



ខុមហ្វ្រែល COMFREL

DEMOCRACY

Elections and Reform in Cambodia

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INTRODUCTION

Over the last two decades Committee for Free and Fair Elections in Cambodia -COMFREL has been at the forefront of efforts by civil society organizations to enact meaningful electoral reforms and achieve advances toward democratic consolidation. COMFREL has endured and succeeded by proving itself to be independent, transparent, accountable and non-partisan. The organization is the product of civil society and concerned citizens collective action or joint project on Cambodia's elections which came together to provide an independent domestic monitoring team for the May 1993 elections organized by the United Nations Transitional Authority in Cambodia (UNTAC). The Task Force worked in close collaboration with international organizations throughout Cambodia in order to monitor the electoral process, before, during and after polling day. The collective action effort managed to provide civic and voter education as well as the training and deployment of Cambodian election observers. The experience demonstrated very clearly that effective domestic civil society input was an indispensable part of the new democracy, and that independent non-partisan monitoring by civil society was necessary for fair elections. Accordingly, in December 1995, the concerned citizens and members of civil society formed the Committee for Free and Fair Elections in Cambodia – COMFREL. COMFREL registered with the ministry of interior in Cambodia in 1997. Since 1998, COMFREL has been accredited as an election observer by the national election committee in Cambodia.

COMFREL has now participated in the 1998, 2003, 2008, and 2013 National Assembly Elections, and the 2002, 2007 and 2012 Commune Council Elections. COMFREL is currently engaged in lobbying and advocating for improvements to the legal framework for political and electoral reforms and monitoring the legislative and executive in terms of fulfillment of political platform promises, responsiveness, and accountability, as well as a commitment to key liberal democratic standards. COMFREL endeavors to build the capacity of its own network as well as those of partners at national and provincial levels. COMFREL conducts public forums and assesses performance of commune councils, by focusing on improving participation of citizens in local bodies to build democracy from the village-level upwards. In addition, the organization actively engages in raising citizen awareness about democracy and improving civic education of the public.

COMFREL has built up a unique national representative network. This membership is based on a high degree of ownership, a joint purpose and a legitimate and pragmatic governance advocacy program. COMFREL's network, established through its members, provides COMFREL access to over 10,000 individual members, volunteers and more than 500 activists/local watchdogs

throughout the country. COMFREL has collaborated effectively with various human rights, governance and democracy organizations, including those associated with its networks through the establishment of the election situation group on Cambodian Election Day and the Electoral Reform Alliance. Together, they hold meetings with the Royal Government of Cambodia, the Ministry of Interior (Mol), legislators, political parties, donors, embassies, and the electorate (directly through networks set up by COMFREL at the local level.) The network provides a structure through which diverse activities can be implemented to effectively engage with policymakers and support the RGC in fulfilling its democracy aims, as set out in its constitution and international human rights and development commitments.

COMFREL's Vision is a democratic society underpinned by free, fair, transparent democratic elections that to bring real benefits to people. COMFREL's mission is to help to create an informed and favorable climate for 1) free and fair elections through lobbying and advocacy for a suitable legal framework, education to inform voters of their rights, and monitoring activities that both discourage irregularities and provide comprehensive monitoring data to enable an objective, non-partisan assessment of the election process, and for 2) meaningfulness of the post-election period through education and public forums to encourage citizens to participate in politics and decision-making, advocacy/lobby for electoral reforms that increase accountability of elected officials and provide comprehensive monitoring data to enable an objective, non-partisan assessment of the fulfillment of political platforms and performance of elected officials.

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 set out in the constitution provide for a set of aims for which progress can be measured or assessed. The constitution's preamble which invokes popular sovereignty and representative government on the basis of a liberal multiparty system, guaranteed rights, and respect for law, and 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.

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

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 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.

As part of its research and monitoring activities, COMFREL also produces an annual report on democracy elaborating on research, results and recommendations for electoral reform, an analysis of the state of the democracy, in terms of and basic freedoms, concerns about democratic governance in Cambodia. COMFREL’s monitoring, research and evaluation of the electoral process in Cambodia has included an annual assessment of the process of democratic transformation and the current degree of consolidation. The annual report on Democracy, Elections and Reform provides an evaluation of democratic strength or quality in terms of the separation of the powers between the main branches and their overall performance in contributing to democratic governance, the degree of enjoyment of fundamental freedoms needed for democratic public space, and the quality of elections which serve as universally accepted measures of popular sovereignty or democratic rule in political systems.

The main contents of the 2018 report include Chapter- 1: The Legislative Branch (its performance, adoption of laws, amendments, and oversight), Chapter- 2: The Judicial Branch (independence, and political neutrality) Chapter- 3: The executive branch (accountability and transparency), Chapter- 4: Civil Society and NGOs (freedom of association and assembly, and the participatory rights needed for a robust political society), Chapter- 5: Media and Press Freedom, Chapter- 6: Online freedom, Chapter- 7: Democratic elections , Chapter-8: Criminalization of Political Opposition Members, and Chapter- 9: Conclusion

ILLEGITIMATE U-TURN

CHAPTER 1–

THE LEGISLATIVE BRANCH

Introduction

In early 2018, the legislative branch of the ruling party began unilaterally making changes to laws and the constitution in order to place further restrictions on freedom of speech, ostensibly preventing insults against the monarchy, but in actuality instituting conditions wherein it is criminal to publicly analyze or discuss the proper role of the King in government in a constitutional monarchy system. The amendments to the Constitution of Cambodia were enacted to a ban on individuals from “doing anything to impact the national interests” at the level of constitutional law. The amendment is to silence major opposition party and CSOs members who call on the international community to take stronger action. Moreover, the change makes it difficult for citizens and citizen groups, including political parties, to make appeals to the king to intervene in political society in order to uphold or secure the standards of the constitution related to ensuring democratic government in Cambodia.

At the same time, there were important advances in the Access to Information Law which is urgently needed to support improved government transparency and citizen empowerment. Toward the end of the year, after consolidating one-party rule through total dominance of both houses of the parliament, the RGC made some gesture toward national reconciliation and potentially reintroducing degree of political competition in support of liberal pluralism. As noted in other sections of this report this followed a mid-year prisoner amnesty, the transfer of opposition Kem Sokha from prison to house arrest, and late year invitations to independent media to resume operations as well as ending political prosecutions of independent labor leaders. This coincided with the amendment to the Law on Political Party. This section first discusses the composition of the legislative branch and changes with the 2018 Senate Elections and National Assembly elections. The elections are discussed in more detail in the last chapter of this report). After which, this section covers key laws enacted by the legislative branch impacting democracy in 2018. These are the Access to Information Law, Constitutional changes, the Lese-majesté law (criminal code amendments), the amendment to the Law on Political Party, and the changes to the laws pertaining to sub-national representative bodies.

Chapter 1 Part I – Single Political Party Control over the Legislative Branch

Following the dissolution of the CNRP, its seats at the different levels of government were redistributed. The 55 parliamentary seats of the CNRP were vacated and had already been distributed by the NEC to other parties, with the new distribution of seats sent to the National Assembly for a vote of confidence. 41 of the 55 seats were distributed to FUNCINPEC, 2 seats to Khmer National Party, one seat to Khmer Economic Development Party, one seat to Khmer Anti-poverty Party and six seats to League for Democracy Party. However, the League for Democracy Party (LDP) and Khmer Anti-poverty Party announced and submitted a letter to the NEC to inform that they would not accept the distributed seats.

In the 2018 National Assembly elections of 29 July 2018, the ruling CPP competed against 19 minor parties, several of them newly established) and won all 125 National Assembly seats. The ruling party thus controlled all elected representative seats in both the upper and lower houses of the parliament. This has cemented one party rule, end eliminated parliamentary oversight of the executive. At the end of the first week of August, PM Hun Sen announced the first meeting of parliament would be held on 5th September 2018 and the government would meet on 6 September 2018.

On 5 September 2018 the new parliament for the 6th legislature of the National Assembly was sworn in, with the opening session presided by King Norodom Sihamoni. All 125 seats were occupied by the ruling party, rendering parliamentary debate to be redundant and eroding the legislative check on the executive branch all together. According to the National Assembly, letters of invitation had been sent to 31 foreign embassies but only 22 sent representatives. The opening session was not attended by key donor states such as U.S., Canada, Australia, France, Germany, the U.K., Sweden, Bulgaria, as well as the European Union. The elections were also rejected as wholly unfair by human rights groups, global media, and the United Nations.² (See the chapter of Democratic Elections).

In August 2018, the Minister of the Interior had sent a letter to the PM requesting a feasibility study regarding the creation of new provinces in order to: “improve the effectiveness of administration, security, public order, local development, and public services.” The new provinces would be created by taking territory from Kandal, Ratanakiri, and Mondulkiri.

² <https://www.rfa.org/english/news/cambodia/cambodias-one-party-parliament-slammed-as-bogus-09052018170540.html>

However, on 5 October 2018 PM Hun Sen declared and rejected the plan to create new provinces and ordered the MOI to halt its study into the issue. PM Hun Sen asserted that he canceled the plan to form new provinces because of corruption and competition to obtain top posts. He asserted that confidential planning had been leaked by power brokers seeking to sell access to high level positions, such as governor, deputy governor, and other major offices.³

For more details on the 2018 Senate elections and National Assembly Elections, see the Chapter on ‘Democratic Elections’.

Chapter 1 Part II – Key Laws

Access to Information Law

This very important law for democratic transparency and accountability has taken well over ten years to be developed, and by the end of 2018 it was not yet approved by the parliament or the RGC. Civil society organizations, UN bodies and development partners have been advocating for a freedom of information law for Cambodia for more than 15 years. The process advanced substantially for the first time in August 2007 with the Ministry of National Assembly and Senate Relations and Inspections issuing a policy paper on the Rights Access to Information.⁴ The draft law is composed of 9 chapters with 38 total articles.

The legislation would make it required that public officials provide information to citizens with a limited number of exceptions. Importantly, it offers some protections for whistleblowers. It would protect access to budget documents, spending records, draft laws, meeting minutes and any other type of recorded information to the public upon request, with ostensibly limited exceptions. However, there are some concerns about how the exceptions are to be interpreted because the implementation of the law could minimize its beneficial impacts. The law stipulates exceptions for confidential documents or documents harming national security, international relations, and police investigations.

The Minister of Information has touted the law as means to for the government, through greater transparency, to decrease disputes and improve cooperation with the news media, as well as build political trust with civil society, through greater transparency. He indicated that the content of the law had been discussed by the government, media reps, and CSOs for three years. As such, the RGC recognizes the need to improve public confidence: “The law is to increase the public’s confidence in the authorities, because information can be misleading, and in democratic societies, the right to access information is indispensable.” He also made the important

³ <https://www.khmertimeskh.com/540030/plan-for-two-new-provinces-scrapped/>

⁴ <http://www.apiinstitute.org/index.php/access-to-information>

acknowledgement that the law provides citizens with different options to ensure an effective remedy for citizens that are denied information, including communicating with the head of an institutions or body, utilizing the courts, and going through a local ombudsman. Moreover, the pointed out the proper role of civil society providing oversight regarding the implementation of the law. UNESCO has encouraged the process of drafting the law sets a new standard for Cambodia and the region, because it involved participation from and cooperation with both state and civil society institutes.” The Advocacy Policy Institute indicated that throughout the process the government officials involved were attentive to their needs or suggestions. Moreover, Lemaistre indicated that the exceptions which allow for denial of information were specifically defined in order to avoid overly broad or politically motivated interpretation. The law for example, breaks down national security to sub-categories, such as weapons plans, military maps or logistics, and intelligence.

Cambodian CSOs’ actors pointed out some problematic clauses related to restrictions on information access. The law categorizes as confidential information that is related to “preliminary plans of . . . government loans, tax reform, and state revenues”, and “preliminary plans of sales or purchases of state property or foreign investment”. Another potential problem with the law is it creates a post “officer in charge of information” to ensure service provision, but also grants that position the authority to decide what information is confidential and what is not. The NGOs demanded : “There should be a very objective review of these concerning points by legal experts, preferably by both local and international experts who favour maximum transparency and open government.”

The Cambodian civil society actors also pointed out the problem with utilizing the courts for redress in the event that information is denied or requests are ignored. The CSOs’ actors suggested that the ombudsman should be stipulated as an alternative to the courts in the law. The ombudsman offices should be established at the district level served very effectively to facilitate interaction between citizens and government offices. Because the public does not confide in the judiciary which is viewed as both partisan and corrupt. Another major weakness of the law is lack of implementation, a reminder to temper expectations regarding the new draft law. The court needs to be more independent and law enforcement should be more helpful in accessing information.

The Cambodian Center for Independent Media supported the regulation for the timeliness of the response, as the law indicates that an official response must come within 15 days. Cambodian Center for Human Rights also expressed concern that the law could be restrictive. Although Cambodian laws may ostensibly be intended to protect individuals’ fundamental freedoms, such as the [Law on NGOs], have been instead misused to restrict people’s freedoms, made possible

by the vagueness of their terms. Cambodian and international human rights actors such as (the Asian Forum for Human Rights and Development) posited that the quality of the law would depend on the implementation as exceptions could be interpreted very broadly. “Given the human rights situation in Cambodia. . . it is not convincing that the government is so eager in terms of promoting human rights.”⁵

Despite the progress made towards enacting the law, for the rest of 2018 the law did not advance significantly. By the beginning of 2019 the draft law had still not been fully discussed by the Council of Ministers of passed on the parliament. Civil society organizations, took the lead in pushing for speeding up the legislative process. Dozens of NGOs submitted letters to the competent authorities (PM, NA president, Senate president, and Minister of Information) and released a group joint statement. The different groups also issued a supportive reminder of Hun Sen’s stated intention to amend the Press Law.⁶

On 12 February 2019, the Minister of Information announced that the draft of the law was included in the strategic plan for the 6th mandate of the RGC. He also indicated his recognition and support of civil society groups which called for speedy passage of the law. At the same time, he indicated that several pieces of legislation would be under review by an RGC working group, including a draft Law on Audio-Visual Content, an amendment of the Press Law, and a draft sub-decree on Advertisement Management.⁷ CSOs advocate for the law to be an essential component to the legal framework which sets the foundation for democracy. It is viewed as beneficial to various stakeholders. It supports citizen’s empowerment through information access and better services, news media reporting and will likely better prevent fake news, it supports private business and investment planning, and it provides government officials and MPs with opportunity to gain knowledge about government activities and improve coordination between government offices.

Constitutional Amendments

On 28 December 2017, the RGC original intention to have amendments to the Constitution of Cambodia which would effectively enact a ban on individuals from “doing anything to impact the national interests” at the level of constitutional law and a prevention of foreign interference. The

⁵ <https://www.phnompenhpost.com/national/draft-long-awaited-access-information-law-unveiled>;
<https://www.phnompenhpost.com/national/access-information-law-finally-ready-enactment>;
<https://www.khmertimeskh.com/105766/information-law-edges-closer/>

⁶ <https://www.khmertimeskh.com/50576752/groups-express-support-for-access-to-information-law/>

⁷ <https://www.khmertimeskh.com/50577422/access-to-information-draft-law-ready/>

minister of interior made it clear at the same time that the legislation was a direct response to major opposition figures who had called on the international community to take stronger action, by giving the example of Kem Monovithya, the daughter of jailed (now under house arrest) opposition leader. The minister also pointed to calls for the international community to take a strong position for democracy in Cambodia as damaging to the nation. The minister indicated, as the Head of a 12-person working group with the aim of introducing constitutional amendments, that the RGC was at that time considering amendments to the Constitution. Other amendments include change of appointment and the holding ranking, of secretaries and undersecretaries of State. The secretaries and undersecretaries of State are not approved by the parliament but by the prime minister, and they not hold the ranking of cabinet members.

However, civil society actors pointed out that the law would present a basic challenge to the full respect of fundamental freedoms because it was too vague and thus easily manipulated. The amendments contravene freedom of expression, which is protected by the Constitution itself. The amendments were not carefully drafted, and key terms are not clearly defined, so there is a lot of space for an arbitrary interpretation. Moreover, amendments were not based a substantial consultation process with civil society organizations and citizens.⁸

On 2 February 2018, the Council of Ministers ratified a set of amendments to the Constitution and Penal Code. After dissolution of CNRP and distribution of CNRP seats, the ruling CPP were able to ask FUNCINPEC and other minority parties to have the two-thirds majority that they were able to amend the constitution. The changes raised serious concern about increased legal justification to crackdown on independent media, civil society, and citizen expression. Independent media was able to confirm the specific articles that were to be amended and the main idea of the changes to be made to each:

“Article 34 provides that electoral laws shall determine any provisions restricting the right to vote or the right to stand as a candidate for an election. The new amendments will reportedly clarify that those rights can be stripped entirely.

Article 42 grants freedom of association and the right to form political parties. The amendment will now require political parties to “place the country and nation’s interests first”.

Article 49 states that “every Khmer citizen shall respect the Constitution” and has an “obligation to . . . defend the motherland”. The amendment will forbid individuals from undermining the country’s interest.

Article 53 states that Cambodia will never invade or interfere in another country’s affairs. It will be amended to declare that Cambodia “opposes any foreign interference in its internal affairs”.

⁸ <https://www.phnompenhpost.com/national-politics/kheng-seeks-constitutional-ban-individuals-harming-cambodias-interests>

Article 118, meanwhile, explains that the central government is made up of a prime minister, deputy prime ministers, senior ministers, ministers and secretaries of state. The amendment will remove secretaries of state from the cabinet, and allow them to be appointed by royal decree rather than a National Assembly vote.”

At that time government officials gave inconsistent responses regarding changes to the Penal Code to enforce these amendments. On the one hand, Council of Ministers’ Siphon and Ministry of Justice spokesman Chhin Malin said that the Penal Code already contains provisions for punishment of the new constitutional provisions. On the other hand, the view that more amendments would be needed was supported by Ministry of Justice Secretary of State Keut Rith and constitutional working group member Sak Setha. In his prior announcement regarding constitutional amendments, PM Hun Sen also indicated there would be changes to the Criminal Code to enact a *lese majesté* law.⁹

On 14 February 2018, the National Assembly voted unanimously (123 MPs voting in the presence of PM Hun Sen in an extraordinary session) to approve the amendments to the constitution and criminal code. CNRP strongly rejected the changes, calling the amendments illegal and illegitimate. It asserted that the current activities of the National Assembly are not valid because they do not include the representatives of the people from their party. However, CPP indicated that the former opposition party had no legitimacy as a revolutionary movement: “Who cares if they [the CNRP] acknowledge it or not. Should we allow the color revolution to happen illegally and violate democracy? They need to be imprisoned, dissolved and eliminated.”¹⁰

Lese-Majesté Law

In early 2018 PM Hun Sen declared that the *lese-majesté* law would not be as severe as Thailand or Saudi Arabia, however, he also stated that it was necessary to punish the offense regardless of the level of severity.¹¹ In a joint statement released in February Rhona Smith, the U.N.’s Special Rapporteur on the human rights in Cambodia and David Kaye, UN Special Rapporteur on free expression, said: “Lese majeste provisions are incompatible with

⁹ ; <https://www.phnompenhpost.com/national-politics/updated-lese-majeste-law-among-changes-cambodias-constitution-and-penal-code>

¹⁰ The view from Washington – U.S. Congressman Alan Lowenthal released a statement on social media which read: “The crackdown on political freedom in Cambodia continues,” he wrote. “The Cambodia National Assembly, essentially a legislative rubber stamp of Prime Minister Hun Sen’s decades-old regime, has voted to make any criticism of the King, and potentially any member of the Hun Sen government, a criminal offense punishable by jail time and fines. This is just a continuation of the Hun Sen regime’s ongoing efforts to eliminate and outlaw all political opposition in the lead up to national elections this year. I join with the international community in expressing outrage at the autocratic overreach by Hun Sen that is severely restricting the freedoms of Cambodian people.” See: <https://www.voacambodia.com/a/cambodian-parliament-passes-controversial-admendments-to-constitution/4257709.html>

¹¹ <https://www.khmertimeskh.com/489120/teacher-charged-under-new-royal-insult-law/>

Cambodia's obligations under international human rights law, as they criminalize the legitimate exercise of freedom of speech."¹²

The Senate voted to approach the new legislation in the last week of February. Constitutional amendments must be passed with a two-thirds majority in both the National Assembly and the Senate, but passed unanimously in the Assembly in which every seat is controlled by the ruling party. In the Senate, the ruling CPP controlled 46 out of 61 seats, and the amendments were approved with 45 votes. There were 11 senators from the former Sam Rainsy party which was then called the Candlelight Party (which was compelled to change its name because of 2017 amendments to the Law on Political Party which were approved unilaterally by the ruling CPP before the CNRP was disbanded by the Supreme Court).¹³

The law was enacted through changes to the Cambodian criminal code. The new law which criminalizes insults of the King defines insult as a: "word, gesture, writing, picture or other media which affects the dignity of the individual". It specifically applies only to the King himself and does not include other members of the royal family. However, both individual and media groups or other organizations are punishable under the law. Penalties for media outlets extend to confiscation of property and being shut down. The law was passed at the same time as the legislature approved a change to the Constitution. The change to Article 42 of the constitution established that political parties must "prioritize national interest" and that "Cambodian people can participate in collective groups that help each other and protect the national achievements and social order".¹⁴

Minister of Justice Ang Vong Vathana responded to questions by Senators regarding the law, and clarified that it would apply to media outlets. Both individual journalists and the organizations would be held responsible. He summated: "What we can do, we will do in order to eliminate insults to the king." CPP Senator Chum Vong claimed that the law did not detract from liberal multiparty democracy. He asserted that liberty had damaged society and adjustments were necessary to protect "national interests". "In the past, we had a problem because we were thinking too much about freedom, which allowed [people] to say and raise whatever they wanted. It affected other people's rights and the national interest, so it . . . became anarchy."

However, at that time the pertinent authorities and representatives of the people in parliament did not clarify to media and public observers whether or not the law would apply to media outlets that issue insulting statements or images or also include any individual or media that it was not

¹² <http://time.com/5275749/cambodia-lese-majeste-law-arrest/>

¹³ <https://www.khmertimeskh.com/489120/teacher-charged-under-new-royal-insult-law/><https://www.phnompenhpost.com/national/un-raises-concerns-over-amendments-government-says-new-lese-majeste-law-will-apply-media>

¹⁴ <https://www.phnompenhpost.com/national-politics/lese-majeste-law-now-effect>

clear if the prohibition would apply just to outlets that insulted the king themselves, or if it would also include those that quoted the information. The international legal expert at the International Commission of Jurists, indicated the: “real possibility that this law could extend to a wide range of actors beyond the maker of the alleged lese majeste statement”.¹⁵

The Cambodian lese-majesté law was signed by Senate President Say Chum in stead of the King in the first week of March. The law came into effect 27 February 2018, but was only disseminated to the public in the first week of March of 2018.¹⁶ The date that the law came into effect was directly relevant to the case of a monk, venerable But Buntenh. He is an activist monk who had consistently criticized the ruling party government and sough to organize citizens for environmental protection.¹⁷ In a radio discussion on RFA, Buntenh commented that all Cambodians including the King, ingest water that has been contaminated by the floating villages made up of Vietnamese immigrants. In response, Cambodian Youth Party president, Pich Sros, proclaimed that Buntenh had violated the law. Article 3 of the Penal Code established that acts may be prosecuted only if when the occurred the relevant law was in force.

Prior to the signature of the King, a piece of legislation is still only draft law. However, if the lese-majesté law was: “before the King signs it is still a draft law, and not valid for implementation”. If the law was signed into effect beforehand, however, it would have been “valid” at the time of the comments. The ministry of justice indicated that the law did not call for the prosecution of past comments, but at the same time conceded broad exceptions including whether or not a post was still online, is done by an ‘organized group’, and is done with ‘ill intentions’. The Ministry of Cults and Religion stated that the Ministry was considering submitting a formal complaint the court, for Buntenh’s statement regarding the king and “other wrongdoings”.

For legal reasons, any offense committed prior to enacting the law would not be criminalized by the law, but if an individual were to share or repeat an old insulting message then it would be subject to prosecution. However, the applicability of the law was confusing and not made clear to the public. Most tellingly, specific clauses of laws were irrelevant because the government prosecutes based on its government decree rather than existing procedures. The government does not adhere to the rules and independent commentators have claimed that it intentionally promoted public confusion regarding the rules and mechanisms of the law, as a means to maintain control.¹⁸

¹⁵ <https://www.phnompenhpost.com/national/un-raises-concerns-over-amendments-government-says-new-lese-majeste-law-will-apply-media>

¹⁶ This contradicted an earlier statement by Chin Malin that the law would come into effect only after a promulgation period of 10 days for the capital and 20 days for the provinces.

¹⁷ <https://www.voacambodia.com/a/from-abroad-firebrand-monk-continues-to-oppose-government/4241560.html>

¹⁸ <https://www.phnompenhpost.com/national-politics/lese-majeste-law-now-effect>

Law on Political Party

On 13 December 2018, the National Assembly on Thursday unanimously (all 125 seats controlled by the ruling CPP, with 115 in attendance and voting which did not include PM Hun Sen) approved an amendment to Article 45 of the Law on Political Parties. On 25 December 2018, the amendment was approved by the Senate. Of the 62 seats in the Senate, 56 senators were in attendance and voting, and all voted in favor of the legislation. The legislation was signed by the King in a royal decree dated 2 January 2018. The change would make it possible for individuals that have been banned from politics, following a violation of that same law, could have their right to participate reinstated. The law permits individuals that have been banned from politics to be reinstated at the discretion of the ruling party. More specifically, the amendment (proposed by 87 ruling party MPs) and enacted by 115 ruling party MPs and National Assembly President Heng Samrin, stipulated that the new paragraph of Art. 45 of the Law would read: “Any persons who are banned by the court from doing political activities will be granted their full rights to do politics after passing the validity of the ban defined by the Supreme Court’s verdict or in case those persons are granted rehabilitation by the King according to requests by the Prime Minister and Interior Minister.”¹⁹

As noted in the 2017 COMFREL Democracy Report, 118 of the most important members of the CNRP were banned from politics for 5 years, following a Supreme Court ruling to disband the CNRP. It was the third amendment in two years of the 1997 law. The law was amended 7 March 2017 and 27 July 2017. The first amendment sought to separate Sam Rainsy from the CNRP by banning affiliation of a party with an individual convicted of a crime. The second amendment seemed to be a supplement to the first by banning individuals of a crime from participating, but was actually more far reaching in scope as it set the stage for the dissolution of the major opposition party. The prior amendments were deemed needed to “promote the duties and responsibilities of political parties in accordance with social progress”.

Prior to the amendment in 2018, article 45 of the law established: “An individual whose political activities have been suspended by the court cannot form a political party, join a political party, compete in elections or act to support or oppose a political party.” The new version of the law stipulates: “An individual whose political activities have been suspended . . . will be able to officially have their full political rights returned after the ruling of the Supreme Court has expired or in the case that the individual’s rights are reinstated by the King after a request from the prime minister as proposed by the interior minister.”

¹⁹ <https://www.khmertimeskh.com/559527/parliament-adopts-political-party-law-amendment/>

CPP lawmakers (87 signatories that proposed the amendment) expressed their support for the amendments “this amendment complies with social progress in Cambodia on the principles of multi-party democracy, and it helps to ensure the promotion of national security, independence and national sovereignty, and in the spirit of national unification ” The CPP lawmakers tries to reject the view that the ruling party and the government was responding to international pressure. CPP lawmakers explained the amendment was made in accordance with Article 8 of the Constitution, which refers to the King as the guarantor of national unity, but also reiterated that only those individuals that adhered to the ban and did not engage in politics will have their rights restored. This law is made for patriots who love the nation and want to serve it. It is the purpose of the current leader [Hun Sen] to have national unification and national reconciliation, and also to strengthen democracy in Cambodia.” A Senate press release declared that the law served to “restore politicians ... who have not carried out any activity against the interests of the Kingdom of Cambodia and not affected the principle of the rule of law and national security”.

In a speech just prior to the vote in the National Assembly, Hun Sen PM elucidated how the law would work. He stated: “After the Law is amended and comes into force, I will wait to receive the applications from individual politician, not from a political party. Each person sends a request via Interior Minister or directly to me. Please don’t be confused. First, the amendment is not for any political party, but for an individual. Second, the application is prepared by an individual and is not under the name of a political party.”²⁰ CNRP has rejected Hun Sen procedures and instructed their politicians to not submit the application to Hun Sen for asking pardon and restore their political rights. The CNRP argued that the court has not yet conducted a trial for Mr. KEM Sokha, president of CNRP, and that the CNRP has not committed any crimes.

Laws for Sub-National Council Administration and Elections

On Jan 3 2019, the National Assembly passed amendments to two key laws governing sub-national administration and representation. The adoption of Article 18 on the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans established that the number of seats would increase for provincial, municipal, district, and commune councils.

The second amendment on the Law on Municipal, Provincial, Town, District, and Khan Council Election enacts changes to the operations of sub-national level elections. It establishes that the

²⁰ <https://www.phnompenhpost.com/national-politics/assembly-passes-amendment-political-party-law-article-45>;
<https://www.khmertimeskh.com/559100/na-adopts-an-amendment-on-political-party-law/>;
<https://www.phnompenhpost.com/national/senate-unanimously-passes-amendment-article-45>;
<https://www.khmertimeskh.com/558706/make-individual-request-to-have-their-ban-lifted-pm-says/>;
<https://www.phnompenhpost.com/national-politics/change-article-45-king-signing>;
<https://www.khmertimeskh.com/50566917/king-signs-off-on-the-political-party-law-amendment/>

validity of voter lists will be reduced from 35 to 15 days before local elections, the deadline for publishing/disseminating the official voter list will be reduced from 30 to 15 days before local elections, that local election campaigns will be shortened from 15 to 8 days, and that the number of rallies during campaign periods is limited to 2.²¹

The amendment increasing the number of sub-national level councilors was supported by 92 ruling party MPs and approved by more than 100. The prior law was adopted in 2008 and deemed to no longer apply to the current population numbers of the different levels of sub-national governance. The CPP lawmakers defended the law that the population has increased to 16,300,000, and we are in need of improved public services and development. The law would result in the following changes: Phnom Penh increasing from 21 to 27 councilors; provinces each increasing from 15 to 27 councilors; districts each increasing from 11 to 21 councilors. There are 393 seats for capital and province councils and 2,931 seats for district councils. A total of 11,572 councilors will vote in the election for the 3rd mandate of provincial and district councils.

After an adoption of the amendment, ministry of interior said that the amendment was vital because of an increase of population in Phnom Penh, each province and in each district. He added that it was in compliance with the implementation of the decentralisation policy. “We intend to transfer power through decentralisation, especially transfer of power, budget and human resources to sub-national level administrations,”

Civil society actors found out that the change would result in an unnecessary drain on the budgets for the different sub-national levels of administration. Currently, many council members are not active supporters of providing services or finding solutions to local problems. Because almost of the councilors are from the ruling party while there are absent of check and balance by the opposition councilors. The ruling party councilors have not helped to serve the people, but in fact, they cause problems for the opposition supporters instead.”²²

CSOs found that the councilors have limited real powers, and so the current number of councilors should be sufficient. Moreover, the policy would require resources that could be better spent on local level development projects.²³

In a Sub-Decree issued on 25 January 2019 and signed by Prime Minister Hun Sen, in accordance with the parliamentary mandated amendments, in which the number of different councilors was clarified.

²¹ <https://www.phnompenhpost.com/national/national-assembly-ratifies-law-amendments>

²² <https://www.phnompenhpost.com/national/national-assembly-vote-local-reps-increase>

²³ <https://www.khmertimeskh.com/50565724/national-assembly-adopts-council-seat-amendment/>

Sub-National Representative Body	Total Number of Seats for the 2 nd Mandate	Total Number of Seats for the 3 rd Mandate
Provincial and Municipal Councils	339	559
Town and District Councils	2,931	3,584
Commune Councils	11,459	11,572

The Sub-Decree stipulated: “[We have] determined the number of municipal council members and provincial council members of each province for the third mandate in accordance with Article 18 on the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans.” It also established that Phnom Penh, Kandal, Kampong Cham, Battambang, Prey Veng, Siem Reap and Takeo provinces required 27 members to stand as candidates. Provinces such as Mondulhiri, Pailin and Kep have fewer council members, with only 15 people standing as candidates in each.

Not long before the announcement of the Sub-Decree, the RGC created 6 new districts and towns: In Phnom Penh, Boeung Keng Kang and Kamboul were created; in Preah Sihanouk province (Koh Rong Town); in Stung Treng province (Borei O’ Svay Sen Chey district); in Kampong Thom province (Taing Kouk district), and in Pursat province (Talo Sen Chey district).²⁴

Chapter 1 Part III – Parliamentary Performance

According to the results of COMFREL’s Parliamentary Watch for the fifth legislature, October 2013 to June 2018, found that early in the fifth legislature the NA was deadlocked and conducted illegal initial sessions with only N/A members of CPP, while the 55 elected MPs of the CNRP boycotted. The boycott was in context of widespread dissatisfaction with the result of general election for the fifth legislature of the NA. The CNRP’s elected NA members protested the result of general election, and they refused to join the initial session after the election even after it was convened by the king of Cambodia. Even with the boycott by the CNRP, the CPP’s NA members still held an initial session, not sanctioned by law, to confirm the validity of each MP’s mandate and vote separately to choose its President, Vice-Presidents and all members of various Commissions of the National Assembly and also passed a vote of confidence on the proposed candidates for Prime Minister and all members of the Royal Government.

²⁴ <https://www.phnompenhpost.com/national/number-municipal-and-provincial-council-members-3rd-mandate>

In the fifth legislature of NA only two political parties obtained seats in the National Assembly. The Cambodian People's Party (CPP) held 68 NA seats, and the Cambodia National Rescue Party (CNRP) gained 55 NA seats. The leaders of N/A structure including candidates for the President and Vice-Presidents of the National Assembly, as well as the Chairpersons and Vice-Chairpersons of the Commissions of the National Assembly were divided among CPP and CNRP, and the President and the second Vice-President were led by CPP and the first Vice-President was led by CNRP since August 2014.

Because of mistrust of election results in 2013, the CNRP boycotted the parliament's initial session for the fifth mandate. However, in 22 July 2014 the CNRP decided to negotiate with the CPP, and then decided to participate in the NA session in August 2014. During that time, leaders of the NA including candidates for the President and Vice-Presidents of the National Assembly, as well as the Chairpersons and Vice-Chairpersons of the Expert Commissions were restructured by division of power between CPP and CNRP by using formula 7 to 6. The newly established tenth expert commission, the Investigation and Anti-Corruption Commission, which separated from the fourth expert commission, and led by CNRP.

COMFREL found that during the fifth legislature, the major opposition party CNRP's parliament members faced intimidation, violence, and illegal removal of parliamentary immunity conducted unilaterally by the ruling party parliamentary majority. CNRP's parliamentary immunity was seriously violated by the courts and NA votes by the ruling party as following:

- In 2014, seven parliamentary members of CNRP were jailed and charged with conducting illegal action.
- On April 2016, His Excellency Oum Som Arn, Siem Reap constituency parliamentary member of CNRP, was kept back by Siem Reap national police and was accused two different criminal offences by Siem Reap court. Moreover, CPP's parliamentary members also approved the accusations and detention of the accused.
- On 13 December 2015, the Phnom Penh court of first instance issued a summons to charge H.E Sam Rainsy with defamation in public and inciting allegedly occurring on 17 April 2008 at Choeung Ek History Museum Sangkat Dongkor Khan Dongkor Phnom Penh city of Cambodia. During this time, CPP's parliamentary members issued its declaration letter which mentioned that H.E. Sam Rainsy's rights, privileges and parliamentary membership for Kampong Cham province constituency, was no longer valid.
- On 30 October 2015, CPP's parliamentary members voted to demote H.E Kem Sokha from vice president of the parliament and also approved the competent authorities to charge him for having an extramarital affair. On September 2017, H.E. Kem Sokha was arrested at midnight in his Phnom Penh home and was accused for treason of colluding

with foreigner. CPP's parliamentary members held an extraordinary meeting to vote approval for competent authorities to proceed with prosecution and detention.

Moreover, during October 2015, two CNRP's parliamentarians H.E Kong Sophea and Nhay Chamroeun were savagely beaten and left seriously injured by pro-government protestors that had been organized outside the National Assembly to demand the deputy party leader of the opposition CNRP, Kem Sokha, resign from the position of first vice president of the NA. At the same time, opposition N/A members and senate members that were active on issue of the Cambodia-Vietnam border were prosecuted by the court and censored by the NA. H.E. Son Chhai the second vice chairperson of N/A expert commission was threatened with removal from his position because of discussing irregularities in the NA national budget allocations.

In 2016, COMFREL reporting found that NA efficiency declined, as CNRP NA immunity was violated, CNRP NA power was reduced and the position of minority leader of the NA was also abolished. The ruling party amended and approved the NA internal-regulations to abolish the legality of minority group leader. Moreover, the RGC encouraged partisan political involvement by the security forces and promoted government officials including arm force and national security guard who had assaulted on CNRP N/A members.

In 2017, COMFREL reporting found continuing declines in the performance of the A when compared with 2016. A serious setback to democracy occurred with the unilateral amendment by the ruling party of the law on political party, used to suspend and removed lawmakers of the CNRP from NA positions and dissolved opposition party. On the legal basis provided by the newly amended political party law, the major opposition party CNRP, which was ready to compete in general election 2018, was dissolved. The political party law amendment also restricted action of lawmakers of CNRP including field visit, comment of NA session etc... which are guaranteed by constitutional of Cambodia and internal regularity of NA. The four Electoral Law amendments which deal with the redistribution of seats of a party that has been banned by the Supreme Court, are seriously detrimental to genuine elections and representation, and an unfair violation of voter's will and rights, because the distribution of CNRP's seats does not reflect voter support.

By the end of the fifth legislature in 2018, COMFREL found that upon the dissolution and distributing its seats to the CPP and other parties which did not win seats in an actual election and received extremely little voter support in 2013, the efficiency of NA continued to severely decline, and there were less activities than in previous years. The field visits conducted by NA members had thinned out, and most of field visits focused attention on party reinforcement. Moreover, the comments expressed by lawmakers during the N/A session are not actively discussing and debating the ratification, amendment or approval of laws.

NA Plenary Sessions: In the fifth mandate (2013-2018), National Assembly carried out 10 session with 139 agenda items. There was an increase of 9 agendas, equal to 7%, when compared to the fourth mandate, in the fourth mandate the NA had held 9 session with 130 agendas. Within the sessions of the fifth mandate, 139 agenda items were discussed. Items that were approved included: 18 draft laws and proposed amendments, 2 hearing clarifications, 2 approvals for the withdrawal of immunity for NA members, 10 election for votes of confidence, 3 approvals of laws for creating institutions, 11 approvals of laws on the national budget, 19 approvals for ratification of international agreements, 50 approvals on other proposed draft laws. 23 others agendas items included royal letters and reports on activities of parliamentarians.

Expressing Comment of Representatives: As a result of observation, it was found that in fifth legislature there were 58 lawmakers who took the floor to make comments for a total of 296 times and 2586 minutes (equal to 43 hours and 6 minutes). The amount of time for expressing comment by lawmakers decreased approximately 5361 minutes (89 hours and 21 minutes) equal to 67% when compared with the same period of fourth legislature when MPs spoke for a total of 7947 minutes (equal to 123 hours and 27 minutes). In the fifth legislature, the lawmakers expressing comment including 30 lawmakers from ruling party made comment in total 186 time equal to 1480 minutes, while 23 lawmakers from CNRP made comment in total 103 times equal to 1049 minutes. Additionally,, lawmakers of FUNCINPEC party which got 41 seats upon CNRP was dissolved by the supreme court of Cambodia made comment in total 7 times equal to 47 minutes.

Parliamentarian's constituency/field visits: According to COMFREL record of fifth legislature showed that 145 parliamentarians conducted the field visits for a total of at least 7003 times, for the purpose of greeting, distributing, inauguration the achievements, strengthening the internal network of its party, accompanying the high ranking officials, and participation in public forum and interventions to solve constituency problems. The field visits for the fifth legislature decreased 22% when compared with the fourth legislature (2008-2013), at least 8726 field visits were conducted by parliamentarians in the fourth legislature. For the fifth legislature, 3315 field visits were conducted by lawmakers from the Cambodian People's Party (2311times in constituency and 1004 times out of constituency), while at least 3552 field visit were conducted by lawmakers from the Cambodia National Recue Party (1905 times in constituency and 1647 time out of constituency) and at least 136 field visits were conducted by lawmakers from FUNCINPEC party (56 times in constituency and 78 times out of constituency).

Letters of Parliamentarians: COMFREL found that 537 letters were issued by 59 parliamentarians including 4 parliamentarians from the CPP and 55 parliamentarians from CNRP. The number of letters in the fifth legislature increased nearly two times when compared to the fourth legislature. There was an increase of 326 letters from the fourth legislature when there were only 211 letters issued by 26 parliamentarians (an increase of 150%). COMFREL observed that the 537 letters included 165 intervention letters, 362 letters for calls to take measures or action, 1 comment letter, 2 question letters, 6 clarification letters, and 62 responsible letters (responses to expert committees).

CHAPTER 2 – THE JUDICIAL BRANCH

INTRODUCTION

The judiciary ranks very low in international comparative assessments, and it suffers from a serious public confidence deficit as it is generally believed that trials are decided by the capacity to pay for the favor of court officials. The extreme democratic deficit of the judicial branch evidenced in 2017 was on display again in 2018, as the courts have been one of three main pillars of the process of lawfare (along with the security services and office of the PM) by which civil society has been repressed and political competition has been eliminated. Changes to the legal framework for democratic participation and competition (the electoral law and political party law), 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. The use of lawfare by the RGC illuminates a basic misconception of the ideal of separation of powers as it would exist in a political system when rule of law is established, and failure to recognize the necessity of checks on the executive as needed for democracy.

The time period for the 5th mandate of the legislature, demonstrated an overall decline in the independence and constitutionalism of the judicial branch. Constitutionalism is considered in terms of adherence to the principles of liberal multiparty democracy and respect for individual political rights. As noted in other chapters of this report there was some improvement in the judiciary's constitutionalism following the 2018 National Assembly elections where the CPP consolidated one-party rule. Releases (although in some cases only on bail) and pardons were an important step toward the restoration of rule of law. However, in some cases the accused were only released on bail and in some cases they were released but still convicted (and so have a conviction record). Moreover, as pardons and releases of political prisoners occurred at the behest of the executive, this improvement cannot be said to be evidence of judicial independence.

In May 2014, without the participation of the major opposition party, the ruling party MPs in the National Assembly unanimously passed three laws which were supposed to constitute the basis of judicial reform. They were aimed at ensuring the independence and professionalism of the judiciary. In practice, they provided the foundation for the 'lawfare' that has been waged by the ruling party at the direction of PM Hun, against any potential political competition or critic,

independent media, and active citizens and civil society activists. The relevant laws included: the Law on the Organization of the Judiciary, the Laws on the Organization and Function of the Supreme Council of Magistracy and the law on the Statutes of Judges and Prosecutors.²⁵ The Law on the Organization and Functioning of the Supreme Council of the Magistracy stipulates that the SCM will have the power to decide and propose to the King the appointment, transfer, delineation of duties, and termination of office of a judge and disciplinary action against a judge (Article 18). An additional concern follows from Art. 5 which does not clearly and expressly prohibit members of the SCM from holding another office at the same time. The law also establishes that the SCM will 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. 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.

This chapter first briefly discusses the findings of international comparative rankings relevant to the ministry and the reports of SCM activities related to judicial governance. Then, it looks at the *lese-majesté* law and how it was implemented in 2018.

PART I – Rankings and Judicial Governance

INTERNATIONAL COMPARATIVE EVALUATIONS

Cambodia was ranked 125 out of 126 countries in a rule of law index conducted by the World Justice Project for 2018.²⁶ The WJP index measures a country's attainment of rule of law based on eight factors: constraints on government powers, the absence of corruption, open governance, fundamental citizen rights, order and security, regulatory enforcement, civil justice and criminal justice. Cambodia was ranked above Venezuela, but below the Democratic Republic of the Congo and Afghanistan.

The WJP index measures a country's rule of law performance based on eight factors. They are constraints on government powers, the absence of corruption, open governance, fundamental citizen rights, order and security, regulatory enforcement, civil justice and criminal justice. The report ranked Cambodia 124th for constraints on government powers, 125th for the absence of

²⁵ <https://www.khmertimeskh.com/49413/parliament-passes-judicial-reform-laws/>

²⁶ <http://data.worldjusticeproject.org/pdf/rule-of-law-index-KHM.pdf>

corruption, 124th for open governance, 117th for fundamental citizen rights, 87th for order and security, 124th for regulatory enforcement, 126th for civil justice and 124th for criminal justice.

“This slide in rule of law in general and checks on government power, in particular, is deeply concerning,” said World Justice Project’s executive director Elizabeth Andersen said that in Cambodia there was both a decline in rule of law in general and in checks and balances on the executive.

The RGC always has not accepted findings of the reports from the independent organizations, and intensively used rhetoric to discredit the evaluation reports, claiming that the reports are not scientific or do not reflect the reality of Cambodia’s progress. The RGC also said that the ranking an effort intended to downgrade Cambodia’s reputation on the international stage because it is the product of Western-based NGOs intending to attack the government. The RGC claimed that color revolution would have resulted if rule of law had not been used in order to crackdown the opposition party and CSOs.²⁷

Cambodian CSOs and legal experts found out that judicial harassment has been used by the Cambodian government to target human rights defenders. The Cambodian government has no willing to change its behavior and standing, it must do more than reform its laws and open legal aid centers. Reform is needed to change its behavior and stance towards human rights organizations and defenders by protecting and supporting them rather than charging them with frivolous or false crimes which ensures that their energy and resources are focused on defending themselves rather than advocating and protecting fundamental rights. Such charges should be reviewed and dismissed rather than taken to trial, and if there is sufficient evidence to go to trial, all fair trial rights should be respected, including the right to a speedy trial, the right to examine witnesses, and the right to remain silent.²⁸

Transparency International noted in the 2018 release of its comparative study on corruption that Cambodia dropped one point from 2017, obtaining a score of 20 out of 100. TI noted that fundamental systemic reforms related to the court have not advanced. This was supported by the Varieties of Democracy Project comparative study which found Cambodia to drop from 19 out of 100 in 2017 to 12 out of 100 in 2018.²⁹

GOVERNANCE OF THE JUDICIARY

At the end of 2017, the ruling CPP consolidated its control over the judiciary with a massive promotion policy for judges and prosecutors, that Ministry of Justice claimed were based on

²⁷ <https://www.phnompenhpost.com/national/government-rejects-rule-law-ranking>

²⁸ <https://www.phnompenhpost.com/opinion/adhoc-5-shows-weak-rule-law>

²⁹ <http://www.ticambodia.org/cpi2018eng/>

achievements and not networks. In a royal decree signed by the King on December 27, 123 judges and 72 prosecutors were given promotions and a pay increase, as stipulated by a 27 December Royal Decree. Independent media linked several promoted judges or court officials to poor practices and partisanism. Sen Leang was promoted and was the investigating judge who played a key role in the verdict against the killer of independent analyst Kem Ley, Oeut Ang. Judge Kung Lean Meg was a presiding judge in cases of ADHOC 5 activists and CNRP Senator Hong Sok Hor. He was involved in cases against both CNRP leaders Sam Rainsy and Kem Sokha, as well as, the case against independent radio broadcaster, Mam Sonando. Judge Pol Samoeun was involved in the case against Tep Vanny. Judge Ros Piseth was involved a case against Sam Rainsy, independent political analyst Kim Sok, and the leader of the Khmer Power Party, Souen Serey Ratha. Judge Ky Rithy was involved in the cases against Kim Sok and CNRP leader Kem Sokha. Judge Keo Mony was promoted even though he had previously investigated, at the order of the King, for questioning an activist without a legal representative. Deputy Court Director for Kampong Speu, Men Vannak, was promoted even though he has been accused of threatening a disabled staff member with a firearm.

Both CNRP leader Sam Rainsy and deputy president Mu Sochua haD fled Cambodia for fear of legal persecution by that time, but Rainsy responded to the promotions by stating that it further undermined the legitimacy of the judiciary and motivated public rebellion as “it pushes the Cambodian people to revolt against the system.” Mu Sochua said: “It’s part of the culture of total and unquestionable allegiance to the supreme leader. No hope for judiciary reforms, no hope for justice until there’s a fundamental change of such a culture.” Boeung Kak representative Chan Puthisak said the promotions were a reflection of the unfair justice system for activist and human rights defenders which rewarded courts subservient to the ruling party.³⁰

The Ministry of Justice accused external evaluations of the judicial system as being biased and indicated in 2017 that it would conduct an internal review. It indicated that it would conduct an assessment 100 days on effectiveness of the courts. The Ministry of Justice claimed that the study would use a scientific methodology to create reform strategies. The ministry indicated the investigation would consider: “management, internal policies, resources and legal procedures, as well as the needs and satisfaction of customers, accessibility and price of services and the public’s level of trust in the courts.”

The CSOs observers found that self-assessments led by the government, were not conducted objectively and transparently in order to identify fundamental problems. Because the self-assessment for partisanism of the courts is being assessed by the same officials that are involved in and complicit with such politicization of the judiciary. The manner in which the Courts have

³⁰ <https://www.phnompenhpost.com/national-politics/judicial-officials-promoted>

not been held accountable by the executive and instead serve as means for the executive to consolidate power and occlude arbitrary rule. Moreover, there has been no real efforts to address the economy of justice for which the courts are well-known, wherein decisions find in favor of the those more capable of paying the court for support. More information on the measures used and the findings of the assessment are needed, especially as the RGC seeks to present this self-evaluation as an alternative of external assessments of the judiciary.

In Cambodia the highest judicial body is the Supreme Council of Magistracy (SCM). In late February 2017 the Supreme Council of the Magistracy had conducted a meeting for review and discipline of the judiciary. It resulted in disciplinary action for two judges and three deputy prosecutors. Moreover, 54 judges and 31 prosecutors were transferred to different posts. However, the RGC did not disclose the full details of the judiciary officials that were being punished or the infractions.³¹ On 19 February 2018, The SCM held its annual meeting for disciplinary actions and appointments/transfers.³² A press release provided indicted that 12 judges and 5 prosecutors had been disciplined, but provided no details regarding the names and infractions. The SCM indicated that Sok Kalyan was transferred from director of Prey Veng Provincial Court to director of Sihanouk Provincial Court, while the director of Sihanouk Provincial Court, Mong Monychakrya, was transferred to Prey Veng. For the Phnom Penh Municipal Court, two deputy directors were appointed and for the Kandal Provincial Court one deputy director was appointed. One prosecutor was appointed for the Court of Appeal, and five deputy prosecutors were transferred. Notably, Hy Sophea, a secretary of state at the Ministry of Justice was appointed to a position on the Constitutional Council In Bopha, a judge with Prey Veng Provincial Court, was appointed as director of the Royal School of Clerks at the Royal Academy for Judicial Professions. Employment was extended for two Supreme Court judges that were supposed to retire, Iv Kim Srey and Chum Samban.³³

The SMC claimed that there were no serious infarctions among judicial officials: “This is for a small mistake that they forgot in their procedure. It is just administrative discipline.” This seemed to indicate a refusal to acknowledge serious infractions and provide the enforcement necessary to deter corruption in the courts. On the other hand, in at least one case, a judge was reinstated that had been found to be responsive to civil society advocacy for rule of law in land disputes. Saing Serey was reported by ADHOC to have dropped the charges against an accused land activist in one case. The judge was suspended from Koh Kong court in March 2017, and reinstated to Prey Veng.

³¹ <https://www.phnompenhpost.com/national/court-shuffle-discipline-set>

³² <https://www.khmertimeskh.com/109502/top-judicial-body-agrees-reshuffle/>

³³ The law allows the council permission to re-employ judges and prosecutors at the Supreme Court who are over the age of 65-years-old, based on individual assessment.

CSOs actors asserted that the annual review simply reinforced the lack of transparency that underpinned public mistrust of the judiciary.³⁴ The courts' officials have failed to provide justice, and without punishing judges accordingly, efforts at reform will be insubstantial.³⁵ According to a Royal Decree dated 27 October, 60 judges and prosecutors were transferred to different posts.

In November 2018, the Royal Academy for Judicial Professions (RAJP), which is subordinate to the Ministry of Justice, announced that 745 individuals were participating in entrance exams to study judicial professions at that academy, as part of its annual efforts to recruit 50 new judges and prosecutors for the country.

In 2018 there were approximately 400 judges and prosecutors in Cambodia. However, the government conceded that the number was insufficient.

CSOs found out that the policy decision of creating more Courts of Appeal was inadequate and that deeper reforms were needed. The recruitment process involves corruption and is not carried out with transparency. Bribes must be paid in order to become judges and prosecutors, and they attempt to get the money back during their careers.³⁶ Notably, a 2015 investigation into the academy by the International Bar Association found pervasive and institutionalized corruption.³⁷

In February 2018, the Cambodian National Council for Women released findings of its investigation into gender equality in the Cambodian judiciary. It found a detrimental imbalance at all levels of the judicial system. There were only 37 female judges, just 14 percent of the total; and there were only 23 female prosecutors, just 12 percent of the total. The number of judges in 2017 had increased by only one when compared to 2013 and actually decreased by 2 when compared to 2016. Of the 22 judges on the Supreme Court there were only 3 women, and of the 29 Appeals Court judges, only 2 were women. Also, in 2013 there were 708 male lawyers and 158 female lawyers in Cambodia, while in 2017 there were 813 male lawyers and 206 female lawyers.³⁸

PART II – Case Study

Lese-Majeste Law and Politicization of the Courts

³⁴ <https://www.phnompenhpost.com/national/judges-prosecutors-disciplined>

³⁵ <https://www.rfa.org/english/news/cambodia/court-10302018152904.html>

³⁶ <https://www.phnompenhpost.com/national/academy-recruits-judges-and-prosecutors-amid-shortage>

³⁷ <https://www.phnompenhpost.com/national/intl-bar-group-rips-kingdoms-courts>

³⁸ <https://www.phnompenhpost.com/national-post-depth/cambodias-courts-its-mans-world-effects-felt-female-employees-and-victims-alike>

The law is of concern to democracy supporters, human rights organizations, and citizens because of the potential to seriously restrict speech. CSOs vehemently rebukes any insult to the monarch of the Kingdom of Cambodia, HRH Norodom Sihamoni. Regarding the law (a change to the Criminal Code, see chapter on Legislative Branch), CSOs find that the law has the potential to minimize the constitutionally mandated role of the king as guarantor of an independent judiciary (article 132). However, because the current judicial laws do not provide the King with any substantial decision making authority, they contradict that constitutional provision and erode the ability of the King to influence the judiciary vis the SCM. CSOs and Independent legal experts found out the law on the Supreme Council of the Magistracy and the constitution are not consistent. Because the constitution implies that the King has no power and cannot rule.”³⁹ CSOs find that the law can be wielded in a way so as to criminalize any appeal to the King to mediate the political situation. In October 2018 opposition leader Sam Rainsy called on the King to mediate the political situation. However, it was rejected by ruling party spokesman Sok Eysan rejected the proposal saying “the duty of the king cannot violated the law.”⁴⁰ CSOs find

it inconsistent with fully free democratic public sphere that media and social media discussion which even mentions other speech in which the King is criticized can be held criminally liable. If interpreted broadly, which is not uncommon in politically motivated cases, it could be that criticisms of state bodies which are, according to law, sanctioned by the King, could be interpreted as criticisms of the King himself. For example, if citizens or groups criticize the legitimacy of the parliament whose opening was presided over by the King. Or if citizens criticize the legitimacy of the Supreme Court but it has not been found failing by the Supreme Council of the Magistracy, presided over by the King, and so the criticism of the court is taken as a refutation of the King’s decision.

CASE 1 – Kheang Navy

On 13 May 2018, Kheang Navy was charged for violation of the new lese-majesté law. He was the first person officially charged, accused of violation of Article 437 of the Criminal Code. He is 50 years-old and primary school teacher from Kampong Thom province. He was arrested only hours after posting a comment in response to another person’s Facebook post. He commented on the post of a provincial government official regarding a birthday celebration for the King which took place in Kampong Thom. In his comment, the defendant linked the King to the dissolution of the CNRP and to the “loss of Khmer land.”

The police chief for Stung Sen district asserted: “He insulted the King in his comment, and he fully admitted his fault.” The deputy police chief of Kampong Thom province, Yen Saren, informed

³⁹ <https://www.phnompenhpost.com/national/royal-silence-cambodias-judiciary>

⁴⁰ <https://www.phnompenhpost.com/national/calls-king-mediate>

media that the defendant had made the comments of his own free will and not at the behest of anyone else. Ministry of Interior spokesperson Kieu Sopheak said the insult of the King would bring consequences, however it was done, and presented the matter as a defense of constitutionalism: “No matter if it is Facebook or whatever, we will impose legal actions because it was an offence according the Constitution.”⁴¹ However, the Minister of Information, Khieu Kanharith, pointed out the role that government mouthpiece media organization Fresh News played in dissemination the insult publicly said yesterday on Facebook that media reports have helped expose the message to the public: “I think that the same message was posted again by Fresh News and people will read it much more than when it was posted by the teacher alone. If you publish the insult on your platform, then it will help the original intent of the accused.”⁴² The Ministry issued an announcement to all media organizations instructing them to avoid publicizing or sharing insults.⁴³

CASE 2 – Ban Samphy

Police arrested Ban Samphy⁴⁴ was arrested 18 May 2018 for sharing a Facebook post that authorities deemed to be insulting to the King, according. Police noted that the post Samphy shared was originally uploaded to Facebook by an account named “Khmer Thatcher” on 13 May. Saturday for sharing a Facebook post deemed insulting to the King. According to to Sok Sotheavuth, Chikreng district police chief: “He confessed that he shared that post. The picture he shared was for his group to see. He said he was angry with the King . . .But he confessed that he was wrong to share the post. But he said [he did so] because he was angry.”

The alleged insult entailed an unfavorable comparison of the current King and prior monarchs which accompanied a video clip of King Sihamoni in a car with PM Hun Sen and his wife Bun Rany together with a video clip of villagers suffering the effects of flooding. According to the court document issued by Nguon Nara, an investigative judge for the Siem Reap Provincial Court, indicated that Samphy was charged with the amended Article 437 of the Criminal Code for “insulting the King” and ordered pre-trial detention. Article 437 says that “the use of words, gestures, writings, sketches or objects which undermine the dignity of a person constitutes an insult. Insulting the King is liable to one year to five years in jail and a fine of 2 million [\$500] to 10 million riel”.

⁴¹ <https://www.phnompenhpost.com/national/arrest-lese-majeste-violation>

⁴² <https://www.khmertimeskh.com/489120/teacher-charged-under-new-royal-insult-law/>

⁴³ <https://www.khmertimeskh.com/493767/ministry-warns-media-about-lese-majeste/>

⁴⁴ Ban Samphy, 70 years old, a Ponleu Preah Phos villager, from Kampong Kdei commune, Chikraeng district, Siem Reap province.

Chin Malin, spokesperson for the Ministry of Justice, indicated that the scope of the law could be broad based on interpretation of individual intentions. He made clear that sharing social media posts done with “ill intentions” is just as liable for punishment as creating an insulting post: “It is a crime if it was ill intended, meaning that if he knew sharing that information would affect the rights of other individuals or public order but shared it anyway, he would be guilty. But if he just shared it without the above mentioned purpose then it would not be a crime.” The spokesman for the Bar Association of Cambodia, Yim Sary, posited that ignorance of the law was not a defense, but that it was not the obligation of the Bar Association to make the public aware and was instead each individual’s duty: “If they want to insult anyone, they have to do research to find out if there is a law on this. They must do the research themselves.”

A legal expert Mr. Sok Sam Oeun indicated that he thought that the picture and caption shared by on Facebook was probably sufficient to convict the defendant. However, he also pointed out the responsibility of the authorities to ensure proper dissemination and public education regarding the law, as it only went into effect in March of 2018. He asserted: “In this case, I believe the court should hand down a light sentence as a warning. But it is no excuse for the insult in the first place. I just think the government did a poor job of disseminating information on the law. And the court, even though there is no cybercrimes law yet, should let it be known that if you use Facebook to share another person’s post, it effectively means you posted it yourself. People need to know this, otherwise people may think they are just innocently sharing someone else’s opinion and not know they may be breaking the law.”⁴⁵

The Siem Reap provincial court judge Um Chanthol, sentenced the 70-year-old barber to a year in prison, but he would serve a reduced sentence of seven months.⁴⁶ Despite having served out his sentence his release was blocked by the provincial prosecutor.⁴⁷ After an Appeal Court hearing of 28 January 2019, the sentence was increased after the deputy prosecutor of the Siem Reap provincial court submitted a complaint that his sentence was not severe enough. The Appeal Court increased the sentence to one year in prison, with two months suspended. Samphy’s defense attorney, Sam Titseyha asserted the verdict was unfair disputed the criminality of sharing information on Facebook. He claimed: “If we examine closely, there is no law related to sharing information on Facebook. And if the court thinks that his action does not seriously affect society, the court should punish him at a level which gives him the opportunity to return to society.”⁴⁸ He was finally release from jail on 22 March 2019. Ang Vong Pheak, Samphy’s

⁴⁵ <https://www.phnompenhpost.com/national/second-man-charged-under-countrys-lese-majeste-law>

⁴⁶ <https://www.phnompenhpost.com/national/barber-jailed-insulting-king>

⁴⁷ <https://www.phnompenhpost.com/national/lese-majeste-violator-remain-behind-bars-while-appeal-lodged>

⁴⁸ <https://www.phnompenhpost.com/national/lese-majeste-convict-not-free>

daughter pointed out that more than 400 Facebook users had shared the same post, she said, but no one else had been arrested. Ban Samphy was a former CNRP official.⁴⁹

Minar Pimple, Amnesty International’s Senior Director for Global Operations, said: “Ban Samphy is behind bars for expressing himself – all he did was click a ‘share’ button for a post that included nothing but peaceful criticism. He should be released immediately and unconditionally, and his sentence must be overturned. This is a brazenly political verdict. Earlier this year, Hun Sen’s administration devised this ‘lese majeste’ provision to the Criminal Code to muzzle peaceful criticism, as this first conviction shows. This legislation must be repealed.”⁵⁰

CASE 3 – Ieng Cholsa

The individual was arrested on 14 June 2018 following Facebook posting that was deemed insulting to the King. In this case, police informed national media that the investigation was done by the Cybercrime Department of the Ministry of Interior. Koy Sopheap, deputy Svay Rieng police chief in charge of criminal offences, said he did not have information about the case as it was investigated by the Cybercrime Department. National media seemed convinced of the violation and wrote: “Cholsa’s Facebook account indicated he had made three posts on the night of June 13, all of which insult and threaten the King.” The posts included: one with a picture of 500 real note with the image of the King; one with an unidentified individual who appears to be consuming narcotics; and one with a photo of the King and his mother Norodom Monineath Sihanouk. Although arrested in June, he was not tried for several months. On 9 January 2019 the Phnom Penh Municipal court convicted the defendant and sentenced him to three years in prison.⁵¹

CASE 4 – Sam Rainsy

In statement dated 18 May 2018 and made public in early June, King Sihamoni asserted that the general election of July 29 was in accord with liberal pluralism, even without the participation of the disqualified CNRP. The King instructed voters to reject “warning and threats” which could inhibit votes from participating in the election. Sam Rainsy posted on Facebook that the King’s letter was either a forgery or written under duress. On 23 May 2018 Sam Rainsy issued a public letter to King Sihamoni requesting he refuse to endorse the election

⁴⁹ <https://www.phnompenhpost.com/national/ex-cnrp-official-out-jail>

⁵⁰ <https://www.amnesty.org/en/latest/news/2018/10/cambodia-first-royal-insult-conviction-a-new-low-for-government/>

⁵¹ <https://www.reuters.com/article/us-cambodia-king/cambodian-jailed-for-three-years-for-insulting-king-on-Facebook-idUSKCN1P31OD>

and Hun Sen's call for citizens to vote because of the political situation. In that letter he suggested that King Sihamoni's statement was backdated to appear to be written before Sainsy's letter as a means to avoid 'shame'.⁵² After the allegations were made by Rainsy, the Ministry of the Royal Palace issued a press release claiming that the accusation of forgery in the King's letter constituted "ill-intent".⁵³

The pro-government Khmer Times published a letter at the end of May from a member or representative of the pro-government Union of Journalist Federations which attacked Sam Rainsy character, referring to him a loser and stupid, and accused him of insulting the King with a comment about the election.⁵⁴ The Phnom Penh municipal court issued a warrant on 19 June 2018 (signed by prosecutor Sieng Sok) which ordered Sam Rainsy to appear before the court on July 12. Both the Cambodian Youth Party (CYP) and the Cambodian Nationality Party (CNP) also asked the court to prosecute Rainsy. CYP president Pich Sros stated: "On behalf of a political party that follows the King, I do not support Rainsy's actions that insult the King. He is responsible for his actions according to law. Therefore, I call on the court act against Rainsy.... It is the Ministry of Justice's duty to enforce the law." Justice Ministry spokesman, Chin Malin, contended: "This case involves our national reputation and is a serious violation towards the King. If this were an ordinary case, it would not need a direct order [from the Ministry of Justice]. However, this case is very sensitive as it affects the King, who is a symbol of the nation." Ang Vong Vathana, the Minister of Justice, ordered the court to prosecute Rainsy. However, former opposition MP Ou Chanrath pointed out: "I think it's not strange in political competition. This is nothing new as we all know the Ministry of Justice is unlikely to provide justice to the opposition." The claims made by Rainsy were denied by the Ministry of the Royal Palace issued a press release claiming that the accusation of forgery in the King's letter constituted "ill-intent".⁵⁵

The violation would mean Rainsy, in addition to imprisonment from various prosecutions, faces up to 5 years imprisonment.⁵⁶ The warrant by investigating judge Ham Mengser dated August 16 stated: "Sam Rainsy is ordered...to appear at the Phnom Penh Municipal Court...on September 13, 2018, at 9:00 a.m. sharp to be questioned over insulting the king, done in Phnom Penh and other places on June 6, 7, and June 10, 2018."⁵⁷ Rainsy did not appear at Court on the date ordered. Rainsy clarified his claims and indicated to stand by his claims, saying: "When I said the King's letter had a fake date, it was not an insult. I wanted to target Hun Sen, who holds the King hostage." So Chantha, a professor of political science, opined that Rainsy's outstanding political

⁵² <https://www.rfa.org/english/news/cambodia/summons-06202018161940.html>

⁵³ <https://www.phnompenhpost.com/national/court-told-act-against-former-opposition-leader-insulting-king>

⁵⁴ <https://www.khmertimeskh.com/494545/rainsys-letter-only-insults-the-king/>

⁵⁵ <https://www.phnompenhpost.com/national/court-told-act-against-former-opposition-leader-insulting-king>

⁵⁶ <https://www.khmertimeskh.com/502935/sam-rainsy-summoned-for-insulting-the-king/>

⁵⁷ <https://www.voacambodia.com/a/former-opposition-leader-summoned-for-insulting-king/4539750.html>

cases would only eventually be solved through a political solution and correlating pardon from the king. He noted: “Rainsy has been charged many times due to his political rhetoric, [creating] political tension. So when there’s a political solution, he should request [the King] for a pardon and everything will be cleared.”⁵⁸

⁵⁸ <https://www.phnompenhpost.com/national/rainsy-skips-court-king-insult-case>

CHAPTER 3-

THE EXECUTIVE BRANCH

2018 saw a host of problems for democracy which occurred in 2017 cemented in the Cambodian political system, both normalized and institutionalized. The executive continued to centralize power, the removal and elimination of political competition and political criticism were furthered, the executive maintained a climate of fear through frequent threats against critics as well as invocations of potential war and civil conflict, and the security sector maintained an active role in politics with a wholly partisan stance. In 2018 the degree of repression decreased considerably in the post-election, but the period of lightened repression did not reverse the overall trend toward authoritarianism in the 5th mandate of the National Assembly.

Part I – Discourse Impacting Democracy and Rights

On 15 February 2018, the Foreign Affairs Ministry released a report which sought to set out justification for the arrest of Kem Sokha and the elimination of the major opposition party for treason and rebellion. The report, titled ‘Stability and Development First’, rebuffed criticism of other states and international organizations related to human rights and democracy in Cambodia. The report claimed:

“If their memories served them well, these critics would know that over the past six decades one of the worst tragedies of the twentieth century inflicted our country and was the result of foreign interference... This is the bitter lesson that the Cambodian leadership must keep in mind today. So it is imperative that the Royal Government protect all of its people from Western governments meddling in the internal affairs of the country... When we do, we are applying the very laws that were drafted, preached and taught to us by Western democracies, which are so keen to put in place a legal and judicial system to help us become a state respecting the rule of law.”⁵⁹

In mid-February 2018, a leaked document of the CPP 5-year plan was obtained by media. The document outlined the ruling regimes intention to move closer to China and utilize its support to buttress against perceived foreign interference, as well as the primary goal of expunging elements seeking a popular uprising in Cambodia. The document noted how the CPP aims to mediate superpower competition in a multi-polar world, and points to different forms of hegemony such as political, economic, scientific, and ideological. It notes that the ruling party

⁵⁹ <https://www.khmertimeskh.com/108996/report-defends-sokhas-arrest/>

aims to implement reforms to foreign policy to move away from traditional diplomacy and increase economic diplomacy. It argued that a new level of threat from revolutionary movements within Cambodia linked to foreign powers and opposition groups. The document states: “We will heighten serious caution to any attempts to apply color Revolution from external actors with the aim of toppling the legitimate Royal Government by opposing foreign interference in the internal affairs of Cambodia and work to retaliate against their dark tricks.”⁶⁰

In February 2018 the Council of Ministers released 132-page book which extrapolating upon the government narrative of a thwarted attempt and continued threat of color revolution. It accused interfering states as attempting to bring about an “immeasurable catastrophe” in Cambodia. It reiterated and complied often repeated claims about the necessity of eliminating the major opposition party. Government mouthpiece media reported that 70,000 copies of the book would be distributed. According to the book Cambodia was and in some ways still is on the brink of war. It reads: “Prime Minister Hun Sen has said repeatedly that the recently ended war could reoccur in Cambodia. This is not a threat or a psychological method to win over the opponent. The opposition has said that they do not possess weapons, but their words, actions and potential violence are the triggers that can initiate war.” The book also refutes closed independent media outlets VOA, RFA, VOD, and Beehive Radio and alleges that they purposely misrepresent events with the aim of “in order to poison the social environment”. Additionally, it claims that CSOs (including Licadho, ADHOC, the National Democracy Institute, Transparency International, Comfrel and Nicfec) of being in league with the rebellious former opposition party.⁶¹

Also in February, the ruling Cambodian People’s Party working groups received instructions in the form of 10 diktats (key points) from Prime Minister Hun Sen, which ordered increased surveillance and policing against the opposition bringing the party’s recent vows to increase surveillance and restrict dissent to the local level. The PM Stipulated that local level officials must emphasize the good deeds and accomplishments of the party in order to “continuing to grow the grassroots movement gradually and actively”. Point six reads, Cambodians: “must unite together to take action to prevent tricks that attempt to block democracy and the election process in Cambodia.” The CPP’s was also obtained by independent media in early February. It indicated that the ruling party is focused on increasing surveillance and eliminating all opposition forces as they function to distort the truth. Banteay Stoung Commune Police Chief Khiev Khuoth said the CPP working group had ordered him and other local security officers to recruit local guards for the purpose of surveilling the population and reporting back to party leadership.

⁶⁰ <https://www.voacambodia.com/a/leaked-ruling-party-platform-shows-desire-for-closer-relations-with-china/4251740.html>

⁶¹ <https://www.voacambodia.com/a/in-new-book-governmetn-details-color-revolution-plots/4256237.html>; <https://www.phnompenhpost.com/national-politics/government-unit-publishes-132-page-treatise-threat-colour-revolution>

Referring to the key points set out by the PM, CPP warned that “ It is only tightening for the illegal, naughty group, and they do not dare to do anything because when they stand up, they will be [jailed].” CNRP leaders commented that : “It’s counter-productive as people will be pushed to find other options such as responding to CNRM calls. It’s the passive resistance effect.”⁶²

In a public letter ostensibly issued to wish Cambodians a happy new year celebration, the PM lauded the efforts of his government in cracking down on and eliminating treasonous and revolutionary threats in the society. He declared: “In the previous year, though Cambodia faced obstacles both inside and out, the defence of the people and national security has been enhanced firmly.” He also reiterated the claim that Cambodia had successfully avoided the color revolutionary threat and treachery of the opposition party which sought to overthrow the “legal government”. He announced that 2017 was the year in which revolution failed in Cambodia and argued that all actions taken by his government has been necessary for peace and stability. At the same, time he admitted that reform was needed as the government needed to “look in the mirror” and make itself “clean”. He has also rejected the option of dialogue with the opposition [CNRP].

CNRP leaders affirmed: “The CNRP stands on principles of nonviolence. We have never thought of competing for power by using the color revolution.” CSOs and Independent commentators find that “political space and liberal democracy, for Hun Sen, have become dirty words and his staunchest enemies.”⁶³

Also on 23 May 2018, PM announced publicly that those who insult him would die in poverty and without a plot for their buried bodies. He then pointed out how the Khmer Rouge had been very insulting to him and used their fate as evidence of what happens to those who challenge him. He claimed: “So, those who insult uncle [himself], “I think they will receive the same result as those like Pol Pot. No one insulted me more than Pol Pot.” He also claimed that Khieu Samphan has insulted him many times in negotiations and then begged to defect to the government. Referring to deaths by lightning that had happened at that time, the PM declared: “I would like to say . . . it was members of the opposition who got hit by lightning. I heard [of the incident] and I said it happened because [they] insulted Hun Sen so many times. Sometimes, their fortune is not as

⁶² <https://www.phnompenhpost.com/national-politics/cpp-issues-local-level-diktats>

⁶³ <https://www.phnompenhpost.com/national-politics/colour-revolution-seriously-failed-hun-sen-praises-cambodias-political-crackdown>

high as Hun Sen's. Sometimes [the opposition] insult Hun Sen then die in car crashes, get struck by lightning, get electrocuted, or perish in a home fire."⁶⁴

Prior to the 2018 National Assembly Election, PM Hun Sen felt the need to give a public announcement declaring that he had not created or paid to create the many new opposition parties created for the 2018 national elections. He claimed that party participation was a reflection of liberal pluralism and respect for political rights. He stated: "Some people think those parties are created by Hun Sen. They seem to look down on other political parties." He declared that the most important thing is that the government ensure peace and development to protect multi-party democracy in Cambodia.⁶⁵

The 2018 post-election relief involved a prisoner release and well much reduced antagonistic discourse toward the international community, as well as national civil society and media. On 23 August 2018, after releasing Boeung Kak lake activists and two former RFA reporters that had been jailed for espionage, the PM indicated that a major release of prisoners linked to the CNRP would occur. He declared: "I plan to request pardons for 12 other people. If I demand they apologise, they should prepare a letter. However, if they issue comments that [the pardons] are because of international pressure, I would hold on. I would hold on until the person making the comments is punished...Let me remind you. . .don't be rude. People who were recently released. . . don't defy me. Do not think that we cannot imprison you again. In Cambodia, there are no laws that prohibit people who were already in prison, to go to jail again for the second or third time. That is not to say that we are shutting your mouth. You can still speak, as long as what you say doesn't violate other peoples' rights. You need to remember that your freedom borders on the freedom of others."⁶⁶

In late September, Prime Minister made a public speech discussing an alleged attempt on his life that took place 20 years ago⁶⁷, so that he could announce that he has forgiven the assailants. He posted on social media detailing the incident. Prime minister Hun Sen said he has forgiven those responsible for an attempt on his life 20 years ago, using the anniversary to further express his determination to prevent any "coup" or "color revolution" from taking place in Cambodia. He

⁶⁴ <https://www.phnompenhpost.com/national/hun-sen-detractors-will-die>

⁶⁵ <https://www.khmertimeskh.com/492268/prime-minister-denies-he-creates-parties-to-contest-the-election/>

⁶⁶ <https://www.phnompenhpost.com/national/hun-sen-hints-pardons-imprisoned-cnrp-members>

⁶⁷ Hun Sen has claimed: At 8:52am on September 24, 1998, an anti-tank rocket was fired at his motorcade but missed, hitting a villager's house located on the other side of the road instead. One villager was killed and another injured. After the attack, the two main opposition leaders at the time, Prince Norodom Ranariddh of Funcinpec and Sam Rainsy of the Sam Rainsy Party left the country...At the time, many suspected that Hun Sen himself might have engineered the attack as an excuse to crack down on the opposition."

declared: “I have forgiven the people who attempted to murder me in Siem Reap. [But] you need to know that I am still the prime minister and I will not let you murder me and I will not let you attempt a coup or color revolution,” he wrote.

In conjunction with International Press Day, PM Hun Sen issued a statement which declared: “Cambodia’s peace remains fragile because of incessant interfering and intervention into Cambodia’s internal affairs by external actors,” he said. “Despite pressure and threats from them to impose sanctions under the pretext of either democracy or human rights, Cambodian people and the government still adhere to the strong will to maintain peace and stability...I appeal to all compatriots to work with the government to promote peace nationally and internationally to boost unification, continue the culture of dialogue, and respect of laws. Join with the government to prevent tricks and attempts of all forms that intend to destabilize and plunge the country into chaos.”⁶⁸

In November, for the anniversary of the 65th Cambodian Independence Day and the establishment of the RCAF, while speaking in front of the King, Prime Minister Hun Sen issued a public vow to continue to push back international forces interfering in Cambodian affairs and attempts to create revolution inside the society. He posited: “The government is determined to protect national independence, peace, sovereignty, territorial integrity and social achievements to enhance national prestige. We are firmly opposed to [foreign] interference in [Cambodia’s] internal affairs and any activities relating to a Colour Revolution or incitement that causes social turmoil or political instability.”

In November, PM Hun Sen refuted allegations of nepotism with regards to the promotions of the family members of several high ranking ruling party officials. Speaking to an audience of several hundred high school seniors who obtained grade A at that level, he claimed that advancement in the RGC was based solely on merit. He claimed: “We promoted our children. But they are people and also officials in government or the military. [Critics] say we [have promoted them] to strengthen power. We just sent them for training. If this was not to improve their capabilities, why would we train them?” Just days prior to that announcement by the PM, a Royal Decree was issued which appointed Suy Dimanche to the position of Joint Secretary of State of the Ministry of Mines and Energy. He is the son of the Minister of Mines and Energy, Suy Sem.⁶⁹

On 27 November 2018, Prime Minister Hun Sen mocked those critics as trying to obtain asylum abroad. In a speech to the Union of Youth Federations of Cambodia congress, the PM claimed

⁶⁸ <https://www.khmertimeskh.com/535836/hun-sen-decries-external-interference/>

⁶⁹ <https://www.phnompenhpost.com/national/pm-denies-nepotism-claims>

that it was normal that the opposition criticize him because they were trying to get money from foreign governments and support to live abroad.⁷⁰

On 12 December 2018, PM Hun Sen rejected as rumors spread by gangsters, claims that there were tensions or a rift among the top CCP officials and that Senate President Say Chhum and Interior Minister Sar Kheng were set to be removed from their positions. He referred to the information as spread by stupid and evil agents, and claimed that the member of the former CNRP were seeking to incite public disorder. He was most likely referring to Chham Chhany, a social media activist that supports Sam Rainsy, who had posted information about an internal source.⁷¹ The major concern of democracy supporters is that cases such as these will be used a pretext to clampdown further on social media and expression in public space. Once commentary is labeled as evil, repression of expression and even its criminalization becomes normalized.

On 17 December, PM Hun Sen declared that only the ruling party was capable of ensuring peace. He also claimed that he would serve as PM until the opposition was eliminated completely. He stated: “I will serve as prime minister until the opposition group is destroyed because only Hun Sen is capable of confronting these evil people. Do not let them destroy our peace. Only the CPP is capable of ensuring peace, which is the foundation of development.” He claimed that he had considered retiring from rule, but that because of the treasonous betrayal of the country he had to remain in power out of necessity.⁷²

At the end of December 2018, the ruling CPP, held its annual party congress. It had attained a single party rule system through total dominance over both houses of the parliament as well, the judiciary, and the entire civil service of the state bureaucracy. Approximately 1,000 of the top party members gathered to discuss political planning and strategy. In order to respond effectively to external pressure and continue to maintain rule the party decided it must focus on internal reform and improved diplomatic relations. This was explained by CPP spokesman Chhim Phal Virun: “We discussed achieving more victories for our party by responsibly leading the country and forming strategies on internal reforms and how to handle international pressure. Internal reform means we look in the mirror, take a bath, clean our bodies, clean dirty things and cure any illness. Reform is to ensure that we stay with the people and the people stays with us – we have to serve the people, it is their mandate.” He rejected international criticism and said the EBA was unimportant to the CPP, as it has only produced negative reviews. He highlighted

⁷⁰ <https://www.khmertimeskh.com/553545/pm-hun-sen-blasts-people-who-insult-him-and-government-to-gain-asylum/>

⁷¹ <https://www.phnompenhpost.com/national-politics/hun-sen-rejects-rift-rumours-spread-stupid-gangsters>

⁷² <https://www.phnompenhpost.com/national-politics/pm-cpp-capable-ensuring-peace-until-opposition-destroyed>

that nationalist sentiment uniting ruling party supporters when he asserted: “Just because we are friends does not mean that you are our boss.” It is clear that the strategy is to outlast the negative effects of EBA withdrawal while maintaining the regime. He asserted: “We are prepared if they decide to withdraw the EBA status, because we will still be able to survive. But if they choose to keep it, then we will still be strong.”

In November, the EU had initiated the formal process of removing Cambodia from participation in the ‘Everything but Arms’ trade scheme which makes a fundamental contribution to Cambodia’s economy through export-based revenues. Hun Sen asserted in a public speech: “If you want the opposition dead, just cut it. If you want the opposition alive, don’t do it and come and hold talks together.” He also asserted that critics and dissidents should flee the country: “People are prepared to flee, be prepared. I won’t forgive them.”⁷³ The threatening discourse by the executive, alleging incitement and insurrection by political and civil society critics, would continue into 2019, despite the stated aim of improving the democracy situation in order to appease major donors and trade partners. In January 2019, PM Hun Sen declared that the opposition would be eliminated entirely if the EU canceled Cambodia’s EBA status.

Part II – Key Areas of Reform

Deconcentration and Decentralization

Decentralization in a policy initiative focused on public finances which in running from 2016 to 2020, with the aim of increasing democratic accountability and responsiveness of government by empowering local level authorities planning and spending capacities with outputs that improve conditions for constituents. In July 2018, just weeks prior to the national election, the government issued a sub-decree mandating the transfer of 124 million USD from national funds to local level budgets.

In November 2017, the CPP unilaterally passed a budget for 2018 of 4.3 billion USD. Specifically, article 4 of the sub-decree stipulates a part of the national budget will be transferred to the communes, measured as a percentage of state revenue. As a result, for 2019 the commune budget will be 3 percent of national revenue, as set out in the budget for 2018 (129.6 million USD). For 2020, commune funding will be 3.1 percent of the 2019 budget figure for government revenue, and eventually in 2023, it will be 3.4 percent of the 2022 budget.

In December 2018, the National Committee for Sub-National Democratic Development (NCDD) held a workshop. Speaking on the topic of the NCDD Action and Budget Plan for 2019, Deputy

⁷³ <https://www.japantimes.co.jp/news/2019/01/14/asia-pacific/cambodian-prime-minister-warns-dead-opposition-eu-withdraws-preferences/#.XLgJxOgzbic>

Prime Minister Aun Pornmoniroth said that three important areas reforms had been advanced which set the foundation for policy plans and the rectangular development strategy in the 6th mandate of the NA. These were decentralization, public finance management, and public administration. On Decentralization, he posited: “We have clearly determined the establishment of some mechanisms, including town and district funds, sub-national democratic development funds, the transfer of resources with conditions, and the arrangement of a direct income source for town and district administrations.” He also indicated that there was a review of the spending with the aim increasing district funding, and that there is a plan to create a mechanism to ensure the fair distribution of tax income to sub-national administrations based on their needs and amount of work.⁷⁴

The Deputy Prime Minister Sar Kheng, the Chairperson of the National Committee for Sub-National Democratic Development (NCDD), noted that many national level ministries had not yet implemented the decentralization reforms. He argued that this was necessary for the long-term commitments of the government and to fulfill a central component of the CPP platform. He noted: “All provincial-municipal administrations have started implementing decentralization and deconcentration reform mechanisms gradually. But at the national level, only some ministries have so far arranged and altered leadership mechanisms. With respect to this problem, I would like to ask the ministries that have not begun implementing the mechanisms to begin implementing the reforms from early next year. We cannot delay the process anymore. “I would like to request to the secretariat of the three reform programs – decentralization and deconcentration, public administration and public financial management – to continue cooperating, facilitating and discussing with ministries, institutions and involved sub-national administrations in preparing structural reform for the first quarter of 2019. We aim to ensure that towns and districts can fulfil their work completely in the new structures and systems from 2020.”⁷⁵

Despite of the increase in the budget, CSOs find that there is lack of operational efficiency and service delivery of local level government, as an impetus to local development. Local level officials are all (except for one commune) from the ruling party. There loss of any checks and balances in local level government undermines the political decentralization. The ministries lack commitment and determination in the [reform] mandate implementation to delegate important functions and services to local administrations.

⁷⁴ <https://www.phnompenhpost.com/national/government-reform-policy-success>

⁷⁵ <https://www.phnompenhpost.com/national/sar-kheng-urges-faster-reform>

Tax Reform

In 2017, the General Department of Taxation (GDT) exceeded its own projections (and its 2016 performance by 30 percent) and collected \$1.93 billion in tax revenue. The improvements were based on improved efficiency of tax collection, and set the foundation for national self-sufficiency for the budget, as well as provide solid advance in overall accountability.⁷⁶ It is imperative that spending increases not outrun gains in order to improve overall efficiency of government programs and decrease dependency on donor aid. Moreover, as the education level of the population increases and middle-class grows, the application of tax collection without demonstrable anti-corruption gains could lead to substantial resentment by the public.

The Cambodian General Department of Taxation announced at the end of March that there would be significant penalties for those who fail to comply with the tax law. Cambodia's General Department of Taxation (GDT) claimed that Cambodia was listed as one of the five most effective countries at tax reform by the IMF, and so it was: "a matter of pride for the country".⁷⁷

The General Department of Taxation (GDT) in November announced a new strategy that it had developed in consultation with the private sector. The plan aimed to increase tax revenue at annual rate of 19 percent for the next four years. The manner in which the policy was developed was more inclusive and transparent and because of addressing the concerns of the private sector the policy is more likely to be sustainable and effective. The tax authority has signaled that it wants to coordinate with more companies and that it recognized the need for fairness in the tax collection process.⁷⁸

The General Department of Taxation announced that in 2018 it collected 2.2 billion USD, which was a 13.3 percent increase from 2017. As a result, the GDT achieved an average growth of revenue of 20 percent over a five-year period, from 1 billion USD in 2014. The Ministry of Economy and Finance has indicated that the GDT should continue modernizing the tax system, including a database for taxpayer information, in order to ensure equality in tax payment. The GDT strategy for 2019-2023 would focus on improving voluntary compliance, reducing the tax burden on firms and providing a quality service to taxpayers.⁷⁹

Education Reform

⁷⁶ <https://www.phnompenhpost.com/business/tax-revenue-exceeds-expectations-following-reforms>;
<https://www.khmertimeskh.com/50532860/tax-department-rakes-2-billion-with-reforms-and-audits/>

⁷⁷ <https://aenewstoday.com/2018/cambodia-tax-chief-comply-or-be-fined-possibly-shunned/>

⁷⁸ <https://www.khmertimeskh.com/545986/tax-authority-reveals-new-target/>

⁷⁹ <https://www.khmertimeskh.com/50573859/tax-collection-rises-13-percent-in-2018/>;
<https://www.phnompenhpost.com/business/tax-collection-deep-tax-reform-be-effect>

The RGC Ministry of Education, Youth and Sport has taken significant strides in improving the education system.⁸⁰ Important foundational advances have occurred at the primary and secondary levels, throughout the country.⁸¹ However, much more efforts, resources, and policy implementation monitoring with stronger accountability mechanisms for intended targets is needed. After four years, a disciplined implementation of the high school exam has ensured a more accurate overall mechanism of student skill development and for assessment of education achievements.⁸²

According to a 2018 Ministry of Education report, the gross enrollment rate in lower secondary education increased from 53.8 percent in the 2015-2016 academic year to 55.7 percent in 2016-2017, while the dropout rate declined from 19.2 percent in 2015-2016 to 17.5 percent in 2016-2017. The primary school promotion rate increased from 87.0 percent in 2015-2016 to 89.9 percent in 2016-2017, the report added, while the percentage of five-year-old children enrolled in any form of early children education program rose from 66.35 percent in 2015-2016 to 68.50 percent in 2016-2017. The results were attributed to a quantitative and qualitative increase of education facilities, strengthening of early grade reading and mathematics in primary education, the provision of scholarships to poor students in primary and secondary education, the implementation of a dropout prevention program, strengthening of inspections, and the implementation of a teacher policy action plan.⁸³

As such, considerable progress has been made towards coordinating cross-ministry and cross-sector support needed for the very deep reforms needed to the education sector.⁸⁴ More efforts as well as resources will be needed, and even with surge in the intensity of the commitment by the RGC, Cambodia will be hard pressed to adapt to the changes in the manufacturing and production sectors with the introduction of robotics and artificial intelligence (Industry 4.0).⁸⁵ As such, considerable progress has been made towards coordinating cross-ministry and cross-sector support needed for the very deep reforms needed to the education sector.⁸⁶ More efforts as well as resources will be needed, and even with surge in the intensity of the commitment by

⁸⁰ <http://www.moeys.gov.kh/images/moeys/policies-and-strategies/559-en.pdf>

⁸¹ <http://unesdoc.unesco.org/images/0022/002297/229713e.pdf>

⁸² <https://www.cambodiadaily.com/news/four-years-later-national-exam-reforms-are-bearing-fruit-133848/>;
<https://www.voacambodia.com/a/four-years-on-are-strict-exam-rules-bearing-fruit/4517186.html>;
<https://www.khmertimeskh.com/50506409/number-of-national-exam-entrants-rises/>

⁸³ <https://www.khmertimeskh.com/50114886/ministry-says-more-students-enrolling-with-fewer-dropouts/>

⁸⁴ <https://www.khmertimeskh.com/news/31955/education-reform-urged/>

⁸⁵ <http://sea-globe.com/hang-chuon-naron/>; <https://www.khmertimeskh.com/50529898/adapting-to-industry-4-0-a-top-priority-ministry/>

⁸⁶ <https://www.khmertimeskh.com/news/31955/education-reform-urged/>

the RGC, Cambodia will be hard pressed to adapt to the changes in the manufacturing and production sectors with the introduction of robotics and artificial intelligence (Industry 4.0).⁸⁷

Budget Reform

In 2017, Cambodia was ranked 89 out of 115 countries, with a budget transparency and accountability score of 20 out of 100.⁸⁸ 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. However, The Supreme Audit Institution was found to perform better, and accounts for Cambodia's overall score not being significantly worse, with a rating of 78 out of 100. The OBI found some substantial advances in overall budget transparency due to better documentation by the RGC. As the above table indicates, Cambodia improved in five areas of documentation: citizen's budget, in-year reports, mid-year review, year-end report, and audit report.

At the same time, major improvements are still needed. In 2017, Cambodia was ranked 89 out of 115 countries, with a budget transparency and accountability score of 20 out of 100.⁸⁹ 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 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). (In 2018, the OBI survey was not published.)

In May of 2018, Transparency International Cambodia released the findings of a study on public budget awareness which should there is very little understanding of both the budget process and levels of spending for different sectors. The research sampled 1,596 people from 200 villages across Cambodia. The report claimed: 99.7 percent of Cambodian citizens are not able to identify the exact amount of last year's national budget, while 94.9 percent are not able to identify which national institution is tasked with preparing the budget."⁹⁰ Moreover, COMFREL finds serious with the change to one-party budget legislation which necessarily accompanies one-party rule.

⁸⁷ <http://sea-globe.com/hang-chuon-naron/>; <https://www.khmertimeskh.com/50529898/adapting-to-industry-4-0-a-top-priority-ministry/>

⁸⁸ <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=kh>

⁸⁹ <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=kh>

⁹⁰ <https://www.khmertimeskh.com/488041/new-report-reveals-lack-of-budgetary-info/>

Without political pluralism in the parliament the annual budget is unlikely to be seriously discussed and debated. Given that the budget necessarily entails trade-offs between different desired uses of limited resources, it is important that parliamentary representatives conduct a critical examination of proposed spending in order to ensure transparency and accountability to the process. Without this it becomes much more difficult for citizens' voices and concerns to be channeled into the spending plan and ensure that urgent societal needs are met.

In November of the 125 CPP lawmakers, 114 were in attendance and 113 voted to approve the 2019 national budget. The plenary session was led by National Assembly President Heng Samrin, but PM Hun Sen did not attend. The NA approved a budget of the USD 6,791,249,000 budget for 2019 as laid out by the Ministry of Finance – an increase from the USD 6,018,543,704 allocated for 2018 (an increase of 11 percent). The budget main sectors include: defense 604 million USD (from 524); education 915 million USD (from 848); health 455.2 million USD (a decrease from 485 in 2018). In 2019 there will be significant increases in spending for the ministries of Public Works and Transport, Labour and Vocational Training, and Land Management, Urban Planning and Construction.⁹¹ However, civil society groups had collaborated to present the common position that spending for four key areas is insufficient. These are: health, agriculture, natural resource management, and the sub-national level budget.⁹²

CSOs find that the continued lack of transparency and inclusiveness in the process of deciding priorities and allocations, which meant that civil society input, parliamentary oversight remains limited, limited openness in consultation when drafting budgets, and concerned over the budget spending."⁹³

Part III – Government Fulfillment

With the outcome of the fifth mandate of the National Assembly Election, the Royal Government of Cambodia (RGC), led by the Cambodian People's Party (CPP), established its political platform which were categorized into four main sectors. They were implemented with the Rectangular Strategy Phase 3 which mainly focuses on employment growth, equity and efficiency in Cambodia. COMFREL conducted an observation on the fulfillment of political platform promises. The political platform was differentiated into political platform with precise indicator and with imprecise indicator. The implementations of precise indicator political platform were assessed as fully fulfilled, partly fulfilled and not fulfilled while the implementations of imprecise ones were scored by people as satisfied, partly satisfied and not satisfied.

⁹¹ <https://www.phnompenhpost.com/national/pm-approves-2019-budget>

⁹² <https://www.phnompenhpost.com/national/ngos-appeal-more-government-funding-four-crucial-sectors>

⁹³ <https://www.phnompenhpost.com/national-post-depth-politics/concerns-over-one-party-budget-approval>

The RGC has fulfilled eight 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, 70% land title registration, design a national housing policy, create a city transportation policy, village electricity supplies and develop a national policy related to jobs and careers.

Another six political platforms including one million tons of rice exports, water for family fishing, annual 300km to 400km of rural roads improvement, people's access to running water, a target for the number of foreign tourists by 2018 and secondary school construction in all communes, have only been partly fulfilled and/or implemented by the RGC. Two political platform promises have been implemented, but when considering their targets, the RGC is unlikely to fulfill them. For example, maintenance of existing forest cover and implementation of retirement allowance in the private sector.

The RGC's fulfillment of political platform promises with imprecise indicators, has been scored by about 2060 people in voter's forums at capital/provinces. Imprecise indicator platform promises are categorized into four main sectors- national defence, security and public order; improvement of public administration, decentralization and deconcentration, law and justice, and anti-corruption activities, development of economics; and development of education, health, labor, culture and social affairs. It shows that result that the implementation was satisfactory for only around one-four participants but it is noted for the fifth mandate government's fulfillment, the score indicated that people, though slowly, were slowly more satisfied. Within the period of 5 years, the number of people who are dissatisfied and somehow satisfied with the fulfillment has steadily decreased which the number of them who are satisfied has continuously increased.

The number of people who are satisfied the government's fulfillment has reached to only 23% in 2018 while there was 7% in 2014. The number of people who are partly satisfied continuously increased from 30% in 2014 to 50% in 2017 but has slightly decreased to 45% in 2018. It is also remarkably noted that the number of people who are dissatisfied has jumped down from 46% in 2014 to 14% in 2018.

In the fifth mandate, the government lacked transparency in the management of national expenditure. A lot of national budget was allocated in unknown expenditure field. The government usually is criticized by its people and international communities about the misuse of state's resource for political interest and about corruption in state institutions. However, the

clearance of national expenditure budget, compared to before, is improved since the 2014, 2015 and 2016 national expenditure budget have been cleared in the mandate.

The RGC in 2016 restructure its cabinet members but it was assessed to only exchange their office ministries. The RGC was also found every year to appoint undersecretaries of state and its advisors, ranked as members of the cabinet.

Part IV – Security Sector Governance

A – Threatening Speech

The security sector became even more politicized in 2018 for three main factors: increased commitment to the ruling party and overlap between the military, legislature, and government; increased consolidation of power by family members of the PM; and steady commitment to propagandize the narrative of color revolution as a justification to forcibly eliminate political opposition. This supposed plot was discussed constantly as the reason why the CNRP had to be disbanded, and has been continually referred to as both a threat the government has successfully eliminated and an urgent impending danger. From the perspective of civil society, the public inside Cambodia, and the international community, the threat of a color revolution has been used by the regime as means to eliminate political competition and crackdown on fundamental freedoms. The military has been the key enabling factor by which the practice of labelling any dissent as a national or public security threat has been normalized.⁹⁴

At the beginning of January 2018, The Commander-in-Chief of the RCAF, Pol Saroeun, in front of assembled high military officers and the press at the military’s annual year-end review, asserted that the former CNRP leadership was organizing to wage war against Cambodia from Thailand. He claimed that they were already implementing its plan for wage war against Cambodia as part of its ‘color revolution’ plot. “The 118 members still have the idea that they will prepare armed forces along the Cambodia-Thailand border as in the civil war era.” Moreover, he declared: “The historical achievement of our country in 2017 was to destroy the color revolution plan in Cambodia. If the plan had not been destroyed, the protection of peace – which is of the highest value – could not be achieved.” He went on to claim that recent tourism in Cambodia was the result of the prevention of revolution, and seemed to indicate that legitimacy of the removal of opposition party was evidenced in the lack public protest. He attacked the media outlets the Cambodia Daily and Radio Free Asia for criticizing him personally and claimed the situation was better now without them.

⁹⁴ <https://www.phnompenhpost.com/national-politics/rcaf-chief-claims-without-evidence-dissolved-cnrp-preparing-war>

The RCAF Head offered no evidence to support his claim. Indeed, throughout the period of the alleged revolutionary threat by the opposition, the discourse by the executive and high government has never included any presentation of substantive evidence to support the claims being made. No members of the public, civil society organizations, or media outlets have yet to present any indication of networks of insurgents, armed organizing, or even discourse in support of violence by opposition party supporters.

At the annual Defense Ministry meeting, the Minister of Defense Tea Banh, asserted that the CNRP was an illegal group determined to destroy the country. He declared the commitment of the RCAF to eliminate the CNRP movement because it incites violence and seeks a color revolutionary coup against the government. He stated: “The CNRM is inciting violence in Cambodia, so we have to crackdown on them in advance,” he said. “All illegal acts must be eliminated, without exception.”

General Sao Sokha, deputy RCAF commander in chief and commander referred to the former opposition party that had always acted non-violently as a terrorist organization. He said: “The military police are ready to get rid of the CNRM, which is an act of terrorism. We will protect the legitimate government, constitution and royalty, and will never allow those listening to foreigners to launch a color revolution.”

In his statement, RCAF commander in chief General Sao Sokha declared: “The outlawed rebel movement incited the armed forces, Cambodian citizens and former members of the CNRP to raise a rebellion against the legitimate government under the form of a color revolution. We appeal to all armed forces and citizens not to join the illicit movement, which must be condemned. The public should cooperate with the government and firmly oppose illegal rebel movements to maintain peace, safeguard national sovereignty and protect democracy.”

Additionally, at that time, the Justice Ministry spokesman Kim Santepheap posted on social media that only certain political activities were permissible by law and would be tolerated: “Participation in illegal movements and activities that contradict judicial decisions are punishable by criminal law.”⁹⁵

Also at the beginning of January 2018, Minister of Interior Sar Kheng issued a public letter praising government workers and the police for their performance in 2017 contributing to: “strong independence, peace, territorial integrity and national sovereignty, which is the main factor in promoting democracy”. The next day, the National Police Chief, Neth Savoeun, lauded the

⁹⁵ <https://www.khmertimeskh.com/103931/tea-banh-leads-war-words/>

leadership of Interior Minister Sar Kheng and credited him with successfully eliminating the color revolutionary threat in Cambodia. The letter was dated 31 December 2017, and stated that the police had: “combated in time colour revolution activity – which was organized by the opposition party with assistance from foreigners – guaranteeing security, peace, safety and social order for the people”.⁹⁶

In a National Police Progress report, it instructed police officials at all levels to: “Keep concentrating on national security by paying attention to information gathering, analysis and evaluation of the financial resources of those who have negative targets for the nation and government.” The spokesman for the MOI, specifically mentioned Kem Monovithya (the daughter of jailed leader of the former CNRP, Kem Sokha) and Pa Nguon Teang (formerly the head of the Cambodian Center for Independent Media).⁹⁷

At a meeting of 600 retired police officers in Battambang Province, the Interior Ministry declared: “If the opposition’s color revolution had been successful, it would have been impossible for democracy to survive and for the internal divisions of Cambodia to unite, which could have caused a civil war. The government prevented this situation.”⁹⁸

At a major military ceremony to celebrate the anniversary of ‘Victory of Genocide’ (the victory of the CPP in the Cambodian civil conflict in the late 1970s and early 1980s) Hun Manet announced that the military would continue to focus on preventing revolution fomented by opposition groups and enemies linked to foreigners. He declared: “The RCAF commits to prevent it from happening on our land because it can lead to the breaking up of our internal stability and development. RCAF is committed to protect the constitutional and legitimate government that is born from elections every five years.” He claimed that the army would continue to eliminate those seeking to destroy democracy.⁹⁹ Also in January, Hun Manet, the eldest son of PM Hun Sen, then Deputy Commander of the RCAF and Lieutenant General (now Joint Chief of Staff) made public called for the military to protect the ruling party government and treat the opposition as revolutionaries or terrorists trying to overthrow the regime. Without the continuation of CPP rule, he claimed, the country would fall into the civil chaos seen in Syria and Libya. While noting that the army had the mandate and responsibility to protect the entire nation, the good of the nation was once again equated with the continuation of PM Hun Sen’s unchallenged rule. He reiterated the often repeated claims that opposition parties were a serious threat that was organizing and advancing in secret, toward the end of eliminating the progress that the nation

⁹⁶ <https://www.phnompenhpost.com/national/sar-kheng-praised-thwarting-revolution>

⁹⁷ <https://www.phnompenhpost.com/national-politics/national-police-ordered-analyse-banned-opposition-members-finances>

⁹⁸ <https://www.khmertimeskh.com/100575/minister-says-cnrb-ban-prevented-bloodshed/>

⁹⁹ <https://www.phnompenhpost.com/national/hun-manet-talks-colour-revolution>

had made.¹⁰⁰ He alleged that certain political figures were trying to topple the government, but that Khmers must defend each other, as the true role of the army is to protect the people rather than intimidate them. He claimed they must be wary of interfering states that do not have the best-interest of the Cambodian people in mind. He also asserted that PM Hun Sen's policy has been to increase salaries, but the threat remained to stability and development by those who contravene the principles of democracy. He claimed: "If the army is slack, then war could break out like in Syria, Libya and other countries, so the army must be strong and clear and defend the legitimate government, so that Cambodia can remain peaceful." In October 2018, Prime Minister Hun Sen's eldest son Hun Manet asserted that the Kingdom would continue to resist international pressure for a revolution in Cambodia. In a speech for the the Alrahman International School in Tbong Khmum province's Dombe district, Manet asserted that foreign governments should stop ignoring the will of the Cambodian people, and claimed: "Therefore, Samdech Techo [Hun Sen] will do whatever it takes to maintain peace for the people. The people want to maintain their national pride. They don't want to be under anyone's pressure. "I wish to send a message to some [politicians] with dual citizenship who have asked foreign countries to harm Cambodians and who want the government to bow down. It's impossible. Don't even think about it."¹⁰¹

CSOs and the opposition argued that the above narrative provided a pretext to use force against legitimate protest or assembly and expression. According to the existing law, the army is prohibited from acting independently of government orders, political neutrality and must adhere to relevant human rights and democracy principles. According to a sub-decree on army discipline, forces must be loyal to the nation, religion and king. However, the public speech and messages of top military officials were a form of intimidation or manipulation of public space. Despite avowed neutrality, the ruling party 'normally' expressed unwavering support of the ruling party.¹⁰²

B – Relevant Policies

On 23 January 2018, General Sao Sokha, the Commander-in-Chief of the military, gave an announcement at an annual Defense Ministry meeting of statistics pertinent to military police activities for the year 2017. He indicated that there were 4,917 crimes handled by the military police, which included 2,620 misdemeanors, 1,997 felonies, 1,219 injuries, and 300 deaths. He also asserted that the military had handled 57 security incidents that resulted in 26 deaths and 68 injuries. These events involved handling or detection of bombs, ammunition, chemical

¹⁰⁰ <https://www.khmertimeskh.com/102522/hun-manet-rallies-forces-defend-nation/>

¹⁰¹ <https://www.phnompenhpost.com/national-politics/do-not-harm-cambodians-says-pms-son-opposition>

¹⁰² <https://www.phnompenhpost.com/national-politics/rcaf-chief-claims-without-evidence-dissolved-cnrp-preparing-war>

weapons, and gas tank explosions. He indicated that there were 612 protests in 2017 which were handled by the military police, composed of 227 demonstrations and 384 labor strikes, and 7 incidents of leaflet distribution.

The RCAF Commander-in-Chief stated: “Protesters demanded better working conditions, asked their companies to reinstate workers that had been sacked, requested bonuses, demanded bankrupt factories pay workers, asked Thai authorities to buy Cambodian agricultural products, sought intervention in land disputes, and asked the court to release land activists.”

On the one hand the report stated that in 2017 kidnapping, murder and drug offences increased. On the other hand, robberies, human trafficking, and illegal weapons decreased, when compared to 2016. He also discussed policing of illegal natural resource extraction. He claimed that 14,833 police had been deployed to stop illegal logging, resulting in 345 arrests and/or seizures of timber. 12 persons were arrested for alleged mining-related crimes, 30 people were arrested for grabbing state land, 273 people were arrested for fishing-related crimes, and 1,950 people were arrested for tax evasion. He declared that the military would continue to intensify policing of public order in anticipation of the July national election.¹⁰³

Despite the fact that independent media was reporting in 2014 that a ban on illegal use of military license plates at that time was not being enforced, it was still an unresolved issue in 2018. Early in the year, Defense Minister Tea Banh announced a policy of improved enforcement of the misuse of the plates. He instructed military officials to detain any vehicle with illegal military plates, and the Technical Department to develop procedures to prevent future violations. According to the existing policies, the plates are permitted only for vehicles donated to Cambodia and for privately owned vehicles which are used on the job and registered as state property. Such vehicles should be taxed and only used by the owner or relevant government agency. He claimed: “Our military has received criticism from the public, domestic and external, because of foreigners and civilians illegally sporting military number plates on their vehicles.”¹⁰⁴

On 13 February 2018, the Ministry of Defence announced that it was monitoring Facebook for commentary about the military. It claimed that this would make it more responsive to the public concerns. Ministry spokesman, Chum Soheat claimed that the RGC had resolved 140 complaints that had arisen on social media. The related problems had to do with salaries, promotions, and land disputes. Four cases of land grabbing by soldiers were submitted to the courts, but had not been resolved. However, he also indicated that the Ministry was attentive to stopping and

¹⁰³ <https://www.khmertimeskh.com/103950/thousands-crimes-tackled-military-police/>

¹⁰⁴ <https://www.khmertimeskh.com/104746/defense-minister-military-number-plate-use/>

punishing the spread of “fake news” or information which results in: “chaos, confusion, incitement or to cause the separation of the nation.”¹⁰⁵

In December, the government diverted around \$4.5 million from the surplus budget to the Ministry of Interior to purchase nine types of “riot equipment”. Senior police officials have not divulged details of the acquisition. Leaked videos from police training exercises have shown armed police practicing tactics to disperse urban protesters, even using armored vehicles. Observers have suggested anti-demonstration preparedness shows the authorities’ anxiety over the upcoming national elections, with the government looking to prevent a repeat of the post-2013 election protests. Those protests were led by the broadly popular opposition Cambodia National Rescue Party, which was forcibly dissolved at the government’s behest in November, prompting widespread condemnation.¹⁰⁶

In October 2018, the MOD announced that it was recruiting for 700 vacant positions, and opening the military academy for another round of enrollment. The announcement said the recruitment was needed to protect sovereignty and peace, however, in practice the security services have the public image of serving private businesses and political elites. Hun Manet asserted: “Peace and national stability are protected by the armed force. They defend the country and people without discrimination and regardless of their political affiliation. Their duties and responsibility are to protect the government, defend the constitution and serve the country. They have the right to follow any political party they like, but their duty is to protect the nation, not the party.” However, throughout the 5th mandate of the National Assembly high ranking members of the military has made public commitments to the ruling CPP and PM Hun Sen.¹⁰⁷

C - Political Motivated Promotions and Nepotism: Consolidating Family and Military Rule

Throughout the history of the CPP period (1993-present) the major characteristic of the regime has been the total control over and support from the security services (military and police) as the means to ensure power. Military promotions became even more important during the course of the 5th mandate of the National Assembly, as the rise in political competition and the electoral challenge from the major opposition party CNRP, required an increased use of the threat of force by the ruling party.

¹⁰⁵ <https://www.phnompenhpost.com/national/defence-ministry-monitoring-Facebook-feedback>

¹⁰⁶ <https://www.phnompenhpost.com/national/pms-son-law-dy-vichea-gets-new-security-portfolio>

¹⁰⁷ <https://www.phnompenhpost.com/national/defence-ministry-add-new-blood-kingdoms-military>

Cambodia's prime minister announced the formation of a new academy to train spies for to conduct counterterrorism operations and eliminate 'color revolution' in Cambodia, which would be headed by his son Hun Manith and located in the Prek Pnov district of Phnom Penh. The PM announced the new initiative as part of an overall effort to eliminate opponents both inside and outside the country, and using agents that may or may not be officially in the security services. He asserted: "I do not want spies to only provide information. The spy needs to have skills to analyze fake news and news resulting from exaggeration . . . We need investigators that we call spies in all places and units."¹⁰⁸ Hun Manith indicated that the purpose of the academy was to train individuals to maintain 'covert identities'. He asserted: "We need to control and share information to take action in time. The political and security situation and competition in the future will be more intense than in previous years."¹⁰⁹

In early January 2018, 45 RCAF (Royal Cambodian Armed Forces) officers were promoted to the rank of general. As a result, the total number of new general created in over a period of 10 months had been 607. In December, 2017, 27 officers were promoted to major general and 6 were promoted to lieutenant general. Although no formal public account is given of the different number and rank of military officers by the Ministry of Defense, already by March 2017 it was estimated that the military had 3,000 generals. Therefore, the estimated number of generals in early January 2018 was 3,607.¹¹⁰

At the end of January of 2018, Minister of Defense declared the need for reforms related to promotions within the called for reforms to the promotion practice within the armed forces. He conceded promotions have not been "implemented properly" and "negatively impact the unit". Moreover, he recognized the policy which independent analysts see as an unveiled attempt to consolidate power on the part of the PM and the top officers of the RCAF, has actually resulted in demoralizing the forces because of resentment resulting undeserved promotions or nepotism. He stated: "The promotion and assigning of roles has not been evaluated transparently, and that makes some mentally discontent."¹¹¹

In late January, Thai Phany, the nephew-in-law of Prime Minister Hun Sen, was removed as a general from the Royal Cambodian Armed Forces. He had been accused of running two cockfighting rings which had been disbanded by the police. He is married to the niece of the PM, and the only person involved in the cockfighting ring who faced charges. This followed the discovery of documents left at the cockfighting ring which detailed corruption, including

¹⁰⁸ At the same time, he asserted that he had feigned ill health (referring to recent rumors about his condition) in order to lay a trap to catch information leakers inside his inner circle.

¹⁰⁹ <http://sea-globe.com/cambodia-spy-terror/>

¹¹⁰ <https://www.phnompenhpost.com/national/king-signs-promotion-45-new-generals>

¹¹¹ <https://www.phnompenhpost.com/national/tea-banh-eyes-overhaul-military-promotions>

payments to politicians, police and journalists. Phany faced up to five years in prison if convicted.¹¹² This was a very unusual case of the demotion of a high-ranking military official and of a relative of PM Hun Sen. The case may have been impacted by the ‘loss of face’ or honor and corresponding disrespect incurred to the image of the PM as a result of the cockfighting rings and the discovery of related corruption by the media. Moreover, COMFREL has not yet been able to follow-up to verify whether or not his prosecution moved forward to trial and/or conviction.

In February 2018, Hun Many, the youngest son of Prime Minister Hun Sen, was promoted to the rank of colonel in the PM’s Bodyguard Unit (the most well equipped and trained of the Cambodian military forces with the command to protect Hun Sen’s position as PM in perpetuity). He was elevated at the same time as 25 others including San Narith, assistant to Royal Cambodian Armed Forces Commander in Chief Pol Saroeun, and Kong Vannak, assistant to RCAF’s cabinet director. According to the Election Law in place, when elected military officers or civil servants must resign from their post, but they retain their rank for the purposes of seniority and retirement calculations.¹¹³

In March of 2018, four generals were promoted to the rank of deputy commanders-in-chief of the RCAF. They were promoted by acting Head of State Say Chhum, included the commanders of the navy and the air force. All four officers are members of the CPP Central Committee. They were: Tea Vinh, the Commander of the Navy, Soueng Samnang, the Commander of the Air Force, Nob Ratana the Director of Artillery, and Vong Veasna, the Operations Director of the RCAF High Command. In another royal decree, also signed by Say Chhum following a request from PM Hun Sen, Vong Veasna and Nob Ratana were elevated to the rank of four star generals.¹¹⁴

Only a few days after the 33rd anniversary of his coming to power, PM Hun Sen appointed his son-in-law to the position of Deputy National Police Chief. Dy Vichea is married to the eldest daughter of PM Hun Sen, Hun Mana. At the time of his promotion Dy Vichea was already in charge of the MOI’s Central Security Department.¹¹⁵ The promotion of his son in law served to further reinforce PM Hun Sen’s power and provide a show of strength that would ensure the loyalty of the security services in the context of upcoming national assembly elections. Dy Vichea will eventually take over as the Head of the National Police. Consider that, the National police chief Neth Savoeun is married to Hun Sen’s niece. Hun Sen’s daughter, Hun Mana, is chairwoman of the Kampuchea Thmey Daily newspaper and Bayon TV and Radio among at least a dozen other firms. Moreover, Hun Sen’s eldest son, Lieutenant General Hun Manet, had been made Deputy

¹¹² <https://www.phnompenhpost.com/national/hun-sens-law-removed-rcaf-after-cockfighting-rings-raided>

¹¹³ <https://www.phnompenhpost.com/national/hun-many-promoted-bodyguard-colonel>

¹¹⁴ <https://www.phnompenhpost.com/national/generals-receive-promotion>

¹¹⁵ <https://www.phnompenhpost.com/national/dy-vichea-promoted-deputy-police-chief>

Commander of the Armed Forces.¹¹⁶ Additionally, General Pen Vibol, a 22 year veteran of the National Police, was promoted to Deputy Chief of the National Police in charge of the Personnel Department.¹¹⁷ Dy Vichea is the son of Hok Lundy, who served as Chief of the National Police from 1994 to 2008.¹¹⁸

A national police document dated 28 February 2018 and by National Police Chief Neth Savoeun, announced that Dy Vichea was given more authority in a reorganization of the National Police, resulting in him being charged with central security, policing money laundering, and fighting terrorism. The reorganization of the force, outlined in a National Police document dated February 28, involved changing the posts of 13 deputy commissioners. The National Police yesterday shuffled around 13 deputy commissioners, with well-connected newcomer Dy Vichea put in charge of central security and combating money laundering and terrorism financing. Additionally, Sar Thet, the nephew of Interior Minister Sar Kheng, as put in charge of the “order police”, a unit with national reach for the purpose of preventing and policing demonstrations.¹¹⁹ Deputy National Police Chief and Phnom Penh Municipal Police Chief Choun Sovann kept his assignments, but Deputy National Police Chief Chhay Sinarith was relieved of some duties.

By the beginning of March 2018, Hun Manet, the eldest son of PM Hun Sen was promoted to the rank of Joint Chief of Staff of the Royal Cambodian Armed Forces. Prior to the promotion he had already held the position of Deputy Commander of the RCAF. According to Cambodian defense ministry spokesman Chhum Socheat, Manet would replace General Kun Kim who was on leave for illness.¹²⁰

In June 2018, Hun Manet was Deputy Commander-in-Chief of the RCAF and Lieutenant General, and then promoted to Acting Joint Chief of Staff. He retained his previous responsibilities as Head of the Joint Ministry Counterterrorism Unit and Deputy Commander of the PM’s Bodyguard Unit. He replaced General Kun Kim. However, he also replaced General Meas Sophea, as Manet was also given the post of Acting Commander of the Infantry Unit.¹²¹ At the same time, General Sao Sokha as appointed to role of Acting Commander of the RCAF, and General Pol Saroeun was removed from his post and indicated he would be running the 2018 National

¹¹⁶ <https://www.scmp.com/news/asia/southeast-asia/article/2129523/cambodian-prime-minister-hun-sen-appoints-son-law-senior>

¹¹⁷ <https://www.khmertimeskh.com/103162/prime-minister-gives-son-law-promotion/>

¹¹⁸ <http://sea-globe.com/police-chief/>

¹¹⁹ <https://www.phnompenhpost.com/national/pms-son-law-dy-vichea-gets-new-security-portfolio>

¹²⁰ <https://www.reuters.com/article/us-cambodia-politics/cambodia-pms-son-assumes-senior-military-post-idUSKCN1GE0D2>

¹²¹ <https://www.khmertimeskh.com/506685/hun-manet-promoted-to-general/>

Assembly elections. Sao Sokha had served previously as Deputy Commander-in-Chief of the RCAF and Commander of the National Military Police.¹²²

Less than one month later and a few weeks before the 2018 national election, Hun Manet was promoted to four-star general, according to the MOD, in order to correspond to his new post as Deputy Commander-in-Chief of the RCAF. Both officers he replaced, replaced General Kun Kim and General Meas Sophea, were put forth as ruling party CPP candidates in the 2018 poll. General Sao Sokha was made Acting Commander-in-Chief of the military, and had formerly been Deputy Commander and Commander of the National Military Police. The Minister of Defense announced the moves in front of an audience of 500 soldiers at the groundbreaking ceremony for the new High Command Headquarters. He stated: “There must be a replacement, but this is not nomination – they are just acting officers. Before the transfer of power, there had been a lot of anxiety [both within the military and society] and rumors circulating,” he said. However, he added that the RCAF and MOD give full support to Manet and Sokha and would defer to the new government to decide their roles.¹²³

Hun Manet was promoted again to the rank of Commander of the Royal Cambodian Armed Forces at the beginning of September 2018, At 41 years of age he became the second highest ranking officer in the Cambodian military. Manet maintains his positions as the Deputy General Commander and Joint Chief of Staff of the RCAF. General Vong Pisen was promoted to the top position of Commander of the RCAF, replacing General Pol Sareoun who was appointed to a position as senior minister. Pisen had previously held the post of Chief of Staff of the National Military Police. The promotions followed a royal decree signed by King Sihamoni at the advice of PM Hun Sen stated that they based on the “necessity of the government” as well as achieved merit. At the same time, General Ith Sarith, the Deputy General Command and Training Chief of the RCAF, retained that post while also being promoted to the rank of Joint Chief of Staff. He replaced General Kun Kim who was appointed to a position as Senior Minister. Three generals appointed to positions as senior ministers, General Pol Sareoun, General Kun Kim and General Meas Sophea, all stepped down from their RGC position in order to compete in the July 29 national elections.¹²⁴

At the end of August, PM Hun Sen submitted a formal request to King Sihamoni to reassign three high ranking national police officers, and in a separate letter, to retire ten officials at the interior ministry. According to the letter: General Kirth Chantharith (Deputy Chief of the National Police) is to become the Director General of Immigration; General Korng Sokorn (Deputy Chief of

¹²² <https://www.phnompenhpost.com/national/hun-manet-gets-promotion>

¹²³ <https://www.phnompenhpost.com/national/hun-manet-now-four-star-general>

¹²⁴ <https://www.phnompenhpost.com/national/hun-manet-promoted-after-royal-decree>

National Police) will be Director General of Identifications; and General Seng Yu Ann, (First Grade Senior Officer) will become the new Director General of Logistics and Finance.¹²⁵ Three incumbent generals – Mao Bunnarin (director of the logistics and finance department), Sok Phal (director of the immigration department), and Mao Chandara (head of the identification department) were retired.

In November 2018, Sok Puthyvuth, the son of the late Deputy Prime Minister Sok An, was promoted to Secretary of State at the Ministry of Posts and Telecommunications, less than a month after being promoted to Undersecretary of State (royal decree of Sep. 29). Also, Sar Sokha, the son of Interior Minister Sar Kheng, was promoted to lieutenant general while keeping a post as Secretary of State at the Education Ministry.¹²⁶ (Battambang Provincial Police Chief Sar Thet, who is the nephew of Interior Minister Sar Kheng, was promoted to deputy commissioner of the National Police in September 2017.)

The large number of promotions and transfers that occurred in 2018, showed that the RGC was continuing a policy of maintaining support of officers in order to uphold the color revolution narrative and carry out the crackdown on political competition. However, another noticeable trend in the 2018 period as a reduction in the large numbers of promotions of high ranking officers, and a shift toward the elevation of Hun Sen's family members through the ranks, most evident in the case of Hun Manet. The pattern fits what political science classes as a family dictatorship. All evidence points to the fact that Hun Manet will be put in full command of the armed forces. As such, it is likely more transfers and promotions will be carried out by Hun Manet in order to ensure fully loyalty of different regional commander and other high ranking officers. Manet has stressed, when speaking with international media, how he seeks a more modern liberal democratic society. In a 2016 interview with Voice of America, he stated: "I, Manet, have never spoken to disseminate about communism, but instead encourage the youth to dare to think, to dare to do, to dare to be responsible, to dare to express public opinions and to dare to participate. I do not understand either why people implicate me with my father. Do people think that the policies of President Obama implicate his children?" he asked. "Whose land has been

¹²⁵ <https://www.khmertimeskh.com/529209/much-movement-among-police-top-brass/>. "The ten senior officers who have reached retirement age are: General Mao Bunnarin, Director of Logistics and Finance Department; General Sok Phal, Director of the Immigration Department; General Mao Chandara, head of the Identification Department; General Thong Sam Ath, Secretary-General of the National Committee for Counter-Trafficking; General Phang Pov, chairman of the Legislative Council; General Moun Saron, chairman of the Intervention Unit of the National Police Commissariat; General Suos Angkea, Deputy Chief of the National Police; General Chuon Sovan, Phnom Penh Municipal Police chief; General Em Samnang, Deputy Director of the Logistics and Finance Department; and General Ly Kimlong, Deputy Secretary-General of the General Secretariat of the National Authority for Combating Drugs."

¹²⁶ <https://www.phnompenhpost.com/national/interior-minister-sar-kheng-son-promoted-lieutenant-general>

grabbed by Manet?”¹²⁷ However, in this report we document several instances of him being one of the primary progenitors of the discourse on color revolution labelling civil society activists, media, and political opposition as enemies of the state. The PM as well has taken pains to stress the merit basis of the promotion in light of the obvious nepotism. He asserted: “They all have doctorate or master’s degrees. Why should they waste them? I should find work for them,” “They all have doctorate or master’s degrees. Why should they waste them? I should find work for them.”¹²⁸ Deputy Prime Minister Tea Banh, a Deputy Prime Minister and the Minister of National Defence, informed independent media that military reforms would continue in the 6th mandate of the National Assembly with the aim of modernize the defense sector to protect the nation’s territory.¹²⁹

CSOs and independent commentators pointed out that such unnecessary promotions were a reflection of institutionalized practices of nepotism and buttressing support for the regime from the military as a response to rising political tensions.¹³⁰ The move was useful for the PM in order to deflect challenges from within the ruling regime. “This is because Hun Sen does not trust anyone as much as his children.”¹³¹ The military does not adhere to international norms because it is too top heavy with such a high number of generals, and military officers have noted off the record that they engage in a practice of lowering their rank in order to liaise with officers of the militaries of other states.¹³² CSOs find that the promotions were not merit based and a legitimate exercise to stimulate encouragement among the officers. Since the promotions do not comply with each individual’s achievement to make them have a strong stance to fulfil their duty. The promotions provide yet another example of a common practice of concentrating political and economic power around the PM through family connections and ensuring allies occupy the top positions. At the same time: “[T]he Cambodian parliament is increasingly filled with former military and police officers loyal to Hun Sen. The CPP, facing no real competition in the election, nominated dozens as candidates earlier this year. The increasing militarization of the legislature could lead to amendments whereby the army will be guaranteed a number of seats without having to be elected...”¹³³

¹²⁷ <https://theasianpost.com/article/nepotism-hun-sens-cambodia>

¹²⁸ <https://www.reuters.com/article/us-cambodia-politics/cambodias-hun-sen-defends-promotion-of-his-sons-to-top-posts-idUSKCN1ND0X4>

¹²⁹ <https://www.phnompenhpost.com/national/hun-manet-promoted-after-royal-decree>

¹³⁰ <https://www.phnompenhpost.com/national/king-signs-promotion-45-new-generals>

¹³¹ <https://www.phnompenhpost.com/national/hun-manet-gets-promotion>

¹³² <https://www.phnompenhpost.com/national/generals-receive-promotion>

¹³³ <https://qz.com/1349047/a-hereditary-dictatorship-looms-on-cambodias-horizon/>

CHAPTER 4 –

CIVIL SOCIETY AND NGOs

Cambodian civil society operates under high levels of oversight and surveillance, difficulty accessing information and engaging with government officials, and with the ongoing potential threat of criminalization and legal prosecution. There were multiple cases of persecution of CSO activists in 2018, many of them also a continuation of charges issued or prosecutions initiated earlier in the 5th mandate of the national assembly. While CSOs are generally strong supporters of political rights and fundamental freedoms, no NGO has been linked to the opposition CNRP party with credible evidence or actually testimony from activists. Despite that, CSOs have been grouped with some independent media outlets and the former major opposition party, as conspirators in clandestine insurgent movement seeking to topple the state. Based on this narrative, CSOs are generally treated as guilty until proven innocent, once accusations are made by high ranking officials. The suppression of fundamental freedoms documented in this chapter should be considered along with serious restrictions on CSOs at the grassroots level combatting corruption and misuse of natural resources. This has a considerably negative effect on public space by decreasing the amount reliable information available to citizens, debilitating forums and projects seeking solutions to governance and development problems, and inhibiting policy uptake of quality recommendations from civil society. **(Problems for political rights/democracy NGOs are discussed in the chapters on Democratic Elections).**

Equitable Cambodia – Land Rights and Environment NGO

The non-governmental organization, Equitable Cambodia, continued to receive severe pressure from the government, including restricting the right to association of its members through the enforced prohibition on the organization which began in 2017 and continued into 2018.

The publicly apparent unjust conviction in the defamation case of 2016 (mentioned above) continued to cause problems for the NGO at the end of 2017 and into early 2018. In the appeals hearing for the 2016 guilty verdict, which took place at the end of 2017, the presiding judge and prosecutor stated publicly that defamation could not have occurred unless the accused made certain information public. However, it had already been proven to all parties and accepted by the courts that this information in question had been made public by the plaintiff.¹³⁴ This verified that the original guilty verdict had no basis in law, and was likely politically motivated. As made

¹³⁴ <https://www.phnompenhpost.com/national/ngo-appeals-verdict-defamation-case>

clear by the presiding judge in the appeals hearing, the original ruling was without basis.¹³⁵ This not only inhibited the work of the NGO and its support for land rights generally, and the affected communities in relation to an overt case of land grabbing by a company linked to a power ruling party tycoon, it also increased fear among civil society and the general public. The case highlighted for both national and international society, the extreme scrutiny placed on civil society organizations, where even fabricated infractions, can be punishable by lengthy criminal court proceedings and application of a principle of guilt by association.¹³⁶

The month following this clear rejection of an unjust earlier decision, the MOI ruled that the suspension of the NGO would be lifted and it would be allowed to resume operations.¹³⁷ The MOI spokesperson supported the decision to suspend the NGO on the basis of insufficient documentation from the NGO, but did not indicate why a 30-day suspension was extended to several months and why the review process of the documentation submitted by the NGO had occurred in a non-transparent manner which took months. The pro-government Khmer Times, failed to address the issue, misleadingly describing the process as follows: “The ministry already allowed EC to operate as usual and continue its work after it had submitted the requested information.”¹³⁸ Moreover, at the time the MOI announced the lifting of the suspension, it also pointed out the Ministry of Land Management had classified the NGO, an important contributing partner. As a result, the previously organized community protests against the NGO in 2016, were tacitly discredited by the Land Ministry.

Although previously informed by the MOI that it could only resume operations after receiving a letter of confirmation from the MOI, no such letter was issued. Instead on 23 February 2018, the EU Ambassador was informed that the suspension was lifted.¹³⁹ In actuality, it was not until 12 March that the NGO received the letter from the MOI, which officially allowed it to continue its activities.¹⁴⁰ The process of ‘lawfare’ to which the NGO was subjected effectively inhibited its support for land rights for some of the most marginalized members of society from Sep 28 until March 12, 2018. The negative impact on the confidence of community based organizations to mobilize and NGOs to conduct advocacy activities was much wider in scope.

Mother Nature – Environmental Protection NGO

¹³⁵ <https://www.phnompenhpost.com/national/equitable-cambodia-defamation-convictions-overturned>

¹³⁶ In fact, the plaintiff in the case publicly (on social media) accused the NGO of committing fraud with donor funding, bribery of court officials, and revolutionary or treasonous organizing, all without offering any evidence. See: <https://www.phnompenhpost.com/national/court-overturns-ngos-defamation-conviction>

¹³⁷ <http://en.freshnewsasia.com/index.php/en/7620-2018-02-23-14-38-21.html>

¹³⁸ <https://www.khmertimeskh.com/110332/ngo-equitable-cambodia-suspension-revoked/>

¹³⁹ <https://www.phnompenhpost.com/national/equitable-cambodia-allowed-reopen>

¹⁴⁰ <https://www.khmertimeskh.com/113665/equitable-cambodia-allowed-to-resume-work/>

The NGO Mother Nature also continued to be subject to threats and discrimination for uncovering and publicizing illegal practices of natural resource extraction capable of supporting large-scale corruption. The NGO was founded in 2013 and has been subjected to coercive persecution in the courts for a large-part of the 5th mandate of the National Assembly. In 2015, one of its founders, a Spanish citizen, was deported. In 2015, three Mother Nature activists involved in monitoring sand dredging were arrested and charged with threatening to destroy property, faced up to two years in prison and were eventually sentenced to 18 months.

In January of 2018, activists Dim Kundy and Hun Vannak were found guilty by the Koh Kong Trial Court. They were sentenced to one year, with seven months suspended and the five remaining months considered as time served. Once more the pre-trial detention process was used as punishment prior to a guilty verdict, and with the verdict coinciding with the release of the accused it seemed to served more as a justification for the detention itself. The two citizens had been detained and charged on 12 September 2017 of violations of privacy and unspecified “crimes”.¹⁴¹ They were arrested while collecting video evidence of illegal sand dredging activities being conducted by a private firm with links to the ruling party.¹⁴² They filmed two boats off the coast of ruling party Senator Ly Yong Phat’s special economic zone in Kiri Sakor district. The video had been watched almost one million times by the time of their arrest. If convicted of the two charges, the activists faced up to two years in prison and maximum fines of six million Cambodian riel (approx. USD1,500) under article 495 (incitement to commit a felony) and article 302 of the Criminal Code (unauthorized recording of a person’s image).¹⁴³ Under pressure and threats of serious criminal prosecution, and without confidence in the due process of the system, the NGO announced that it would formally disband just days after their arrest.

The two were released on 13 February 2018 from Koh Kong provincial prison. After pre-trial detention in excess of four months, they were judged guilty of the charges in a trial that lasted less than a day. They were sentenced to a year in prison, with seven months suspended. The two were found guilty and convicted of “incitement to commit a felony” and making unauthorized recordings of a person “in a private place”, even though the recording was made on the ocean off the coast of Cambodia. A provincial rights coordinator for Licadho, In Kong Chit, emphasized that the two were serving the public interest by protecting natural resources and should not have been prosecuted. He noted, their treatment would effectively deter other youth from getting involved to support civic activism. Moreover, the conviction will have a life-long impact on the two environmentalists.¹⁴⁴ The two environmentalists affirmed that they would

¹⁴¹ <https://www.rfa.org/english/news/cambodia/dredging-activists-01262018173028.html>

¹⁴² <https://www.business-humanrights.org/en/cambodia-mother-nature-activists-fined-sentenced-to-serve-5-months-in-prison-for-recording-controversial-sand-dredging-operations#c180511>

¹⁴³ <http://www.licadho-cambodia.org/flashnews.php?perm=219>

¹⁴⁴ <https://www.phnompenhpost.com/national/mother-nature-activists-released-prison>

continue to appeal and protest their conviction and that return to environmental protection. Vannak affirmed: “Me and Kundy have not done anything wrong, but they still put us in jail. We do not accept the results of the Koh Kong court.”¹⁴⁵

Other Environmental and Land Rights Suppression

In January 2018, three environmental protection workers (from both government and civil society) were murdered while on routine patrol monitoring for illegal logging. Those killed were Ministry of Environment ranger Theun Soknay, military police officer Sek Vathana, and NGO Wildlife Conservation Society officer Thol Khna.¹⁴⁶

Kong Putheara, Keo Seima, the director of the Keo Seima Wildlife Sanctuary Wildlife in Mondulakiri province informed media that the three individuals were patrolling in O’Raing district near the O’Huch border crossing with Vietnam. Mondulakiri Governor Svay Sam Eng, informed media that he was aware of a confrontation between the environmental protection workers and a “border force” stationed there.

Bou Bun Chheat, O’Raing district police chief, indicated that two individuals killed at the scene could be identified as Theun Soknay, a ranger team leader from the Mondulakiri Provincial Environment Department, and Military Police officer Sok Vothana. Phan Setha, a technical adviser for Wildlife Conservation Society based in the Keo Seima Wildlife Sanctuary, said that a WCS staff member named Thol Khna was wounded in the shooting and died on the way to hospital.¹⁴⁷ Police arrested Mr. Phal Penh on 2 February 2018. He was the police officer in charge of the O’Rolear border post. Mr. Keut Vaha was arrested on 1 February 2018. He was the head of the armed forces regiment 103. According to police Mr. Phal was attempting to flee to his homeland in Prey Veng Province. Mr. Veh contended that he did not participate in the actual shooting. The third suspect remained at large.

Lieutenant General Sok Khemarin, chief of the major crimes unit, said that the police did not have any information as to the motive of the crime, but that he would be sent to the Interior Ministry for interrogation. A staffer member of a local NGO who wished to remain anonymous, informed independent media that the three victims had seized tools from a group of illegal Vietnamese loggers while on patrol and were ambushed as retaliation.¹⁴⁸ A staffer member of a local NGO who wished to remain anonymous, informed independent media that the three

¹⁴⁵ <https://www.phnompenhpost.com/national/freed-mother-nature-activists-decry-injustice>

¹⁴⁶ <https://news.mongabay.com/2018/01/more-murders-conservationists-allegedly-killed-by-soldiers-in-cambodia/>

¹⁴⁷ <https://phnompenhpost.com/national/three-killed-jungle-when-patrol-comes-under-fire-fellow-authorities-suspected>

¹⁴⁸ <https://www.rfa.org/english/news/cambodia/shooting-01312018165753.html>

victims had seized tools from a group of illegal Vietnamese loggers while on patrol and were ambushed as retaliation.¹⁴⁹ In a public statement, WCS noted that the three had located an illegal logging camp and confiscated chainsaws, which resulted in their being targeted by the military officers.¹⁵⁰

Bou Bun Chheat, the O’Raing district police chief, said: “While they were patrolling they were attacked, so they could not fight back because their group has only one gun, which was the military police officer’s.” However, he also claimed that it was the armed military police officer, Vathana, who fired the first shot. Within a week, the police had arrested all three suspects. All three of the suspects were considered serving military officers. Two of the suspects, Keut Vetha and Phal Penh were charged with premeditated murder. Keut Vetha was charged with accomplice to a murder. Mao Pros, the provincial court spokesman, indicated: “They both had a gun. They waited by a road for about one hour, waiting to shoot those people.”

In a confession video posted to government-aligned Freshnews, Penh claimed that the environmentalists had been photographing illegal logging and when confronted they were offered a bribe of 220 USD, which they did not accept and that they had already reported what they had seen to the local prosecutor. Court spokesman said there was no evidence of bribery, and the head of natural resources preservation at the environment ministry, Chea Sam Ang, said there was no information to support the claim that the environmentalist had taken a bribe. He noted: “They fulfilled their work responsibly and correctly.” The Wildlife Conservation Society director, Ken Sereyrotha, stated: “Every day, rangers and law enforcement staff risk their lives to protect wildlife and forests. We should not allow criminals to destroy the forests of Cambodia and to threaten and murder those working tirelessly to protect this country’s natural heritage.”¹⁵¹

The manner in which non-government public figures are enabled by the ruling party to undermine social capital through threats of lawfare was again highlighted in early 2019, when Ty Sovantha asserted she would issue a lawsuit against an environmental protection NGO for not permitting her to accompany a group excursion the Areng Valley of Koh Kong province. On 25 January 2018 the social media personality (formerly a critic of the CPP, but then allied with the PM as CPP member and consistent critic of the major opposition party CNRP) announced that she would sue the head of the environmental NGO Wildlife Alliance, Suwana Guantlett.¹⁵² Here

¹⁴⁹ <https://www.rfa.org/english/news/cambodia/shooting-01312018165753.html>

¹⁵⁰

¹⁵¹ [https://www.khmertimeskh.com/106312/suspects-forest-shooting-nabbed/;](https://www.khmertimeskh.com/106312/suspects-forest-shooting-nabbed/)

<https://www.phnompenhpost.com/national/breaking-police-identify-suspects-forestry-patrol-killings>

¹⁵² <https://www.phnompenhpost.com/national/thy-sovantha-threatens-new-suit>. The Phnom Penh post noted: “The social media celebrity’s penchant for filing lawsuits has seen her sue former CNRP President Kem Sokha for disparaging her in a leaked private phone call, two opposition activists for questioning the attendance at one of

accusations against NGO director alleged “discrimination”, while an audio recording taken without the knowledge of Guantlett showed that she was asked not to come because her celebrity status would be a distraction, but that she could come next time. An NGO member indicated that the focus of the trip was on the community and that Sovantha’s presence would draw attention to her. Sovantha has presented herself as an environmental supporter ever since a 2016 environment forum with PM Hun Sen. In that event she occupied the microphone for half an hour in order to emphasize how local villagers were the primary logging problem. International NGO representatives and activists from community-based organizations pointed out how she tried to shift blame away from the government and obscured the fact that large companies fund local level economics where poor villagers are paid to conduct illegal logging.¹⁵³ She was widely discredited when leaks linked to PM Hun Sen son, Hun Manith the Head of Military Intelligence in which they communicated about working to discredit Kem Sokha.¹⁵⁴

In March 2018, authorities in Koh Kong’s Chumnap commune announced that the community built by local villagers and environmental activists must be removed. The commune chief Meas Chrea stated that the deadline for demolition of the center was April 25. A notice letter from his office read: “Commune authorities need the area to construct a standard commune hall in upcoming time in order to serve public services for the people.”¹⁵⁵

Locals announced that they would refuse the order from commune authorities to dismantle the center. The community center has been the focus of pressure from authorities since it was constructed, and Ven Vorn, a former CPP Chumnap commune councilor, was charged with harvesting the materials illegally so as to construct the center and with destroying evidence of an illegal lumber purchase. Vorn was found guilty in 2016 and sentenced to one year with seven months suspended. He had been active in the grassroots challenge to a planned hydropower dam, along with activists from the NGO Mother Nature. Alex Gonzalez-Davidson, a co-founder of the environmental group Mother Nature, which has worked with the community, said “We completely support their decision to not dismantle the center, as doing so would only favor the local authorities’ plan to further repress non-government voices in the valley. As a matter of fact, we will now try and find a way to expand the community center.”¹⁵⁶

her NGO events, and ex-opposition leader Sam Rainsy for claiming she took \$1 million from the premier to fund anti-opposition activities – an accusation based on leaked text logs, purportedly between her and Hun Sen.” Additionally, after the Supreme Court dissolution of the CNRP she threatened to sue 5,000 CNRP officials as accomplices in a conspiracy to commit treason.

¹⁵³ <https://www.phnompenhpost.com/national/sovantha-under-fire-comments-forestry-forum>

¹⁵⁴ <https://www.phnompenhpost.com/national/manith-message-inquiry-pledged>

¹⁵⁵ <https://www.phnompenhpost.com/national/authorities-order-dismantling-controversial-areng-valley-community-centre>

¹⁵⁶ <https://www.phnompenhpost.com/national/areng-villagers-say-they-wont-tear-down-community-centre-ordered>

In early April, Theng Savoem, president of the Coalition of Cambodia Farmer Community (CCFC), went public to national media to challenge the implementation of the LANGO law which governs civil society groups. He asserted that the law was being abused by authorities who were preventing community based organization activities. He noted that in the prior month alone the CFCC had been blocked from organizing in Takeo, Tbong Khmum and Svay Rieng provinces. He contended that political tensions enabled abuse of the law without accountability, as groups were accused of anti-government incitement. He stated: “We think that freedom of assembly and the freedom of association in Cambodia are restricted and are declining by the use of the system of the law on associations and NGOs. On the other hand, we see that the authorities’ awareness of the law is not really clear, meaning they often prohibited us, asking us to provide notice and to get legal permits.” Khieu Sopheak, a spokesman for responded: “I don’t know if they understand it or not, but I believe that in our Cambodia if we asked for permission...there will be harmony. But if we act boastfully against other people while walking, there will be no food to eat.”¹⁵⁷

On 12 May 2018, Ven Eth, an environmental activist in the Areng Valley region of Koh Kong province, reported an attempt on his life. The attempt involved several gunshots while he was walking just in front of his house. The shots missed but struck the walls of his home. based in the Areng valley region of southwest Cambodia’s Koh Kong province on Tuesday urged authorities to launch an investigation into an attempt on his life over the weekend, saying he is no longer safe in his own home and expects his would-be killers will strike again.

Mr. Eth had submitted a formal complaint against Tel Chan with the Chum Noap commune administrative police station, which claimed that the vice-chief of the commune had made a death threat against him on 17 April. After no action was taken by the police he moved his family to a safe location for two weeks, and then returned to testify at the Thmar Baing district administrative police station about the death threat and the failure of the commune authorities to take action. Mr. Eth claims that in that interaction the two parties to the dispute reached a compromise on 9 May. However, three days later the attempt on his life was made. Ven Eth is both a forestry activist challenging illegal logging and former active member of the CNRP.¹⁵⁸

¹⁵⁷ <https://www.voacambodia.com/a/ngo-law-having-negative-impact-on-freedom-of-assembly-and-political-participation-community-group/4332115.html>

¹⁵⁸ <https://www.rfa.org/english/news/cambodia/probe-05152018151347.html>

Kem Ley Funeral Organizing Committee Members

On 22 September 2017, Phnom Penh Municipal Court on Friday had issued summonses to question the three members of the former committee in charging of planning and organizing a funeral stupa to be constructed for murdered independent analyst Kem Ley. They received a second summons to appear before the court on November 7 and 8 to answer to allegations of breach of trust, and then charged on 4 January 2018 with breach of trust (under articles 391 and 392 of the Criminal Code, punishable by up to 3 years in prison).¹⁵⁹

The three accused individuals were a monk, Venerable But Buntenh (head of the Independent Monk's Network for Social Justice), Moeun Tola (executive director of the Center for Alliance of Labor and Human Rights or Central), and (the head of Cambodian Center for Independent Media) Pa Ngoun Teang. By the time they were charged, Buntenh and Teang had fled the country. The accuser Pich Sros, the head of the Cambodian Youth Party, was demanding an accounting breakdown of expenses for the money raised, after having contributed about 750 USD of the 170,000 raised. He submitted a complaint on 8 September 2017.¹⁶⁰

At the time of the first summons, Ven Buntenh asserted: "Mr Sros' actions are killing the reputation of Kem Ley." Moeun Tola stated to media: "I don't want to say much about Pich Sros, but I want to clarify some things. Firstly, the committee did not manage or divide any of the money collected, we provided it all to the Ley family. Secondly, Mr Sros is not a member of the Ley family and was not on the committee."¹⁶¹ Sao Kosal, a member of the funeral committee and who then became the chief of Mr. Ley's stupa construction committee, Sao Kosal, asserted that it was unreasonable that the three were charged and pointed out that the funeral committee had given the money directly to the family of Kem Ley.¹⁶² Sros, however, claimed he had inside information from Ley's brother, Rithisith that the accused stole funds. However, Rithisith refuted the charges against the activists. Despite his primary role in enabling the prosecution of the three innocent civil society leaders, Sros argued that it was the court's investigation and prosecution that should be applauded.

However, Ley's sister-in-law, Bou Imolyta, the sister-in-law of Kem Ley, refuted Sros's allegations completely. She pointed out that Buntenh had not managed money and she claimed that Sros had no right to file the complaint. She said: "The monk did not hold that money, and Pich Sros has no right to file a complaint at all. He is not the relative of the family and is not involved with

¹⁵⁹ <https://www.fidh.org/en/issues/human-rights-defenders/cambodia-judicial-harassment-of-prominent-defenders-pa-nguon-teang>

¹⁶⁰ The three defendants were accused of complicity in the embezzlement of 300,000 USD from the funeral of Kem Ley while taking part in the organization of the event.

¹⁶¹ <https://www.khmertimeskh.com/83256/court-summons-kem-ley-funeral-committee-members/>

¹⁶² <https://www.khmertimeskh.com/103181/three-charged-kem-ley-stupa-fund/>

the family even a bit. The ones who handled the budget were [Ley's] wife and his mother." Buntenh said: "The court created this case . . . and then they tried to prosecute us. We are not accepting this type of created case." Naly Pilorge, deputy director of Licadho, said: "There seems to be no indication these three individuals were involved in collecting or managing funeral funds."¹⁶³ Ley's widow, Bou Rachana, would repeatedly asserted: "The complaint against these three people is not based on evidence and it can't be trusted. The complaint is just to defame the three."¹⁶⁴

On 30 January 2018, 35 civil society organization issued a joint statement which called for all charges against the three to be dropped. It pointed out that the allegations against the defendants were without basis or evidence, and that the family of Mr. Kem Ley did not support the charges. "These unsubstantiated charges come amidst a severe government crackdown on dissent in Cambodia, which has dramatically diminished the space for human rights defenders and civil society organizations to operate." Despite that, the Council of Ministers spokesman Phay Siphan said the statement from civil society did disregarded the fact that it was the government that was supporting rule of law.¹⁶⁵

In early July 2018, charges were dropped against civil society activist and labor rights supporter Moeun Tola. Kem Rithisith, Ley's younger brother, said that no embezzlement from the fund had occurred. He stated publicly: "I have clarified all sorts of things, meaning that the family didn't lose money because we didn't see the money that was lost in such an excessive amount."

The allegations were made by Pich Sros, the head of the Cambodian Youth Party, however, following the court's decision, Sros would claim: "I want to reiterate that I was not taking advantage of this issue for political gain for the Cambodian Youth Party. What I did was in the name of respect and love for Dr. Kem Ley." Investigating Judge Y Thavarak decided that there was no evidence in support of Sros' allegations. The Central labor coordinator, pointed out how the decision would make it possible for Tola to continue his work in support of labor rights, which had been hindered.¹⁶⁶

The charges were dropped the same time as a visit was taking place from a EU delegation assessing the possible decision to remove Cambodia's EBA trade status. Before the charges were dismissed, 30 national and international civil society organizations called on the RGC and the

¹⁶³ <https://www.phnompenhpost.com/national/three-activists-charged-allegedly-misappropriating-funds-meant-ley-funeral>

¹⁶⁴ <https://www.phnompenhpost.com/national/labour-ministry-seeks-drop-charges-against-activist-moeun-tola>

¹⁶⁵ <https://www.khmertimeskh.com/105451/call-drop-kem-ley-charges/>

¹⁶⁶ <https://www.voacambodia.com/a/court-dismisses-charges-against-unionist-over-alleged-funeral-fund-embezzlement/4480068.html>

courts to drop all charges against the three accused members of the funeral organizing committee. The spokesman for the human rights group ADHOC, Soeung Senkaruna, indicated: “The dismissal of this charge against Moeun Tola by the court is a positive sign to pave the way for civil society organizations to continue their professional activities.” However, Am Sam Ath of the human rights group Licadho pointed out that the charges were still in place against the other two members of the committee and, on the basis of this decision, should be dropped in those cases as well.¹⁶⁷ The charges were dropped after the court received a request from the Ministry of Labor, in order to “ensure freedom of association”. Representatives of apparel brands such as Gap and H&M communicated to the RGC that the charges against Tola should be dropped.¹⁶⁸

Kim Sok – Independent Political Analyst

On 10 January 2018 political analyst Kim Sok was denied bail by the Supreme Court which decided to uphold a lower court conviction and sentencing of 18 months in prison, thereby rejecting any early release for the defendant. Mr. Sok had been arrested in February 2017 and charged with defamation and incitement for comments made linking the PM to the murder of independent political analyst Kem Ley.¹⁶⁹ He was then later his with a second complaint of defamation made by the ruling party, for a 13 February 2017 statement made on the radio in which he said: "This refers to the system ... a system under this government to murder people in which the murderer is never to be found including Kem Ley and other activists ..."¹⁷⁰ This is a good example of how, in the public sphere in Cambodia, critical speech and discussions of political events reflecting an expectation of rule of law and good governance are punished.

In the Supreme Court hearing, the prosecutor made the argument that any release would result in social “chaos”. Supreme Court Prosecutor Chan Dara Rasmey called upon the judges to rule against Sok: “for the sake of society, for the sake of the public and for the sake of Samdech Prime Minister Hun Sen”. Presiding Judge Kim Sothavy indicated that the decision to uphold the decisions of the Municipal and Appeal Court was based on legal procedures, but did not specify. Ky Tech, the lawyer for PM Hun Sen and the ruling Cambodian People’s Party argued that Sok should be confined because he was “confrontational”. He asserted: “If he is released on bail, crimes will happen all over the place because he does not listen to anybody,” Tech said. “He caused chaos and inflamed the anger of the people against the [ruling Cambodian People's Party].”

¹⁶⁷ <https://www.voacambodia.com/a/rights-workers-welcome-dismissal-of-charges-against-unionist/4481669.html>

¹⁶⁸ <https://www.phnompenhpost.com/national/labour-ministry-seeks-drop-charges-against-activist-moeun-tola>

¹⁶⁹ <https://www.phnompenhpost.com/national/analyst-kim-sok-arrested-jailed-after-showing-questioning>

¹⁷⁰ <http://m.en.freshnewsasia.com/index.php/en/3927-pp-court-detains-kim-sok-after-hearing.html>

Kim Sok asserted that while in prison he had been beaten and received death threats. He stated: “I filed the [bail request] to the Supreme Court because it is an injustice; also Prime Minister Hun Sen has been using his power and his officials to put me in a dark prison.” He also later proclaimed: “The court is just a rubber stamp for Hun Sen ... The court helps Hun Sen to jail democracy.”¹⁷¹

Tep Vanny – Land Rights Activist

Tep Vanny, considered a main leader of the grassroots protest movement of citizens displaced by a development project which occupied Boeung Kak lake under the government sanction private development control of a high ranking CPP member and business tycoon. This dispute goes back to 2007.¹⁷² Many residents resisted the land grab and challenged the government and Shukaku, a firm owned by Choeung Sopheap, the wife of powerful ruling party Senator Lao Meng Khin. Vanny was pardoned after serving two years of imprisonment.

Vanny was pardoned by the King, following a request from the PM at the same time as three other Boeung Kak community activists, just a day before two former RFA reporters were released on bail (see section on Freedom of the Press).¹⁷³ Heng Mom, Bo Chhorvy and Kong Chantha were pardoned for convictions received in 2016 related to a protest which occurred in 2011.¹⁷⁴ Vanny was also convicted of that crime along with them, and all former women were found by the court to have committed “Insults Addressed to Public Officials” and “Obstruction of a Public Official with Aggravating Circumstances”. They all received a six-month sentence. No reasons were given for the pardon, but her arrival home was broadcast on social media and a large crowd had gathered to cheer for her.¹⁷⁵ Vanny was released after serving more than two years of a total of 36 months, as she was given a thirty-month sentence for another conviction when she was found guilty of a reactivated charge of an “Intentional Act of Violence with Aggravating Circumstances” for a 2013 protest, after the charges were reactivated by the prosecutor.

The incident involved around 70 land dispute protestors from three different communities that have been displaced. First they sought to deliver a petition to the Ministry of Justice, but they

¹⁷¹ <https://www.phnompenhpost.com/national/analyst-kim-soks-bail-request-denied-supreme-court>

¹⁷² <https://www.aljazeera.com/news/2018/08/cambodia-rights-activist-freed-jail-pardon-180820163915085.html>

¹⁷³ <https://theaseanpost.com/article/cambodia-frees-activist-and-journalists>

¹⁷⁴ <https://www.rfa.org/english/news/cambodia/charged-11292011173320.html>;

<https://www.khmertimeskh.com/92361/boeung-kak-activists-verdict-delayed/>;

<https://www.khmertimeskh.com/95116/court-upholds-terms-boeung-kak-activists/>;

<https://www.phnompenhpost.com/national/breaking-supreme-court-upholds-boeung-kak-convictions>;

<https://www.cambodiadaily.com/editors-choice/boeng-kak-activists-sentenced-5-years-later-118199/>

¹⁷⁵ <https://www.voanews.com/a/cambodian-king-pardons-imprisoned-land-rights-activists/4536874.html>

were blocked, and then sought to deliver the petition to the PM's residence directly (independence monument). The petition was a request for the release of Yorm Bopha from incarceration and an effective redress for the displaced communities. In front of the PM's residence the security services responded with force, and Boeung Kak protestor Bo Chhorvy was injured. Even though the only evidence was the testimony of the plaintiffs delivered in written form, Vanny was charged and convicted with committing aggravating intentional violence for allegedly ordering protesters to attack the security guards. The two plaintiffs were Daun Penh security guards Hao Hoeurn and Ouk Ratana. The Daun Penh security forces have been involved in a number of violent incidents against peaceful protesters during the 5th mandate of the National Assembly, without any accountability or repercussions from the authorities. In many cases, it has been the victims that were charged. Following the incident Vanny was arrested on 15 August 2016 and sentenced to 6 days imprisonment for the crime of "insulting a public official", but after serving the sentence she was not released and instead was charged with "aggravated intentional violence". She was not tried until and convicted until 23 February 2017.¹⁷⁶

On 8 August 2017, the Court of Appeal upheld the lower court verdict against land activist Tep Vanny who had been found guilty of an intentional act of violence when security guards responded with force against peace protesters who had assembled outside PM Hun Sen's house in 2013. Court of appeal presiding judge, Pol Sam Oeun, asserted that the court determined that Vanny did instigate violence against the security guards on scene. However, he also seemed to indicate that an infraction totally irrelevant to the crime was relevant to her guilt, when he emphasized that she did not have permission to hold a protest and submit a petition to the PM. After the Court of Appeal decision, approximately 50 residents of the Boeung Kak community held a peaceful gather outside the court.¹⁷⁷ On 5 February 2018, the Supreme Court upheld the sentence of 30 months in agreement with the prior decision of the Appeal Court. The presiding Judge Kem Sathavy summarily rejected the defense position that the defendant did not commit violence as "note true" without providing further grounds.¹⁷⁸ In the third week of April family and supporters submitted a petition to the Ministry of Justice to obtain Vanny's release, in conjunction with a traditional annual prisoner release for the Visak Bochea holiday. The Ministry indicated that it was reviewed, but no apparent further action was taken.¹⁷⁹ In mid-August, in conjunction with the second anniversary of her incarceration, 162 groups issued a joint

¹⁷⁶ <https://www.rfa.org/english/news/cambodia/pardons-08202018162801.html>

¹⁷⁷ <https://www.khmertimeskh.com/77331/tep-vanny-jail-term-upheld/>

¹⁷⁸ <https://www.phnompenhpost.com/national/tep-vannys-sentence-upheld-supreme-court>

¹⁷⁹ <https://www.phnompenhpost.com/national/activist-tep-vanny-makes-new-bid-release-cambodia-prison>

statement calling for her release. The statement was signed by CBOs, NGOs, and INGOs and included COMFREL.¹⁸⁰

After being jailed for two years, after a wholly innocuous action was treated as a violent assault and she was convicted on unconvincing evidence and testimony, Vanny's legal problems continued. Within a week of her pardon and release, she returned to court as a defendant. The case related to a complaint accusing Vanny of a death threat and insult. It was submitted by a fellow former Boeung Kak resident named Ly Mom in 2012. In that case Vanny was one of 6 accused by the complainant (the others were Heng Mom, Chheng Leap, Kong Chantha, Tol Sreyppov and Nget Khun). Phnom Penh Municipal Court dropped the insult charge but found the defendants guilty of the death threat charge. They were given a six-month suspended sentence. Vanny indicated that verdict of guilty for the death sentence was an injustice and she would file a complaint to the court.¹⁸¹

Following her release, she continued to call for justice based on rule of law. In discussion with media she asserted that she should never have been arrested and that her conviction exemplified the corruption of the national judicial system. She declared: "More specifically, I am a normal citizen, like others in the Boeung Kak community, who have been victimized by government-approved development projects. So I should be granted warmth and justice, not a two-year jail term."¹⁸² In October 2016, Vanny traveled the U.S. to meet with members of the Cambodian government and to lobby the authorities there to take a stronger stance in support of human rights in Cambodia. She bravely stated: "The situation in Cambodia is difficult now as they restrict us everywhere. Even though I am out of a prison with walls, I am now in a prison without walls. My freedom of expression and freedom of assembly do not exist and we live in fear as they do all kinds of intimidation that they can do. It's not only me who lives in fear, but also my family. We are motivated to be brave even though we know that by leaving home, we will never know if we have a chance to come back home to meet our children and family. We need to step forward and do more advocacy... If we can't protect our home, we can't protect our children, then our children will lose their future."¹⁸³

ADHOC 5

On 26 September 2018, four civil society human rights activists with the NGO ADHOC, and one former civil society activist that had become a member of the National Election Committee were

¹⁸⁰ <https://www.hrw.org/news/2018/08/15/cambodia-civil-society-groups-call-release-tep-vanny>

¹⁸¹ <https://www.phnompenhpost.com/national/tep-vanny-back-court-after-release>

¹⁸² <https://www.voanews.com/a/cambodian-land-activist-freed-journalists-granted-bail/4537665.html>

¹⁸³ <https://www.voacambodia.com/a/prominent-land-rights-activist-meets-us-officials-after-prison-release/4614374.html>

found guilty of bribing a witness in a 2016 case. In that case, the government sought to discredit and prosecute opposition leader Kem Sokha who was later arrested for treason in 2017. Despite detention that began in early 2015, and they were released on bail on 29 June 2017, after 427 days in pre-trial detention.¹⁸⁴ The ‘ADHOC 5’ were found guilty of bribing a witness and sentenced to 5 years of imprisonment. The judge ordered that the sentence be reduced to time served and they were released. They were ADHOC staffers Nay Vanda, Ny Sokha, Yi Soksan and Lim Mony, as well as National Election Committee official Ny Chakrya.

The presiding judge indicated that the ruling was based on the confession of Ms. Chandaraty who told prosecutors that the leaked recording of herself and Kem Sokha was authentic. However, it was in no way clear how the conversation proved the bribery of the defendants in this case. No other evidence was provided and not witnesses were called for the prosecution. All five of the defendants have consistently denied the charges. Judge Sok Sarin asserted: “According to Khom Chandaraty’s answers, she recognised that the audio recording between her and Kem Sokha was authentic. The ADHOC officials bribed the witness before she went for questioning at the Interior Ministry. They pressured Khom Chandaraty to tell a lie when she was questioned by police.”

The trial was characterized by a list of 7 witnesses for the prosecution, of which only one was attended (ADHOC investigation official, Sum Chankea). Two of the defendants Lim Mony and Ny Sokha had not received a warrant from the court to be officially called to trial, as is stipulated by the law. Defense attorney Sam Sokong asserted: “If they have received a warrant but failed to show up, that would not be a problem because there are lawyers representing them, but they have received none...And if the case still proceeds, it will contradict articles 309, 466, and 467 of the Criminal Code.” Defense attorneys also pointed out that the accused allegedly bribed a witness in a case, but there was no actual case (as the legal persecution of Kem Sokha in relation an alleged extramarital affair had finished).¹⁸⁵

CSOs have been very regretful and disappointing because the decision is unjust for ADHOC 5: “These are the first staffers working to protect human rights to be convicted. During the trial there was no evidence to convict them. The conviction will have a chilling effect on other human rights defenders as they will be afraid of fulfilling their duty.” They find that “the baseless convictions show that Prime Minister Hun Sen intends to persecute human rights defenders even after cementing his power through July’s sham election.”

¹⁸⁴ <https://www.phnompenhpost.com/national/adhoc-5-released-bail-case-widely-seen-political>;
<https://www.rfa.org/english/news/cambodia/sentence-09262018171352.html>

¹⁸⁵ <https://www.phnompenhpost.com/national/adhoc-5-key-witnesses-absent>;
<https://www.phnompenhpost.com/national/outrage-adhoc-5-hearing-key-witnesses-absent-and-verdict-looms>

On 29 June 2017 (after the commune council elections final results were announced by the NEC), the imprisoned ADHOC 5 (four human rights workers and one NEC official) 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.¹⁸⁶ Although no official reason for their release was given by the judge, the Phnom Penh Municipal Court Director indicated that they were released because of illness.¹⁸⁷ On the 426th day of detention without trial¹⁸⁸, 33 civil society organizations issuing a joint statement verifying that there were concerns regarding the health of the human rights workers and that they had been denied medical care while imprisoned.¹⁸⁹ Independent media had reported problems related to the health condition of the detainees as early as June 21 and the obstruction of access to medical care¹⁹⁰, and almost immediately it was announced that the investigation had ended.¹⁹¹

Trade Unionists

The union leader Chea Mony was ordered to appear before the court on 22 January 2018, the anniversary of the death of his brother, labor leader Chea Vichea, in a murder case that has never been solved. He was called to answer to a complaint submitted on 18 December 2017 by the legal representative of 120 unions, who claimed Mony had called for the EU and US to impose economic sanctions on Cambodia. This followed an interview he gave on RFA. Media reported that an article accompanying the published portion of that interview did mention that Mony had supported such measures. Complainants called for 1 million USD in compensation and incitement charges against Mony. Most of the 120 unions are considered pro-government. The lawyer representing the group asserted: “During the questioning, I firstly requested the court to prosecute Chea Mony according to the law. Secondly we upheld the demand for compensation of \$1 million, and thirdly we demanded Chea Mony be responsible for the damage that would

¹⁸⁶ <https://www.phnompenhpost.com/national/adhoc-5-released-bail-case-widely-seen-political>

¹⁸⁷ <https://www.cambodiadaily.com/news/adhoc-5-approved-release-bail-131960/>

¹⁸⁸ In December 2016 the Minister of the Interior stated that the detained civil society advocates and electoral official would be freed before the end of 2016. <https://www.khmertimeskh.com/14270/adhoc-five-probe-ends>

¹⁸⁹ <https://www.phnompenhpost.com/national/three-adhoc-5-denied-medical-care>

¹⁹⁰ <https://www.voacambodia.com/a/jailed-rights-worker-health-deteriorates-as-doctors-barred-by-authorities/3908676.html>

¹⁹¹ <https://www.khmertimeskh.com/14270/adhoc-five-probe-ends/>

happen in the future, meaning that in the future if there is a crisis or other damage, we will demand the compensation accordingly.”¹⁹²

Mony did not attend for the first summons, and was summoned a second time for 9 February 2018 to answer questions regarding allegations of incitement, however, the court did not specify if the charge was incitement to discrimination (punishable by up to three years in prison) or incitement to commit a felony (punishable by up to two years in prison).¹⁹³ On 21 February 2019, more than a year later, the Phnom Penh municipal court decided to drop the charges against Mony. Phnom Penh Municipal Court spokesman Y Rin said Investigating Judge Seng Rithy had moved to drop the case brought against Mony on December 15, 2017 on the basis of insufficient evidence.¹⁹⁴

At the end of January 2018 the Ministry of Labor issued a warning to the Cambodian Labor Confederation (headed by Ath Thorn) that it would be de-registered if it did not provide the ministry with financial data on its member groups and their leadership. It was given until 14 February to provide the information, even though the trade union law required only financial reports and activity reports from registered unions. The labor ministry has warned one of Cambodia’s most prominent unions that its registration could be canceled if it does not supply the government with financial reports. Mr. Thorn indicated that his group was checking on the legality of the ministry’s order. The CLC has been one of the most active unions pushing for increases to the minimum wage during the period of the 5th mandate of the National Assembly. The CLC was directed to the ministry spokesman for clarifying the law, but the spokesman was not able to be reached.¹⁹⁵

In February 2018, four unionists from the Cosmo Textile garment factory in Kandal province accused of starting an illegal protest were questioned by the Phnom Penh Municipal Court. Prior to the protest, two members of the union were dismissed for allegedly failing to register their time card. In response, they were arrested along with two other unionists. Their lawyer was not present during the interrogation, and he indicated he had not received a copy of their case file as per procedure, without which they could not submit a request for bail. Following the dismissals of the unions, more than 100 workers voluntarily and peacefully went on strike. According to workers, on 20 February the Arbitration Council had ordered them to return to work while it deliberated the case.¹⁹⁶

¹⁹² <https://www.phnompenhpost.com/national/case-against-unionist-chea-mony-brother-murdered-labour-leader-proceeds>

¹⁹³ <https://www.phnompenhpost.com/national/court-summons-union-leader-chea-mony-second-time>

¹⁹⁴ <https://www.phnompenhpost.com/national/former-union-president-monys-charges-dropped>

¹⁹⁵ <https://www.voacambodia.com/a/major-union-faces-lawsuite-over-financial-reporting/4224572.html>

¹⁹⁶ <https://www.phnompenhpost.com/national/unionists-questioned-after-illegal-protests>

A Cambodian court found the six union leaders guilty on 11 December 2018. They were: Ath Thorn (Cambodian Apparel Workers' Democratic Union), Chea Mony (Free Trade Union of Workers of the Kingdom of Cambodia), Yang Sophorn (Cambodian Alliance of Trade Unions), Pav Sina (Collective Union of Movement of Workers), Rong Chhun¹⁹⁷ (Cambodian Confederation of Unions) and Mam Nhim (National Independent Federation Textile Union of Cambodia). Pav Sina had previously indicated to media that a total of 7 complaints had been made against him, including defamation and forgery. Ath Thorn noted that 7 complaints were made against him as well, and complaints were made against 30 of his union colleagues. He estimated a total of 100 unionists had been accused in official complaints.¹⁹⁸

The court ruling found the six union leaders to be responsible for having instigated violent protests against the government. Prior to their conviction, the four original charges against the union leaders had all been changed to charges of instigating the acts (the original charges were intentional acts of violence with aggravating circumstances; intentionally causing damage with aggravating circumstances; threats to destroy property followed by an order; and blocking public traffic).¹⁹⁹ The labor leaders were effectively held responsible for a 3 January 2014 protest where, in response to stone-throwing protestors, the police opened fire with live ammunition (at least 4 people were killed and 20 were wounded).²⁰⁰ At the very end of 2013, garment factory workers formed a protest on Phnom Penh's Veng Sreng Boulevard to demand the minimum wage increase to 160 USD a month, after a previous government decision to increase the minimum wage only moved it from 80 USD to 95 USD. The wage demand was supported by the former major opposition party, the CNRP, who was also supporting protests to demand an investigation into the 2013 national assembly election results.

Specifically, they were convicted of initiating intentional violence and causing damage. They were given prison sentences ranging from 8 months to 4.5 years, but all sentences were

¹⁹⁷ Former unionist and election official Rong Chhun was formerly of head of the Independent Teacher's Association, who then worked at the Ministry of Education Research Department. He was granted leave from the ministry to be a member of the National Election Committee, but later resigned from that body after the dissolution of the CNRP. He applied to return to his post at the ministry on 3 January 2018, but then was informed in March that he had been fired retroactively since the beginning of the year. The ministry spokesman claimed that he had waited too long to apply to return to his old post, as a 1999 sub-decree specifies that a person must return 'soon' after the reason for their leave has ended.

<https://www.phnompenhpost.com/national/government-critic-fired-education-ministry>

¹⁹⁸ <https://www.khmertimeskh.com/548329/hun-sen-urges-courts-to-drop-charges-against-union-leaders/>

¹⁹⁹ <https://www.phnompenhpost.com/national/ninety-five-ngos-condemn-convictions-union-leaders>

²⁰⁰ In the government 'revolution' narrative, the protest had been linked The protest was linked as well to the CNRP and its claims that the CPP had committed electoral fraud in 2013.

immediately suspended. Judge Im Vannak did not explain why the sentences were to be suspended even though the accused were found guilty. The convicted labor rights activists were still ordered to pay 8,692 USD to those injured in the protest as compensation. It should be emphasized, as well, that the convictions effectively banned the labor leaders from heading a labor union. Ath Thon, the president of the Coalition of Cambodian Apparel Workers' Democratic Union, stated: "We can't accept this criminal conviction record. The situation is now more tense than before."²⁰¹

On 7 November 2018, PM Hun Sen publicly stated that in all the cases, the trial process should be expedited or the charges should be dropped. At that time, the spokesman for the Ministry of Justice, Chin Malin stated: "We do not have the power to intervene to have the courts drop the charges, but we will review and see what regulations are available at our disposal. Some cases have been on-going for a very long time and what we can do is help speed up the process. However, whether the cases get dropped or not, it's up to the courts."²⁰²

On 28 November 2018 Prime Minister Hun Sen had announced, in front of an audience of 18,000 factory workers, that he 'requested' union leaders to submit all relevant documentation to the Labor and Justice Ministries so that those ministries could collaborate with the courts to expedite their cases. At that time, he asserted: "To prevent riots from happening, there is no better option than having a dialogue. The option of dismissing unions is not a good choice as it only intensifies tensions further."²⁰³ However, the labor ministry instructed the defendants to submit a request for assistance that involved a confession of guilt. It instructed them to sign on to a statement that labor conditions were improving under PM Hun Sen, that they had been in the wrong, and that they acted in a way which violated the rights of others.²⁰⁴

On 12 December 2018, in front of an audience of 20,000 factory workers in Kampong Speu, PM Hun Sen declared that three of the six convicted union leaders were innocent, as they were not involved in the protest. They were Ath Thorn, Pav Sina, and Chea Mony. Hun Sen asserted: "There are three people who were not involved, I have evidence for the three. But for the other three, I do not dare to comment."²⁰⁵

The PM said that the chairman of the Cambodia Human Rights Committee Keo Remy and journalist Soy Sopheap were key witnesses who were able to verify that Chea Mony, Pav Sina and

²⁰¹ <https://www.reuters.com/article/us-cambodia-politics/cambodia-union-leaders-convicted-over-protests-jail-terms-suspended-idUSKBN10A18J>

²⁰² <https://www.khmertimeskh.com/548329/hun-sen-urges-courts-to-drop-charges-against-union-leaders/>

²⁰³ <https://www.phnompenhpost.com/national/dismissing-unions-not-good-choice>

²⁰⁴ <https://www.khmertimeskh.com/549866/union-leaders-urged-to-admit-faults-to-gain-legal-assistance/>

²⁰⁵ <https://www.phnompenhpost.com/national/union-leaders-set-appeal>

Ath Thorn were not involved in the protest. He stated: “Keo Remy can be a witness for Chea Mony, because at the time I received a report that forces would intervene [in the Veng Sreng protests], I called Keo Remy to tell him to instruct Chea Mony not to get involved. For Ath Thorn, I sent a message via WhatsApp [a mobile messaging app]. For Pav Sina, I told Soy Sopheap to not let him get involved. Therefore, I believe these three people have not been involved since the beginning.” Despite these statements, he also said that the three accused still needed to submit a complaint to the Appeals Court, and indicated that they should collect more evidence to prove their innocence.²⁰⁶

Not long after their conviction all six of the labor activists indicated that they would appeal the ruling. Following the conviction of the union leaders, 95 NGOs issued a joint statement condemning the court’s decision. The civil society groups called for respect for fundamental freedoms and end to the suppression of public space with the aim of attaining genuine freedom of association. The statement declared: “At trial, prosecutors failed to produce any evidence to establish that the six had committed the crimes they were charged with, nor were any witnesses produced to prove the accused had acted violently during the protests. Importantly, no evidence was submitted to prove that the six union leaders had instigated any of the acts with which they were charged. Further, none of the actual perpetrators of violence or damage were named or charged.”²⁰⁷

On 27 December 2018 the Appeal Court overruled the Preah Sihanouk provincial court, after the latter had ruled that labor leader Khem Mao must pay 3,000 USD in compensation to Cambrew Lt. for a peaceful strike held on 20 August 2016. Mao, the president of the Democratic Workers Union of Angkor Beer Company, The Appeal Court on Thursday overruled a Preah Sihanouk provincial court verdict that ordered a former union leader to pay \$3,000 to Cambrew Ltd, the Sihanoukville-based brewers of Angkor Beer over a 2016 strike. He was accused by the company along with Sar Mora of the Cambodian Food and Service Workers Federation, he was accused by the company which demanded 60,000 USD. The provincial court had decided that Mora did not participate in in the strike and that Mao was responsible. Neither the defendant or plaintiff were present in the Appeal Court hearing,

Collective Union of Movement of Workers (CUMW) president Pav Sina asserted: “Union leaders and representatives protest peacefully to stop companies from violating the law and worker rights, but then they are hit with criminal cases. People generally think it is a waste of time to appeal to the upper [Appeal and Supreme] courts because they think they will just uphold the earlier ruling. [But this case shows they] can make different decisions in accordance with their

²⁰⁶ <https://www.phnompenhpost.com/national-politics/pm-three-protest-union-leaders-innocent>

²⁰⁷ <https://www.phnompenhpost.com/national/ninety-five-ngos-condemn-convictions-union-leaders>

judgement.” Coalition of Cambodian Apparel Workers’ Democratic Union (C.CAWDU) president Ath Thorn also supported the decision of the Appeal Court. However, on 25 December 2018, the Kampong Speu provincial court sentenced nine members of C.CAWDU to a year in prison each (and to pay 9,000 USD in compensation) because of their role in a different labor protest.

Space for CSOs

Toward the end of 2018 the RGC enter into a phase of reconciliation or reform in which it sought to improve its democratic standing and record for respect of fundamental freedoms. On 19 September 2018 an annual report on Fundamental Freedoms Monitoring Project was released by the NGOs the Cambodian Center for Human Rights (CCHR), the Cambodian Human Rights and Development Association (ADHOC), and the Solidarity Center (SC). From April 2017 to March 2018, the CSOs found an increase in incidents of restrictions on fundamental freedoms, from 391 to 593 cases from the previous year.²⁰⁸ The report said: “Year Two of the FFMP showed a shift in the state of fundamental freedoms in Cambodia, due to (a) several significant legislative amendments, (b) the systematic and arbitrary application of laws governing fundamental freedoms, and (c) a decrease in the public’s ability to exercise fundamental freedoms.” It also asserted: “Voices deemed critical of government officials and policies were suppressed with increasing frequency and severity, at the national and local levels.”

On 2 November 2018, PM Hun Sen announced the creation of a task force for engaging with and civil society and addressing complaints stemming from blocks on their activities. The PM appointed 8 officials to the group, including the Interior Minister who would serve as the head of the group. The groups would function to: “Gather information; study the requests and proposal and share ideas with government, ministries and relevant stakeholders to resolve it. Promote and raise civil society’s awareness and relevant stakeholders [awareness] about associations and NGOs law and regulations.” On the one hand, this was a rare admission of the fact that civil society was not free to organize and that suppression of fundamental freedoms was a problem. On the other hand, civil society groups remained concerned that the policy was, made in response to international pressure, only a temporary initiative rather than a substantial reform.

On 27 November 2018, the Interior Minister announced that registered NGOs no longer needed to request permission three days prior to conducting activities. He indicated the new policy was intended to improve cooperation between government and civil society, but would also support local communities. He stated: “NGOs that are legally registered, along with local communities,

²⁰⁸ The number was a result of the project recording 163 incidents, polling 996 citizens from 21 provinces, discussion with 169 security officials and trade union leaders, and looked at 672 incidents on social media.

have the full right to conduct their activities in the Kingdom of Cambodia in accordance with the law.”

CSOs supported the policy change, and called it means to restore fundamental freedoms of association. However CSOs questioned “What’s important is their true willingness in the culture of blame. And we want more freedom for civil society to do their job.”²⁰⁹

CSOs find that they still face restrictions despite claims by policy and officials that the practice is prevented. CSOs did comply with the new policy they were still blocked by local authorities. There is a lack of will to disseminate and enforce such policies at the local level, and government aligned media tend to publicize critiques of NGOs rather than cases of cooperation.

CSOs remains seriously concerned about the ability of citizens to enjoy political rights when the quality of the election process can no longer be considered democratic. The prisoner releases are an important aspect of a new ‘reform’ policy initiative. It is likely the initiative comes in response to international pressures, although denied by RGC officials. Regardless, the political system has moved to one party rule and elections occur as more of a ritual reinforcement of ruling party legitimacy rather than a real competition of different policy platforms with a political opposition party with some significant amount of popular support. Given that, it is unlikely that the reforms mentioned will lead to substantial improvements in government responsiveness. Without political checks and balances in the parliament, advocacy efforts by CSOs may increase but also be less able to engage with policymakers. Moreover, it is likely that civil society activities and statements will continue to be accused of crimes such as defamation and incitement.

²⁰⁹ <https://www.voacambodia.com/a/pm-hun-sen-creates-task-force-to-address-civil-society-concerns/4647309.html>

CHAPTER 5 – MEDIA AND PRESS FREEDOM

Introduction

The situation for press freedom and social media freedom continued the trajectory of decline which characterized 2017. At the end of 2017, the Minister of Information, in a communication to the UN HR Council which was accidentally released on the ministry’s webpage, the Minister of Information defended the 2017 crackdown on the press as “a warning to media”.²¹⁰ Events of 2018 would prove that to be an accurate premonition. One area of democratic progress pertains to the Access to Information Law (see section on Legislation), but there very were few bright spots for press freedom in 2018. Part One of this chapter first discusses rankings and assessments for Cambodian media by national and international civil society organizations, with a focus on giving voice to journalists themselves as they describe the current media situation and trends. In Part Two of the Chapter, the report will look at key cases of restrictions, repression, and lawfare used against independent media and journalists.

Part I - Rankings, Assessments and Journalists Voices

In February 2018 Reporters Without Borders released a report which detailed the findings of an investigation it conducted in October 2017 which assessed free press in Cambodia to be in a state of “ruins as a result of constant depredation by Prime Minister Hun Sen’s regime.” The report argues that the regime intensified targeting and eliminating independent press as a response to the results of the 2017 commune council elections where the opposition party made significant gains. The COMFREL 2017 Democracy Report documents the closures of the Cambodia Daily and RFA and VOD radio in 2017 just prior to the arrest of Kem Sokha for treason and the dissolution of the CNRP by the Supreme Court. The Reporters Without Borders report found that media in Cambodia had become more at risk than at any time in the post-UN period. The Southeast Asia Press Alliance (SEAPA) indicated that the press freedom, especially for traditional media²¹¹ had been significantly debilitated.

²¹⁰ <https://www.phnompenhpost.com/national-politics/ministry-information-defends-press-crackdown-un>

²¹¹ Consider TV: “The combined ratings of just four TV channels represent 80 [percent] of the country’s viewers.. Government members or advisers own eight of the ten leading TV channels. Among these powerful players is Hun Mana, head of Bayon Media Group, which owns the country’s biggest TV channel, Bayon TV. Meanwhile, Senate President and CPP Vice President Say Chhum owns newspaper Rasmei Kampuchea, as well as several TV and radio stations.” <https://www.phnompenhpost.com/national/press-freedom-tragic-decline-report>

In late February 2018 the Cambodian Center for Independent Media (CCIM) released the results of a study which surveyed 75 journalists from 41 local media outlets in November 2017. Whereas in the organization's 2015 study 71 percent of respondents said Cambodia was heading in the right direction, in 2018 only 11 percent of surveyed journalists thought so. 92 percent of those surveyed said that media closures had been politically motivated. One journalist was quoted as saying: "The authorities have warned us: don't be so brave."²¹² The Ministry of Information rejected the CCIM report as: "conducted on a handful of extremist journalists, with ill intentions to escape legal responsibilities, and put the blame on the Royal Government of Cambodia".

Also in February, the International Federation of Journalists released a report titled *Cambodia's Media on Edge*, finding increased repression of media outlets in Cambodia. It emphasized that the RGC has: "politicized the country's courts, restricted freedom of speech, assembly and association, and uses violence and imprisonment to suppress its political opposition, civil society and media". It interviews several local journalists and includes their perspective which shows the fear, restriction, and pressure to self-censor which they work under. Journalists said that "It's very difficult for independent journalists to report on what we call 'sensitive issues' like politics, logging or corruption. [Cambodian] journalists are under threat." Increased editorial oversight and interference was regarded as related to politics for one foreign journalist who worked at a pro-government media outlet. The source described the balance being deliberately taken out of articles by editors or management. Journalists who worked for the closed outlets are being denied press cards, some have been brought in for questioning . . . this makes it hard to work without self-censoring. If we can't work how can we look after our families?"²¹³

In early April, Reporters Without Border released its annual World Press Freedom Index which had found Cambodia dropped ten places from the year before. Cambodia was ranked 142 out of 180 countries in 2018. Although it had been a regional leader in free press at one point, by 2018 Cambodia was ranked below both Myanmar and Thailand. Cambodia is still, however, ranked above Vietnam, Laos, and Singapore. Cambodia was ranked slightly higher than Venezuela and South Sudan. The report contended: "Prime Minister Hun Sen's regime launched a ruthless offensive against media freedom in 2017 . . . His suppression of independent voices, his increased dominance of the mass media and his meticulous control of social media are a disturbing echo of the methods used in China, which has invested millions of euros in Cambodia's pro-government media."

The Cambodian Centre for Independent Media, find that "Press freedom in Cambodia is ... worse and worse since the last year, and it will be worse as the Cambodian government doesn't care about freedoms, rights, and laws," he said in a message, adding the government's hostile attitude

²¹² <https://www.phnompenhpost.com/national/press-freedom-collapsed-2017-journalist-survey-says>

²¹³ <https://www.phnompenhpost.com/national/cambodian-media-under-threat-report>

put Cambodia's free press in "great danger and uncertainty". The Cambodian Institute for Media Studies, said that those in the media feel sad and frustrated about the situation.²¹⁴ In its 2019 rankings for press freedom in 2018, Cambodia dropped another spot to 143 out of 180.²¹⁵ Press freedom declined further in the course of 2018 with the change in ownership of the Phnom Penh Post, continued prosecutions of journalists and the owner of the Cambodia Daily, and prosecutions of documentary filmmakers, all of which are documented below in this report.

Despite the findings of these different reputable national and international non-governmental organizations, in early March the Minister of Information declared that it was the supporters of press freedom that were undermining democracy. The Information Minister said supported the elimination of the major opposition party and lauded national news coverage of the related events. Referring to a 'national pride' in a media supporting democracy. The minister asserted: "As we are facing the high tension in events, we must acknowledge and check the gaps [in the ministry's] surveillance and control, and also react on time to prevent the incidents from taking place".²¹⁶

Despite the rapid decline in independent media in 2017 and its continuation into 2018, in conjunction with World Press Freedom Day in early May 2018, two Cambodian journalist federations issues statements which lauded the country as having the freest press in the region. They asserted that the real problem for Cambodia was the threat posed by fake news, which needed to be combatted. Both the Union of Journalist Federations of Cambodia (UJFC) and the Cambodia Association for Protection of Journalists (CAPJ) issued statements.²¹⁷

On World Press Freedom Day 2018, journalist reported having to self-censor on any critical or sensitive story, leaving stories out or unreported because of fear of repercussions, high stress and fear among family members, and leaving journalism for other jobs.

VOA reporters recounted surveillance during news reporting and interviewing members of the public. This included an event in Battambang where journalists were forced to interrupt interviews and show identification because local authorities said people were going there to cheat the villagers. In another case police followed journalists as they interviewed a local commune chief and forced the reporters to produce a letter explaining their intentions. As with CSO members, many journalists have turned to other professions because of the stress,

²¹⁴ <https://www.phnompenhpost.com/national/cambodias-press-freedom-ranking-plunges>.

²¹⁵ <https://www.voacambodia.com/a/reporters-without-borders-says-cambodia-media-freedoms-plummeted-in-2018/4883267.html>

²¹⁶ <https://www.phnompenhpost.com/national/information-ministry-claims-press-freedom-supporters-are-killing-democracy>

²¹⁷ <https://www.phnompenhpost.com/national/statements-laud-press-freedom-ignore-inconvenient-truths>

intimidation, and fear of imprisonment. Morm Moniroth, a former RFA reporter recounted a decision to return to farming after receiving death threats, and indicated that he planned to: “remain silent and want to live my life as an ordinary person.” Voice of Democracy (VOD) informed that reporters had to take more precautions for security and to avoid politically motivated prosecutions. More stories had to be left out and sources were no longer willing to go on the record. VOD still disseminates news using its Facebook page, which has more than 900,000 likes.²¹⁸

In late May, prakas (government directives) were released which ordered the blocking of any and all websites considered a threat to national security or capable of incitement.²¹⁹ Prior to the 2018 National Assembly elections the RGC ordered 15 news media websites to be blocked on the day before and the day of the election, (July 28 and 29).²²⁰

Part II - Key Cases of Restrictions on Media Freedom

In addition to these cases, significant restrictions were placed on journalists and online news for the 2018 National Assembly Elections. (See chapter on Democratic Elections).

Cambodia Daily

In early 2018, Cambodia’s Telecommunications Regulator (TRC) announced that it would investigate and sanction internet providers that did not block the Cambodia daily website. The Ministry of Posts and Telecommunications ordered ISPs to block the Daily, following a request from the General Department of Taxation had ordered a block on the website, twitter account and Facebook two months prior, but only a few ISPs had complied.²²¹ Even though the original request from the GDT to the MPTC was dated 5 September 2017, and the letter from Telecoms Ministry instructing ISPs to block was dated 28 September, which resulted in barred access through some ISPs, national media was not made aware of an official policy of until February 2018. Some ISPs indicated that they never received any letter from the MPTC. Telecom Ministry

²¹⁸ <https://www.voacambodia.com/a/as-cambodia-marks-press-freedom-day-journalists-fear-increasing-restrictions/4376043.html>

²¹⁹ <https://www.reuters.com/article/us-cambodia-election-censorship/cambodia-blocks-some-independent-news-media-sites-rights-group-idUSKBN1KH29Q>

²²⁰ <https://www.voacambodia.com/a/government-confirm-blocking-fifteen-independent-news-sites-over-poll-disruption/4503739.html>

²²¹ <https://www.phnompenhpost.com/national/telecoms-regulator-investigate-internet-providers-snubbing-cambodia-daily-ban>;

asserted: “Block means you are not able to view; censorship is something different. Censorship means you cannot do – block means you are not allowed to see.”²²²

Pressure from the RGC, which forced the closure of the Daily in 2017, under the pretext of a tax violation, continued in 2018 with legal restriction on access to the Daily website and the defamation trial of the former Deputy Publisher of the Daily, Deborah Krisher-Steele. The tax infraction had become highly politicized by the tax department and government media mouthpiece Fresh News, in an apparent attempt to discredit the Daily and foment nationalist sentiment against the media organization. However, when Krisher-Steele complained about the release of confidential information by Fresh News and attributed the leaks to the tax department, she was hit with a defamation suit. The Cambodia Daily ceased operations on 4 September 2017. In a statement issued the management asserted: “There may well be a legitimate dispute between the tax department and the owners of the Daily over when tax became collectable and in what amount. In an ordinary process, matters in dispute would be resolved after an audit and private negotiations. Instead, the Daily has been targeted with an astronomical tax assessment, leaks and false statements by the tax department and public vilification by the head of government before an audit, much less a legal proceeding.”²²³

On 5 September 2017, the General Department of Taxation (GDT) filed a lawsuit against the publishers of the Cambodia Daily after it had ceased operations. It alleged that the media organization had committed both tax evasion and defamation. The complaint was submitted by the General Department of Taxation. The tax evasion allegation related to a 6.3 million USD tax bill that the RGC said the Daily owed. The defamation allegation stemmed from comments made in a press conference by Krisher-Steele insinuating that the Tax Department had leaked the private documents. .²²⁴

Referring to the defamation allegation which pertained to a statement by Krisher-Steele Vann Puthipol proclaimed: “The acts of Ms. Deborah Krisher Steele accusing tax officers of leaking information was serious defamation that has affected the honor and dignity of a state institution.”²²⁵ At the time the Daily disputed the tax bill and called for a formal audit, but it was not granted by the authorities before the deadline to settle the overdue payment. The defamation suit sought approximately 200,000USD in damages, and the tax evasion charge is punishable by up to five years of imprisonment.

²²² <https://www.phnompenhpost.com/national/cambodia-dailys-website-twitter-blocked-government-order>;
<https://www.phnompenhpost.com/national/telecoms-regulator-investigate-internet-providers-snubbing-cambodia-daily-ban>

²²³ <https://www.khmertimeskh.com/81102/cambodia-daily-close/>

²²⁴ <https://www.phnompenhpost.com/national/cambodia-daily-publishers-defamation-trial-begins>

²²⁵ <https://www.khmertimeskh.com/81868/tax-office-hits-daily-bosses-defamation-lawsuits/>

On 22 March 2018 the Phnom Penh Municipal Court tried Krisher-Steele for defamation, with the only result being a ruling that the trial would continue on April 12.²²⁶ The defense lawyer Ham Sunrith stated that the defendant had not received any official summons related to the case, but this claim was disputed by prosecutor Keo Sokunthea. Presiding Judge Seng Leang decided in support of the proposition and indicated the trial would move ahead. However, the court adjourned the hearing until April 12 because the statement of Krisher-Steele that had been provided to the court by the defense had not been translated by official translators.

Tax Department Deputy Director Vann Puthipol is the complainant, but Heng Narith presented a statement on behalf of the department. He asserted: “The Tax Department is a law enforcement institution and follows the regulations, and no documents were leaked by the department. These accusations have affected the reputation of the Tax Department. The GDT is not involved in politics.”²²⁷

In the hearing on April 12, the focus was on the basis for the defamation complaint. The initial complaint submitted by the tax department claimed that the defendant had defamed the tax department by alleging that it had leaked the tax document (resulting in its publication on social media and fake news) and that the tax department was acting on political motives. The legal representatives for the defendant, Hem Sunrith and Sek Sophorn posited the need to establish the source of the leak obtained by Fresh News. Presiding Judge Seng Leang determined that more time would be needed to consider the request of the defense to summon Fresh News in order to ascertain the source of the leak. The judge claimed: “The case is complicated to summon Fresh News. It could affect the professionalism of the journalists and so we will discuss this later.”²²⁸

However, in response to this line of argument by the defense, the prosecutor Mao Samvutheary declared that the leaks were not the basis of the complaint which was instead accusations made by the defendant regarding the tax departments intention to shut down the newspaper. In the hearing, Krisher-Steele issued a statement which contended that she publicly discussed the tax document leak only after the Tax Department had shared information or commented about it with national media, which violated the department’s confidentiality clauses. Effectively, the tax document first publicly discussed a confidential document, her comments were in response and an example of protected fundamental freedom of expression. She also pointed out to the court and national and international observers: “I learned about the trial after being contacted by media outlets in Cambodia who say they saw this case posted on the court noticeboard,” she said in the statement. “To this date I have never been contacted by the court or informed of the trial

²²⁶ <https://www.khmertimeskh.com/115633/court-tries-defamation-case-against-daily-publisher/>

²²⁷ <https://www.phnompenhpost.com/national/cambodia-daily-publishers-defamation-trial-begins>

²²⁸²²⁸ <https://www.phnompenhpost.com/national/cambodia-daily-publishers-defamation-trial-again-deferred>

or invited to be questioned.”²²⁹ The hearing was ultimately postponed indefinitely because of the need to consider the defense request to summon Fresh News.

Krisher-Steele, the former deputy-publisher of the Daily faces separate charges related to the alleged unpaid tax debt, along with former general manager Douglas Steele and the founder of the newspaper, Bernard Krisher. They were accused by the tax department of tax evasion, punishable by up to five years in prison, and obstruction of tax collection, punishable by up to one year in prison. Douglas Steele’s lawyer Sek Sophorn, received a request that Steele appear for questioning on 9 May 2019, however, Sophorn indicated he would be unavailable on that day. Steele has assured national media that he would not flee Cambodia. He asserted: “I won’t solve their problem for them by fleeing. I will not run away. I’m not looking forward to it, but it’s something I can’t control.”²³⁰

Aun Pheap Case

Aun Pheap informed media that he had sought asylum and fled to the United States, following charges made against him for alleged “incitement to commit a felony”.²³¹ He was charged on 28 August 2017, along with Canadian reporter Zsombor Peter, while they worked for the Cambodia Daily reporting on the commune council elections of 2017. The charge is punishable by up to one year of imprisonment. Analysts point out that the prosecutor’s office has never clarified which specific felony they are accused of inciting. In an interview with Reuters, Aun Pheap contended: “If I go back to Cambodia, it is for sure that I will be arrested.” Aun Pheap denied the charges made by the RGC. He claimed that he was granted refugee status by the U.N. Refugee Agency (UNHCR) in January, and had departed for the U.S. on 25 March 2018.²³²

According to VOA the journalists were not made aware of the charges until October. The charges were based on a 22 May 2017 complaint from a former commune chief from the Sam Rainsy party, named Rmam Yout, along with two more villagers, who sued the journalists for “incitement with bad intention” because the journalist asked them which party they voted for. The defendants lawyer has argued before the court that asking questions is part of the profession of journalism and not a criminal offense. Mr. Pheap informed media that he believed the charges were a means to punish the journalist for their reporting on illegal logging, with powerful elites pushing for the lawsuit. Shawn Crispin, CPJ's senior Southeast Asia representative, urged that

²²⁹ <https://www.khmertimeskh.com/302773/dailys-defamation-case-delayed-again/>

²³⁰ <https://www.phnompenhpost.com/national/cambodia-daily-gms-lawyer-invited-questioning>

²³¹ Articles 494 publicly spoken or published provocation to commit crimes, and Article 495 direct provocation to commit a felony.

²³² <https://www.voanews.com/a/cambodian-journalist-charged-with-incitement-flees-amid-crackdown/4363067.html>

the "incitement charges against journalists Aun Pheap and Zsombor Peter should be dropped immediately," adding, "We urge Prime Minister Hun Sen to cease and desist his government's campaign of intimidation against independent media, and allow reporters to do their jobs without fear of reprisal."²³³

The Phnom Penh Post

In early May, to the surprise of both its staff and readership, the Phnom Penh Post newspaper was sold. For 26 years the Post had served as a high quality independent news source in Cambodia. The amount paid for the media organization was not disclosed, but the sale correlated with an out-of-court settlement of an alleged back tax bill of 3.9 million USD. No details of the settlement were made public.²³⁴ An investigative piece by the Post staff and published on the website of the paper, was met with furor and condemnation by the new owner.²³⁵ As a result of the dispute over the article, several staff members were fired or resigned, in what appeared to the public to be a purge by the new owner which fundamentally undermined public confidence in the continued independence of the paper. The sale of the Post occurred within 10 months of the Cambodian Daily and RFA closing down operations in Cambodia.²³⁶ Post owner Bill Clough informed media that the news organization's tax burden had been resolved in a "full final amicable settlement". He vouched for the new owners as a respected and experienced journalist. However, to observers and analysts the specifics surrounding the sale and the timing of the settlement of the tax dispute seemed suspicious.²³⁷

On May 6 2018 the post ran the story about the sale and pointed out that the new owner's background was in public relations and that his agency had worked for PM Hun Sen in the past.²³⁸ His own PR firm website connected him to Hun Sen, listing Hun Sen's "entry into government seat" as one of its government affiliated contracts.²³⁹ The Post article made several more key revelations. First, in addition to PM Hun Sen, Asia PR has also worked for KFC Holdings Berhad, the branch of the fast food chain KFC, which operates in Cambodia in a

²³³ <https://www.voanews.com/a/cambodian-journalist-fearing-arrest-obtains-un-refugee-status-flees-to-us/4372404.html>

²³⁴ <https://www.scmp.com/news/asia/southeast-asia/article/2145111/new-malaysian-owner-cambodias-phnom-penh-post-fires-editor>

²³⁵ The article has been removed from the website by the new ownership. Brendan O'Byrne and Ananth Baliga "Phnom Penh Post sold to Malaysian investor", *Phnom Penh Post*, 6 May 2018.

²³⁶ <https://www.rfa.org/english/news/cambodia/bail-08212018150345.html>

²³⁷ <https://www.ft.com/content/0a9dd70c-50e9-11e8-b3ee-41e0209208ec>

²³⁸ Brendan O'Byrne and Ananth Baliga "Phnom Penh Post sold to Malaysian investor", *Phnom Penh Post*, 6 May 2018.

²³⁹ <https://www.theguardian.com/world/2018/may/06/newspaper-takeover-staggering-blow-cambodia-free-press-phnom-penh-post>

partnership with business tycoon and close associate to PM Hun Sen, Kith Meng. Second, Asia PR was previously managed the pro-government newspaper The Cambodia Times which published in the early 1990s and whose owner was identified by media as NagaCorp CEO Chen Lip Keong. Third, the name of the editor-in-chief at the Cambodia Times was Kamaralzaman Tambu, which Asian Business magazine reported to be the managing director of Asia PR in a 1995 article. Sivakumar's LinkedIn profile indicated, however, that he began working at Asia PR in 2010. Fourth, Reporters without Borders indicates that T. Mohan, the current owner of the Khmer Times, was the managing editor of the Cambodia Times. A set of leaked messages linked NagaCorp, Hun Manith, and T. Mohan.²⁴⁰ Fifth, Sivakumar was linked to Sarawak state Chief Minister Abdul Taib Mahud through serving as the chief operating officer and editor in chief of the Eastern Times, a Malaysian newspaper. He has authored two books on the Taib, who is reputed to be highly corrupt by international non-governmental organizations.²⁴¹ Asia PR website facts explained its 'covert PR' services: "If the politician says he is good, nobody believes him. But if someone of credibility says the politician is good, the audience listens. If we exploit and explain an issue to prove that the politician is good, the audience is convinced."²⁴²

The Post article on the sale also indicated that the seller, Australian Bill Clough, told reporters he did not believe in a connection between the new owner and the Khmer Times or NagaCorp. He asserted: "Siva has repeated[ly] categorically denied that his investment group has any connection with either Naga World or the Khmer Times." It was also reported that T. Mohan denied any connection between Sivakumar and the Cambodia Times. The Post twice stated that a press release from the new owner mentioned that he intended to maintain editorial independence of the newspaper. Post reporters attempted to contact the new owner by email and Facebook messages, but there was no response. Phone and email messages to Asia PR also did not receive a response. It also noted, that attempts to communicate with NagaCorp by email concerning the Cambodia Times did not receive a response.²⁴³

Despite the article being of crucial importance to the Post readership as an indicator that the staff fully intended to maintain critical independence under the new ownership, the new owner declared the article to be "a disgrace and an insult to the independence claim of the newspaper". He claimed the article appeared to be "internal sabotage"²⁴⁴ Kimsong was fired, and the managing editor resigned prior to a meeting with the new Editor-in-Chief, after which

²⁴⁰ <https://www.cambodiadaily.com/news/link-alleged-between-newspaper-hun-manith-nagacorp-ceo-126010/>; <https://www.phnompenhpost.com/national/portions-leaks-verified-nine>; <http://sea-globe.com/sizing-up-hun-manith/>

²⁴¹ See also <https://www.globalwitness.org/en/blog/phnom-penh-post-debt-gratitude/>

²⁴² <http://sea-globe.com/how-cambodia-defeated-its-free-press/>

²⁴³ Brendan O'Byrne and Ananth Baliga "Phnom Penh Post sold to Malaysian investor", *Phnom Penh Post*, 6 May 2018.

²⁴⁴ <https://www.rfa.org/english/news/cambodia/media-05142018165329.html>

the business editor, web editor, and a senior journalist also resigned.²⁴⁵ Another source reports Kimsong was fired and six more staff resigned on the same day in protest to the new editorial policy. The next day eight more reporters resigned, and the media organization had no more foreign staff. Khmer staff member Yon Sineat stated: “What happened made us very afraid that we may not be able to continue our journalistic work. We don’t know what will happen next.”²⁴⁶

Investigative reporting by AEC news today obtained documents which indicated that the Post was most likely sold for 5 million USD, with 2 or 3 million reduced for liabilities. From materials provided to press at a media briefing by the new management, AEC news found indication that the actual buyer was a Malaysian media company called Media More. The link between the new owner Mr. Ganapathy and the buyer were not clear and Media More did respond to requests for information. The media announcement provided by the Phnom Penh Post former owners related to the sale referred to the new owner as an experienced journalist, but no by-lines could be found by investigating national media.²⁴⁷

Responses To the Sale of the Post

A former Post editor, Chad Williams, acknowledged: “It’s impossible to believe the Post’s standing as the last independent media voice in the country wasn’t the real driving force behind the events leading to this sale.”²⁴⁸ Abby Seiff, a freelance journalist based in Cambodia who was formerly an editor at the post, asserted: “The Post is really the last remaining newspaper that comes out every day and does long investigations on corruption, illegal logging and politics.” The journalist community is concerned about what the implication (of the sale) could be. It’s just two months until the election and there’s not much independent media left. Alan Parkhouse, who worked as editor at the Post and at the Khmer Times under T. Mohan, said: “Now the two remaining English-language newspapers in Cambodia are controlled by Malaysians. Controlled is a more accurate word than owned. And Malaysia does not have independent media and recently passed a law about 'fake news' thought to give politicians more power to control the press.”²⁴⁹

²⁴⁵ <https://www.lowyinstitute.org/the-interpreter/mourning-cambodia-press-freedom>

²⁴⁶ <http://time.com/5269047/cambodia-phnom-penh-post-newspaper/>

²⁴⁷ <https://aecnewstoday.com/2018/whos-who-at-the-new-phnom-penh-post-propaganda-5mln-a-bogus-malaysia-boleh-record/>

²⁴⁸ <https://www.ft.com/content/0a9dd70c-50e9-11e8-b3ee-41e0209208ec>

²⁴⁹ <http://www.eliteplumagazine.com/home/content/550/4>

The Southeast Asia Press Alliance (SEAPA), asserted that interference in editorial policy would severely negatively impact the situation for media in Cambodia.²⁵⁰ The Human Rights Watch, also asserted: “This looks like the beginning of the end for the Phnom Penh Post as an independent and critical newspaper focused on doing serious investigations to ferret out government corruption, rights abuses, and lies. There is no plausible business rationale for an obscure Malaysian public relations firm to buy this newspaper, except to seek control for elite Cambodian friends who can be expected to reward the company for its role in the acquisition in future.”²⁵¹

Astrid Norén-Nilsson, author of *Cambodia’s Second Kingdom: Nation, Imagination and Democracy*, argued that the restrictions on free press were aimed at undermining the power of the people to bear witness to the corruption and abuses of their leaders. She noted: “At the most basic level, the media crackdown is about instating new rules for what can be articulated and what cannot, and, consequently, to change over time what can be politically imagined and what cannot. Accessing and selectively sharing news is a main way for people in Cambodia to engage with national politics. Even in a context in which the government holds such strong control over key institutions, the reporting of the independent media was therefore, even in its most weakened state, always powerful.”²⁵²

The pro-government Khmer Times publicly however, rebuked both the Post and its public support, and issued an op-ed stating: 1. *In reality, this is nothing but an attack on Cambodia’s tax regime and the Kingdom’s judiciary and by virtue of this, an attack on the country.* 2. *Any attempts to link the sale to the forthcoming election in July is simply a case of misrepresentation, for which the publishing license of The PPPost should have been revoked.*²⁵³

The Cambodia Daily had been pressured to close by the government and RFA had been severely diminished by the closure of radio stations. It seemed that the only possibility is that a buyer seeking a profitable media business would not maintain the paper’s independence. However, a change in content would inevitably result in a loss of core long-term readers. Third, a change in ownership could allow for a change in content, moving the paper away from critical investigative reporting, without the loss of legitimacy for the RGC that would follow from forcing the paper’s closure.²⁵⁴

²⁵⁰ Brendan O’Byrne and Ananth Baliga “Phnom Penh Post sold to Malaysian investor”, *Phnom Penh Post*, 6 May 2018.

²⁵¹ <https://www.ft.com/content/0a9dd70c-50e9-11e8-b3ee-41e0209208ec>

²⁵² <http://sea-globe.com/how-cambodia-defeated-its-free-press/>

²⁵³ <https://www.khmertimeskh.com/487675/corporate-greed-and-tax-fraud-at-the-post/>;

<https://thediomat.com/2018/05/a-rocky-start-for-the-new-phnom-penh-post-owners-in-cambodia/>

²⁵⁴ <https://www.bangkokpost.com/opinion/opinion/1468550/why-did-a-malaysian-buy-the-phnom-penh-post->

Asian Parliament Human Rights (APHR) also raised concerns: “Having taken drastic steps to transform Cambodia into a de facto one-party state, it appears that Prime Minister Hun Sen believes that even one independent news outlet is too many and that only the complete end of press freedom in Cambodia can assure his reelection. The denial of the basic right to information runs counter to the very essence of a functioning democratic system. The demise of press freedom has gone hand in hand with the government’s refusal to allow the people of Cambodia to freely choose their leaders in a democratic election.”²⁵⁵

The regional human rights NGO Forum-Asia concluded: “The crackdown on independent media in the country is linked to broader political repression. The clampdown on opposition parties, particularly the dissolution of the Cambodia National Rescue Party (CNRP); the harassment and attacks on human rights defenders; and threats against civil society organisations: all seem to be designed to ensure a landslide victory for the ruling Cambodian People’s Party in the General Elections scheduled for 29 July 2018. Silencing critical voices, dismantling democracy, and disregarding basic human rights are part of that process.”²⁵⁶

As the Foreign Correspondents’ Club of Thailand noted: “Such tactics obviously jeopardize any hope of maintaining a moderately free press in Cambodia, but should also be of grave concern to all investors in the country who may find themselves on the wrong side of officialdom or vested interests with no viable legal recourse.”²⁵⁷

Yeang Sochea Meta (Sothearin) and Uon Chhin Case (RFA Journalists)

The two accused are former RFA reporters and at the time of writing this report their situation had not been resolved and the very real threat of imprisonment for high crimes against the state. The two were arrested on 14 November 2017, and not released on bail until 21 August 2018.²⁵⁸ They were charged on 17 November 2017 with espionage, simply on the basis that they had provided news reports to RFA in the United States, despite the fact that the act had not been proven and even though journalism is not a crime.²⁵⁹ They were imprisoned for 9 months and 7 days, and put under police surveillance when released on bail. As of March 2019, the courts indicated that the trial of the two reporters would proceed.

²⁵⁵ <https://www.rfa.org/english/news/cambodia/media-05142018165329.html>

²⁵⁶ <https://www.forum-asia.org/?p=26317>

²⁵⁷ <https://thedi diplomat.com/2018/05/a-rocky-start-for-the-new-phnom-penh-post-owners-in-cambodia/>

²⁵⁸ <https://www.foxnews.com/world/cambodian-reporters-charged-with-spying-granted-bail/>; <https://www.reuters.com/article/us-cambodia-media/two-cambodian-journalists-facing-spying-charges-freed-on-bail-idUSKCN1L6191>; <https://www.khmertimeskh.com/524999/jailed-rfa-reporters-released-on-bail/>

²⁵⁹ <https://www.japantimes.co.jp/news/2017/11/19/asia-pacific/cambodian-court-charges-two-u-s-linked-journalists-espionage/#.XKtmRZgzbic>

From the moment of their arrest the accused were not afforded the real treatment that the presumption of innocence and due process would require. Initially it was asserted that they were running an illegal karaoke studio.²⁶⁰ Even though they had not obtained evidence of illegal broadcasting and had not yet conducted an investigation into the digitized contents of computers seized by the police, General Kirth Chantharith, spokesman for National Police, said: “Police have detained them because they installed equipment for broadcasting news and activity without permission from the Information Ministry.”²⁶¹ At the time of being charged Phnom Penh deputy municipal police chief Sim Vuthy claimed that police found evidence of illegal broadcasting in the employment of RFA and that confessions had been obtained. However, the actual evidence was not disclosed, undermining transparency of the investigation, and no such confessions were actually made by the accused. They were instructed to sign confession letters seeking an apology, which was presented to them as a way to avoid imprisonment and further prosecution.²⁶² Additionally, RFA spokesman Rohit Mahajan strongly denied that the accused were collecting or transmitting information for RFA.²⁶³ Moreover, In several months after the espionage charges were issued following their arrest, on 29 March 2018, the Phnom Penh Municipal Court charged them with production of pornographic materials.²⁶⁴

In March of 2018, the Supreme Court upheld the decision refuse bail and keep the accused in detention. On 4 April 2018, the Appeals Court denied bail for the accused, upholding the decision regarding detention made by the Phnom Penh Municipal Court. The accused had argued that due to detention which exceeded 48 hours without being charged, they should be released on bail.²⁶⁵ According to observers, Judge Phou Povsun ruled that “Accused person Uon Chhin was detained for 42 hours and 35 minutes and Yeang Sothearin was detained for 42 hours and 5 minutes.”²⁶⁶ However, Yeang Sothearin indicated in an interview with COMFREL for the purposes

²⁶⁰ <https://www.rfa.org/english/news/cambodia/bail-08212018150345.html>

²⁶¹ <https://www.khmertimeskh.com/90718/former-rfa-reporters-arrested/>

²⁶² Interview with Yeang Sochea Meta conducted on 6 April 2019.

²⁶³ <https://www.khmertimeskh.com/90884/rfa-reporters-face-espionage-charges/>

²⁶⁴ <https://www.khmertimeskh.com/303355/former-rfa-reporters-denied-bail-again/>. The reporters have had to endure separate prosecution proceedings, and obtain additional legal representation in response to the pornography charges. Soon after the reporters were first arrested in 2017 Fresh News released photos of a man which the media organization alleged to be Chhin who was engaged in sexual activities. However, independent media pointed out that the man could not be clearly identified. Fresh News stated publicly that the photos came from computers owned by the suspects which were confiscated by the police at the time of their arrest. See: <https://www.phnompenhpost.com/national/former-rfa-journalist-court-over-possible-pornography-charges>. The two accused were questioned on 31 May 2018 at the Phnom Penh Municipal court, at which time the charge remained provisional, but not formally charged with the crime at that time. The two were charged under Article 39 of the Law on Suppression of Human Trafficking and Sexual Exploitation, which is punishable by up to 1 year in prison. Art. 39 prohibits and act which distributes, transports, sells, leases, displays, projects or presents pornography. See: <https://www.phnompenhpost.com/national/rfa-journalists-questioned>

²⁶⁵ <https://www.khmertimeskh.com/299583/detention-of-rfa-reporters-upheld/>

²⁶⁶ <https://www.khmertimeskh.com/299406/appeal-court-upholds-detention-of-two-former-rfa-reporters/>

of this report that his lawyer had documents from the Court showing that the accused did not come before the prosecutor within 48 hours as stipulated specifically by the law, and instead were brought before a judge (which is not what the law calls for in precise terms).²⁶⁷ On 19 April 2018, the Appeals Court denied bail to both of the accused for a second time. At that point, the Appeals Court spokesman Touch Tharith said Presiding Judge Suos Sam Ath decided on the grounds that their release would impact the investigation.²⁶⁸ Sothearin said: “The court has investigated for five months but there has not been any result and they continue to only detain me. They intend to completely break our spirit.” Chinn added: “It is revenge.”²⁶⁹

In May 2018, the Phnom Penh Municipal Court extended the pre-trial detention for both defendants for six months. Again due process was violated as the two were held in for more than six months before the court decided to extend detention.²⁷⁰ The judge indicated that the extension of pre-trial detention was warranted for the sake of the investigation, despite no real evidence having been presented by the prosecution after more than six months of investigation.²⁷¹ In a statement to media, defense lawyer presented the argument that after the period of six months the prosecutors should either have found evidence to warrant a trial or the court should release the accused.²⁷² Then, bail was again denied in late July of 2018. Presiding Judge Khim Ponn announced the decision was based on the grounds that releasing the accused would affect security and public order.²⁷³

Despite that decision, on 21 August 2018 the two were released on bail. No explanation was given for the inconsistency between the rulings which previously denied bail, and there was no indication of why they had been and no longer were considered a threat to security and public order.²⁷⁴ On 18 September 2018 the Supreme Court tacitly refused to recognize the validity of the defendants evidence of procedural violation in their case, and ruled to reject their petition to end the prosecution against them.²⁷⁵

Yeang Sotherin has emphasized how, because of the need to insulate his children from the stress and potential trauma, he fabricated a story that he was away at university to explain his time in detention. He said: “When I come to the court for the bail [hearing], I always tell my children

²⁶⁷ Interview with Yeang Sochea Meta conducted on 6 April 2019.

²⁶⁸ <https://www.khmertimeskh.com/303355/former-rfa-reporters-denied-bail-again/>

²⁶⁹ <https://www.phnompenhpost.com/national/it-revenge-bail-denied-again-rfa-reporters-accused-espionage>

²⁷⁰ Despite being detained on 14 November 2017, the Court officially counted their detention as beginning on November 18. See <https://www.phnompenhpost.com/national/spy-case-against-rfa-journalists-delayed>

²⁷¹ <https://www.rfa.org/english/news/cambodia/extension-05182018154042.html>

²⁷² <https://www.phnompenhpost.com/national/ex-rfa-reporters-summonsed-court-over-ongoing-detention>

²⁷³ <https://www.khmertimeskh.com/514623/former-rfa-reporters-denied-bail/>

²⁷⁴ <https://www.rfa.org/english/news/cambodia/bail-08212018150345.html>

²⁷⁵ <https://www.phnompenhpost.com/national/case-against-rfa-reporters-pushes-ahead>

that I come to have the exam. If I pass I go home. But unfortunately, I always fail.” He noted how his son was noticeably impacted by the trauma of the situation “He lost warmth, he lost trust in his life.”²⁷⁶

Moreover, during the period of detention they had been unable to provide any income for their family and after being granted bail they were still unable to work as they were categorized as being placed under court supervision. They were also prohibited from traveling to their homeland in the provinces. The presumption of innocence did not protect the accused from informal blacklisting given the seriousness of the charge of espionage.²⁷⁷ CSOs pointed out how it was very rare that charges were dropped for activists detained for politically motivated reasons. Experience shows that the burden of proof has little influence in such cases.²⁷⁸ In an interview with Comfrel, Yeang Sothearin emphasized how at each stage of the proceedings against the two accused, no evidence was offered, but despite that, the prosecution moved forward. He expressed the fear that they will be found guilty simply to rationalize their detention and the multiple rulings by the judiciary against their defense.²⁷⁹

In January of 2019 a group of 38 journalists wrote a formal letter to petition the RGC to drop all charges against the two journalists as they had been under police surveillance since released on bail. The journalists noted that this created great hardship for them and their families as it was difficult to find work, international travel was prohibited and they were required to check in at the police station on a monthly basis. The letter affirmed the necessity of independent media for democracy and that the two accused reporters had done nothing more than provide the public with truth.²⁸⁰ In May of 2018, the regional human rights NGO, Forum-Asia, called for the charges to be dropped against the two accused: “Forum-Asia calls on the Government of Cambodia to drop the charges against Uon Chhin and Yeang Sothearin and release them from such arbitrary detention, especially since six months have passed without any progress.”²⁸¹

Human Rights organizations have called the arrest of the two as a component of a clearly visible larger crackdown to control the political context through intimidation in the months ahead of the 2018 elections. It asserted the case showed how independent journalism had become as

²⁷⁶ <https://www.lowyinstitute.org/the-interpreter/james-ricketson-trial>

²⁷⁷ [https://www.khmertimeskh.com/525215/former-rfa-journalists-bailed/;](https://www.khmertimeskh.com/525215/former-rfa-journalists-bailed/)
<https://www.phnompenhpost.com/national/case-against-rfa-reporters-pushes-ahead>

²⁷⁸ <https://www.rfa.org/english/news/cambodia/reporters-03152019133905.html>

²⁷⁹ Interview with Yeang Sochea Meta conducted on 6 April 2019.

²⁸⁰ <https://www.phnompenhpost.com/national/journos-drop-rfa-charges;>
<https://www.rfa.org/english/news/cambodia/letter-01102019170640.html>
<https://www.khmertimeskh.com/116391/court-hears-rfa-reporters-appeal/>

²⁸¹ <https://www.phnompenhpost.com/national/spy-case-against-rfa-journalists-delayed>

serious crime, now threatened by the most strict national security laws. The Southeast Asian Press Alliance asserted that the case was a “direct assault on freedom of the media and designed to frighten other journalists into silence.”²⁸²

Chun Chanboth Case

On 2 May 2017 Radio Free Asia journalist Chun Chanboth (real name Huot Vuthy) submitted a written statement to the Phnom Penh Municipal Court refuting allegations that he concealed his identity when entering Prey Sar prison in order to interview Kim Sok (a jailed political analyst that has now fled Cambodia). Later that day the court issued an arrest warrant for the reporter. In order to avoid a politically motivated prosecution for the charge of ‘making a false declaration’, punishable by up to two years of imprisonment, the RFA as the reporter to travel to the United States. Deputy Prosecutor Seang Sok proclaimed: “On May 2, the suspect did not show up as per the summons and did not keep his promise like stated clearly in his informing letter dated 28 April 2017.”²⁸³

On 16 March 2018, in a speech to the Khmer-Australian community in Sydney, Hun Sen declared that RFA reporter Chun Chanboth was his spy. Hun Sen alleged that the reporter had met separately with both Lieutenant General Hun Manet and Lieutenant General Mao Sophon (Commander of Brigade 70) in order to seek security due to the fear that U.S. agents were planning to assassinate him, as he believed they had done to political analyst Kem Ley. Hun Sen asserted that he had kept Chun Chanboth secret and challenged him to publicly refute the claims. He also reiterated the claims that after the investigation into the murder of Kem Ley, the RGC found a ‘third hand’ (the U.S. government) was behind the crime.²⁸⁴

On 20 March 2018, former RFA reporter Sok Ratha (who reported under the name Ratha Visal) indicated announced to pro-government Khmer Times that he could verify the claims made by PM Hun Sen regarding Chun Chanboth.²⁸⁵ Sok Ratha is the former RFA reporter which convened a press conference, in order to publicly shame the organization for failing to provide severance pay, which organized by the Ministry of Information shortly after the abolition of the opposition party CNRP in November 2017.²⁸⁶ Following the announcement by PM Hun Sen that Chanboth was his spy, Mr. Ratha alleged that Chun Chanboth had expressed his regret working as a political tool for RFA but was pressured to remain with the media organization.

²⁸² <https://www.phnompenhpost.com/national/former-rfa-journalist-court-over-possible-pornography-charges>

²⁸³ <https://www.phnompenhpost.com/national/breaking-arrest-warrant-issued-rfa-reporter-chanboth>

²⁸⁴ <https://www.khmertimeskh.com/114653/rfa-journalist-is-my-spy-pm/>

²⁸⁵ <https://www.khmertimeskh.com/115180/former-rfa-reporter-backs-up-pms-claim/>

²⁸⁶ <https://www.phnompenhpost.com/national/ex-rfa-journos-accuse-outlet>

He asserted that Chun Chanboth had contacted him while the latter was in the US before coming to Cambodia in March 2017, and requested that Mr. Ratha arrange security protection for him because he feared he would be killed by US agents. More specifically, the ‘third hand’ that was behind the assassination of political analyst Kem Ley in 2016. Ratha also claimed that Chun Chanboth, while on the plan from the US to Cambodia, penned a document which explained what to do if he was killed in Cambodia. Mr. Ratha stated that Mr. Chanboth had been required by an RCAF commander (presumably Brigade 70 commander Lieutenant General Sophann) to sign (thumbprint) a document in which he declared he would not make a formal complaint if he was killed while in Cambodia. According to his account, Mr. Ratha was provided three bodyguards (soldiers from brigade 70) in order to protect Mr. Chanboth. At the Phnom Penh airport, Mr. Ratha received Chun Chanboth upon arrival and they shook hands and walked toward the car, at which point a Lexus SUV pulled up to them at high speed, and two US agents and one Cambodian got out and escorted Chun Chanboth into the vehicle. Mr. Ratha reported he followed the vehicle which took Chanboth to his hotel. The account of Mr. Ratha was strongly rejected by RFA, the US embassy in Phnom Penh and Chan Chanboth.

On 26 March 2018, government mouthpiece Fresh News leaked an audio recording of an in-person conversation which it alleged was a discussion between Chun Chanboth and RCAF General Mao Sophan. The audio clip included Chun Chanboth apparently describing how if the CNRP had won it would have behaved more dictatorially than the CPP. A man who seemed to be Chanboth stated: “We are lucky that the opposition did not win the election, if the ... party won the election, we don’t know what the country would become now.”

However, despite the Fresh News attempt to paint this as Chanboth’s opinion, pro-government Khmer Times reported that Chanboth was recounting comments made by Kem Ley in an interview with RFA.²⁸⁷ The Fresh News article which released the recording functioned as a propaganda piece aimed at discrediting Chanboth which, in addition to an unconvincing attempt to support PM Hun Sen’s claims that he was his spy, also argued that the recording proved Chanboth was in violation of RFA regulations for journalists which prohibit secret meetings.²⁸⁸ Independent media noted that the recording failed to provide any information which would establish a context for the conversation, and pointed out signs that recording may have been doctored: “Chanboth’s syntax at times seems clipped and jumbled, raising questions as to whether the audio was selectively edited”.²⁸⁹

²⁸⁷ The Fresh News campaign and the emphasis on Mr. Chanboth fear of threats from the U.S. also seemed designed to play into the narrative that the U.S. (the ‘third-hand’) was behind the death of Kem Ley because he was a challenge to the CNRP.

²⁸⁸ <https://www.phnompenhpost.com/national/claims-about-rfas-chun-chanboth-continue-leaked-recording>

²⁸⁹ <https://www.phnompenhpost.com/national/claims-about-rfas-chun-chanboth-continue-leaked-recording>

Afterwards, in an interview with national media on 31 March 2019, Mr. Chanboth confirmed his voice on the recording but argued that the original conversation was not what the recording showed as they had been doctored. He conceded that a conversation with Lieutenant General Mao Sophan in March of 2017 had taken place which he knew was being recorded. In that conversation, the RCAF officer claimed that he and PM Hun Sen believed Chanboth would be killed by US agents and tried to compel him to accept security bodyguards while in Cambodia. However, he did not accept the offer. Sophan explained his meeting with the general as a meeting with a source that had provided him with newsworthy information several times in the past.²⁹⁰ He also explained that his comment about Kem Ley’s criticism of the CNRP which happened in an RFA broadcast was given by him as an example to show that RFA was not bias in favor of the opposition, after that allegation was made by the general in the conversation.

Notably, Chanboth pointed out that the general had by that time become a trusted source after providing him with important information on prior occasions: “Anything . . . that he would send to Prime Minister Hun Sen, he would send to me immediately. So he is a very very good source, an inside source actually.”²⁹¹ Rohit Mahajan, the spokesman for RFA in Washington, shed some light on the context in which the recording material was produced which could have provided the source material for the doctored clip released on Fresh News following the original claim made by PM Hun Sen in Australia. The RFA spokesman asserted: “Contrary to fiction, RFA’s Huot Vuthy did not violate company policy in talking to sources in trying to set up an interview with the Prime Minister last year. As with journalists at any credible news organization, RFA’s reporters can freely speak with officials.”²⁹² This supported Chun Chanboth’s claim that the recordings leaked by Fresh News were doctored. At this point, Chanboth had given a plausible account to refute the two major claims by PM Hun Sen, Fresh News media, and former RFA reporter Mr. Ratha—that he had met with general Sophan as a source, and that it was the general that first proposed the idea that he would be killed by U.S. agents, and that the assertion of CNRP authoritarian behavior was Kem Ley’s criticism which Chanboth used an example. However, he then went further and made public assertions that Mr. Ratha was a spy working for the U.S., although the latter refuted that claim.²⁹³

Ultimately, the Chun Chanboth case showed itself to be a somewhat haphazard attempt to further hinder RFA news coverage of Cambodia, through attacking its credibility. The journalist served as an example to sow doubts among the press that their own safety and confidence could be trusted with sources. Discussion were being recorded, and increased self-censorship was needed by the press because, as the case showed, their words could unexpectedly be used

²⁹⁰ <https://www.phnompenhpost.com/national/rfa-journo-rubbishes-spy-claims>

²⁹¹ <https://www.phnompenhpost.com/national/rfa-journo-rubbishes-spy-claims>

²⁹² <https://www.khmertimeskh.com/300656/rfa-reporters-trading-spy-accusations/>

²⁹³ <https://www.khmertimeskh.com/300656/rfa-reporters-trading-spy-accusations/>

against them. It furthered contributed to a public sphere which has been contaminated by leaks and hacks over a period of a few years, which has weakened social capital. Nevertheless, the case increased public doubt and fear about being recorded and being able to trust journalists. This disorientation serves the regime by making it harder for citizens to seek transparent and accountable government.

James Ricketson Case

Australian national James Ricketson, a documentary filmmaker, was arrested in Cambodia on 3 June 2017, but not officially charged with a crime until 9 June even though the law stipulates that this must occur within 72 hours. He was arrested after the act of using a drone to film an opposition party (CNRP) rally. Despite filming a public event in a peaceful manner in accordance with the law, he was arrested and eventually (much later) charged with a crime against national security. Following his arrest, government-aligned Fresh News media confusingly indicated both that he was arrested for flying the drone without permission and that he was accused of spreading information “overseas” without permission.²⁹⁴ Almost one week after his initial arrest, the Phnom Penh Municipal Court Spokesperson announced that Ricketson was being charged under Article 446 of the Cambodian Penal Code, which prohibits “receiving or collecting information, processes, objects, documents, computerized data or files, with a view to supplying them to a foreign state or its agents, which are liable to prejudice the national defense”.²⁹⁵ Effectively, Ricketson was charged with espionage, although it was not a crime to film the rally and even though no connection between the filming and the definition of the crime espionage was made by the authorities.²⁹⁶ From the time of his arrest until the last day of his trial, Ricketson spent 454 days incarcerated.²⁹⁷

When he was actually informed through hearsay that he would be charged with espionage, he believed that his arrest resulted from a case of mistaken identity as he had no connections to the U.S government (which was blamed in RGC discourse for fomenting a ‘color revolution’ in Cambodia). He assumed he was being confused with a U.S. citizen which had been connected to the daughter of CNRP leader Kem Sokha by government media as ‘proof’ of the conspiracy and U.S. interference. This is because national media government mouthpiece Fresh News, disseminating the insinuations of the Kon Khmer (Khmer Child) Facebook page, substituted James Ricketson for Geoffrey Cain, a U.S. journalist about whom the same social media and media

²⁹⁴ <http://en.freshnewsasia.com/index.php/en/6647-court-questions-arrested-australian-filmmaker.html>

²⁹⁵ <https://www.phnompenhpost.com/national/filmmaker-james-ricketson-charged>

²⁹⁶ At the time he was charged, the two RFA journalists had also been pursued, two Cambodia daily journalists were also face potential criminal charges and the NEC issued a policy statement which would directly restrict freedom of expression by threatening criminal prosecution of any persons that disseminate “confusing” information related to the election.

²⁹⁷ <https://www.phnompenhpost.com/national/ricketson-trial-closes-verdict-due-friday>

sources had previously claimed to be a revolutionary conspirator in league with Kem Monovithya.²⁹⁸

Ricketson was brought to trial without having actually been officially informed of charges, and, although having been detained for more than one year, neither he nor his legal representative had been presented with a formal summons or indictment. Ricketson's lawyer was not present, and so representing himself, he requested a delay because the only information he had received was a one-page document from the office of the prosecutor which recommended an indictment for espionage but made no mention of any evidence or other basis for the charges. In a tacit admission of the mismanagement of due process in the case, the presiding judge ordered a one-month delay so that the accused could review the information and evidence.²⁹⁹ The evidence accumulated evidence that had been disclosed at that time constitutes only of images from the drone video of the CNRP rally and emails between CNRP leader Sam Rainsy and the accused.³⁰⁰

The conditions of the detention facilities were deplorable. Ricketson complained of physical abuse by guards, overcrowding, parasites and other infectious disease, and a lack of sanitation and clean water.³⁰¹ After well over a year in pre-trial detention and being denied bail despite having surrendered his passport³⁰², Ricketson was finally given the opportunity to present a defense. One of the items that became most apparent in the trial was the accused's contribution to charity work in Cambodia. Witnesses testified to impressive levels monetary and time commitments to families living/working in the refuse dumps. According to the affected families he provided essential or even life-changing support to 17 separate families living in extreme

²⁹⁸ Photos of Cain and accusations that he had aided in the organization of an insurrectionary movement in South Korea (specifically, the protests which lead to the resignation of former President Park in relation to massive corruption of and abuse of office) were posted along with photos of Ricketson, claiming he was an "important spy who is highly-experienced at helping the opposition party in Cambodia." It is notable that the exact same sequence of events occurred in the propaganda (media-based) vilification of the National Democratic Institute. The same Facebook page posted unfounded accusations that NDI was involved in revolutionary activity by organizing or inciting rebellion, and these accusations were then shared as news by Fresh News. Following that campaign to discredit on the grounds of high crimes against the state, NDI was ejected for not having fulfilled the proper registration practice in accordance with the NGO law. <https://www.cambodiadaily.com/news/fresh-news-spins-new-theses-of-spies-and-us-interference-134078/>

²⁹⁹ <https://www.theguardian.com/world/2018/jun/15/james-ricketson-cambodia-espionage-charges-grapevine-australian-film-maker-court>. It should be noted that the behavior of the prosecution seems inexplicable, unless it is interpreted as an indication that the decision had already been made to find the accused in the wrong and the outcome of the process preordained.

³⁰⁰ <https://www.voanews.com/a/australian-filmmaker-still-in-cambodian-prison-on-espionage-charges/4542574.html>

³⁰¹ <https://www.phnompenhpost.com/national/jailed-australian-filmmaker-james-ricketson-makes-plea-release>

³⁰² <https://www.reuters.com/article/us-cambodia-australia-filmmaker/australian-filmmaker-denied-bail-in-cambodia-over-espionage-idUSKBN1FJ0FH>

poverty.³⁰³ Moreover, it was noted that his documentary filmmaking led a law to end child prostitution.³⁰⁴

During trial, the prosecution claimed that the drone video recorded the positions of security personnel surrounding the event and that this information was communicated to opposition leaders Sam Rainsy by providing the latter with the video. Without any substantial evidence the trial centered on Ricketson's emails. The judge linked Ricketson in criminal conspiracy on the basis of emails between the accused and some leaders of the former CNRP. Rather than related to espionage the emails expressed the opinion of Ricketson on the political situation in Cambodia. Not privileged, confidential, or national security pertinent information was provided by the court. Ricketson urged Australia to shun Cambodia diplomatically, and claimed that PM Hun Sen was responsible for human rights violations such as support for land grabbing. It also mentioned open facts such as the size of the PM's bodyguard unit.

The investigating judge claimed that Ricketson was clearly supporting the opposition party and committing incitement, and had defamed both the PM and the CPP. Ricketson challenged the court to demonstrate how the emails were a violation of Article 446, but the court did not address it. Perhaps the evidence most useful to the court as a means to convict without actual proof of espionage was an op-ed piece speculating about the possibility of a non-violent revolution in Cambodia, which was titled Cambodian spring.³⁰⁵ The trial showed the gap between the practice of the law in Cambodia and the expectations of those accustomed to rule of law in which nonviolent personal political opinions are both protected as freedom of expression and are not taken to be evidence of culpability in connection to any criminal act. This was clear in the way in which the same political opinions which Ricketson thought would vindicate his emails/blogs were taken as proof of his guilt the court.³⁰⁶ After lengthy presentation of evidence which was not substantive, the prosecution focused on criticisms of Hun Sen, for painting Cambodia in a poor light and for not caring about the suffering of the people resulting from aid cuts.³⁰⁷

³⁰³ <https://www.phnompenhpost.com/national/james-ricketson-fundraises-poor>. On the other hand, he has also been the subject of controversy and already had been found guilty in prior unrelated civil suits. According to independent national media: "He is a controversial figure, however, with NGOs like the child protection group APLE and the Cambodian Children's Fund claiming he made unsubstantiated allegations of abuse against them. His supporters have lauded his charity work, but the Cambodian courts have previously fined him for defamation and blackmail." <https://www.phnompenhpost.com/national/jailed-australian-filmmaker-james-ricketson-makes-plea-release>

³⁰⁴ <https://www.phnompenhpost.com/national/ricketson-trial-closes-verdict-due-friday>

³⁰⁵ <https://www.phnompenhpost.com/national/emails-focus-sixth-day-ricketson-trial>

³⁰⁶ <https://www.scmp.com/week-asia/people/article/2162206/james-ricketson-spy-who-loved-cambodia>

³⁰⁷ <https://www.crikey.com.au/2018/09/01/james-ricketson-trial-espionage/?ft=Q0JCekczeUilOUdLbEN2Rmc0bHVkQT09>

The Southeast Asian Press Alliance SEAPA find that the case was indicative of a context of state repression of press freedom and freedom of expression. Daniel Bastard, head of Reporters Without Borders' Asia-Pacific desk, described the sentence as unjustified, and stated: "Nothing in this case bears scrutiny. [Ricketson] was arrested on completely spurious grounds. The prosecution presented a totally specious case against him." He noted that Ricketson's prosecution was part of the same propaganda as the color revolution narrative and rhetoric about treason. Sebastian Strangio, author of *Hun Sen's Cambodia*, said that it was Ricketson's admitted preference for the opposition CNRP which resulted in his being used as a pawn in a domestic strategy of eliminating political dissent: "The treatment of Ricketson is a warning not just to journalists — though it does set a frightening precedent in this regard — but also to foreigners in general, not to get 'involved' in any way in Cambodian politics." As a foreigner, Ricketson served as a symbol of foreign interference and 'proof' of opposition party treason. At the same time, a former journalist for Al Jazeera that has been imprisoned for more than a year in a violation of press freedom, pointed out that there was no indication that Ricketson was doing anything other than internationally accepted journalism. Given there was no indication of espionage, CSOs pointed out that the very dangerous slippery slope of politically motivated prosecution of the press ³⁰⁸

Even his pardon was irregular and failed to adhere to the parameters of rule of law. In legal terms it meant Ricketson was absolved of his crime or given amnesty. However, not long after his pardon he was informed that he would be deported from Cambodia and prohibited in perpetuity from returning. Khieu Sopheak, interior ministry spokesman, said that the deportation was a decision made by the court, but it was not clear which judicial body was involved or when the ruling was made specifically. He claimed that the deportation followed findings that Ricketson was "not neutral, not independent."³⁰⁹ Immigration department spokesman Keo Vanthan indicated that the decision was taken by that body in the form of refusing a visa renewal.³¹⁰

Ricketson accurately depicted the situation for independent media in Cambodia, as dissent is criminalized and the law affords little or no protections, when he stated: "There is only one country in the world that equates documentary filmmaking with espionage and I'm in that country now. Frankly, I think it is up to the court to prove I am not a filmmaker."³¹¹ The case is ultimately concerning not only for freedom of media and fundamental freedoms of expression

³⁰⁸ <https://www.crikey.com.au/2018/09/01/james-ricketson-trial-espionage/?ft=Q0JCekczeUjLOUdLbEN2Rmc0bHVkQT09>

³⁰⁹ <https://www.voacambodia.com/a/released-aussie-filmmaker-will-be-banned-from-cambodia/4588333.html>

³¹⁰ <https://www.theguardian.com/australia-news/2018/sep/21/cambodia-pardons-australian-filmmaker-james-ricketson>

³¹¹ <https://www.voanews.com/a/australian-filmmaker-still-in-cambodian-prison-on-espionage-charges/4542574.html>

and assembly, but also because it is indicative of the manner in which the judicial system actively undermines the rule of law in Cambodia. No independent national analysts or international observers, scholars, media found evidence of the specific illegal act as stipulated in article 446 of the criminal code: “receiving or collecting information, processes, objects, documents, computerized data or files, with a view to supplying them to a foreign state or its agents, which are liable to prejudice the national defense”.³¹² The information collected by Ricketson was clearly not related to national defense and no link to any foreign state was made. This sent a clear signal to the international community that high crimes against the state could be based on trumped up charges, even for a citizen of a developed and influential state. The impact on foreigners working in media, civil society, and the private sector was stifling as they were assured that their international human rights offered little protection in the Cambodian context. The case undoubtedly had an impact on the international perception of democracy in Cambodia.³¹³ As noted by a journalist familiar to Cambodia: “Ricketson’s conviction is galling to Australian observers, who generally enjoy the right to a fair trial and would expect for such ludicrous allegations to be thrown out. But sadly, for Cambodians, the idea that you might be arrested on politically-motivated charges and imprisoned for years with no evidence is not an anomaly, it’s a fact of life.”³¹⁴

Rott Mony Case

Rott Mony is a union activist³¹⁵ who also aided in the production of a Russia Today (RT) news documentary on trafficking, for which he served as a ‘news fixer’. The documentary was widely shared on social media in October of 2018 and rebuked by the Cambodian government. It was announced in earlier December 2018 that Mr. Mony would be detained in Thailand and would be deported at the behest of the RGC which had accused him of creating ‘fake news’ detrimental to the reputation of Cambodia. He was arrested in Thailand on 7 December 2018 while attempting to obtain asylum in the Netherlands, and deported to Cambodia on 12 December.³¹⁶

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³¹² <http://en.freshnewsasia.com/index.php/en/6647-court-questions-arrested-australian-filmmaker.html>

³¹³ The trial was described by multiple sources as farcical and involving a conviction without any evidence. It was speculated that Hun Sen released prisoners only after he had assured absolute control over the political situation in the context of elections; that Hun Sen was concerned about pushback during his visit to the General Assembly in 2018; and that Ricketson was targeted by Hun Sen simply for his political opinions in support of CNRP. See: <https://www.dw.com/en/australian-journalist-james-ricketson-pardoned-in-cambodia/a-45595252>; <https://www.bbc.com/news/world-asia-45602616>; <https://www.nytimes.com/2018/08/31/world/asia/cambodia-australia-james-ricketson.html>; <https://thediplomat.com/2018/08/what-the-ricketson-case-says-about-justice-in-cambodia/>; <https://www.japantimes.co.jp/news/2018/09/21/asia-pacific/crime-legal-asia-pacific/cambodia-pardons-australian-filmmaker-jailed-espionage/#.XJ9otZgzbic>

³¹⁴ <https://www.lowyinstitute.org/the-interpreter/james-ricketson-trial>

³¹⁵ The labor leader is the president of the Cambodian construction workers union (CCTUF).

³¹⁶ <https://www.rfa.org/english/news/cambodia/mony-indicted-12132018170137.html>

The RT documentary, titled “My Mother Sold Me”, focused on the plight of poor families which sold their daughters virginity for money, with the ultimate result that the girls ended up working in prostitution. Featured in the video were a Cambodian woman Kav Malay and her daughter Khieng Sreymich. After the video went viral, they discounted their earlier statements and claimed they were paid to act in the documentary. The RGC announced that Rott Mony was guilty of falsifying the documentary. RT maintained that the film was the truth, despite the public statements by the two women, and indicated that it was attempting to use diplomatic channels to support the accused. Interior Ministry spokesman General Khieu Sopheak said Rott Mony both committed a crime and damaged the reputation of Cambodia. He declared: “...this guy committed a crime. Action should be taken against him. He will not be free.”³¹⁷

The accused was brought to court on 13 December 2018. Supporting the analysis that Mony was being punished for making Cambodia look bad or lose face, the Deputy National Police Chief Lieutenant General Chhay Kim Khoeun indicated that he did not know what crime Mony would be charged with or even if he would be charged with a crime.³¹⁸ On 2 January 2019, Phnom Penh Municipal Court charged Rath Rott Mony with incitement to discriminate and ordered he be held in detention while the investigation was ongoing.³¹⁹ The violation stipulated in Art. 496 of the criminal code is punishable by up to 3 years imprisonment.³²⁰ The pro-government Khmer Times newspaper published a report on 9 January 2019 which cited a document provided by the Phnom Penh Municipal Court detailing the grounds for the court’s decision to deny bail. The document listed the need to prevent contact between the accused and other people involved in the documentary also suspected by the police. The letter claimed that victims and witnesses in the case were “vulnerable groups of females”. It also asserted that Mr. Mony would be a flight risk. National Police spokesman Lieutenant General Chhay Kim Khoeun said police needed time to get cooperation from sources involved in the film, and that one source affirmed the accuracy of the film but had refused to cooperate with the authorities.³²¹

On 30 January 2019 the Appeal Court held a close door hearing on the issue of bail for the accused. Mr. Mony did not have his legal representative present at the hearing. Touch Tharith, the spokesperson for the Appeal Court, claimed that Mr Rott Mony’s two lawyers were not invited to attend the hearing because they did not file a request. However, Mr Rott Mony’s

³¹⁷ <https://www.khmertimeskh.com/558121/news-fixer-for-rt-to-be-deported-from-thailand/>

³¹⁸ <https://www.phnompenhpost.com/national/suspected-human-trafficking-filmmaker-brought-court>

³¹⁹ <https://www.khmertimeskh.com/565348/court-denies-bail-to-rt-news-fixer/>

³²⁰ <https://www.phnompenhpost.com/national/russia-petitioned-release-filmmaker>

³²¹ <https://www.khmertimeskh.com/50567132/document-reveals-why-municipal-court-denied-bail-to-rt-news-fixer/>

lawyer Sam Titseyha stated that he had filed the request but then was required to file another, but was made aware of the situation.³²²

RT published a report on the case which noted how the documentary was denounced by the RGC as smearing Cambodia's "culture and reputation". In an interview with RT, Long Kimheang, the wife of the accused asserted that the RGC was using the issue as a means to punish Rott Mony for his labor activism, as well as to discredit the film in order to distract attention from the issue of trafficking. This was also the motive behind the actions of the RGC, according to the director of the film, Pavel Bunatov. Mr. Bunatov strongly denied 'inciting discrimination' with the film. He pointed out the likelihood that the two women were under significant pressure to retract their statements in the film because they effectively admitted to breaking the law.³²³ He also noted how in the statement that they were paid to lie, Khieng Sreymich indicated that women received 200 USD, but that this money was given as a charitable donation in order for them to buy a laundry machine in support of their laundry business. He wholly denied that the woman were paid or had ever asked for payment for giving their stories. Additionally, Mr. Bunatov mentioned that RT had worked with Rott Mony several times before and recognized him as a professional, and that in the production of the documentary they had the proper permits and worked closely with local authorities. The RT film crew had even contacted the governor of Phnom Penh who gave it permission to make the documentary and even offered assistance.³²⁴ The RT Press Office told the Committee to Protect Journalists: "We stand by our story, and are disheartened to hear that because of 'questioning' by authorities, statements intended to contradict our reporting and undermine a legitimate focus on the real problem of Cambodia's sex industry have been extracted from documentary participants."³²⁵

A woman who appeared in the documentary named Un Srey Pech supported the claim that documentary was not falsified and informed media that Rott Mony did not make mistakes and did not pay bribes. She affirmed that she participated in the documentary voluntarily and told her story accurately, but was afraid to talk with RGC authorities. She also mentioned that the court had not summoned her for testimony.³²⁶ From mid-December 2018 to early February 2019, Rott Mony supporters held five separate protests gatherings in front of the Russian embassy to petition support from the Russian government to obtain his release.³²⁷

³²² <https://www.khmertimeskh.com/573897/rt-news-fixer-attends-closed-door-bail-hearing/>

³²³ Bunatov proclaimed: "These girls are no actors. To ask them to do some sort of a scene would be useless. It would be insane. They told their stories in such detail – you simply can't make them up like that."

³²⁴ <https://www.rt.com/news/446388-cambodia-sex-trafficking-doc-activist-deported/>

³²⁵ <https://cpj.org/2018/12/news-fixer-deported-from-thailand-to-cambodia-on-f.php>

³²⁶ <https://www.khmertimeskh.com/565348/court-denies-bail-to-rt-news-fixer/>

³²⁷ <https://www.phnompenhpost.com/national/russia-petitioned-release-filmmaker;>
<https://www.phnompenhpost.com/national/second-protest-over-detained-filmmaker;>
<https://www.phnompenhpost.com/national/activists-stage-third-russian-embassy-filmmaker-protest;>

Despite all that the case followed a pattern often seen in cases of public figures facing politically motivated prosecutions declarations of reprehensible or criminal act is made by the PM, and then other key figures within the police and judiciary find some manner in which to prosecute and follow through with the more or less tacit instructions from the PM. In the Rott Mony case, PM publicly declared the report to be a ‘serious insult’, and Huy Vannak, president of the Pro Government Union of Journalist Federations of Cambodia and a secretary of state at the Interior Ministry, publicly denounced the film as a “fabrication” that presented a “negative image” of Cambodian women. He asserted: “A Cambodian girl doesn’t speak that bravely about this [topic]. From outside, you can see [that] without pay [for the interviews], they wouldn’t be able to do this documentary.”

Chou Bun Eng, vice chair of the National Committee for Counter Trafficking, had said as early as November that the documentary had injured the reputation of the country and an investigation into accuracy was occurring. She asserted: “Once the message is disseminated throughout the world, everyone thinks Cambodia is a place [for selling girls]. It seems like they try to disseminate the fake information to the world.” These public statements show how it was established that an offense (an insult) had occurred prior to any investigation, would have put tremendous pressure on those involved in the film, and likely sufficient to compel the two women to change their stories to avoid being blamed for the offense. Moreover, rather than concern with media freedom the union of journalists emphasized the fabricated threat of fake news, and the official charged with protecting against trafficking seemed more concerned about trafficking coming into light.³²⁸

Restoration of Freedom of Independent Media

Toward the end of 2018, in the face of increasing international pressures (sanctions and loss of preferential trade status), some conciliatory statements were made regarding the media. In early November, the Minister of Interior informed the then outgoing U.S. Ambassador that it was the intention of the RGC to reopen RFA and VOA in support of: “effective communication and to promote freedom of the press in Cambodia”.³²⁹ Despite token gestures taken at the end of 2018, following the elections and the period of consolidation of power following the elections by the PM, there seemed to be little real indication of any plans for improvement in media and social media freedom or democratic reform.

[https://www.phnompenhpost.com/national/protests-continue-filmmakers-release;](https://www.phnompenhpost.com/national/protests-continue-filmmakers-release)

<https://www.phnompenhpost.com/national/rott-monys-supporters-hold-5th-russian-embassy-protest>

³²⁸ <http://sea-globe.com/cambodian-translator-rath-rott-mony-jailed/>

³²⁹ <https://www.phnompenhpost.com/national/government-wants-rfa-and-voa-reopened>

On 5 December 2018, Interior Minister asserted that both RFA and VOA were welcome to return to Cambodia, and rejected the claim that they had been pressured to cease broadcasting to begin with. “Now we welcome them back. We welcome them to reopen their offices here again.” Prior to that, announcement, the Ministry of Foreign Affairs made a statement in which it emphasized Cambodia’s commitment to free press and expression to “strengthen democracy and political space”. However, it should be noted that the Interior Minister stipulated that the Cambodia Daily would be expected to pay its tax bill, and he stated that RFA could open an office in Phnom Penh but failed to mention the network of more than 30 radio stations that had been closed for licensing violations which were essential for RFA to maintain a nation-wide broadcast network.³³⁰

The Ministry of Foreign Affairs publicly rejected claims that the Cambodia Daily was shuttered for political reasons. The Ministry asserted, that the owners of the Daily had failed to engage with the tax authorities to seek resolution to the tax bill.³³¹ On 10 December 2018, the Ministry of Foreign Affairs publicly accused RFA of covert operations intended to undermine the reputation of the Cambodian government. Moreover, in an interview with RFA published on 17 December 2018, PM Hun Sen stated: “Your radio is so bad. You can quote my statement on this. Your radio is so bad that I cannot speak with you. You broadcast differently from reality. When I said west, you say east. I said about something white, you wrote about something black. You don’t need to ask me anything. I won’t answer your questions. You can listen from other people.” When asked to substantiate his claim that RFA was biased, he asserted: “You’re crazy. I have said that I would not answer your questions. Yet you are still asking me questions. Go ahead and broadcast my words to prove you are a smart-ass. Sure enough! Your stupidity is now proven!” RFA staff again asked him to explain his accusations, but the PM then ended the phone conversation.³³² Thus it is unlikely that the situation for independent media is going to improve in Cambodia in the short and medium-term. The transition to social media based news and the ability to access independent media through Facebook may significantly offset the loss of media.

³³⁰ <https://www.rfa.org/english/news/cambodia/reopen-12042018171127.html>

³³¹ <https://www.khmertimeskh.com/558333/foreign-ministry-denies-government-closed-down-the-cambodia-daily/>

³³² <https://www.rfa.org/english/news/cambodia/blasts-12172018163924.html>

CHAPTER 6 – ONLINE FREEDOM

INTRODUCTION

Online activity and social media networks provide essential tools for citizen information, participation, and organizing for advocacy, research, and engagement with policy makers. Article 41 enshrined in the Constitution of Cambodia states that “Khmer citizens shall have the freedom to express their personal opinions, the freedom of press, of publication and of assembly.” Citizens groups have utilized internet and social media to organize advocacy campaigns in support of political prisoners, challenging problematic laws, demanding respect for human rights, and supporting land rights and limiting illegal natural resource extraction. For example, in the case of the ‘ADHOC 5’ civil society defenders arrested and imprisoned in connection to an earlier prosecution of opposition leader Kem Sokha, there was an online campaign of information dissemination and support. This occurred as well in support of Tep Vanny and Boeung Kak Lake land activists. These case are discussed in more detail in the chapter on Civil Society. Interviews with journalist conducted by COMFREL found that they are increasingly using messaging apps with encryption to hold group discussions, which allows for safe spaced to develop.³³³

Moreover, both traditional media (RFA, VOD, and Cambodia Daily) and CSOs, such as COMFREL and Central, are increasingly using Facebook to disseminate information. In some cases, this allows activists to share information and mobilize solidarity while risks and intimidation, such as Mother Nature which utilizes puppets to share information. More or less formal online petitions have also been used such as in the case of changing the traffic law, release of RFA reporters, and in support of ending gender discrimination. Online access and social media is essential for CSOs to share information and reports as well as for pooling resources and creating forums for enabling value-added gains for individual programs and organizations. Examples include the joint statements of support for Mother Nature environmental activists, CSO leaders accused of stealing money for the funeral of activist Kem Ley, the joint statements of the NGOs which made up the former Situation Room for elections monitoring, and joint statements supporting the release of the ADHOC 5 and for ending prosecutions of trade unionists.

³³³ Interview with Sek Sophal (journalist and CCIM coordinator) and Mam Vibol (CCIM coordinator), conducted 11 April 2018.

Demographic indicators related to population size and media use indicate that online and social media will play an increasingly important role in individual socialization, access to news and information (as well as disinformation), friends and hobby/interests networks, civil society network and capacity development, and government efforts to control or direct citizen awareness as well as political narratives. Social media news and networks are increasingly relied on and trusted as an alternative to state-run propaganda and government affiliated media outlets. At the same time, government information mechanisms have become more effective at capturing audience and dominating the narrative around government actions and policies. This follows rapid increase in the use of social media by high ranking regime officials, which followed the 2013 elections. As such, self-censorship of citizen expression has become prevalent, and there is a public expectation that criticism will be met with legal actions.

Freedom House assessment of online and internet freedom for 2018 found freedom decreasing in Cambodia. Cambodia was still ranked ‘partly free’, but the report indicated a continuing decline in online freedom over the period of the 5th mandate of the national assembly. The study compares countries and ranks them from 0 (Free) to 100 (Least Free). Cambodia has scored:

Year	2013	2014	2015	2016	2017	2018
Score	47	47	48	52	52	55

The report pointed out to problems for public space such as the lese-majesté law, prakas (policy decrees) for regulating and policing media and internet, a restrictive code of conduct for media during elections, and legal prosecutions or pressures against media outlets and social media expression. Chin Malin, a member of the Cambodian Human Rights Committee (CHRC) and Ministry of Justice spokesman, said: “We don’t have to look at other sectors – just look at the number of media institutions, the number of journalists, the relationship between the government and journalists, and the way the government monitors media content.” However, those sentiments were not echoed by civil society representatives. Soeung Sen Karuna, an official with rights group ADHOC, said: “With regard to politics, online freedom is restricted. We see the lese majesty law and accusations of “incitement” have been used [by authorities]. And recently, three ministries jointly forced the monitoring of online content and shut down Facebook accounts that criticized the government. This shows that the government doesn’t want to see online expression.”³³⁴

³³⁴ <https://www.phnompenhpost.com/national/report-cambodias-internet-freedom-slipping>

This chapter will first look at major policy initiatives related to online and social media space. Then it will consider cases of ‘lawfare’ waged against social media expression. In addition to policies outlined below COMFREL is also concerned about potential new laws pertaining to cybercrime and fake news as enacting further restrictions on expression, assembly, and association, as well as voting and rights to political party in elections.

Part I – Policies of Concern for Democracy and Rights

On 28 May 2018 three ministries signed an inter-ministerial directive for regulating online and social media activities in order to safeguard national security and prevent attempts at incitement. It called for action against websites and social networks disseminate, broadcast, or post/share destabilizing information. It ordered each of the three ministries to assign personnel and resources in order to monitor in support of legal action against violators. The directive was signed by Interior Minister Sar Kheng, Telecommunications Minister Tram Iv Tek and Information Minister Khiev Kanharith. It stipulates that the content or meaning of information shared (text, audio, and video) should be regulated to prevent those intending to attack the nation. The directive stated: “This directive is intended to block all broadcasts or news dissemination, or messages, audio clips, images, videos or other forms of media that are of intent to provoke chaos, damage national defence and security...incite discrimination or affect national customs and culture.”

The Information Ministry explained that the policy was necessary to prevent destabilizing false information: “It is good that all three ministries are working together on monitoring websites and social media because fake news has occurred a lot in our society as well as around the world. Social media sometimes creates a criminal case by broadcasting fake news because it undermines national defense and provokes chaos, affects public order and society.”

The discussion by the spokesman for the Ministry of Interior gives an example of how the RGC interprets reporting seeking good governance in support of solutions to social issues as threats to order national security. He equated the law to the practice of all countries around the world that have regulations on media, and then gave an example of ‘fake news’ that affected national security. The Ministry argued that in one case to Cambodian individuals reporting for RFA shared information that soldiers “at the frontlines” (presumably the border although Cambodia is not at war with any state) lacked sufficient drinking water. He claimed that this undermined national security because the information was made available or known to foreigners, and the journalists went against the truth that “their hearts were Cambodian”. He added: “Now fake news has

happened and some people post it to defame others and complaints are filed against them, so they will face jail.”³³⁵

A letter signed by the Council of Ministers, dated 2 May 2018 but only obtained by media and publicized at the end of the month, indicated that the RGC has ordered all internet traffic, both domestic and international data, will have to pass through the Data Management Center of the Ministry of Post and Telecommunications.³³⁶ The letter indicated that the policy followed the instructions of PM Hun Sen.

This raised fears of an increased capacity to monitor social media and prohibit access to different websites. The Cambodian Centre for Applied Philosophy and Ethics, discussed this issue at a forum of approximately 80 youths. Most of them expressed concern about the policy and indicated they felt the need to intensify self-censorship, with many indicating a fear of just clicking like on opposition parties’ social media pages or posts.

CSOs finds the prakas to be a serious threat to constitution Article 41 which guarantees freedom of expression, as well as to obligations to the International Covenant on Civil and Political Rights. It shows government disregarded for right to privacy and expression. The terms related to incitement, discrimination, breaking solidarity, and national security are all too vaguely defined, without clear standards for measure in order to apply the law fairly and consistently. The law thus promotes further suppression of public space and the potential for abuse of power and violence from the government being justified by reference to ‘national security’ concerns without the presence of a genuine national security threat. The order is likely to support the policing of all online critical speech and dissent, and it is not clear which government body has the authority to make the determination that specific utterances, posts, or reports are in violation of the law. This further increases the discretionary potential of the law. Moreover, as pointed out by human rights groups, the law regulates both public online communication and private online communication, effectively limiting individual freedoms to have a private life without state interference. Following the prakas, all citizens and online users are now under continual surveillance. ISPs must contribute to the policing of internet users as well, without any framework to ensure fair treatment and accountability.

A joint petition from 116 civil society groups stated: “This ministerial order represents a serious threat to the Cambodian people's constitutional rights to privacy and freedom of expression.

³³⁵ <https://www.khmertimeskh.com/497082/three-ministries-tasked-with-monitoring-online-activity/>

³³⁶ It is not clear exactly when the policy would be initiated, as the letter stipulated the policy would come into effect only in the third quarter of 2018. The letter itself indicates that the policy was for fiscal management purposes on the part of the RGC with the data price being set at one cent per minute, which it said would stabilize state revenues in that sector. The letter states the DMC would be announced to the public in the third quarter of 2018, jointly by the Ministry of Post and Telecommunications and the Ministry of Economic and Finance.

Article 41 of the Constitution of Cambodia states that "Khmer citizens shall have the freedom to express their personal opinions, the freedom of press, of publication and of assembly." This constitutional freedom can be limited by public order and national security considerations, but only in narrow circumstances and when it is truly necessary and proportionate. This order represents a severely disproportionate restriction on the Cambodian public's human rights."³³⁷

The policy fundamentally limits speech, information access, and discussion-based learning because it puts legal responsibility on the individual to be certain of the veracity of any information before it can be shared, exchanged, or commented on. The Ministry of Information clarified this expectation now placed on individuals.³³⁸ Certainly, such a responsibility is beyond what can be reasonably expected of even the most educated and privileged citizens, not to mention the majority.

As noted above, in late May, prakas (government directives) were released which ordered the blocking of any and all websites considered a threat to national security or capable of incitement. Prior to the 2018 National Assembly elections the RGC ordered 15 news media websites to be blocked on the day before and the day of the election³³⁹, (July 28 and 29) including: Voice of America's Khmer service, Radio Free Asia's Khmer service, Voice of Democracy, Vayo FM Radio, Monorom.info, and the news site of the Independent Network for Social Justice on July 28 and 29 – the day of the election. Also blocked were Cnrp7.org, Khmerpolitical.com, Khmersharingnews.com, Camnews.com, Stubes.info, Pinterest.de, Vithyu.com, Freecambodia.org, and Akppure.com, which are sites used to relay news from the first sites mentioned.³⁴⁰ Additionally, on 2 July 2018, PM Hun Sen announced that those who posted that they were not going to vote in the elections would face legal prosecution.³⁴¹

Source: AEC News Today

³³⁷ [https://www.ifex.org/cambodia/2018/06/15/revocation-media-directive/;](https://www.ifex.org/cambodia/2018/06/15/revocation-media-directive/)

<https://www.phnompenhpost.com/national/civil-society-groups-slam-govt-web-monitor-group>

³³⁸ <http://sea-globe.com/cambodian-government-issues-chill-on-online-speech-and-publishing/>

³³⁹ <https://www.reuters.com/article/us-cambodia-election-censorship/cambodia-blocks-some-independent-news-media-sites-rights-group-idUSKBN1KH29Q>

³⁴⁰ <https://www.voacambodia.com/a/government-confirm-blocking-fifteen-independent-news-sites-over-poll-disruption/4503739.html>

³⁴¹ <https://www.voacambodia.com/a/pm-orders-Facebook-surveillance-over-reported-rumors-of-fatal-election-ink/4465060.html>

Cambodia news media accessibility July 28												
News Site	Digi			OpenNet			Cellcard			Smart		
	8am	5pm	9pm	8am	5pm	9pm	8am	5pm	9pm	8am	5pm	9pm
The Phnom Penh Post	Green	Green	Red	Green	Red	Red	Green	Red	Red	Red	White	Red
Khmer Times	Green	Green	Red	Green	Red	Red	Green	Red	Red	Green	White	Green
VOA Cambodia (English)	Green	Green	Red	Green	Red	Red	Green	Red	Red	Green	White	Red
VOA Khmer	Green	Green	Red	Green	Red	Red	Green	Red	Red	Green	White	Red
RFA Cambodia (English)	Green	Green	Red	Green	Red	Red	Green	Red	Red	Green	White	Red
RFA Cambodia (Khmer)	Green	Green	Red	Green	Red	Red	Green	Red	Red	Green	White	Red
Fresh News	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	White	Green
AEC News Today	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green

On 8 August 2018, in front of audience of 18, 467 factory workers, PM Hun Sen announced that anyone posting an insulting comment on Facebook could be tracked down in eight minutes.³⁴² On 10 August 2018 the Facebook page of PM Hun Sen was apparently ‘hacked’. The news of the hack came after the page had posted an announcement that the ruling CPP party, which controlled all 125 National Assembly seats, was planning to give 4 seats away for MPs from other parties (FUNCINPEC and LDP). The message remained posted for approximately one hour and obtained 3,300 ‘likes’ from social media followers of the PM. CPP spokesman Sok Eysan informed media that the announcement was fake news and indicated there were no plans to share seats with other parties. He accused “opposition groups or traitors or outlawed rebels” of hacking the PM’s page.³⁴³ COMFREL observed the case to be puzzling, as the capacity to hack a Facebook page is far beyond the technical abilities of the CNRP leadership. There is no apparent political gain from the message, making it difficult to conceive of a motive for the post.

In late October 2018, the Ministry of Interior on Saturday announced the closure of six Facebook accounts. It asserted that the ministry had conducted an investigation and found these accounts to have falsified news which had incited insecurity in Cambodia. Three of the six accounts belonged to Hun Manet, the son of PM Hun Sen and Commander of the Royal Armed Forces. The

³⁴² <http://en.freshnewsasia.com/index.php/en/10570-2018-08-08-09-00-46.html>

³⁴³ <https://www.straitstimes.com/asia/se-asia/cambodia-pm-Facebook-hacked-to-give-away-parliament-seats>

accounts names on those accounts were Hun Manet (Lieutenant General Hun Manet), Hun Manet, Prime Minister of Cambodia, and Hun Manet (of HE Hun Manet). Additionally, one account was named Vong Bunintreavuth, and the last two were similarly named the Khmer Vietnamese Association in Cambodia. The ministry requested Facebook investigate that page after a post which called on Vietnamese immigrants to vote in the July parliamentary elections. As this is not legal, it was deemed to be in the service of “dishonest interests”.

In addition to the blocked sites indicated, the announcement also verified 10 sites as genuine or authentic. These included both institutions and officials, such as: the ministries of Interior, Economy and Finance, Labour and Vocational Training, and the General Department of National Treasury and General Department of Taxation; as well as high officials including Hun Manet, Vong Bunintreavuth (director-general of General Department of National Treasury), Pich Sophoan (secretary of state at the Ministry of Labour), and Heng Sour (Ministry of Labour spokesman). Continued crackdown on fake accounts was an urgent priority to prevent lies spreading according to the Information Technology department.³⁴⁴

The former print newspaper the Cambodia daily (see Key Cases above) asserted: “The regime has ordered Cambodian ISPs to block the *Daily* website, so Facebook has become one of our most robust channels around their censorship. Facebook is internally encrypted so the regime can block all of it, or none. *Cambodiadaily.com* is available for users outside of Cambodia or who have a VPN while much of our readership inside sees us through our Facebook page. Ironically, our reach inside Cambodia is larger now than when the *Daily* was primarily in print in the capital, as more of our articles are in Khmer or in audio format.”³⁴⁵

Citizen journalism training and capacity building needs to increase. Active citizens and CSOs must increase knowledge of and use of security techniques in both the real world and online. Citizens must show an increased ability to avoid surveillance and carry out expression in safe online networks. However, they must also learn to avoid falling into traps by making statements that can be misinterpreted to allow for the abusive application of laws supporting social order and national security. Despite the fact that most radio has shifted to social media, the change from radio FM broadcast means people are less able to listen to the news during daily activities and may incur data costs. Moreover, the loss of key news media outlets means the source news or investigative reporting has declined which serves as the means for much social media commentary and discussion.

³⁴⁴ <https://www.phnompenhpost.com/national/ministry-shuts-down-fake-fb-accounts>

³⁴⁵ <https://www.rfa.org/english/news/cambodia/cambodia-daily-no-taxes-12062018153628.html>

Part II - Criminalization of Expression on Social Media

It became common to charge critics and opposition party members with incitement during the course of the mandate of the National Assembly. Criticisms of the regime, especially of the PM, run a significant risk of a prison sentence up to two years.³⁴⁶ This section deals some cases of alleged ‘insult’ and/or ‘incitement’ related to expression on social media. Cases of politically motivated prosecutions (lawfare) related to the lese-majesté are discussed in the chapter on the Judicial Branch, cases related to opposition party members and activists are discussed in the chapter on Political Society, and cases related to civil society organizations and activists are discussed in the chapter on Civil Society).

Sam Sokha posted a video on Facebook of herself throwing a shoe at a billboard picture of PM Hun Sen on 1 April 2017. In late June, an arrest warrant was issued for Sam Sokha which accused Sam Sokha of insulting a public official under Article 502 of the Criminal Code, and incitement to discriminate under articles 494 and 496, which are punishable by up to three years and six days in jail.³⁴⁷ The accused fled and went to be hiding. She had applied for asylum in Thailand and continued to be an active critic of the government while in Thailand. Although recognized by the UN High Commissioner for Refugees, she was arrested by the Thailand government for illegal entry and was ultimately extradited from Thailand on 8 February 2018 and arrested by the RGC that same day.

She had already be sentenced in absentia to two years imprisonment.³⁴⁸ The case has raised the possibility of extradition for opposition leaders and activists who have fled abroad to Thailand, as well as independent members of civil society organizations. As of February 2018 approximately 100 former members of the opposition CNRP had fled to Thailand, and approximately half of them were seeking asylum.³⁴⁹ In September 2018, she wrote a letter of apology to PM Hun Sen, requesting a royal pardon. She claimed she was upset about the death of her father when she threw the shoe. He was a former policeman which, she felt, had not been treated well by the government.³⁵⁰

³⁴⁶ <https://www.cambodiadaily.com/editors-choice/incitement-cambodias-catchall-political-crime-132176/>

³⁴⁷ <https://www.phnompenhpost.com/national/shoe-thrower-charged-faces-jail-time-kampong-speu>

³⁴⁸ <https://www.phnompenhpost.com/national/extradited-shoe-thrower-sam-sokha-faces-two-year-prison-sentence>

³⁴⁹ <https://www.phnompenhpost.com/national/extradition-shoe-thrower-protester-thailand-raises-possibility-cnrc-deportations>

³⁵⁰ This is an example of a not uncommon practice which has the benefit of securing releases for some individuals convicted for exercising fundamental freedoms. However, it also reinforces the idea that the convicted persons admit guilt and appeal to a demonstration of charity and magnanimity.

On 8 February 2018, San Rotha, a 29-year-old man from Kampong Cham was arrested and interrogated in relation to video posts made on social media in which he referred to the RGC as an authoritarian government. He also claimed that free speech was under threat. Rotha was arrested by provincial military police and accused of “public insult of the leader and public defamation.” However, Huot Vuthy, spokesman for the Kampong Cham Provincial Court, said Rotha was being questioned for alleged public insult and for incitement. By 11 February 2018, the video had been removed. However, in his video post the defendant had stated: “I want to inform the people and people supporting [the] CNRP to stand up again, and please do not be scared by all the actions and intimidations of some authoritarians. If you do not stand up and unite together, we will not get loose from the devil’s hand.” He also asserted: “corruption cannot win over the people’s solidarity power”.

Keo Oun, Rotha’s sister-in-law, said “The Military Police said that they would just educate him and would release him six months later because he apologised and promised to stop playing on Facebook.” Phil Roberston, deputy Asia director of Human Rights Watch, said: “Pro-government trolls are especially on the lookout for critical commentary on Facebook and other online forums because that is the one source of information that the government can’t fully control.” Paul Chambers, a lecturer at Naresuan University in Thailand, said: that the case was an example of a growing climate of fear which had been developing rapidly since 2017.³⁵¹

On 7 March 2018, a former police official named Keo Saravuth, was briefly detained and “educated” after he expressed commentary on social media which criticized the head of the National Police. According to national police spokesman Kirth Chantarith, he was arrested for morning for criticising the leader of the National Police on Facebook. Specifically, the police spokesman claimed the accused had said: “the old general police chief [Hok Lundy] protected the subordinates, but new general police chief [Neth Savoeun] does not help the subordinates”. He accused national police chief Savoeun of unfairly punishing people for minor mistakes. Chantarith asserted: “The above statement affects the reputation and dignity of the leader, as he is a police official who committed crimes and violated the law.” Saravuth had been fired from the police in 2016 after being accused of faking a family book. He was released after being instructed to stop making critical posts.³⁵²

On 31 March 2018, May Voeun, a 35 year-old migrant, upon his return from Thailand, was arrested and charged with insulting the PM in video clip posted to Facebook in February 2016. A 35-year-old man from Banteay Meanchey was arrested on Saturday – a day after returning from work in Thailand – and sent to pre-trial detention on Monday for allegedly insulting Prime

³⁵¹ <https://www.phnompenhpost.com/national/man-arrested-wedding-day-criticising-government-Facebook>

³⁵² <https://www.phnompenhpost.com/national/ex-officer-detained-Facebook-post-aimed-police>

Minister Hun Sen in a video clip he posted to Facebook in February 2016. He was ordered to be held in pre-trial detention. Sit Los, deputy provincial police chief in Banteay Meanchey, confirmed the arrest. After communicating with investigating judge Hok Pov, Licadho coordinator In Kongchit confirmed that Voeun was charged with public defamation and incitement to commit a felony. The video has since been deleted and cannot be examined for content.³⁵³

On 30 April 2018, Chhea Dina was detained, interrogated and reeducated by police before being released in relation to a complaint of defamation and incitement to discriminate submitted by the head of the League for Democracy Party Khem Veasna. That complaint was submitted on 10 July 2017.³⁵⁴ The allegations claimed that Sran Sok Rom (“Aja Thom”), Kum Sokharoth, and Stung Khiev Radio Station Director also were involved in the crimes committed via social media. Mr. Veasna asserts that all of the three individuals (Dina, Rom, and Soharoth) misrepresented his position on a 2005 border treaty with Vietnam and on the issue of the cessation of Phu Quoc island (Koh Tral). Although the accused was released from police custody, the case has been sent to the court for further measures.³⁵⁵

In mid-December 2018, Ly Meng Yieng was summoned and questioned by the police related to a Facebook post expressing support for the leader of the former opposition party Sam Rainsy and those banned from politics. Mr. Yieng is a CNRP supporter from Kandal province. He was pressured to sign a letter in which he promises to cease all posts of video clips expressing support of the CNRP. He was questioned for more than four hours, but after he accepted to sign the letter he was released. Mr. Yieng also posted the letter which declared: “I, Ly Meng Yieng, promise before the Sa’ang district police that from today onwards I will stop posting video clips which support the CNRP, and I will not do anything that affects national security. If I don’t respect the above promise, I will face the law.” The original expression which had been criminalized involved the statement: “We would like to announce that we support HE Sam Rainsy to be acting president of the CNRP to lead the CNRP to be successful going forward, and to demand the release of HE Kem Sokha and that district councils, commune chiefs, commune council, first and second commune chiefs in all 16 communes in Sa’ang district be allowed to return to [their positions].”³⁵⁶

³⁵³ <https://www.phnompenhpost.com/national/migrant-arrested-insulting-pm-Facebook>

³⁵⁴ <https://www.phnompenhpost.com/national/ldps-veasna-sues-Facebook-users-defamation>

³⁵⁵ <https://www.phnompenhpost.com/national/man-briefly-detained-poipet-Facebook-post-involving-ldp-head-khem-veasna>

³⁵⁶ <https://www.phnompenhpost.com/national-politics/rainsys-Facebook-supporter-questioned>

On 16 January 2019, former CNRP provincial committee leader Kong Mas was arrested in Phnom Penh and charged with incitement and insulting.³⁵⁷ Prior to his arrest, Kong Mas posted on Facebook his enthusiasm for EU tariffs on rice exports (not part of the EBA withdrawal), and he had given interview with Al Jazeera news in which he expressed his support for sanctions on Cambodia which he hoped would lead to mass protests. Sam Sokong, the lawyer for Kong Mas, pointed out that the prosecution had to be politically motivated because the evidence against the defendant was composed of Facebook posts in which he criticized the government, made from April to December 2018. Only days before his arrest, he posted a Reuters story about the EU deciding to move forward with removing preferential trade status for Cambodia. He also posted comments where he criticized the government's rice policy and actions to support farmers. Mr. Sokong emphasized: "When authorities or the government are angry, they will file complaints and 100 percent of the time, the court has to take action in accordance with the complaints, whether or not they're based on the law."³⁵⁸

Also, not long before the arrest, Hun Sen had publicly chided the EU, stating: "Please don't forget that if you sanction me, it equally means that [you] beat the opposition in Cambodia to death. I won't forgive them." CNRP founder Sam Rainsy said: "If he wants to avoid those sanctions because he cares about the well-being of the Cambodian people, he just has to reverse his repressive policies and start negotiations with the European Union in order to restore democracy in Cambodia." After the arrest of Mas, the government issued a public statement indicating that any discussion of the EBA is prohibited from involving: "inappropriate words and negative visions, making confusion to the public" when discussing the EBA. Hun Sen initially renounced the risks of loss of preferential trade access to the EU under the EBA, but then threatened prosecution of anyone who supports sanctions and to destroy the opposition if the EU made the change.³⁵⁹

³⁵⁷ <https://www.rfa.org/english/news/cambodia/tariffs-01162019153641.html>

³⁵⁸ <https://www.voanews.com/a/cambodia-takes-aim-at-critics-on-Facebook/4834665.html>

³⁵⁹ <https://www.aljazeera.com/news/2019/01/cambodia-opposition-member-charged-pm-threat-sanctions-190119065456154.html>

CHAPTER 7 – DEMOCRATIC ELECTIONS

Part I – Voter Registration and List Audit

Part I Section A - Voter Registration

The voter registration and voter list update of 2017 was conducted from 1 October to 8 November 2017. The NEC organized voter registration groups in order to assist commune councils. The NEC organized 1,633 voter registration groups (a group for each commune). Each group consisted of 3 members or more members according to that amount of eligible voters. The NEC estimated the number of eligible voters in 2017 to be 9,882,746 persons. The NEC released an official voter registration list on 24 January 2018 with 8,380,217 eligible voters casting their ballot in 22,967 polling stations. The estimation for voter registration in 2018 by the NEC increased from 9,664,216 to 9,882,746, for 6th legislature national assembly election.

Voter Registration Turnout from 1993 to 2018

Updating voter list and voter registration	Estimate	Voter registration	
		Number	Percentage
1993	4,654,000	4,764,430	102.00%
1998	5,8,029	5,395,595	98.00%
2002	6,251,832	5,190,307	83.00%
2003	6,749,876	6,341,834	94.00%
2007	7,291,084	7,799,371	107.00%
2008	7,828,161	8,125,529	104.00%
2012	8,894,219	9,203,493	104.00%
2013	9,509,732	9,675,453	102.00%

2017	9,664,216	7,865,033	81.38%
2018	9,882,746	8,380,240	84.80%

The report on the 2017 voter registration 2017 was the result of voter registration monitoring in the second year after the reform of the NEC and new voter registration. For voter registration monitoring, COMFREL deployed 103 observers in 103 communes although it had planned to deploy in 312 communes. The observation on electoral process did not monitor the each of the 70 days, but COMFREL observers conducted monitoring in 8 times during that time period.

The voter registration process in 2017 was different from 2016. COMFREL found that, unlike 2016 in the voter registration process the NEC did not work on the public holiday, Pchum Ben day, for voter registration for eligible citizens, especially migrants. The voter registration in 2 provinces exceed the estimates of the NEC. Svey Rieng province had voter registration of 156.41% of the estimate and Ratanakiri had voter registration 156.90%. Some polling stations established by the NEC were unreasonable because voter registration based on voters per polling stations defined the maximum at 750 eligible voters per station. If in excess of 750 eligible voters the NEC must create a new polling station, but in fact some communes did not have 750 eligible voters and a new polling station was created. In addition, COMFREL found that the NEC estimate for eligible citizens was less than in previous years.

In the electoral process in 2016, political parties actively took part to educate eligible citizens to cast their ballot, but in 2017 it was observed that the activities of electoral education decreased. Especially, the activities of the major opposition party (the CNRP) decreased because it was busy with the political laws amendments, political sign changing, structural changes, and an advocacy campaign to free its president.

CSO electoral education and observation decreased as well. Some CSOs totally postponed their activities, especially CSOs getting donation from the National Democratic Institute such as COMFREL, NICFEC, and ADHOC. COMFREL had planned to deploy observers to more than 300 communes, but it could deploy observers to only 100 communes. Independent media, VOD, RFA and VOA, (which were actively involved in electoral education dissemination in 2016) were ordered to stop broadcasting by the Ministry of Information. Political tensions also affected the political participation of citizens.

Part I Section B - Audit of Voter List

The quality of the voter list is essential for a fair election. Two methods were used to confirm: 1) checking for duplicates on the list, and 2) verification of names on the voter list with local residents after the registration. The study on duplicated names on the voter list was done by taking the NEC's final voter list (official list) to use to verify. The method of verification for duplicate names included checking for duplicate names at both the same polling station and at different polling stations. The verification procedure found that the of the total amount of eligible citizens of 8.3 million, there were 961 duplicated names which were including the both the same polling station and different polling station, even though, NEC announced that it had removed 21,671 duplicated names from voter list.

For the voter list audit, COMFREL conducted verification in the 3 provinces of Banteay Meanchey, Takeo and Tbong Khmom province. This verification process conducted a list-to-people check, and the results showed that in Takeo province the list was 99.02% reliable, and in Banteay Meanchey and Tbong Khmom provinces it was 100% reliable. As a result, the verification process of checking the voter information with the residency of the voters found that 99.58% of the voters do reside at the residence listed. The residence of the voters was verified by the Chief of Village, neighbors, members of family, the Chief of Commune, Commune Councilors, or the Commune Clerk in charge of the resident name list. Additionally, three 3 categories of personal data were checked, including name, sex and date of birth. The result of the investigation showed that the information on the list was 94.46% correct, based on an average of: Takeo 97.48%, Tbong Khmom 93.98% and Banteay Meanchey 88.24%. COMFREL could conclude that the voter list was highly accurate and would be adequate to enable an election without fraud.

Part II – Background and Political Climate

Constitutional Amendments which occurred after the 2013 elections, contributed to the election reform according to the principle of liberal pluralism enshrined in the Constitution, and made political parties more confident in the fairness of electoral competition. Following the 2013 election, political reform entailed changes to political party law and electoral laws. The 2017 election made voters more optimistic about the election process. But later on, further changes to laws have reduced public confidence in politics and freedom of expression which is a vital element in the democratic election process.

The ruling party unilaterally proposed the amendments to the political party law. They were adopted by the National Assembly on 20 February 2017 in an extraordinary plenary session and sent to the senate and the constitutional council for a constituency review and approval. The amendments were validated by the acting head of state, Say Chhum while the King was out of

the country.³⁶⁰ Despite disagreement from the major opposition party and other political parties, international civil society groups, main international donors, and international NGOs, the amendment was successfully adopted. The ruling party said the amendment was to create a better political environment in accordance with democratic principles and asserted that the amendment was not politically motivated to restrict and punish the opposition CNRP, but it was a needed update. Unilaterally, in 2017 the ruling party drafted a second amendment on the political party law and it was enacted by the the fifth mandate parliament on 10th July 2017 in the 8th plenary session. The amendment further restricted political rights and freedom of expression of people.

The National Democratic Institute (NDI) was ordered by the Ministry of Foreign Affairs and International Cooperation to suspend activity on Aug. 23th 2017. The ministry said its order was aimed at strengthening the rule of law and respect for sovereignty of Cambodia and also claimed that the decision was taken after careful consideration and discussion among the competent authorities. The Ministry clarified that the decision was based on two laws including the Law on Associations and Non-Governmental Organizations and the Fiscal Law. It added that NDI conducted its activities without ministerial registration and it did not register with the Tax Administrative department to comply with tax obligations. In contrast, NDI claimed that it had fulfilled all its legal obligations for registration through the Ministry. The Ministry had received its registration application since September 2016, however, did not respond to NDI's request. This meant that the Ministry of Foreign Affairs violated Article 14 of the Law on Associations and Non-Governmental Organizations, which requires the Ministry to decide on applications for registration within 45 days. NDI is non-profit organization working in more than 60 countries around the world to support and strengthen democratic process through civic engagement, openness and accountability of the government. For 25 years, NDI has worked with all major political parties, including the ruling party. Many national and international civil society groups have criticized the the ministry's decision as unfounded, and the US Embassy in Cambodia questioned whether Cambodia had a commitment to democracy. The US Ministry of Foreign Affairs also issued a statement expressing deep concern over the deteriorating situation for democracy in Cambodia.

The President of the Cambodian National Rescue Party, Kem Sokha, was arrested at midnight on December 3, 2017, it happened about three hours after Fresh News, a pro government media agency, disseminated a video clip posted on the Facebook page 'Koun Khmer', which it was believed by some media agencies to be Kem Sokha's social media page. The video clip showed Kem Sokha standing in front of supporters, but did not to confirm that the message delivered to

³⁶⁰ <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=536>

the supporter was his original message, and it was not confirmed or rejected by him or other opposition officials after his arrest.

A well-known newspaper, the Cambodia Daily, was forced to shut down on September 4, 2017 because it was not able to pay more than \$ 6 million in taxes, of which nearly \$ 3 million was interest on alleged unpaid taxes from ten years of operations. The newspaper's owner, Deborah Krisher-Steele, as well as national and international observers, characterized the government's move to block the Daily newspaper due to unpaid tax as politically motivated. Moreover, the effect of the closure on press freedom was noted by all as well. The Cambodia Daily, was established by Bernard Krisher in 1993, aiming to strengthen press freedom in Cambodia by training Cambodian journalists. Bernard Krisher was not paid and ran the institution as a social enterprise. The Cambodia Daily had only turned into a private business in April 2017. The Cambodia Daily should have been provided a proper audit first in order to to enforce the laws in a fair and equitable manner.

Radio Free Asia closed its office in Cambodia on September 10, 2017. In a statement released by Radio Free Asia, it was asserted that the government forced the Daily Cambodia to shut down its office for excessive taxation, which prevented the owner of the newspaper, Douglas Eric Steele, from leaving Cambodia under threat of criminal charges. The statement claimed that the authorities also used the same tactics against RFA, even though it provided full cooperation to comply with all requests and efforts to register as a licensed information company. Radio Free Asia journalists and commentators have been intimidated and jailed and forced to leave the country to avoid arrest or worse. But the recent restrictions were viewed as more severe than previous suppression, as the ruling party CPP seeks to eliminate any obstacles or influences that prevent it from completely and dictatorially grabbing power.

Two political parties, the Cambodian Youth Party and FUNCINPEC Party, announced publicly on September 30, 2017 that they would file a lawsuit to the Supreme Court to request the dissolution of the CNRP on the basis that the party's leaders and actions severely dishonored the nation's interests and were part of a foreign plot to destroy peace and development. The national and international community believed their argument to be disingenuous and politically motivated.

The Supreme Court on November 16, 2017 issued its verdict which ordered the dissolution of the Cambodia National Rescue Party (CNRP) following a complaint from the Ministry of the Interior, accusing the CNRP of attempting to topple the current government. The court decided to dissolve the CNRP and suspend the political rights of the opposition party leaders and another 118 senior party officials for five years. In the complaint process, a group of four lawyers representing the

Ministry of Interior and led by Mr. Ky Tech (the personal lawyer for PM Hun Sen), presented 26 pieces of evidence containing more than 10 video clips, as well as some documents and photographs linked to the actions that they alleged to be color revolutionary activities. The footage showed events of the protests in early 2013 and late 2014 and opposition leader Kem Sokha and former opposition leader Sam Rainsy making public statements about receiving foreign support from the USA to change the government in Cambodia. They argued that the CNRP was planning to overthrow the Cambodian government through a color revolution in 2018. They added that that the government led by Prime Minister Hun Sen, cracked down on the plot to prevent the revolution. Democracy advocates, international media, and political analysts all considered the dissolution of the CNRP the death of democracy in Cambodia and the killing of the spirit of the Paris Peace Agreements.

PART III – Senate Elections

Part III Section A – Background and Result

In the 2018 Senate elections the ruling party received 96 percent (of 11,202) of a total of 11,670 votes at 33 total polling stations. There were 11,695 eligible voters (11,572 commune councilors and 123 members of parliament), so 99.7 percent of eligible voters participated in the ballot. The results showed that the CPP received 11,202 (or 96 per cent) of the total 11,670 votes, taking all 58 elected Senate seats.³⁶¹ FUNCINPEC received 276 votes, Khmer National United Party 182 votes and Cambodia Youth Party won 3 votes.³⁶²

After dissolution of the CNRP and distribution of the CNRP seats, of the CNRP's 5,007 commune council seats the ruling CPP took control of 4,548. FUNCINPEC took 239 seats, the Khmer National United Party took 201, the Cambodian Nationality Party took 10, the Cambodia Youth Party took 3, and the Cambodia Indigenous People Democracy Party took 3. Thus, the CPP gained 11,051 commune councilors, 95.5 percent, giving it total control over senate votes and government at the local level across the country.

Before the dissolution, the CNRP also controlled 86 provincial council seats, and CPP took 78 of them and FUNCINPEC took 10. After the dissolution of CNRP, of the 679 town and district council seats occupied by CNRP members the CPP took 639, and FUNCINPEC took 40. The CPP took also received 78 of the CNRP's 86 provincial council seats, with FUNCINPEC taking the remainder.³⁶³ The next district elections will be in May 2019. The National Election Committee statement

³⁶¹ <https://www.straitstimes.com/asia/se-asia/cambodian-pm-hun-sen-party-sweeps-all-seats-in-senate-election-official-results>

³⁶² <https://www.channelnewsasia.com/news/asia/cambodia-pm-hun-sen-party-cpp-landslide-win-9990876>

³⁶³ <https://www.phnompenhpost.com/national-politics/cpp-big-winner-local-seat-reallocation>

declared: “The distribution of seats was made in accordance with the Law on the Amendment on Commune/Sangkat Council Elections in Article 20 and Article 21.”³⁶⁴

In the upper house of the Cambodian parliament, the Senate, there are a total of 62 seats and 58 are elected (two are appointed by the King, and two are appointed by the lower house, the National Assembly). In the 2018 Senate elections, on the basis of its near total control of sub-national entities (province and commune councils), the CPP took all 58 of the elected seats. Senate elections occur every six years, but the general population does not vote. Senators are elected by the MPs in the National Assembly and commune councilors. Four parties competed in the election, including the ruling CPP, FUNCINPEC, the Cambodian Youth Party, and the Khmer National United Party.

Part III Section B – The National Election Committee (NEC)

The National Election Committee (NEC) indicated that only four parties registered to compete in the elections: the ruling Cambodian People’s Party, FUNCINPEC, the Khmer National United Party, and Cambodia Youth Party. The former opposition party CNRP was not allowed to compete under the current electoral laws. When distributing ballot rankings, the ruling CPP obtained first position.³⁶⁵

The National Election Committee (NEC) said that the “proper authorities” were organizing the February 25 election “in accordance with the law”. It affirmed it would do fulfill its mandate responsibly and fairly in support of multi-party democracy. However, following the dissolution of the CNRP, three NEC members resigned from the electoral body and were replaced with officials viewed to be aligned with the Cambodian People’s Party. One of the NEC members who resigned after the CNRP’s dissolution, Rong Chhun, indicated that the statement was a sign that the electoral body was concerned about its public legitimacy. He pointed out: “There is no reason for them to release the statement declaring their stance. It just simply means that they are guilty because the public is judging and watching. Therefore, they have to defend themselves.”³⁶⁶

The National Election Committee also conceded to media that the competing parties did conducted very little campaign activities. As pointed out by civil society, the lack of a vibrant opposition party rendered the election uncompetitive, and smaller parties had no ability to influence the vote of commune councilors which were obligated to support their party. According to an NEC press release, the opposition parties had done very little campaigning. On the other hand, the ruling party had been active throughout the country. The NEC has banned

³⁶⁴ <https://www.khmertimeskh.com/93703/cnrp-commune-seats-doled/>

³⁶⁵ <https://www.voacambodia.com/a/four-parties-register-to-contest-senate-election-next-month/4203479.html>

³⁶⁶ <https://www.voacambodia.com/a/election-body-defends-neutrality-ahead-of-senate-election/4256259.html>

all political parties from campaigning on nine major boulevards in Phnom Penh, along with a slew of public spaces within the city prior to the upcoming Senate election on February 25.³⁶⁷

On polling day National Election Committee Chairman inspected voting at a Phnom Penh polling center and reported that he found the polling to be going smoothly and peacefully across the country without any report of irregularities. He rebuffed the assertions that the poll was not legitimate by pointing to the continuing support of Japan and China for the NEC. He claimed: “I already said the two important things for an election is it needs to be independent and neutral to ensure it will be free, fair and just. This election is based on the law created by the National Assembly and not from the United States or the European Union.”³⁶⁸

Part III Section C - the 2018 Senate Polling

According to the National Election Committee, 12 organizations applied to be registered as monitors for the polls and they were all accepted by the election body. Reputed independent monitoring CSOs, NICFEC and COMFREL did not apply to monitor. When asked about the credibility of the approved institutions and the absence of seasoned monitors, NEC spokesman Dim Sovannarom was asked about the credibility of the polls and the results without participation of civil society. He claimed that lack of independent observers was because of less interest in the election, rather than accepting the legitimacy deficit of the polls. He asserted: “For the non-election [Senate polls], the national and international observers have less interest than the national election.”

Of the 276 total monitors, the largest group came from The Cambodian Democratic Student Intellectual Federation, a pro-government NGO. They deployed 93 volunteer observers. The group urged both main parties accept the result of the 2013 poll after that election in order to maintain political stability. 80 monitors were from Hun Many’s Union of Youth Federations of Cambodia, a pro-government youth group. They were deployed across 23 provinces. In the 2017 commune council election the group deployed 30,000 monitors.

The ruling Cambodian People’s Party, declared victory and occupied all 58 Senate seats that were up for election, and the Senate became a one-party body. Three minor parties had put up candidates for available seats but did not win any.³⁶⁹ Cambodian CSOs and International Organizations decided that the vote cannot be considered a legitimate democratic exercise that

³⁶⁷ <https://www.khmertimeskh.com/109501/little-campaigning-done-senate-polls/>

³⁶⁸ <https://www.phnompenhpost.com/national/senate-polls-open-across-country-nec-head-defends-election-legitimacy>

³⁶⁹ <https://www.khmertimeskh.com/110574/cpp-landslide-senate-election/>

reflects voter wills, because of both the elimination of all political competition and an increasingly repressive environment.³⁷⁰ During this polling, 5,007 commune councilors as voters were deprived of their rights. This has huge implications in any free and fair election and calls into question the legitimacy of the vote. On top of that, the only real opposition party was dissolved and banned from competing in the elections, while lawmakers from the CNRP have all been barred from politics and were not allowed to run as candidates. This defied the principles of free and fair elections.³⁷¹

Part IV – 2018 National Assembly Elections

Part IV Section A – Introductory Points

Registration for political parties and candidate lists: There were 20 competing political parties registered with the NEC. The period of registration for political party was 15 days from 30 April to 14 May 2018. In previous year: 2013, there were 8 competing political parties; and, 2017 commune councils elections, there were only 12 competing political parties. In the national election of 2018, the CNRP, main opposition party was dissolved by the Cambodian Supreme Court, and so could not compete. Among the 20 competing political parties, there were new political parties, established less than one month, such as Reaksmeay Khemara Party, Khmer United Party, Khmer Willing Party and Khmer Rise Party.

The four new political parties were created in a short period, causing suspicion from the public that that the process was irregular and not transparent because the political law stipulates that in order to establish new political party, should mobilize supporters by fingerprint collection and submit it to the Ministry of Interior, in accordance with new article 19 of the Law on Political Party. This legislation states that a newly established political party shall petition the Ministry for registration and have at least 4000 members. Article 20, paragraph 8, of that law stipulates that new political parties establishing require a supporting name list of members including ages, addresses and at least 4000 fingerprints. In the previous years, COMFREL observed that some of political parties prepared political party application at least one year in advance in order to get registered by the Ministry of Interior.

Election Campaign: The electoral campaign lasted for 21 days. For observation and monitoring during the electoral campaign, COMFREL mainly focused on voter's rights- and the issue of electoral boycott or "go to vote or not go to vote". It was noted that the campaign was conducted

³⁷⁰ <https://www.reuters.com/article/us-cambodia-election/cambodias-ruling-party-sweeps-senate-election-after-crackdown-idUSKCN1G902M>

³⁷¹ <https://www.rfa.org/english/news/cambodia/senate-02262018164009.html>

without violence. All the political parties running in the election carried out a campaign. During the campaign period, campaign processions were conducted through provinces four times. In the 2018 election, the NEC made a tremendous effort to educate citizens to vote. SMS with voter awareness messages were regularly sent to voters through mobile phones. In contrast to 2017, the Ministry of Labor and vocational training, and the NEC, issued a notice giving days off for workers and civil servants in order to cast their vote. Leadership of the government and ruling party not only conducted field visits, but also issued a message threatening the public and voters.

Election Observer Accreditation: in the process of electoral observer accreditation, it was noted that none of national and international non-governmental organizations which have independent status, (in particular COMFREL and other former members of the Situation Room for elections) applied for observer accreditation from the NEC. However, on the 26th July the NEC notified that there were more than eighteen thousand observers for the election. The NEC had accredited 76,849 political party agents (51,575 privileged observers) as electoral observers. They were from the 20 contesting political parties. The NEC also had accredited 322 international observers from 42 institutions, including embassies.

27 independent domestic and international election monitors, denounce on July 28 ,2018 the attempt by the Government and the National Election Committee (NEC) of Cambodia to legitimize the upcoming July 29 general election by accrediting large numbers fake Observers and the Cambodian Legislative Elections July 28, 2018 . It is their opinion that the 80,000 domestic observers authorized by the NEC show neither the autonomy nor the skills to conduct an independent, reliable assessment of the elections. As a matter of fact, the two biggest contingents of these monitors are deployed by organizations with close personal ties to the ruling Cambodian People's Party (CPP) — the Union of Youth Federation of Cambodia (UYFC), led by none other than Hun Manet, one of the Prime Minister's sons, while the Cambodian Women for Peace and Development (CWPD) is led by Deputy Prime Minister Men Sam An. Together, they account for more than half of the people receiving observer cards from the NEC. In fact, there will be more than twice as many domestic observers this year than there were for the 2017 commune elections, despite the regretful absence of established groups like COMFREL and NICFEC, which both felt compelled to refrain from participating in any capacity in this sham electoral process. Groups such as the International Conference of Asian Political Parties (ICAPP) and the Centrist Asia Pacific Democrats International (CAPDI), both having CPP leaders on their board, are known to rubber-stamp elections in authoritarian regimes as "free and fair." We call for the political party alliances affiliated to the CPP disguising themselves as election monitoring groups to present their standards and methodologies for their assessments. Accredited foreign observers also include members of the European Council on International Relations and the European Council of Tourism and Trade, but both groups are headed by a notorious "observer

for hire” who has endorsed in the past the leaders of Kazakhstan, Zimbabwe, and Venezuela, despite unanimous denunciation of human rights abuses by the international community.³⁷²

Part IV Section B – Pre-Election Context of Intimidation

The ruling political party and the government continued to crackdown the opposition party, independent CSOs and Media until the election period in 2018. After dissolving the CNRP and the five-year ban on political activities of its senior officials, disagreements over election participation and voting rights occurred. Former CNRP leaders and supporters jointly made a campaign in and out country for boycotting the election, while leaders of the ruling Cambodian People's Party (CPP) and other contesting parties called for people to vote. The ruling party's activities were conducted with threatening and intimidating messaging.

Ruling party officials or supporters were campaigning for citizens to cast their ballot by saying that whoever would not cast their vote killed democracy and loves dictatorship or rebel groups. Fraud related to the indelible ink was considered a criminal act. The campaign was conducted by the Prime Minister, spokesperson of the Ministry of Justice, the Ministry of Interior and other governmental officials. They publicly stated that those who do not cash their vote will be charged with a crime.

Meanwhile, former senior CNRP leaders and local activists also conducted an electoral boycott campaign. The campaign took in several forms including social media and people's assemblies. Civil society organizations including COMFREL observed that the campaign for an uninked or clean finger was within citizen's right to choose and to freedom of expression of their will in terms of a reaction to the dissolution of the opposition party which received more than 3 million votes in the 2017 elections.

The following are examples from the discourse of government officials and senior officials of the ruling party which led to concerns about restrictions on citizen's voting rights because of pressure from authorities:

1) Senior Minister Ieng Moly, Chairman of the National AIDS Authority and President of the CPP field visit working group for Bor Seth District, Kampong Speu addressed a meeting with more than 2,000 workers in Pheary Meanchey commune, Borseth district, Kampong Speu province that "Our country nowadays the country is peaceful and regards to democratic principle. If we love democracy, let's go to the polls on July 29, 2018. When we go to vote, we will have an

³⁷² <https://anfrel.org/wp-content/uploads/2018/07/Press-Release-Cambodia-2-edited-1.pdf>

indelible ink on the finger. But if we do not go to poll, it means that we do not love democracy but rather dictatorship. We will be recognized as rebel supporters if our finger is clean."

2) A ruling party supporter and army personnel, with a large social media following, Khan Chan Sophal, in a Facebook post on May 15, called on people to support a new legislation, saying "People have to go to vote. Those who do not vote are not equally deserving of public services and access to property title transformation because they failed in their citizen obligations." Justice Ministry spokesman Kim Santepheap said that "People intentionally coloring their finger with black ink to make it appear as if they have voted is considered as an illegal scheme intended to cause social chaos and protest against the electoral result. This violates Article 495 of the criminal code".

3) Siek Bun Hok, the president of the National Election Committee on May 29, 2018, claimed that the NEC and the Ministry of Interior will take action against any individual or institutions calling for people to not vote. He considered it as violation of the people's freedom stated in the constitution and stated that they shall be fined from 05 to 20 million Riels, excluding criminal charges. The president made the comment soon after former CNRP leader Sam Rainsy on July 29, 2018 called for people to not vote. He explained that "The new Article 34 states that people of both sexes have the right to vote and have the right to stand for election." He added those who advised them against voting, violated their rights. Article 41 of the Constitution states that citizens have freedom to express their own opinions, so that calling on them to not express their opinions (through not going to vote) is also a crime."

4) Prime Minister Hun Sen also warned that "anyone who does not go to vote but colors their finger with other types of ink including hair color ink to make it appear as if they had casted a ballot, will be criminally charged and jailed." The warning message was given in his address for an inauguration ceremony of a cement factory in Battambang province on May 31, 2018.

5) Ministry of Interior spokesman Khieu Sopheap publicly told reporters on June 14, 2018 that "authorities will arrest people making campaign for not voting and recorrect them to stop those activities. And they will be fined and faced with legal action by the authorities, if they repeat offenses."

6) On June 27, 2018, the Prime Minister said, during a meeting with a total of 24,375 female workers from 5 factories in Samaki Meanchey district, Kampong Chhnang province, that "Cambodians do not have to be evacuated again by the war, no matter going abroad or as a refugee in other countries and [the government] is doing best to maintain peace and development. A best choice [for people] is to vote for the CPP."

Election Results:

The same as the senate elections, the ruling Cambodian People's Party declared victory that won and occupied all 125 seats of members of the national assembly that were up for election; it subsequently become only one party to run and control the national assembly.

On 26 September 2018, The UN Special Rapporteur on the situation of human rights in Cambodia called the results into question and expressed concerns:

- the “genuineness” of the general election in July, which maintained the ruling Cambodian People's Party decades long position in power and “consigned multiparty liberal democracy to history for the next five years”. The ruling Cambodian People's Party won all of the parliamentary seats in the vote. “The country is therefore de facto a single party state; the multiparty liberal democracy envisaged by the Constitution is consigned to history for the next five years, the duration of the current Parliament.
- the use of laws to restrict debate and the targeting of media, political opponents, civil society organizations and individuals, including through the use of criminal charges, had shrunk the space for serious political debate, an essential factor for the enjoyment of the right to take part in the conduct of public affairs.
- Concerns about reports that voters were subjected to threats and intimidation after calls for a boycott of the election, which, in a non-compulsory election, is recognized by the Human Rights Committee as a permitted exercise of freedom of expression. “The reports of threats to voters if they did not vote are of particular concern: the inkstained finger, a sign in the past of hope and freedom, ironically has become a symbol of coercion,”.³⁷³

Part IV Section C – Major Concerns with the Legal Framework National Assembly Election System and Its Formula for Seat Allocation

Election Laws

As noted in the 2017 Democracy Report and the Report on 2018 Voter Registration, COMFREL has serious objections to the provisions of the Law on Political Party and the primary elections laws (Law on Election of Members of National Assembly, Law on Election of Commune Councils, Law on Election of District and Provincial Councils) because of the manner in which these laws

³⁷³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23638&LangID=E>

have been coordinated so that that executive, through domination over the judiciary, can police, prosecute and expunge political competition.

The provisions of the **Law on the Election of the National Assembly** have some negative impacts which infringe upon the fundamental rights of citizens and election-related stakeholders as stipulated in the International Covenant on Civil and Political Rights and the Cambodian Constitution. These include:

Constituency Seat Setting: The formula for setting constituency seats is not stipulated in this law. The loophole can make the ruling party able to increase or decrease the number of seats to their political advantage. In the previous law, the formulation for setting seats was based on scientific, geographic, economic, and social development criteria.

Penalties for party agents and observers: Political Parties and national electoral observers shall be fined from 1 million Riel to 10 Million Riel for not following the instructions provided in Article 18 of the Law.

Encouragement for electoral campaign participation of court officials, army personnel, and national police: Against Article 82 of the law, which limits the participation of civil servants in political party activities, local authorities at all levels, army personnel, national police and court official during the election campaign are allowed to participate in propaganda supporting any political party or candidate when they are not on duty or working hours. They are allowed to do so without wearing uniforms, having weapons and when not to causing any threat, according to article 83. They have a significant role and responsibility in maintaining the security of the electoral process, and court officials will also be directly involved in the resolution of complaints related to the election. To maintain political impartiality, the conditions for exercising their political rights should be set.

Dismissal and penalties for associations or organizations in joining election campaigns, and voting and counting activities: according to articles 84 and 137, within the period of electoral campaign, polling and counting processes, national and international non-governmental associations and organizations are not allowed to conduct direct or indirect political party-related activities and expression directly or indirectly. However, while private sector institutions are not restricted. CSOs are non-profit organizations and work for the common social interest. During the election period, they should be given the right to participate actively in their political life. The provisions of Article 84 above discriminate against CSOs exercising their rights and freedom of expression. Each non-governmental organization already has to adhere to its statutes and codes of neutrality submitted to relevant ministries including the Ministry of Interior.

Article 148 and Article 149 posit punishments for national and international non-governmental organizations and associations involved in political party activities: These provisions undermine political and civil rights and freedom of expression of the members of national or international non-governmental organizations and associations which are a crucial foundation for a democratic

society. Participation in a political movement or support for a political party should be viewed as a reflection on the institution's professional and moral values.

Punishment of electoral observers: according article 160, on the Election Day, observers may be fined 1,000,000 Riels to 10,000,000 Riels by the National Election Committee if they are found to pressure or harass the officials at the polling station. Electoral observation is voluntary work for which people should be motivated to participate without being under pressure or intimidation. This article is a threat to the voluntary work of observers, and considers the activities of people in democratic society as warranting punishments that are not proportional to any offense.

Elimination of Political Parties Candidates: Articles 152 and 153 state that during electoral campaign and polling processes, acts of insulting at any political party or candidates, and of incitement which result in discrimination against a group of people, nation, race or religion will result in the disqualification of not only the candidate but also of the political party from the contest. Article 162 considers criminal offenses committed by party representatives as an offense of that political party. Implementation of this article will be at risk of interpreting and explaining the offense. Politically biased explanations would undermine political competition during the election. The competent authorities, who implement and interpret the laws, have not yet gained public confidence that they are politically neutrality and impartial.

Some regulations, however, may be challenging and controversial in their enforcement. According to Article 71 of the Law on the Election of Members of the National Assembly, the activities of political parties, candidates or supporters, including threats, intimidation, and harassment to compel anyone to pledge to vote for a political party are prohibited, but not stipulated as an offense. Any such activity would still impact the will of the people when voting. Article 144 designates the punishment for any offence who wishes to register as a voter on the list more than once. The regulation is in accordance with the principle of one vote of one voter, but in the situation that the people have not been well informed about voter registration requirements, the regulation cannot be fully implemented.

Article 138 of the Law on Election of Members of the National Assembly election is set up in order to respond to post-election political conflicts related to the Assembly after the election. After the last three national elections, the electoral result rejection and first parliamentary session boycott of the opposition, there are questions about the legitimacy and procedures of the establishment of the National Assembly. Article 138 of the law clearly states that the political party that receives seats in the election shall be deemed to have abandoned its seats in the event that the political party refuses to attend the first parliamentary session with the King's invitation, refuses to attended the parliamentary session for member of parliamentary validation, or refuses to take the oath of office. The NEC shall reallocate the seats of that political party to other parties after being informed by the National Assembly. Article 76 of the Constitution states that the National

Assembly shall have at least 120 members of Parliament. Presence of at least 120 National Assembly members attending the first parliamentary session is a necessary condition for the establishment of the parliament for each legislature. Paragraph 3 of Article 138, which states that the parliament has to notify the NEC regarding the party's abandonment of seats, is unclear in terms of implementation because if the first parliament session is conducted with less than 120 members of parliament, the legitimacy of the parliament will remain unclear. Therefore, paragraph 3 of article 138 still cannot be implemented.

The Law on Political Party, amended twice in 2017, was found to be bias in favor of the ruling party and a significant obstacle to both the achievement of liberal pluralism as stipulated in the constitution and the enjoyment of political rights protected in international law. The amendment was heavily criticized and considered by national and international observers as a political tool limiting rights and freedoms of contesting political parties.

The amendment to the Law on Political Party which was proposed and passed unilaterally by the ruling party, makes it possible to suspend and dissolve political parties, effectively removing a political party and its leadership from politics. The amendment does not accord with the Cambodian Constitution and the principles of liberal democracy, such as pluralism of political parties, and civil and political rights, including freedom of association and expression.

Article 18 prohibits individuals convicted and/or imprisoned for crimes or misdemeanors from becoming a president or vice president of a political party and a member of its board of directors or steering committee. This legislation violates civil political rights under the protection of the constitution. Article 6 New (II), legally authorizes the Ministry of Interior of the government of the ruling party and judiciary, both highly controlled by central authorities and the ruling party, to broadly interpret the political party's offense to be undermining the security of the state and provoking incitement advancing the disintegration off the nation unity. The article also prohibits the political party from intentionally or unintentionally accepting and using images, voice messages, documents, or activities of criminal prisoners for political benefit.

Articles 6 New, 38 New, and 44 New of the legislation empowers the Ministry of Interior to halt or suspend political activities and to file a complaint to the Supreme Court requesting the dissolution of a political party if it is found to have committed an infraction serious enough to impact upon the security of the state or incite actions which undermine national unity. The empowerment to the Ministry of Interior, an institution of the government controlled by the ruling party, results in a conflict of interests which undermines the legitimacy of the ministry in terms of performing the corresponding enforcement duties. Moreover, the judiciary lacks the necessary capacity, independence and impartiality to carry out oversight and enforcement of the

law, and it is unlikely that implementation will be free from political pressure and interference since its officials are also ruling political party officers.

The amendment also lead to the disregard of the will of citizens which because an elected political party can be dissolved and lose all its seats in parliament, senate, and commune/district/city/province levels, according to the law on elections and the law on the administration of commune, district/city and province. There is a clear cause for concern on the basis of the record of previous actions and policy implementation of the state, which demonstrate the government and authorities have used national security or public order as pretexts for carrying out repression and arrest or detention of political activists, parliamentarians, senators from the opposition, human right defenders, and social analysts.

Part IV Section D – Registration for political parties and candidate lists

There were 20 competing political parties registered with the NEC. The period of registration for political party was 15 days from 30 April to 14 May 2018. In previous year: 2013, there were 8 competing political parties; and, 2017 commune councils elections, there were only 12 competing political parties. In the national election of 2018, the CNRP, main opposition party was dissolved by the Cambodian Supreme Court, and so could not compete. Among the 20 competing political parties, there were new political parties, established less than one month, such as Reaksmey Khemara Party, Khmer United Party, Khmer Willing Party and Khmer Rise Party.

The four new political parties were created in a short period, causing suspicion from the public that that the process was irregular and not transparent because the political law stipulates that in order to establish new political party, should mobilize supporters by fingerprint collection and submit it to the Ministry of Interior, in accordance with new article 19 of the Law on Political Party. This legislation states that newly established political party shall petition the Ministry for registration and have at least 4000 members. Article 20, paragraph 8, of that law stipulates that new political parties establishing require a supporting name list of members including ages, addresses and at least 4000 fingerprints. In the previous years, COMFREL observed that some of political parties prepared political party application at least one year in advance in order to get registered by the Ministry of Interior.

Since 1993, there have been many competing political parties. Some political parties have disappeared and others have been established. During the national election in 1993 for the 1st legislature, organized by UNTAC, there were 20 political parties which joined in the electoral competition. In the following years Cambodia conducted the elections and in the 2nd legislature election there were 39 political parties which joined in the electoral completion. In the 3rd

legislature election in 2003 were 23 political parties, in 4th legislature election in 2008 there were 11 political parties, in the 5th legislature election in 2013 there were 8 political parties, and in the 6th legislature election in 2018 there were 20 political parties.

Part IV Section E– The deployment of COMFREL voluntary citizens

COMFREL decided to not submit the application form to register observers to obtain the accredited election observer card from the NEC in order to monitor the electoral process. The COMFREL decision to not participate in the electoral observation, was announced through media in June 2018. The decision to not deploy observers by COMFREL was because of the accusations against CSO member of the 2017 Situation Room for elections and because of the political environment limiting the participation and rights of citizens. In particular, the political environment resulted in intimidation of those citizens which wished to serve as voluntary observers for COMFREL and other CSOs. The climate of fear was intensified by PM Hun Sen order to the Ministry of Interior to investigate Situation Room CSOs as revolutionaries.

Following the notification by the Ministry of Interior ordering COMFREL to shut down the Situation Room, government aligned media outlets and the Press and Quick Reaction Unit of the office of the Council of Ministers accused COMREL and others former CSOs members of the Situation Room of being color revolutionaries and opposition party supporters. However, the Situation Room was a transparent and non-partisan coalition of more than 40 CSOs which pooled funding for monitoring and deployed observers for the 2017 Commune Council elections.

Even though, COMFREL did not submit the application form to register for the Observation Card, COMFREL received information and observations from 295 voluntary citizens involved in observing the electoral process. 143 voluntary citizens for watching election campaign and adding 152 voluntary citizens (in total 295 COMFREL voluntary citizens) for watching on polling and counting days and for conducting the rapid survey upon polling and counting day. The voluntary citizen observers monitored the situation of enjoyment of political rights and the respect for the will of voter in a sample of communes across all 25 provinces. The voluntary citizens conducted a rapid survey by interviewing 2950 eligible voters selected by random sampling after Election Day.

For monitoring violations of voter rights during the 2018 electoral process, COMFREL conducted its activities from the initiation of the election campaign to the announcement of the official election results. COMFREL did not apply to register as accredited observers because of the absence of political competition, political tensions, and accusations against COMFREL of

revolutionary activity. In accordance with the Ministry of Interior order 1752 issued on 02 October 2017, COMFREL submitted its activity announcement (for volunteer citizen observation) to all municipal/provincial halls of the 24 provinces and the capital of Cambodia to ensure the legality of its activities. After receiving COMFREL's announcement, provincial and municipal authorities issued an announcement instructing COMFREL provincial secretaries to submit an application form to the PEC. Two COMFREL secretaries including Preah Vihear and Svey Rieng province, submitted their application to the PEC because they thought announcement was a policy of the provincial administration. On 30 June 2018, NEC released Directive 1047 for PECs to indicate that COMFREL activities related to unofficial electoral observation were not recognized by the NEC. In addition, all municipal and provincial authorities released an announcement requiring COMFREL municipal/provincial secretaries to ask permission from the NEC because all COMFREL activities related to electoral observation are under the authority of the NEC. 143 COMFREL voluntary citizens who already trained for election campaign observation were obstructed from monitoring from 7 to 16 July 2018 because of the political environment and allegations against COMFREL. Following intervention of COMFREL with the NEC to explain the activities, it was decided by the National Election Committee that such activities were permissible under the LANGO, and COMFREL was permitted to continue to utilize volunteer citizens to collect information.

Part IV Section F – Irregularities Observed on the Election Day

Election Day Observation on voter's right to "Go or Not Go to Vote": COMFREL saw the environment during the polling process was quieter than in previous elections. According to observations by citizen observers who communicated information to COMFREL, some irregularities were reported by voters to have increased. They included (1) local authorities intimidation of voters by asking: "Have you voted? For whom have you have voted?" and stating: "Not voting for party number 20, you will not get even a single coin". (2) Village chiefs not only called for people to vote but also arranged transportation to take voters to the polls. (3) Voters and inked fingers were under observation in front of polling stations. (4) Local authorities instructed people on Election Day about how to mark the ballot paper.

103 COMFREL voluntary citizens including 24 provincial secretaries still collected observations while casting their ballot at the polling station where they were registered. COMFREL voluntary citizen observation found 39 irregularities during the polling and counting day. The voters were threatened and intimidated by local authorities (chief of village, deputy of chief village) to cast the ballot in 26 cases.

Six cases of violation and intimidation:

In Lao Eth village, commune Brek Schach, Krong Battambang, Battambang province, a village protector asked voter that “Whose party you voting for? If you do not vote for 20 order number, you will be a hunger.” In Pahi village, commune Pailin, Krong Pailin, Pailin province, the Chief of Village and Pahi Market Controller told the residents to cast their ballot, and those who did not would be considered a traitor and would be exiled from the village. In Bek Krong village, Prey Nob commune, Prey Nob district, Preah Sihanouk province, the Chief of Village compelled the voters to cast the ballot by affirming that “Whoever is accepting the gift of 20000 riel must cast the ballot”. Also, in Teok Laok commune authorities spread rumors that the vote was not secret and that civil servants would be removed from their position if they did not vote.

Four cases of transportation:

Khan Tolkok, commune Teoklaok 3, Phnom Penh capital, where the Chief of Village transported voters to cast their ballot by motorbike. Kdey Thnoth village, Sre Thmey commune, Lolea Baear district Kampong Chhnang province polling station 0514, where the Chief of Village paid to motor bike drivers to transport eligible voters to cast their ballot. Ratanakiri province, almost polling stations, eligible voters were transported by motor biker in approximately 2000 riel to 5000 riel.

Eleven cases of supervision of ink-stained fingers and ballot casting:

Four cases occurred (in Pouk village, Phnom Toch commune, and Our Brasat commune, Banteay Meanchey province) where the Chief of Village checked the top of finger of residents that are CPP party members to see whether he/she cast their ballot or not. And in Phnom Thom Tbong village and Phnom Toch Tbong village, Mongkol Borey district, the Chief of Village announced loudly with the intention of making residents aware that three days after the election they would be checking the residents’ fingers for ink. In Phnom Penh, Chief of volunteer district security guards and the Chief of Village in Spean Thmor commune, Dongkor district, listed the voter’s names that casted their ballot. In Kampong Speu province, Peanechakam village, commune Roka Thom, Khan Chbar Mon, Chief of Village, Chief of Commune Council, and Commune Councilors sat near the polling station and listed the voter’s names that had cast their ballot. Four cases were happened in Ratanakiri province, all polling station wherever COMFREL voluntary citizens monitoring noted that the local commune authorities were present in polling station space to watch eligible voter cast the ballot. Preah Sihanouk province, 3 number village, commune 4 number, Krong Kampong Som, the chief of village watched whether who cast the ballot or not.

Five Cases of residents introducing to mark on ballot paper:

Four cases occurred in Kampong Chhnang province, commune Khsam, Krong Kampong Chhnange, Chet Khsam village, in which the chief of village instructed the eligible voters to mark number 20 (CPP). This happened at 4 polling stations: 0182, 0183, 0185 and 0186. In commune

Peam Ek, Krong Battambang, Battambang province, village voluntary security guards and commune councils instructed eligible voters to cast the ballot for number 20.

Fear, Violation and Intimidation of COMFREL voluntary citizens and provincial secretaries

COMFREL voluntary citizens went to polling stations for collecting the result of election (form 1102) when commune electoral commissions displayed the form 1102 at the polling station. During the casting of ballots of COMFREL voluntary citizen observers took an opportunity to observe. Some of COMFREL voluntary citizens experienced pressure or intimidation by supervising authorities. This occurred in a total of 13 cases.

COMFREL voluntary citizens were watched and interrogated by local police, such as in Orng Snoul district, Lerk Dek district, Kandal Steung district and Khchach Kandal district of Kandal province and commune Chbar Moun of Kampong Speu province. Moreover, COMFREL voluntary citizens were intimidated when observing polling station 0809, Prey Thmey village, commune Teuk Vil, Krong Siem Reap of Siem Reap province and Svay Ler Phloeung village, Svay Phloeung commune, Baray district of Kampong Thom province. In those cases, they were not allowed them to conduct their all activities relevant to human right and electoral issues. Beside COMFREL voluntary citizens, provincial secretariats were also threatened when watching local authorities in Battambang and Ratanakiri province (see detail page 70)

Part IV Section G – Challenges to COMFREL’s Activities

After the commune council election 2017, COMFREL faced serious pressure and intimidation from the government of Cambodia. In particular following the public accusations of criminal and rebellious activity in connection with concerns COMFREL expressed about the quality of the indelible ink in the national election of 2013. The accusations by the PM were followed by an order issued in a public speech for the Ministry of Interior to investigate COMFREL. This was followed by accusations against COMFREL alleging color revolutionary activities without any evidence by multiple media outlets aligned with the ruling party. The Council of Ministers released a public document, called a “White Book”, which linked COMFREL to color revolution without evidence. One day prior to the dissolution of the CNRP, 15 November 2017, authorities entered COMFREL’s office in Phnom Penh demanding information from the staff regarding COMFREL activities and staff. Continuing in early 2018, national media, in particular the government mouthpiece media outlet Fresh News, made unfounded allegations against COMFREL about revolutionary activities and espionage, with the aim of creating instability following the election results. These misinformation activities are at the root of public confusion and fear of COMFREL observers, ex-observers, and staff.

Citizen observers and provincial secretaries of COMFREL were monitored and detained for questioning by local authorities. They received threats and were pressured to quit their observation. This occurred in Kandal province (Ang Snoul, Lerk Dek, Kandal Steung districts) and in Kompong Speu province (Khsach Kandal district Chbar Morn commune), in Siem Reap province (Siem Reap district, Sangkat Teuk Vel, Prey Thmey Village) and in Kompong Thom province (Baray district, Svay Plerng commune and Svay Plerng village). Due to intimidation, citizen observers and COMFREL did not successfully carry out their informal monitoring activities.

Indirect and Direct Threats to COMFREL

On July 2, 2018, Government aligned media, including Fresh News, Swift News and Kampuchea Pet, disseminated allegations without any evidence, reiterating the speech of PM Hun Sen, calling for the arrest of COMFREL staff, and alleging that COMFREL was spreading fake news on social media about the indelible ink and that it was poisonous and would be lethal within 24 hours for anyone that used it to vote. COMFREL found that the indelible ink could be cleaned in the 2013 and 2017 election, but did not question the quality of the ink for the 2018 election or spread rumors about the danger of the ink. In reality, the issue of problems with the indelible was raised by the PM through social media and in both plenary and non-plenary sessions of the National Assembly. However, COMFREL had publicly recognized that any doubts about the in indelible ink were addressed by the NEC Chairman NEC Sik Bunhok on June 26, 2018 when he publicly tested the indelible-ink in the presence of key stakeholders, including representatives from the EU, JICA, and local and international NGOs on 26 June 2017. The results of the indelible-ink testing showed that the ink can be cleaned immediately after dipping one's finger in the ink bottle. In order to resolve the issue, the NEC put in place 5 measures which were requested by stakeholders in order to ink removal after voting.

Beside the indirectly public threat, COMFREL staff and network members were also subject to **direct threats and intimidation prior to polling day**. There were 11 cases, including:

- On 1 July 2018, COMFREL Kampong Chhnang Provincial Secretary was interrogated by telephone about COMFREL activities and documents by police.
- On 5 July 2018, COMFREL Kampong Chhnang Provincial Secretary ordered by the police to come to the police station. On 6 July 2018, COMFREL Kampong Chhnang Provincial Secretary together with Adhhoc coordinator went to police post station and waited for 2 hours, but the meeting was then canceled by the Chief of Police.
- On 17 July 2018, COMFREL voluntary citizens of Svey Rieng province, Romeas Hek district, Ankor Brosre commune, were interrogated and ordered to stop all actions related to organizing and informing citizens.

- On 22 July 2018, in Svey Rieng province at the initiation of training, a strange man in plain clothes surveilled the training and then drove his moto around the training location two time, but did not interrupt the training further.
- Training for Kampong Thom province was held on 27 July 2018, but it was interrupted by a threatening phone call by the Chief of Provincial Police who ordered the trainer to stop activities and claimed that COMFREL was a blacklisted NGO.
- COMFREL's Provincial Secretary for Ratanakiri province received a phone call on 27 July by provincial authorities who stated that COMFREL personnel were being watched and that they were not allowed to conduct activities. COMFREL's Provincial Secretary asked the authorities why he was being threatened as he was not conducting any activities. However, at that point the authorities hung up on the phone call.
- Volunteer citizens, requesting to remain unnamed, residing in Kampong Tralach district, Kampong Chhnang province, on July 27, were instructed by a CPP local leader to not do any activities and that they would be arrested if they did so.
- While conducting the training course in Kompong Speu on July 27, a uniformed police stood outside and observed the training.
- At the COMFREL Headquarters on July 27, a police officer was posted outside and interrogated the security guard about COMFREL activities. However, before that he lied and told the security guard that he had come to attend COMFREL training. The security guard informed the police that he did not know about COMFREL training and that no training was being held.
- 300 volunteer citizens were subjected to intimidation on Cooling Day (one day before Election Day). After two previous volunteers, Mr.Chak Hay and Mrs. Mao Soneta in Kampong Cham province held a press conference on July 28, 2018 the Kampong Cham Provincial Governor Mr. Kouch Chamroeun expressed on the national pro-government outlet media Fresh News that COMFREL conducted its activities illegally by recruiting 21 observers in the province without permission from the NEC or competent authorities. They stated to media that "COMFREL activities were illegal because of not cooperating with the NEC". During training it became apparent that the two young men and their friends were members of the Union of Youth Federations of Cambodia which is controlled by the son of the Prime Minister. This information quickly spread out to COMFREL volunteer citizens across Cambodia, through social media, and it made them more nervous due to the comments of the governor of Kompong Cham province and made citizens less willing to participate. COMFREL volunteer citizens in each province/municipality informed COMFREL Provincial Secretaries that "They (Volunteer Citizens) do not dare to watch during the polling and counting day, even though we only function as volunteer citizens like normal people".

Often, COMFREL Provincial Secretariats has been subjected to threats by telephone, monitoring from local authorities. Moreover, the local authorities required other legal supportive documents

to be opened COMFREL subsidiary in provinces. These case were happened in Kampong Chhnang, Ratanakiri, Kampong Thom, Battambang, Banteay Meanchey and Siem Reap. In addition, the Ministry of Interior released an internal document on social media which indicated that "authorities have received all orders to monitor civil society activities, especially those who do not participate in election monitoring, if any irregularities occur the authorities would arrest and crack down immediately." Because of all the harassment and threats detailed above, and based on the advice of the COMFREL Board of Directors and Executive Director, COMFREL instructed all staff and volunteers to cease activities for Election Day to avoid risks and potential violence from authorities.

Polling Day Intimidation, Threats, and Harassment

COMFREL secretaries who have stood by for their own province/municipality and COMFREL voluntary citizens, deployed in their own voting constituencies, monitored political and human rights enjoyment. They were harassed and/or interrogated by local authorities on polling and counting day in 11 cases:

- There were 7 cases in Kandal province, in Ang Korng district, Lektek district, Kandal Steung and Ksach Kandal districts. They were surveilled by plain clothes security services officers, and intimidated by CPP activists who stated in the village that, "Anyone working with the CSOs will be arrested." In addition, they were asked by local authorities about their actions and "whether they work for COMFREL or not, if they do, must to immediately stop ". In addition, the voluntary citizen in Kandal Stung district visited the polling station and recorded the electoral result by taking a photo of the form 1102, was ordered to explain himself and his action by authorities, who asked "where are you come from and what do you do with this photo".
- In Kompong Speu, Chbar Morn District volunteer citizens activities were put under surveillance by local authorities.
- In Battambang, the COMFREL secretary was followed by the local authorities when she casted the ballot, and afterwards. She was told by the district police "Do not go any further because they will keep tracking you."
- In Kompong Thom province, the voluntary citizen resident in Svay Rieng commune, Svay Romny commune, Baray district, the god brother of the Svay Ploeung commune police chief, confirmed that "According to the order of the provincial commissioner, surveillance on all COMFREL actions is to continue."
- In Ratanakiri province, the COMFREL Provincial Secretary was directed by telephone by a powerful person connected to provincial governor that "you must not go anywhere and you must not do nothing if you dare to do you will be arrested". He was called frequently by that man.

CHAPTER 8 –

Criminalization of Opposition Members

In 2018 politics in Cambodia took shape similar to 2017 in that they both followed a trajectory of democratic decline. The massive shift in 2017 with the elimination of the major opposition party through ‘lawfare’ continued in 2018. Indeed, many cases of politically motivated prosecutions in 2018 were a continuation of allegations and arrests from prior years during the 5th mandate, however, new charges were issued as well. Events in 2018 support the conclusion that constitutionally mandated liberal pluralism has been further eroded, and even potentially eliminate outright. As many analysts have pointed out, under the direction of PM Hun Sen the CPP tends to increased repression in period leading up to an election as a means to eliminate uncertainty and control all results. Despite the almost total elimination of political competition with the 2017 ban on the CNRP (following the most genuine democratic elections in the post-UNTAC period), the same use of pre-election repression was evidenced in 2018. Cases continued against key opposition figures (see below for details) were continued or intensified in the pre-election period (before the July 29 elections) while a large number of pardons and prisoner releases occurred in the post-election. However, the overall trend continued against liberal pluralism, genuine political competition, free and fair elections with real voter rights (free choice and inclusive participation), and a vibrant public space. This section details the use of lawfare to contain, coerce, and terminate political competition by criminalizing the leaders and supporters of the former main opposition party in Cambodia. It is important to note that the cases discussed in this chapter should be considered in light of the multiple cases discussed in other sections of this report. (See Ch. 2 and Ch. 6 especially)

In January, former members of the Cambodian National Rescue Party formed a ‘movement’, effectively changing the name of their group to Cambodian National Rescue Movement. Soon after the Ministry of Interior filed a complaint with the Phnom Penh Municipal Court against the group. The complaint alleged that five leading members of the group had committed illegal activities and were organizing in exile.³⁷⁴ This section of the report looks at key cases of the deployment of lawfare against members of the already dissolved major opposition party. This process has not ceased by the time of publication of this report, and was already ongoing at the beginning of 2018.

³⁷⁴ <https://www.voacambodia.com/a/government-take-terrorist-opposition-group-to-court/4256278.html>

On 7 February 2018, Ismael Pin Ousman upon his return from Thailand and charged with illegally sending workers outside the country for work. He had stood as parliamentary candidate for the CNRP, but fled the country after being pressured to defect the ruling party and refusing. A former CNRP MP from informed reporters: "According to what he told me, Ismael had been lobbied by local CPP officials to join their party, but he refused to defect because he didn't want to betray his constituents."

In January, five CNRP commune councilors that had gone into hiding following the ban on the CNRP stated that they did not feel safe to return home as they were under serious ongoing pressure to defect to the ruling party. Chak Botha, a CNRP councilor from Battambang province asserted: "I will never serve the CPP, because the party has no intention to solve the problems of the people. I would rather stand with the people than defect. The people are still suffering social injustice."³⁷⁵

Sin Chanpeou Rozeth

Former CNRP commune chief Sin Chanpeou Rozeth faced significant harassment and intimidation in early 2018. A group of 13 former opposition lawmakers submitted a letter to United Nations Human Rights officials to seek support for Rozeth, the former opposition party CNRP commune council chief for the O'Cha commune in Battambang province. The letter was dated Feb 12 and sent to the chairperson of the UN Human Rights Committee under the OHCHR (Yuji Iwasawa), the UN Special Rapporteur on the situation of human rights in Cambodia (Rhona Smith), the Inter-Parliamentary Union, and CEDAW (the Committee on the Elimination of Discrimination Against Women). They issued a request for support in preventing the continued harassment, intimidation, and persecution of Rozeth which has been spearheaded by high ranking ruling party MP Chheang Vun.

The abuse of power began when she was still serving as commune chief as she was prevented from carrying out a public works project and ridiculed for her efforts to improve water management in her community.³⁷⁶ As with all CNRP commune council members, she had a maintain from the voters in her commune, but was removed from office after the ban on the CNRP in 2017. She did not defect to the ruling party and so was forced to open a restaurant to earn a living. Following that Chheang Vun has accused her of using the restaurant to organize or conduct treasonous and insurrectionary activities.

Rozeth informed media about how her business clientele had disappeared out of fear of punishment by authorities for patronizing her restaurant. As such, both her good name and

³⁷⁵ <https://www.rfa.org/english/news/cambodia/arrested-02082018171208.html/>

³⁷⁶ <https://www.phnompenhpost.com/national/cnrps-sin-rozeth-again-draws-officials-ire-she-told-stop-building-drain>

her livelihood were put in jeopardy by powerful vindictive elites. She posted a sign which stated that all customers were welcome but rebels were not, and the local authorities forced her to discard it. Rozeth said she is not considering filing a lawsuit to refute those persecuting her because she has no confidence in the courts. She asserted: “I have no faith in the judicial system. I would like to call on them to stop persecuting me and my business. I am just an ordinary citizen who runs an honest business for a living. ... I want to request that ruling party politicians not use threats to intimidate us.”³⁷⁷

Thak Lany

The continued prosecution of former CNRP Senator Thak Lany, now living in exile, is a good example of how 2018 showed a continuation of the longer process of lawfare waged against political opposition and civil society in the 5th mandate. On 26 February 2018 the Supreme Court upheld the 18-month prison sentence for suggesting PM Hun Sen was linked to the murder (in 2016) of political analyst Kem Ley. The PM labelled the comments “defamation and incitement to cause chaos”. In November 2016, she was sentenced in absentia after fleeing abroad, by the Phnom Penh Municipal Court.³⁷⁸ At the time of her original conviction, despite the long-term pattern of politically motivated convictions, the lawyer for the PM declared her flight abroad to proof of guilt. Ky Tech, a lawyer for Mr Hun Sen, said: “Ms Lany knew that she made a mistake, so she has escaped abroad. Her activity shows that she does not take responsibility for her actions.”³⁷⁹ The defense argument centered on the fact that Lany’s comments were not made in a public forum and so constitute a private opinion that does not constitute defamation or function to incite the public. The comment was made in a closed gathering of opposition party members. However, the Supreme Court was swayed by PM Hun Sen’s lawyer Ky Tech’s assertion that the forum must have been public because she was using a microphone and loudspeakers, reasoning that private forums do not use any audio equipment. He contended: “Thak Lany had a public forum because there were loudspeakers. So it’s defamation and incitement to cause chaos in society. If it affects ordinary people, it’s a common issue, but it also affects the prime minister and his reputation.” The concept of an ‘effect on ordinary people’ as the standard of measure for when a criticism constitutes defamation, was not explained. The decision of Presiding Judge Khim Ponn was perhaps even more confusing in that it failed to address the

³⁷⁷ <https://www.voacambodia.com/a/ruling-party-lawmaker-accused-of-harassment-threats/4241395.html>;
<https://www.rfa.org/english/news/cambodia/mission-07112018161002.html>;
<https://www.phnompenhpost.com/national-politics/cpp-lawmaker-accuses-sin-rozeth-supporting-rainsys-movement-using-restaurant-front>; <https://www.phnompenhpost.com/national/joking-rebel-sign-sin-rozeth-restaurant-attracts-governors-warning>; <https://www.phnompenhpost.com/national/opposition-lawmakers-appeal-sin-rozeths-safety>

³⁷⁸ <https://www.cambodiadaily.com/news/senator-handed-18-month-jail-sentence-hun-sen-remarks-120683/>

³⁷⁹ <https://www.khmertimeskh.com/77725/opposition-senator-sentenced-absentia/>

defense's argument completely: "After having discussed and seen that defense lawyer Sam Sokong said his client did not have a public forum ... the court sees that it's not reasonable because Thak Lany did make the accusation." The importance of trial was its symbolism of Lany's guilt and the strength of the PM in his capacity to use the law to punish challengers. Moreover, it buttresses the widespread and cemented practice of punishing critique of the PM.³⁸⁰

Um Sam An

On 9 February 2018, the Supreme Court upheld the conviction of Um Sam An. The defense argued that the Sam An had been arrested before his immunity had been lifted, which thereby annulled the arrest, but as expected the higher court upheld the decisions of the Phnom Penh Municipal Court and Appeal Court.³⁸¹ Observers noted that the prosecution provided not specific response to the defense which expected a burden of proof to be met, asking "'Where did he commit incitement? When? And who did he incite?'"³⁸² On 25 August 2018, the former King Norodom Sihamoni granted an amnesty to release former Cambodia National Rescue Party lawmaker Um Sam An, was granted amnesty by the King as announced a Royal Decree dated that day. He was originally arrested on 10 April 2016 and charged with "incitement to commit a felony" and "incitement to cause discrimination" for writing on Facebook posts criticising the government's handling of mapping and demarcation of the Cambodia-Vietnam border.³⁸³ Despite having parliamentary immunity, on 10 October 2016 the lawmaker was sentenced to two years and six months imprisonment and fined \$1,000.³⁸⁴ He was sentenced only a month after CNRP leader Kem Sokha was sentenced to five months in prison for failing to comply with a court summons.³⁸⁵ It also came just days after the CNRP failed to attend a reopening of parliamentary sessions, and the opposition continued with a parliamentary boycott which had initiated approximately four months before.³⁸⁶ He was pardoned in 2018 the day after Tep Vanny and three other community activists from the Boeung Kak lake land dispute were pardoned.³⁸⁷

³⁸⁰ <https://www.phnompenhpost.com/national/supreme-court-upholds-sentence-former-opposition-senator-who-made-kem-ley-accusations>

³⁸¹ <https://www.khmertimeskh.com/108060/conviction-upheld-former-cnrp-lawmaker-um-sam/>

³⁸² <https://www.phnompenhpost.com/national/supreme-court-upholds-sentence-former-cnrp-lawmaker-um-sam>

³⁸³ <https://www.rfa.org/english/news/cambodia/cambodian-court-charges-opposition-lawmaker-with-incitement-for-border-comments-04122016163533.html>

³⁸⁴ <http://m.en.freshnewsasia.com/index.php/en/10837-2018-08-25-08-00-22.html>

³⁸⁵ [https://www.cambodiadaily.com/editors-choice/kem-sokha-sentenced-five-months-prison-117812/;](https://www.cambodiadaily.com/editors-choice/kem-sokha-sentenced-five-months-prison-117812/)
<https://www.rfa.org/english/news/cambodia/cambodian-court-sentences-opposition-leader-09092016150054.html>

³⁸⁶ <https://www.seattletimes.com/nation-world/cambodia-jails-opposition-lawmaker-critical-of-government/>

³⁸⁷ <https://www.apnews.com/b29114ba3a234caaa5e90a53b974e536>

The charges against Um Sam An were for his social media commentary which complained that the RGC was using Vietnamese-produced maps to mark the border. Sam An had been a consistent critique of the ruling CPP's handling of the border and the issue was source of considerable public support for the CNRP. The political saliency of the issue is related to the fact that some of the Cambodian public still see the CPP as an illegitimate government installed by the Vietnamese that refused to respect the results of the first democratic election organized by the United Nations Transition Authority for Cambodia. Sam An had lead several groups to visit and observe the border in 2015 and confrontations with authorities ensued.³⁸⁸ Another MP for the former CNRP, Hong Sok Hour, had already been jailed related to discussing the border on social media and allegedly posting a fake map.

The protections afforded to opposition politicians by parliamentary immunity were easily disregarded by the ruling party which, at the direction of the PM declared his crime to be an 'obvious crime', which in accordance with the constitutional 'flagrante delicto', allows a two-thirds parliamentary majority to waive immunity. Even without that immunity the ruling CPP voted to allow prosecution of Sam An.³⁸⁹ The PM declared before ministers: "The lawmaker's attempt to raise the issue about the border was to incite and provoke conflict with a neighboring county and to topple the prime minister."³⁹⁰ The case showed similarities to the lawfare tactics applied against civil society activists and opposition political party members.³⁹¹ For example, Sam An was held in pre-trial detention and denied bail. In August 2016, the Supreme Court upheld the ruling the deny him bail on the grounds that he was a flight risk, that he could destroy evidence, and cause social unrest.³⁹²

At the end of October 2017 Sam An publicly announced he would write a letter to PM Hun Sen seeking a pardon. This was only a week after Hong Sok Hour had been pardoned, after being sentenced to seven years of imprisonment for posting a 'fake' map of the border on social media in 2015. At that time, Political analyst Meas Ny opined that pardons could be a significant source of goodwill for diffusing political tensions. Sok Eysan, the ruling party spokesman admitted that Sok Hour was pardoned because he admitted guilt and asked PM Hun Sen for forgiveness. As for

³⁸⁸

<http://country.eiu.com/article.aspx?articleid=1373243121&Country=Cambodia&topic=Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=324020816&oid=324020816&uid=1>

³⁸⁹

<http://country.eiu.com/article.aspx?articleid=1264132110&Country=Cambodia&topic=Politics&subtopic=Forecast&subsubtopic=Political+stability&u=1&pid=384721022&oid=384721022&uid=1>

³⁹⁰ <https://www.rfa.org/english/news/cambodia/cambodian-court-denies-bail-to-opposition-lawmaker-04222016170102.html/>

³⁹¹ Article 205 of the criminal code allows or detention without bail if there is a fear that releasing the defendant could endanger public order.

³⁹² <https://www.phnompenhpost.com/national/bail-again-rejected-lawmaker-um-sam>

Sam An, he said: “Mr Sam An has said himself that he did nothing wrong, so how can he be pardoned?”³⁹³

Kem Sokha

Kem Sokha, the leader of the former major opposition party CNRP was released on bail on 9 September 2018, after a year of imprisonment in pre-trial detention. He was arrested and held on the basis of charges of treason for which the only real evidence was video commentary of him discussing changing (through democratic means and not toppling) the government of Cambodia. He was released only after the complete control of the legislative branch by the ruling party and suppression of all political expression of dissent concerning the legitimacy of the elections in both online and real public space. Sokha was not exonerated of the charges and still faces potential long-term imprisonment.³⁹⁴

The conditions of his release on bail stipulated that he was barred from all political activities (and effectively denied all fundamental freedoms of expression by being blocked from making public statements or attending any public gatherings. He is supposedly being surveilled for contact with foreign forces seeking to foment the revolution. As such, ‘house arrest’ is a more accurate description of his case than is ‘released on bail’. There is no provision for house arrest under Cambodia’s current legal system and criminal procedure code.³⁹⁵ Throngs of people have gathered, to show support but he is cordoned off by a significant security force deployment. His lawyer clarified that he could not hold meetings or make any public statements.

The lawfare mode of government in Cambodia demonstrates that the burden of proof is not an important consideration in establishing guilt for politically motivate trials. As such, one cannot conduct a legal analysis of the case to determine the potential for Sokha to be convicted. Instead it depends on the political environment and whether or not Hun Sen wants to appease the international community and/or present himself as a forgiving ruler. As noted by Human Rights Watch: “There’s been no justice served here, just the temporary release of an opposition political leader that prosecutors could undo at any time.” Many independent analysts and observers predicted that political prisoners would be released after the 2018 national elections. The fact of their release not only indicated increasing pressure on the regime from international society. It also testifies to the fact that the regime does not actually believe in the existence of an insurgent movement and rebellious organizing inside Cambodia.

³⁹³ <https://www.khmertimeskh.com/88172/um-sam-asks-pm-pardon/>

³⁹⁴ <https://www.nytimes.com/2018/09/10/world/asia/cambodia-kem-sokha-released.html>

³⁹⁵ <https://www.khmertimeskh.com/532397/kem-sokha-released-on-bail-but-freedom-restricted-to-four-blocks/>

566 police officers have been deployed to “protect” the detained opposition leader. RGC officials claimed that it was necessary to prevent “social chaos”. Phnom Penh police Lieutenant Chief, General Sar Thet stated that the security forces were necessary “to prevent opposition leaders, civil society groups and organisations from trying to gather public forces at the residence of Kem Sokha, which would harm the public order in Phnom Penh”. The general also declared that the security forces were needed to increase efforts to “prevent all tricks and action plans concerning terrorism, crime and causing social chaos”, as well as “control all activities of civil society organisation, unions, foreigners, former CNRP leaders and the 118 individuals involved in the case who were banned from politics”.³⁹⁶

On 9 March 2018, the Supreme Court rejected Mr Sokha’s request for bail after the Court of Appeal in February upheld an earlier Phnom Penh Municipal Court decision; the bail request was then returned to the municipal court for a second round.³⁹⁷ In June of 2018, The Appeal Court rejected bail for the second time. It was decided that he must remain incarcerated “because the investigation into his case was ongoing”, despite having been investigating since his arrest in September 2017. The defendant was not allowed to attend the bail hearing.³⁹⁸ On 22 August 2018, the Supreme Court upheld the ruling of the Appeal Court for the second time. Again the defendant was not afforded the right to be present during the hearing. The Supreme Court reiterated that claim that Sokha’s release would cause chaos in the society. The Deputy Prosecutor, Ouk Kimsith claimed that bail should be denied for the safety of the defendant, which seemed to indicate his security was at risk by ruling party supporters. He stated: “He is jailed now so that his safety can be ensured. Please judges, uphold the Appeal Court’s verdict.”³⁹⁹ In November of 2018, the UN rights envoy to Cambodia, Rhona Smith, has been denied access to Kem Sokha by the investigating judge in his case on the grounds that he investigation was ongoing.⁴⁰⁰

PM Hun Sen has made public assertions that despite the amnesty and prisoner release that followed the 2018 elections, Kem Sokha will not be released from jail. He affirmed: “This is a treason case, so in my capacity as the head of the government I will absolutely keep pressing the lawsuit [against him].”⁴⁰¹ At the end of the year, the MOI spokesman indicated that Sokha would not be eligible to return to politics as his court cases was ongoing, and the Interior

³⁹⁶ <https://www.phnompenhpost.com/national/police-deploy-566-officers-protect-kem-sokha>

³⁹⁷ <https://www.khmertimeskh.com/525607/kem-sokha-denied-bail/>

³⁹⁸ <https://www.rfa.org/english/news/cambodia/pardons-08202018162801.html>

³⁹⁹ <https://www.khmertimeskh.com/525856/kem-sokha-again-denied-bail-2/>

⁴⁰⁰ <https://www.voacambodia.com/a/un-envoy-banned-from-meeting-with-former-cambodian-opposition-leader/4638860.html>

⁴⁰¹ <https://www.rfa.org/english/news/cambodia/vow-08292018171258.html>

Minister stipulated that Sokha's return was up to the courts as it depended on whether or not he was convicted.⁴⁰²

Sam Rainsy

The pro-democracy group ASEAN Parliamentarians for Human Rights provides a summary of all the cases brought against opposition leader Sam Rainsy. The timeline demonstrates how the use of warfare to contain and eliminate political competition has intensified since the early 2000s in terms of the severity and frequency of charges made. Moreover, it shows how the process of using the courts under the pretense of an independent judiciary and rule of law has normalized by the end of the 5th mandate of the national assembly. This correlates with the rise of the one-party state for the first time since the Khmer Rouge regime. At the end of 2018, the Ministry of Interior made clear that Sam Rainsy would not be eligible to have his political rights 'restored'.⁴⁰³

According to ACHR:

"Former Cambodia National Rescue Party (CNRP) President Sam Rainsy was the target of six lawsuits from 2004 to 2013: 1. Two defamation lawsuits filed by Prime Minister Hun Sen and Prince Ranariddh in 2004, for which he was convicted in 2005; 2. A defamation and disinformation suit filed by Foreign Minister Hor Namhong in 2008, for which he was convicted in 2011 and sentenced to two years in prison; 3. A defamation suit filed by Prime Minister Hun Sen in February 2009, for which he was convicted and forced to pay a fine a month later; 4. An incitement to discrimination and destruction of property suit filed in November 2009, for which he was convicted and sentenced to two years in prison; and 5. A disinformation and forgery of public document suit filed in March 2010, for which he was convicted and sentenced to ten years in prison.

Despite a royal pardon in 2013, on 13 November 2015, the Phnom Penh Municipal Court issued an arrest warrant for Sam Rainsy over the 2008 defamation case filed by Foreign Minister Hor Namhong. He was subsequently stripped of his National Assembly seat and has been in exile since. In addition to the revived 2008 defamation case, Sam Rainsy has been charged in eight new cases since August 2015:

- As an accomplice to forging public documents, using forged public documents, and incitement to commit a felony (Articles 29, 629, 630, and 495 of the Criminal Code) in the case against SRP Senator Hong Sok Hour in August 2015, for which he was convicted and sentenced to five years in prison on 27 December 2016;

⁴⁰² <https://www.phnompenhpost.com/national-politics/kem-sokha-will-not-be-eligible-reinstatement-rights>;
<https://www.phnompenhpost.com/national-politics/sar-kheng-return-sokha-courts>

⁴⁰³ <https://www.phnompenhpost.com/national-politics/sam-rainsy-will-not-have-his-rights-restored>

- With defamation (Article 305 of the Criminal Code) in a case filed by National Assembly President Heng Samrin in November 2015, for which he was convicted and fined 37,500 USD on 28 July 2016;
- With defamation (Article 305 of the Criminal Code) in a case filed by CPP website administrator Som Soeun in March 2016, for which he was convicted and fined 6,250 USD on 8 November 2016;
- With defamation and incitement to commit a felony (Articles 305 and 495 of the Criminal Code) in a case filed by Prime Minister Hun Sen in August 2016, for which he was convicted, sentenced to 20 months in prison, and fined 2,500 USD on 30 March 2017;
- With incitement to commit a felony (Article 495 of the Criminal Code) filed by Prime Minister Hun Sen in September 2016;
- In two separate but related defamation cases (Article 305 of the Criminal Code) filed in January 2017, one by Prime Minister Hun Sen, for which he was convicted and fined 1 million USD in December 2017, and one by former CNRP youth activist Thy Sovantha; and
- With inciting military personnel to disobey (Article 471 of the Criminal Code) and demoralization of military personnel (Article 472 of the Criminal Code) in a case filed by the military in December 2017. Sam Rainsy now faces over eight years in prison for the existing convictions (in addition to owing over 1 million USD in fines and damages) if he returns to Cambodia and could face up to an additional two years if convicted of all charges and sentenced to the maximum jail time permitted under the law. He was officially exiled by the Cambodian government in mid-October 2016, although the travel ban was later lifted in mid-June 2017.⁴⁰⁴

Regarding these last accusations, on 18 January 2018, Opposition leader Sam Rainsy was officially charged with inciting and demoralising the military after calling on soldiers to not fire on protestors. In a Facebook post, Rainsy stated soldiers should not “obey orders from any dictators if they order you to shoot and kill innocent people”. Hun Sen called the statement a declaration of war” and treasonous. The charges followed a complaint submitted on behalf of the Royal Cambodian Armed Forces. In response, Rainsy declared that the RGC is an insecure regime with a “well-founded fear to be toppled by disgruntled internal forces as in the case of many dictatorships recently all over the world”.⁴⁰⁵ The RCAF complaint accused Rainsy of treason and said his insult undermined troop morale which negatively affected national security, which is a criminal act.⁴⁰⁶

⁴⁰⁴ https://aseanmp.org/wp-content/uploads/2018/03/APHR_Cambodia-MPs_Sam-Rainsy-Timeline-Updated-March-2018.pdf

⁴⁰⁵ <https://www.phnompenhpost.com/national/rainsy-charged-inciting-and-demoralising-security-services-latest-lawsuit>

⁴⁰⁶ <https://www.khmertimeskh.com/50579125/sam-rainsy-charged-with-inciting-military-personnel-to-disobey-orders/>

The CNRP 14

In a royal decree dated 27 August 2018, the King pardoned 14 political prisoners from the former CNRP. The prisoners had submitted an apology letter to PM Hun Sen in which they expressed their responsibility and regret for the events that occurred at Freedom Park on 15 July 2014. In that incident, peaceful CNRP protestors seeking the opening of 'Freedom Park' which had been closed and blockaded by the authorities, were violently set upon by Daun Penh security guards who emerged government ministry building next to the park wielding batons. The protestors, in self-defense fought back using hands as well as plastic flag poles they were carrying with the CNRP party flag. As a result, several government security guards were injured. Upper level CNRP activists were held responsible, arrested and accused of insurrection. They were convicted in June of 2015 with sentences ranging from 7 to 20 years. Their sentences were upheld in June of 2018 by the Supreme Court. Their apology letter stated: "We have been imprisoned for more than three years. We all regret joining the demonstration at Freedom Park which seriously affected security and social order. We would like to promise that from now on we will not join any demonstration or any activity with such consideration. We respect the Constitution and other laws and wish to participate in protecting the peace that Samdech Techo [Hun Sen] has made great efforts to achieve and maintain for the development of our country." The signatories were Meach Sovannara, Khin Roeun, Neang Sokhun, San Kim Heng, San Seyhak, Ouk Pich Samnang, Tep Narin, Oeu Narith, An Bathom, Keo Khim, Roeun Chetra and Sum Puthy. Four former members of the CNRP did not sign the letter, but were also pardoned. They were Yin Kimhuor and Yea Thong, and two more former CNRP activists.⁴⁰⁷

11 of the 14 released prisoners had been found guilty for the incident at Freedom Park. Meach Sovannara, Oeu Narith, and Khim Chamreun were convicted of participating in and leading an insurrectionary movement under Articles 456, 457, and 459 of Cambodia's Criminal Code, and were each sentenced to 20 years in prison. Ouk Pich Samnang, Sum Puthy, Neang Sokhun, San Seihak, San Kimheng, Tep Narin, An Butham, and Ke Khim were convicted of participating in an insurrectionary movement under Articles 456 and 457, and each sentenced to seven years in prison.⁴⁰⁸ After their arrest, Human Rights Watch Asia director Brad Adams said: "This case is particularly twisted because the people charged not only didn't commit violence, but some actively tried to prevent it. The court's ruling, in this case, sends a broader message to the international community that the future of peaceful public dissent in Cambodia is at stake."

⁴⁰⁷ <https://www.phnompenhpost.com/national/jailed-cnrp-14-receive-royal-pardon>

⁴⁰⁸ <https://www.rfa.org/english/news/cambodia/traitors-05082018163536.html>

When Hun Sen proposed the prisoner release he asserted that he did so because they asked his forgiveness and if Sam Rainsy continued to assert that it was the result of international pressure, he would keep them in prison.⁴⁰⁹ He also affirmed publicly that he would release all former CNRP members imprisoned if they asked for his forgiveness.⁴¹⁰ Prior to their release, addressing Meach Sovannara and referring to Sam Rainsy, the PM stated: “I want to tell you that you must stay in prison forever because your boss is very stupid.”⁴¹¹

Sebastian Strangio, author of the book “Hun Sen’s Cambodia”, said the pardons served a dual function of easing domestic political tensions and presenting Western critics with some marginal signs of democratic progress. “This does not signify any substantial change in Hun Sen’s mentality. If the CPP faces a serious challenge before the next election, history suggests that Hun Sen will do whatever he needs to do in order to maintain his hold on power.”⁴¹²

Remaining Political Prisoners

Following the 2018 prisoner releases on bail or pardons, there were still political prisoners from the former major opposition party in prison. Not only that, but as noted, the 2018 political reconciliation only found prisoners pardoned after they had been convicted or released on bail but not acquitted of charges. Chao Veasna, a member of the Sam Rainsy Party and a former deputy chief for Poipet commune was denied medical treatment outside of prison even though he is reported to be suffering from fevers serious skin infections. He is being detained on charges of incitement to violence.

Sam Rainsy called for the release of Kem Sokha and declared: “Those prisoners do not need to ask Hun Sen’s forgiveness. It is Hun Sen who must ask their forgiveness for having arrested them in the first place.” Meach Sovannara, the former CNRP media and communications officer said on 28 August that his imprisonment has been unjust.⁴¹³ Un Sam An, having suffered 30 months in prison on politically motivated charges, proclaimed: “It’s time for the country to reunite and reconcile. I hope Cambodian politicians will be more mature going forward. Political prisoners should be released and allowed to resume their posts.”⁴¹⁴

⁴⁰⁹ <https://www.khmertimeskh.com/526489/hun-sen-to-seek-pardons-for-jailed-former-opposition-cnrp-members/>

⁴¹⁰ <https://www.khmertimeskh.com/527257/ex-cnrp-members-receive-pardons/>

⁴¹¹ <https://www.khmertimeskh.com/116392/hun-sen-threatens-to-sack-prison-director/>

⁴¹² <https://www.reuters.com/article/us-cambodia-politics/cambodia-frees-14-government-critics-idUSKCN1LD0AR>

⁴¹³ <https://www.rfa.org/english/news/cambodia/release-10032018154557.html>

⁴¹⁴ <https://www.khmertimeskh.com/527257/ex-cnrp-members-receive-pardons/>

On Sept. 12, Human Rights Watch announced that it was creating a new webpage with information and profiles on political prisoners in Cambodia and asserted that all prisoners should be released. The INGO claimed that pardons were “attempts to regain international legitimacy after sham elections.”⁴¹⁵ In addition to the remaining political prisoners in Cambodia, new charges were laid against top members of the CNRP, Sam Rainsy was convicted and sentenced to 8 years, several former CNRP members were summoned for questioning related to complaints or potential charges, and several former CNRP activists fled into exile out of fear of arrest.

⁴¹⁵ <https://www.rfa.org/english/news/cambodia/release-10032018154557.html>

CHAPTER 9 – CONCLUSION

Toward the end of 2018, in the face of increasing international pressures (sanctions and loss of preferential trade status), statements were made regarding the illegitimate U-turn on the road to democracy with pluralism. Despite token gestures taken at the end of 2018, there seemed to be little real indication of any plans for restoration of democracy and human rights.

In 2018, the strength of the legislative branch severely declined while single ruling party CPP controls all 100% of 125 National Assembly legislative seats and full control over the legislative branch. This contributed to an absence of parliamentary democracy with pluralism and contradicts the constitutional principle of democracy with pluralism.

Not surprisingly, with the absence of political opposition lawmakers and its final elimination in November of 2017, there has been a significant decline in checks and balances, in parliamentary efficiency 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 and backed by its monopoly on the use of force. This corresponded with an overall rise in using scapegoating and allegations of enemies of the state and national security threats.

The amendments to the constitution and laws have the potential to curtail legitimate free speech, civil liberty and political pluralism significantly. Inevitably, ambiguous cases will occur and this raises the potential that judgments are politically motivated. As such, the amendment of law on political party which was implemented with appeals to the opposition political party while its members were criminalized as traitors. More generally, as with all law in Cambodia, judiciary mechanisms for both citizen redress and government enforcement are not trusted by the public and are believed to be partisan by both the national and international community.

Judicial performance consistently declined in 2018 as shown in practice. The judiciary appeared increasingly politicized and subservient to executive direction by the PM and the ruling party. Studies show Cambodia consistently declining in terms of rule of law, that corruption within the courts system is a big problem, and that 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 year 2018 saw a rapid intensification of the threats and intolerance in the political discourse and policies of the PM and the executive branch. Executive discourse has sought to destroy political opposition. The PM has consolidated its power monopoly over the government to the detriment of legislative oversight and judicial independence. The widespread labelling as enemies of the state for 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 been movement away from democratic civil military relations which aims for separation of the military from domestic politics and to prevent partisanism and cronyism in the police and military. 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.

Basic freedoms of expression, CSOs, trade unions, independent media, and civil liberty were severely curtailed as high-profile prosecutions coupled with pervasive announcements labelling CSOs, independent media and public dissent as revolutionary, sharply intensified self-censorship and anxiety related to activity and operation.

Although formally authorized and protected by law, assembly continued to be highly restricted in 2018. 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 2018 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, to provide officials with information needed on sensitive issues, to and engage with policymakers to ensure responsive outcomes. 2018 also saw the enactment of legal changes which criminalize criticism of the monarchy and authorize the government to remove legal entities and associations that have been convicted.

The freedom of political parties dramatically deteriorated. The amendments to the Law on Political Parties, were implemented by the government to ban political activity of opposition political parties and opposition politicians.

The July 2018 national election situation severely deteriorated while eliminate main opposition. Ultimately, eliminating the will of people who supported the political opposition, while at the same time state discourse and policies have painted and criminalized the political opposition as a national security threat and traitors. International communities of Western Countries, the UN Human Rights experts and bodies, and independent domestic and international election monitoring organizations not recognized that the general election in July was not legitimately genuine and democratic, and served to maintain the ruling Cambodian People's Party decades long position in power and contradicted the principle multiparty liberal democracy in the Cambodian constitution. The ruling Cambodian People's Party won all of the parliamentary seats in the vote. The country is therefore de facto a single party state. During the election, the use of laws to restrict debate and the targeting of media, political opponents, civil society organizations, trade unions, and individuals, including through the use of criminal charges. Voters were subjected to threats and intimidation after calls for a boycott of the election, which is legitimate as voting in a democracy is not compulsory. The reports of threats to voters if they did not vote are of particular concern: the inkstained finger, a sign in the past of hope and freedom, ironically has become a symbol of coercion.



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