce that include information on government assets and liabilities; no report is produced by the RGC which explains why budget execution differs from the initial budget; ministries do not produce annual reports on budget performance for parliament; and, the report on budget execution by the Supreme Audit Institution is not submitted to parliament within 12 months after the end of the fiscal year. The review of parliamentary oversight tools for accountability is mixed. On the one hand, the minister of finance is required by law to defend the draft budget before parliament and in practice the minister is called at least once per year to do so. What is more, the parliament can request responses to written questions, from the government on budget-related matters. On the other hand, parliament does not actively follow-up on recommendations from the Supreme Audit Institution, and the minister of finance is not in practice called to defend budget execution before parliament.

IV. 3- New Standard without Representation of the Will of People and Constituency

The anti-democratic dissolution of the major opposition party resulted in 55 NA seats vacant, and on the basis of the newly amended laws on political party and elections, the seats were to be distributed to the 6 other minor political parties that competed in the 2013 NA elections.⁴ The replacement of 55 elected parliamentarians with a redistribution of seats to other unelected parties, casts doubts on the legitimacy of the new members of the national assembly because article 76 of the constitution of the Kingdom of Cambodia stipulates that the parliamentarians shall be elected by universal election According to article 77, the Members of the National Assembly are the representatives of the whole Khmer Nation and not of the only citizens from their constituencies. Any imperative mandate shall be considered as null.

By the third week of November, it was evident that although several parties would assume seats without actually being chosen to be representatives, other parties would insist on playing by the rules of the game for a democracy, and refused their seats on the grounds that they did not have a mandate to represent the relevant constituencies. League for Democracy Party (LDP), Grassroots Democracy Party (GDP), Khmer Power Party (KPP), and Beehive Social Democratic Party (BSDP, which gained one second deputy chief seat in the June elections) all indicated that they would not accept seats.⁵ FUNCIPPEC, the Cambodian Nationality Party, and the Khmer Economic Development Party were willing to accept seats, and they were granted 41 seats, 2 seats, and 1 seat, respectively. The 11 seats which were to go to the parties which refused then

⁴ Opposition CNRP lawmaker Ou Chanrith filed an appeal to the Supreme Court despite the fact the that Court ruled unanimously to dissolve the CNRP and while indicating that the Court was not independent and so the appeal was likely to fail. As noted by political analysts, such a remedy through the Court on the basis of rule of law but without political will seemed very unlikely. Lipes, Joshua "Cambodia's opposition appeals supreme court ruling for dissolution" RFA, 8 December 2017.

⁵ Ros, Chanveasna "Democracy remains 'unharmed', say politicians" Khmer Times, 22 November 2017; Mom, Sophon "Parties reject CNRP commune seats" Khmer Times, 23 November 2017.

were allocated in a second round of distribution among four parties, as the ruling party was also included. According to existing laws and seat allocation formulas, all 11 of the seats went to the CPP. As such, the ruling party majority increased from 68 to 79 seats.⁶ The National Assembly spokesman indicated the 11 seats would be reallocated by the NEC, while the NEC deputy-secretary general Som Sorida said, “All 11 seats will be handed to the CPP.”⁷

At the beginning of December, the National Assembly moved forward with internal elections based on its new party membership and seat allocation. As a result, You Hokry of the FUNCINPEC was elected as the first Vice President, the position occupied by the CNRP’s Kem Sokha after the 2014 political agreement. Hokry had served as Second Vice President of the NA. It likely reflected an arrangement reached with the ruling CPP as only two MPs voted against his approval (two abstained). While indicating his commitment to serve the people, the new Vice President disregarded the issue of a legitimate election based mandate as the foundation for such service. Less than a month after the ruling he stated, “The dissolution of CNRP is [a thing of] the past. For me, we must focus on the present and the future.”⁸

In terms of the standards required for consolidated democracy, the legitimacy and representativeness of new NA members suffers from a critical deficiency. The FUNCINPEC party would now be imposed by the RGC as the opposition party in parliament by the RGC which would continue to insist that Cambodia was a democracy even though FUNCINPEC did not win a single NA seat in 2013 or a single commune council chief seat in 2017.

Following the dissolution of the opposition party by the Supreme Court, at the behest of the executive, local governance representativeness as well as multiparty pluralism radically eroded. The new Law on Election of Commune Councils Articles 20 and 21 were implemented. The NEC announced that through a new distribution of seats, permissible and mandated on the basis of the new framework of legislation, that CNRP 4,548 of the CNRP’s 5,007 seats would be distributed to the ruling CPP, giving the ruling party a total of 11,051 (95.5% of the commune seats). Although, they had not been able to win any seats in an election the PM applauded as fully free and fair, other parties would take a lesser number of the CNRP total: FUNCINPEC (239), Khmer United Party (201), and Cambodian Nationality Party (10). Effectively, the more than 43% of seats which were won by the CNRP would no longer be representative.⁹ The NEC also indicated in its statement that some parties volunteered to adhere to the standards of democratic representation and popular accountability by refusing seats offered, including the League for Democracy party, the Anti-Poverty party and the Grassroots Democracy party had declined seats. On the other hand, the FUNCINPEC spokesman indicated an intention to serve the

⁶ Niem, Cheng and Ananth Baliga “List of new National Assembly member approved” Phnom Penh Post, 24 November 2017.

⁷ Khuon, Narim “Assembly poised to fill CNRP’s old seats” Khmer Times, 27 November 2017.

⁸ Ven, Rathavong “National Assembly approves its new vice president” Khmer Times, 8 December 2017

⁹ Kijewski, Leonie and Sophak Chakrya Khuoth, “CPP big winner in seat allocation” Phnom Penh Post, 4 December 2017.

public despite being unaware of the procedure for seat allocation which formed the basis of his own party taking office at the local level.¹⁰ The Khmer Power Party also publicly announced that it would not accept seats. The party president stated: “We think that the division of the seats by the NEC does not reflect the real will of the people who voted to elect their representatives. I think that it’s not appropriate as a politician to take the seats of other politicians. We cannot accept the seats because we want to show a willingness to serve citizens. We don’t want to show that we are just opportunistic politicians or politicians that seek individual benefits.”¹¹

In an additional blow to representative government and rule of law, the same CNRP officials that had been alleged to be part of a revolutionary movement to create an uprising and overthrow the government, were pressured and coerced to join the ruling party. The process began in October and would continue into 2018, with the ruling party repeatedly publicizing defections as an indication to the lack of legitimacy of the opposition.¹² The PM initiated a strategy to undermine opposition solidarity and the legitimacy of its leadership by calling for defections to the ruling party. The ultimate goal, would be to erode the support base for the ruling party at the local level, or ‘cut off the foot’ of the opposition.¹³

V-The Judicial Branch – Independence and Constitutionalism

Expectations that judicial reform been unmet. It was hoped that the reform would provide the basis for a more independent judiciary, with the degree of judicial review necessary for sustaining constitutionalism, or fidelity to a liberal democratic constitution. Changes to the legal framework and their sanctioning by the judiciary, have mobilized the judiciary as a mechanism to in support of the ruling party which maintains a near total monopoly on government branches, institutions and offices by the ruling party. Two trends have been especially detrimental to liberal pluralism and vibrant public sphere—the increased use or application of prior use of laws such as defamation in the public sphere restricting political space through criminal

¹⁰ May, Titthara “CNRP commune seats doled out”, Phnom Penh Post, 4 December 2017.

¹¹ Mom, Sophon “Parties reject CNRP commune seats” Phnom Penh Post, 23 November 2017.

¹² For example, although previous deadlines had been imposed, extended, and expired, in January of 2018 the ruling party would ceremonially perform and publicize a defection ritual of 344 people including 44 youth activists from the opposition CNRP. Ou Sokchea, a CPP district council member at Sunday’s event, said there was a “commitment testimony” for former CNRP members, who “defected because they are self-aware”. He described their choice of political party as wholly free and voluntary, when he stated, “We don’t promise to give anything to them; they want to become our members of the CPP because their party leaders are split and they saw their party was already dissolved.” Kong, Meta and Koemsoeun Soth “Ruling party touts hundreds of defections over weekend” Phnom Penh Post, 30 January 2018.

¹³ Niem, Chheng and Brendan O’Byrne “Hun Sen says defections are to ‘cut the foot’ off of CNRP” Phnom Penh Post, 27 November 2017.

charges/convictions, and increased severity of criminal charges/convictions including crimes such as incitement, insurrection, espionage, and treason. In this chapter, after a brief discussion of the legal framework for the judiciary and rankings or assessments of judicial integrity, the focus turns to prosecutions of minor party leadership or key officials on criminal charges in 2017.

According to Amnesty International:

The Government and the CPP have used the criminal justice system to target the main opposition party. Kem Sokha, the president of the CNRP, was arrested, despite his parliamentary immunity, at his house in Tuol Kork in Phnom Penh during a night raid on 3 September 2017 on the basis of charges of “conspiracy with a foreign power” (Article 443 of the Cambodian Criminal Code), for which the sentence is up to 30 years’ imprisonment. While judicial investigations are still on-going, he has been denied bail, including on appeal, and continues to be held in pre-trial detention at Correctional Centre 3, despite his severely deteriorating health. The Supreme Court, composed of judges sitting on the CPP’s highest central committees and with personal ties to the Prime Minister, ruled to dissolve the CNRP on 16 November 2017 on allegations of having conspired to carry out a so-called “colour revolution,” constituting a serious violation of the CNRP members’ rights to freedom of expression and association. At the same time, the Court ruled to ban 118 senior CNRP officials from political activity for five years for allegedly conspiring to overthrow the Government. These measures have contributed to more than half of the opposition’s key figures fleeing the country due to fear of arbitrary arrest, harassment, threats and reprisals. These actions, and other less conspicuous ones, suggest an orchestrated attack is being carried out by the Government and ruling party on the main opposition party in the lead up to this year’s election. The judiciary, law enforcement and the parliament appear to being used as instruments.¹⁴

UN Special Rapporteur for Human Rights Rhona Smith has noted that in Cambodia one-sided interpretations of the criminal code have created conditions of injustice, and asserted: “In article 31 [the Cambodian Constitution] makes clear the emphasis to be placed on human rights and on ensuring that the law is applied without discrimination. Yet there are many examples of the law being applied in an apparently discriminatory and politicized manner.”¹⁵

V.1- Judicial Independence

The judicial independence is based on three main laws that are foundational for the judicial system and which were the focus of the 2014 judicial reform, are the Law on the Organization

¹⁴ <https://www.amnesty.org/download/Documents/ASA2379092018ENGLISH.pdf>

¹⁵ Charles, Safiya “Cambodia’s ranking slips” 21 October 2016.

and Functioning of the Supreme Council of the Magistracy (the “SCM”), the Law on the Statute of, Judges and Prosecutors, and the Law on the Organization and Functioning of the Courts. According to the framework established by these laws, the monarch is mandated to ensure the integrity or independence of the judiciary by way of the institutional mechanism of the SCM. The laws have been found to weaken judicial independence because the SCM in terms of structure, funding, and operations is not independent of the legislative and executive branches.¹⁶ In addition, the integrity of the judiciary is jeopardized by putting the appointment and promotions of judges under the control of the executive through the MoJ. Finally, court operations are subjected to MoJ influence by way of the latter’s control over funding and budgeting for the judiciary at all levels.

The law also stipulates that members of the SCM compose and function as the Disciplinary Council for the judiciary—President of the Supreme Court serves as President of the Disciplinary Council in cases concerning judges; the Supreme Court General Prosecutor functions as the President of the Disciplinary Council for cases concerning prosecutors; and, the MoJ is included in the disciplinary process for the President of the Supreme Court. Effectively, the executive branch in the form of the MoJ is included in the disciplinary mechanism. Putting discipline of judges and prosecutors, including the President of the Supreme Court, under the influence of the MoJ limits the independence of the judicial branch.

The Law on the Statute of Judges and Prosecutors has been promulgated with the aim of ensuring the independence of the judicial branch, as stipulated in Article 1. The law endows the Commission on Promotion to oversee the positions and promotions of both judges and prosecutors, but this has been found to permit MoJ influence over the judiciary. In addition, according to the law all members of the Commission are appointed automatically and the MoJ is authorized to make additional appointments, effectively putting the Commission on the influence of MoJ.

¹⁶ See:

[https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf);

https://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing_Note_Judicial%20Reform_ENG_2014%E2%80%8B.pdf;

The New York Times Editorial Board wrote: “The Cambodian National Assembly passed new laws last month governing the composition and organization of the nation’s courts. The net effect is to ratify and reinforce Prime Minister Hun Sen’s control over the judiciary. This is in violation of Cambodia’s Constitution, which calls for a separation of powers and an independent judiciary.

The laws empower the minister of justice to oversee the administration of the judicial system and to appoint and discipline judges — which, as a practical matter, means he can determine the outcome in politically sensitive cases. This formalizes the de facto control over the courts Mr. Hun Sen has wielded during almost 30 years in power. All along, the courts have been politicized, ineffective and corrupt.” Editorial Board “Cambodia’s subservient judiciary” The New York Times, 6 June 2014.

V.2- The Judiciary Assessment

The World Justice Project conducts a global comparative study on the rule of law in different countries based on eight factors of indicators. As conceived by the World Justice Project, the rule of law refers to a system in which the following four universal principles are upheld: I. The government and its officials and agents as well as individuals and private entities are accountable under the law. II. The laws are clear, publicized, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons and property. III. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient. IV. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.¹⁷

In the 2017-2018 Rule of Law Index Cambodia was ranked as a country with a drastic deficiency in the rule of law, placing 112 out of a total of 113 countries surveyed. With a score of only 0.32, Cambodia received the worst ranking in the region, and the worst ranking for states in its income group (30 out of 30). Cambodia scored best in the factor ‘Order and Security’, receiving the ranking of 81 out 113 globally, and 18 out of 30 for countries in the same income group. However, in the region it was still only ranked 14 out of 15 for order and security. The order and security factor is composed of three sub-factors: absence of crime, absence of civil conflict, and absence of violent redress. Whereas in Cambodia scored high in absence of civil conflict it performed very poorly in terms of absence of violent redress.

Cambodia scored worst on the factors of ‘Civil Justice’ and ‘Open Government’. In terms of civil justice, the RGC was found to fail to provide effective enforcement, to show high levels of corruption in the judiciary, to include unreasonable delays in the justice process, and to show extensive improper government influence over the judiciary. In terms of open government, the RGC was found to have weak or absent complaint mechanisms, low levels of information publication and access to information, and a severe lack of citizen participation.¹⁸

In October of 2017 the International Commission of Jurists released a report detailing how the rule of law was expunged from the judicial system because of the control by the executive. As a result, there are multiple domestic and international legal obligations consistently violated by the RGC. It also asserted that “[The] single largest problem facing the Cambodian justice system is the lack of independent and impartial judges and prosecutors.” The report points to CPP central committee meetings and strategy which elaborate on developing and implementing a plan to use the judiciary to support the ruling party. The ICJ contends: “Suggesting that all of this activity [of using court cases] may have been part of a carefully crafted plan, official minutes of a CPP

¹⁷ See: https://worldjusticeproject.org/sites/default/files/documents/WJP_Index_Report_2012.pdf

¹⁸ See: https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf

central committee meeting revealed the party's intentions to weaken the opposition through, among other avenues, the application of further legal pressure on the judiciary." Controversial legislation has been enacted prior to actions taken against the opposition on the basis of the new or amended law. Moreover, the ICJ notes problems with impunity or unconvincing justice in cases such as the killing of Kem Ley, and the use of the criminal prosecutions to eliminate leadership of competing political parties.

V.3- Judiciary Related to Political Cases

A- President of Khmer National United Party

The Khmer National United Party (KNUP) was only formed in 2016, when Nhek Bun Chhay¹⁹ resigned from FUNCINPEC (royalist party). It was the only minor opposition party to win a commune chief position in the 2017 elections, represented by former FUNCINPEC commune chief Da Chheam. The leader of the KNUP, Nhek Bun Chhay, was removed from his position in the government and lost his title²⁰, following a royal decree initiated by Hun Sen and signed by the king on June 4, 2017. On that same day, the KNUP leader was ordered to turn over all firearms in his possession to the Ministry of Defense.²¹

The Royal decree announcing he had been removed from his position in government did not explain the dismissal. Nhek Bun Chhay denied he had planned or attempted any collaboration with the opposition in a radio interview. The KNUP provincial head for Banteay Meanchey addressed the rumors on Facebook regarding an planned alliance with the CNRP and denied that the KNUP leadership had any such plans.²² Nhek Bun Chhay and Da Chheam, publicly denied affiliation with the CNRP, but did not publicly affirm their right to dialogue and cooperate with any other political party. However, the recipient of the phone call that initiated his ouster from his government post, Chhay Eang of the CNRP, had publicly verified that the KNUP leader had committed support for the major opposition party in future elections in those districts where the KNUP was not fielding candidates.²³

¹⁹ For a historical background on the role of Nhek Bun Chhay in Cambodian politics see: Scroggins, Hurley "Bun Chhay: loved, feared, admired, hated" Phnom Penh Post, 27 June 1997.

²⁰ Appointed Deputy Prime Minister in 2004, changed to Government Advisor in 2013.

²¹ A Banteay Meanchey provincial police document, dated June 4, was reported to record an MoD soldier delivering 10 surrendered firearms, including 7 registered pistols and 3 unregistered rifles. Mech, Dara "Nhek Bun Chhay stripped of title, surrenders firearms to MoD" Phnom Penh Post, 9 June 2017.

²² Sek, Odom "Nhek Bun Chhay stripped of government advisor role" Cambodia Daily, 9 June 2017. Reporters were informed at Bun Chhay's home that local authorities had been stationed outside, and according to one media source, government authorities had been making trouble at Bun Chhay's home since his party's commune win.

²³ Sek, Odom "Nhek Bun Chhay claims call mix-up lead to ousting from government" Cambodia Daily, 14 June 2017.

High ranking ruling party sources publicly indicated that the attempt at such an alliance, viewed as an exhibition of disloyalty to the ruling party and government, was the reason that Nhek Bun Chhay has been removed from his position. The Minister of Defense informed media: “Just know that he is not loyal to the government, and we know he has somewhere else to go ... The government knows who is loyal and who is not.”²⁴ Throughout Nhek Bun Chhay defended himself on the grounds that he had mistakenly called a CNRP official with a similar name to a KNUP party member, and that in the conversation he never suggested KNUP members vote for CNRP. Later it became public that the conversation had been recorded, increasing concerns of mass surveillance of officials from opposition parties.²⁵ Effectively, collaboration with the opposition was itself deemed to be a crime warranting dismissal from office and eventual prosecution.²⁶ Undoubtedly this had a chilling and coercive effect throughout the government bureaucracy, reminding all ‘civil servants’ that party loyalty overrides job performance and that any cooperation with officials from other parties has been ruled unacceptable.

Before his arrest, the KNUP party effectively disintegrated through multiple dismissals from government position, and defections to the ruling CPP. By the third week of June, at least 5 KNUP officials with the rank of undersecretary of state (or equivalent rank of advisor) were dismissed from their post, and two officials had defected to the CPP reporting that they required to declare their loyalty or face dismissal.²⁷ By late July, it was reported that a total of 12 KNUP officials had been fired from their government position on the grounds that they failed to show loyalty to the ruling party.²⁸

At the same time, the remaining KNUP leadership indicated that officials would defect back to FUNCINPEC as a means to secure their government posts.²⁹ It was reported that 10 KNUP officials retained their posts by defecting to either the CPP or FUNCINPEC.³⁰ As of early August, former Nhek Bun Chhay allies in FUNCINPEC were seeking to make demonstrations of loyalty to the regime, and claiming that there was clear evidence on which further punishment could be based, if the government decided: “If Nhek Bun Chhay is still being obstinate and does not take

²⁴ Mech, Dara “Ex-RCAF Commander Nhek Bun Chhay accused of disloyalty, stripped of role” Phnom Penh Post, 12 June 2017. Although the source of information or evidence against Bun Chhay has been unclear, it was later reported that his telephone conversation with the CNRP official was recorded indicated that phones were being tapped. See Van, Roeun “Nhek Bun Chhay charged for drug offences” 7 August 2017.

²⁵ Chhorn, Pherun “Nhek Bun Chhay loyalist stripped of government roles” Cambodia Daily, 21 July 2017; Van Roeun “Nhek Bun Chhay charged for drug offenses” Cambodia Daily, 7 August 2017.

²⁶ Mech, Dara “Nhek Bun Chhay denies telling his supporters to vote CNRP” Phnom Penh Post, 14 June 2017.

²⁷ Meas, Sokchea and Shaun Turton “Minister presses KNUP backers on support for Bun Chhay” Phnom Penh Post, 15 June 2017; Meas, Sokchea “Government’s KNUP purge rolls on” Phnom Penh Post, 20 June 2017.

²⁸ Official removal enacted with a July 18 letter signed by the King.

²⁹ Chhay, Channyda “More set to leave KNUP” Phnom Penh Post, 24 July 2017.

³⁰ Meas, Sokchea “More KNUP members lose adviser roles” Phnom Penh Post, 21 July 2017.

responsibility for his activities on the white day, it is the same as refusing the political charity from Hun Sen to Nhek Bun Chhay.”³¹

Almost immediately, he was placed under arrest and charged in relation to that drug production case. No announcement of the reasons for the delay in the arrest were given, and no explanation of what evidence of guilt formed the basis of the prosecution.

Moreover, the National Police did not explain why there had been such a delay in implementing a warrant or why it had taken several years to investigate that case.³² Within days of his arrest, the MoI announced that it had clear evidence of guilt and that it had searched the residence of the accused in relation to the case (despite the fact that the search came 10 years after the alleged crime). Nevertheless, the only evidence or reasoning given in support of the charges was found to be vague and unconvincing. In a statement released by the Phnom Penh Municipal Court, the government claimed that the prosecution was based on recent allegations made by a prisoner. The spokesman for the Ministry of Justice also claimed the arrest was based on new evidence. However, it became apparent to all concerned stakeholders that the supposed evidence was nothing more than the circumstantial claims of a prisoner convicted in the 2007-8 prosecution who now claimed that Bun Chhay had been the leader or organizer of the drug production activities.³³

The KNUP was left without a president (and the essential funding he provided), and its deputy president defected.³⁴ From prison Bun Chhay issued a letter of apology addressed to his own party, but actually intended for PM Hun Sen to appeal for intervention and the end of his criminal prosecution. He wrote: “I would respectfully like to express, with honesty and dedication, all the mistakes incorrectly committed against Samdech Hun Sen, president of the CPP . . . which have as a consequence damaged the interests of the [KNUP].”³⁵

B- Leaders of Khmer Power Party

On August 13, the leader to the Khmer Power Party was arrested and for comments he made on social media critical of a war with Laos.³⁶ He accused elites of benefiting from conflict while

³¹ KNUP was rendered incapable of action could only release a statement that the party did not want to respond to the accusations. See Meas, Sokchea “Advisor tells Bun Chhay to fess up” Phnom Penh Post, 2 August 2017.

³² Baliga, Ananth “Breaking: KNUP president Nhek Bun Chhay arrested in Phnom Penh” Phnom Penh Post, 3 August 2017. Notably, in the 2007 raid and investigation no narcotics were actually found, but 21 suspects were charged at the time. See Van, Roeun “KNUP future in doubt as Bun Chhay jailed, deputy defects.” Cambodia Daily, 8 August 2017. Also, it has been reported that the land where the chemicals were found in 2007 did not belong to Bun Chhay but rather to a former advisor. See Chhorn, Phearun “Government foe hit with 10-year old warrant” Cambodia Daily, 4 August 2017.

³³ Van, Roeun “Nhek Bun Chhay charged for drug offences” 7 August 2017.

³⁴ Van, Roeun “KNUP future in doubt as Bun Chhay jailed, deputy defects.” Cambodia Daily, 8 August 2017.

³⁵ Willemys, Alex “Bun Chhay pens public letter expressing his regret” Phnom Penh Post, 17 August 2017.

³⁶ Meas, Sokchea “KPP head arrested for facebook post criticizing deployment of troops to Lao border” Phnom Penh Post, 14 August 2017.

common people and/or soldiers suffer. The spokesman from the Ministry of Defense claimed the crime was ‘looking down on Cambodia’.³⁷ It was alleged that he was seeking to defame the government or incite social chaos or disruption, and he was eventually convicted for inciting soldiers to civil disobedience and sentenced to 5 years in prison.³⁸ Despite only posting social media comments critical of government policy, the KPP headquarters was subsequently raided by Counterterrorism Police. The public defense of the accused by the KPP centered on the claim that no actual damage to national interest or divisions in the military resulted from the speech, but not that the criminalization of the speech was itself excessive.³⁹ Of concern to observers was the manner in which any critical discussion of national defense issues or the security services was deemed to warrant a forcible response. PM Hun Sen stated: “It’s better for him to stay in jail. If he stayed outside of the prison, the army would look for him every day...No matter if you are the party president, or whatever you are, even if you have parliamentary immunity, for this offence, you will be handcuffed immediately.”⁴⁰ By mid-August the KPP leader was being accused of committing another crime by inquiring on Facebook about a possible French nationality of the king. The PM declared in another speech that this was a serious insult and that further charges would be added⁴¹, thereby demonstrating the direct control of the PM over the office of the prosecutor. In addition, when police raided KPP headquarters they alleged that the KPP president was conspiring with ‘one’ other dissident to create a ‘government in exile’⁴² (with the exact criminal charge and conspiracy of two persons unclear).

Notably, the history of the KPP also raises doubts regarding the quality of political pluralism in Cambodia, since the group was first categorized as a terrorist organization but then accepted as a legitimate party following the surprising success of the CNRP in the 2013 elections.⁴³ However,

³⁷ “He was arrested because he looked down on Cambodian people very badly.” See Van, Roeun, Phearun Chhorn, and Brendan O’Byrne “Laos Border Dispute Leads to Critics Arrest” Cambodia Daily, 14 August 2017.

³⁸ Ven, Rathavong “KPP leader gets five years in jail” Khmer Times, 25 August 2017.

³⁹ Mom, Sophon “KPP headquarters shut down” Khmer Times, 16 August 2017.

⁴⁰ Mom, Sophon “New allegations levelled against KPP leader” Khmer Times, 15 August 2017.

⁴¹ Mom, Sophon “New allegations levelled against KPP leader” Khmer Times, 15 August 2017.

⁴² Meas, Sokchea “Police raid Khmer Power Party headquarters in Phnom Penh” 16 August 2017.

⁴³ By the end of 2014, the KPP was accepted as a legitimate party by the MoI which only rejected authorizing it officially on minor grounds. These included: the spelling of the applicant’s name; the address of the party; the logo of the party; and ensuring the name of the party was not too similar to already existing party. Subsequently, its name was changed from Khmer People’s Power Party to Khmer Power Party. (See Nov, Sivutha “Khmer People Power Party registration stalled” Khmer Times, 20 December 2014.) Despite that, three members of the Khmer People Power Movement (as previously named) and leader Sourn Serey Ratha were convicted in January 2015 of ‘conspiracy’ and ‘obstructing electoral procedures’ (also reported as treason). They were arrested when distributing promotional materials (t-shirts and watches) with the group logo on it in the context of the 2013 elections. They also disseminated messages urging voters to abstain in protest and openly advocating for ‘an Arab spring’ reformation. (Note this was one of the earlier instances of the now common rhetoric of color revolution). The three members of the group were sentenced to 6 years, and the group leader to 7 years. In July 2015, Sourn Serey Ratha was pardoned, and in September 2015 the other three members of the groups were pardoned. They had spent more than 2 years in prison. (See: Khy, Sovuthy “Dissident ‘plotters’ convicted, jailed over T-shirts”

after return from self-imposed exile under threat of imprisonment⁴⁴ in late 2015, and achieving recognition as a political party by the MoI, the party leader has publicly challenged the ruling party in visible ways.⁴⁵ The impact of this background on the politicization of the case against the accused of this should be taken into consideration. Any prosecution for political purposes would be in stark contradiction to the rule of law and both the letter and spirit of the law set out the Cambodian Constitution, which as the representation of a social contract between the state and the people, provides the measure of legitimacy of governmental authorities.

A potential border conflict seems an appropriate matter for discussion in a healthy public sphere, as well as the importance of prioritizing the lives of the Cambodian men and women of the armed services. These topics should not be discussed in an insulting manner, although criticism of policy that is reasonable or evidence-based should be tolerated by authorities. However, all public discussion and debate of potential conflicts with neighbors and military affairs had been precluded by the PM's promise of arrest.⁴⁶ Although comments by analysts and expressive citizens may be erroneous, it is better to reject them in the court of public reason rather than policing them, as this allows the Cambodian people to have policy input on key issues and develop their capacities as citizens, as well as provides a mechanism by which the credibility of policy can be ensured in the eyes of an increasingly educated populace. Excessive and harsh punishment for speech critical of foreign policy can be managed by a strong and effective state on the basis of its achievements and by providing a coherent and reasonable account to the public regarding policies taken.

The case also raised concern because it normalized the practice of military officials requesting courts to take action to control expression, as evident in the public demand for prosecution issued by the Deputy Commander in Chief of the RCAF. The most evident manner in which the case detracted from democracy was the penalization of the political party as a whole in connection with the criminal prosecution of one of its officials. The same practice of debilitating political competition to undermine electoral competitiveness seems to be repeated with the KNUP, the KPP

Cambodia Daily, 15 January 2015; Chhay, Channyda "Sentence stands in KPPM trial" Phnom Penh Post, 29 May 2015; Chhay, Channyda and Alice Cuddy "'Terrorists' pardoned" Phnom Penh Post, 22 September 2015.)

⁴⁴ Meas, Sokchea "KPPM chief's exile ends" Phnom Penh Post 2 October 2015.

⁴⁵ These included defamation suit against (now former-) Foreign Minister Hor Nam Hong, a public criticism of the ban and exile of CNRP leader Sam Rainsy; and a public rebuke of the amendments to the Law on Political Parties. See: Buth, Reaksmey Kongkea "Namhong suit filed by KPP chief as promised" Phnom Penh Post 22 December 2015; Niem, Chheng "KPP chief offers audio evidence in defamation case" Phnom Penh Post 14 January 2016; Lay, Samean "KPP chief's defamation case against Namhong tossed by judge" Phnom Penh Post 3 February 2016; Meas, Sokchea "KPP chief calls ban of Rainsy 'crazy politics'" Phnom Penh Post, 26 October 2016; Meas, Sockcha "Parties lambast legal changes" Phnom Penh Post, 20 July 2017.

⁴⁶ PM Hun Sen claimed such an arrest was warranted on the basis of an unforgivable "insult". The Municipal Court spokesman claimed the court determined the defendant guilty of "undermining national security". The KPP head was charged with three crimes: "inciting military personnel to be disobedient", "demoralizing military personnel", and "provocation to commit crimes". Kann, Vicheika "Hun Sen threatens to jail critics of military deployment" VOA, 16 August 2017.

and the CNRP (both pre and post-election). This new mode of rule by law on the basis of the amended political party law makes it impossible to build independent political party institutions, and risks continually disabling organic democratic developments as they emerge out of civil society coalitions and citizen interest groups.

C- Leaders and Members of Cambodian National Rescue Party

1) SAM RAINSY

The move in early 2017 to amend the Law on Political Parties, for the first time, introducing the ‘culprit clause’ occurred in a context wherein the number of lawsuits against opposition leader Sam Rainsy had risen to six (including convictions and allegations by ruling party figures for defamation).⁴⁷ For opposition leader Sam Rainsy, charges of defamation have followed discussion of leaked links between ruling party activist Thy Sovantha, discussion of the border agreements with Vietnam, and discussing the source of all the ‘likes’ on the PM’s Facebook page from foreign countries.⁴⁸ In addition, in October 2016 the PM ordered all relevant government bodies to use every means to prevent Sam Rainsy from returning to Cambodia.⁴⁹

On December 27, 2016 the Phnom Penh Municipal Court sentenced Sam Rainsy and two assistants (Ung Chong Leang and Sombath Satya) to five years in jail for conspiracy to forge public documents in August 2015. Afterwards, the sentences for the assistants were reduced to 3 years. The two assistants, who manage Sam Rainsy’s Facebook page, were additionally charged by the court with using fake public documents and incitement causing chaos. The judge announced the verdict was based on violations of Criminal Code articles 107, 108, 429, 430 495 and 29. The court found Mr. Rainsy and the two members of his social media had posted a ‘fake’ version of a 1979 border treaty which allegedly showed Cambodia and Vietnam agreeing to eliminate their shared border.⁵⁰

On March 30, 2017, the 20th anniversary of the grenade attack on a Sam Rainsy rally for which no one was arrested or held accountable, Sam Rainsy was fined approximately \$2,500 (10 million riel) and sentenced to an additional 20 months in prison by the Phnom Penh Municipal Court. The sentencing followed having been found guilty of defamation against PM Hun Sen for

⁴⁷ Ibid. See also Mech, Dara “Sovantha files suit against Rainsy”, Phnom Penh Post, 18 January 2017.

⁴⁸ Sovuthy, Khy and George Wright “Hun Sen files \$1million lawsuit against Rainsy”, Cambodia Daily, 19 January 2017.

⁴⁹ Huot, Vuthy and Moniroth Morm “Cambodia’s Hun Sen sues rival Sam Rainsy, again”, RFA 18 January 2017.

Notably, Rainsy’s discourse, although within the bounds of free speech accepted in consolidated democracies, has also at times been provocative and not conducive to further reconciliation between political parties. For example, Sokchea, Meas “Rainsy ‘lobs’ bribery claim at PM”, Phnom Penh Post, 16 January 2017.

⁵⁰ Pech, Sotheary “Sam Rainsy sentenced to five years” Khmer Times, 27 December 2016.

asserting that state authorities were linked to the murder of Kem Ley. The court also ordered the payment of a symbolic fine of 100 riel to the PM.⁵¹

The Court of Appeal upheld Sam Rainsy's sentencing of 20 months for defamation and incitement on 13 August, even though the convicted defendant was not present in the hearing because of fleeing the country to avoid punishment for multiple convictions. The court of appeal based its decision on the same video footage which formed the basis of the prosecution in the trial. Mr Rainsy commented: "I am not going to file a complaint to the Supreme Court, but I still keep my accusation that Mr. Hun Sen is behind the killing, and thousands of Khmer citizens think the same as me."⁵²

In early November 2017, the Supreme Court upheld the decisions of two lower courts and rejected Sam Rainsy's appeal of a defamation conviction from a lawsuit by NA President Heng Samrin. Mr Rainsy was sued for defamation by Mr Samrin because of a video the CNRP leader posted on Facebook in 2015. In 2016, the Phnom Penh Municipal Court ordered him to pay \$37,500 to Mr Samrin.⁵³ In December 2017, Sam Rainsy was found guilty of defamation and ordered to pay 4 billion riel (about \$1 million) to Prime Minister Hun Sen for making the claim that PM bribed Thy Sovantha. This related to leaks of Facebook account messages from Thy Sovantha which linked the PM to Thy Sovantha in terms of a payment or offer of \$1 million.⁵⁴ Sam Rainsy claimed that no defamation occurred in the case because it was possible to prove the authenticity of the leaks linking the PM to Thy Sovantha, and that the PM had not demonstrated the leaks to be false.⁵⁵

On January 18, 2018 the Phnom Penh Municipal Court charged Sam Rainsy with inciting the military to rebel against the government, following a lawsuit submitted by the Royal Cambodian Armed Force's lawyer Vong Pheakdey on December 7, 2017. Sam Rainsy had urged soldiers not to shoot civilians if they were ordered to do so. On his Facebook page he posted: "To soldiers and policemen, please don't obey orders from any dictator if they order you to shoot and kill innocent people."⁵⁶ The RCAF lawyer contended that Sam Rainsy's comments seriously affected national security. In addition, on Dec 11 the Phnom Penh Municipal court issued a summons for Sam Rainsy to appear on January 11 2018 to answer questions regarding accusations of treason.

On March 14, 2018, the Interior Ministry's Counter-Terrorism Department filed a lawsuit against former opposition leader Sam Rainsy, accusing him of agreeing to cede four Cambodian

⁵¹ May, Titthara "Rainsy sentenced for defaming the PM" Khmer Times, 31 March 2017.

⁵² May, Titthara "Court upholds Rainsy prison term" Khmer Times, 14 August 2017.

⁵³ Khy, Sovuthy "Court rejects Sam Rainsy defamation appeal" Khmer Times, 2 November 2017.

⁵⁴ Niem, Chheng and Andrew Nachemson "Rainsy hit with latest defamation conviction, fined \$1M" Phnom Penh Post, 29 December 2017.

⁵⁵ May, Titthara "Rainsy fined \$1million for defamation" Khmer Times, 1 January 2018.

⁵⁶ Khuon, Narim "Court charges Sam Rainsy" Khmer Times, 19 January 2018.

provinces to the Montagnard ethnic group of Vietnam, if he was successful in the 2013 election. The lawsuit immediately followed an announcement by PM Hun Sen ordering an investigation into Rainsy for treason, and asserted: “Now we’ve found out that he signed an agreement to cede four provinces. It’s a very big case and treason has clearly emerged; no one has the right to cede Cambodian land.” Y Sok Khy, the director of the MoI Counter-Terrorism Department asserted: “The video and act of signing the agreement to cede territory to a foreign state or foreign agency of prisoner Sam Rainsy is really treason.”⁵⁷

The evidence for the allegations were leaked on Facebook, and were made up of a video of Sam Rainsy discussing the indigenous groups of Easter Cambodia and documents dated April 12, 2013 and bearing the signatures of Mr Rainsy and that of Kok Ksor, head of a Mongtagnard association in the United States. In the video Sam Rainsy states: “Those people who themselves are Degar people, they are part of the Cambodian nation. They live in Monduliri, Ratanakiri, Stung Treng and Kratie provinces. When we establish a new government, we will ensure that Montagnards, the Degar people, will live as free citizens in Cambodia. Their lands, their forests, their mountains will be returned to them.” The document bearing the signatures stated: “Indigenous peoples have the rights to autonomy under the Constitution of the Kingdom of Cambodia.” it quoted the document as saying, adding that Montagnards would be allowed to freely pursue their economic, social and cultural development.

Former CNRP lawmaker Ou Chanrath said yesterday that he did not support ceding land to create a foreign state. He affirmed: “I did not see the agreement to cede land to the Montagnards but if it affects the territorial sovereignty of our nation I do not support it at all.” However, he also noted that the video footage of Sam Rainsy was also being discussed and released now as part of a strategy to increase support for the ruling party in the 2018 elections. Ruling party CPP spokesman Sok Eysan, stated: “We have strong evidence against Sam Rainsy. He signed the agreement to allow the Montagnards to set up their base on Cambodian land to oppose communist Vietnam. Sam Rainsy would bring a war into Cambodia.”⁵⁸

2) KEM SOKHA

Kem Sokha, the leader of the major opposition party, was arrested and charged with treason on September 3, 2017.⁵⁹ The charges have the potential to lead to a massive setback for the democracy process in Cambodia and fundamentally undermine national reconciliation and public trust. Prior to his arrest government-aligned Fresh News announced it had a video of him discussing efforts to overthrow the government.⁶⁰ PM Hun Sen claimed that he had no choice in arresting Kem Sokha because he had betrayed the nation. It was argued that the US was a “third

⁵⁷ Khuon, Narim “Treason lawsuit filed against Sam Rainsy” Khmer Times, 16 March 2018.

⁵⁸ Ibid.

⁵⁹ Paddock, Richard C. and Julia Wallace “Cambodia arrests opposition leader, accuses him of treason” New York Times, 2 September 2017.

⁶⁰ “Cambodian opposition leader Kem Sokha arrested - daughter” Reuters, 2 September 2017.

hand” in Cambodian politics which had orchestrated a coup in 1970 and was doing the same now, but no explanation was given of how a coup could occur without the support of the military and by an unarmed, peaceful and legal organization such as the opposition party. In the Kem Sokha case parliamentary immunity was rescinded rapidly as he was deemed to have been caught red-handed (*flagrante delicto*). According to the charge, Kem Sokha had violated Article 443 of the Criminal Code which prohibits “conspiracy with foreign power” mandating a punishment of 15 to 30 years imprisonment. The crime is defined as the act of “having [a] secret agreement with a foreign state or its agents, with a view to fomenting hostilities or aggression against the Kingdom of Cambodia.”⁶¹ In late August, Kem Sokha was quoted by national news media as stating in a news interview in Australia, on August 15 2015: “there was a powerful democratic country which is helping the CNRP to organize policy and political platform for the party in order to rule the country.”⁶² He also came out clearly in favor of change through free and fair elections rather than violence in a June 2017 interview with the New York Times. According to the statement made on the official Facebook page of Hun Manith, Sokha had been caught red handed for treason by merely admitting to “long-term plans” with the United States.⁶³ In the 2013 video which is alleged to prove his guilt, Sokha admits to advice and support from the US, and discusses non-violent democratization through removal of dictators (specifically, the former Serbian dictator, Slobodan Milosevic) on the basis of a non-violent social movement. Notably, he also separates his own approach from that of popular protests, by pointing out the self-destructive aspect of violent pressure and prescribes “not-making noise”.⁶⁴

The major opposition party organized around two main points: that Kem Sokha was innocent until proven guilty, and that the prosecution against him was unconstitutional (in violation of Article 38). The ruling party insisted that the prosecution was legal and warranted.⁶⁵ Criminalizing all efforts of the CNRP to support its leadership, the PM stated: “If a political party continues to protect this traitor, this is also treasonous. If treason was conspired by the

⁶¹ “Sokha arrested for ‘treason’, is accused of colluding with the US to topple the government” Phnom Penh Post, 4 September 2017.

⁶² Ven, Rathavong and Chanveasna Ros “Did democracy group cross a line in poll advice?” Khmer Times, 22 August 2017.

⁶³ Paddock, Richard C. and Julia Wallace “Cambodia arrests opposition leader, accuses him of treason” New York Times, 2 September 2017.

⁶⁴ Mech, Dara and Erin Handley “Breaking: Interior Ministry files complaint to dissolve CNRP” Phnom Penh Post, 6 October 2017.

⁶⁵ Khoun, Narim “Opposition says Sokha innocent until proven guilty” Khmer Times, 12 September 2017. To a significant degree, such a politicized case entails a kind of trial by media, and so the ultimate determination of guilt depends on the manner in which the criminal act is presented. This is especially true for the evaluation of the video which is has been presented as the incontrovertible truth of guilt. Khmer Times wrote: “The case against Mr Sokha is based on video footage published by the Australia-based news outlet CBN, in which he speaks of being tutored by the US to lead regime change in Cambodia.” See Khuom, Narin “CNRP will stand by its leader” 13 September 2017. On the other hand, “The government said the charges were based on comments Kem Sokha made on a video dating back to 2013, in which he claims to have received help from the United States to build a pro-democracy movement in Cambodia.” See “Cambodian opposition leader flees into exile after arrest warning” VOA, 4 October 2017.

whole party that party could be dissolved under the law on political parties.” The activities and mobilizing efforts have been increasingly sanctioned and restricted by government authorities. The campaign to publicize their opposition to the treatment of Kem Sokha has been repressed, and when the opposition party announced it was organizing an advocacy campaign in support of Kem Sokha, the ruling party spokesman asserted that it only proved they were also complicit in treason.⁶⁶ Also banners or other informational material at CNRP provincial offices discussing the case were deemed a threat to public order by the MoI.⁶⁷ Moreover, the ruling party spokesman publicly stated although the ruling party was itself committed to dialogue, no future dialogue allowing for reconciliation would be acceptable.⁶⁸

Given the presumption of innocence until proven guilty, the burden falls on the state to demonstrate the criteria have been met. Two key points are of concern to the public and election stakeholders: first, whether it is reasonable to say that a ‘secret’ collaboration took place when the fundamental piece of evidence presented is a video clip from a TV program which was broadcast publicly and retrievable on internet; second, whether or not it is reasonable to say that the dialogue on the video clip (which authorities claim is self-incriminating) actually discloses hostilities or aggression toward the Cambodian state or people. After his initial arrest Kem Sokha was not allowed a lawyer, and later he was barred from his own appeal hearing, ostensibly for security concerns.⁶⁹ Also, the MoI spokesman asserted that because in the video clip Kem Sokha makes a confession, no investigation was needed.⁷⁰

Almost six months after Kem Sokha’s his arrest for “treason” stemming from remarks he made during a 2013 speech about receiving advice and assistance from the US about democratic change in Cambodia, the ASEAN Parliamentarians for Human Rights released a public statement. The group spokesman, Charles Santiago, said “The charges are so blatantly politically motivated and the judiciary so clearly acting at the behest of the Prime Minister that it’s a wonder the government even bothers going through the motions. These trumped-up charges should never have been brought in the first place. They should be immediately dropped and Kem Sokha unconditionally freed.”⁷¹

In early March 2018, the Supreme Court today rejected the appeal by Kem Sokha seeking bail and ruled his detention was justified. As a result, he had exhausted his appeals process and lost his last attempt to obtain bail after being imprisoned in pre-trial detention for six months. Although 7 lawyers for Sokha made verbal arguments in support of an appeal, including ongoing

⁶⁶ “Cambodia bans opposition chief from appeal, citing ‘security concern’” RFA, 25 September 2017.

⁶⁷ May, Tittara “Sokha release banners seized” Khmer Times, 28 September 2017.

⁶⁸ Reuters “Cambodian opposition MPs flee from crackdown” Al Jazeera, 30 September 2017.

⁶⁹ “Cambodia bans opposition chief from appeal, citing ‘security concern’” RFA, 25 September 2017.

⁷⁰ “Cambodia arrests opposition leader, alleging treason in collusion with US” Japan Times, 3 September 2017.

⁷¹ Post staff “Asean rights group urges release of former Cambodian opposition leader Kem Sokha”, Phnom Penh Post, 2 March 2018.”

health problems of the accused and poor conditions in the detention center, the judges did not agree.

The six -month extension meant that Sokha's trial would be postponed until after the 2018 national elections. Supreme Court Judge Kim Sathavy asserted "the health treatment must be based on the available resource in the country". And, "If the detainees want to have the health services, there must be permission from the prosecutor." Sokha was known to be afflicted by both diabetes and high blood pressure. Supreme Court Prosecutor Ouk Kimseth announced that the defendant would not be present at the Supreme Court hearing. In addition, UN Special Rapporteur Rhona Smith was denied access to visit the accused in detention just days prior to the Supreme Court bail hearing.⁷² Smith commented: "I am disappointed that my request to meet with Kem Sokha was rejected by the investigating judge. I reiterate that the authorities should not deny me access to any detainees." Investigating Judge Ky Rithy held that only the legal representatives and family members of the defendant were allowed to visit him in detention.

Moreover, the defendants' legal defense team noted the lack of best practices for due process by not bringing the accused to the bail hearing. The team pointed out it was always better that the defendant be present in the courtroom.⁷³

3) Other CNRP members

In August, it was announced that Morn Phalla (who is the chairman of the CNRP branch of Phnom Penh) was to be arrested in connection with 'intentional violence' victimizing one individual on May 28, 2017. The crime was allegedly committed by 10 individuals acting in concert.⁷⁴ He had first been summoned by the Court in connection with the case at the beginning of June commune election campaign. Despite not being involved in the event, the summons cited violations to articles 37, 94, and 114 of the Criminal Code.⁷⁵ The second summons cited charges of 'intentional violence'⁷⁶, but local media reported that the arrest warrant that followed indicated that Morn Phalla was to be questioned in relation to the events, rather than alleging he committed a crime. In the video evidence underpinning the prosecution, Morn Phalla was not shown to be assaulting the victim.⁷⁷ It was found that the CNRP position that the events were electoral issues, falling under the jurisdiction of the NEC, was not fully convincing because the situation involved a potential criminal act.

⁷² Chhay, Channyda "Supreme Court: No bail for Kem Sokha" Phnom Penh Post, 9 March 2018.

⁷³ Ben, Sokhean and Chheng Niem "UN rapporteur denied prison meeting with Kem Sokha" Phnom Penh Post, 9 March 2018.

⁷⁴ "Court order arrest on CNRP official" Fresh News, 10 August 2017.

⁷⁵ Mech, Dara "CNRP official summonsed by court" Phnom Penh Post, 28 June 2017.

⁷⁶ Soth, Koemsoeun "CNRP official called up by court yet again" Phnom Penh Post, 9 August 2017.

⁷⁷ Ven, Rathavong "Police summon CNRP official over rally row" Khmer Times, 2 June 2017.

However, it was also found that no supporting evidence or testimony had been provided linking the accused to the events, and multiple witnesses contradicted the victim's testimony.⁷⁸ It should also be noted that in early July 2017, an appeal was denied for 11 opposition activists convicted of insurrection (they had been sentenced to between 7 and 20 years imprisonment). Rather than address the substance of the case the appeal was ruled invalid on procedural grounds.⁷⁹

In addition, in late August appeal was denied in absentia for CNRP (Sam Rainsy Party) former (compelled to resign because of the culprit clause in the Law on Political Parties) Senator, Thak Lany. She was found guilty for comments made in July 2016 linking PM Hun Sen to the murder of political activist and commentator Kem Ley, and had been sentenced to 1.5 years in prison for defamation and incitement to cause social chaos.⁸⁰ There were two points of concern for CSOs and key stakeholders related due process and rule of law. First, that no reason for the decision was given by the judge, but an explanation would provide credibility to the ruling and reduce potential suspicions that the prosecution had political motives. Second, that the defendant has claimed the evidence against her (an audio recording) was doctored, suggesting an analysis by independent audio experts to assess the integrity of the recording would contribute toward understanding the actions of the defendant.⁸¹

In late October, opposition Senator Hong Sok Hour (SRP) was released following a pardon by King Sihamoni. As pointed out by Fresh News "the pardon was made after Hong Sok Hour wrote a letter to Prime Minister Hun Sen expressing an apology." Hong Sok Hour had been arrested and detained in 2015, but not convicted until 2016 for falsifying public documents and sentenced to 7 years in prison on the basis of Articles 629, 630 and 495 of the Criminal Code.⁸²

4) CNRP DISSOLUTION

The MoI filed an official complaint with the Supreme Court to disband the CNRP on October 6, 2017. The authorities stated that the complaint was based on 21 pieces of evidence, including 3 video clips of Kem Sokha where he is alleged to commit conspiracy with a foreign power.⁸³ Ky Tech, Hun Sen's lawyer later indicated that prosecution lawyers supplied the court with 26 pieces of evidence, including photos, videos, messages and documents.⁸⁴ The spokesman for the Council of Ministers claimed that eliminating the major opposition party did not impact democracy in Cambodia and that failure to prosecute the CNRP would be to "pave the way or

⁷⁸ Ben, Sokhean "Arrest warrant issued for CNRP's top Phnom Penh boss" Cambodia Daily, 10 August 2017.

⁷⁹ Mech, Dara and Sokha Touch "Court rejects appeal of 'insurrection' convicts" Phnom Penh Post, 3 July 2017.

⁸⁰ "Cambodia's appeals court upholds 18 month prison sentence for ex-opposition senator" Xinhua, 29 August 2017.

⁸¹ Ouch, Sony "Court upholds sentence for opposition senator" Cambodia Daily, 30 August 2017.

⁸² "Breaking News: Former opposition Senator released" Fresh News, 25 October 2017.

⁸³ Ven, Rathavong "Interior Ministry files complaint to dissolve opposition" Khmer Times, 6 October 2017.

⁸⁴ Kann, Vicheika "Government lawyers file further 'evidence' against opposition, ask judge to ban CNRP from politics" VOA, 14 November 2017.

red carpet to act as a criminal”.⁸⁵ Officials then tried to convince stakeholders that the complaint seeking dissolution of the CNRP and the imprisonment of Kem Sokha were two unrelated issues, because they were based on violations of two different laws.⁸⁶

MoI officials stated that the complaint seeking to disband the major opposition party was based on alleged violations of articles 6, 7, 44, and 45 of the Law on Political Parties. Article 6 prohibits any activity that affects state security, any incitement that diminishes national unity, and “sabotage that would lead to *counter liberal, multi-parties democracy* and constitutional monarchy”.⁸⁷ Article 7 stipulates: “All political parties shall not be subordinated to or under command or order of any foreign political party or any foreign government”. Articles 44 and 45 entail provisions for the dissolution of a party or for its ban for 5 years. Citizens, including the public, CSOs and affected interest groups, are of the position that the burden of proof in the court of public opinion, as well as the requirements of transparency and accountability demanded for good governance, necessitate a reasonable and convincing demonstration that state security has been affected or that incitement and/or sabotage has occurred.

The Supreme Court ruling to dissolve the only competitive opposition party occurred on November 16, 2017.⁸⁸ International media reported that this rendered Cambodia a one party state by taking all the seats from the opposition party, including lawmaker seats in the national assembly and commune council seats, and barring 118 members of the opposition party from politics for 5 years. In addition, to having their political rights denied, the ruling effectively denied all opposition party lawmakers and local level representatives (commune councilors or chiefs) their livelihood.⁸⁹ The Presiding Judge was Supreme Court President and high-ranking CPP member reported to be allied with the PM.⁹⁰ He stated after the trial that the judgment considered the CNRP boycott of the trial as itself confession that they were guilty of a treasonous rebellious conspiracy. As such, the CNRP absence from trial was taken as meeting the burden of

⁸⁵ Mech, Dara and Erin Handley “Breaking: Interior Ministry files a complaint to dissolve CNRP” Phnom Penh Post, 6 October 2017.

⁸⁶ “Twin tracks on CNRP cases” Khmer Times, 10 October 2017.

⁸⁷ Emphasis added.

⁸⁸ Lipes, Joshua “Cambodia’s supreme court rules to dissolve opposition party” RFA, 16 November 2017.

⁸⁹ Mom, Sophon “CNRP leaders face loss of salary” Khmer Times, 15 November 2017.

⁹⁰ A member of the CPP since 1989, the Supreme Court President serves on two key CPP committees. See Holmes, Oliver “‘Death of democracy’ in Cambodia as court dissolves opposition” The Guardian, 16 November 2017. He was elected to the National Assembly in 1993 as a CPP MP, and since 1998 he has served as President of the Supreme Court. “New Supreme Court Chief Justice Appointed” Phnom Penh Post, 5 June 1998. It is notable that in the January 2018 inductions to the CPP central committee (342 people in total) included Ky Tech (Hun Sen’s lawyer), Chiv Keng (a supreme court judge) and Chea Leang (the government prosecutor in the CNRP case). Hul, Reaksmeay “Ruling party adds supreme court justices to central committee” VOA, 24 January 2018. Also of note in the month preceding the Supreme Court ruling at the behest of the PM, Ken Somarith, the son of the Supreme Court Deputy President Chiv Keng was named director of the Royal Academy for Judicial Professions, the institution responsible for training judges. Mech, Dara “Son of Supreme Court official gets promoted” Phnom Penh Post, 10 October 2017.

proof (confession) of guilt for the crime on which they were on trial.⁹¹ Based on the alleged intent to conduct a coup, albeit without any armed forces or insurgency an unknown to CNRP's own members, the refusal to attend the trial on the ground that it was politically motivated was ruled to be compelling indication of guilt.⁹²

International media echoed the claims of INGOs, that the rule-by-law used to contain and eliminate electoral competition, essentially undermined all credibility for the 2018 elections and reversed the gains made by the national-international cooperative effort to build a democratic system following the UNTAC period.⁹³ International CSOs have also called into question the independence of the judiciary noting an absence of real rule of law, as well as pointed out how future elections cannot be considered to be real polls.⁹⁴ As a result of the exclusion of the opposition and its broad-scale support base or popularity and party platform, the ruling party can run effectively uncontested in the 2018 polls even with the participation of other parties.⁹⁵

The world experts on rule of law, pointed out: "By dissolving the main opposition party, the supreme court is irreparably interfering with the rights of potentially millions of Cambodians to freely choose their political representatives and vote for them in the upcoming elections. It makes a mockery of fair justice to have someone in a leadership position within one political party sit in judgment on the conduct of that party's main opposition. There can be no starker example of an inherent conflict of interest."⁹⁶

D- A Trial for Kem Ley

The murder of prominent and outspoken political analyst and organizer Kem Ley, the Phnom Penh Municipal court has sentenced Choub Samlab (the defendant referred to as 'Meet Kill') to a life sentence for the crimes of murder and carrying a weapon, criminal code articles 200 and 409. Leang Samnat, the presiding judge, posited: "The reason we decided on this sentence was because we have all the evidence and the suspect already confessed that he was the killer. He can file an appeal if he is disappointed with my decision." During the trial, the defendant gave testimony which recounted details regarding the supposed means and motive. He alleged that the victim had borrowed \$3,000 and because he did not keep those promises the defendant decided to kill him. He claimed that the gun was obtained in Thailand and he spent 10 days searching for the victim based on his car license plate: "I decided to work in Thailand as a gardener and at a rubber plantation to save 45,000 baht (\$1,280) to buy a pistol costing 50,000 baht (\$1,400). Then I traveled from Thailand across Siem Reap to Phnom Penh, with only 5,000

⁹¹ Angaindrankumar Gnanasagaran, "Hun Sen cements grip on Cambodia", The Asean Post, 20 November 2017.

⁹² "Cambodian Supreme Court dissolves main opposition party" DW, 16 November 2017.

⁹³ Barron, Laignee "Cambodia's top court has dismantled the opposition party, sounding a 'death knell' for democracy" Time, 16 November 2017.

⁹⁴ Head, Jonathan "Cambodia top court dissolves main opposition CNRP party" BBC News, 16 November 2017.

⁹⁵ Holmes, Oliver "'Death of democracy' in Cambodia as court dissolves opposition" The Guardian, 16 November 2017.

⁹⁶ Ibid.

baht [\$140] and slept on sidewalks outside people's houses....” The Phnom Penh Municipal Court officially closed its investigation into the murder of Kem Ley on 23 December 2016. The investigation ended without providing the public and key stakeholders with a clear narrative of the events or demonstrating compelling evidence of the certainty of the guilt of the accused. The Court supported the story of the accused, Oeut Ang, who throughout the investigation and trial consistently maintained his name was Choub Samlab (‘meet kill’), and had confessed to the murder alleging being motivated by a \$3,000 debt.

Although the widow of the deceased had not filed a complaint with the court, the investigating judge Seng Leang asserted that Ley's wife, Bou Rachana, was classified as a civil party and had been informed by the court regarding the closing of the case. Court informed media that the case was to investigation was to be concluded despite the fact that CCTV footage of the murder had not been released and the police had note indicated any new leads or evidence had been found. The investigation had done little to instill confidence in the justice system by the public or provide redress for the family of the victim. Bou Channy, Rachana's brother, asserted that closing the investigation was unacceptable and the refusal to release the CCTV footage fundamentally undermined the credibility of the RGC. Ultimately, rather than eliminate doubt the investigation and trial cemented public uncertainty that the accused was actually responsible for the crime.

As noted by independent media, the MoI spokesman illuminated the weakness in the case against the accused, including his confession. Khieu Sopheak admitted “ We do not believe that the offender was named Choub Samlab and we do not believe he gave Kem Ley a loan of \$3,000.” According to his family, there was no meeting with Kem Ley and no loan given for \$3000. Additionally, in the investigation and trial no records were found to connect the two, such as telephone calls or text messages, banking records, or social media links. There were no witnesses found by the police to connect the victim and the accused. Kingsley Abbot of the International Commission of Jurists contended: “What was missing from the trial was a proper establishment of the truth.” What happened is that the accused provided a version of events which was totally improbable, and they weren't explored in any way.”

In addition, the handling of the security camera footage from the gas station where the murder took place has been major source of doubt, mistrust, and insecurity. Although there are multiple cameras on location, most of the footage disappeared after police confiscated the recording equipment following the murder. The Chevron corporation was ordered by a U.S. district court judge to deliver the footage, but the company claimed that it was all already given to the Cambodian government. At the same time, Phnom Penh Police Chief Chuon Sovann informed media that all the video footage was given to the Court, but he did not know why it was not shown in the trial. In announcing his decision, the judge stated that he was confident of the guilt of the accused because of the exactly similar appearance between the defendant and the person in

the video footage showing the shooting. One important claim already discounted by the RGC authorities concerned the gun. The defendant claimed that he obtained it in Thailand. However, Ly Sophanna, spokesman for the Phnom Penh Municipal Court and a prosecutor on the case informed the public that the police had found the origin of the weapon and charged the seller for the crime of “selling a weapon without authorization”. However, he would not give the name of the gun dealer press, raising further questions about the actual events of the crime.

VI. Executive Branch- Responsiveness and Transparency

The Executive Branch is in many ways the largest and most powerful of the three branches of the state. In authoritarian systems the executive extends its control over the judiciary and legislative branches either in formally or in practice, to the extent that these branches are not granted autonomy according a Constitutional foundation. Cambodia is formally a liberal democratic system with full separation of powers, because those standards are enshrined in the Constitution. However, in practice it has yet to develop the robust separation of powers characteristic of consolidated democratic systems. 2017 evidenced a decline in the strength of separation of powers as the judiciary was used extensively to cordon and control opposition political competition and the legislative was fundamentally recomposed with a large segment of unelected lawmakers. The quality of political discourse declined with less concern for the sanctity of human rights, less rhetoric to support the expectation of election based competition rather than rule through strength, and less discussion and debate on policy issues, agendas, targets, and solutions for pressing challenges. The politicization of the security services has increased in tandem with the criminalization of non-violent dissent. The elimination of the opposition as a national security threat has left the legislature incapable of fulfilling its oversight function, and the legal prosecution of high profile members of opposition parties risks the appearance of partisanism in the judiciary. As dissenting voices are categorized as enemies of the state, it has militarized political society and made a healthy liberal pluralism impossible.

COMFREL’s government watch found that in several key areas of governance the RGC has failed to achieve the targets it set out in its policy platform. Moreover, the emphasize on military spending and public security detracts from a potential peace dividend for development achieved by prioritizing other areas and would enable less international borrowing for infrastructure projects. The mobilization of state officials and institutions around a vague and undefined threat of color revolution has further siphoned needed resources for education, health, and social security spending. At the same time, by policing civil society relations and treating interest groups as national security threats, there has been a decline in the engagement between civil society, donors, and policymakers which undermines long-term development and democracy aims. This chapter presents the results of two key programs carried out by COMFREL’s Government Watch and Political Corruption Watch. It also includes a discussion of the political discourse and actions taken by the executive during 2017 in order to evaluate the democratic quality of the discourse as well as responsiveness and inclusivity in rhetoric and policies set out

by the executive. Democratic quality of discourse refers to a commitment to liberal-pluralism, a willingness to abide by the competition rules of democratic political society, and inclusiveness of minority political parties, and rule of law in terms of fidelity to the spirit and letter of the constitution. Monitoring of civil-military relations shows an increased role of the military in politics, and increased partisanism with the military actively and publicly mobilized against opposition political parties and other actors labelled revolutionary. The chapter concludes with a discussion of the National Budget in order to discuss financial transparency and accountability in Cambodia.

VI.1-Government Platform Fulfillment

Since late 2013, the RGC has been implementing a political platform which is categorized into four main sectors: 1. National defense, security and public order; 2 Improvement of public administration, decentralization and de-concentration, law and justice, and anti-corruption activities, 3: Development of economics; and, 4: Development of education, health, labor, culture and social affairs. In relation to the implementation of political promises, the RGC has also been carrying out the Rectangular Strategy Phase 3: Employment growth, equity and efficiency in Cambodia.

During the 4th year of the 5th mandate of the National Assembly (NA), the Royal Government of Cambodia (RGC), led by the Cambodian People's Party (CPP), has fulfilled six of 16 political platform promises with precise indicators. They are: annual economic growth of 7%, annual poverty reduction of 1%, halting of economic land concessions, design a national housing policy, create a city transportation policy, and develop a national policy related to jobs and careers. Another six political platforms related to one million tons of rice exports, water for family fishing, land title registration, people's access to running water, village electricity supplies, and a target for the number of foreign tourists by 2018, have only been partly fulfilled and/or implemented by the RGC. Four political platform promises have been implemented, but when considering their targets, the RGC is unlikely to fulfill them. These include, maintenance of existing forest cover, annual 300km to 400km of rural roads improvement, secondary school construction in all communes and implementation of retirement allowance in the private sector.

In 2017, the RGC was failed to implement the policy of situating secondary schools in all communes although it was partly fulfilled in 2016. The public education statistic and indicator for 2016-2017 said that the number of secondary schools decreased by 6 (it was 1251 in 2016 and it was 1255 in 2017 as six were probably turned into high schools). Therefore, the RGC in 2017 did not carry out the political promise to establish new secondary schools.

For the fourth year of the fifth mandate of the National Assembly, the voters' scorecard on the fulfillment of political platform promises with imprecise indicators, showed that of 214 participants (38% are female) 17% were satisfied, 60% of them were partly satisfied, while 22% were not satisfied. It is notable that the percentage of participants who were partly satisfied

dramatically increased from 38% in 2014 to 60% in 2015, but for the last three years, the percentage remains the same (around 60%). At the same time, the percentage of participants who were satisfied decreased and the percentage of participants, who were not satisfied increased.

Reviewing the 2017 national budget, the RGC planned to spend USD 5,046 million, 17% of which was not allocated. The RGC planned to allocate to social affairs about 28%, to the economic sector about 26%, to national defense, security and public order about 17%, and to general administration around 10%. In 2017, the budget allocation to the economic sector, if compared to 2016, decreased 3% while the budget allocation to other sectors slightly increased. To fulfill and implement its political platforms promises in the fourth year, the RGC has been found to decrease its cabinet members but to increase undersecretaries of state. By November 2017, at least 03 officials left the cabinet. During the monitoring period, 30 officials have been appointed in 16 ministries as undersecretary of state, while only 10 have been fired. Also, ten Royal Government of Cambodia's advisors, ranked as members of the cabinet, have been appointed while six have been fired.

Although there are no political platform components related to the change of the constitution, at the end of 2017, the RGC proposed a constitutional amendment of article 118 (NEW) of the Cambodian Constitution relating to the composition of RGC cabinet. The amendment proposes to withdraw Secretary of States from the cabinet membership. The withdrawal will result in a planned decrease in cabinet member, but there still remain a lot of Secretaries of State and also an important change in procedure for appointing them. A Secretary of State would be appointed by Royal degree based only on the Prime Minister's request, and would no longer be subject to a vote of confidence by the National Assembly (NA), and so not accountable to the NA. It is also observed because of a lack of a law or regulation limiting the number of undersecretaries of state, there has been new appointments every year. During the 11-months period the RGC had issued 1,579 sub degrees and 344 announcements. Around 4% of sub degrees concerned the transferring of public property to the private property of the state and transfer of budget funds. The remainder concerned the awarding of medals, commendations and promotions to government officials.

VI. 2- Military and Law Enforcement

2017 saw a sharp increase in the politicization of the security sector. In early January, the RGC announced that it had acquired 3 armored personnel carriers equipped with tear gas cannons. According to defense analysts, the vehicles are also armed with machine guns. The spokesman from the national police indicated that carriers would be used for public security purposes, and security official indicated to local media that the vehicles would be used to “crack down on protestors”.⁹⁷

⁹⁷ Dara, Mech and Shaun Turton “Military police machines” Phnom Penh Post, 12 January 2017.

Toward the end of January, the RGC announced a massive plan for promotions in the RCAF, initiating the advancement to the rank of general for 700 personnel which had served prior to January 7 1979, which the RGC holds to be liberation day from the Khmer Rouge regime. The promotions were to be awarded by Hun Manet, the policy was a continuation of long-held practice of ensuring support and patronage for the ruling party, while consolidating power in the position of the PM.⁹⁸ In early February, 256 officers were promoted to the rank of general (249 army, 7 navy), implementing a policy announced via the Royal Gazette in December 2016. At this time it was also announced that the policy of promoting pre-1979 personnel would be expanded to include those who joined the military post-1979.⁹⁹ Giving an indication of just how rampant the practice had become, the Ministry of Defense spokesman was unable provide the actual number of existing generals. The policy was implemented further in the period leading up to the 2017 commune elections, and in March another 84 officers were promoted to brigadier general, 43 to major general, and 5 to lieutenant general.

Also in April, another round of mass promotions occurred, as 434 army officers and 4 navy officers were elevated to the rank of general, following a royal decree dated February 27, 2017).

In addition, in late January, promotions were given to the same members of the PM's bodyguard unit that had been found guilty but released early for the 2015 serious beating of opposition MP's Nhay Chamroeun and Kong Saphea outside of parliament.¹⁰⁰ After serving one year of a four year sentence for the assault, one of the men was promoted to general and two were promoted to colonel. None of the men's commanders or any other government officials were investigated or punished for inciting the violence.¹⁰¹ The arrest and sentencing of the assailants occurred only when PM Hun Sen called on the men to come forward, after a special investigative committee announced that it has been unsuccessful in apprehending the suspects. Despite ruling party legislative moves to disqualify opposition politicians from politics for less serious crimes such as defamation, the MOD took the position that the promotion of the perpetrators of the assault was legitimate because they had completed their punishment.¹⁰² T

Such a lack of transparency and accountability on promotion greatly contributes to a public sense of insecurity by undermining trust in the professionalism of the security services.

⁹⁸ Dara, Mech "Promotions pledged for '79 RCAF veterans" Phnom Penh Post, 26 January 2017.

⁹⁹ Dara, Mech "RCAF add more than 250 new generals" Phnom Penh Post, 3 February 2017. A significant concern for the quality of democratic pluralism in Cambodia in the post-UNTAC period has been partisanship of security services officials. The early February 2017 promotion of Hun Manith, a major general and the head of military intelligence, to the position of deputy-head of the CPP internal monitoring committee which is charged with party discipline (after having been appointed to the committee in December 2016), actualized a further concentration of power in the hands of the PM while reasserting the practices of nepotism and the links between the top position in the party and the top positions in the security services. See Dara, Mech and Leonie Kijewski "Manith given deputy role on CPP body" Phnom Penh Post, 13 February 2017.

¹⁰⁰ The attack occurred as approximately 1,000 ruling party supporters had gathered outside of parliament to protest in demand of the resignation of Kem Sokha as First Vice President of the National Assembly on the grounds that he had (allegedly) had an extramarital affair.

¹⁰¹ Neou, Vannarin and Khemara Sok "Three Charged for Assaults on Lawmakers but no 'masterminds' arrested" VOA, 4 November 2017.

¹⁰² Sothoeuth, Ith "Soldier implicated in lawmaker beating promoted" VOA, 30 January 2017.

In late February, the Minister of Defense publicly rebuked any who called for political change labelling them as threats to peace, equated non-violent social movements and civil society mobilization with revolutionary activities¹⁰³, and stated the government would not allow any movement.¹⁰⁴

Also in May, the National Police celebrated its anniversary and released two significant statements. The MoI seemed to claiming both that there were was a large range of different types of threats public order with the situation of insecurity being a cause for serious concern, while at the same time applauding the police for all the success they had had in eliminating revolutionary threats. He also alleged the prevalence of a terrorist threat. In addition, to that the National Police Chief stated that his officers had prevented 1,000 cases of demonstrations, strikes, or ‘color revolutions’.¹⁰⁵

At the beginning of September media reported that, in accordance with a MoD request, approved August 1, for more troops would be assigned to the PM’s Bodyguard Unit. The Unit was created in 2009 and is now estimated to have several thousand troops. Also in early September, the PM’s Bodyguard Unit celebrated its anniversary with an announcement that it possessed 100 tanks and a declaration of loyalty to the PM. The Unit Chief asserted: “When there is an issue like a protest or strike to demand something that opposes democracy or breaks the law... this force will cooperate with Military Police and National Police to maintain security.”¹⁰⁶ Three members of the unit were convicted of a 2015 assault on opposition MP’s but were then released early and subsequently promoted (see Pre-Election Climate above).¹⁰⁷ General Hing Bun Heang, deputy chief of the Royal Armed Forces, said that over 100 tanks are available at the bodyguard headquarter to protect the government and the people. The remark was made on the 9th anniversary of the operation of Bodyguard Unit on Monday morning. *The general once again announced that the bodyguard shall declare the legal protection of the Royal Government, led by PM Hun Sen, and follow his leadership on maintaining peace, development and supporting the candidacy of the premier as Prime Minister in every mandate.*¹⁰⁸

The pattern of politicization of the security services has continued, along with consolidation of power around the ruling party and the PM through promotions. In early July national media reported a fourth round of promotions in the armed services for 2017, announced in the June Royal Gazette. In the military, 76 colonels were promoted to brigadier general, and 26 brigadier generals were promoted to major general. In the national police, one major general was promoted to lieutenant general, 12 brigadier generals were promoted to major general, and 10 colonels were promoted to brigadier general.¹⁰⁹

¹⁰³ For example, he stated that the political compromise and reform following the 2013 elections was equivalent to events of 1970 and 1975 (a military coup and an armed overthrowing of a regime).

¹⁰⁴ Sokha, Touch and Leonie Kijewski “‘Change’ begets ‘disaster’”, Phnom Penh Post, 27 February 2017

¹⁰⁵ Mech, Dara “Cops commended for staving off ‘color revolution’” Phnom Penh Post, 16 May 2017.

¹⁰⁶ Mech, Dara “Bodyguard Unit shows off hardware, warns against protest” Phnom Penh Post, 4 September 2017.

¹⁰⁷ Mech, Dara “Bodyguard Unit handed fresh troops” Phnom Penh Post, 1 September 2017.

¹⁰⁸ “Over 100 tanks stock at Bodyguard headquarters” 4 September 2017. Emphasis added.

¹⁰⁹ Phan, Suomy “Gaining stars, 125 police, military officers receive promotions” Cambodia Daily, 7 July 2017

In early August, multiple transfers and promotions occurred in with the National Military Police: Kampong Chhnang military police commander Brigadier General Meas Sovann will move to become Battambang military police commander. Battambang military police commander Brigadier General Por Vannak will meanwhile be promoted to major general, becoming deputy commander of the National Military Police. Colonel Born Bin, deputy police commander for Banteay Meanchey will be promoted to brigadier general, taking up the post of the provincial military police commander instead. Current Banteay Meanchey military police commander Brigadier General Or Borin was transferred to work at the national military police. Colonel Chhuon Kimsan, deputy military police commander in Prey Veng province will also be promoted to the highest ranking police post in his province, while existing post-holder Brigadier General Men Siborn will move to the national military police. Colonel Hem Bonarel, bureau security commander at the National Military Police, will become a brigadier general and Mondulkiri military police commander, instead of Brigadier General Sak Saraing, who will move to the post in Kampong Chhnang.”¹¹⁰

In the last week of August, Hun Manith was promoted to General Director of the General Directorate of Intelligence. The GDI was created in October 2016 following a request of the MoD. The Commander-in-Chief of the Royal Cambodian Armed Forces stated: “In 2018, Cambodia will have many important historical events, including the national election. It is regarded as an absolute priority, so the intelligence director will have an important role to play.” The spokesman for the MoD indicated that the GDI would cover five departments, but did not specify. Hun Manith was appointed Deputy Director of the Intelligence Department in 2012, and made Director in 2015. He is also the Deputy Head of the ruling CPP Internal Monitoring Committee.¹¹¹ At the beginning of October, Hun Manith, was promoted to the rank of Secretary of State and the position of Deputy Cabinet Chief. In the same Royal Decree, dated September 29, multiple officials and journalists (see below) lined to ruling party were promoted. This occurred in the wake of arrest of the opposition CNRP leader and threat of arrest against more CNRP members.¹¹²

At the end of the first week of October it was announced that 4 police officials were promoted to general, 28 military officers were promoted to brigadier and lieutenant general, and Hun Manith was promoted from major general to lieutenant general.¹¹³ In December of 2017 the youngest son of the PM, was given the rank of colonel in the PM Bodyguard Unit, and PM Hun Sen’s son in law was made deputy national police chief. The eldest son of Cambodia's Prime Minister Hun Sen, in addition to deputy commander of the RCAF, was made RCAF joint chief of staff. On 2 March 2018, the Cambodian defense ministry spokesman Chhum Socheat said that Lieutenant

¹¹⁰ Khy, Sovuthy “Reshuffle at the top for military police” Khmer Times, 9 August 2017

¹¹¹ Khy, Sovuthy “Hun Sen’s son gets intelligence chief job” Khmer Times, 24 August 2017

¹¹² Mech, Dara and Alessandro Marazzi Sassoon “Hun Manith, officials and pro-government journalists promoted” Phnom Penh Post, 2 October 2017

¹¹³ Khy, Sovuthy “Uniformed officials get higher ranks” Khmer Times, 9 October 2017

General Hun Manet, had been appointed to the role of joint chief of staff as General Kun Kim was on sick leave.¹¹⁴

Also at an RCAF anniversary event, Gen. Pol Saroeun, commander-in-chief of the Royal Cambodian Armed Forces (RCAF), asserted that the military is committed to “oppose all activities of opportunistic groups supported by foreigners that aim to topple the legitimate government through incitement to cause violence.” He exclaimed that the primary duty of the military was absolutely protect peace and eliminate any color revolution.¹¹⁵

In December, it was announced that a new security committee or national security working group was formed which included 3 members of PM Hun Sen’s family (sons Hun Manet and Hun Manith, and son-in-law Dy Vichea). The information was released in an order published in the Royal Book, which indicated that the advisory group will be led by four-star General and Deputy National Police Commissioner Chhay Sinarith. According to the directive from the PM, the group functions for providing analysis or suggestions related to “protecting social order, national security, public property and other important national development projects”. General Chhay Sinarith indicated to media that the group would be similar to the U.S. National Security Council, would give advice on both domestic and foreign security issues, but would have no decision-making power of its own. He emphasized the group would not focus on investigating demonstrations, but rather on helping the country develop well and allowing people to live comfortably.

VI.3- Use of State Resources for Political Irregularities and Corruption

COMFREL political corruption watch found 522 cases of political related corruption¹¹⁶ and misuse of state resources¹¹⁷, an increase of 41.17 percent compared to 2016, when there was only 391 cases.

- There were 48 cases involving serious abuse of power committed by senior political leaders, leaders of political parties, leaders of the executive, legislative and judicial institutions in exercising their authority.
- There were 249 cases of irregularities of bribery and embezzlement¹¹⁸ committed by government officials charged with public office, of which 2 cases were solved.

¹¹⁴ “Cambodia PM’s son assumes senior military post” Straits Times, 2 March 2018.

¹¹⁵ Ibid.

¹¹⁶ (1) Refers to the abuse of power and exercising powers made by authorities or officials who have political power decisions and to decisions by authorities for the benefit of relatives (nepotism) or key allies and supporters (cronyism); (2) Irregularities such as bribes and embezzlement by political officials; by public officials in-charge office in gaining benefit themselves and their families and the interests of political party.

¹¹⁷ Misuse of State resources are including the using of human resources of the state assets including real estate and non-real estate or both tangible and intangible properties. Use of state resources incorrectly refers to acts violate any that law bans or regulates the use of human resources, of the state media, equipment, buildings office, courtyards, public offices, civil servants, soldiers and state budget to serve or advantage the interests of the political party.

- There were 217 cases involving the improper/misuse of state resources with the aim of serving political party interests, and 03 cases were tackled. There were 13 cases of irregularities, bribery and embezzlement committed by elected officials and 0 cases have been resolved.
- There were 22 cases of irregularities related to the appointment of relatives, cronyism, and nepotism, and 1 case have been resolved.¹¹⁹

Misuse of the state-run media are found in the national television (TVK) broadcasts amongst 205 political bias and partisan contents broadcasted. There was 167 contents focused on praising, promoting, and saying good things about the ruling party's officials and their field visit activities, and CPP MPs and members of the armed forces. Among the 205 contents, 20 contents were found discrediting and attacking the opposition. Overall, in 2017, 80% of the information broadcasted by TVK was found to be biased or partisan, with a tendency toward the ruling party. This treated not reflect its role as the national television, which as state-run media utilizes funds from the national budget for operations.

There were 13 cases found of abuse of power¹²⁰ committed by senior political leaders and institutions of parliament, the judiciary, and government. This was an increase of 04 cases from 2016. These cases also refers to the interfering of exercising powers made by senior political leaders between leader of legislative, leader of Executive and Judiciary recorded.

In the late 2017 is the potential use of the corruption law to persecute and further punish officials and party members of the CNRP. The threat extends to loss of property and homes as well as financial savings. The CNRP has advocated for its officials to make the declaration in order to avoid potential legal problems or allegations from the Anti-Corruption Unit (ACU). PM Hun Sen had stated that those that did not disclose their assets would be imprisoned. Given the

¹¹⁸ Irregularities Bribe (Irregularity of giving or gaining Bribe and Inducement): refers to suspicions and accusations arguments about bribery and bribery or embezzlement budget made by political officials and public officials in charging office. Cases of irregularities are in the level of charges and accusations and arguments by individual natural persons or public, media, journalists and social network or other information sources reliable.

Political officials refers to members of the government and members of elected officials (who has an electoral mandate through elections direct or indirect elected) both at national and sub-national levels. State public officials discharging office those who are included President/Chair and Vice Governor or Deputy Governor, etc.

¹¹⁹ Refers to the nomination and appointment of public officials/political officials into office bias or corrupted with cronyism and nepotism. The nomination or appointment is for the benefit of political party or own interest or group of persons. The nomination/appointment such as mother, father, siblings, children, or other close relatives, and including a spouse into the office, discharging office, without transparent methods or mean.

¹²⁰ Refers to the use of authority, role and jurisdiction provided to the Senior officials/leaders by the laws or regulations committed by senior politicians/leaders of executive/legislative and judiciary, especially the abuse between the senior leaders of the political institutions, principles of separation of powers. Violations can reach the violation of basic principles of human rights and principles of democracy, separation of powers and the rule of law advancing their political interest/benefit.

allegations of rebellion and treasonous conspiracy, there is a serious risk that CNRP officials could be accused of graft with the burden of proof falling on the accused rather than the prosecution, with their homes, savings, or even livelihoods at risk. On 17 December, PM Hun Sen had warned: “Some have questioned why they need to declare their assets if their party has already been dissolved. I’m afraid you will end up in jail if you fail to do so—I’m telling you. When you took your position you had to declare your assets once. When you leave your position, you must do it again. If your declared assets are more than previously declared, then you will be investigated.” On the same day as the PM’s statement, the ACU had released an updated account of the number of CNRP members who had declared their assets—33 lawmakers, three former members of the National Election Committee, and 262 provincial, district, and commune councilors throughout the country.¹²¹

VI.4 – Corruption Index

In the 2017 Transparency International Corruption Perception Index found Cambodia to receive a score of only 21, showing an extremely high level of corruption compared to the global norm and an ability to effectively advance reforms which would improve the situation, given that the score did not improve from 2016.¹²² The score placed Cambodia in last place for the region of Southeast Asia, and meant that its overall ranking would drop 6 spots to 156th out of 176 countries. This meant for four years in a row Cambodia received the lowest ranking in Southeast Asia. The largest problem was found with the judiciary and payments determining the outcome of court decisions.

In the 2018 Global Corruption Perceptions Index, Cambodia received the extremely low ranking of 161 out of 181 countries, a reduction in five places from the 2017 ranking. Within ASEAN, Singapore received the top ranking (it was rated at number 6 globally); Myanmar was third worst (130 globally) and Laos came in second worst (135 globally), and Cambodia was ranked last. The level for being classified ‘corrupt’ is a score of 45, but from 2016-2018 Cambodia has scored only 21.

Undermining and restricting independent media, in combination with harassment and exclusion of CSOs, weakens actual institutional mechanisms in society to support rule of law and the implementation of existing legislation against corruption related crimes. It also increases incentives for journalists or activists to engage in corruption.

Comparing Cambodia’s Score with ASEAN Countries from 2013 to 2017					
Country	2017 Score	2016 Score	2015 Score	2014 Score	2013 Score
Singapore	84	84	85	84	86

¹²¹ Lipes, Joshua “Cambodia’s opposition party urges officials to declare assets following threats of jail” RFA, 22 December 2017.

¹²² The rankings are based on information provided by NGOs, private sector actors, and members of the media. Eight sources are used overall. Three of them are the World Economic Forum, the World Bank and the Economist Intelligence Unit. See Nachemson, Andrew and Lay Samean “Kingdom slips in TI’s graft index” Phnom Penh Post, 26 January 2017.

Brunei Darussalam	62	58	N/A	N/A	60
Malaysia	47	49	50	52	50
Indonesia	37	37	36	34	32
Thailand	37	35	38	38	35
Vietnam	35	33	31	31	31
Philippines	34	35	35	38	36
Myanmar	30	28	22	21	21
Lao PDR	29	30	25	25	26
Cambodia	21	21	21	21	20

Transparency International Cambodia released its first Business Integrity Country Agenda assessment report in December 2017. The reports stated aim was reducing corruption so as to improve the business and investment climate with fair competition.¹²³

In 2016, the World Bank Enterprise surveyed 363 businesses and 64.7 percent of the private enterprises indicated that they had been asked to pay a bribe, and 59.4 percent of public transactions involved an informal payment. Cambodia was ranked 131 out of 190 countries in the World Bank’s Ease of Doing Business survey. The survey also found that 86.8 percent of business were compelled to pay a bribe to receive a construction permit, 63.3 percent were forced to pay a bribe to obtain an import license, and 50.3 percent of businesses were required to pay a bribe in order to receive an operating license.

Transparency International’s evaluation of integrity in the business climate involved a survey of 47 different businesses (31 national). It examined their websites to look at disclosure of information practices for assurances against corruption. It found that of the 31 domestic companies, only 4 shared any information about adherence to domestic laws and regulations or an anti-corruption policy. This was in sharp contrast to the international businesses, as 12 of the 16 foreign firms shared relevant information. A main cause of the problem elucidated by the report is the lack of law at the national level which would compel such behavior by companies. A variety of laws have been enacted, however, implementation has not been achieved. Relevant laws include standards and regulations relating to the bribery of public officials, commercial bribery, money laundering, accounting and auditing, undue influence, public procurement and tax administration.

VI.5- Transparency of the National Budget

The national budget is both a source of and a reflection of the trust that citizens have put in government to manage public resources and ensure for the collective well-being. The budget is an essential tool for the planning and implementation of policies which has a direct impact on the daily lives of the people and can provide a foundation for achieving the goals of representatives of the society. The transparent and accountable collection and distribution of state revenues is

¹²³ Khuon, Narim “Report targets corrupt businesses” Khmer Times, 20 December 2017.

forms an important buttress to the market economy and ensuring inclusive market driven growth. Moreover, the transparent collection and distribution of resources is needed so that citizens can be sure that they are not supporting corruption and abuse of office by government leaders. Control over the budget by way of representatives is allows for citizens to shape policy as the allocation of resources will determine priorities and potential outputs. Through the legislative branch to public is guaranteed a gatekeeping role over policy by ensuring state resources are only used for the public interest.

In Cambodia the national budget process is ruled by the 2008 Law on Public Finance System¹²⁴. This law guides and regulates the legislative process and to some degree the contents of the annual financial law or Budget Law, the financial Corrective Law or Budget Adjustment Law, and the post-budge law or Budget Settlement Law.

The National Budget 2017 was approved on 21 October 2016 by the Council of Ministers, with a government expenditure of about \$5.04 billion. For the 2016 national budget, the government approved a 16 percent increase on the 2015 budget of \$3.75 billion to make it \$4.36 billion. According to the statement released by the RGC, the budget amount is an increase of about 15.6 percent compared to the 2016 budget of \$4.36 billion. The Council of Ministers announcement indicated, as well, that \$834 million will be allocated in 2017 for national defense, security and maintaining public order. This represents an increase of about 20.4 percent from the 2016 national budget.¹²⁵ The statement added that about \$326 million will be given to the economy-driven sectors next year, up 13.1 percent from this year, while the social sector will get \$1.2 billion in 2017, up 12.7 percent. There was a 15.68 percent rise in social spending to \$1.21 billion, from slightly more than \$1 billion in 2015.¹²⁶

The National Assembly approved the 2018 national budget with an amount of over \$6 billion, an increase of 15 percent from 2017. The budget entails an increase in spending that is aimed to support three priority areas—education, healthcare, and infrastructure—as part of a broad strategy to improve public services. According to an outline of the budget, the government will boost expenditure in three prioritized areas. The additional funds will be used to improve the quality of public services – particularly education, healthcare and infrastructure – and aim to support a GDP growth of seven percent. The Ministry of Education, Youth and Sport will get 25 percent more money, for a total of \$852 million. According to the Minister of Economy and

¹²⁴ See: http://www.cdc-crdp.gov.kh/cdc/twg_network/country_systems_cambodia/strengthening_national_systems/documents_for_reform/PFM/law_on_public_finance_2008_en.pdf

¹²⁵ Commenting on the possibility of increasing salaries for civil servants (almost all of which are CPP party members) at the time, PM Hun Sen stated: “When our civil servants are paid more, they will spend more. Thus, it will not affect the macro-economy. Our macroeconomy is strong in all fields. The allocation for the 2017 budget is in response to making better the living conditions of our people. We, the government, have looked to increase more pay for civil servants in the future.”

¹²⁶ Sum, Manet “Gov’t Okays \$5 Bil for 2017 Budget” Khmer Times, 24 October 2016.

Finance, the added funds for education are to enable the development of STEM education. The Ministry of Health will receive \$487 million, an increase of 16 percent from 2017. Notably, the budget of the Ministry of Agriculture, Forestry and Fisheries will increase threefold.

The Minister of Economy and Finance asserted, as well, that in 2018 there would be no tax increases, no new taxes, and the removal of the tax on animal slaughter aimed at lowering the cost of meat. Notably, beginning in January 2018, incomes of \$300 or less a month are not taxed. The budget report the ministry also predicted a \$500 million increase in foreign reserves, reaching a total amount of more than \$7.85 billion in 2018. The 2018 budget included current expenditures of \$3.8 billion and capital expenditure of \$2.05 billion.¹²⁷

A major impediment to democratic consolidation with regard to budgeting and resource management by government has been the failure to give reality in policy and practice to the principle of liberal pluralism. For the 2018 budget, only 65 lawmakers from the ruling CPP voted for the budget. The CNRP lawmakers were absent because the Cambodian Supreme Court dissolved their party.¹²⁸

For the budget, the CNRP always boycotted the vote and the draft was approved by only CPP lawmakers unanimously.¹²⁹

In 2017, the budget of unallocated funds in Cambodia has improved, but problems remain as the below table.

Reserved/ Unallocated Fund:

US\$	2014	2015	2016	2017
Total Budget	3.4 billion	3.7 billion +10.6%	4.3 billion +16.1%	5 billion +15.6%
Reserve/ Unallocated Funds	1.5 billion ” 46%	606.4 million -60.9% 16%	725.4 million +19.6% 17%	855.5 million +17.9% 17%

In 2017, Cambodia was ranked 89 out of 115 countries, with a budget transparency and accountability score of 20 out of 100.¹³⁰ The OBI 2017, a global comparative study of budget transparency and accountability which includes indicators and assessment for both parliamentary oversight of the executive and citizen’s participation, found Cambodia to have an OBI score of 20. This was less than half of the global average of 42. It also noted an almost total absence of

¹²⁷ “Government may approve \$5.86b for next year’s budget” Khmer Times,

¹²⁸ Ven, Rathavong “NA approves national budget for 2018” Khmer Times, 17 November 2017.

¹²⁹ Vong, Sokheng and Charles Rollet “Assembly passes budget as CNRP boycotts vote” Phnom Penh Post, 1 December 2015.

¹³⁰ <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=kh>

public participation. Parliamentary oversight was viewed as significantly deficient. Legislative monitoring and check on the executive in terms of budget formulation was deemed limited (48 out of 100), and in terms of budget execution was found to be even worse, and rated as limited bordering on weak (40 out of 100).

A detailed financial report of the remaining funds from previous fiscal years is not published and disseminated to the public. The draft laws on the national budget and the Budget Execution Law are observed to have insufficient clauses which would define and set standards for transparency and accountability.

VI.6- The National Debt

In April of 2017 the MEF announced in the Cambodia Public Debt Statistical Bulletin that the RGC had borrowed \$8.3 billion from 1993 to 2016, including both bilateral and multilateral borrowing.¹³¹ 86.6 percent of borrowed funds was used for infrastructure development. Of that \$5.3 billion was from bilateral loans. The largest bilateral lenders were: China (\$3.59 billion), Japan (\$900 million), South Korea (\$510 million), France (\$124 million), Thailand (\$86 million), India (\$75 million), Vietnam (\$44.5 million), and Malaysia (\$7.85 million).

Multilateral lending agencies were also owed approximately \$3 billion. Most of this was owed to the Asian Development Bank (\$2 billion). Other significant debts to multilateral lenders included the World Bank (\$794 million), and much smaller sums to the International Fund for Agricultural Development (\$87 million), the OPEC Fund for International Development (\$70 million), and Nordic Development Fund (\$10.6 million).

To achieve the resource allocation stipulated in the 2018 budget, the RGC announced that it would borrow an additional \$1.4 billion (1 billion through Special Drawing Rights). This would make the national debt at the end of 2018 to be \$7.6 billion. Based on population estimate of 15.5 million persons, that would mean that each citizen owed \$400. The national debt decreased to \$6.2 billion in June of 2017 from \$8.3 billion at the end of 2016, because of repayments.

According to the 2018 draft budget disseminated by the Ministry of Economy and Finance (MEF), the additional \$1.4 billion pertains to 26 development projects from lenders which include the World Bank, the Asian Development Bank, China, Japan, South Korea, France and India. These projects are centered on energy and infrastructure growth, but also include tourism, health care, agriculture, and education. What is more, at the time of the released draft budget the MEF indicated that another 31 projects were still under consideration which, if approved, would result in total borrowing increasing to \$2.6 billion for 2018, and the total national debt increasing to \$8.8 billion.

¹³¹ Notably, the figure for amount of funds actually dispersed remained considerably lower. The report said the government disbursed \$5.8 billion from development partners (approximately \$3.7 billion or 64 percent was from bilateral sources). Sok, Chan "Cambodia's debt at \$5.8 bil" Khmer Times, 20 April 2017.

Cambodia's national debt primarily derives from bilateral and multilateral loans. Main lenders included China (\$2.9 billion or 47.5 percent), and multilateral lending agencies (\$1.9 billion or 30.1 percent). At the end of 2016, 80 percent of the national debt was owed to China. Other debts include old debts to Russia (\$458 million) and to the US (\$500 million). In addition, Japan, South Korea, and other bilateral partners are owed a total of \$775 million. The debt amount of \$6.2 billion put Cambodia's debt-to-GDP at approximately 28 percent; based on a population estimate of 15.5 million people, each Cambodian would owe approximately \$400. The MEF predicts that Cambodia's GDP for 2017 would increase to \$22.2 billion and then grow to nearly \$24.6 billion by the end of 2018.¹³²

According to the Cambodia Public Debt Statistical Bulletin of the Ministry of Economy and Finance released in March 2018, the RGC took concessional loans totaling \$977 million, and special drawing rights (SDR) of \$685 million in 2017, and Cambodia repaid approximately \$210 million. The concessional loans included funding from bilateral lenders (\$804 million) and multilateral lenders (\$173 million). In 2017, the government disbursed \$721.87 million from the loans by from development partners (77.5 percent or \$559.43 million from bilateral loans, 22.5 percent or \$162.44 million from multilateral loans).

It also indicated that Cambodia has paid approximately \$1.14 billion to repay loans from development partners from 1993 to 2017. During that same period, Cambodia took \$9.685 billion in loans. The amount borrowed from bilaterally totaled \$6.377 billion, of which \$4.05 billion was from China, \$1.235 billion was from Japan, \$720 million from South Korea, and \$145 million was from France, \$95.48 million from Thailand, \$75.2 million was from India, \$44.56 million was from Vietnam, and \$8.66 million from Malaysia. Borrowing from multilateral lenders totaled \$3.307 billion, which included \$2.119 billion from the Asian Development Bank, \$968.35 million from the World Bank, \$138.46 million from the International Fund for Agricultural Development, \$69.80 million from the OPEC Fund for International Development, and \$12 million from the Nordic Development Fund. The RGC disbursed \$6.77 billion from development partners from 1993 to the end of 2017. According to the MEF bulletin, 87.80 percent of the total loans were allocated to support infrastructure development, and 12.20 percent were committed to all other areas.¹³³

¹³² Sokhorng, Cheng "Government plans to borrow \$1.4B for 2018 national budget" Phnom Penh Post, 30 October 2017.

¹³³ Sok, Chan "Public debt 'stays within safe limits'" Khmer Times, 27 March 2018.

VII. Freedoms of Expression, Press and Access to Information

Free expression and free press are essential for a democratic country. Freedom of speech or expression today is a universally recognized norm as found in Article 19 of the Universal Declaration of Human Rights:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Art. 41 of the Cambodian Constitution enshrines protection of expression and press. It stipulates that the media regime shall be determined by the law, but it is essential to keep in mind that democratic rule of law requires fidelity to both the letter and spirit of the constitution set out in Art. 41 and in the constitution’s promise of liberal pluralism.

2017 saw severe setbacks for freedom of expression, freedom of press, and access to information. Policing and repressive monitoring of the different forums of individual and groups expressed has increased extensively, and opposition parties, civil society, and regular citizens have been made to feel insecure and unable to participate in public space. Independent media has been shut down or pressured to self-censor. In addition, elimination of key media outlets detracts from the quality of the 2018 elections.¹³⁴ Given that it is impossible political trust to develop well when there is such fear, a repressive approach to expression and media is contrary to the long-term interests and legitimacy of the state. A diversity of voices needed for debate which grounds collective problem-solving, political competition which enables fair elections and parliamentary oversight of the executive, and to ground compromise and inclusion which provide for positive peace. However, in Cambodia this diversity of voices has come under attack, accused of being destabilizing and even undemocratic, as it is labelled insulting, inciting, insurrectionary, and unpatriotic. The evolution of the rule by law mode of governance in Cambodia over the course of the 5th mandate of the NA, has entailed the enactment of key laws with clauses of concern, applying the law to eliminate independent media, prosecution and insecurity for journalists, and general insecurity among citizens to express themselves in public space. The process has been amplified in 2017 with the widespread articulation, of a

¹³⁴ Nguon Teang, the founder and executive director of the Cambodian Center for Independent Media (CCIM), which ran Voice of Democracy (VOD), one of the media outlets targeted by the government, indicated that the changes to the media landscape would negatively impact the 2018 election. He noted: “Independent media is really important for the people. Why is it so important? Because it provides the truth and provides information from all sides of the political spectrum to the people. Voters can then decide what political parties they support, but they can’t do that unless they have enough information. That’s why democratic countries need to have independent media for the democratic process.”¹³⁴ Judith Clarke, a journalism professor at the Baptist University of Hong Kong and expert on the media in Cambodia asserted: “The Cambodian constitution guarantees press freedom and the country has in the past respected this to some extent, but is now moving into a dictatorship.”¹³⁴

government narrative of a revolutionary conspiracy linking citizens, CSOs, unions, and media that critically discuss government performance, public policy, or deep-rooted social issues.

According to the international NGO Frontline Defenders:

“The Cambodian authorities use legislation and the judicial system to restrict free speech, jail government critics, and disperse workers, trade union representatives and farmers when engaging in peaceful assembly. The 2015 Law on Association and Non-Governmental Organizations imposes a range of restrictions on both domestic and foreign NGOs. Among other provisions, the law requires NGOs to register with the government and allows them to be shut down for undermining “national security”, “national unity”, “peace, stability and public order”, or Cambodian culture. Defamation and damaging the country’s image are widely used charges against HRDs and journalists. Under the 2010 Criminal Code, those who peacefully express views about political parties, government institutions or businesses risk criminal prosecution for defamation and spreading false information.”¹³⁵

VII.1 Legal Framework – Potential Problem

Authorities involved in media regulation include the Ministry of Information, the Telecom Regulator (under the direction of the Ministry of Posts and Telecommunications), and the National Commission on Cybercrimes.

Under the **Cambodian Criminal Code** there are also a number of provisions which could be used to restrict expression and limit dissent because of vague wording or because of an overly repressive interpretation of the law. The relevant provisions include: Art. 302 which criminalizes defamation; Art. 307 which criminalizes public insult, both punishable by fines; Art. 311 and 312 which criminalizes malicious denunciation, punishable by 1 month to 1 year imprisonment in addition to fines; Art. 495 which establishes the crime of incitement to commit a felony, punishable by 6 months to 2 years imprisonment in addition to fines; Art. 496 which criminalizes incitement to discriminate, which can be punished by between 1 and 3 years imprisonment in addition to fines; Art. 498 which sets out additional punishments for incitement entailing up to 5 years in prison; Art. 502 which criminalizes public insult of a public or elected official in the discharge of their duties by 1-6 days imprisonment in addition to fines; Art. 522 which prohibits publication of commentary intended to unlawfully coerce judicial authorities, punishable by 1-6 months imprisonment in addition to fines; Art. 523 banning discrediting judicial opinions and Art. 524 barring false denunciation to judicial authorities (with same penalties as Art. 522), and Art. 526 which sets out additional penalties for violations of Art. 522-524. These additional penalties include deprivation of certain civil rights for up to five years. The civil rights, set out in Art. 55, include: vote; stand for election; work in public office; be designated as an expert, arbitrator or judicially-appointed official; receive all official decorations

¹³⁵ <https://www.frontlinedefenders.org/en/location/cambodia>

and honors; and testify under oath in court. They do not include fundamental freedoms such as the right to freedom of expression.¹³⁶

The **Press Law** stipulates a number of crimes which, when broadly and oppressively interpreted, could easily lead to restrictions on the press and personal insecurity for journalists. Art. 10 sets out the crime of defamation, libel, or harming someone's honor (punishable by 1-5 million riel fine); Art. 11 which establishes the crime of incitement to commit violence (punishable by 1-5 million riel fine); Art. 12 sets out the crime of publication of information affecting national security or political stability (punishable by 5-15 million riel fine and the MoI can confiscate the publication and close the press for 30 days pending Court proceedings); Art. 13 establishes the crime of publication of information which humiliates public institutions; and, Art. 14 criminalizes the publication of information affecting the good customs of the society. Moreover, the Press Law authorizes civil proceedings for defamation (Art. 10) and for incitement to commit violence (Art. 11). CSOs have pointed to the danger of vaguely defined terms which are easily abused such as: "may affect the public order by inciting directly one or more persons to commit violence" (Article 11) or which "may cause harm to the national security and political stability" (Article 12) or which affects "the good custom of society" (Article 14). The Press Law explicitly guarantees freedom of expression for the press as it "determines the regime of the Press and assures freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the Constitution" (Article 1). Furthermore, Article 3 provides for the right to freedom from pre-publication censorship (Article 3). Publication of official information may not be penalized if such publication is fully true or an accurate summary of the truth (Article 4). Article 20 goes on to say that "no person shall be arrested or subject to criminal charges as the result of the expression of opinions".¹³⁷

The current **Telecommunications Law** entails several provisions of concern to CSOs and supporters of democracy. The law has been classified as a severe threat to both public expression and private conversation through technology. It allows intrusion, the destruction of evidence before trial, and taking control of all telecoms systems by the RGC.¹³⁸ In terms of surveillance of the citizenry and their rights to expression and privacy, Art. 97 establishes government authority to monitor secretly when approved by an undefined 'legitimate authority'. This covers phone, email, text, and social media. Art. 6 establishes that the telecom provider must provide personal data on users to the Ministry of Posts and Telecommunications, and no warrant is required. Art. 66 prohibits any activity which "may" (not only 'does') affect national security. Art. 80 sets out that any use of any telecommunications equipment that results in national insecurity is punishable by 7-15 years. Art. 107 puts vicarious liability on owners or

¹³⁶ *Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent.* Cambodian Center for Human Rights, 2012.

¹³⁷ *Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent.* Cambodian Center for Human Rights, 2012.

¹³⁸ *Cambodia's Law on Telecommunications: A Legal Analysis.* LICADHO, March 2016.

heads of organizations, and limits media more fundamentally is free expression of opinion is criminalized. Finally, Art. 65(b) posits the right to privacy but is also allows for it to be easily overruled when “otherwise determined by specific laws”. Perhaps most importantly, the law does not reaffirm or invoke Cambodian Constitution Art. 40 Right to Privacy and Art. 41 Right to Expression.

The Ministry of Information, over a period of more than 10 years, had been developing a draft **Access to Information Law** which was finally made public in February of 2018. The ministry also announced that a ‘state secrets’ law, which had potential to vastly restrict transparency and accountability, would not be enacted as it was not needed. The proposed Access to Information Law entails some significant steps in support of transparent and accountable governance. The Minister of Information pointed out how the law provides citizens with different means to seek redress when information requests are denied—communicating with the head of the institution, using the courts and seeking judicial redress, and a local ombudsman office. Although this an important advance toward a legal framework which ensures individual citizens are empowered to make informed decisions, according to CSO analysis there are some causes of concern.

VII.2- Media/Press Landscape-Limit on Pluralism

The media landscape includes traditional media (TV, radio, print) and new internet based media (online news and social media). At the end of 2017 the Minister of Information indicated that the ministry has on record 338 active newspapers, 207 magazines, 25 newsletters, 200 radio stations, 20 television stations, and 148 websites.¹³⁹ Until very recently TV was considered to be the dominant form of media in Cambodia, able to reach an estimated 96% of the potential public audience. CCIM and Reporters without border indicate approximately 18 TV stations, including one state-owned station with a marginal impact on information dissemination (an estimated 1% of audience share). Moreover, although 4 owners are considered to have captured 78% of the audience share, of the top 10 TV stations 8 are owned by individuals affiliated with the ruling party.¹⁴⁰ According to the Ministry of Information statements, TVK is viewed in almost 130 countries and in the U.S. alone broadcast on many channels.¹⁴¹ The Ministry of Interior launched its new television station called NICE TV in Sept 2017. It indicated that broadcasts would focus on government achievements and crime crackdowns.¹⁴² The Minister of

¹³⁹ Cheang, Sokha “Minister closes 330 inactive newspapers” Khmer Times, 18 December 2017.

¹⁴⁰ See <https://cambodia-mom-rsf.org/en/media/tv/>

¹⁴¹ Khuon, Narim “Minister says no to taxing US radio outlets” Khmer Times, 16 August 2017.

¹⁴² Cheang, Sokha “Interior Ministry launches TV station” Khmer Times, 28 September 2017. The station is a joint venture between the Mol and a Chinese business, NICE Culture Investment Group. General Mao Bunnarin, director-general of General Department of Logistics and Finance, which will control NICE TV, said the television station started a trial run in April and was officially launched yesterday. He indicated 9 million USD had been invested (3 million USD headquarters, 4 million USD equipment, and 2 million USD operations). In late July 2105, the Ministry of Interior held a signing ceremony to announce the launch of a 30 million USD television and radio station with backing from a Chinese company China Fujian Zhongya Culture Media company. The Mol announced that the station was scheduled to begin broadcasting at the same time as the CNRP’s station. At that time, Yem

Information announced it was the 23rd television station in the country. Minister of Interior Sar Kheng said NICE TV will focus on security, but will also broadcast news and entertainment programming. Online media and social media is expanding rapidly and by some accounts has surpassed TV in terms of audience share as well as in shaping political views and providing information about politics (see below).

The third most important type of media in Cambodia is radio. There are 175 radio stations in Cambodia, based on data provided by the Ministry of Information. However, CSO estimates show that almost half of the audience is controlled by the top 4 stations. Before being banned from, RFA and VOA (see below) were the most popular radio programs and were broadcast on 15 radio stations achieving nationwide coverage. It is notable that the radio's importance politics, as a forum for expression and participation or for access to information, is decreasingly significantly as it is offset by the rise of online news and social media, and because of the disruption to the media landscape with the coercive removal of RFA, VOA, and VOD broadcasting. Over the course of the summer, 19 radio stations that broadcasted Voice of America, RFA or opposition party shows were pulled from the air, ostensibly over licensing issues.¹⁴³

Newspapers and print media do not have a large audience, but very influential with politically active citizens, educated members of society, civil society activists, staff of IOs and INGOs, and students and researchers. At the same time the larger public impact may be limited as only 1 in 10 Cambodians digests either newspapers or magazines. For that relatively small market there is a significant concentration of the media sector given that four organizations have almost 60% of the audience. On the one hand, print is rapidly shifting to online and as internet based news and social media become more prevalent some print media may find a larger audience. On the other hand, the closure of the Cambodia Daily, the best or one of the best independent newspapers in the country, has seriously put the independence of the press into doubt, threatened the quality and balance of the print media sector, and weakened public trust in media overall.

An independent, investigatory, and critical press is essential for a democratic system. Without it citizens lack the information needed to truly exercise their participatory rights and government is left unchecked by public opinion allowing for impunity to reign. Whereas media pluralism is necessary for a vibrant public sphere in an established democratic political system, media in

Ponhearith, spokesman for the opposition Cambodia National Rescue Party, indicated that the CNRP was not involved in the planning for the Mol TV station and did not know about it before media was informed. He also pointed out that state-owned TV already existed and questioned the need for more state-owned broadcasting. He also indicated that the CNRP station guaranteed in the political deal end the post-election parliamentary boycott by the opposition in 2014, would be called Sun TV, would cost \$3 million to \$4 million and would launch in early 2016. However, at that time only about 400,000 USD had been collected. Notably, only two weeks prior to the Mol announcement, PNN TV was launched with more than 20 million USD under ownership of CPP senator and business tycoon Ly Yong Phat. Vida, Taing "Ministry gets own TV, radio platform" Phnom Penh Post, 30 July 2015.¹⁴³ Amario, Yesenia and Dara Mech "Journos thank PM for 'freedom'" Phnom Penh Post, 27 November 2017. For description of events see below.

Cambodia continues to be highly concentrated in terms of ownership and partisanism in favor of the ruling party.

The Media Ownership Monitor by the Cambodian Center for Independent Media (CCIM) and Reporters Without Borders evaluates media space in terms of 10 indicators of risk to media pluralism. It finds high risks in 7 out of 10 areas of indication.

The Media Ownership Monitor also has found the politicization of media outlets to be high, as the media having greater than 50% of the market share is owned or controlled by a specific politician, political party, or owner with political affiliation. It notes that among the 27 media owners, at least 8 are affiliated with the ruling party or working for the RGC, including: Kith Meng (Advisor to the PM); Hun Mana (daughter of and Assistant to the PM); Say Chhum (CPP Senator, Senate President); Soy Sopheap (Ministry of Information personnel); Kao Kim Hourn (Minister Delegate attached to the PM's office); Ly Yong Phat (CPP Senator and Advisor to the PM); Neang Phat (Secretary of State at the Ministry of Defense and four-star general); and, Vong Mayoura (Deputy Secretary of State at the Ministry of National Assembly-Senate Relations).¹⁴⁴

The Top 4 Media corporations and owners (Royal Group, Hang Meas, Hun Mana & Seng Bunveng) together reach 83.4% of the audience across all media sectors, which demonstrates a very level of concentration of media companies that have a potential influence on public opinion. Keth Meng is likely the most influential media mogul in Cambodia, given that The *Cambodian Broadcasting Service (CBS)* Corporation, that alone gathers 47% in the TV sector, includes at least three media-related sister companies including telephone, TV, and ISP operations.

VII.3-New Media Online and Social Media

New technology, including smartphones, internet, and social media, have had a profound impact on the Cambodian public sphere, including both political discourse and mobilization. It has both increased awareness and engagement of the citizenry, but also transferred the adversarial zero-sum politics of political parties into online space. With the generational change and youth becoming the majority of the population, more and more young people utilizing the new technology to get engaged seeking reforms, social justice, and solutions to issues faced by the community from the village to the national levels. Citizens and citizens' groups now have access to multiple forums, voices, points of view, new ideas and sources of information. Increased

¹⁴⁴ See <https://cambodia.mom-rsf.org/en/findings/affiliations> (Accessed 20 February 2018)

access to technology and low cost communication enables a vast increase in the exchange of opinions through mobile and internet based discussion, comments, bloggers, news shares, and in ‘likes’ and ‘following’.

Out of an estimated population of 15.9 million in 2017, there were approximately 7,160,000 active internet users and 4,900,000 active social media users (almost all of which use Facebook, 4,800,000). Of the Facebook users, 4,500,000 access social media through their mobile. The mobile phone penetration rate in Cambodia has been assessed at 78% for 2017.¹⁴⁵ It is estimated that in 2018, there are 6,800,000 Facebook users. (4,800,000 men and 2,700,000 women), with 78% of users between the ages of 18 and 34.¹⁴⁶ This is double the number of Facebook users in 2016 (3,400,000).¹⁴⁷ Another source, in cooperation with policymakers, stated that as of August 2017, Cambodia was considered to have 110% mobile penetration, and 90% telecoms coverage with approximately 9,000 towers. The RGC vision 2020 for telecommunications sets out the targets of 100% urban broadband coverage and 70% rural broadband coverage, with 80% internet penetration.¹⁴⁸ According to experts, the challenges for Cambodia’s ICT is connecting everyone in urban and rural areas, since in rural areas the infrastructure is still insufficient.¹⁴⁹ In 2016, the Telecommunications Regulator of Cambodia reported 31 ISPs and 7 mobile service providers operating in Cambodia, a decrease from 2014 resulting from consolidation.¹⁵⁰

According to the Media Ownership Monitor, 1 out of 3 Cambodians has used the internet and 24% of Cambodians use the internet or Facebook get information. Almost 32% of internet use is for accessing Facebook or social networking (however, the different use of Facebook have not been calculated), while almost 23% of internet use is for entertainment. Another 17% was found to be used for calling or chatting, and just over 10% for gaming. Local website access accounted for almost 14%, while international website access only accounted for 4%.¹⁵¹ Facebook is accessed by almost all Cambodian internet users, while news websites are not accessed often.

At the same time, social media has had a transformative effect on public space in Cambodia and has greatly increased citizen participation as well as access to information. It has become increasingly important for politicians and society figures to maintain a social media presence, and following the 2013 elections (and even more so the 2014 political deal between the two major parties) PM Hun Sen has sought to cultivate a social media following. This has entailed demonstrating a more personal side, allowing him to outreach to voters and the public in a way that offsets the strongman image. In 2016, the role of social media in influencing policy and

¹⁴⁵ See www.geeksincambodia.com/cambodias-2017-social-media-digital-statistics/ (Accessed 20 February 2018)

¹⁴⁶ See www.geeksincambodia.com/cambodias-2018-social-media-digital-statistics/

¹⁴⁷ See www.geeksincambodia.com/cambodias-digital-statistics-2016/

¹⁴⁸ “Infrastructure support enables 100% mobile coverage” Khmer Times, 16 August 2017.

¹⁴⁹ Chea, Vannak “Push to connect rural areas” Khmer Times, 29 August 2017.

¹⁵⁰ Telecommunication Regulator of Cambodia, “Licenses,” <http://bit.ly/1TmPxM9>

¹⁵¹ See https://cambodia.mom-rsf.org/fileadmin/Editorial/Cambodia/Infographies/English/Infographik_Online.png

connecting the executive to the public was demonstrated in an amendment of a controversial traffic law on the basis of complaints made of Facebook and commentary on the PM's Facebook page. This increased responsiveness and approachability agrees with the standards of good governance for democratic systems and should be seen as positive measures.

10 Most 'Liked' Facebook Pages in Cambodia -- Social Bakers
PM Hun Sen (9,549,673 fans), VOA Khmer (6,451,280), RFA Khmer (5,407,763), Post Khmer (5,272,413), Sabay (4,878,760), Khmerload (4,646,587), Meas Soksophea (4,587,198), Sam Rainsy (4,526,321), RFI Khmer (3,662,141), Koh Santepheap Daily (3,558, 326).¹⁵²

However, there are some potentially concerning trends. First is that, although social media has served as forum for debating the authenticity of Facebook and internet based personas, publicity, as well as popularity, there are significant political gains at stake. This raises the potential for propaganda or manipulation of information through techniques such as massive sponsoring, spamming, bots, trolls, fake news, and fake likes. Some internet and social media researchers suspect the deployment of local level cyber-units to spread publicity in support of the ruling party and share news or commentary denouncing the opposition. What is more, in 2016 independent journalists disclosed evidence suggesting an inordinate number of the PM's Facebook likes were from outside Cambodia. When opposition leader Sam Rainsy took to Facebook to question the authenticity of the 'likes', he was hit with a defamation charge.

As second issue is that the prevalence of online-based news does not necessarily translate into a more aware and educated citizenry, in part because media use for entertainment, but also in part because of the potentially low quality of the news offered. In the 2015 Media Monitor assessment, of the top 120 websites, only ten are news sites. Of the ten new sites, 7 are online versions of a print news source, while 3 produce their own content. 3 of the new sites are foreign owned (RFI, RFA, Post Khmer), and 4 of the online news sites are owned by individuals that are part of the RGC or affiliated with the ruling CPP.¹⁵³ Political affiliations aside, a particular concern is the preponderance of images of graphic physical and sexual violence against women, as well as images of other victims of crimes or traffic accidents.

Third, surveillance is has also become a serious concern. Both personal insecurity and self-censorship have been heightened by a combination of the broad power authorized by the telecommunciations law, prosecutions for online commentary or postings, statements by the

¹⁵² See <https://www.socialbakers.com/statistics/facebook/pages/total/cambodia/>. Accessed Feb 28, 2018.

¹⁵³ See <https://cambodia.mom-rsf.org/en/media/online>

police about massive monitoring of social media and internet to root out enemies of the state and treasonous rebels, the deployment of a system of surveillance cameras under central control in the capital, massive leaks of private conversations or information on social media, and “the propensity to define national security as stability of CPP rule”.¹⁵⁴

An initial 200 cameras for public surveillance were donated by China in 2015. As of mid-2017 there were 600 cameras under the supervision of City Hall and 400 monitors under the supervision of the National police. 200 more were expected to be donated by China in the near future. Police indicated the cameras have been effective in criminal investigations, but increase in surveillance under a central control room has worried rights supporters and independent analysts. In 2014 the Press and Quick Reaction Unit of the Council of Ministers announced the establishment of a cyber-war team to monitor the internet for dissent, and to actively “use strategies...to disseminate, prevent, clarify and maintain every activity and achievement of the government.” In July 2017, following the commune elections the RGC announced further that it was monitoring Facebook for enemies and rebel activities. These policies have reduced the space for free dialogue and public debate, heightened citizen’s anxiety, and delimit the capacity of citizens to communicate their needs or dissatisfaction to policymakers.

In 2016 leaked recordings allegedly of CNRP leader Kem Sokha and his mistress, drove a prostitution case which resulted in his self-imposed house arrest for a good portion of the year. Other leaks include recording linking the PM and his family to Thy Sovantha and staged protests outside the parliament which resulted in serious physical assault on opposition MPs, and leaks connecting Nagaworld Casino (NagaCorp) to the PM’s son and the owner of the Khmer times. 2017 began with a leaked letter allegedly showing the PM’s attempt to divide CNRP, and later in March a leaked recording between the PM and CNRP leader Kem Sokha showing purported deal making. In April, large amount messaging service logs were released on Sam Rainsy’s Facebook page which seemed show improprieties by a number of ruling party officials. Most alarmingly, the Cambodia Daily broke a story about a massive nation-wide breach of individual privacy rights through cooptation of the mobile phone SMS recovery on social media services and email services.¹⁵⁵ The Daily discovered the use of the telecoms systems allowed for a widespread cyber-assault, and that potentially millions of accounts could be locked to their real users or even taken over by impersonators. The investigation included testimony of many opposition party officials and civil society workers had suffered the same security breach.

¹⁵⁴ Say, Momy “Cambodian Netizens face new risks as government tightens online controls” VOA, 12 November 2017.

¹⁵⁵ Pavoir, Ben “Surveillance State” Cambodia Daily, 7 April 2017. Leaks critical of the government or seeming to shed light on corruption or malpractice were also released with the apparent intention of discrediting the government. This seems to have, in the eyes of the security services, given credibility claims regarding the severity of ‘threats’ to ruling party order. The compound effect of anti-CNRP and anti-CPP leaks has weakened the potential for compromise and the cooperation needed to resuscitate democratic political society.

A 2016 study by Oxfam on mobile phone and internet use found that 96% of Cambodians own a mobile phone and 99% reachable by phone. In addition, the number of people with phones that have Khmer script capacity increased from 55% in 2015 to 76% in 2016. Some 48% of Cambodians were found to have at least one smartphone. The study found 48 of respondents said they have accessed the internet or Facebook, and of those that have accessed the internet five of every six had a Facebook account. respondents in this group have their own Facebook accounts. Smartphones play a key role in increased social media use according to the results, as only 3% of Facebook users access it through computers alone, while 80% access it through smartphones alone. Moreover, the study found that in 2016 Internet/Facebook became the most important channel through which Cambodians access information (30%) — surpassing TV (29%) and almost doubling radio (15%) — and it is expected to continue gaining market share yearly. The study found some evidence to indicate new technology and media reduces the gender gap in education, and thereby empowers women. They also increase education overall as more citizens are using the tech and media for reading and writing which enhances their access to information, public speaking and debating skills, as well as critical thinking, and a minimum amount of internet based research capacity.¹⁵⁶

A study released by UNICEF and Indochina Research in late 2016, which surveyed 800 adolescents (between 10 and 19 years old), found that approximately 66% viewed TV on a daily basis. This would mean indicates that overall television is still consumed more than any other media. However, the results also indicated that mobile phone use was increasing, as 4 out of 10 surveyed reported they had a phone and 2 out of 10 owned a smartphone. The findings also showed that major concerns for youth were crime and traffic, which reflected media consumption in that they paralleled the major themes of national news outlets. Moeun Chhean Nariddh, director of the Cambodian Institute for Media Studies noted that he believed youth turn to TV for entertainment and to internet for news and information.

According to Freedom House rankings of internet freedom in 2016, based on an assessment of 2015 events and conditions, Cambodia fell four spots and was given a ranking of in a 2016 ranking of 52 (0 worst, 100 best) from 48 in 2015 and 47 in 2014. Cambodia did score higher than both Vietnam (ranking 76) and Thailand (ranking 66). Thus, Freedom House has found a continual decline in internet Freedom since 2013. In response, government spokesman Phay Siphon asserted that: “Freedom House is a foreign agent which issued this useless report. The report did not respond to the actual situation in Cambodia, which has respect for human rights and freedom of the internet.”¹⁵⁷

The pro-democracy NGO Freedom House also released its global press assessment rankings in early 2017 for the prior year. It categorized Cambodia as a “country to watch”, and ranked

¹⁵⁶ Phong, Kimchhoy, Lihol Srou and Javier Solá. *Mobile Phones and Internet Use in Cambodia*. Oxfam, December 2016.

¹⁵⁷ Pech, Sotheary “Internet Freedom Ranking Slips” Khmer Times, 16 November 2016.

Cambodia at 152 out of 199 countries (33 out of 40 for the Asia-Pacific region). It also categorized the press in Cambodia as ‘not free’. The report stated: “Prime Minister Hun Sen’s determination to avoid a repeat of 2013 general elections, in which the opposition made significant gains, could translate into a media crackdown ahead of upcoming polls.” And “The authorities in Cambodia stepped up monitoring of social media activity ahead of local and national elections in 2017 and 2018, pursuing criminal cases against both prominent figures and ordinary users whose comments were considered politically sensitive.”

VII.4- Press Freedom Assessment

In April of 2017, Reporters without Border released its World Press Freedom Index, which found Cambodia dropping to from 128 to 132 out of 180 countries. In Southeast Asia, Cambodia was ranked higher than communist states of Laos and Vietnam, but lower than Indonesia, Philippines, and Myanmar. That reported noted the 2016 killing of political analyst Kem Ley and the broad-scale effect of increasing fear in the public, as well as the threats against media and repressive posturing of the RGC following the release of the Global Witness report that documented the business empire of PM Hun Sen and his family on the basis of government records.

In conjunction with World Press Freedom Day in 2017, the Cambodian Human Rights Committee released a video to demonstrate the degree of freedom of expression or press in Cambodia.¹⁵⁸ In the video, featuring narration from Hun Sen, the PM claims that under his government Cambodian media space has grown from two newspapers to approximately 800 media organizations. He asks: “Thus, how could a man be considered a dictator for having developed a state this far?” he said. Nevertheless, the video failed to address the important of independent media and balance to offset the massive messaging and communications capacities provided to the government through the control of state administration and bureaucracy.

In September of 2017, the Cambodian Center for Independent Media released the results of a study conducted in 2016. The study interviewed 22 journalists who indicated significant pressure to coverage on stories that is favorable to the government as well as ruling party affiliated or aligned businesspeople. According to the respondents, the greater challenge for journalists was low pay, followed by government control and pressure. The report asserts: “With the country facing deep uncertainty over the national election in July 2018, there was widespread concern among journalists as to whether a government that has been surprisingly tolerant of highly critical media outlets would shift its position and expand its campaign against critics into the media arena.” These predictions would prove accurate with the elimination of the Cambodia Daily, RFA, and more than 12 radio stations. The study also found growth in pro-government media put human resources pressure on independent media.

¹⁵⁸ Touch, Sokha and Erin Handley “On World Press Freedom Day, CPP touts record of free speech” Phnom Penh Post, 4 May 2017.

Freedom House internet freedom rankings and assessments show a continual decline in Net freedom from 2013 to 2017. In 2016 found Cambodia with a score of 52, a drop from 48 in 2015, which put it in 40th place out 65 countries assessed. In the region, Cambodia ranked worse than Philipinnes, Singapore, Indonesia, and Malaysia; however, Cambodia ranked better than Myanmar, Thailand, and Vietnam. Key findings included the overly broad surveillance powers authorized by the telecommunications law, the imprisonment of student Kong Raya for Facebook post commentary; criminal charges issued for opposition leader Sam Rainsy and Senator Sok Hour for Facebook images posted (‘false’ documents); PM Hun Sen embraces social media, launches an app, and adjusts traffic law following Facebook complaints.¹⁵⁹ The 2017 findings also showed a score of 52, with improvements in access (reflecting increases internet and mobile penetration), but decreased respect for user’s rights. In the region, as in the previous year, Cambodia ranked worse than Philippines, Singapore, Malaysia, Indonesia (moving down from 2016); however, Cambodia ranked above Myanmar, Thailand, and Vietnam.¹⁶⁰ Key findings included that citizens were now most likely to turn to the internet for news than any other media type; the large amount of leaks targeting both opposition and ruling party politicians; two opposition politicians sentenced for Facebook posts, and hackers targeting large numbers of opposition party members, civil society activists, and journalists. According the report in Cambodia social media and ICT apps are not blocked, but political and social content is blocked and bloggers/ICT users are arrested. For net controls in Cambodia, the report lists political and social censorship, free speech prosecutions, and technical attacks.¹⁶¹ According to a recent investigation by BuzzFeed News, 15 people have been arrested for Facebook posts since 2014.¹⁶²

VIII. Freedoms of Assembly and Civil /Political Association

VIII.1 Repression of Civil Space

The criminalization of civil society and categorization of independent critical voices as enemies of the state added to the level of insecurity felt be CSOs and the citizens they advocate for. Linking civil society solidarity and human rights activism to terrorism and cross-border crime, the report applauded activities restricting public assembly and dissent on the grounds that demonstrations (or even online campaigns). By labelling democratic participation and activism as a threat to the society, such policy and rhetoric was found to heighten citizens’ sense of insecurity and provided them clear disincentives (through fear or threat of reprisal) to refrain from exercising their democratic rights to expression and participation prior to polling day. The

¹⁵⁹ See: <https://freedomhouse.org/report/freedom-net/2016/cambodia>

¹⁶⁰ Chisholm, Johanna “The Philippines is the only Southeast Asian country with a ‘free’ internet grade, report finds” Southeast Asia Globe, 5 December 2017.

¹⁶¹ See: https://freedomhouse.org/sites/default/files/FOTN%202017_Cambodia.pdf

¹⁶² “How the Cambodian government and Prime Minister Hun Sen are using Facebook to silence dissent before election” South China Morning Post, 10 February 2018.

allegations of a vast array of threats polarizes the relationship between the security services and the public and militarizes public space, fomenting a context where healthy democratic competition is viewed as an existential threat to the state to be met with force rather than inclusion and cooperation.

Examples of such repression is evident in the freedom of assembly and association, as more pressing threats to democracy emerged with the investigation and criminalization of the freedom of assembly and association of monitoring organizations.

Repression Of Civil Society: In early June 2017, within a week of the commune election, the MoI spokesman admitted to the media and public his threatening accusation, made just before the elections, of illegal links between civil society and the opposition CNRP was misleading. In a public speech, PM Hun Sen categorized the peaceful, non-violent and legal group of CSOs that had collaborated to conducted independent electoral observation as exceeding its rights and serving as a base for color revolution. He said: “Some of the problems we have to handle soon are: What is this Situation Room that has in recent days been dirtying the election results? Has the Situation Room registered with the Interior Ministry?...Do they have the rights to create this or that place, or take it as the base for orders with the principles of a colour revolution? If so, the Interior Ministry must take immediate action against what they are doing under the pretext of election observing.”¹⁶³ The PM decreed: “The Ministry of Interior must take immediate action against this group”. The MoI informed media that a group experts would investigate and conduct a study into the group.¹⁶⁴

Just prior to the PM’s denunciation of the group as being illegal, the COMFREL and CSO partners forming the ‘Situation Room’ released their final assessment of the 2017 commune elections, designating them as less than free and fair because of the lack of independent judiciary, political suppression and intimidation of civil society groups.¹⁶⁵ COMFREL and partner CSOs noted problems with key laws such as the Law on Political Parties, the imprisonment of opposition party figures, and threats by government officials. Also, campaign financing was found to lack transparency and adequate regulation, while access to media was significantly unbalanced.¹⁶⁶ It issued eight recommendations for the 2018 elections, three of which were: eliminate controversial provisions to electoral laws and the amended Political Party

¹⁶³ Alex Willemys and Dara Mech “As CPP marks 66th anniversary, Hun Sen takes opportunity to accuse CNRP” Phnom Penh Post, 29 June 2017.

¹⁶⁴ Tin, Zakariya, Vuthy Tha and Sopheak Chin “Cambodia’s Hun Sen pushes for tighter restrictions on political opposition” RFA, 28 June 2017.

¹⁶⁵ Reuters “Cambodia’s PM Hun Sen orders probe into rights group” The Indian Express, 28 June 2017.

¹⁶⁶ Van, Roeun “Hun Sen bites back at critics of commune election process” Cambodia Daily, 27 June 2017.

Law; free political prisoners and rights workers; and, maintain neutrality of armed forces and court officials.¹⁶⁷

COMFREL and former Situation Room partner CSOs are reputed NGOs with a long history of contribution to civil society and the public sphere, as well as cooperation with different government bodies, including with the NEC in fortifying of the electoral system in the 2013-2017 period. The only proof that NGOs were seeking a revolution was an alleged “gloomy” environment that they had created around the election result.¹⁶⁸ Because of its criticism of the pre-election climate, the PM labelled the CSOs instruments of a foreign orchestrated plot with an agenda to topple the government, and accused them of defining freedom as the ability to murder the PM himself. He then threatened to arrest foreigners suspected of espionage.¹⁶⁹ He stated, “A political party and an NGO did not consider it free...I say that it will be considered free for them when they enter the prime minister’s home or assassinate the premier on the spot—then it would be free.” He also claimed that political situation could easily descend into civil war, and publicly explained that this was possible even though the opposition had no weapons because their words could cause war.¹⁷⁰ Referring to EU Ambassador George Edgar, he stated: “Your Excellency Edgar, you and your people are the ones who fund the Situation Room. The Situation Room is no different from a military control center. Why was it established in Cambodia in the first place? My Minister of Interior shall never allow it to exist anymore.”¹⁷¹

By the first week of July the MoI had completed an investigation into the Situation Room. Its decision made it clear to all civil society and citizens that the LANGO would be used to control and even remove NGOs that it found to express views contrary to its position. The political climate prior to the election was criticized by UN bodies, key donor countries and established democratic states, and reputed international non-governmental organizations. Despite no connection between the CSOs and any political party, the MoI found that CSO criticism demonstrated bias and a violation of Art.24 which requires neutrality in relation to political parties. The Interior Minister stated that the group assessment “had no legal value and does not reflect on neutrality”. Although the Situation Room CSOs had indicated multiple improvements in the election, it also maintained that restrictions on political freedom remained. The MoI argued that the Situation Room had violated the law by failing to register as a single

¹⁶⁷ See: https://www.comfrel.org/eng/index.php?view=article&catid=188%3Aother&id=821%3Astatement-overall-and-ultimate-assessment-on-commune-council-election-for-the-4th-mandate-restrictions-on-political-freedom-and-limits-to-fairness-but-improved-election-management-&format=pdf&option=com_content

¹⁶⁸ Hul, Reaksmeay “Hun Sen uses CPP anniversary to attack election monitors” VOA, 3 July 2017.

¹⁶⁹ Touch, Sokha and Ananth Baliga “Hun Sen slams watchdog for saying commune elections ‘not completely free, fair’” Phnom Penh Post, 27 June 2017.

¹⁷⁰ Without showing any connection, he linked CSOs the false news facebook post of an individual that claimed he had died in a plane crash. PM Hun Sen stated, “They come out and wish me dead. Is this still freedom of expression?”

¹⁷¹ Yang, Chandara “Hun Sen threatens to shut down Cambodia Daily amid tax allegations” RFA, 22 August 2017.

entity.¹⁷² It also issued a blanket warning to all CSOs stating that many had not submitted the required information according to Art. 10 (bank accounts and finances, bylaw changes, leadership, location, and information on any donation within 30 days of receiving it).¹⁷³

COMFREL and NICFEC, as well as other partners increased outreach to media and key stakeholders to disseminate information on the non-violent, legal, and non-partisan activities of the group. They stressed that they are not affiliated with a political party, but rather committed to the international standards of best practices for democratic elections.¹⁷⁴ In a public statement collaborating CSOs noted, that the situation room was not a formal organization but rather a collaborative effort of approximately 40 CSOs which, through voluntary cooperation and dialogue, sought to achieve three main aims: strengthening capacity and mobilizing financial and material support for deployment of domestic election observers; information sharing related to the election situation; and, making an assessment and verification of the election result following the standards set out in the national laws and policies, as well as in applicable international standards.¹⁷⁵

By this time several prominent NGOs reported significantly increased surveillance and intimidation. Staff from civil society groups including Licadho, Transparency International, Equitable Cambodia, the Cambodian Center for Human Rights, and land-rights NGO Sahmakum Teang Tnaut described being followed often, personal security threats, threats of imprisonment, harassment of family members, disruption of events by armed security officials, having their movements restricted, and even being approached by undercover members of the security services.

By late September, the Equitable Cambodia was suspended by the MoI on the basis of violating its own by-laws (Art. 5) and LANGO Articles 10 and 25. The alleged violation of the organization's internal rules was not clarified by the Ministry. Art. 10 requests an organization to submit bank statements to the ministry within 30 days of registration, as well as notify the MoI of any changes in bank information. Art. 25 stipulates that domestic organizations must submit copies of both its annual financial report and activities report to the ministry by the end of the following year. The MoI indicated the suspension was temporary and would last for thirty working days. The letter mentions the complaint by villagers against the NGO (submitted to the MoI on August 30), but does not explicitly link the issue to the suspension. However, in addition to requiring the NGO submit bank statements, and activity and financial reports, it also made it

¹⁷² Khy, Sovuthy "Ministry declines to meet with poll watchdogs" Khmer Times, 22 August 2017.

¹⁷³ LANGO stipulates that NGOs in violation of Art.10 or Art.25 can be removed from the MoI registry and no longer legal.

¹⁷⁴ Handley, Erin "Election monitors get warning over law on neutrality" Phnom Penh Post, 5 July 2017.

¹⁷⁵ See: https://www.comfrel.org/eng/index.php?view=article&catid=188%3AOther&id=822%3Aannouncement-situation-room-for-the-2017-election-purposes-and-activities&format=pdf&option=com_content

mandatory that the NGO submit a report on its role in the land dispute with Phnom Penh Sugar.¹⁷⁶

A student group (Federation of Cambodian Intellectuals and Students) was suspended by the Ministry of Interior at the beginning of November for being in violation of the Law on Associations and Non-governmental Organizations (LANGO). The group was alleged to have violated Art. 24 which requires civil society organizations to remain politically neutral. In the week prior to the group's suspension the group leader called for peaceful demonstrations in response to a Supreme Court ruling dissolving the opposition party. The MoI penalized the group with 60-day suspension. Any future activities require that the group both submit forms and documentation, and demonstrate its willingness to right its wrongs.

In November, after the 30-day period of suspension for violation of the LANGO had expired, representatives of EC noted that had submitted the documentation required by the MoI, but had not yet been notified that their suspension had ended. Although it has fulfilled the terms set out by the MoI, it had not received approval to continue activities. According to media reports, by Chhim Kan, the director of the Interior Ministry's Department of Associations and Political Parties, confirmed that EC had submitted the requested documentation but that it had not yet been reviewed by the MoI.¹⁷⁷

At the end of November 2017, PM Hun Sen declared that the Cambodian Center for Human Rights (CCHR) was under the direction of foreigners and has deceptively presented itself as a national NGO. Linking it to the CNRP and the continual assertion of a revolutionary plot, the PM stated (again in front of an audience of workers) that the reputed non-governmental human rights organization founded by Kem Sokha in 2002 must close. The only evidence given of wrongdoing, in addition to the accusation was an additional allegation based on nationalism which denied the NGOs authenticity: "The Ministry of Interior should check, because they were created by foreigners, not Khmers." However, CCHR is one of the most active and vocal NGOs in Cambodia and has consistently been critical of human rights problems in Cambodia. Given its prominence, repute, and professionalism closing the CSO would have a broad-scale negative impact across all areas of civil society by significantly increasing insecurity and disincentives to engage with government officials to address social issues. Before the end of November, the MoI had announced that it was investigating CCHR and checking its bylaws, even though Minister Sar Kheng admitted that they had no grounds to penalize the NGO. He noted "We need reasons...[We] cannot do anything without reason."

The government documents accused the US of trying to topple the Cambodian government because it does not serve the policy of the US. The presentation attacked the National

¹⁷⁶ Ben, Sokhean and Meta Kong "Land rights NGO suspended" Phnom Penh Post, 29 September 2017.

¹⁷⁷ Kijewski, Leonie and Meta Kong "Land rights organization in Lango limbo" Phnom Penh Post, 17 November 2017.

Democratic Institute (NDI), Freedom House, Open Societies Foundation, National Endowment for Democracy (NED), and USAID as tools for US intelligence services. Moreover, it stipulated that “foreign-owned” media sources were not credible and served as biased tools attack the legitimacy of the government.¹⁷⁸ In the presentation, the National Assembly spokesman also claimed that the US was driving the Black Monday civil society campaign¹⁷⁹ (an informal campaign, largely social media based, linking CSOs and citizens in support of freeing political prisoners). In addition to fomenting a dangerous and irresponsible xenophobia and increasing tensions with foreign states, especially consolidated democracies, the presentation was cause for alarm on several counts.

Repression over Peaceful Assembly: As demonstrated in the example above, despite the peaceful character of the protests and organic solidarity among social groups on the basis of shared interests and values, expression and assembly in support of the Black Monday campaign would be increasingly labelled as a grave insurrectionary ‘color revolution. The Black Monday nonviolent protest assemblies resumed in small-scale¹⁸⁰ on January 9, 2017 because of the continuing detention of the ADHOC 5 and Tep Vanny, a land rights activist representing the Boeung Kak community who had been convicted and sentenced to 6 months incarceration on September 19, 2016, for a charge related to a protest that occurred in 2011.¹⁸¹ The government’s position seemed to add confusion to the situation and highlighted the manner in which the related trials were political, when the ruling party spokesman stated both that the issue was to be resolved by the courts and that a political agreement over the release of the prisoners could still be reached. The protest organizers informed that they would continue to hold assemblies until the prisoners were released.¹⁸² Alleging innocence, a political deal to secure their release was publicly rejected by the prisoners themselves.¹⁸³ Documents became public regarding the existence of a cross-ministry task force to deal with all protests which it had defined as ‘anarchy’ and ‘color revolutions’. The very problematic policy has linked as incitement and revolutionary insurgency, all labor strikes, land-related protests, opposition political party activities in support of freeing imprisoned activists, and civil society activities in support of freeing imprisoned activists, as well as most peaceful assemblies. The RGC formed the Committee to Solve Strikes and Demonstrations of All Targets, and strengthened it following the 2014 Veng Sreng Boulevard shootings which left 5 protestors dead, by including key figures from the military and national police. Analysis by independent media of the 2016-19 action plan for the group found the mandate of the group had been altered to emphasize eliminating “inciters” that “cheat people to join their illegal anarchic action” and “destroy peace”.¹⁸⁴

¹⁷⁸ Turton, Shaun “CPP calls out foreign NGOs for stirring ‘color revolution’” Phnom Penh Post, 24 May 2017.

¹⁷⁹ Sovuthy, Khy “US linked to color revolt” Khmer Times, 24 May 2017.

¹⁸⁰ An estimated 20 protestors. See Lay, Samean “Back in Black” Phnom Penh Post, 10 January 2017.

¹⁸¹ Rann, Samnang “Monday turns black again in Cambodia as protest restart” RFA, 9 January 2017.

¹⁸² Sek, Odom “Black Monday starts again as Adhoc officers languish in jail” Cambodia Daily, 10 January 2017.

¹⁸³ Morm, Moniroth “Cambodia’s political prisoners urge the opposition to stay strong” RFA, 11 January 2017.

¹⁸⁴ Dara, Mech “‘Color’ coups on group’s agenda” Phnom Penh Post, 7 February 2017.

The increased insecurity experiences by civil society and communities involved in land disputes, as well as constricting advocacy for remedy on social justice issues, for other example land rights advocate Tep Vanny¹⁸⁵, who had been sentenced to 2.5 years in 2016 in relation to demonstration that occurred in 2013. She has been jailed since August 2016 when she was convicted of public insult for being involved in a public assembly (vigil ceremony) that was linked to the Black Monday campaign (see discussion of pre-election climate above).¹⁸⁶ Although approximately 200 security officers were present, and multiple witnesses have confirmed violence by the security services¹⁸⁷ (10 protestors were injured when the crowd was violently dispersed), the appeals court ruled that the decision which found Tep Vanny guilty of “violence with aggravating circumstances”.¹⁸⁸

Although deported almost one year earlier, Gonzalez-Davidson was charged along with the two other co-founders of the Mother Nature organization (Cambodian nationals). They were accused of being accomplices to the crimes for which 3 other activists were arrested (Cambodian nationals) in August 2015. Gonzalez-Davidson was then both barred entry into Cambodia and being put on trial in a Cambodian court. This was seen as a violation of his individual rights and constitutional as well as international standards for fair trial and due process.¹⁸⁹ On March 3, 2016 one mother nature member, a leader of the Chong minority community, was convicted of illegal logging, in relation to the wood used to build a community center.¹⁹⁰ In July of 2016, 3 Mother Nature environmental advocates held in detention since August 2015 were sentenced to 1.5 years imprisonment for threatening to destroy property (a barge used in dredging by the company Direct Access).¹⁹¹ More recently, on Sept 13, two mother nature environmental

¹⁸⁵ “In 2007, the Phnom Penh municipality granted a 99-year lease for Boeng Kak to Shukaku, a private company owned by CPP Senator Lao Meng Khin. Nearly two years later, more than 3,000 families were forcefully evicted from their homes. Like millions of others across the country, the families lacked legal titles, though a 2002 land law should have entitled them to legal ownership because they had been there prior to the end of a government grace period.” Retka, Janelle and Odom Sek “From housewife to grassroots warrior: the rise of Tep Vanny” Cambodia Daily, 8 August 2017.

¹⁸⁶ Following her arrest, 3 different cases alleging criminal activities have been brought against Tep Vanny. Mech, Dara and Ananth Baliga “Vigil held for imprisoned activist Tep Vanny” Phnom Penh Post, 16 August 2017. Prosecutions of Tep Vanny include: a 6-day sentence for ‘insulting public officials’, a 6-month sentence for a 2011 assembly where security officers clashed with demonstrators, and a 30-month sentence for inciting violence, and an alleged threat against another Boeung Kak resident which has not yet been brought to trial. Baliga, Ananth and Chheng Niem “A year of ‘hell’ in Prey Sar for Tep Vanny” Phnom Penh Post, 15 August 2017.

¹⁸⁷ Defense witnesses have confirmed multiple different types of injury suffered by protesters, including Tep Vanny who was injured in the incident.

¹⁸⁸ Chheng, Niem and Ananth Baliga “Breaking: Tep Vanny sentence upheld” Phnom Penh Post, 8 August 2017.

¹⁸⁹ Marazzi Sassoon, Alessandro “Mother Nature founder wants his day in Court” Phnom Penh Post, 25 February 2016.

¹⁹⁰ Aun, Pheap “Environmental campaigner convicted of forestry crime” Cambodia Daily, 4 March 2016.

¹⁹¹ They were released at sentencing with sentences suspended for time served, after 10 months in pre-trial detention. Key, Sovuthy, and George Wright “Mother Nature activists found guilty, freed” Cambodia Daily, 2 July 2016.

advocates were detained and accused of inciting others to commit crimes and violations, for recording clear sand dredging activities by a private business linked to the ruling party.¹⁹² They had filmed sand dredging by LYP Group, owned by ruling party Senator Ly Yong Phat.¹⁹³

Arbitrary detention of Human Rights Workers: The UN Working Group on Arbitrary Detention had categorized the incarceration as arbitrary of imprisoned ADHOC 5 (four human rights workers and one NEC official). On June 29 (after the commune council elections final results were announced by the NEC), the imprisoned ADHOC 5 were released on bail, after being arrested in April of 2016 and having their pre-trial detention extended two times. The case was widely viewed as politically motivated, and in contradiction with the norms of due process and effective/timely investigation by the prosecuting authorities. The human rights workers continued to insist that they had been the victims of a serious injustice, and political analysts viewed the prosecution as illegitimate while noting the continuing legal threat against the accused.

Establishment of Government's CSO Forum: At the end of August, the government documents were published showing that a body called the 'Civil Society Forum' were government officials from the Council of Ministers. The RGC formed the forum for the purpose of engaging with policy makers on civil society issues. Making a demonstration of inclusion and engagement while at the same time using repressive tactics against CSOs categorized by the government as pro-opposition, lead many activists and analysts to question the sincerity of the form and suspect it would be used to undermine civil society or advance regressive policies. The group is composed of 13 members which include: group head Council of Ministers official Kemrath Viseth; his deputy will be Doung Virath, head of the CoM Civil Society Department; Som Aun, a pro-government union leader; Dim Sovanarom, deputy of the government's Cambodian Human Rights Committee; Bun Hun, former president of the Bar Association of the Kingdom of Cambodia; and Bin Trachhey, assistant to the Minister for the Council of Ministers Bin Chhin. The group is authorized to generate new policy recommendations, basing ideas on scientific research, and supporting rule of law and democratic liberty within the law. One group member reported to media that the group would seek to build bridges with civil society while at the same time monitoring and pressuring its compliance with the law.

VIII.2- Freedom of Political Party

Freedom of the contesting political party have been eliminated. Serious setbacks to the legislative framework needed for freedoms of political party occurred with further amendments to laws. Changes to the Law on Political Parties and election laws, are a direct attack on opposition political parties. The Law on Political Parties constricts all political parties by forcing them to control the speech of any individual, regardless of their position as a party official.

¹⁹² Tin, Zakaria "Cambodian Environmental NGO disbands, citing threats" RFA, 15 September 2017.

¹⁹³ Sen, David "Nature activists charged" Khmer Times, 14 September 2017.

PM Hun Sen intervened to amend the Law on Political Parties to prevent Sam Rainsy from leading the CNRP by making it possible to dissolve the any political party with leadership links to those convicted of a crime. He claimed that the legislative change was needed to prevent “culprits” from serving as political party president or vice-president, directly referring to the policy change as a move “to strip them of their rights.”¹⁹⁴ The change added to the multiple legislation enacted unilaterally by the ruling party without any opposition participation or votes in the National Assembly.

During the final week of February 2017, the ruling party unilaterally moved forward with the amendments to political party law (22 changes in total¹⁹⁵), passing it in both houses and by the Constitutional Council, and the law was signed into effect in the King’s absence by Senate President Say Chhum.¹⁹⁶ Despite being opposed by the main opposition party and other minor political parties, national civil society organizations, key international donors, consolidated democratic states, and international NGOs, the proposed legislative change passed the National Assembly and was described by the ruling party as creating a proper political atmosphere consistent with democracy.¹⁹⁷ It was also claimed that change did not occur as a response to constrict and punish the CNRP, but because the political party law was outdated.¹⁹⁸

By the beginning of October, both the Cambodian Youth Party (CYP) and FUNCINPEC initiated lawsuits demanding that the CNRP be disbanded through a Supreme Court ruling, allegedly to comply with the newly amended political party law. The CYP leader indicated its lawsuit was based the leadership of the CNRP conspiring with a foreign power to overthrow the state. Moreover, he asserted the party’s right to be concerned that the CNRP was “taking Cambodia under the control of foreigners”, and that national reputation and honor of Cambodia had been damaged.¹⁹⁹ A clear example of the lack of critical discussion with regards to the burden of proof was exhibited in the CYP leader’s statement that the arrest itself was proof of guilt.²⁰⁰ Oct 5, FUNCINPEC submitted an official complaint to the MoI in order to request that the CNRP be dissolved, alleging the need to implement the amended political party law, and affirming party support for the arrest and prosecution of Kem Sokha for treason. According to the MoI, any person can file a request to have a law implemented when they know of illegal activities that

¹⁹⁴ Tha, Vuthy and Chandara Yang “Cambodian crackdown on ‘culprits’ targets Hun Sen’s opponents”, RFA 31 January 2017.

¹⁹⁵ Sokchea, Meas and Erin Handley “CPP amends party law, opening the door to dissolving the opposition”, Phnom Penh Post, 21 February 2017.

¹⁹⁶ Handley, Erin “In the King’s name: party law amendments now official”, Phnom Penh Post, 10 March 2017.

¹⁹⁷ It should be noted that the PM has also publicly stated that the purpose of the legislation change was to provide him with powers to obstruct the opposition party. See Roeun, Van, Zsombor Peter and Ben Sokhean “Attacks on slogan grown; Party law takes effect” Cambodia Daily 10 March 2017.

¹⁹⁸ Vida, Taing “Senate passes amendments to Law on Political Parties”, Khmer Times, 1 March 2017.

¹⁹⁹ Khuom, Narim “Court asked to dissolve CNRP” Khmer Times, 2 October 2017.

²⁰⁰ Ven, Rathavong “Interior Ministry files complaint to dissolve opposition” Khmer Times, 6 October 2017.

affect the public interest.²⁰¹ By that time, the CYP had submitted an official complaint, publicly stating that disbanding the opposition CNRP was necessary to prevent the country falling into war.²⁰²

The complaint to disband and dissolve the CNRP was based on alleged violations of articles 6, 7, 44, and 45 of amendments of the Law on Political Parties. Article 6 prohibits any activity that affects state security, any incitement that diminishes national unity, and “sabotage that would lead to counter liberal, multi-parties democracy and constitutional monarchy”.²⁰³ Article 7 stipulates: “All political parties shall not be subordinated to or under command or order of any foreign political party or any foreign government”. Articles 44 and 45 entail provisions for the dissolution of a party or for its ban for 5 years.

The Supreme Court ruling to dissolve the only competitive opposition party occurred on November 16, 2017 and ban 118 members of the opposition party from politics for 5 years. In addition, to having their political rights denied, the ruling effectively denied all opposition party lawmakers and local level representatives (commune councilors or chiefs) their livelihood.²⁰⁴

The advancement and enactment of legal changes criminalize criticism of the monarchy and authorize the RGC to remove the political rights of any citizen that has been convicted of any alleged felony. By early February draft legislation was ready which made insults to the monarchy punishable by up to five years in prison. This brings Cambodia in line with the legislative framework of Thailand where *lèse-majesté* rules have been seen to place significant limitations on free and public political discourse, given the king’s role as head of state. The government and the ruling party RGC defended the law as needed because of 1) “the rise of attackers affecting our entire monarchy, 2) Strengthening the national interest, the interest of the people, and opposing internal interference in Cambodia’s affairs, 3) “very necessary” to order to the way citizens “exercised their freedoms.”²⁰⁵ Although the initial proposal from the MoI called for a change the country’s criminal code²⁰⁶, the law was ultimately passed in the form of

²⁰¹ Khuom, Narim “FUNCIPEC seeks to dissolve CNRP” Khmer Times, 6 October 2017.

²⁰² Khuom, Narim “Youth party files opposition complaint” Khmer Times, 5 October 2017.

²⁰³ Emphasis added.

²⁰⁴ Mom, Sophon “CNRP leaders face loss of salary” Khmer Times, 15 November 2017.

²⁰⁵ RGC spokesman Phay Sihan said in Cambodia the law was needed because of “the rise of attackers affecting our entire monarchy.” According to NA spokesman Leng Penglong: “These amendments aimed to enhance the multi-party democracy regime, strengthening the national interest, the interest of the people, defending neutrality, independence, territory, and opposing internal interference in Cambodia’s affairs.” Justice ministry spokesman Chin Malin said the *lèse-majesté* law was “very necessary” to order to the way citizens “exercised their freedoms.” He stated that the constitutional amendments empowered the courts to suspend permanently the right to vote or run for office for felons. Already existing legislation had enabled such a suspension but only for the period of incarceration of a convicted felon. Demonstrating the strict overlap between government by the ruling party and the interests of the nation, he noted: “There’s nothing for (any) group with opposite political tendencies to the government to worry about with this legislation, if they put the national interests first.”

²⁰⁶ Niem, Chheng and Andrew Nachemson “Proposed law to ban insulting monarchy prompts free speech fears” Phnom Penh Post, 21 December 2017.

amendments to the criminal code along with constitutional amendment further restricting political participation.²⁰⁷ Thus the law criminalizing criticism of the monarchy was part of a larger change which seriously degraded freedom of association.

Additions to the Criminal Code, make violation of the new *lèse majesté* law punishable by between one and five years in prison and fines of 2 million riel to 10 million riel (about \$500 to \$2,500). The amendments to the Constitution introduce new restrictions to political participation, and include ambiguous phrases capable of political manipulation, and undue executive influence and discretion, such as prioritizing the nation's "interests" and forbidding foreign "interference".

The government confirmed that the constitutional amendments empowered the courts to suspend permanently the right to vote or run for office for felons. Already existing legislation had enabled such a suspension but only for the period of incarceration of a convicted felon.

Despite the government position that they put the national interest first, the enforcement of laws demonstrate the strict overlap between government by the ruling party and the interests of the nation. International legal experts found that the government is able to misuse the law to curtail the expression of fundamental freedoms, and misinterpret capriciously to include a broad range of activities that the government is able to repress and infringe on protected freedoms of expression and association. There would be inconsistent and unpredictable with one of the key requirements of the rule of law implementation.²⁰⁸

The changes restricting freedom of association and denial fundamental political rights required in a democracy to citizens even after their period of incarceration must be taken into consideration along with the long-term partisanism and high levels of corruption in the judicial system. The constitutional change then is not only a clear step of democratic regression, but also weakens the already fragile constitutionalism in the political and legal spheres which is needed for rule of law.

At issue, in terms of potential restrictions on freedom of expression, is the practical implementation of the distinction between insults and reasonable criticisms. More importantly, the law may be used to divorce citizens and parties from any mode of engagement with the king, such as submitting of petitions (which when attempted by the CNRP in the 5th mandate of the NA was investigated and criminalized by the RGC). It is essential that the king not be restricted

²⁰⁷ Kijewski, Leonie and Koemsoeun Soth "National Assembly passes *lèse majesté* law, limits to freedom of association" Phnom Penh Post, 14 February 2018.

²⁰⁸ Kingsley Abbott of the International Commission of Jurists, said this was an example of governments around the region were passing on key lessons on "how to misuse the law to curtail the expression of fundamental freedoms." He also pointed out: "Notably, these obligations are worded so vaguely they could be interpreted capriciously to include a broad range of activities the government may wish to repress. As such, in addition to infringing on protected freedom of expression, association and so on, they would be inconsistent with one of the key requirements of the rule of law, as properly understood, namely predictability."

by the new law engaging with his subjects in the course of conducting constitutionally mandated roles (as per articles 9,18, 21, 22, 23, 24, 26, 28, and 29). It is through those roles that the king serves as guarantor of sovereignty (Art. 8) and upholds the moral principles grounding the system of law that are set out in the preamble to the constitution—rule of the people, representative government, a liberal multiparty system, guaranteed rights, and respect for the laws. Additionally, it would be a serious setback to democratic public space if the law were extended to those holding royal titles in addition to the monarch himself.

The Amendments of Laws on Political Parties and Elections constrict contesting political parties by forcing them to control the speech of any individual regardless of their position as a party official. It establishes a slippery slope toward a one-party system and authoritarian rule by providing for the dissolution of any party. Through its influence over the national election committee, the executive branch effectively can regulate political competition with discretion. The amendments to the Laws on built on the momentum to constrain democratic competition. It is clear violation of the international and constitutional principle of liberal democracy and political pluralism, and violating the rights of party members to association and to form a party to contest in elections.

IX. Democratic Elections

IX.1 Outlawing the Election Campaign Based Change

It is normal in democratic elections that the party seeking to take office promotes the idea of changing the incumbent authorities.

The events surrounding the attack on the CNRP slogan demonstrate both the discretionary character of the practice of law and regulations in Cambodia, and the degree to which the ruling party focused on constricting the opposition rather than developing their own popular message. Almost immediately after the PM’s public declaration that he determined the slogan to be a crime, the ruling party released a statement condemning the slogan, demanding a change “for the peace of the country”.

The first problem evident in the ruling party’s approach to the slogan issue was that the policy position set out cemented an already excessive use of the charge of ‘incitement’ by governing authorities. In this case, incitement was equated with anything determined to create divisions in society, such that any disagreement or public dissent is categorized as criminal.²⁰⁹ The second problem evident, was the attack on universal norms of good governance. A democratic environment with competitive deliberation on ideas and policies is fundamentally stunted when

²⁰⁹ Chheng, Niem “CCP commune chiefs join fray against slogan”, Phnom Penh Post 9 March 2017.

political speech that proffers and sustains norms of government accountability and responsiveness is deemed an immoral/illegal act.

According to the ruling party reaction, the CNRP's slogan "violates the content of the law...It's like discrimination against the commune chiefs, who are mostly CPP. So your evaluation is against the law, and it's an act we cannot accept."²¹⁰ Despite this, civil society organizations and human rights experts found no grounds for the claim of illegality, and the opposition political party found the slogan to be receptive to voters seeking improvements to rule of law and social services. Elections refer to choice, and it is normal practice in the elections of democratic countries that the contesting parties advocate for change of the incumbent government.

Within days of the first declaration of the slogan's illegality by the PM, ruling party commune level officials had publicized more than 300 letters of complaint against the slogan. The National Election Committee publicly stated that it would evaluate the legality of the opposition campaign slogan. The NEC declared that it would make a determination of whether or not the slogan was a violation before election campaign period, but that it would provide a resolution to the issue when the campaign period began. However, the NEC then stated that its jurisdiction did not extend to the party slogan, and that it would only consider the issue if it received a complaint by a political party.²¹¹ By mid-March the opposition CNRP announced that it would cease using the slogan if ordered to do so by competent authorities such as the courts. The opposition also attempted to take a position which held that although the slogan was itself acceptable, it was not in fact the official slogan of the opposition, never having been officially adopted and disseminated by the party, and in that sense, the party had done nothing wrong by using the slogan.²¹² The attempted balancing act failed to attenuate related government pressure, and it was announced that the opposition would no longer employ the slogan in order to avoid impending legal prosecution. The change demonstrated the overall effect of government pressure on the public speech and campaign related activities of the opposition, which was forced to adjust in order to survive in the new legislative context.²¹³

By the third week of March, the Interior Ministry issued a statement calling on the opposition to change the slogan, not on the grounds that it was illegal, but rather because it contradicted the values of multiparty democracy. At the same time, ministry officials stated that the slogan was illegal, but that the MOI had no rights or power to require the opposition to change it.²¹⁴ By that time the CNRP strategy had been to claim that the slogan was not official, but that it was not willing to prohibit party supporters from using it. The public position taken by the interior ministry had, however, become more ominous. The Minister of Interior referred to the slogan,

²¹⁰ Sokhean, Ben and Zsombor Peter "Defying CPP, CNRP to keep slogan", Cambodia Daily 8 March 2017.

²¹¹ Sothoeuth, Ith "Interior ministry calls on opposition to change campaign slogan" VOA 27 March 2017.

²¹² Sokchea, Meas "Slogan neither official, nor illegal, CNRP says" Phnom Penh Post, 20 March 2017.

²¹³ Sokhean, Ben "Facing legal threat, CNRP set to drop campaign slogan" Cambodia Daily, 20 March 2017.

²¹⁴ Sothoeuth, Ith "Interior ministry calls on opposition to change campaign slogan" VOA, 27 March 2017.

calling for voters to support who they thought most represented the interests of the people, as “incitement, discrimination, and despotism”, asserting that it violated the rights of CPP local officials and was a cause of violence in society.²¹⁵

On April 2, 2017, the CNRP announced that it would drop the slogan, admitting that it had been included in the official platform of the party. The opposition party was compelled to change its slogan and conceded to the demands of the MOI and ruling party, since by that time, the choice of party officials by the opposition had been declared as illegal by the MOI on the basis of violating the opposition’s own party by-laws.²¹⁶ Effectively, the opposition’s choice of Kem Sokha as party leader was ruled invalid by the MOI.²¹⁷

The campaign slogan for which there was such concerted effort to have removed, was originally set out at the opposition party extraordinary congress held in early March, which also involved decisions on party leadership. Those decisions were being ruled invalid by the RGC on the basis that they violated the opposition parties internal rules, which are not actually legally binding, despite opposition claims that the changes were made to comply with the amendments to the Political Party Law.²¹⁸ In the March 2 CNRP congress that Kem Sokha was elected party president, the opposition amended the same by-laws²¹⁹ being used by the MOI as the basis for the claim that the internal CNRP election itself was invalid.²²⁰ Following a meeting between the opposition party and the MOI, the MOI publicly announced that its position had not changed and that it considered invalid the CNRP internal party elections of Kem Sokha as President and Pol Ham, Mu Sochua, and Eng Chhay Eang as deputies because it violated the CNRP’s internal rules. The NEC took the position that a designation of Kem Sokha as ‘acting president’ would be sufficient for the purposes of the upcoming elections.²²¹

The MOI recognized Kem Sokha as CNRP president only after the opposition conceded to no longer use the disputed campaign slogan, but it then affirmed that the CNRP deputies were not valid. Whereas it initially decreed the selection of party leadership to occur too early, now it

²¹⁵ Sokchea, Meas “CPP keeps up slogan controversy” Phnom Penh Post, 23 March 2017.

²¹⁶ Sokhean, Ben “CNRP drops slogan amid pressure for sake of ‘fair election’” Cambodia Daily, 3 April 2017.

²¹⁷ Sokchea, Meas “CNRP drops contentious slogan” Phnom Penh Post, 3 April 2017.

²¹⁸ According to CNRP internal rules at the time (Art. 47), following the resignation of a party president there would be an 18-month interim period before holding a party conference to elect a new president. Nevertheless, the amended Law on Political Parties held that such a change of party leadership must occur within 90 days. The very purpose of the CNRP extraordinary congress was to amend party rules and enact a change of party leadership in compliance with the Law on Political Parties, but the effort to comply with the law was itself ruled unacceptable by the MOI without clarifying the legal grounds on which that policy was based.

²¹⁹ Following changes to party internal rules, the CNRP complied with existing regulations and submitted its new regulations to the MOI. See Sokchea, Meas “CNRP vexed as CPP continues to call Sokha’s presidency invalid” Phnom Penh Post, 30 March 2017.

²²⁰ Sokchea, Meas “CNRP drops contentious slogan” Phnom Penh Post 3 April 2017.

²²¹ Sokchea, Meas “CNRP vexed as CPP continues to call Sokha’s presidency invalid” Phnom Penh Post, 30 March 2017.

claimed that the selection of the three deputies occurred too late. This forced a second amendment to the internal rules of the CNRP at another extraordinary party congress in early April.²²² Finally, after approximately two months, the Interior Ministry issued an official letter to the CNRP to confirm that it had received the new by-laws.²²³ This ended a two month challenge to the major opposition party, potentially disqualifying it for the election or even disbanding it, over a minor issue. This most likely detracted from both the ability of the CNRP to prepare and organize for election campaign and from its credibility as a viable party in the eyes of voters. Most alarmingly, the issue significantly undermined rule of law necessary for democratic space and processes because it seemed to challenge and punish the very action of the opposition required for its internal policy to comply with relevant existing laws. Moreover, rather than challenging the opposition party campaign slogan on convincing legal grounds or with a competitive alternative slogan by the ruling party, the MOI made it clear that the violations that occurred in the selection of leadership would be re-categorized as acceptable if the party slogan were dropped.²²⁴ Such a policy was found to actually challenge the credibility of the initial MOI decision that the internal party rule changes and elections by the CNRP were not legal.

The undemocratic restrictions on opposition party mobilizing and campaigning continued in the period immediately preceding the election campaign. The ruling party then determined that slogans such as “change” and “Hun Sen step down” were also illegal, as if the very suggestion of an electorally based peaceful transition of power between political parties was itself an illegal idea and that legal action would be taken through the court system.²²⁵ It is difficult not to see the distinct but related legal maneuvers as part of an overall strategy seeking electoral success by the ruling party which was fundamentally undermining the level playing field necessary for a fair election. The overall message institutionalized was one of ruling party arbitrary power, through the demonstration that the CPP sets the rules and can determine who and the how of violations at its own discretion.²²⁶

IX.2- 2017 Commune Council Elections

The 2017 commune council elections exemplified the two sides of Cambodian democracy. On the one hand there was a deteriorating legal situation and political climate, the militarization public space around ambiguous threats and increased insecurity among the citizens. On the other hand, at the election showed an improved voter list with increased participation, improved professionalism and capacity of the electoral institutions, and overall fairness of the polling and counting processes. Most importantly, both parties accepted the legitimacy of the results. The

²²² The new party by-laws enabled the party’s central committee to select deputies at any time following the resignation of the party president.

²²³ Sokchea, Meas “Interior approves CNRP’s bylaws” Phnom Penh Post, 4 May 2017.

²²⁴ Sokchea, Meas “CNRP vexed as CPP continues to call Sokha’s presidency invalid” Phnom Penh Post, 30 March 2017.

²²⁵ Sokchea, Meas “CPP warns against use of slogans” Phnom Penh Post, 19 May 2017.

²²⁶ Sokchea, Meas and Shaun Turton “CNRP slogan scandal, ‘follows pattern’” Phnom Penh Post, 4 April 2017.

advancements in democratic consolidation achieved in the polls were short-lived as the post electoral conditions took a sharp U-turn away from further establishing democracy.

A- Legal framework

The amendments to the law on commune election contain more negative than positive aspects. Significant positive changes included: voter registration and organization of the voter list; a mechanism for the installation of political party's signs in public spaces; the banning of civil servants, local authorities, military and national police forces and judicial officials from participating in any of a political party's events during working hours in the election campaign period; recognition of political party's agents and election observers is clear in the law, as is the time frame of the NEC to process, verify, and recognize applications. Significant negative changes included: provisions for the number of voters allocated in each polling are ambiguous; definition and scope of activities included in the election campaign; the duration of the election campaign; provisions related to rights of civil servants, local authorities, military and national armed forces and judicial officials to participate in election campaign activities once they asked permission or outside of working hours; provisions related to the dissolution of a political party enact a negative change because the law connects party dissolution to the commission of a criminal offense committed by an individual and not the party itself; provisions limiting the activities of NGOs and associations participating in politics during election campaign are significantly negative, curtailing civil society's right to expression. In order to increase fairness in terms of democratic representation and equal weight to individual votes, the election system should be amended to allow independent candidates, and a mixed election system should replace the current election system. The formula for seat calculation should be changed back to the UNTAC formula (that is, changed from the highest averages method to the largest remainder formula or Hare-Niemeyer method). Moreover, the number or quota of female and youth should be mentioned in the law, to set the conditions for the submission of proposed candidates. At least 30 per cent of the total registered contesting candidates should be allocated to these groups, whether female or youth. COMFREL strongly recommends: the removal of provisions in LECC articles 74 and 159 which impose restrictions and sanctions on NGOs and association, especially for NGOs or association who are working on election monitoring and recognized by the NEC; removal of sanctions against civil society groups engaging with political parties to improve the party system as a whole; and amendment to LECC article 190 in order to protect the rights of political parties to associate.

B. Election Management Body

The constitution of the national commission and sub-national commissions on recruitment were observed to accord with the regulations and procedures and decisions of the NEC. Those National and Sub-national Commissions have implemented recruitment as provided for in the regulations and procedures and decisions of the NEC. However, problems included: a lack of public access to information related to the announcement of the recruitment processes; a majority

of recruitment commissions had an insufficient number of candidates to make the process truly competitive; the recruitment process was not based on real competition as 70% were prior election staff, likely to be linked to the ruling party as members and supporters; and provincial commissions and sub-commissions acted uncooperatively regarding the dissemination of information about the recruitment process. The process of recruitment of polling officers and counting officers occurred in a capable and credible manner, similar to the recruitment and selection of the PECs and CECs for the 2017 commune elections. The observation found that the recruitment and selection were improved and the Recruitment Commission acted firmly in accordance with the regulations and procedures, and conditions set the NEC. The recruitment and selection were made openly, and candidates that passed the examination viewed it to be conducted in a fair manner. At the same time, in its observation on the recruitment for PSOs, COMFREL found some things to be improved on for future recruitment. These included a lack of information on the announcement of the recruitment and the announcements were not widely accessible to interested applicants. Also, there was a lack of candidates who applied for the positions in some communes and most of the PSOs had previously worked for the NEC especially the Chiefs of the polling stations. Because they were also civil servants and often active members of the ruling party, the interviewing and examination for the recruitment could have been conducted more transparently.

C. Candidate Registration

Twelve registered political parties submitted candidate lists to the NEC, and for the first time in history more than one party was able to register candidates in all communes. The number of political parties that participated in the 2017 commune election was the same as the 2007 commune election, but more than in the 2002 and 2012 commune elections. Unfortunately, there was no single standard for the determination of requirements for candidate registration by CECs. Many political parties faced challenges in finding eligible candidates. There were some cases of threats made against candidates, especially those registered for the opposition party. Some political party candidates withdrew their applications from a party list due intimidation, threats, fear, discrimination, or duress, and parties faced an inability to find candidates willing to take the risk and stand for the elections. Some were persuaded/lured to participate with another political party, after which they withdrew from the candidate list.

D. Election Campaign

Observation and monitoring found the election campaign was conducted smoothly and peacefully without any serious violence. Political parties participated actively in the campaign process. However, the restrictions on public spaces, types of activities, and number of rallies detracted from freedom expression and the quality public sphere. Private TV stations did not follow NEC media guidelines and the principle of equality. According to our assessment, the legal framework related the election campaign took away from the overall democratic quality of

the poll because the provisions of the new commune election law related to the election campaign resulted in restrictions on the freedom of political expression of the registered contesting political parties, particularly the opposition party. Problems included: the biased implementation of the law some constituencies, for example when main routes in Phnom Penh blocked for the campaign period were opened to allow the ruling party to rally on the final day of the campaign; the prohibition of civil society organizations from expressing their opinions, and conducting opinion polls (in contrast with the permitted participation of civil servants, military/police personnel, and members of the judiciary).

E. Campaign Finance

The reports concerning political party expenditures during the campaign were never released to the public or made available to the NEC. Observation estimates found a large difference in the amount of available resources between contesting political parties was high. The CPP's expenditures were mostly funded from the political party branch at the commune, provincial or capital level, whereas the CNRP's expenditures were mostly funded from running election candidates. The quality of elections was reduced because of the failure to adhere to the principle of equity in campaign finances. The lack of transparency and accountability mechanisms for campaign financing, including an accurate public record of specific types and amounts of expenditures, create the potential for misuse of state resources, and detract from the public information needed for voter's to make a free choice and ensure that those seeking office are not beholden to special interest groups. Without full disclosure, there is a potential for state resources to be harnessed in the service of a particular political party. The NEC should have authority to require political parties to openly reveal sources of income and expenses for their election.

F. Media

COMFREL media Monitoring supports the conclusion that the NEC did not effectively enforce campaign regulations on the media in this election because, except for current guidelines given by the NEC, no legal framework is in place for regulating the media and use of media by government, parties, and other non-state actors. For this election media guidelines were released by the NEC, however, except for the state owned TVK and affiliated radio stations, there was a lack of compliance by private broadcasters and effective enforcement of the guidelines. The 'Manual for Election Campaign' outlines that private media are free to refuse to sell airtime to any political party, but only when they have not sold airtime to any other political party. In practice, in the 2017 election, private TV stations not only affiliated their broadcast programming, but could also be observed to have sold airtime to the CPP without reporting airtime sold in compliance with NEC guidelines. CPP-related content composed 43% of total airtime of four TV stations broadcasting programs by political parties. COMFREL finds the framework of laws and regulations in place inadequate for supporting the balanced conditions of

political competition required for a fair campaign media. COMFREL media monitoring demonstrated clearly that during the election campaign one political party had a clear advantage in favorable airtime of private TV and radio stations. The ruling party had more opportunities to disseminate its political platform and message to voters through TV channels, especially private TV channels, when compared to other political parties.

G. Election Day

The observation on polling day irregularities overall found the process to have improved considerably from past elections. The four main irregularities found were: the participation of RGC officials in active support of the ruling party election campaign in violation of regulations (766 cases); disputes or obstructions to observation (153 cases); intimidation or threats/violence (84 cases); uniformed armed forces members campaigning (29 cases). For the fairness of future elections, it is imperative to effectively enforce the provisions to article 15 of the law on political parties during the election campaign to ensure the neutrality of Cambodian armed forces, police, civil servants and judicial officials and prevent them from acting unfairly against any registered contesting political party. These groups of citizens play a crucial role to ensure the security and impartiality of all phases of election process.

COMFREL deployed 14,589 observers (6,153 observers were females) to monitor the polling and counting process in 9,889 polling centers (84% of the 11,781 total polling centers). In the 2017 commune elections, the irregularities recorded: on cooling day 06 cases; during polling 2,276 cases; during counting 768 cases. Irregularities occurred at 1,657 polling stations, or 9 percent of the total polling number of stations where COMFREL had deployed its electoral observers. There were 22,148 polling stations. Most of the irregularities recorded in the 2017 commune elections were related to challenges faced by voters which prevented them from casting their ballot: (1) lack of Identity Certificate; (2) lack of Voter Information Cards making it difficult for the voter to find their name on the voter list and polling station number; (3) misspelling of name and incorrect details on the voter list; and, (4) missing names from voter list. Most cases of the electoral related irregularities found during the polling process resulted from mistakes or problems with the implementation of the regulations and procedures for voting set out by the NEC. The electoral irregularities during counting included: cases related to preventing CSO's and political parties' observers from taking photographs and videos of the counting process; the recognizing of spoiled or valid votes without the consents and verification of political party agents and CSO observers; closed-door counting; counting so rapidly that observers were not able to follow; a difference between the numbers of votes in the ballot box after counting and numbers of voters marked on the voter list; refusing to provide result forms to political party observers and or post them correctly; disturbances during the process and obstructing the counting process; and consolidating the total result incorrectly.

H. Election Results

The number of estimated eligible voters was 9,664,216, and of that 7,865,033 (81.38%) registered. Most of the unregistered voters were external migrants that are unable to meet the residency requirements for voting. On the Election Day, 7,107,395 ballots were cast (90.37% of registered voters). There are number of possible reasons for the high turnout, including: NEC reform resulting in a new computerized voter list system using voter photographs and biometric fingerprints; active participation of the opposition in the National Assembly committees in calling incumbent government ministers to account; field visits to promote political platforms; participation of civil society organisations and other stakeholders in the election process; and a high quality voter list preventing a repetition of past problems. A COMFREL rapid survey of 757 voters without indelible ink on their finger on the day after the Election Day found that 48% of the eligible voters interviewed could not vote but reached the polling station, and 52% of the eligible voters interviewed did not reach the polling station. Of the latter, 85% stated they would have been willing to vote, while another 15% were not. Among those who could not vote but reached the polling station, 46% had no Khmer ID or ICV, and 43% of them had no voter identity notification (VIN), meaning they could not find their polling station and name on the voter list. For those who could not vote but were willing to vote, 60% of them did not receive proper election information and did not go to register, while 16% of them were not able to access the polling station because of distance and lack of free time (mostly work commitments).

The CPP won the election with 1,156 seats, 14 of which were not previously controlled by the ruling party. In 37 communes the CPP occupies all councilor and commune chief seats, although in the election for those seats there were at least two contesting political parties. However, it is also the first time that another party shares 30% of the commune chief seats, with 489 commune chief seats of 1,646 communes occupied by the CNRP (one commune chief position is occupied by KNUP). Four other political parties including FUN, GDP, BSDP and LDP did not have enough votes to win a commune chief seat, but did gain commune councilor seats. The CPP won the majority of commune councilor seats in 21 provinces, but there were nine provinces where the CPP victory was slight, winning 50% to 60% of council seats. The 2017 election results show that only the ruling party CPP and the opposition CNRP party were able to strengthen their support among voters when compared to their performance in the previous 2012 commune council election and 2013 national assembly elections. In the 2017 election, the CPP gained 3,540,056 votes, a decrease of 91,026 votes from the 2012 commune council election, but an increase of 304,087 votes when compared to the 2013 national assembly election. The ruling CPP lost 436 commune chiefs seats, when compared to the results of the 2012 election, and the CNRP gained these seats. In addition, the CPP won 8,292 commune council seats in 2012 but won only 6,503 seats in the 2017 election. In distinction to 2012, in 2017, the CPP was not able to win an absolute majority of commune chief seats of Phnom Penh, Kampong Cham, Kampong Thom or Siem Reap provinces. The major opposition party gained in support from voters in

2017 if compared to the 2012 commune council elections and the 2013 national assembly elections. The CNRP gained 3,056,824 votes in the 2017 election, an increase of 1,251,881 votes from the 2012, and CNRP results increased by 110,648 votes when compared to the 2013. In addition to the two major political parties, in 2017 FUN gained 132,319 votes, a decrease of 90,352 votes when compared to 2012, and 110,094 votes when compared to 2013. Contesting opposition political parties, other than the CNRP and the newly established political parties, did not gain commune council seats and commune chief seats.

IX.3 Women and Youth Participation in Election and Politics

a. Youth Participation

Youth involvement in politics and voting has steadily increased over the years, and in 2016, 2,621,190 youth registered (33.3% of the 7,865,033 of the eligible voters). According to the NEC, the number of election candidates from 25 to 35 years-old nominated by political parties was 10,285. However, only 4,535 were eligible candidates on the list. According to official election results, 862 youth candidates were elected, but only 324 of them are 25 to 30 years old. During the election campaign, participation of youth voters in campaign activities was found to be active, resulting in a new trend for political parties toward seeking supporters among a younger and better educated post-war generation.

b. Women's participation

4,210,914 eligible women voters were registered on the 2016 voter list (53.53% of 7,865,033 registered voters). Some women, however, failed to exercise their registration and voting rights stipulated in the constitution for different reasons, including old age, maternity, being in prison, or migration. COMFREL's women's observation²²⁷ found 38.46% of eligible women voters interviewed, who did not or could not vote, provided one or more of the following reasons for not voting: being busy with their household/farming job or business, losing their Khmer ID, and not getting registered. In 2017, 25,788 of the 94,595 eligible candidates were women, from 12 contesting political parties (an increase of 1.62% from 2012). During the three earlier mandates, the number of women candidates elected as commune councilors increased steadily, and women were found to be more active in political activities. However, the number of elected women candidates, in the 2017 election has decreased. In addition, although the number of women candidates has been found to have increased, the rate for women candidates still remains much lower than the rate for men candidates. COMFREL found that women are still afraid of getting involved in political activities and elections and has raised three main concerns: first, there is no a particular written policy that is an affirmative measure and/or an article in election law, to support and promote equal opportunity for women to engage in political activities and to run as a candidate in elections; second, there is still discrimination against women in terms of candidate

²²⁷ See section on Gender Equality and Politics below for a review of COMFREL 2017 Gender Watch Report.

selection for political parties; and third, key aspects of the political atmosphere during the process of election were not supportive of the participation of women, including intimidation, threats, and harassment using the courts of candidates and political activists from opposition parties. (See next section on Gender Equality and Politics).

There was a decrease in the number of elected women commune councillors for the 4th mandate poll. The decrease was due to the following reasons: **(1)** A lack of specific written policies as a temporary special measures and some articles of election law for supporting and providing opportunity for equal participation for women and men; **(2)** Continued discrimination against women in the selection of candidates by political parties; **(3)** The major parties, namely the CPP and the CNRP, had the fewest women selected as candidates which was about the same number of women candidates in the 3rd mandate poll, while the other 10 political parties had significantly more women selected as candidates; **(4)** The prime minister verbally called for all political parties to put female candidates at the top of the party list (from 1st to 3rd ranking) while there was no actual amendment to articles of the Law on Commune Council Elections, which meant that reform was not effective; **(5)** The Ministry of Women's Affairs created a Technical Working Group on Gender (TWG-G) and committed to push for increasing the number of women representatives in decision- making and political affairs. Unfortunately, during the CC elections process 2017, there were no prominent activities to encourage women to stand as candidates.

The official NEC result of the political party registration and list of candidates released on 18 April 2017 listed a total of 94,595 titular candidates, of which 25,788 (27.26%) were female candidates from 12 political parties. Only the ruling CPP and the opposition CNRP registered candidates for all of the 1,646 Commune seats but the percentage of their candidates was smaller than the others. The number of female candidates increased slightly, by 1.62% compared to the 3rd mandate with 25,64%. Only 481 (7.89%) female candidate were selected as 1st rank of the total 6,092 and 2,738 (14,98%) at the top of the party list from 1st to 3rd ranking which has seen a significant increase of 416 when compared to the 2nd mandate 2007 with 2,322. It should be noted that the political parties that hold seats in the National Assembly (NA) (and the most popular parties), the CPP and CNRP, tended to field more women candidates at the 1st rank than previous elections. The number of elected female as Commune Councilors for the 4th mandate has decreased 1.02% (98), from 17.78% (2,038) in 2012 to 16.76% (1,940) in 2017 of the total 11,572 elected candidates. However, the number of female commune chiefs has increased 1.96% (33) from 5.81% (95) in 2012 to 7.77% (128) in 2017. Only the two major political parties won seats on the Commune Councils and have female Commune Councilors.

c. Female commune chief

The total number of female commune chiefs was 128 (7.77%), an increase of 1.96% (33) compared to the 3rd mandate of 2012 when there was only 5.81% (95). The number of female first deputies is 234 (14.22%), an increase of 2.65% (45) compared to the 3rd mandate with only

189 (11.57%). The number of female second deputy is 115 (7%), a decreased of 3.04% (49) compared to the 3rd mandate when there was 164 (10.04%). The total number of elected female members of commune councils was 1,463 (22.05%), a decrease of 2.18% (127) compared to the 3rd mandate when there was 1,590 (24.23%). There were 92 CPP female commune chiefs (7.96%) which is more than that of the CNRP which had 36 (7.36%) female commune chiefs. The number of female 1st deputies of the CPP is 192 (16.85%) while the CNRP has less with 42 (8.35%). The CPP had 48 female 2nd deputies (9.41%), which is lower than that of the CNRP which had 67 (6.16%). In terms of the total number of elected female members, the CPP had 1,055 (28.53%) which is higher than that of the CNRP which had only 408 (13.93%).

Compared to the 3rd mandate, the number of women elected has decreased for the 4th mandate, from 17.78% (2,038) to 16.76% (1,940). On the other hand, the number of women serving as commune chiefs increased slightly from 5.81% (95) in 2012 to 7.77% (128) in 2017. The decrease of elected females contributes to 3 negative effects: (1) an effect on the government's goals (2) an effect on women's willingness to participate in politics, and (3) an effect on resolving women's and children's issues". The CSO working group noted that "The decrease of the elected women as the commune councilors was due to fact that the major political parties put the lowest percentage of female candidates on the candidate list.

There were very few women working in the position of election management at all levels for the 4th mandate CC Elections 2017. There was only one woman out of nine members of National Election Committee (NEC). There were only 42 women, equal to 12.96% of the total 324 people, working staff at the NEC's office, which decreased by 5.48% (22), compared to the NA Elections in 2013 when there was 64 women, equal to 18.44%. At the same time, there were 55 women working on short-term contracts at the NEC's office (cabinet), equivalent to 31.60% out of the total of 174 people.

The number of women is still low at the lower election commissions. There were 114 women, equal to 12.63% out of a total of 902 working at Capital-Provincial Election Commissions (PEC). This was a slight decrease of 0.75% (10) compared to the NA Elections in 2013 when there was 124 women, equal to 13.38%. However, the number of women increased slightly by 0.29% (39) at the Commune Election Commissions (CEC)—a change from 1,195, equal to 14.64% in the NA Elections in 2013 to 1,234, equal to 14.93% out of a total 8,263 for the CC Elections in 2017. Surprisingly, there were more women at the level of polling station staff. There were 58,176 women, equaling 43.77% out of a total of 132,888 Polling Station Officials (PSO) working at the Polling Station Commissions (PSCs) and Ballot Counting Commissions (BCCs). This number is a slight increase of 1.76% (10,263), when compared to the NA Elections 2013 when there was only 47,913 women, equaling 42.01% of the total of 6,117.

IX.4- Preparation Climate for 2018 National Elections (Senate and National Assembly Elections)

A. Further Erosion on Political Climate

Unfolding in the last months of 2017 and early 2018, the process would further weaken the party system and pushing it away from any semblance of democratic competition. Not only does it ignore the voluntary civil society roots of political party formation, by introducing the practice of membership under duress, it is also an affront the will of the electorate expressed in the selection of elected officials on the basis of party platform.

The government announced the successful outcome of the dissolution to the opposition party CNRP and 118 opposition officials were banned from politics, applying ahead of time for 2018 senate election and national assembly elections.

By early December the Minister of the Interior had an organized meeting with over 1,000 district and commune level councilors to expound upon the importance of color revolutions, with a presentation based on video clips showing alleged consequences of those revolutions abroad as evidence of a Cambodian threat.²²⁸ In the midst of this re-education campaign of local level officials that followed the redistribution of seats and the calls for defection, the PM announced that all CNRP members that have not been banned should form new political parties. He stated, “There is only one way to compete democratically in the next election and that is to create a new party.”²²⁹ However, it was evident that real electoral competition would not be tolerated and existing legal mechanisms would be used certainly be used to dismantle those that challenged the ruling CPP, since calls for change were now deemed threats to national stability or security. On the basis of their own experience it is likely that minority parties found the call to establish new parties as a hollow affirmation of liberal pluralism.

The scope of one-party control and influence was made more evident with ruling party promotions to the CPP central committee. In January 2018 the ruling CPP held a party congress where it set out its plan for the next five years. More than 300 people were inducted to the central committee including pro-government members of civil society, government officials, and security sector officials.

B. Contesting Competitive Political Parties and Laws

There was no serious competitive opposition party to contest in the senate election and national assembly elections. The main competitive opposition party (CNRP) (winning 44% of votes and 45% of seats of the national assembly in 2013 and 43% of votes and 45% of commune councillor

²²⁸ Khy, Sovuthy “Minister meets with former CNRP commune councilors”, Khmer Times, 11 December 2017.

²²⁹ May, Titthara “PM urges new parties to form” Khmer Times, 18 December 2017.

seats) was dissolved. Their 118 senior politicians and leaders are banned from political activities for 5 years. Not surprisingly, the outcome of the 2018 senate election was be 100% of seats of senators occupied by the CPP.

In 2017, some political parties had activities and prepared to participate in the upcoming national assembly elections. The parties are FUNCINPEC, Beehive Social Democratic Party (BSDP), Grassroots Democracy Party (GDP), the Khmer Power Party (KPP), the Cambodian Youth Party (CYP), the League of Democracy Party (LDP), the Cambodian Nationality Party (CNP), the Khmer Anti-Poverty Party (KAPP), and the Khmer National United Party. These parties had contested the previous election in 2013 and 2017, or gained national assembly seats after CNRP dissolution and seat distribution.

The amended Laws follow other attempts to centralize power and suggests the government has a negative-credit focus on consolidating its electoral position ahead of February Senate election and July 2018 elections, putting reforms to address institutional weaknesses.

According to Article 6, amendments of the election law prohibits any “images” or “activities” linking the convicted person to a political party; the classification of a violation includes both “openly and tacitly agreeing or conspiring” with convicted persons; and, stipulates that any party deemed to threaten state security would be in violation of the law. However, it does not set out clear and convincing measures of designated threats. Article 11 in the new version of the law prohibits party names with the names of individuals, as well as logos involving photos of a person or national symbols.²³⁰ Human Rights organizations have found the language of Art 6. to be unacceptably vague and therefore in violation of the principle of legal certainty (the requirement that laws must be clear and predictable). Moreover, it was reasoned that the scope of the law’s restrictions on expression is excessive, contradicting the standard of necessary proportionality.²³¹ The fairness of the law must be addressed in an assessment. It is not enough to say that the law is necessarily good because it means disagreements are solved through law rather than violence²³², since an unjust law is a form of violence. Furthermore, claims that the law does not affect the rights of citizens²³³ demonstrate a misunderstanding of both constitutional and international human rights standards.

It enacted a prohibition on any association between a political party and an individual that has been convicted of a criminal offense, including using voice, image or written documentation.

²³⁰ Ben, Sokhean and Ben Paviour “Political party law would sever Rainsy from CNRP” Cambodia Daily, 7 July 2017.

²³¹ See Cambodian Center for Human Rights *Annex 1: Legal analysis of the July 2017 proposed amendment to the LPP*. CCHR. Available at: http://cchrcambodia.org/admin/media/analysis/english/2017-07-19-CSO-ssubmit-Legal-Analysis-of-Proposed-Amendment-to-LPP-to-CC_ENG.pdf

²³² Khuon, Narim “Academy backs party law change” Khmer Times, 20 July 2017.

²³³ Ruling party lawmaker Chheang Vun stated to media: “The amendments affect political parties; they were not directed at the rights of citizens.” See Khuon, Narim “Party law changes end Rainsy’s political career” Khmer Times, 13 July 2017.

Article 44(2) also stipulates that it is illegal for a political party organize plans or carry out “actions against the interest of the Kingdom of Cambodia”, which has been found by electoral stakeholder and CSOs to be overly vague, lending itself to abusive implementation. The punishment stipulated includes banning political activities for up to five years including disallowing participation in elections, or even the dissolution of a political party. The change was categorized by opposition parties as an illegitimate legal mechanism used to constrain challenges to the ruling party from increased popular support of alternatives.

The law was ultimately passed in the form of amendments to the criminal code along with constitutional amendment further restricting political participation.²³⁴ Thus the law criminalizing criticism of the monarchy was part of a larger change which seriously degraded freedom of association.

Additions to the Criminal Code, make violation of the new *lèse majesté* law punishable by between one and five years in prison and fines of 2 million riel to 10 million riel (about \$500 to \$2,500). The amendments to the Constitution introduce new restrictions to political participation, and include ambiguous phrases capable of political manipulation, and undue executive influence and discretion, such as prioritizing the nation’s “interests” and forbidding foreign “interference”.

Despite the government position that the national interest are prioritized, the enforcement of laws demonstrates the strict overlap between government by the ruling party and the interests of the nation.

International legal experts have found the government to misuse the law to curtail the expression of fundamental freedoms, and misinterpret the law arbitrarily to include a broad range of activities so that the government is then authorized to repress and infringe on protected freedoms of expression, association. This is inconsistent and unpredictable with one of the key requirements of the rule of law implementation.²³⁵

The changes of the laws restricting freedom of association and denial fundamental political rights required in a democracy to citizens even after their period of incarceration must be taken into consideration along with the long-term partisanism and high levels of corruption in the judicial system. The constitutional change then is not only a clear step of democratic regression,

²³⁴ Kijewski, Leonie and Koemsoeun Soth “National Assembly passes *lèse majesté* law, limits to freedom of association” Phnom Penh Post, 14 February 2018.

²³⁵ Kingsley Abbott of the International Commission of Jurists, said this was an example of governments around the region were passing on key lessons on “how to misuse the law to curtail the expression of fundamental freedoms.” He also pointed out: “Notably, these obligations are worded so vaguely they could be interpreted capriciously to include a broad range of activities the government may wish to repress. As such, in addition to infringing on protected freedom of expression, association and so on, they would be inconsistent with one of the key requirements of the rule of law, as properly understood, namely predictability.”

but also weakens the already fragile constitutionalism in the political and legal spheres which is needed for rule of law.

At issue, in terms of potential restrictions on freedom of expression, is the practical implementation of the distinction between insults and reasonable criticisms. More importantly, the law may be used to divorce citizens and parties from any mode of engagement with the king, such as submitting of petitions (which when attempted by the CNRP in the 5th mandate of the NA was investigated and criminalized by the RGC). It is essential that the king not be restricted by the new law engaging with his subjects in the course of conducting constitutionally mandated roles (as per articles 9,18, 21, 22, 23, 24, 26, 28, and 29). It is through those roles that the king serves as guarantor of sovereignty (Art. 8) and upholds the moral principles grounding the system of law that are set out in the preamble to the constitution—rule of the people, representative government, a liberal multiparty system, guaranteed rights, and respect for the laws. Additionally, it would be a serious setback to democratic public space if the law were extended to those holding royal titles in addition to the monarch himself.

The Amendments of Laws constrict contesting political parties by forcing them to control the speech of any individual regardless of their position as a party official. It establishes a slippery slope toward a one-party system and authoritarian rule by providing for the dissolution of any party. Through its influence over the national election committee, the executive branch effectively can regulate political competition with discretion. The amendments to the Laws on built on the momentum to constrain democratic elections and competition. It is clear violation of the international and constitutional principle of liberal democracy and political pluralism, and violating the rights of party members to association and to form a party to contest in elections.

C. New Composition of the National Election Committee (NEC)

After the dissolution of CNRP, the three members of NEC selected by CNRP, Kouy Bunroeun, Rong Chhun and Te Manyrong, stepped down. The three new members of the National Election Committee were from FUNCINPEC Nuth Sokhom, as vice chairman of the NEC, and Dim Sovannarom and Hel Sarath.

The Constitution and the Law on Organization and Functioning of the National Election Committee” require a bipartisan nine-member composition of the NEC under the auspices of the National Assembly. The opposition party holds now four positions, the ruling party four positions and the ninth member needs to be a compromise candidate.

However, the new composition of the NEC provides more influence for the ruling party. The ruling party from holding a control in the NEC decision-making process. The new three member of NEC was selected by FUNCINPEC and CPP which are under question on legitimacy of the unelected party such as FUNCINPEC.

D. Voter List and Identity Certification for 2018 Election

In 2017, the NEC conducted voter list update and registrations for a period 70 days from September 1 to November 9. As a result of the voter list update and voter registration, 536,674 eligible voters were newly registered. In the 2017 voter list, there are 8,380,219 equal to 84.80% of 9,882,746 estimated total eligible voters. COMFREL observation and monitoring found that the registration process was of a significantly high quality and overall added to the integrity, accuracy and universal scope of the voter list. Major shortfalls remain such as: failing to meet registration estimates by more than fifteen percent, the establishment of some registration stations not according to procedure, decreased accessibility to required documentation, the need to recruit from a broader pool of applicants and reduce reliance on former election officials, coercion or intimidation at the local level, continued significant obstacles for migrants and disabled persons, and reduced participation overall by citizens, parties, and stakeholders.

Problems with the process of issuing Identity Certificates for Registration (ICRs) were found in some communes. If proven with a credible investigation to be true, it is a serious violation of provision 28 of the Law on Commune Administrative Management, which stipulates that the commune clerk is appointed by the Ministry of Interior and then is tasked to assist in the commune, and provision 43 which stipulates a role of assistance in the commune's basic administrative service.

COMFREL found that it was more difficult for people to request residential certificates. The Ministry of Interior changed the authority for issuing residential certificate from commune council to local police station.²³⁶ It required more criteria which were found to dissuade registration requests, including having a K8 (residential list) notification for living 30 days in particular place and having a K9 (residential registration letter) notification issued by the local police station. In addition, the registration period did not include allocation of certificates during holiday for Pchum Ben ceremony in which most migrant eligible voters returned home.

X. CONCLUSION

2017 events indicate executive control and direction of a process of legislating and implementing a policy to eliminate electoral competition. There has been minimal compelling evidence to indicate a treasonous conspiracy or rebellious movement, or any immanent instability. However, through coordinated legal changes criminalization of individuals was linked to criminalization of political parties, which was used to set in motion the dissolution of the major opposition party and the application of new provisions to the key electoral laws effectively ended the practice of the will of voters based representation of and democratic elections.

Two 2018 national elections especially national assembly election could be predicted that the close races between the ruling party CPP and opposition party CNRP. The opposition (CNRP)

²³⁶ Guideline announcement No. 4079 issued on 14 August 2017, functioned to revise announcement No. 10245 issued on 15 December 2015 on the procedure for issuing communal residential certificates by the commune authorities.

gained more than 44.5% of the votes in the 2013 national election and 43.8 % of the votes in the 2017 commune election. The voting patterns between commune and national elections have differed significantly in the past. In the 2012 commune elections, the CPP won 3,631,082 votes (62%). The opposition, at this time was not united (HRP and CNRP but current CNRP) won 1,804,943 votes (31%). By contrast, in the 2013 national elections, the CPP won only 3,235,969 votes (48.83%) around 400,000 votes less or 10% than 2012 while the newly formed united opposition of SRP and HRP calling themselves the CNRP, won 2,946,176 votes (44.46%), almost one million votes more than in the 2012 commune elections or increase 10%. Since 2017 there have been severely dysfunctional legislative process with unilateral adoption of amendments to the Laws, a lack of the independence of the judiciary, constitutional council, law enforcement, and military.

As a result, executive and legislative performance and accountability has been seriously declined, as people are increasingly either afraid or apathetic when it comes to participation in the public sphere, in all areas of social issues and reform oriented problem-solving. Political participation has been drastically setback, as citizens have lost confidence in the electoral mechanism as well as the democratic governance to popular accountability.

A lack of trust and consensus has been introduced at the core of the relationship between opposition supporters, the government supporters, and elected officials. The ultimate cost to public trust is potentially so serious that it is difficult to yet calculate.

The National Assembly has well has been fundamentally altered as its composition is put under the discretion of the executive which, through its influence over the judiciary, can implement the Law on Political Parties in conjunction with the Law on Election of Members of the National Assembly (LEMNA), to control the composition of the legislature and national election committee. In absence of the major opposition party, few other parties are likely to be able to provide significant challenge and competition to the ruling CPP in the two 2018 elections (February senate election and July national assembly election).

Moreover, as of yet, leadership of other parties lacks the political support and political capital of the two main CNRP personalities, Sam Rainsy and Kem Sokha. It is important to consider: “Few, if any, of the remaining smaller parties have leaders or senior members who capture the popular imagination as agents of political change. The CPP and the CNRP won respectively 48.8% and 44.4% of the vote at 2013’s general election. Combined, numerous smaller parties notched just over 7% of the vote. Funcinpec, which was handed 41 of the CNRP’s 55 seats in the National Assembly last month despite winning a paltry 3% of the vote in 2013, has already said it prefers to be a “minority” rather than “opposition” party.”²³⁷

Recommended urgently necessary conditions for the legitimacy of the upcoming elections:

²³⁷ Hutt, David “How democracy died in Cambodia”, Asia Times, 25 December 2017.

- To restore a free environment and allow for the active participation of the main competitive opposition party, independent media and CSOs in the upcoming elections.
- To free detainees/prisoners (in particular leaders of the political parties) of political prisoners of conscience or political expression, and imprisoned members of the press) so that they may return to participation in political life and the 2018 elections.
- To follow-up on implementation of international laws and agreements, especially reconvening the Conference to address the principal crisis of the Paris Peace accord, and to push for implementation of UN resolutions including UPR recommendations, to instill an understanding of the necessity of international acceptance for the legitimacy of the elections and support the public expectation of the norms of liberal democracy with pluralism and human rights.
- To change all controversial provisions of the amendments to the law on political parties and laws on elections, back to the previous laws with bipartisan practices of decision-making related to election rules, as occurred in 2014 and 2015.

2017 was a challenging year for expression, press, assembly and association with many setbacks to a vibrant and organic civil society. Quality of democracy requires unobstructed dynamics of social solidarity, mobilization, and collective action among citizens' groups. Undermining political trust, the assault on civil society (including NGOs, associations, independent media, and independent unions) does seem demonstrate a disagreement which responds to policy critiques, but rather to challenge their existence entirely by propagandizing their illegitimacy and illegality. Furthermore, it has created conditions where civic space and the public sphere are diminished by mistrust and increased obstacles to the growth of social capital. Channels for effective engagement with policymakers closed off, minimizing the potential for policy uptake of recommendations and solutions. Insecurity and stress has drastically increased among CSO staff and community activists, and along with apathy and dissatisfaction of the large portions of the public. Without affording citizens the space for free assembly and association, through creating a climate of insecurity and threats and by policing solidarity amongst groups who disagree with policies, there is no means left by which the public can mobilize advocacy campaigns on social issues. Stabilizing a status quo of high rankings on international corruption and autocracy scales, and establishing a political context without real citizen engagement on social issues and perceived injustices, means solidifying formidable obstacles to further democratization and sustainable development in Cambodia.

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