



ខុមហ្វ្រែល COMFREL

2019

DEMOCRACY

ELECTIONS AND REFORM

IN CAMBODIA



APRIL 2020

Table of Content

EXECUTIVE SUMMARY	1
CHAPTER 1 – Civil and Political Rights	5
PART 1: Repression of Political Opposition	6
PART 2: Persecution of the Memorialization of Kem Ley	24
PART 3: LANGO and CSO Freedom	28
CHAPTER 2 – Media and Press Freedoms	40
PART 1: The Media Landscape	44
PART 2: Laws and Policies	48
PART 3: Criminalization of Press and Journalism	58
CHAPTER 3 – Labor Rights and Politics	71
PART 1: Key Policy Issues for Labor	72
PART 2: Trade Union Law	75
PART 3: The Tripartite National Council on Minimum Wage	80
PART 4: Right to Strike	84
PART 5: Status of Legal Prosecution of Unionists	97
PART 6: International Brands and Labor Associations	103
PART 7: Remedying Violence Against Unionists – Remembering Chea Vichea	106
CHAPTER 4 – The Legislative Branch	108
CHAPTER 5 – The Judicial Branch	118
PART 1: Lack of Justice	120
PART 2: Legal Reform	124
PART 3: Legal Aid	130
CHAPTER 6 – The Executive Branch	135
CHAPTER 7 – Democratic Elections	148
PART 1: 2019 Sub-national Elections	148
PART 2: 2019 Voter Registration	155
CHAPTER 8 – The EU and EBA Status	158
CHAPTER 9 – Cambodia and Major Powers	173
CHAPTER 10 – Conclusion	199

EXECUTIVE SUMMARY

Democracy in Cambodia was assessed on how to decline in 2019. The ruling party consolidated its hegemony over the political system, and there were no significant improvements in liberal pluralism. As outlined in this report, important reforms occurred in different areas; however, reforms were not sufficient in any areas to meet the standards of an established democratic system. Improvements were made to laws, but there are still significant problems with existing legislation.

Moreover, Cambodian politics has long been characterized by the disjuncture between laws and their implementation. As such, there is not a solid basis for an expectation that the reforms will endure in the long-term. The massive surveillance and detention of former members of the opposition party demonstrate that dissent is has become progressively less tolerated

What is more, the discourse on internal enemies and the threat of a 'coup' show how with the transition from competitive authoritarianism to a hegemonic party system, the Cambodian state shows increasingly totalitarian tendencies. It conclusively demonstrates that if any real popular challenge arose to ruling party domination, then the state would quickly turn to the tactic of large-scale violence. The security services remain wholly loyal to and controlled by the ruling party, and the PM has increased the centralization of power in his person.

In the area of civil and political rights, intimidation and a sense of insecurity of the public has amply expanded, following several months of massive arrests and proclamations that anyone supporting the opposition would be arrested and the Cambodian people no longer able to express support for a political party based on free choice or express their sentiments in public space. The right to assembly has been for some time violated (since 2017), and it continues to be and continues to be violated, as public gatherings are generally banned. In terms of respect for political rights, Cambodia has declined to the lowest level in the post-UNTAC period. Personal security of an individual is violated on the basis of public participation and expression, result in a climate of fear. The basis of regime legitimacy is economic growth, which has been significantly aided by the services and advisory support of a vast number of IOs, INGOs, and NGOs. However, because of low capacity, corruption and nepotism, and a high level of impunity, the benefits of economic growth have not effectively distributed to the majority of the population. The resulting tensions will become increasingly evident as Cambodia

transitions to a middle-income country. Multiple smaller opposition parties have not shown any real capacity to muster popular support, and have dedicated at least some of their efforts to criticizing the former major opposition party. The institutional mechanism for minor party competition, the Supreme Consultative Council (formed after the transition to a one-party state in 2018) has enabled a modicum of debate over policies but shown no real capacity to critically engage the government on issues such as the concentration of power in the executive, corruption, or the militarization of public space under pretenses of responding to threats to national security. As for the former opposition party, its members were subjected to increased levels of intimidation, detention, and violence not seen since the 1993 election, where the ruling party lost the vote but refused to concede power. Fragmentation of the former opposition party has increased. Following mass repression and the failure of mass solidarity around the return of CNRP leaders living in exile, it appears to have lost its potency for political impact.

Although media freedom exceeds that of neighboring states such as Vietnam and Thailand, it is normal practice for online commentary and press coverage to be criminalized. Most evident, critical commentary of the PM and high ranking officials is treated as ‘incitement’ and criminal ‘insult’ by both the police and the courts. Journalists continue to face threats, especially when covering illegal or abusive natural resource extraction and corruption. Complaints leading to defamation charges are also common. Although the press law sets out protections for journalists, they are often prosecuted under the criminal code. At the same time, even though the PM and Minister of Information have exhorted freedom of the press to make critical commentary or coverage of the government, they have made it clear that only ‘constructive’ criticism will be tolerated, with the decision as to what meets that criteria residing in the person of the PM and the courts which are controlled by the executive.

In terms of labor rights, unionists and workers continue to face repression and threats of legal harassment, and demonstrations and strikes are still frequently criminalized. Reforms to the Trade Union Law have found to be insufficient to protect worker’s rights to association. Additionally, workers continue to face a litany of problems ranging from poor working conditions, lack of access to healthcare, lack of implementation of existing laws related to salary (or bonuses, and severance pay). Child labor continues to be a major problem in the informal economy and persists in certain sectors of industry. There has not been significant progress addressing gender discrimination and violence against women in the

workplace. Alarmingly, there are some indications that despite increased rhetoric to resolve the issue, that rates of human trafficking have increased. There has been no policy initiative advanced to provide suffrage for migrants living abroad.

The legislative branch does still not function to ensure oversight of the executive. It has become a forum for cultivating clientelism in support of the executive. Decisions on the process and content of legislation have almost entirely shifted to the Council of Ministers which is under the strict supervisory direction of the PM. Given that the public has little choice in parliamentary elections (as existing opposition parties lack public trust, capacity, and resources), polls for the parliament are more a way for the ruling party to manage promotions and oversight over intra-party loyalty through the administration of the party list.

The judicial branch has been essential to the deployment of 'lawfare' which has ushered the transition from competitive authoritarianism to a hegemonic party system. Politically motivated cases are typical, and prosecutions often proceed and lead to convictions without any actual basis in a due process such as convincing evidence. Moreover, it is very common that pre-trial detention be used to incarcerate the accused for long periods of time (months or even years) without an actual conviction. Often charges that were issued years earlier taken up by the courts in prosecutions at a later date. This allows the judiciary to serve as a constant threat and tool for long-term intimidation to those who are alleged to have committed crimes even if there was no basis for the accusations. Lastly, despite frequent declarations of judicial independence, the courts are clearly under the control of the executive who uses them at will as a mechanism to punish critics and opposition political figures.

The areas where the executive branch continues to be most capable of good governance pertain to macroeconomic management, such as budgeting, avoiding excessive borrowing, and tax collection. The executive has shown no disposition to real substantial reforms that would support a separation of powers or an increase in liberal pluralism. Essential reforms that did occur in 2019 were almost certainly made out of an attempt to appease the EU and prevent the loss of EBA trade status. There is an overlap between the government, the ruling party, and the military, which is evident in military rule systems. The security services continue to operate most effectively as a tool to eliminate criticism and political competition, rather than support for the rule of law. As a result, public trust in the security services remains low, and fear remains high. The areas where the executive continues to fall far below the standards of established democrat

government are high levels of impunity, urban development planning, corruption, agricultural development, and natural resource management.

The quality of Cambodian elections continues to decline. The 2019 poll was predictable given that sub-national administrations were selected by an electorate composed entirely of the ruling party local-level officials. As such, elections in Cambodia have taken on a ritualistic character to provide a hue of democracy to an otherwise authoritarian political system. Advances made with the voter list and voter registration procedure following the 2013 national elections, for the most part, continue to be in place. However, given the sharp decline in the relevance of elections to providing a popular mandate and as a mechanism of accountability, it is not surprising that interest in voting or participation in elections has declined.

Major issues in Cambodian international relations in 2019 included the potential loss of participation in the EU's Everything But Arms trade arrangement and Cambodia's relations to the major powers. The EU's ultimate decision in February 2020 to only exclude approximately 20 percent of Cambodian imports from the EBA framework raises two main lines of questioning. First, what the effect on the Cambodian economy will be, and second whether it enables the EU to maintain an influence on Cambodia or if it results in loss of credibility for EU efforts to pressure reform. Additional issues (not addressed in this report) include border politics and Cambodia's relations with other ASEAN states in relation to the potential return of former opposition party leaders. Although Cambodia's relationship with the US has improved, significant obstacles remain, such as existing draft legislation in the US to reprove the decline of democracy in Cambodia. Cambodia's foreign policy has moved increasingly close to China, with an increase in borrowing, military aid, and advances toward a free trade agreement. Joint military exercises and inspections by Chinese military officials demonstrate that the security ties between the two countries strengthened in 2019.

The report is divided into 9 Chapters: 1) Political Rights; 2) Media Freedom; 3) Labor Rights; 4) Legislative Branch; 5) Judicial Branch; 6) Executive Branch; 7) Democratic Elections; 8) International Relations – the EU and EBA; 9) International Relations – Cambodia and the Major Powers; 10) Conclusion.

CHAPTER 1 – Civil and Political Rights

Introduction

2019 entailed the continuation of progressive deterioration of the political rights necessary for democracy. The year showed a steady decline in the possibility of reconciliation, as supported in international and constitutional law, between the ruling party and the former major opposition party CNRP. There was widespread repression of members and supporters of the former opposition party, continued restrictions on media and social media, as well as progress toward the enactment of laws further restricting them. A broad range of reforms in different areas (see chapters on Media, Labor, and the Executive) were not deep enough to provide a foundation for real change, and more likely served as token gestures made as part of a strategy not to lose access to the EU's EBA trade arrangement. The restrictions on political liberties which would occur in a state of emergency have become common or standard practice in Cambodia, as a narrative of revolution and impending coup have been used to create long-term conditions where fundamental freedoms are arbitrarily violated for those who challenge or dissent from the ruling party doctrine. As a result, issues such as fair elections, separation of powers, civilian control of the military, and individual freedoms of expression, assembly, and association have been increasingly ostracized from the public sphere. This chapter is composed of three sections: first, it looks at the intensified use of lawfare to eliminate opposition political competition; second, it briefly addresses the criminalization of fundamental freedoms in relation to the memorialization of independent analyst Kem Ley (see also Chapter on the Judiciary); and third, it looks at the institutional and political processes of state-civil society relations in the case of amendments to the Law on Association and Non-governmental Organizations.

CHAPTER 1 – PART 1

Repression of Political Opposition

In a speech given at an assembly to commemorate the 34th anniversary of Hun Sen coming to power, the PM stated, concerning the EU: “Please don’t forget that if you sanction me, it equally means that [you] beat the opposition in Cambodia to death.” He asserted that critics of the government would need to flee the country, and declared: “I won’t forgive them.”¹

By that time of 2019, the human rights CSO Licadho had recorded 27 arrests of opposition supporters charged with crimes and 156 cases of opposition supporters detained and interrogated.² There was the repression of the political opposition critics as response to the negative impacts of EBA withdrawal, and the government did not restore recently eliminated components of democracy. On 16 January 2019, a former activist of the CNRP was arrested for fake news dissemination and subsequently charged with incitement and insulting. Kong Mas, a former CNRP member from Svay Rieng province, was charged with “Insult” and “Incitement to commit a felony” (Articles 502 and 495 of the Criminal Code of the Kingdom of Cambodia) concerning posts he made on Facebook.³ He was remanded to pre-trial detention and denied bail by the municipal court. Subsequent appeals seeking release on bail were denied, with the Supreme Court denying bail in May 2019. Authorities struggled to provide a coherent account of the violations that Mas was alleged to have committed. Consider that, on the one hand, the Ministry of Interior spokesman General Khieu Sopheak said the police were carrying out an arrest warrant issued by the Phnom Penh municipal court issued related to fake news that was tantamount to an act of incitement, and that the offense was committed prior the 2018 elections. He asserted further that Mas had distributed pictures and 100,000 leaflets.⁴ On the other hand, his arrest came just hours after a facebook post related to potential tariffs on Cambodia rice by the EU. The arrest was made in the context of PM Hun Sen’s threat to be unforgiving with anyone who highlighted the negative impacts of EBA withdrawal.

¹ <https://www.aljazeera.com/news/2019/01/cambodia-opposition-member-charged-pm-threat-sanctions-190119065456154.html>; <https://www.japantimes.co.jp/news/2019/01/14/asia-pacific/cambodian-prime-minister-warns-dead-opposition-eu-withdraws-preferences/#.XilRZWgzbie>

² <https://www.rfa.org/english/news/cambodia/warrant-09172019163936.html>

³ <https://www.voanews.com/east-asia-pacific/cambodia-takes-aim-critics-who-post-facebook>

⁴ <https://www.phnompenhpost.com/national-politics/cnrp-activist-arrested-alleged-fake-news>

Before his return schedule to Cambodia, Mr. Sam Rainsy had publicly accused Hun Sen that Cambodia had become “the private property of one individual and family. The individual and family have been dividing Cambodia to sell off in pieces to foreigners.” He also asserted that Cambodians should collaborate: “to liberate our nation from this individual and family who are robbing and destroying the nation”. By that time, Rainsy had issued many appeals to the Cambodian public and military to take action to undermine Hun Sen’s dictatorial power. The ruling party spokesman, Phay Siphon claimed that Rainsy had rebuked government efforts to compromise and characterized Rainsy’s criticisms as “...against the elections, Cambodian law, and even the constitution.”

Hun Sen had set a deadline of April 2019 for the 118 members of the former opposition to seek a pardon that would enable the restoration of the enjoyment of their fundamental political rights. As of March 2019, only 9 former CNRP officials had been pardoned. Siphon asserted: “Those who proclaim themselves as Democrats but pressure others not to ask for a pardon by accusing them of being a traitor are themselves, dictators.”

On 13 March 2019, PM Hun Sen announced that his lawyers were preparing no less than 32 lawsuits against Sam Rainsy for comments he made in public or on social media. The PM declared would seek the confiscation of Rainsy’s properties as compensation, and stated: “You scoundrel [Mr. Rainsy] cursed my life. I will not forgive this,” he said. “I told my lawyers to study what had been posted on Facebook in which he insulted me by using photos with my head cut off. Please seize all his properties. I believe the compensation will be about \$2 million. I regret that this is now happening. I had previously only requested for 100 riels as compensation, but this time I will not forgive his actions and will donate the money raised from selling all the properties to help orphans.” Sam Rainsy’s legal representative, Sam Sokong, indicated that at the time, there were already 12 insult and defamation lawsuits against his client. He argued that as they were in the process of the court system, the properties could not be confiscated. He also asserted that the judicial process was unjust because the accused could not participate and provide evidence and verbally defend himself against the

accusations. He stated: “I have filed many appeals against the municipal court’s decisions, so I do not think my client is concerned about the new threats now.”⁵

On 25 April 2019, Interior Minister Sar Kheng called Sam Rainsy a “pretend patriot” for leaving Cambodia (in 2015) to avoid prosecution and imprisonment while his supporters face legal troubles. Rainsy had claimed it was not logical for him to stay in Cambodia and risk being murdered like political analyst Kem Ley or imprisoned like fellow CNRP leader Kem Sokha. The Interior Minister conveniently overlooked the rule by law which the government unjustly uses to persecute the opposition, and which makes it all but certain that Rainsy would be incarcerated for a very long time, or worse. Sar Kheng asserted: “He calls himself a patriot, but he fled the country and while abroad claimed to have made the most sacrifices compared to others still in the Kingdom. We are here in the country, we serve the people’s interests every day, but he does not consider us as patriots.”

This was the first lawsuit filed by the Minister against an opposition party member, ostensibly to promote adherence to an unspoken political code of conduct.⁶ Despite the obvious and deeply documented use of the judiciary to silence critics on trumped up charges and using absurd prosecution processes, Kheng’s claim had also clearly resonated with some opposition supporters (as stressed by pro-government media). Government critic Hong Lim indicated that he disagreed with Sam Rainsy’s comments about Kem Ley and Kem Sokha, which he considered insulting, and stated: “He said he ‘will not come [to the Kingdom] to be killed like Kem Ley, or imprisoned like Kem Sokha’. I was disappointed and hurt because I know Kem Sokha is loyal to his people, and has not fled the country.”

Former CNRP Member of Parliament, Kang Kimhak, stated: “I think that what Sam Rainsy said looks down on those who sacrificed themselves for democracy and human rights in the Kingdom. If he dares not to make a sacrifice, then he should not pass the blame to others.” These comments show the extent to which opposition supporters’ expectations that Sam Rainsy makes some gesture of martyrdom have not been met. More importantly, that give an indication to the fragmenting of the former opposition party that increased over the course of 2018 and 2019, beginning with multiple former CNRP officials banned from politics seeking an amnesty from PM Hun Sen. While former CNRP leader Kem Sokha has consistently refrained from commentary giving the impression of a break with

⁵ <https://www.khmertimeskh.com/50586681/hun-sen-to-file-about-32-lawsuits-against-rainsy>

⁶ <https://www.khmertimeskh.com/50622085/lawsuit-against-rainsy-is-sar-khengs-first>

the opposition, his daughter Kem Monovithya publicly stated later in 2019 that Sam Rainsy's return to Cambodia was nothing more than a PR stunt.⁷

On 15 June 2019, the Deputy Prime Minister and Minister of the Interior Sar Kheng publicly declared that Rainsy had done nothing for Cambodia and equated the total hegemony of the ruling party over the genuine democracy, characterizing it as the source of peace and stability. He stated: "Some people said they love the nation, but they have not done anything. I am not blaming anyone for what they said, but for the fact, they have done nothing. We are a peaceful, stable country, so there is no war. We have one national army, one civil servant, one national police, one royal gendarmerie, one King, one prime minister, one royal government, and we do not have an unlawful army to overthrow the government. For us, the democratic process in Cambodia is improving and it is moving forward. It's because we have strong, genuine democracy – that's why we now have peace and stability."⁸

On 2 July 2019, Interior Minister Sar Kheng filed a lawsuit against former opposition leader Sam Rainsy which accused him of incitement to commit a felony.⁹ The lawsuit came in response to social media commentary where Rainsy speculated on the possibility of foul play in the death of former National Police Chief Hok Lundy (who died in a helicopter crash in 2008.¹⁰ at the Phnom Penh Municipal Court accusing him of incitement to commit a felony. The lawsuit alleged: "It is fiction by Sam Rainsy aimed at causing tension among top leaders to destroy unity and create internal conflicts within the government." In indicated the plaintiff sought 1 million USD in compensation. Rainsy's social media commentary speculated that Dy Vichea, the son of Hok Lundy and current director of the Ministry of Interior central security department, along with Sar Kheng sought revenge against PM Hun Sen for Hok Lundy's death. Dy Vichea also indicated he would pursue legal action against Sam Rainsy, and asserted: "This is not the first time Sam Rainsy has made up false information and incited to undermine social stability and national solidarity. There have been Facebook account [accusing] a government official of attacking the government inciting the military to take over the government." PM Hun Sen publicly declared that if Rainsy

⁷ <https://www.theguardian.com/world/2019/nov/07/crackdown-in-cambodia-as-opposition-leader-vows-to-return-from-self-imposed-exile>

⁸ <https://www.khmertimeskh.com/50614798/sam-rainsy-has-done-nothing-for-the-kingdom-sar-kheng>

⁹ <https://www.khmertimeskh.com/50621774/sar-kheng-files-court-action-against-sam-rainsy>;
<https://www.khmertimeskh.com/621504/dpm-files-more-complaints-against-sam-rainsy>

¹⁰ Suspicions were raised because of the arrest of eyewitnesses to the crash (who had reported the helicopter was on fire before crashing). See:

returned to Cambodia, in addition to arresting him on arrival, his plane could be shot down.¹¹

Hun Sen is ready to use violence to represses the opposition and foreign supporters. According to media reports, Rainsy's original accusation via Facebook stated: "Hun Sen is the one who killed Hok Lundy through a bomb planted on board the helicopter while he was flying over Svay Rieng province on November 9, 2008," he said. "He decided to kill Hok Lundy because Hok Lundy knew a lot about Hun Sen doing very bad things." Hun Sen's public retort was as follows: "I have intended to make a speech about you in Tokyo because you declared to have me arrested – what do you mean? It means you declared war. He urged the army and the people to arrest me. Hun Sen is Prime Minister. If you arrest Hun Sen, it means you're conducting a coup and waging a war. From now on, I will call you a dog and the son of a traitor. You can insult me, I can insult you, too," Mr. Hun Sen continued. "It is not your right because you urged soldiers and people to topple the government. I do not want to use bad words against him but he is too bad. I want to see how a dog returns to the Kingdom. Mr. Hun Sen added "my second question is if there are any foreign planes that will carry this dog and fly into our airspace without permission – would they be able to do so? If so, can our air force shoot down the plane?"¹²

On 1 May 2019, Sam Rainsy was sentenced to 8 years in prison (4 for 'demoralization' of the military to rebel and 4 for insulting the king). Just 10 later he was sentenced to two more years for additional crimes.¹³ As of September 2019, he was facing another accusation of insulting the monarch.¹⁴ On 18 October 2019, along with two other 'accomplices' (Ho Vann, an ex-CNRP lawmaker, and Kak Komphear, a former party member), Sam Rainsy was sentenced to one year and eight months imprisonment for instigating incitement and insult.¹⁵ By August of 2019, the Phnom Penh Municipal Court had decided to prosecute him for incitement, in relation to the complaint submitted by Interior Minister Sar Kheng.¹⁶

¹¹ <https://sorsdaytoday.com/dy-vichea-denies-father-hok-lundy-was-killed-in-a-helicopter-bomb-plot/>

¹² <https://www.khmertimeskh.com/610698/hun-sen-challenges-rainsy-over-hok-lundys-death/>

¹³ <https://www.khmertimeskh.com/50600094/court-finds-sam-rainsy-guilty-in-two-cases;>

[https://www.khmertimeskh.com/579386/court-completes-two-sam-rainsy-cases/;](https://www.khmertimeskh.com/579386/court-completes-two-sam-rainsy-cases/)

¹⁴ <https://www.khmertimeskh.com/643209/sam-rainsy-slammed-for-insulting-king/>

¹⁵ <https://www.khmertimeskh.com/50652586/sam-rainsy-and-accomplices-convicted>

¹⁶ <https://www.khmertimeskh.com/50629202/court-moves-forward-with-rainsy-incitement-case>

In April, Tith Rorn, the son of a former CNRP commune councillor, was arrested and jailed in Kampong Cham on a 2010 misdemeanour conviction, even though the statute of limitations had expired. On 18 April 2019, in three days of the arrest Rorn was dead. His body showed signs of torture or abuse as it was littered with bruises and evidence of beatings.¹⁷ The bruises were visible in photos of the dead man released on social media. Kampong Cham police said he died as a result of collapsing and hitting his head. The death of 38-year-old Tith Rorn on April 18 in Kampong Cham prison was down to him collapsing the previous day in the toilet of the provincial police headquarters while being temporally detained there. The police video footage of an unidentifiable man collapsing and the police appearing to give aid, but then leaving the injured person alone, and after several minutes the person stood up. Kampong Cham police chief Em Kosal said: “The bruises on his right forehead, right eye, right and left arms, and right foot were due to him collapsing face down in the restroom of the temporary detention room at Kampong Cham police headquarters on April 17.” However, it was still not clear why medical aid for the victim was not sought. Moreover, the version of events given was partly contradicted by Hun Key, Kampong Cham provincial prison director, who said the deceased had the bruises when he arrived at the detention center.¹⁸

A massive number of persecution of former CNRP members was taken utilizing rule-by-Mr. Hun Sen’s dictate to accuse, investigate, arrest and/or prosecute. By the end of May 2019, legal actions occurred across various provinces of Cambodia (including Battambang 35 persons, Kampong Thorn 35 persons, Kandal 36 persons, Kampong Speu, and dozens of people from the provinces of Kampong Chhnang, and Tbong Khmum). In total, at least 140 individuals who had been supporters (members or activists) of the former opposition party were subjected to blatant and unfounded abuses of power by the state, by being ordered to appear for questioning and treated as guilty until proven innocent. Summons provided by the police/prosecutors did not clarify any basis for suspicion or accusations other than alleged violations of the 2017 ban on the opposition party. Eventually, most of those arrested would be accused, without evidence or

¹⁷ <https://www.civicus.org/index.php/media-resources/news/3882-csos-express-concern-over-judicial-harassment-of-former-cambodia-national-rescue-party-members>

¹⁸ <https://www.phnompenhpost.com/national-politics/officials-respond-kampong-cham-prison-death>; <https://www.khmertimeskh.com/50599768/man-files-complaint-with-rights-group-over-sons-prison-death>; <https://www.aljazeera.com/news/2019/05/cambodia-opposition-faces-renewed-crackdown-china-shift-190516044529247.html>

corroborating witnesses, of seeking to foment a rebellion with the intent of overthrowing the state. Such allegations would be used to legitimize their detentions after their eventual release later in the year. This demonstrates the normalized practice of presumption of guilt followed by forgiveness by the ruling party and PM, erected upon detention without trials or, in some cases, convictions without evidence. All these repression cases have linked the opposition members who carried out political opinions to support the Sam Rainsy return to Cambodia.

There was repression by using the courts to harass the opposition members. A joint statement was released by 73 different national, and international non-governmental organizations and associations asserted that:

“The recent surge in legal actions taken against former CNRP members illustrates the serious and systematic misuse of laws to target, intimidate and harass individuals for merely exercising their fundamental freedoms”¹⁹.

When the more significant number of members of the former opposition party were ordered to appear before the courts, it was clear that the ruling party was willing to enact policies of large-scale violence if necessary to ensure that that political competition could not return to Cambodia. The members of the opposition targeted in the round-up had been ordered to appear before the courts as of May 2019. The RGC enacted broad scale persecution of dissenting members of the public, in violation of their basic personal security and political rights, without evidence. Despite rights enshrined in the constitution and in international covenants which Cambodia has joined, court summons accused them of breaking the law by participating in “meetings”.

In many cases, the prosecution found any excuse to criminalize and detain the relevant individuals. For example, Pol Tith Theany, a former CNRP financier in Kampong Chhnang Province was detained by police on charges of “providing illegal healthcare service”. This made it clear that even good works and charity could provide justification for prosecution according to the narratives fabricated by the ruling party. As of that time, 2 members of the former opposition party had been incarcerated and one died after apparently being tortured by the security services. Phay Sipphan, used the oft-cited excuse of concerns for national security, even though plausible explanation could be given of how the targeted individuals

¹⁹ <https://www.civicus.org/index.php/media-resources/news/3882-csos-express-concern-over-judicial-harassment-of-former-cambodia-national-rescue-party-members>

posed a threat to the nation and its people. He alleged: “Some of their activities could be suspected of being harmful to the national security.”

The authorities often used charges for crimes not related to politics as a pretense to make the arrests. An example of this was the 28 May arrest Chan Sophal and his colleague Tuon Sam Ath in Pursat province Veal Veng district for alleged engagement in illegal logging. Court spokespersons,, as well as the district police chief, were not accessible or willing to comment on media, and as a result, the prosecutions lacked transparency. Keo Kim Srong, the provincial coordinator for local rights group Licadho, said it was likely the arrests resulted from the PM’s order to police local level CNRP activists. He noted: “Since Hun Sen made the comment, CNRP activists in Pursat are living in fear, even if they haven’t done anything.”²⁰

There was the repression of the opposition officers and activists who supported Sam Rainsy’s plan for returning to Cambodia. The charges were issued not long after Rainsy had made a public statement indicating his intention to return to Cambodia on 9 November 2019. On 25 January 2019, speaking before a large audience of factory workers, Hun Sen challenged Sam Rainsy to return to Cambodia so that he could be imprisoned. He asserted: “I truly want you to return. You must be aware of the court’s verdict—Interior Minister Sar Kheng confirmed that he had received the related arrest warrant, so there is no issue with that. I feel so bad having let you run, so now, if you come back, I’ll be able to rid myself of this feeling.” In the week prior to that statement, the RGC issued a formal statement asserting that legal prosecution would ensue for anyone who indicated support for the former opposition party or supports the return of Sam Rainsy. Notably, despite the PM’s public declarations and the RGC policy of predetermined prosecution in the absence of an actual crime, the statement claimed that the courts were independent and punishment for political party preference authorized by the 2017 Supreme Court ban on the opposition party.²¹

In the second week of March, warrants were issued by the Phnom Penh Municipal Court, charging 8 senior members of the former opposition party with treason and incitement. This followed the long ongoing case for treason against opposition leader Kem Sokha. Those charged included: Sam Rainsy, two vice presidents, Mu Sochua and Eng Chhai Eang, and five other members. On 27 July 2019, the

²⁰ <https://www.rfa.org/english/news/cambodia/arrests-05292019155539.html>

²¹ <https://www.rfa.org/english/news/cambodia/warrant-01252019155936.html>

National Police Commissariat announced an operation in place to arrest Sam Rainsy and associates that had been charged *in absentia*. Spokesman of National Police Chhay Kim Khoeun said: “The National Police will take all appropriate measures and procedures in order to effectively enforce the court’s order to seek and arrest Sam Rainsy and his accomplices to be punished by law.” He also issued an appeal to all national and international actors to support the police and to not be duped by the insurgents seeking to incite the populace to rise against the government.²²

In September 2019, a new arrest warrant was issued for Sam Rainsy for the purpose of charging him under the lese-majeste on the ground that he insulted the king. In an interview with RFA news, Rainsy states that the king was afraid of Hun Sen and wanted to retain his throne, and so democracy supporters could not expect much support from the monarch. In a strongly-worded statement, Rainsy referred to the King as a “puppet of Hun Sen.” Soon afterwards, the Phnom Penh Municipal Court investigating Judge Koy Sao indicated the charges for the arrest warrant. The warrant instructed authorities to prepare prison cell for the leader of the former opposition party.

Making clear the political motivations of the warrant, in an interview with pro-government Fresh News, the Ministry of Justice spokesman, Chin Malin, asserted that the new arrest warrant was issued because Rainsy had not learned his lesson from the arrest warrant (for charges of treason) issued in March. Independent analyst Em Sovannara told media that the warrants were part of an intimidation strategy aimed at preventing Rainsy’s return to Cambodia. He noted that Rainsy could not return without first amassing more support. He stated: “Even if there weren’t any charges against him, Sam Rainsy wouldn’t return. He needs to gather supporters first because if he is not safe, he won’t come back.”

On 17 September 2019, the Ministry of Interior announced that anyone online expressing support for the CNRP or its head Sam Rainsy would be arrested. The MOI spokesman made clear that not only those actively supporting the CNRP would be detained and prosecuted, but also those who issued opinions in favor of the former opposition party. The announcement came on the same day that National Police chief Neth Savoeun instructed all police departments and bodies to design and implement measures to eliminate the opposition party’s “rebel movement” and its aim of overthrowing the state. To an audience of

²² <https://www.khmertimeskh.com/627893/national-police-seek-and-t-sam-rainsy-and-accomplices-arrest/>

approximately 1000 ranking police officials, he declared: “we all are together in our commitment to protecting the government and not allowing any group or traitor to destroy Cambodia’s happiness and peace”. Spokesman Khieu Sopheak, asserted: “Anyone supporting those who wish to topple the government . . . we will consider that you also oppose Cambodia’s peace and want to bring about unrest and see that peace comes to an end. We will also arrest you. We will take measures against those posting messages in support of Sam Rainsy’s return. We will find and arrest them. Our country is enjoying peace, so why would you want to topple the government?” Despite the threat of mass arrests, at the same time he claimed that only leaders would be targeted. Despite the claims that those who take action are inciting war against the country, he chided Sam Rainsy for not taking direct action when fellow CNRP leader Kem Sokha was arrested. He stated: “There will not be chaos as we have already arrested the ringleaders. Sam Rainsy did nothing while Kem Sokha was imprisoned. We have only arrested the ringleaders who provoke, and this is not millions of people. We look only for the ringleaders.”

Spokesman and deputy chief of the national police Chhay Kim Khoeun said “The National Police has emphasised two tasks. The first is to maintain security during the Pchum Ben festival. The second is to strengthen security to protect national interests and not allow any enemy or rebel group to destroy the safety, security and peace that we currently enjoy.” said Kim Khoeun, who is also the deputy chief of the National Police. An anonymous senior police official commented to media: “The National Police ordered that we must do whatever it takes to arrest the ringleaders, regardless of how many people support them. All police officers must follow the orders of their superiors fully and must crackdown on any rebel group wishing to destroy peace.” Disregarding the absence of a ruling party mandate based on a fair election, Kin Phea, the director of the International Relations Institute said: “The authorities have an obligation to crack down on those posting messages in support of activities involved in attempting to topple the legitimate government – one born out of the will of the people.” Soeng Sen Karuna, senior investigator at rights group Adhoc, pointed out the obvious violation of freedom of speech and expression resulting from the police policy: “They are harsh and affect human rights, freedom of expression and the right to participate in politics because people would only be expressing their views,” Sen Karuna said.²³

²³ <https://www.phnompenhpost.com/national-politics/support-cnrp-return-online-will-lead-arrest>

On 3 October 2019, the Phnom Penh Municipal Court issued arrest warrants for 8 senior figures of the former opposition party, charging that they were attempting to conduct a coup against the government. This occurred even though there was no evidence of armed organizing by the members of the CNRP or of any links to factions within the military. The arrest order stated: “Phnom Penh Municipal Court would like to inform the public that on October 2, an investigating judge issued warrants to arrest the nine accused: Sam Rainsy, Eng Chhay Eang, Mu Sochua, Ou Chanrith, Ho Vann, Long Ry, Men Sothavrin, Tioulong Saumura and Nuth Romduol. “The nine accused were charged with attack...in a criminal case according to Article 27 and Article 451 of Criminal Code over a plot to stage a coup to topple the government.”²⁴

On 4 October 2019, the day after the Phnom Penh Municipal Court issued another set of arrests warrants for former leaders of the CNRP, alleging a revolutionary plot to topple the government, the spokesman for the Ministry of Justice announced that opposition supporters should come forward and admit their guilt if they hoped to receive a pardon for their misdeeds. Justice Ministry spokesman Kim Santepheap asserted that they would only be forgiven if they voluntarily reported their guilt prior to being accused by the state. He stipulated: “To be pardoned from the charge of conspiracy, the individual must confess prior to the accusation. Step back from the planned plot and report yourself to the police, so you will be pardoned. Do not wait until you are charged.”²⁵ In the week prior, Minister of Interior Sar Kheng said the confession was the only way CNRP supporters could avoid imprisonment. He asserted: “There is no other choice...as you know many of them have confessed and sought clemency. Sam Rainsy’s arrival aims to create war. We are going to celebrate Independence Day and Water Festival, but he plans to come and cause insecurity.”²⁶

On 18 October 2019, the Phnom Penh Municipal Court sentenced Mr. Sam Rainsy and two other ‘accomplices’ (Ho Vann, an ex-CNRP lawmaker, and Kak Komphear, a former party member) to one year and eight-months imprisonment for instigating incitement and insult. On the same day, the court sentenced Kong Mas and Voeun Kemlun to one year and six-months imprisonment for the crime of

²⁴ <https://www.khmertimeskh.com/50647859/warrants-issued-for-planned-coup>

²⁵ <https://www.khmertimeskh.com/50648196/repent-to-be-pardoned>

²⁶ <https://www.khmertimeskh.com/653443/forces-ready-to-apprehend-rainsy-interior-ministry/>

incitement and insulting Prime Minister Hun Sen. Mas had fled to Thailand after in 2017, but his request for refugee status from the UN High Commissioner for Refugees was denied and he was deported back to Cambodia, and subsequently arrested in January 2019. (see above). The court yesterday also issued arrest warrants for Mr Rainsy, Ho Vann, Kak Komphear, and Kemloun who had all fled abroad.²⁷

By the end of the first week of October, more than 20 people had been arrested and/or charged with attempting to overthrow the state on the basis of their support for the former opposition party. The rate of arrests shot up after 20 September, when the Ministry of Justice declared Sam Rainsy's return to be a 'coup attempt'. On 7 September 2019, five individuals were arrested on the basis of alleged plotting, although police and court spokespersons gave no indication to media of any evidence to support the charges. Two of those arrested were former Prek Pra commune chief Khen Sokheang and Tit Sophat, an ex-Phsar Depot II commune council member. On that same day, Hun Sen publicly asserted: "If you just post on Facebook [encouraging] participation in this campaign, you will be arrested. It is not freedom of expression, it is participation in plotting to topple the government using armed force." Sam Rainsy had indicated that fair pay was available for those members of the military that defect from the ruling party.

Despite months of threatening supporters of the former opposition party as well as many cases of arrest warrants publicly issued and arrests made, former CNRP senior official Meach Sovannara also indicated that the government still had a duty to warn the public against supporting Rainsy through warning them prior to arresting them. "The government should call those who have been charged to the commune police station for education as the first step. The second step should find them and tell them that they face jail if they continue." He added: "We should not use force to arrest [people] without first having educated them because doing so lacks virtue. Of course, we must respect the rule of law, but we must also have virtue."

Ministry spokesperson Chin Malin said more public education was not necessary, as supporters of the former opposition party were aware of their actions and motivated by the goal of gaining refugee status in other countries. He claimed: "It is not because they don't understand, they want to do it because they have the impression they will get some position or refugee status abroad. They want to

²⁷ <https://www.khmertimeskh.com/50652586/sam-rainsy-and-accomplices-convicted>

follow orders from an illegally organized group and challenge the legitimate authorities, but this will lead them on the wrong path and the risk of being charged and arrested.”²⁸

On 14 October 2019, Minister of Defense, General Tea Banh, ordered the military to take action to prevent a coup that was being planned by the former opposition party leader. He made the pronouncement to an audience of the military parade marking the 70th anniversary of Brigade 70, with RCAF Commander Hun Manet and National Military Police Commander Sao Sokha in attendance. He stressed that Sam Rainsy was not returning to Cambodia to save the kingdom, but rather to overthrow the government. The Minister asserted: “We have already decided that they crossed the red line. The attempt is being led by Sam Rainsy and his people. We must enforce the law on those people,” he said. “We have no choice but to prevent the coup and crackdown on activities that aim to cause chaos and [compromise] security and peace that we fought for.”²⁹

On 22 October 2019, the MOI announced that security forces were deployed and ready to arrest Sam Rainsy upon his return to Cambodia. He categorized the ‘nine fingers’ campaign to restore democracy as an attempt to carry out a coup. He indicated that security forces were monitoring border entry points in Preah Vihear, Oddar Meanchey, Pailin, Banteay Meanchey, and Battambang. He also pointed out that they were coordinating with the government of neighboring countries to ensure Rainsy was arrested and conceded that 50 people had already been arrested as part of the coup conspiracy.³⁰ On 11 November 2019, five men designated as former bodyguards of Sam Rainsy were arrested in the border area of Poipet, after being accused of unspecified illegal activities. Banteay Meanchey provincial police chief Major General Ath Khem said that the five men were: Sim Kimleang, Chhoun Sareth, Sim Vuthy, Ros Bunthan, and Bo Sokeoun.³¹

Between mid-September and the end of October 2019, 230 people had been charged with ‘plotting’. Of those, 45 had been placed under arrest, 55 were being sought following the issuing of warrants of arrest, and 143 had confessed under pressure or duress from the threat of imprisonment by the authorities.³² Despite frequent invocations to ‘confess’ crimes when individuals had only exercised their

²⁸ <https://www.phnompenhpost.com/national-politics/more-charges-rainsy-allies-warned-against-backing-plot>

²⁹ <https://www.khmertimeskh.com/50650906/defence-minister-orders-rcaf-to-stop-sam-rainsy>

³⁰ <https://www.khmertimeskh.com/653443/forces-ready-to-apprehend-rainsy-interior-ministry/>

³¹ <https://www.khmertimeskh.com/50658724/five-arrested-over-rainsys-planned-return>

³² <https://www.phnompenhpost.com/national-politics/rainsy-plot-suspects-told-join-143-and-confess>

fundamental political rights and had not engaged in any criminal activity, confessions were not a means to elude politically motivated prosecutions. As the Ministry of Justice spokesman Chin Malin made clear, confessions increase the possibility of bail (under article 454 of the Criminal Code), but prosecutions could still follow because bail does not mean that charges were dropped.

The conclusion that can be drawn from this is that all these cases intended to repress the opposition members who support Mr. Sam Rainsy's return while the government has mobilized and used all state institutions including the armed forces, the courts, and the authorities through arbitrary actions such as arrests, detentions, court's subpoena, the force of confession, and other forms of intimidation.

After Sam Rainsy not able to return to Cambodia, On 14 November 2019, despite frequent assertions by the RGC that judicial independence is maintained in Cambodia, PM Hun Sen instructed the courts to release supporters of the former opposition party that had been detained in a sweeping police operation which criminalized them as coup plotter and revolutionaries. Disregarding the fact that the burden of proof is on the state, no mention of the failure to provide grounds for the detentions occurred. Instead, the PM took the opportunity, just days after the EU indicated that the government's respect for human rights was not sufficient to maintain EBA status, to present himself as the magnanimous benefactor of the people.

The spectacle of forgiveness was in sharp contrast to the severity of the crimes they were accused of and the urgency with which the government incarcerated them. Earlier in the same week, Hun Sen had publicly asserted that the government could not instruct the court to release or cease prosecution of Kem Sokha because of the independence of the judiciary. Just days prior to the announcement that opposition supporters would be freed from detention, Kem Sokha was released on bail.

Despite ordering arrests for several months, Hun Sen declared: "There are over 70 people, please hurry up work on this case so that these brothers can be released on bail." The PM claimed that he also ordered the Ministry of Justice to cancel warrants of arrest for opposition activists who were in hiding in Cambodia

and Thailand.³³ He declared: “The ones who don’t have court warrants and just feel scared, please come back. Nobody will touch you.” He also asserted that those who had been criminalized, harassed and intimidated by the RGC without justification could seek his support through Facebook.

As of 16 November, 74 people had been released. They included opposition supporters, as well as arrests of persons not connected to the former opposition party such as Suong Neak Poan who had been arrested in connection with assembling to memorialize the killing of political analyst Kem Ley (see below). Hun Sen called for their release, not on the basis of their innocence, but on the grounds that they had been duped by Sam Rainsy. He characterized his decision to release them as an act of compassion and refuted suggestions that he was responding to external pressures.

Justice Ministry spokesperson, Chin Malin, informed media that the government came to the awareness that the accused had been tricked into aiding in the attempt to overthrow the government, and as a result the decision was taken to grant them bail. He also made clear, that despite their release, prosecutions against them would proceed and asserted: “For charges to be dropped or not, it relies on the courts. It relies on further investigation procedures.”

Mom Sambo, a CNRP supporter in Kampot, was put in jail on October 14 and held for a month. She noted that after the release the accused still felt threatened and intimidated: “We’re under monitoring from the court, we can’t leave the country, and the biggest problem is we’re not allowed to have any gathering.” Notably, she pointed out that in prison, despite the bad conditions of the facility, she and the other political prisoners were treated well. She claimed: “They like me and respect me and the other political prisoners. All of them, the prisoners and guards, they respect me as they know I did not commit anything wrong.”

The release of the prisoners occurred in the same week that the leader of the former opposition party Kem Sokha was released from detention, and just days after the EU submitted the report of its findings to the RGC regarding the potential loss of EBA trade status. Astrid Noren-Nilsson, a political scientist with Lund University, who specializes in Cambodia and is based at Sweden's Lund

³³ <https://www.aljazeera.com/news/2019/11/hun-sen-orders-release-70-cambodia-opposition-activists-191114054116701.html>

University, said the change in the policy regarding the incarceration of opposition supporters was a reflection of the EU's EBA report. She stated: "The timing of the order, coming merely two days after the EU report presenting the preliminary findings of the EBA investigation was sent to the Cambodian government, suggests that the releases may be in response to the findings and recommendations of that report." Opposition vice-president Mu Sochua said that it was certain the slightly improved respect for rights as a result of the EBA report. She asserted: "In the long run, it's not going to solve the fundamental problem of politics in Cambodia or the situation of democracy." She pointed out that Hun Sen was never going to allow a fair election under his rule.³⁴

PM made a public pronouncement clarifying that the prisoner release did not mean that members of the former CNRP would be allowed to form a political party or that their commune seat positions (taken by the ruling party with the 2017 ban on the opposition) would be restored.³⁵ It is usual practice in Cambodia for politically motivated cases to proceed months or even years after charges were issued. As such, release on bail should not be an indication of any significant change in the severe lack of toleration for political pluralism by the ruling party.

As of the first week of December 2019, 13 members of the former opposition party had been assaulted from the time Sam Rainsy's August announcement that he planned to return in November. The most striking aspect of this violence has been the total impunity by the perpetrators which provides a form of express consent to discriminate with extreme prejudice against those who dissent from the ruling party.

Tep Chansokheya, belonged to the CNRP and served as the councilor of O'Russey III commune in Phnom Penh's 7 Makara district. She was a 51-year old widow and mother of two. In the attack, two men suddenly began beating her and rendered her unconscious, and then proceeded to flee on motorbike without being pursued or apprehended by the police. The attackers were dressed in all black (characteristic of security guards that have been used by the RGC to attack demonstrators, as well as of bodyguards that work for ranking

³⁴ <https://www.aljazeera.com/news/2019/11/cambodia-starts-release-opposition-activists-191116062400263.html>

³⁵ <https://www.voacambodia.com/a/hun-sen-rules-out-return-of-opposition-party-s-commune-seats-/5171912.html>

officials). They also work a black mask to conceal their identity. Immediately after the attack she filed a complaint with the commune police, but their response lacked any sense of urgency and she was not even interviewed until later that day. She requested that police review footage from a security camera positioned on her neighbor's house, but the police refused the request. Chansokheya asserted: "I think this stems from a political issue, not a personal conflict, because I ... never have had an argument with anyone. [Prime Minister Hun Sen's government] robbed me of my elected position and they must find justice for me." According to the commune police chief for O'Russey III", Nhem Amrin, the police did not delay in conducting an investigation. However, he also informed the media that they had been unable to develop any leads in the case. He claimed police had been reviewing footage from security cameras in the area, and referred reporters to 7 Makara district deputy police chief Kreth Sekherin. However, Sekherin would not comment to the media. National Police Commissariat spokesman Chhay Kimkhoeun claimed: "When something happens, people always say that it is a political issue, but I don't agree with that accusation, because we have yet to find the truth."

Following Sam Rainsy's announcement to return on 9 November, in a period of a few weeks at least 12 supporters of the former opposition party were targeted. Without effective police investigations and arrests, the attacks appear to be part of a concerted campaign to foment fear and insecurity among the public and, through intimidation, dissuade CNRP supporters from exercising their fundamental freedoms.

On 25 September 2019, CNRP activist Sin Bona was violently assaulted in broad daylight by two assailants armed with a metal pipe and firearm. The attack left him with a severely broken arm that was unable to heal completely. He pointed out how the police had failed to carry out an investigation into his case, noting that even though he had filed a complaint: "The authorities never identified me as a plaintiff." He averred: "I think that if the government wants to arrest those responsible, it isn't difficult for them because they have enough evidence." Family members verified that he had no ongoing personal disputes with anyone, which made it clear the motives for the assault were political. Only days earlier, Pouk Chenda, the chief of Sam Rainsy's bodyguard detail, was assaulted by two perpetrators armed with iron bars and inflicting serious head injuries. Pouk Chenda, was assaulted by two unknown men who beat him with an iron bar as

he returned home from a market near the CNRP's headquarters in Phnom Penh, leaving him with a serious head wound that required stitches.

Following a dozen different attacks, it became clear that the *modus operandi* of the perpetrators had been to work in teams dressed in black, taking the victim by surprise by attacking from the rear, and fleeing the scene of the crime rapidly on a motorbike. As of December 2019, none of the perpetrators had been brought to justice. Moreover, no indication of leads or evidence gathered by the police had been given. National Police spokesman General Chhay Kim Khoun declined to discuss police investigations, saying: "I can't say anything about the investigation results while they are being processed."³⁶

In the conclusion of this part, the repression cases over the opposition members are a clear violation of the political rights. The World Organization Against Torture affirmed:

"The recent surge in legal actions taken against former CNRP members illustrates the serious and systematic misuse of laws to target, intimidate, and harass individuals for merely exercising their fundamental freedoms. Other Cambodian citizens raising dissenting voices are similarly being silenced and deprived of their right to free expression, increasingly so on social media and online platforms. They are threatened, intimidated, or face criminal charges for any dissent expressed..."³⁷

On July 8, 2019, the International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT) issued:

"Over the past months, human rights defenders in Cambodia have been subject to constant acts of harassment from the Government that has sought to link them to a fictitious "colour revolution", allegedly led by the former political opposition. Civil society space has further closed since the Government initiated its political crackdownCurrently operating in a repressive environment that is unprecedented in Cambodia's recent history. The main obstacles for the exercise of defenders' work include the harassment of dissenting voices, including NGOs and media outlets and journalists, and increasingly oppressive security presence and restrictive legal amendments."³⁸

The group ASEAN Parliamentarians for Human Rights (APHR) pointed out that the RGC was conducting serious violations of human rights and democratic

³⁶ <https://www.rfa.org/english/news/cambodia/justice-12032019163922.html>

³⁷ <https://www.omct.org/statements/cambodia/2019/06/d25369/>

³⁸ <https://www.omct.org/human-rights-defenders/statements/cambodia/2019/07/d25430/>

norms. Charles Santiago, Malaysian Member of Parliament and APHR Chair, asserted: “The timing of these most recent arrests is preposterous. They are a clear attempt to threaten and silence opposition members and any activists showing support for the return of CNRP leaders.”.

CHAPTER 1 – PART 2

Persecution of the Memorialization of Kem Ley

On 9 July 2019, Kong Raiya and three family members were arrested and charged with incitement to commit a felony. Their only offense was selling t-shirts with the image of murdered political analyst and commentator Kem Ley (see the section of this report on the Judiciary).³⁹ He also made a social media post urging people to participate in the commemoration of the anniversary of Kem Ley’s death. The Phnom Penh City Hall had banned any public demonstrations of grieving or commemoration. Raiya was taken before the court for questioning two times and then remitted to pre-trial detention. The conviction for the crime carries a sentence of two-years imprisonment. This was the second time that Kong Raiya had been charged with the crime, as he was convicted of the crime and sentenced to two years in 2016. In 2015 he made a social media post indicating a need for the society to pursue peaceful change through color revolution. Despite constitutional protections on free speech, the RGC punishes even minimal expressed in public speech or online speech. In 2019, the state continued to use the criminal charge of incitement for critics of the government.

Kong Raiya was arrested on July 9 and held, charged on July 11 and remitted to pre-trial detention, and not released on bail until Nov 29.⁴⁰ One condition of his bail was that he not express any political opinion on social media.⁴¹ As a result, without committing any crime or even a moral offense, he was incarcerated for 143 days. His bail requested was denied by the Appeals Court on 13 August, and rejected by the Supreme Court which heard the appeal on Oct 28 and upheld the decision of the lower court on 4 November 2019. Supreme Court presiding judge

³⁹ One of Kem Ley quotes printed on the t-shirt read: “If you do nothing, you will be victimized. It is just not your turn yet.”

⁴⁰ <https://www.khmertimeskh.com/50665693/jailed-activist-released-on-bail>

⁴¹ <https://www.khmertimeskh.com/50665978/municipal-court-frees-kong-raiya-on-bail>

Khim Ponn admitted that the investigation into the case had finished and that the investigating judge had scheduled a hearing for the trial, but despite that bail was refused and Ponn claimed that Raiya had given no reason valid reason to warrant release on bail.⁴² In his bail hearing before the Supreme Court, Raiya had pointed out that he had dependents who were in need of his support and provision of income, including an elderly mother that was ill, and a wife and children. However, incredibly, the court found the fact that the investigation had finished as the grounds to deny bail.⁴³

At the time of the arrest, Lieutenant General Sar Thet, chief of municipal police, said: “Mr. Raiya took the lead. His act could have caused social insecurity. We must take legal action against him. He was sentenced before, but he still committed the crime. We can’t forgive him.”⁴⁴

On 10 July 2019, three persons accused of criminal action were arrested for the peaceful act of attempting to put flowers at the murder site of Kem Ley. Soeng Neak Poan, vice president of the Khmer Student Intelligent League Association, was charged by the Phnom Penh Municipal court for alleged incitement to commit a crime after he distributed leaflets to people containing the sentence “stop extrajudicial killings”.⁴⁵ Mr. Neak Poan was arrested along with two environmental activists, Chum Hout and Chum Hour. The two were released after signing a statement that pledged they would not repeat the action. Neak Poan was released on bail but still faces criminal prosecution. The restrictions also impacted the right to religion as mourners sought to practice Buddhist beliefs. Just prior to his arrest, Chum Huot denounced the injustice: “I was not even saying a word and only wanted to pay tribute to Kem Ley’s soul, and still we are prohibited. It’s a grave rights abuse.”⁴⁶

Seven persons in total were arrested and five were released after being made to sign a statement that they would not attempt further assembly or expression on

⁴² <https://www.khmertimeskh.com/50657105/supreme-court-denies-bail-for-kong-raiya>

⁴³ <https://www.khmertimeskh.com/50655063/supreme-court-hears-kong-raiyas-bail-appeal>. Notably, the original decision to deny bail by the Phnom Penh Municipal court was based on the baseless allegation that he would threaten witnesses. See: <https://www.khmertimeskh.com/50655063/supreme-court-hears-kong-raiyas-bail-appeal>

⁴⁴ <https://www.khmertimeskh.com/50622597/activist-held-over-kem-ley-t-shirts>

⁴⁵ <https://www.khmertimeskh.com/50623467/ksila-vice-president-charged-with-incitement-over-kem-leys-leaflets>

⁴⁶ <https://www.voacambodia.com/a/seven-arrested-for-commemorating-kem-ley-assassination/4994656.html>

the matter.⁴⁷ This type of restriction is common because it draws less criticism than detention, but effectively limits the rights to expression of those concerned. Primarily, to avoid jail the arrested individuals have to admit to wrongdoing and, under pressure from the threat of detention and prosecution, concede to a loss of rights. At the same time that it allows the government to avoid scrutiny from further detentions, it is able to propagandize its magnanimity.

In total, hundreds of persons were dispersed using police pressure, and seven persons were arrested for peaceful actions of expression when attempting to join a gathering for slain activist Kem Ley. This occurred in the context of the forced dispersal of mourners. The police prohibited peaceful gathering because it threatened social order. The police officer on the scene, Leng Kimlong, stated: “The action was taken to ensure social order and security for the owners of the gas station and the mart. Police must take action to handle the situation.” Government spokesman Sok Eysan put a spin on the events claiming that the mourners were trying to politicize the murder and it was the state’s prohibition on assembly and expression which respected the memory of Kem Ley.⁴⁸

Cambodian Confederation of Unions president Rong Chhun informed media that the use of police force to prohibit the gathering was unwarranted and that it punished people for seeking to honor the work and contributions of Kem Ley. He said: “We notified the authorities about the marking, but they banned us from doing it. I came here alone as a citizen, but they did not allow me to enter the site. This is very disappointing.”⁴⁹ Tim Malay, president of the Cambodian Youth Network, said: “They [authorities] don't want the public to see Dr. Kem Ley's image. Even flowers and small garlands [that we bring to put to the place of the killing], they confiscated everything because they don't want the public or youth to remember Kem Ley's heroism.”⁵⁰

The arrests in Phnom Penh, demonstrated a highly repressive atmosphere and a low tolerance for freedom of expression and assembly, were accompanied by restrictions on the freedom of assembly across Cambodia. Ceremonies were blocked, and mourners policed in Battambang, Banteay Meanchey, Kampong Thom, Prey Veng, and Tboung Khmum provinces. Moreover, in Battambang

⁴⁷ <https://www.voacambodia.com/a/two-charged-with-incitement-for-commemorating-slain-political-commentator/4996396.html>

⁴⁸ <https://www.khmertimeskh.com/50622093/stop-politicising-kem-leys-murder-cpp>

police were deployed to the homes of supporters of the former CNRP to prevent them from holding events, and wearing Kem Ley shirts. One motorist who attempted to attend a rally was fined 175 USD for not wearing a helmet. Events such as this made it clear that the law is arbitrarily enforced and used in a discretionary manner by security forces persecute supporters of the former opposition party and those seeking justice for Kem Ley. Suon Seab, an activist based in Banteay Meanchey informed media that ceremonies in some cases had to be held in secret because of fear of the police. At a ceremony in Kamong Cham, police took photos of mourners, which intimidated them and potentially put their security at risk. Despite all the evidence and the explicit formal bans on ceremonies in the capital, National Police spokesman Chhay Kim Khoeun rejected reports that police obstructed assemblies calling them baseless accusations. At the same time as that denial, he confirmed that Suong Neakpaon and Kong Raiya had been arrested for incitement because “they distributed leaflets”. He claimed that ceremonies were a threat to public order and the police presence was in the service of those gathered for ceremonies.⁵¹ One of the hallmarks of the authoritarianism in Cambodia is the manner in which government representatives restrict rights and then issue obviously false denials of such restrictions, as this demonstrates the extent of the impunity afforded to them. In conclusion of this part, UN human rights, human rights organizations, and trade unions condemned the cases as a severe violation of human rights. The multiple UN Human Rights Experts⁵² issued a joint statement that asserted: “We are concerned about the arrest, detention and criminal charges brought against Kong Raiya and Soung Neakpaon. According to information we have received, Kong Raiya and Soung Neakpaon were engaged in the legitimate exercise of their freedom of speech, and Soung Neakpaon was about to participate in a peaceful commemoration ceremony. We are concerned that, yet again, the authorities are targeting free speech and peaceful assemblies.”⁵³ The UN rights experts asserted that Cambodia should remedy a downward trend in the enjoyment of rights and

⁵¹ <https://www.rfa.org/english/news/cambodia/anniversary-07112019125300.html>

⁵² Ms Rhona Smith, Special Rapporteur on the situation of human rights in Cambodia; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders.

⁵³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24850&LangID=E>; <https://www.khmertimeskh.com/50627866/un-experts-call-for-release-of-two-activists-arrested-over-kem-ley-anniversary>; <https://www.khmertimeskh.com/50627866/un-experts-call-for-release-of-two-activists-arrested-over-kem-ley-anniversary>

respect for fundamental freedoms. They pointed out that the policies of the Cambodian government were contrary to sustainable development and lasting peace.⁵⁴ Two international non-governmental rights organizations released statements against the arrests, Amnesty International and ASEAN Parliamentarians for Human Rights (APHR), which condemned the RGC persecution of peaceful expression and assembly. The APHR statement pointed out fundamental problems with the bail hearing and the Amnesty International statement noted that detention conditions fell far below international standards.⁵⁵

CHAPTER 1 – PART 3

LANGO and CSO Freedom

In this section, developments pertaining to the relationship between the state and civil society are discussed. That relationship reached an all-time low the 2017 crackdown on the opposition party, media, and civil society groups. It became the standard practice that CSOs were accused of revolutionary intentions and organizing. CSO staff, supporters and beneficiaries were subjected to extensive intimidation and, at times, harassment and prosecution. Since the EU's announcement of potential EBA withdrawal, measures have been taken by the RGC to improve the relationship with civil society, but challenges remain.

In 2019, the RGC opened up a consultation process related to the Law on Associations and Nongovernmental Organizations (passed in 2015), involving dialogue with NGOs. A major weakness of the law had been that provisions which require activity and financial reports from organizations can limit the ability of

⁵⁴ <https://www.rfa.org/english/news/cambodia/trial-07262019170337.html>

⁵⁵ <https://www.amnesty.org/download/Documents/ASA2312912019ENGLISH.pdf>. On July 11, Kong Raiya began a hunger strike, which added to the negative impact on his health resulting from poor detention conditions. He requested permission to read, exercise and meditate. His wife reported significantly declining health including chest pains. Nuth Savana, a spokesperson for the Interior Ministry's Prison Directorate, told media that he was not aware of the case, and asserted that on the one hand, the matter would be investigated, and on the other hand, the poor detention conditions were to be expected. He stated: "[We] know that—it is normal that our prisons are overcrowded." See: <https://www.rfa.org/english/news/cambodia/strike-07152019165359.html>

grassroots and community-based organizations to develop.⁵⁶ Moreover, the law allows authorities to interpret criticism as partisanism. CSO working on human rights and democratization have faced more severe restrictions than those working on development, and it remains to be seen both whether new policies of tolerance and inclusion by the RGC are implementing in practice and whether they are implemented evenly for different types of NGOs. In October 2018, the Minister of Interior announced that 5,328 organizations and NGOs had registered with the ministry. As of the third meeting between CSOs and the MOI, which took place on 29 August 2019, the Minister of Interior announced there were a total of 5,483 associations and NGOs which had registered with the ministry, 2,203 of which were associations and 3,280 which were NGOs. He noted that 81 associations and NGOs were removed from the ministry's registry at the request of the organizations.⁵⁷

In January 2018, the RGC formed a 33 member inter-ministerial committee to oversee the application of the LANGO law, in accordance with a directive from 5 December 2017. An Interior Ministry official, Pol Lim, was charged with heading the committee along with Foreign Ministry officials Ouch Borith and Keo Rith. Lim indicated that all aspects of foreign NGOs would be investigated by the committee. Following the 2017 crackdown on media and civil society, and the dissolution and prosecution of the major opposition party CNRP, many national NGOs had been accused of tax violations.⁵⁸

The process of improved collaboration and consultation with NGOs, as well as proclamations of commitment to respect and protect NGO activities, began in 2018. In June of 2018, approximately 170 NGOs participated in a meeting with the MOI. At that time, NGOs requested the government form a joint working group including relevant ministries and CSOs to address restrictions on NGO activities and limitations of the LANGO law. The Interior Minister announced in late October 2018 that the Ministry would meet biannually with NGOs to address their concerns and collect recommendations for national development. Sar Kheng indicated the forum would enable NGOs to present information on challenges or restrictions that they encounter in their activities. Ministry spokesman Phat Sophanith said: "Groups can report to the ministry what they have achieved so far and what the

⁵⁶ In August 2019, the Ministry of Economy and Finance announced an extension of the deadline for tax registration for NGOs to December 31, after it was originally set at March 31. See:

<https://www.phnompenhpost.com/national/ngo-tax-registration-deadline-extended>

⁵⁷ <https://www.phnompenhpost.com/national/ministry-urged-allow-csos-work-without-restriction>

⁵⁸ <https://www.phnompenhpost.com/national/new-lango-committee-formed>

ministry can do to help them. Once we meet face to face often, we can understand each other and will be able to tackle problems easily.” He also acknowledged: “The Interior Minister knows that their presence is important and their input is also essential for the country’s development.”

The executive director of the Cooperation Committee for Cambodia, said: “Most often, there are erroneous links drawn between civil society organisations and political parties and opposition movements such as a colour revolution.”⁵⁹

The second meeting between the MOI and civil society groups was held in January 2019. Cambodian Independent Teachers Association (CITA) president Ouk Chhayavy indicated her plan to attend the meeting but asserted: “It is very good that the Ministry of Interior meets with civil society groups, but it would be less so if during the meeting the ministry dominates the discussion without any debate on certain issues we raise. In past meetings with them, the ministry merely talked about various issues without any real solutions to help improve situations in the country.” The Center for Alliance of Labor and Human Rights (Central) executive director Moeun Tola called attention to the continuing problem of restrictions on association and assembly at the grassroots level. He noted: “[The challenge is] when we hold public gatherings like when we celebrated Human Right Day on December 10, we were not allowed to march and there were [constant monitoring by] police. We didn’t have full freedom.” The Alliance for Conflict Transformation (ACT) executive director Srey Sotheavy asserted that the removal on the requirement that permission be obtained to hold events or conduct activities had been a positive policy change, but that it has not been implemented in practice. She stated: “In real practice, [NGOs] were not given freedom as promised. Higher-ranking officials need to instruct their officials to cooperate with civil society organizations.”⁶⁰

On 16 January 2019, in the meeting with the MOI, more than 300 CSOs collaborated to issue a joint request that the Minister respect and protect 12 points to guarantee civil society would not be restricted or persecuted. Part of their recommendations centered on removing restrictions on the inclusion of CSOs from the Ministry’s forum, and changes to the LANGO law.

⁵⁹ <https://www.khmertimeskh.com/544946/ministry-to-meet-with-ngos-biannually-2/>

⁶⁰ <https://www.phnompenhpost.com/national/sar-kheng-meet-ngos-second-time-next-week>

Prior to the 2018 elections, the Council of Ministers issued a ‘white book’ listing 300 NGOs it claimed were involved in the effort to foment a color revolution in Cambodia. The list included organizations such as Comfrel, Nicfec, Adhoc, and Licadho. However, in January 2019, Minister of Interior Sar Kheng declared that the government did not consider CSOs to be opposition groups seeking such a revolution. He claimed that he entirely opposed the labelling of NGOs as revolutionary actors. Despite the existence of the list, the Minister claimed that any organization wishing to complain should submit an official letter to the Ministry and provide evidence to support their claim. His support for NGOs was tempered by statements that made it clear that certain individuals may be involved in such activities and that if an organization was involved, they would be prosecuted by the law. He indicated: “The government does not accuse [in this way]. It might be that an individual NGO [implicated] themselves, so it’s their matter. But if their actions were contrary to the law and we took action, they would say we had labelled them, and that is not right...Nobody has accused anyone, but if [an NGO] was involved [in such activity] then they must take responsibility before the law.”

CSOs pointed out the existence of government created blacklist, which was used to label and police NGO activities, called the government ‘white book’. Nicfec executive director Sam Kuntheamy, said that since being listed in the white book, the activities of his organization had been restricted and blocked, and he indicated his primary concern was eliminating the blacklist. He asserted: “Since Nicfec was named in the white book, I found it hard to do its work, and my team in the provinces resigned after seeing [us included in the document]. The claim spread to the sub-national level, so they resigned because they were concerned for their [safety]. We work professionally, but were still named on the blacklist.”

The Interior Minister Sar Kheng, claimed that no blacklist existed, however, other NGOs repeated the assertions of its existence. Soeung Saroeun, the executive director of the Cooperation Committee for Cambodia, which represents more than 200 civil society organizations, said: “The [white book] was issued, and now it’s time to discuss whether we continue using it as a mechanism to label each other, or should it be removed from how we have worked in the past and we join together to find ways to develop the country.”⁶¹

On 28 January 2019, Ministry of Interior General Department of Administration director-general Prak Sam Oeun announced that the ministry would conduct a

⁶¹ <https://www.phnompenhpost.com/national-politics/sar-kheng-denies-ngo-labelling>

census of CSOs in Cambodia, in collaboration with the Cooperation Committee of Cambodia. The project was a result of having over 5,000 CSOs registered with the MOI, but only approximately 2,000 had submitted annual reports as required by the LANGO law. CCC executive director Soeung Saroeun said the census would improve coordination with the MOI by determining which CSOs were actually operational and conducting activities. Kin Phea, the director-general of the pro-government institution of the International Relations Institute at the Royal Academy of Cambodia, explained that the census was necessary because some NGOs had conducted illegal activities seeking a revolution. He claimed the number of NGOs was proof of political freedom in Cambodia, but that some NGOs were engaged in activities that threatened public security and social stability. He asserted: “Some civil society organizations...they run like businesses. Some organizations and associations run a business for the interests of their leaders. Some are aided by foreign powers who use this mechanism to link their political agenda through organizations and associations and to grassroots citizens.”⁶²

However, the actual census, jointly conducted by the MOI and the CCC, was conducted from 10 October to 29 November.⁶³ The ministry spokesman General Khieu Sopheak stated that there had not been a census of CSOs since 1993. He indicated that since that time, some organizations had formed without registering, and some have ceased operations. He also claimed that the information collected in the census would not be used against organizations, and asserted that organizations had the right to express themselves in accordance with democratic standards. Nevertheless, Bunn Rachana, the director of women’s rights organization Klahaan, indicated that a census was not necessary as organizations had already registered with the MOI, in accordance with the LANGO law. In order to allay fears of possible repression and prosecution by the government, she asserted that the ministry should clearly stipulate the methodology of the census and the manner in which information collected would be used. She also noted that CSOs had not been informed about how to prepare data and documentation for the census.⁶⁴

On 29 January 2019, the inaugural Consultation Meeting with Foreign Nongovernmental Organizations was held. It was attended by 300 participants

⁶² <https://www.phnompenhpost.com/national/ministry-conduct-cso-census>

⁶³ Prior to conducting the census, the MOI reported that since 1993, 5,386 NGOs and associations had registered in Cambodia. However, of these, 3,251 were NGOs and 2,135 were associations. However, it also stipulated that only 2,000 of those institutions had carried out work in 2016 and 2017.

⁶⁴ <https://www.phnompenhpost.com/national/ministry-carry-out-ngo-census>

representing INGOs and communities. As of December 2018, there were 386 foreign NGOs with a memorandum of understanding with the RGC. Although the ostensible purpose of the meeting was to foster cooperation between the NGOs and the RGC, the ministry emphasized the goal of strengthening laws and enforcement of regulations. Deputy Prime Minister and Minister of Foreign Affairs and International Cooperation Prak Sokhonn, emphasized the need for foreign NGOs to refrain from criminal activities. He stated: “I urge all foreign NGOs to operate in accordance with the legal framework and in compliance with the regulatory requirements that are in force. Furthermore, please avoid at all costs activities which could be associated with or linked to money laundering, financing of terrorism and weapons of mass destruction as stipulated by the Asia Pacific Group on Money Laundering, so that you can avoid falling into its grey list and prevent any negative effect on the Cambodian financial system, investment flows and political sentiments.” Although conceding that the RGC recognized concerns of organizations related to limitations on activities by the LANGO law, he argued that a strong legal framework was necessary for long-term cooperation. He also asserted that the purpose of LANGO was to protect the right to association and the rights of the beneficiaries of NGO activities. He expressed the view that the law created cooperation between the government and civil society. Representatives of NGOs supported the practice of holding the consultation forum as a means to find solutions to challenges faced. However, their disposition made clear the limits on fundamental freedoms still at work, as NGO representatives were unwilling to disclose to media the problems raised in the discussion (Edith Van Wijngaarden, Humanity & Inclusion in Cambodia director), and took pains to emphasize that they were not involved in politics (Roberto Pavetto, a Don Bosco School and Organization representative).⁶⁵

On 14 March 2019, the Ministry of Interior issued a directive ordering provincial government administrations to schedule forums with civil society organizations. The Ministry indicated that the forums were a response to the claims of certain NGOs that their activities were being repressed at the local level. The MOI had issued a directive in October 2018 requiring provincial authorities to meet with NGOs biannually. to set dates to hold forums with civil society organisations (CSOs), as some CSOs have claimed that their work is being hindered by local authorities. Ministry of Interior secretary of state Bun Honn said the provincial government was tasked with ensuring the participation of all relevant government

⁶⁵ <https://www.phnompenhpost.com/national-politics/government-calls-ngos-avoid-activities-linked-crime>

offices, and that a record of the meeting content should be kept and given to the MOI, with details regarding proposals, recommendations, results, and ongoing issues. The Coalition of Cambodia Farmers Community (CCFC) general-secretary Theng Savoeun said on Thursday that in the absence of conducting the meetings, sub-national administrations had continued to impose restrictions on CSO activities. He noted that on 8 March 2019, the authorities in Memot district of Tbong Khum province had blocked a local event of celebration for International Women's Day. Also, he pointed out that on 13 March 2019, authorities from the Oral district in Kampon Speu province ordered locals to ask permission before holding a meeting of their community network.⁶⁶

Civil society forums at the provincial level were conducted with the theme 'Strengthening Cooperation Between Civil Society Organizations and the Royal Government', under the direction of the Civil Society Alliance Forum (CSAF). The meeting between CSOs and RGC officials for Kampon Chhnang province took place on 9 July 2019. After the meeting, the coordinator for Indigenous Rights Protection Organization, Tot Kimsroy, declared that the forum had not been effective in providing for positive cooperation between CSOs and the government. He claimed that not only was the requirement of providing a three-days advance notice for holding activities or events still in force but even after providing the notice, CSO activities were still blocked. As a result, he declared that the forum was not effective at supporting cooperation, but rather served as a mechanism for the officials to issue promises in response to civil society challenges and concerns. He noted that most of the concerns raised had to do with labor issues, such as the National Social Security Fund, employee leave, and the legal compliance of companies, especially Chinese owned businesses. Kampong Chhnang provincial deputy governor Sun Sovannarith said more than 140 requests were raised. He indicated that the provincial working group would finalize a report and provide it to the provincial governor. He also claimed that the authorities were not aware of any cases of NGO activities being blocked by authorities and that no organization made such a claim in the forum. However, he did indicate that complaints were issued regarding land grabbing from villagers by government authorities. The provincial coordinator for Adhoc, Sam Chankea, reported that the organization was not invited to the forum.⁶⁷

⁶⁶ <https://www.phnompenhpost.com/national/authorities-told-set-dates-cso-forums>

⁶⁷ <https://www.phnompenhpost.com/national/cso-official-dismayed-lack-cooperation-kampong-chhnang-forum>

About one week prior to the third meeting between the MOI and CSOs which took place at the end of August 2019, the Kratie provincial governor Va Thorn met with 152 civil society organizations, associations, and communities that have activities in the province and declared their need to follow the law, remain politically neutral and desist involvement in efforts to foment a color revolution. The forum was presided over by Kim Roth Viseth, the president of the board of directors of the Civil Society Alliance Forum and secretary of state at the Council of Ministers. Provincial governor Thorn stated that organizations presented problems and concerns concerning land-grabbing, illegal deforestation, and fisheries, and urged the provincial government to take action in those areas. However, Soeng Sen Karuna, the spokesman for human rights group Adhoc based in the province, said: “If [the forum] is held to accept participants’ requests and address their concerns, and if relevant authorities themselves comply with the Ministry of Interior’s guidance, there would not be any problems. But they [officials] failed to follow the guidance. We still see officials going around monitoring and disrupting CSOs’ activities. That is the main concern of the participants.” The provincial governor committed to addressing concerns related to land grabbing, and forestry and fishing crimes. However, his primary emphasis was on the duties of NGOs: “Associations, NGOs and local communities must strictly follow the law, maintain neutrality, ensure transparency, and avoid secretly planning a revolution.”⁶⁸

The third forum meeting between the Ministry of Interior and CSOs took place on 29 August 2019. 500 representatives from civil society organisations (CSO) attended the meeting and put emphasis on seeking the MOI’s support in adhering to democratic standards in terms of permitting CSOs to operate without restrictions from local authorities. The Minister of Interior Sar Kheng rebuked the claims of CSOs that their activities had been restricted. However, Adhoc presented a report detailing 71 instances of repression of activities or event by local level authorities. According to the minister, local-level authorities assisted CSOs and enforced rules which do not require notice given or permission obtained for CSOs to organize. He rejected the report by Adhoc, and claimed the registration of new CSOs with the Ministry was evidence that the government was not restricting them. The representative of the Coalition of Cambodian Farmers Community pointed out that local authorities were still not fully aware of the MOI directive and as result continued with non-compliance. The improvement in CSO’s freedom was setback by the lack of knowledge of the current law. The Adhoc representative said that

⁶⁸ <https://www.phnompenhpost.com/national/kratie-chief-urges-cso-responsibility>

clear and established guideline were needed for subnational level authorities to prevent contravening the law.⁶⁹

On 28 October 2019, the Ministry of Interior announced it would meet with representatives from civil society organizations to discuss proposed amendments to the Law on Association and Nongovernmental Organizations (LANGO). The ostensible purpose of the meeting was to provide NGOs with present reasons and evidence to support their requests for amendments to the law. NGOs had suggested 14 changes to the law, including reducing the difficulty of the registration process, reducing obstacles to fieldwork, ending restrictions on activities in support of human rights, and procedural and definitional changes to ensure a reduction in intimidation by authorities. Bun Honn, a secretary of state at the ministry, said that the Ministry would evaluate the proposals of NGOs to see if they were convincing, after which it would discuss changes with related stakeholders such as development partners to determine if they agree on the potential changes. NGOs were expected to provide documentation and evidence to support their claims. He claimed that the LANGO law had made it easier for CSOs to register Soeung Saroeun, executive director of the Cooperation Committee for Cambodia, said: “After the law was introduced, it led to restrictions and misunderstanding in partnership and cooperation.”⁷⁰ Adhoc spokesman Soeng Sen Karuna said that CSOs were requesting amendments to the law because existing provisions restricted freedom of association and the conduct of organizations’ activities. He pointed out how Adhoc had been subjected to surveillance even though it had registered and complied with the law and called for legally stipulated penalties for those who obstructed NGO activities. Nevertheless, ill will from certain sectors of the RGC toward NGOs was still evident. For example, Kin Phea, the director of the Royal Academy of Cambodia’s International Relations Institute, claimed that CSOs wanted to change the law so that they could do whatever they want.⁷¹

On 4 November 2019, the MOI met with CSO representatives. Bun Hun, from the Ministry of Interior, stated that there were no clear results because of disagreements among CSOs on the meaning of the different articles of the law. He asserted: “We want to know how they want the 17 articles to be revised. We want to know what difficulties the implementation of the law has caused them. They [NGOs] don’t even fully understand the essence of the articles that they want

⁶⁹ <https://www.phnompenhpost.com/national/ministry-urged-allow-csos-work-without-restriction>

⁷⁰ <https://www.khmertimeskh.com/50655528/ngo-reps-to-meet-with-interior-ministry-over-lango-amendments>

⁷¹ <https://www.phnompenhpost.com/national/govt-gather-feedback-lango>

to be revised. They haven't reached a consensus among themselves on how they want them amended. So we have asked them to hold further internal discussions to find common ground. Then they can resubmit their proposal before we refer it to the government for approval.”⁷²

On 28 November 2019, the Ministry of Interior announced that a second meeting to discuss LANGO amendments would be held on 3 December between the RGC working group and representatives of local and international NGOs to discuss the contentious provisions in the LANGO law. Korn Savang, deputy of the executive director Comfrel, said that COMFREL would attend and submit for considerations its concerns and reasoning in relation to 12 of the 39 articles of the law, with emphasis on the removal of articles 24 and 25 of the law. Article 24 requires NGOs to maintain neutrality in relation to political parties, and article 25 establishes that national NGOs must submit financial records annually to the MOI no later than February of the next year. In practice, there have been two standards, on the one hand, NGOs are pro-ruling party while criticising the opposition, the government interpreted the article that they are neutral. On the other hand, NGOs are pro-opposition while criticizing the government interpreted this article that these NGOs are not neutral.

On 3 December 2019, the Ministry of Interior held a second meeting with civil society organizations concerning the potential amendment of the LANGO law. 17 amendments had been proposed by CSOs. One recommendation for reform centered on Article 8, which stipulates the MOI will not register any organization which is deemed to “jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society”. According to Bun Hun, secretary of state at the MOI, only two articles of the law were discussed in the meeting. It became evident that the RGC and CSOs could not agree on the interpretation of Article 8. Hun stated: “We reviewed Article 8 and Article 9 of [the Lango], the first issue addressed concerned awareness of the content of the law and there were conflicting interpretations of the second issue [Article 8] with organizations that have reviewed and proposed the amendment.” Yong Kim Eng, the president of the People Centre for Development and Peace, stated: “If these Articles are included, they [the ministry] will interpret these articles at will, we have already seen different interpretations of laws in the past. If we [Cambodia] are committed to respecting basic human rights as stipulated in our

⁷² <https://www.phnompenhpost.com/national/ministry-and-ngos-discuss-changes-lango-articles>

Constitution, I think these Articles should be left out [of the Lango].” However, Hun asserted the law’s legality could be proven on a national and international basis. He claimed: “The term ‘public order’ includes security, calmness, cleanliness, and conservation. We said [at the meeting] that if these Articles were removed, it would render the ministry unable to deny registration of groups that aim to threaten public order.”⁷³

At the 4th Government-CSOs Partnership Forum, on 3 February 2020, Minister of Interior Sar Kheng admonished CSOs to collaborate with the government and provide accurate information to the public, rather than make false claims about restrictions on their activities because of ill intentions toward the state.⁷⁴ This followed the release of a report by Adhoc detailing hundreds of cases of repression of NGO activities. The MOI announced that in the second half of 2019, it had received only two complaints about restrictions or intimidation of NGOs. A representative of Adhoc indicated that it was likely that local-level officials are not forthright with the Ministry regarding restrictions on NGOs out of fear of repercussions. The Minister of Interior accused NGOs of lying about restrictions and asserted: “I ask CSOs not to hide information. They claim that there are hundreds of cases of oppression and intimidation against CSOs, and I ask: Where is the proof? Where are the details? “They don’t dare to share specific information. Why? Because they are exaggerating the facts.” In response, Human rights organizations in Cambodia said the report was accurate with detailed information, and nothing was concealed. .”⁷⁵

The Government-CSO partnership forum has been a positive step in the development of state-civil society relations in Cambodia and overall has functioned to support democratization. The assertions of civil society value or contribution to development and guarantees regarding the protection of CSOs activities from repression and recrimination have significantly improved civic space for citizens’ groups. They provide an important lever of institutional and ideological support in the context of the traditional political culture of authoritarianism which views citizen mobilization with skepticism and suspicion. At the same time, several pressing issues persist. First, the changes to the LANGO law, which would provide a legal

⁷³ <https://www.phnompenhpost.com/national/conflicting-interpretations-second-lango-meeting>

⁷⁴ The Minister of Interior announced at that time that since the Law on Associations and Non-Governmental Organisations became effective, 471 associations and 495 NGOs had registered with the Ministry of Interior, and that each month an average of 20 new associations or organizations registered with the Ministry.

⁷⁵ <https://www.phnompenhpost.com/national-politics/sar-kheng-csos-exaggerating-facts-about-restricting-activities>

framework which ensures fundamental freedoms to expression, assembly, and association, needed for a vibrant civil society. Second, it remains to be seen whether the opening of civil society space and the forum for government-CSO partnership will endure and normalize, rather than being merely being a pretense of democratic inclusion in response to international oversight. Third, the forum has not yet resolved the issue of repression and restriction on CSO activities at the local level, and the disagreement as to their frequency and degree means that communication between the MOI and CSOs must improve further. In this regard, an independent investigatory mechanism for alleged cases of restrictions by local-level officials may be warranted.

In conclusion of this part, the government lacks willingness to improve freedom of association and role of independent NGOs. Still, the government intended to amend some articles of LANGO while interpreting the law with many standards to control NGOs and CSOs. The government's motivation was tolerating with NGOs and amendments of LANGO to show a political image of responding to conditions of the EU and the international community for benefiting trade.

CHAPTER 2 – Media and Press Freedoms

Introduction

The RGC briefly lessened restrictions on press and media in 2018 following its landslide victory in a highly flawed election process and total dominance of the National Assembly, and importantly, the EU threat of removal of Cambodia from the EBA system.⁷⁶ However, the change neither had a significant impact to restoring the level of press freedom that existed earlier in the 5th mandate nor was it lasting. In 2019, Cambodia saw a return to the authoritarian norm of threats and coercion against independent media along with a massive degree of co-optation and control overall dimensions of the media landscape.

Cambodia was ranked 143 out of 180 countries evaluated by Reporters Without Borders in 2019. Cambodia's media freedom peaked with the reform period that followed the opposition boycott and period of 'culture of dialogue' early in the 5th mandate of the National Assembly. Since then it has seen a sharp decline, with 2019 as the third consecutive year of a decrease in press freedom. On Press Freedom Day in May, Prime Minister Hun Sen reiterated the oft-repeated argument that the prioritization of peace trumps human rights, while seemingly issuing a veiled threat against critical journalists. He said: "Human rights need to start from the right to life. They do not start from the writing of newspaper comments," Hun Sen said. "If all are dead, who could write a newspaper?"⁷⁷

Cambodia – Reporters Without Borders Press Rankings Trend:

2013	143/180	2017	132/180
2014	144/180	2018	142/180
2015	139/180	2019	143/180

⁷⁶ <https://www.voacambodia.com/a/5240555.html>

⁷⁷ <https://vodenglish.news/reporters-arrested-over-live-broadcast-of-land-protest/>

2016	128/180		
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In the 2019 World Press Freedom Index, in its section on Cambodia ‘Ruling Party Eliminates Critical Media, RSF posits: “Worried by the prospect of losing the July 2018 general elections after more than 30 years in power, Prime Minister Hun Sen launched a pre-emptive war against the media in which around 30 radio stations were silenced and Cambodia Daily, an English-language newspaper that had helped to nurture Cambodia’s fragile democracy, was forced to close. As a result of this clean sweep, Cambodians now only have access to news provided by major media groups directly linked to Hun Sen, such as the online news agency Fresh News, which pumps out pro-government propaganda.”⁷⁸

Cambodia 2019 Freedom House Freedom on the Net Evaluation

Area	2018 Score	2019 Score
Obstacles to Access	13 out of 25	12 out of 25
Limits on Content	16 out of 35	18 out of 35
Violations of User Rights	26 out of 40	13 out of 40
Overall Score	55 out of 100	43 out of 100

As in 2018, Freedom House ranked Cambodia as Partly Free for Freedom on the Net in 2019. Freedom House finds networks are not restricted, social media is not blocked, but websites are blocked, and users are arrested. However, Cambodia’s score significantly improved with the largest change in the area of users’ rights. However, rather than reflect a more tolerant political context, this instead is a reflection of the elimination of political competition and the consolidation of the hegemonic party status of the ruling CPP. As a result, self-censorship has increased, as well.

⁷⁸ <https://www.phnompenhpost.com/national/reporters-without-borders-ranks-kingdom-143-180>

On 11 January 2019, PM Hun Sen held a third media correspondent meeting, with 5,000 people in attendance, mostly journalists.⁷⁹ The response from both independent media and pro-government outlets was positive. For example, Moeun Chhean Nariddh, director of the Cambodian Institute for Media Studies, claimed that the situation for media and politics in Cambodia had improved. He emphasized: “We should not report using the American standard, attacking their own government. In Cambodia, we should balance it with positive stories.” Chhim Makara, a journalist, based in Koh Kong province, claimed: “I think this would be a good opportunity for the journalists and government officials to share experiences and advice with each other.” The PM set out eight points or principles for journalism⁸⁰, one of which was that journalists should dare to criticize the government. Such a public presentation of free press occludes the reality that the press heavily restricted in Cambodia. On the one hand, freedom of the press is used to describe conditions where the media landscape is very heavily weighted in favor of pro-government media. On the other hand, journalists are critical of corruption are easily dispatched by the courts, which in political cases are entirely directed by top leadership of the ruling party and in civil cases are beholden to the highest bidder.

In the first media correspondents’ dinner in 2017, Hun Sen fiercely criticized the ‘unprofessional’ journalists that criticized the government and refused to make retractions or corrections when instructed to do so by officials. Afterward, on social media, he stated: “Next year we will invite three or four thousand journalists to the gathering, even if they are pro- or anti-government. We live in the same country, even if our perspectives are different ... we can still meet and discuss.” However, during the event, he accused journalists of taking bribes from officials not to cover certain stories and indicated that they, rather than the corrupt officials, “cannot serve society but encourage corruption instead.”⁸¹ Despite the rhetoric of free

⁷⁹ 955 reporters for TV and radio stations, 979 for print media and 380 for digital media; 276 representatives from private organisations, and 150 of security personnel; the remaining attendants consist of government officials from various levels.

⁸⁰ 1- Journalists are mirror to reflex the reality of societies; 2- Journalists must continue to be bridge between citizens and royal government; 3- Journalists dare to criticize for constructive criticism in related to government’s, institutions’ and individual policies; 4- Journalists shall contribute and analyze the issues at the level of national, regional and international strategies; 5- Journalists shall carry proper professionalism and enrich its capacities; 6- Journalists shall help eradicate the group of media who are just involved with extortion; 7- To participate in fighting against fake news; 8- Journalists shall improve human resources within its organization and shall be well-aware of modernization of technology. See: <https://swiftnewsdaily.com/articles/310240> Hun Sen also indicated that no new government televisions stations would be created.

⁸¹ <https://www.voacambodia.com/a/in-first-correspondents-dinner-pm-hun-sen-lays-into-unprofessional-journalists/3678178.html>

press, it would not be long before the newspaper and radio landscape shifted considerably with a crackdown on the press and created a climate of fear with mass prosecutions of opposition political party members and supporters. In the 2018 media correspondents dinner, similar themes were raised by the PM as he both lambasted journalists for publishing fake news critical of the government and accused them of taking money from illegal loggers to hide the latter's activities.⁸² Following the 2019 dinner, pro-government media outlets published stories applauding the freedom of the press and the promising road ahead for media. The event served as a means to cultivate the benevolent image of the PM and reinforce patronage, with participants reportedly receiving 200 USD to attend

Moreover, such functions serve a propaganda function for the government, which in reality does not tolerate critical investigative journalism and often charges such journalists with incitement or worse crimes. While restricting such media, the RGC simultaneously foments a pro-government media, which inundates the public with positive stories about the conditions in the country. In reality, public assemblies have been almost wholly restricted since 2016, such as the refusal to allow an event to celebrate the 70th anniversary of the Universal Declaration of Human Rights in December 2018. Independent journalist Sek Sophal affirmed: "Nothing has changed. Unfortunately, I am pessimistic about the current situation. I don't think Cambodia will witness any positive development, at least in the near future."⁸³

The practice of restricting the press has become normalized, allowing decentralization of repressive policies away from the central apparatus of the ruling party. For example, in a letter dated July 5, 2019, the Ratanakiri provincial authorities issued a requirement that all journalists report to them providing information as well as their identification before reporting any story. According to Human Rights Watch: "Hun Sen's Cambodia has effectively become a one-party state, yet the prime minister still holds journalists as scapegoats to punish those who criticize the government. Foreign governments and donors should urge the government to drop the ridiculous charges against these journalists or consider media freedom in Cambodia as dead as its democracy."⁸⁴

⁸² <https://www.reuters.com/article/us-cambodia-media/cambodia-pm-berates-media-at-correspondents-dinner-idUSKBN1FA0ZB>

⁸³ <https://ipi.media/cambodia-media-stranglehold-continues-despite-propaganda/>

⁸⁴ <https://www.hrw.org/news/2019/07/24/cambodia-drop-case-against-journalists>

CHAPTER 2 – PART 1

The Media Landscape

Journalists Associations

On 6 May 2019, the Minister of Information Khieu Kanharith headed the official initiation of the Cambodia-China Journalist Association aimed at boosting ties between the media of both countries.⁸⁵ RGC spokesman Phay Siphon asserted that those journalists play an important role in sustaining peace. He stated: "...I strongly hope that this association will contribute to ensuring the free flow of information in an objective, professional, and ethical way to contribute to the development of relations between Cambodia and China." He also indicated that the organization would increase the public's perception that close cooperation between the two countries was beneficial. Soy Sopheap, CCJA co-president, said: "We agreed to create this association to jointly promote ties based on the principles of the Cambodian and Chinese governments which have enjoyed good relations and cooperation for decades. The Cambodia-China Journalist Association vows to respect the principle of the cooperation between both countries and will try to professionally disseminate factual information about Chinese investments in Cambodia and exports of Cambodian products to China."⁸⁶ The danger is that the association will work to propagandize the relationship between the two countries by preventing the dissemination of information critical of the impact of Chinese loans, investment, and migration into Cambodia. A major concern is that the purpose of the association is to offset news critical of Cambodia's democratic regression and embrace of Chinese authoritarianism. As such, it could portend a movement to more state-controlled media.⁸⁷

As of 22 October 2019, there were 42 press associations in Cambodia, with the formation of the CamboJa association. May Titthara, the group's executive director, indicated the group would focus on support for journalists working in an increasingly repressive environment, especially in rural areas. He asserted: "Our goal is to first focus on those journalists who work with professionalism. And if their

⁸⁵ http://www.xinhuanet.com/english/2019-05/06/c_138038519.htm

⁸⁶ <https://www.khmertimeskh.com/50601669/cambodia-china-journalist-association-launched>

⁸⁷ <https://www.voacambodia.com/a/cambodia-china-journalist-association-launched-to-promote-positive-news/4926568.html>

professionalism causes problems for them, we will study the legal mechanism to advocate for them.” He also noted that existing associations rarely advocate for journalists targeted by officials for prosecution by the courts.⁸⁸ CamboJa releases quality independent news available online at <https://cambojanews.com/>.

Nop Vy, CamboJA’s board chairman and media director for the Cambodian Center for Independent Media stated: “CamboJA is an independent and professional institution, with no tendency or bias toward any political party, and has a mission to strengthen journalism and the freedom of journalists, strengthen the independence of news outlets and the power of media, and protect journalists.” He asserted that independent media were not for or against any political party or the government, but sought comprehensive provision of information in line with the full freedom of the press. Moreover, he added: “Reporting in-depth and sensitive news is participating in pushing for a solution to social problems.”⁸⁹ The public space and discourse from journalists associations has been dominated by pro-government groups, most visibly the Union of Journalist Federations of Cambodia, headed Huy Vannak, a secretary of state at the Interior Ministry.

A Return of Independent Radio?

On 3 December 2018, the Ministry of Foreign Affairs released a statement which said that RFA and VOA media were permitted to resume operations in Cambodia.⁹⁰ VOA one of several media outlets pressured to close in 2017 as the government accused them of tax and registration violations. At the time the government was found in violation of both tax and registration regulations.⁹¹ In early January 2019, the Minister of Information Khieu Kanharith announced that two media outlets, which had been closed, Voice of America (VOA) and Radio

⁸⁸ <https://www.voacambodia.com/a/journalists-form-a-new-press-association-plan-to-protect-at-risk-reporters/5136043.html>

⁸⁹ <https://vodenglish.news/new-journalists-group-vows-to-defend-reporters-free-press/>

⁹⁰ “The Royal Government always cherishes promotion of freedom of press and expression in accordance with the Constitution and laws in force. Previously, there were complaints that freedom of press has been restricted, particularly regarding The Cambodia Daily, RFA, and VOA. For these cases, here are the facts: The Cambodia Daily shut down its publication on its own due to its failure to fulfill tax obligations in accordance with the Law on Taxation. In the event that such liabilities are legally met, the newspaper can resume its operation. The closure of Radio Free Asia’ and Voice of America’ representative offices was self-initiated. The two radio stations are free to reopen their offices in Cambodia,” according to the foreign affairs ministry’s statement released on 3 December 2018. See:

<http://m.en.freshnewsasia.com/index.php/en/localnews/14143-2019-05-30-09-54-55.html>

⁹¹ <https://www.khmertimeskh.com/612267/moi-allows-voa-office-to-reopen/>

Free Asia (RFA), would be allowed to reopen if they paid overdue taxes. The Ministry of Information submitted a letter to the Ministry of Foreign Affairs asserting that the radio stations had been closed because they had violated regulations by operating for years without registration. Nevertheless, the Ministry did not account for its own omission by failing to secure registration of the stations for such a lengthy period. Ministry of Information spokesman stated: “Because they still have tax obligations to fulfill, we ask them to settle the issue first and then we will give them permission.”

The pro-government Club of Cambodian Journalists (CCJ) president Pen Bona echoed the view of the Ministry of Information, accusing the closed radio stations of claiming a privileged status, exempt from the standards which apply to national radio stations. He claimed: “They should pay tax first before accusing the government of restricting their institutions’ rights and freedom. They should stop accusing the government of abusing them. We find it difficult to figure out the motive behind their hesitation to reopen their offices in Cambodia.” However, social analysts critiqued government overtures to the two closed radio stations as a staged and insincere.⁹²

On 30 May 2019, Information Minister Khieu Kanharith, met with US embassy Charge d’affaires Michael Newbill and US Agency for Global Media deputy director Matthew Walsh. Meas Sophorn, the spokesperson for the ministry, announced the meeting pertained to the potential reopening of VOA Khmer. Following that, US embassy spokesman Arend Zwartjes stated: “I can confirm that representatives from the United States Agency for Global Media met with the Minister of Information today to agree on a roadmap for registering Voice of America and Radio Free Asia in Cambodia.⁹³ Our hope is that both VOA and RFA will soon be allowed to register and once again broadcast in Cambodia.”

Reflecting on the meeting, Pen Bona, president of the Club of Cambodian Journalists, said that the meeting was proof that the RGC allows critical media outlets to operate. “If the Information Ministry agreed in principle to allow VOA to reopen its office officially, it demonstrates that Cambodia did not put pressure on that radio station. The issues in the past were due to legal problems.”⁹⁴ According

⁹² <https://www.phnompenhpost.com/national/all-media-outlets-must-pay-tax>

⁹³ For information on the process and politics of the closure of VOA and RFA, which was rooted in the 2017 crackdown on democracy, see COMFREL’s Democracy Report for 2017 and 2018.

⁹⁴ <https://www.khmertimeskh.com/609653/voa-reps-discuss-reopening-with-information-minister/>

to social media posts by the Minister of Information and statements by the spokesperson for the ministry, the RGC agreed to allow VOA to reopen a bureau in Cambodia. Meas Sophorn informed media : “We have clarified with them that every registration of a legal representative must follow procedures as stated in law and the legal proceedings related to an office’s registration. The US counterpart was informed about that matter, and they accepted our advice. They will return the registration application file to the ministry soon.” He also emphasized that the case was evidence that the government of Cambodia was “promoting freedom of the press and speech”.⁹⁵

On 3 June 2019, the Ministry of Information gave official permission to VOA to open an office in Phnom Penh (located in Daun Penh’s Chaktomuk commune and under the direction of Mr. Christopher Decherd), according to the letter released by the Minister of Information on 5 June.⁹⁶ In November of 2019, the Ministry of Information gave permission to VOA to buy airtime from two radio stations, Beehive Radio FM 105 and Radio FM 102. The announcement came after a meeting between the Minister and US Ambassador Murphy. Beehive Radio owner Mam Sonando, confirmed he had been contacted by VOA and that a meeting was being set-up. Radio 102 also confirmed that a meeting with VOA would take place, and noted that prior to closure VOA broadcast from the station for 1.5 hours daily. The US ambassador characterized the change as part of the efforts by the two countries to cooperate in the media sector. The ministry stipulated that VOA had fulfilled its legal registration requirements. The spokesperson for the MIF, Meas Sophorn, indicated that the application would have to be submitted by VOA to obtain permission to buy airtime from other stations.

Moreover, the MIF would not grant RFA permission to resume broadcasting in Cambodia because of the media outlet’s past use of improper language. The minister of MIF gave the example of referring to the RGC as the “Phnom Penh regime”. He stipulated that authorization for RFA would depend on the outcome of a MIF review of the broadcaster’s ‘attitude’.

Moeun Chhean Narith, a lecturer in media, said that past media closures were the result of the political situation. He stated: “If the media is allowed to enjoy full

⁹⁵ <https://www.phnompenhpost.com/national/govt-allows-voa-open-representative-bureau>

⁹⁶ <https://www.khmertimeskh.com/612267/moi-allows-voa-office-to-reopen/>

broadcasting rights, with voices from all communities and countries, it will be a positive development and a sign of the re-growth of democracy in Cambodia.”⁹⁷

CHAPTER 2 – PART 2

Laws and Policies

The Press Law

On 3 May 2019, World Press Freedom Day, the Ministry of Information announced it is coordinating with other relevant ministries in order to make amendments to the Press Law. Minister of Information Khieu Kanharith said on World Press Freedom Day that the ministry is discussing revisions to Chapter 2, Article 20, which pertains to the issue of confidential information. The change would specifically be related to the publication of corrections or retractions: “We are preparing to amend the law to oblige newspapers and TV and radio stations to publish corrections when they broadcast or publish factual errors.” He indicated, as well, that there may be provisions setting requirements for editors and publishers. For example, they must have graduated from Grade 12 and worked for five years in the sector.

Cambodian Center for Independent Media director Nop Vy asserted: “The important thing is the quality of writing, the quality of the news they publish. If they don’t have the ability, the readers can decide whether to read the news or not.” He also added that the Press Law has in force for a significant time, but has not effectively protected or supported the work of journalists. Club of Cambodian Journalists president, Pen Bona, held that the Press Law was should be updated, and has had a significant effect on supporting freedom of press: “First, it protects journalists from being imprisoned for doing their job and it protects sources. This point is very important and must be retained.”

The UN Special Rapporteur for Human Rights for Cambodia, Rhona Smith, expressed concerns over press freedom in Cambodia. She pointed to the decline in Cambodia’s ranking by Reporters Without Borders and called for the RGC to provide a free space for media, both online and offline. She also affirmed the need

⁹⁷ <https://www.phnompenhpost.com/national/voice-america-planning-discuss-buying-air-time>

to adopt the Access to Information Law and end criminal prosecutions of journalists.

On 27 August 2019, the MOI began the review of draft amendments for the draft Press Law. In the third week of October 2019, the Ministry of Information solicited inputs from journalists and media outlets regarding the amendments to the Press Law. He assured that their commentary would be pooled and included in the drafting of the changes. As well, he emphasized that the changes were considered necessary to do the change in the medium of news, in terms of the shift from print and television, to online and social media-based journalism.⁹⁸ The Minister of Information said: “I will gather all your inputs. My working group will take note of them for consideration. I will create a chat group in Telegram [messaging app] where participants can offer suggestions in the amendment process. My working group will consider them while drafting the amendments. After that, we will organise a team and invite active journalist association representatives to work together until it becomes a law. The ministry will not close the door in drafting this law. We will invite journalists to give ideas just like when we amended the right to information law.”⁹⁹

Cambodian Association for the Protection of Journalists, Um Sarin, agreed that the change was needed because of a transformation in the media sector since 1995. He claimed the Press Law supports the right to free press as guaranteed in Articles 31 and 41 of the Constitution. He also noted the importance of protections for journalists and sources found in the Press Law. Club of Cambodian Journalists executive director, Chhay Sophal, said the organization sought changes in the Press Law to reflect current trends in media. Referring to the rise of digital and online news, he noted: “There are still loopholes in some Articles of the current Press Law. I think the ministry also sees this, which is why a committee was formed to revise it.” However, he also pointed out: “Most of the provisions in the current Press Law restrict journalists. It fails to stipulate punishments for government officials who provide information [to reporters] in the first place, for example.”¹⁰⁰ Sok Sam Oeun, a senior lawyer explained that the press law should take other laws into account in order to ensure legal support for press freedom and journalists’ security, such as the Criminal Code, for instance the provision to ensure that any

⁹⁸ According to the Minister of Information, there are now approximately 700 media outlets operating in Cambodia with the majority operating online through websites, YouTube or Facebook.

⁹⁹ <https://www.phnompenhpost.com/national/ministry-seeking-journalists-input-amending-press-law>

¹⁰⁰ <https://www.phnompenhpost.com/national/review-press-law-begins>

journalist arrested for mistakes in reporting should not be put into pre-trial detention, and other laws such as incitement should not be applied to journalists.”¹⁰¹ In the Criminal Code, there is an article that says the Press Law can be applied. But then there is only one chapter consisting of two articles, and they are not enough to protect journalists.

The International Federation of Journalists issued a public statement urging for changes in the Press Law in order to support press freedom and the protection of journalists. The IFJ noted that the current law did not adequately provide for the safety of journalists when gathering information and publishing. There are various provisions in the current law that can be manipulated to punish journalists and protect those in power, resulting in restrictions on free press rather than protections. The IFJ declared: “Basic but critical reforms are necessary right now to make Cambodia’s press law contemporary, relevant and consistent with the principles of establishing, supporting and maintaining a free media in Cambodia.” Of particular concern are the current provisions related to criminal defamation: “Other items for necessary review would be the abolition of crippling and disproportionate civil damages for alleged defamation by journalists and publishers and the establishment of a Cambodian press or media council for the effective self-regulation of the media to deal with resolution of complaints according to a code of ethics.”¹⁰²

As is so often the case with laws in Cambodia, the letter of the law is less problematic than its implementation. The requirement related to retractions could easily be abused by authorities that find critical or investigative journalism threatening to established practices of corruption or patronage. At issue is not whether corrections or retractions should be required, but rather the determination of when they should occur and by whom. The requirements related to the educational and experience standards for publishers and editors could have a significantly restrictive effect on significant journalism. The media landscape is changing rapidly, with online news becoming the primary source of information, and social media enables citizen journalists to get involved in the public sphere to a greater degree. As such, many sources of information and contributors to public discourse may be precluded from participation if the law regulates citizen journalists and small news outlets.

¹⁰² <https://www.khmertimeskh.com/50656430/ifj-seeks-press-law-amendment>

In the sum of this part, any amendments are made to the press law, an inclusive discussion is needed with stakeholders. The amendments to the Press Law should go beyond merely extending the application of already existing provisions to the new mediums. There should be greater protection for journalists and sources input into the law, as well as firm guarantees that journalists are regulated primarily by the Press Law rather than the provisions of the Criminal Code related to defamation and incitement.

Access to Information Law

In 2019 some progress has been made toward the enactment of the law and the ultimate goal of implementation. The law was supposedly ready for passage in early 2018.¹⁰³ But the draft was made available to the public in February 2019¹⁰⁴, and several shortcomings were noted by civil society at that time.¹⁰⁵ The Ministry of Information announced February 2019 that the draft of the law was ready and would be included in the 6th mandate of the National Assembly's strategic plan. The Minister of Information clarified that the law was composed of 9 chapters and 38 articles, and assured that it would guarantee the right to information.¹⁰⁶ Just prior to the announcement, 19 CSOs had issued a joint statement calling for speeding up the process of enacting the law.

On 3 July 2019, the RGC held the 5th inter-ministerial working group on the draft law. Afterward, the spokesman for the Ministry of Information, Meas Sophorn, informed media that two items remained before the draft could be sent to the legislature. They were a direct dialogue between the Ministry of Information and the Ministry of Justice on penalties (set out in Ch. 7 of the draft), and a final meeting to aggregate all the inputs from the different working group sessions. The Ministry spokesman indicated that during the working group sessions, some changes were made to the draft of the law, adding words or phrases, ostensibly to make the law easier to understand.

¹⁰³ <https://www.phnompenhpost.com/national/access-information-law-finally-ready-enactment>

¹⁰⁴ The draft of the Access to Information Law is available at: <http://a2i.info.gov.kh/khmer/a2i/A2I-draft-law-ENG.pdf>

¹⁰⁵ <https://www.phnompenhpost.com/national/draft-long-awaited-access-information-law-unveiled>

¹⁰⁶ <https://www.khmertimeskh.com/50577422/access-to-information-draft-law-ready>

In mid-November 2019, the inter-ministry committee completed the review of the draft law, and the Ministry spokesman Phos Sovann announced that it would likely be sent to the Council of Ministers for final approval in January. Its review of the draft bill on access to information on Friday and plans to submit it to the Council of Ministers in January before it is sent to the National Assembly. However, he indicated that the Ministry of Justice would make a final decision over input on provisions regarding penalties. Ministry of Information under-secretary of state, Meas Sophorn, declared: “The bill ensures the improvement of good governance and matches development with transparency and accountability. Once enacted, the new law on access to information will provide rights and freedom to the public to take part in improving good governance.”¹⁰⁷

Club of Cambodian Journalists executive director Chhay Sophal strongly supported the law as effective mechanisms for the public to gain knowledge about government institutional activities and applauded the drafting process and transparent and inclusive. He stated: “It’s a model law for which the Royal Government has collected national and international opinion from communities, citizens, civil society organisations and national and international NGOs. The law is publically available on the Ministry of Information website, where people all over the world can comment. If this law has gone through the major ministries, it’s no problem to send it to the Council of Ministers.”

The president of the Union of Journalist Federations of Cambodia (a pro-government organization) and the secretary of state of the ministry of the interior, Huy Vannak, claimed that the draft law was adequate and would effectively support the work of journalists: “The law will protect journalists and at the same time make sure that journalists do not violate the law.”

In the sum of this part, the draft law on access to information is under control of the government that has not been explicit content and schedule for finalizing. The reason why CSOs have concerns on the draft law are as follows.

Nop Vy, director of the Cambodian Center for Independent Media, asserted that the government should adhere to the original draft that was made public and accepted by CSOs.¹⁰⁸ Nob Vy commented that he would not like to see major changes to the draft that had earlier been made public: “If the content of the draft

¹⁰⁷ <https://www.phnompenhpost.com/national/inter-ministry-committee-clears-draft-access-information-bill>

¹⁰⁸ <https://www.phnompenhpost.com/national/govt-reviews-access-information-law-draft>

law has remained the same, it is a good sign because the original content serves the public interest.”¹⁰⁹

Lam Socheat, director of the Advocacy and Policy Institute, Lam Socheat argued that the law should be passed despite its shortcomings: “I know the draft law does not meet international standards, but we will call for amendments later.” However, he reiterated the fact of problems with the law with regard to freedom of press: “For example, the draft law gives government officials up to five days to respond to journalists’ questions to obtain information. This is not a good solution.” Importantly, he also noted that the draft law stipulates limits on access to information to protect state secrets but does not give a definition of what information is considered classified.¹¹⁰

Human rights international NGOs, Article 19 and Human Rights Watch, indicated that the process of incorporating feedback from civil society and stakeholders was not satisfactory.¹¹¹ They found the draft law to exhibit several problems: an unclear definition of information included in the scope of the law; no clarification on whether the law applies to judicial and legislative bodies, as well as private bodies supported by public funds; no affirmation of the basic principle of full disclosure; excessive procedural formalities for requesting information; broad space for exemptions to disclosure of information; no clear definition of the term ‘public interest’; no oversight mechanism or body for enforcement of the law; and, provisions which limit freedom of expression.

Cybercrime Law and Fake News Law

In early March 2019, PM Hun Sen publicly exhorted his ministers to speed up the drafting of two pieces of legislation that will reduce freedom of the press and online speech in Cambodia—a law criminalizing fake news, and the cybercrime law (which has been in development since 2012).¹¹² Hun Sen urged officials to fight

¹⁰⁹ <https://www.phnompenhpost.com/national/inter-ministry-committee-clears-draft-access-information-bill>

¹¹⁰ <https://www.khmertimeskh.com/50577422/access-to-information-draft-law-ready>

¹¹¹ <https://www.rfa.org/english/news/cambodia/draftlaw-12122019150823.html> ;

<https://www.article19.org/resources/cambodia-analysis-of-the-draft-law-on-access-to-information/>

¹¹² <https://asia.nikkei.com/Politics/International-relations/Cambodia-squeezes-online-speech-despite-threat-of-EU-backlash>

fake news and said two laws were being developed to complement the existing Press Law.¹¹³

On 10 July 2019, the Ministry of Interior conducted a review of the draft cybercrime law, directed by secretaries of state Bun Hun and Lam Chea. Ministry of Justice spokesperson Chin Malin indicated that the RGC legal experts needed more time to study comparative laws from other countries and that there was a need to ensure that the law did not conflict with existing Cambodian laws: “Other developing countries have similar laws to stop online crimes such as robberies, fraud, and kidnappings, as well as social media scams. We must have a law to stop such crimes.”

The draft law on cybercrime is composed of 7 chapters and 48 articles. On 9 December 2019, the Interior Ministry, led by secretaries of state Bun Honn and Lam Chea, have evaluated the draft cybercrime law. Mr. Honn described the event as a ‘preliminary review’ using existing cybercrime laws from multiple states as references, including the United States and Singapore. He indicated that the Ministry had conducted approximately 20 meetings to discuss the draft law. The draft law covers cybercrimes as well as penalties. Lieutenant General Chea Pov, director of Interior Ministry’s Anti-Cyber Crime Department, informed media that the scope of the cybercrime law would extend to all crimes involving technology, including fake news.¹¹⁴

The General Department of Immigration indicated that foreigners committing VoIP fraud were an increasing problem. The number arrested for a related crime has risen from 2017 to 2019. Lieutenant General Uk Heisela, chief of investigations at the department publicly reported that in 2017, the number of Chinese nationals conducting such scams or illegal online gambling increased from 300 individuals deported in 2017 to 403 in 2018, as well as 48 Malaysian nationals.¹¹⁵

On 14 January 2019, Information Minister Khieu Kanharith made a public appeal for individuals to assist the government in monitoring fake news and forestall detrimental impact on public security. Ouk Kimseng, the ministry spokesman, said the Ministry had ordered actions to be taken to stop fake news and mandated the media to assist the government. He noted that there had been the creation of a joint committee to combat fake news, including representatives from the national

¹¹³ <https://www.phnompenhpost.com/national/ministries-review-content-draft-law-cybercrime>

¹¹⁴ <https://www.khmertimeskh.com/50668855/interior-ministry-continues-work-on-cybercrime-law>

¹¹⁵ <https://www.khmertimeskh.com/583891/foreigner-led-cybercrimes-on-the-rise-report/>

police, Telecommunications Ministry, and Information Ministry. He stated: “We already have the joint committee working on this issue and will create a mechanism for the Information Ministry to respond to fake news immediately. Some fake news is harmless and just meant to be humorous while others poison people’s minds so people must judge news based on facts.”¹¹⁶

On 12 June 2019, giving an address at the 16th Asia Media Summit, Hun Sen that the development of digital technology is a serious threat to security in both the region and worldwide. He asserted: “Digital technology is aimed at enhancing the sharing of information between media organizations, including cooperation in the fight against fake news. Fake news and cybercrimes severely threaten individual rights as well as regional and global security.” He called for fortifying law enforcement and improving professional ethics to combat fake, which included threatened to societal security along with insults, incitement, and religious or racial discrimination. He declared that all relevant bodies must cooperate through national, regional, and global frameworks to eliminate fake news and cybercrime.

The head of UNESCO in Cambodia, Sardar Umar Alam, pointed out that studies find disinformation spreads up to six times faster on social media than true information. However, he also emphasized: “In the past few months, we have seen the governments in the region blocking or slowing down connection on social media to prevent dissemination of false information in the aftermath of terrorist attacks or large-scale protests. The efficacy of such actions is not clear, and there are concerns over the blocking of legitimate uses of the platform, including for journalists.”¹¹⁷

In a Facebook post on 11 July 2019, the Battambang provincial police headquarters said the most serious concern for law enforcement and society resulting from information technology was fake news. The post referenced a comment from provincial deputy police chief Im Kosal who stated that fake news has been a severe problem for societal security in Cambodia as it was used to attack and unduly discredit individuals, organizations and the state. He also claimed that fake news eroded national development.¹¹⁸

On 12 August 2019, the Ministry of Information Ministry announced that media outlets that disseminate fake news would have their licenses revoked. Phos

¹¹⁶ <https://www.khmertimeskh.com/569085/ministry-seeks-publics-help-to-fight-fake-news-2/>

¹¹⁷ <https://www.khmertimeskh.com/50613800/media-urged-to-step-up-against-fake-news>

¹¹⁸ <https://www.phnompenhpost.com/national/ministries-review-content-draft-law-cybercrime>

Sovann, director-general of the General Department of Information and Broadcasting indicated that the RGC would respond strongly to fake news or to media outlets that were unlicensed or had violated their license agreements. He noted that certain fake news to be a threat to national security, whereas other violations would be considered more minor, with the latter given warnings and an opportunity to make corrections. If no remedy was provided by the media outlets, then their licenses would be revoked. Chea Pov, head of the Interior Ministry's anti-cyber-crime department, indicated that it would be considered criminal if anyone spread fake news unintentionally because of the act of spreading false information. Both Mr. Sovann and Mr. Pov claimed that citizens should check with registered media outlets to verify the information before posting or sharing it. Nop Vy, media director at the Cambodian Centre for Independent Media, accepted that fake news was a serious problem for all countries because of its destabilizing capacity. He noted that most social media users are not aware of fake news when they post or share it and often believe most or all of the information they find online. However, he indicated: "Revoking licences is not a good solution to crack down on fake news. It is better to have an unbiased media watchdog to tackle the issue."¹¹⁹

On 15 November 2019, the Ministry of Foreign Affairs and International Cooperation released a statement labelling the RFA media outlet as fake news. Prior to the statement's release Sok Sopheak, secretary of state at the Ministry of Commerce told national media that RFA's report on the European Commission's assessment of Cambodia in relation to potential loss of EBA status was false. The RGC had received the confidential report on 12 November. The RFA published what it claimed were extracts from a leaked copy of the report.¹²⁰ The RGC statement asserted: "Such false information creates unnecessary worries among hundreds of thousands of workers involved, misleads the public and tarnishes the reputation of the government officials whom RFA claimed to have leaked the document. Once again, RFA's action provides proof that it is not a credible source of information, but simply a propaganda station at the service of a political faction."¹²¹

In a letter to the Editor Forum of Cambodia (EFC), in early December 2019, PM Hun Sen issued a call to all journalists to practice professional ethics and take

¹¹⁹ <https://www.khmertimeskh.com/632885/ministry-to-revoke-licences-of-media-over-fake-news/>

¹²⁰ <https://aecnewstoday.com/2019/rfa-fake-eba-news-claim-ends-an-extraordinary-seven-days-in-cambodia-politics/>; <https://www.khmertimeskh.com/660288/the-ministry-dismisses-rfa-report-as-fake>

¹²¹ <https://www.phnompenhpost.com/national-politics/ministry-deplores-rfa-report-eba>

action against fake news. He appealed to all journalists to adhere to their professional code of ethics and figure out actions against fake news. He stated that fake news or biased reporting could be considered a failure to respect the law, and affirmed: “The government truly wants press media that are accountable and committed to professional code of ethics, and journalists must dare to tell the truth with constructive criticism. Do not report on just one side of an issue or use inciting news to cause problems. Journalists must keep developing their own capacities and keep finding ways against fake news.” Information Minister Khieu Kanharith said: “Journalists must tell the truth, dare to say what has happened and must know how to put that information into words that readers and listeners could understand.” Afterwards the EFC issued a joint statement that held: “EFC understands that combating fake news remains an important job for every journalist to improve the effectiveness of journalism, as well as to promote the value of professional journalism and reduce social pollution information too.”¹²²

In the sum of this part, the comments of the government officials intended to create these laws to restrict freedom of social media and online speech criminalizing the news that the government claims that it is fake. The draft laws are not yet open to public consultation while UN human rights expert and CSOs are concerned.

United Nations Special Rapporteur to Cambodia, Rhona Smith indicated that she was aware of multiple cases of arrests related to online commentary or posts. She stated: “I am reminded that freedom of expression and the controls that can be legitimately placed thereon are the same irrespective of whether the comments are made on Facebook, through other social media, or in printed media. I have previously expressed concern at various provisions of the criminal code being used to limit freedom of expression in Cambodia.” She also declared: “With respect to the cybercrime law, I have not received information on this law. I can simply state that I hope that any law will give effect to Cambodia’s international obligations to ensure the appropriate balance between protecting national security and internet freedom.” Adhoc and Licadho human rights NGOs, indicated civil society organizations were concerned about the potential use of the cybercrime law to limit freedom of expression.¹²³

¹²² <https://www.khmertimeskh.com/50668006/pm-calls-on-journalists-to-continue-fighting-fake-news>

¹²³ <https://www.phnompenhpost.com/national/government-did-not-violate-rights-freedom-press-says-hun-sen>

CHAPTER 2 – PART 3

Criminalization of Press and Journalism

The 1995 Press Law stipulates if a certain party discussed in a news report claims that the report contains false information or in any way negatively affects the dignity of a person or group, then they can demand a retraction or a right to a reply that is published within seven or in the next issue of the publication. Despite that, journalists are at risk and pressured because the normal practice of authorities is to pursue complaints under the criminal code, and charges of defamation or incitement are levelled.

Cases: Repression of Online News

On 20 June 2019, two journalists with Kraing Meas online news (Nging Veasna the chief of the news service, and reporter Touch Din) were charged by the Kampong Chhnang provincial court with extortion and public defamation. The charges followed accusations by tycoon Tea Vichet (the son of Minister of Defense Tea Banh).¹²⁴ According to the complaint, the defendants had accused Mr. Vichet of illegally smuggling gasoline. Mr. Vichet claims to have met with the accused and requested that they remove the information from the online news site, after which they allegedly demanded compensation.¹²⁵ The legal representative for Mr. Vichet stated to media that his client had not wished to submit a complaint, but the defendants refused to correct the information. Moeun Chhean Naridh, director of the Cambodia Institute for Media Studies, indicated that proper police procedures, as well as journalism professionalism, would entail an investigation of the pertinent information prior to making an arrest. He also stipulated that: “If a journalist published wrong information, they could issue a letter of apology to the source. All journalists should respect ethics and professionalism.”

Kampong Chhnang provincial Military Police deputy commander Hang Socheat informed media that the military police had ordered the arrest. He claimed it was in response to ‘fake news’ published by the online news service. He stated: “They ordered the suspects to correct the news story, but they didn’t follow that order. Then they ordered them to drop the article, but the suspects didn’t drop it. Finally

¹²⁴ <https://www.khmertimeskh.com/616284/reporters-face-defamation-extortion-charges/>

¹²⁵ The Khmer Times indicates the amount was 2,400 USD, while the Phnom Penh Post has reported the amount to be 2,800 USD.

the suspects said they would remove the story if they were paid \$2,800 or in exchange for a drone. The suspects defamed the reputation of a high-level leader.”¹²⁶

Two reporters, Hun Sokha and Keo Rattana, were arrested and charged for incitement in relation to covering a land protest which took place in Preah Sihanouk Province.¹²⁷ Hun Sokha is the director of the online Facebook-based news CPNTV, and Keo Rattana is the director of the online Facebook-based news TN TV Online. They gave Livestream coverage to a land-rights protest involving approximately 20 families that attempted to block the clearing of disputed land in the Muoy commune by a private company (Thai Boon Roong) using heavy machinery. Five of the protestors were detained in addition to the two journalists. According to residents in the area the land dispute has been ongoing for more than 20 years. The journalists asked questions to the land protestors, and were subsequently arrested by the National Military Police on the orders of provincial prosecutor Seang Sok. They were charged with incitement solely on the basis of asking questions to the protestors gathered at the scene.¹²⁸ The five arrested protestors were charged with appropriating private property.

May Titthara, the news editor of the Khmer Times national news editor, pointed out how the prosecution of the two reporters increased apprehension for all journalists in Cambodia. He indicated that they should be released, and persecution of reporters should stop: “This case shows that reporters in Cambodia are faced with potential sentences while they are fulfilling their work. We ask for their release.” Titthara said. Although indicating the Ministry of Information was investigating the case following a CIJ request for their release but gave no details as to the investigation procedure of the situation. Of concern, he seemed to lay blame on the shoulders of the reporters ahead of the investigation by declaring: “The ministry asks reporters to respect the code of ethics.” The spokesman for the military police, Eng Hy, claimed that the arrests were warranted because the reporters have exceeded their role as reporters, although he did not make it clear in what way a crime was committed. He asserted: “We followed the law. We asked the

¹²⁶ <https://www.phnompenhpost.com/national/two-journos-held-over-defamation-blackmail>

¹²⁷ [https://vodenglish.news/reporters-arrested-over-live-broadcast-of-land-protest/;](https://vodenglish.news/reporters-arrested-over-live-broadcast-of-land-protest/)
<https://cpj.org/2019/07/journalists-charged-with-incitement-for-live-streaming.php>

¹²⁸ The crime of incitement to obstruct a public official is punishable by between one day to one month imprisonment.

reporters to properly follow professionalism. The military police does not want to see reporters being imprisoned.”

Hun Sokha (a member of the ruling Cambodia People’s Party) is the president of the Club of Independent Journalists (CIJ), a professional organization whose membership is composed mostly of small rural news services. The CIJ has had repeated problems with prosecutions in the rule by law system in place. For example, to coverage of a land dispute in Preah Sihanouk province, the group was sued by villagers for inciting violence ¹²⁹; and, in response to investigative journalism regarding customs irregularities Kampot province, the journalists were charged with insult and obstruction of public officials.¹³⁰

In the former case, in late April 2019, 149 families (represented in the complaint by Morn Sina and Keo Leng) filed a court complaint against Hun Sokha and unspecified others of collusion, incitement to commit a felony and incitement to discriminate.¹³¹ The complaint sought legal action against the accused and 200,000 USD in compensation. The land dispute between the families and Him Sovanry has been ongoing since the 2010 purchase of the land (in Stung Have district, O’Tres commune) by the latter while the families already lived there. The complaint alleged that the journalists’ news broadcasts implied the villagers were at fault in the case and incited other families to use force to take the land from the complainants. The CPNTV news report stipulated: “These 320 families could use violence to take control of the land that the 149 families are in the process of resolving according to legal procedures.” Hun Sokha informed media: “Regarding the land dispute, we don’t know. We don’t know who has the land, we don’t know what the 149 families have, and we don’t know what the 300 families have. We don’t know.” “We only know that we have seen a legal document issued by local authorities. We follow the law. We don’t just do anything, and we do not just say anything.” In the video reports posted online and cited in the complaint, CPNTV references an official legal document, which indicates that only six out of the 149 families are legal owners of the disputed land they claim. The news reports allegedly also interview several different members of a group of 320 families affiliated with Him Sovanry.

¹²⁹ <https://vodenglish.news/journalists-and-sources-sued-over-land-dispute-reports/>

¹³⁰ <https://vodenglish.news/journalists-sued-for-investigation-of-alleged-customs-irregularities/>

¹³¹ <https://www.hrw.org/news/2019/07/24/cambodia-drop-case-against-journalists>

Chhay Sophal, executive director of the Club of Cambodian Journalists, said: “An article can be complete or incomplete. If there is anything unfairly balanced against any individual or any group, they can ask reporters to make a correction according to the Press Law. They do not just have to sue under the Criminal Code.”¹³²

In a third case involving CPNTV online news, approximately 10 different reporters were prosecuted in relation to coverage of the Kampot province Customs and Excise Bureau in relation to possible corruption. The journalists were accused by Yi Thol, the head of the Prek Chak customs bureau, in a complaint filed to the court, which resulted in the investigation for charges of insult and obstruction of public officials (punishable by up to a year imprisonment). The chief of CPNTV online, Hun Sokha, claimed that with the permission of the police, they were filming customs activities and the transport of goods at the border when they documented irregularities involving illegal permission of businessmen to avoid customs. An altercation ensued, as seen in a video circulated widely online, where customs officials attempt to confiscate a phone, and one of the journalists appears to shove a customs official. Hun Soka raised the possibility of counter-complaint to the Anti-Corruption Unit. He also declared: “After I give my testimony, I will hold a press conference in front of the court to clarify all facts related to the case.”¹³³

Another online/social media commentator, Pheng Vannak who is a member of the ruling party and military official, was jailed at the beginning of April after several complaints were submitted against him. Simply because of comparing the handling of a hit and run accident to the murder of Kem Ley, he was accused of criminal activities. First, the lawyer of PM Hun Sen, Ky Tech asserted: “The post illustrated a clear plan and wicked intention to make a comparison under a purpose to accuse and to brand Mr. Hun Sen as the man behind the murder of Kem Ley.” Second, the director of government-aligned media outlet FreshNews accused him of defamation and demanded half a million USD in compensation. Third, Cambodian Youth Party President Pich Sros filed a corruption complaint solely on the basis that Vannak had given the family of the hit and run victim 5,000 USD.¹³⁴

¹³² <https://vodenglish.news/journalists-and-sources-sued-over-land-dispute-reports/>

¹³³ <https://vodenglish.news/journalists-sued-for-investigation-of-alleged-customs-irregularities/>

¹³⁴ <https://www.khmertimeskh.com/50593367/pheng-vannak-sent-to-prison-amidst-mounting-complaints>

Case: Former Cambodia Daily Reporters

Two journalists that worked for the now-shuttered Cambodia Daily newspaper, Aun Pheap, and Zsombor Peter, were charged with incitement to commit a felony after routine interviews following the 2017 commune council elections. If convicted, they face up to 2 years in prison. However, as of the end of 2019, their case had still not gone to trial. Both had fled the country due to fear of pretrial detention and unfair trial proceedings. On 28 August 2017, they were charged, and the case was submitted to the Ratanakiri Court investigating judge Chea Pich. Despite that, they were not actually informed of the charges until 5 October 2017. After giving interviews to the journalists voluntarily in which they journalists asked about why the commune had previously voted in favor of the opposition Sam Rainsy Party, they were accused by former Sam Rainsy Party Commune Chief Rmam Yout, along with two other villagers of incitement.¹³⁵ The trial was scheduled for 25 December 2019¹³⁶, however, it was then further delayed to the judge missing the trial. The delay was announced at the actual hearing and neither the defendants or their legal representative were informed ahead of time.¹³⁷

Significantly, the charges were brought against the reporters at the same time that the government was pressuring the closure of the Cambodia Daily by hitting it with an unmanageable bill for back taxes, with the threat of criminal prosecution for tax evasion (as a well as allegations of defamation against its publisher). Reporters Without Borders pointed out: “By announcing this trial and by maintaining the absurd charges against these two journalists, the court in Ratanakiri is not only covering itself in ridicule but is also demonstrating – if any demonstration were still needed – the degree to which Cambodia’s judicial system is manipulated politically. The two journalists were doing their job as reporters, and the decision to put them on trial now has been a bolt from the blue. It is clear that the persecution to which they are being subjected has one sole aim, to intimidate all of Cambodia’s journalists.”¹³⁸

¹³⁵ <https://www.phnompenhpost.com/national/former-cambodia-daily-reporters-charged-incitement>

¹³⁶ It is also significant that both the trial of the former Cambodia Daily reporters and the trial of the former RFA reporters (discussed below) were scheduled at the end of the year. Reporters Without Borders asserts: “Scheduling the initial hearing on 25 December is an additional mean trick of the kind you expect from the most authoritarian regimes, which often take advantage of the end-of-year holidays in many democratic countries to violate human rights without too much publicity.” <https://rsf.org/en/news/cambodia-urged-drop-trumped-charges-against-two-journalists>

¹³⁷ <https://www.voacambodia.com/a/former-cambodia-daily-reporters-incitement-trial-postponed/5219796.html>

¹³⁸ <https://rsf.org/en/news/reporters-cambodia-charged-inciting-crime-covering-election>

One of the accused, Zsombor Peter, has expressed how the charges have hurt his career by removing his potential for employment in Cambodia, where he had built up more than 8 years of country knowledge and reducing potential job opportunities outside Cambodia as well. He also noted how the charges had caused his exceptionally high levels of anxiety because of the possibility of being arrested in Cambodia or abroad and extradited to Cambodia. In an interview, when asked what he would include in a prepared statement for the court, he replied: “I would not make a prepared statement for this “court.” I would reserve a prepared statement for a real court, a court where the facts might make a difference. The fact that this case has progressed to trial without a shred of evidence is proof enough that this is not a court.”¹³⁹

Notably, the original complaint against the two reporters was for inciting people to support the opposition party, and this was changed by the provincial court’s prosecutors’ office to an actual crime of incitement to commit a felony. After the original complaint was submitted, the Minister of Information Khieu Kanharith (who has frequently made public statements which claim that there is freedom of the press in Cambodia) posted a photo of Zsombor Peter’s passport on social media and threatened him with reprisals for failure to respect the law. The post was a clear indication of the threats and insecurity faced by journalists in Cambodia.¹⁴⁰

Case: Former RFA Reporters

The case against two former journalists following allegations of espionage shows the degree to which the media landscape has been restricted and freedom of the press has been repressed. Treating journalists as spies with no grounds entails the harshest criminalization of journalism and has created a climate of fear by the demonstration that the state is willing to lose all international credibility in order to demonstrate its total arbitrary power in the domestic context.

After the closing of RFA in 2017, two RFA reporters were arrested and charged with “illegally collecting information for a foreign source”. The duo, Uon Chhin and

¹³⁹ <https://www.voacambodia.com/a/ex-cambodia-daily-reporter-no-clue-what-triggered-criminal-charges/5219551.html>

¹⁴⁰ <https://rsf.org/en/news/reporters-cambodia-charged-inciting-crime-covering-election>

Yeang Sothearin, were released on bail in August 2018 but continued to be prosecuted for two felony crimes.¹⁴¹

On March 15, 2019, the investigating judge of the Phnom Penh court ordered the case against two former RFA journalists to go to trial. On 21 June 2019, the Court of Appeal heard the appeal by the two defendants two former Radio Free Asia¹⁴² journalists (Uon Chhin and Yeang Sothearin) regarding the court's decision to keep them under supervision as they were released on bail.¹⁴³ They had been jailed in November 2017 on charges of espionage¹⁴⁴, despite having no access to privileged or classified information. At that time, they were charged with the crime of "illegally providing information to a foreign state" as established in Article 445 of the Criminal Code. At a later date, they were charged with pornography.¹⁴⁵ Local and international rights groups have called for their unconditional release and condemned their prosecutions and characterized their case as a part of a wider crackdown independent media. They are currently facing potential imprisonment of up to 15 years for espionage and 1 year for pornography. They were detained without conviction or trial (spending approximately 9 months in prison), in total violation of due process standards and fair trial rights, until August of 2018. No evidence of espionage has since been given by the prosecutor's office or the court. No evidence of the information that they supposedly provided to a foreign power or the manner of transmission of that information has yet been provided. The condition of court supervision, which has been in place since their release on bail, stipulated that they are banned from travel and have to report to the police periodically. The abuse of the courts by the executive is part of the strategy to pressure the United States and link critics to a fabricated 'plot' off revolutionary overthrow that has been the central narrative in the justification of increased repression and the elimination of political competition.

Mr. Sothearin pointed out: "It is difficult for us when we remain under court supervision, and I have to show up at a police station once a month. Sometimes

¹⁴¹ <https://www.phnompenhpost.com/national/all-media-outlets-must-pay-tax>

¹⁴² RFA closed its nearly 20-year-old bureau in Phnom Penh on Sept. 12, 2017 in the context of a crackdown which entailed massive changes to the media landscape, persecution and threats against CSOs, and the forced dissolution of the major opposition party CNRP.

¹⁴³ <https://www.khmertimeskh.com/50615460/appeal-court-to-hear-rfa-duos-case>

¹⁴⁴ Espionage consists of supplying a foreign state with information prejudicial to Cambodia's national defense under article 445 of the criminal code, an offense punishable by a prison term of 7 to 15 years.

¹⁴⁵ In accordance with article 39 of the Law of Suppression of Human Trafficking and Sexual Exploitation, production of pornography for distribution, sale or public display is punishable by a maximum prison term of one year in prison and a fine of 2 million riels (U.S. \$490)

when I go there, I am not able to see the officer who is in charge of my case so I have to go back again, which is a waste of time. Because of the supervision order, I cannot go overseas to join a short training course to improve my knowledge. I also can't visit my Kampuchea Krom parents who are in Vietnam and they can't come to visit me because they are very old."

Mr. Chhin said that the confiscation of his equipment limits his ability to obtain a basic income, as it prevents him from running a photo studio or producing documentaries. He asserted: "I hope that the court will give back my equipment so that I can work to support my family as I am now jobless. Now I don't have any money to buy new equipment and do not have a job to support my family," he added.

In the June 2019 hearing, the appeals court informed the defendants that they no longer would continue to be under court supervision, but longer needed to report to the police¹⁴⁶, as it had expired in March. Neither the defendants nor their legal representative had been notified of that change by the municipal court.¹⁴⁷

On 26 July 2019, the court finally began the trial of the two former journalists. In the trial hearing both admitted that they had sent information to the RFA after its offices in Cambodia had been closed. They clarified what the content of that information was, demonstrating that it was not classified and pertained to common knowledge public information related to news events that were also covered by other media outlets. They rejected the idea that this information was 'state secrets'.

Uon Chhin expressed that at the time of arrest, he was building a karaoke parlor in order to start a small business as he had been left without employment following the closure of RFA. He also denied alleged connections to the U.S. Central Intelligence Agency. Yeang Sothearin similarly admitted sending information to RFA in relation to two news stories but also emphasized how the issues were widely reported by local media and could be considered public knowledge.

The proceedings exemplified the pretense for political maneuvering and lack of substance, which characterizes the entire case against the reporters. Sam Chamroeun, pointed out the ineffectual nature of the proceedings, with no

¹⁴⁶ <https://www.hrw.org/news/2019/07/24/cambodia-drop-case-against-journalists>

¹⁴⁷ <https://www.khmertimeskh.com/50615460/appeal-court-to-hear-rfa-duos-case>

evidence being offered by the prosecution and not an outcome to the hearing. The defense requested the removal of the arresting police officers from the courtroom because they were intimidating the defendants, but the request was denied. The presiding judge, Im Vannak, was said to ask questions irrelevant to the charges against the accused and adjourned the hearing until August 9, announcing that on that date he would make a statement related to the espionage charge and hear evidence pertaining to the pornography charge. He said Im Vannak had asked questions “with little relevance” to the charges facing his clients, and also rejected his request for the police officers who had arrested the defendants for being removed from the courtroom because they were “intimidating” the defendants. The presiding judge implied wrongdoing in sending news related information to RFA after its Cambodia office was closed, but that itself is not a crime, giving the clear impression that despite a lack of evidence, the court was trying to conclude the accused were in the wrong.¹⁴⁸

On 9 August 2019, the trial against the two former journalists resumed. The weakness of the case against them and the total lack of any evidence connecting the accused to alleged crimes is evident to any reasonable observer. Consider that prosecutor Seng Hieng asserted the charges were valid on three grounds. First, the prosecutor said, Chhin had rented a studio on the seventh floor of a hotel to send information to a foreign state. However, no evidence of such intentions was provided. As such, the implication was that the accused committed an illegal act simply by renting a hotel room. The prosecutor claimed that the location made it easy or convenient for the accused to commit the crime. With such convenience being irrelevant to the commission of the crime and other locations being just as comfortable, the absurdity of the prosecution’s case became apparent. Second, it was asserted that the accused had set up a recording studio without the proper permits, which was itself evidence of their ‘bad intentions’. Third, the prosecutor asserted that the accused had continued to send news information to RFA after its Phnom Penh office was closed.¹⁴⁹ Notably, such an act is not illegal under Cambodian law and certainly is not an instance of espionage.

The lawyer for the accused noted that the prosecutor presented no evidence to support the charges: “What information undermined national defense? The prosecutor never proved that the information that our clients had sent out harmed

¹⁴⁸ <https://www.rfa.org/english/news/cambodia/trial-07262019170337.html>

¹⁴⁹ <https://globalvoices.org/2019/08/09/netizen-report-journalists-are-under-fire-from-cambodia-to-cuba-and-beyond/>

national security. Where a ‘foreign state’ is concerned, which country had received information from our clients? The prosecutor never specified either.”

Then, on 3 October 2019, the Phnom Penh Municipal Court ruled that former RFA reporters Uon Chhin and Yeang Sothearin would be re-investigated in relation to espionage charges and subsequent pornography charges brought against them in November 2017.¹⁵⁰ The two were tried in hearings, which took place in July and August of 2019, after having experienced several months in pre-trial detention. On 30 August, the Municipal Court presiding judge announced that the verdict would be rendered on August 30. On the pretense of having a meeting that day, the verdict was delayed, and it was expected to be finally announced on 3 October. However, presiding judge Im Vannak, then declared the court required a new investigation into the case to examine evidence collected earlier.¹⁵¹

On 23 December 2019, the Appeal Court held a closed-door hearing to consider a challenge by the accused in relation to the decision to delay a verdict and reinvestigate the pornography charge.¹⁵² Rather than address the basis for the appeal and the paucity of the case against the accused, the Appeal Court focused on whether or not the defendants' appeal request had followed proper procedure. Yeang Sothearin, asserted that the delays were an attempt to further persecute them or fabricate grounds to convict them. This is verified by the more than two-year process, without any credible case being presented to the prosecution. Indeed, the state now runs a high risk of ‘loss of face’ if it fails to demonstrate wrongdoing by the accused. The defendants themselves may be convicted without evidence for the reason that the prosecution needs to legitimize their detention and extended prosecution. As Uon Chhin pointed out to media, the case is interconnected with the political situation in the country. Following the case over time, it seems apparent that the defendants are being used as pawns to pressure concessions in trade and diplomatic relations with the EU and the US.¹⁵³

¹⁵⁰ <https://www.khmertimeskh.com/50647705/rfa-duos-spy-case-reopened>; The Appeals Court informed the defendants that because they were released on bail, it did not consider the absence of a trial to affect their freedom. See: <https://vodenglish.news/appeal-court-upholds-decision-to-reinvestigate-rfa-case/>

¹⁵¹ <https://www.khmertimeskh.com/50647652/court-orders-re-investigation-into-rfa-duo>; <https://rsf.org/en/news/another-denial-justice-two-cambodian-journalists>; <https://rsf.org/en/news/despite-lack-evidence-cambodian-judge-refuses-drop-case-against-two-journalists>

¹⁵² <https://www.khmertimeskh.com/50672915/court-hears-former-rfa-reporters-case>

¹⁵³ <https://www.voacambodia.com/a/appeal-court-considers-lower-court-ruling-on-pornography-charges-against-ex-rfa-reporters/5218911.html>

The decision of the Appeal Court was announced on 30 December 2019, and the court supported the Phnom Penh Municipal Court decision to reinvestigate the case against the accused in terms of both the espionage charges and the pornography charges.¹⁵⁴ Licadho monitoring manager Am Sam Ath affirmed: “The investigation process has taken years, and it should have been finished, but the Phnom Penh Municipal Court decided to reinvestigate. This has led to more criticism because the investigation has taken a long time already but still cannot find evidence.”

Yeang Sothearin told media: “Why do they still want to investigate when they haven’t found anything [after all of this time]. Why won’t the [court] speed up the trial instead of dragging it on like this? I think they intend to mistreat us and want to ensure that we are forced to live in such a situation for as long as possible. I don’t have full freedom because the case is still hanging over me, so I call on the court to complete it as soon as possible.”¹⁵⁵

The case against the two former journalists has eroded trust of journalists in the different laws and publicly stated positions that support freedom of speech and press. The behavior of the courts directly contradicts the claims by the Ministry of Information that there is media freedom in Cambodia. Chak Sopheap, director of the Cambodian Centre for Human Rights: “Journalists should be permitted to do their work, including exposing corruption, criticizing public policies, and shedding light on human rights violations, in an environment that promotes their safety, without fear of negative repercussions.”¹⁵⁶ However, in Cambodia journalists cannot fulfill these public functions without serious threat of legal prosecution or even violations of personal security.

In a statement in November, the US embassy in Cambodia declared: “Dropping charges against these journalists and restoring their full rights and freedoms would correct an injustice, honor Cambodia’s constitution, and signal a needed commitment to the important role an independent media plays in a democracy.”¹⁵⁷ On 15 September 2017, the spokesman for the Ministry of Information held a press conference to publicly rebuke the claim that the RGC had pressured the closure of

¹⁵⁴ <https://vodenglish.news/appeal-court-upholds-decision-to-reinvestigate-rfa-case/>

¹⁵⁵ <https://www.rfa.org/english/news/cambodia/rejection-12302019162147.html>

¹⁵⁶ <https://www.aljazeera.com/news/2019/07/espionage-trial-rfa-journalists-starts-cambodia-190726070844918.html>

¹⁵⁷ <https://www.khmertimeskh.com/660034/call-for-charges-to-be-dropped-against-rfa-duo/>

RFA.¹⁵⁸ However, at the same time, he indicated that RFA staff and reporters, which continued to act as professional or citizen journalists, would be treated as spies.¹⁵⁹

On May 29, 2019, the United Nations Working Group on Arbitrary Detention decided the: “violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Uon and Mr. Yeang an arbitrary character.” The working group concluded that article 445 of the Cambodian criminal code lacked a clear definition of the offense criminalized by the article and thus was in violation of Cambodia’s international human rights obligations. A representative of Human Rights Watch asserted: “The fabricated case against the ex-RFA journalists is intended as a strike against media that dares to criticize the Cambodian government.”¹⁶⁰ rights group Adhoc maintained: “The charges against the former reporters have been unjustified from the time of their arrest...As journalists, they have the right to take pictures and videos and write stories [even if they are no longer with RFA]. What they did was a report on local issues, and it had nothing to do with harming national security.”¹⁶¹

On 14 November 2019, the Cambodian Journalists Alliance released a statement denouncing the charges against the former reporters as spurious and without basis: It declared: “The ongoing prosecution against the two former RFA reporters is part of continuing intimidation against all journalists working in Cambodia,” its statement said. Justice Ministry spokesman Chin Malin claimed that the lack of evidence in the case after two years of the prosecution was itself justification for re-investigation: “It’s their right to make the calls and demands. It is the judge’s right to investigate the case as long as he finds it helpful to gather more information. We cannot drop charges or change a decision without trial or evidence.”¹⁶² The statement makes clear that in Cambodia, in politically motivated persecution through rule by law, it is guilty until proven innocent as evidence is required to drop charges rather than convict.

At the end of 2019, without addressing the failure to procure evidence in relation to the espionage charges, PM Hun Sen sought to denigrate the reputation of the two reporters and move the case to the court of public opinion on charges of

¹⁵⁸ <https://www.khmertimeskh.com/83138/ministry-not-close-rfa/>

¹⁵⁹ <https://www.phnompenhpost.com/national/official-warns-ex-rfa-staffers-about-continuing-work-cambodia>

¹⁶⁰ <https://www.hrw.org/news/2019/07/24/cambodia-drop-case-against-journalists>

¹⁶¹ <https://www.rfa.org/english/news/cambodia/trial-07262019170337.html>

¹⁶² <https://www.khmertimeskh.com/660034/call-for-charges-to-be-dropped-against-rfa-duo/>

immorality. In a public speech, he declared: “Some embassies have requested for the charges against him to be dropped and accused the government of violating the rights and freedom of the press. This journalist is worse than an animal. He took his wife to have sex with a foreigner and even filmed it himself, while another had an extramarital affair with the wife of a man who lived in Kampot province and filmed himself as well. I don’t want to reveal [his name]. They did this; why not sentence them? They asked, ‘why not drop their charges?’ The sentencing has nothing to do with journalism. The sentencing is about producing a [pornographic] film. And don’t say that the case is a private incident because this is a violation [of the law].”

Hun Sen continued by commanding Keo Remy, the president of the Cambodian Human Rights Committee (CHRC) to take the film to any embassy of a government critical of arrest and prosecution of the reporters. He declared: “The worst was when he took his wife to have sex with a foreigner and filmed it himself. In this case, I would like to ask whether we violated the rights of the press. We did not violate [press rights] but sentenced [the individual for his crimes]. So for any embassy that accuses us, the films should be taken to them.”¹⁶³

In conclusion of this part, the degree of freedom of the press and online freedom did not improve significantly in 2019. The presence of independent media with the capacity for investigative journalism and analysis is sorely lacking. The shift to online news has resulted in a proliferation of media outlets, but many are of poor quality. The media landscape remains reduced and has not recovered from the 2017 and 2018 reduction of independent media outlets. Journalists continue to be easily prosecuted for defamation and incitement. Coverage of land and resource grabbing, corruption, and impunity for government officials puts journalists at serious risk of prosecution. The potential for citizen journalists remains restricted by substantial self-censorship by the citizenry. Importantly, overly lengthy prosecutions of journalists for serious crimes, without the provision of evidence continues unabated. As a result, journalists cannot trust the judicial system to provide an effective mechanism for protection.

¹⁶³ <https://www.phnompenhpost.com/national/government-did-not-violate-rights-freedom-press-says-hun-sen>

CHAPTER 3-

Labor Rights and Politics

Introduction

This chapter is divided into several sections in order to provide a comprehensive, albeit not exhaustive, presentation of events and issues in the Cambodian labor sector in 2019. The first section looks at key policy issues related to labor. The second section focuses on the process of amendment of the Trade Union Law, highlighting changes and continuing deficiencies of the law, according to the perspectives of the different stakeholders. The third section examines the political process and results of the negotiations for the 2020 minimum wage for the garment and footwear sectors. This allows for an examination of the politics of the process for determining the minimum wage and a preliminary assessment of the import and effectiveness of the newly established council. The fourth section examines the rights to assembly and association by looking at the empirical evidence pertaining to labor strikes and demonstrations in 2019. This case-based reporting enables conclusions regarding the challenges and opportunities faced by organized labor. The fifth section covers cases of 'lawfare' against unionists and worker representatives. The analysis supports the conclusion that likely a result of a change in policies stemming from incentives to maintain EU trade access beginning with PM Hun Sen's instruction to the courts in late 2018, there has been a reduction in the use of legal prosecution to restrict union rights and organizing. However, cases of violence against union leaders and members, as well as prosecutions against unionists continue. It remains to be seen whether or not the courts will return to the rates of prosecution which existed prior to efforts to reduce repression of unions, after the EU decision on the EBA is rendered. The sixth section entails presenting the positions of some key international brands for the garment and footwear sector on labor issues and rights in Cambodia in 2019. The final section briefly considers judicial remedy for the violence of unionists and how collective memory is maintained through mourning by looking at developments in the case of murdered unionist Chea Vichea.

CHAPTER 3 – PART 1

Key Policy Issues for Labor

On 27 May 2019, Labor Minister Ith Samheng addressed the challenge of preparing for the changes in the labor force, which result from automation and the application of advanced technology. He claimed that the impact of technology on labor in Cambodia was still small, but that new policies and practices were needed to develop the human resources capacity to weather the coming changes. A 2016 ILO study found that several ASEAN states faced mass unemployment as a result of job automation if education and human resources did not advance. The ILO found that for Vietnam, 70 percent of jobs could be lost, with Cambodia 57 percent, with Indonesia, 56 percent, with Philippines 49 percent, and with Thailand 44 percent. The Cambodian garment sector could see 88 percent of the workforce unemployed.

Moreover, the impact is expected to be more serious for women and unskilled workers. Van Sou Ieng, chairman of the Garment Manufacturers Association in Cambodia, said changes were already being seen. For example, there is less need for human resources in advertising following the shift to online and social media product promotion. Ath Thorn, president of the Cambodia Labor Confederation, said that workers were already worried about job losses and the future of employment.¹⁶⁴

In June 2019, the Ministry of Labor and Vocational Training announced it would monitor employers to ensure proper adherence to procedure pertaining to seniority indemnity payments, as the policy requiring such payments came into effect that month. The says it will monitor the implementation of seniority indemnity payments to all factory employees in line with the new policy which comes into force this month. According to the relevant *prakas*, seniority indemnity payments should be given to workers with their salary. MLVT representatives said that information about the policy has been disseminated since late 2018, but if employers were found deviating from the policy then fines would be imposed. The deputy secretary-general of the ministry's General Secretariat of the Committee for the Resolution of Strikes and Demonstrations, Tes Rokaphal, said: "Seniority indemnity back pay, and future seniority indemnity payments for workers will begin

¹⁶⁴ <https://www.khmertimeskh.com/50608287/government-seeks-to-prepare-labour-force-over-automation>

in late June. If any factory is found to have failed to implement the payment of back pay and seniority indemnity for workers, there will be a fine on those enterprises."¹⁶⁵ GMAC deputy secretary-general Kaing Monika, claimed: "There is no problem. We are working with the ministry [of Labor and Vocational Training] to organize a three-day training course from Tuesday to Thursday on how to calculate payment."

In November 2019, Labor Minister Ith Samheng announced that labor inspection teams of different ministries would be merged to create a single inter-institutional mechanism for the assessment of factories and evaluations of working conditions or labor disputes. On 15 November 2019, the MLVT met with officials from the Ministry of Industry and Handicrafts, the Ministry of Tourism, and the Ministry of Environment. He said that the inspectors from all four ministries will be merged into an inter-institutional labor inspection team, with the Ministry of Labor taking the lead to organize and conduct the inspection process, as well as develop the schedule for inspections. He indicated that by combining teams, it would reduce the burden on employers. Inspections would occur on an annual basis, or in response to a specific problem. However, he indicated that relevant ministries still needed to devise common content for inspections. Far Saly, president of National Trade Unions Coalition, questioned the efficacy and impact of the change if workers' needs were not given higher priority. He said: "Even if three or four ministries work together, their effort will not be productive if they do not care to look into the needs of workers. Previously, when there were teams from four ministries working on worker issues, bad working conditions still remained."¹⁶⁶

In July of 2019, the Garment Manufacturers Association in Cambodia (GMAC) requested that the government suspend negotiations with unions, halting the work of the Trade Union Negotiation Council. GMAC claimed that uncertainty resulting from the potential EBA loss made it impossible to conduct negotiations. It was the second time the manufacturers had requested a cessation to TUNC activities in

¹⁶⁵ <https://www.phnompenhpost.com/national/ministry-monitor-seniority-payments>. The policy stipulates that seniority indemnity payments (in the Textiles, Garment, and Footwear Sector (TGF), would be made according to a regular schedule two times per year, and that payment must be made for seniority indemnity due prior to 2019. Bay pack is to be given to workers in the TGF sector is to be provided to were employed prior to 1 January 2019, in the amount of 30 days of wages per year up to 6 months total. The payment for seniority requires 15 days of wages with half distributed in June and half in December. For sectors other than the TGF the same policy would apply, except payments from before 2019 would not be necessary to distribute until December 2021. Instead of paying it in full when terminating workers' contracts, the payments are to be made regularly twice a year and must include seniority indemnity due before this year.

¹⁶⁶ <https://www.khmertimeskh.com/50660643/ministry-to-merge-labour-inspection-teams>

2019 in relation to the formation of a collective bargaining agreement. The letter from GMAC secretary-general Ken Loo declared: “The GMAC executive committee feels that the uncertainty surrounding EBA means we are not in any position to enter into major negotiations that will impact the industry.” A Trade Union Negotiation Council response indicated that any withdrawal from dialogue jeopardized future discussions and that continued engagement would be a positive sign to the EU. According to union leaders involved with the body, the Trade Union Negotiation Council (TUNC) was formed in 2017, for workers to seek out benefits other than wage raises. The TUNC has been supported by the ILO to be the forum for negotiations related to the Collective Bargaining Agreement for the garment and footwear sectors. There was a claim that approximately 40 percent of buyers had indicated support for increased benefits for workers.”¹⁶⁷

In November 2019, the Garment Manufacturers Association issued a strong request to the RGC to delay the implementation of the government-mandated pension scheme established by the draft law on social security. It claimed that the pension framework placed an excessive financial burden on employers. The Social Security Law Cambodia has urged the government to delay implementing a pension scheme included in the current draft law on social security to reduce the financial burden on employers. The law is expected to be approved in by the parliament in 2020, as the draft was accepted at the Council of Ministers in August 2019¹⁶⁸ The law entails an expansion of existing social security funding for the private sector (including both the informal economy and garment sector labor forces). GMAC said, the implementation of policy pertinent to pensions should be delayed as company budgets for 2020 had already been fixed, and because further consultation is needed between employers and workers related to the investment of social security funding. The association stipulated that social security investments should focus on improving facilities, technology, and worker capacity. However, Ouk Samvithya, director of the National Social Security Fund, said the purpose of the pension system was to provide protection for workers facing risks and to care for them when they are elderly.¹⁶⁹

In the sum of this part, It means that the discussions on the policy related to labor rights, working conditions, and other benefits stall what workers receive remains

¹⁶⁷ <https://www.phnompenhpost.com/national-politics/gmac-calls-halt-union-negotiations-due-uncertainty-over-eba>

¹⁶⁸ <https://www.khmertimeskh.com/50630164/draft-law-on-social-security-approved>

¹⁶⁹ <https://www.khmertimeskh.com/50660667/gmac-calls-for-delay-of-incoming-pension-scheme/>

the same and is not improved. There have been skeptical that factories would adhere to the government's policy because of past evasion related to payment for workers and the financial limitations of some employers.

CHAPTER 3 – PART 2

Trade Union Law

On 15 January 2019, the Labor Ministry released a directive from the Minister instructing all officials to adhere to the provisions of the labor law. The directive was issued on 14 December 2018, but not made available to unions and the public until one month later. The directive asserted: “In order to ensure and improve the freedom of vocational organizations in Cambodia, I am requesting all officials in labor departments to follow the Trade Union Law, especially the implementation of procedures to protect union officials and union leaders.” It also stated that the authorities should not require union leaders to provide personal details and family information, and they should be given a grace period of 45 days for submitting an application to form a union. Moreover, he indicated that they should not be required to register the union with the Ministry, as they should be allowed to do so through a federation or confederation of unions. However, unionists pointed to the Ministry was not providing effective protection for unions from being fired. Firings were not responded to with the Ministry's action to compel employers to allow union members/leaders to return to work.

Likely in relation to the impending EBA withdrawal decision, the RGC directed the Ministry of Labor and Vocational Training to undertake a process of the highly controversial and criticized trade union law, ostensibly for the purpose of better protection of labor rights and freedom of association.¹⁷⁰ On 25 April 2019, the Ministry conducted a seminar with 100 representatives of trade unions and workers' associations to gain their input.¹⁷¹ This provided an opportunity for workers to raise their major concerns, and to assess the changed Trade Union Law by comparing the amended law with the legislation desired by trade unions.

¹⁷⁰ In February 2019 the Council of Ministers instructed the Ministry of Labor to begin consultations on amending the law. See: <https://www.khmertimeskh.com/50597930/trade-union-law-amendments-to-be-discussed-today>

¹⁷¹ <https://www.phnompenhpost.com/national/ministry-and-trade-unions-discuss-law-amendments>

On 11 October 2019, the Council of Ministers approved the draft changes to the Trade Union Law without further editions. On 26 November 2019, the single-party parliament enacted amendments to 10 articles of the Law on Trade Unions.¹⁷² The Senate approved the changes to the law on 9 December 2019¹⁷³, and the Constitutional Council on 19 December 2019.¹⁷⁴

Following the April seminary, labor reps and international stakeholders indicated that they welcomed the inclusive practice of developing a draft amendment to the law. Ath Thon, president of the Cambodian Labor Confederation, indicated that approximately 70 percent of unions' concerns were addressed. However, he indicated that remaining concerns pertained to workers' right to assembly and strike, as well as the standard for the number of members required by an association to register a union with the Ministry of Labor. Som Aun, president of the National Union Alliance Chamber of Cambodia, said the workshop effectively provided an opportunity for unions to provide input. However, only 10 articles were included under discussion by the MoL. The representative of the International Labor Organization which gave them one month to request changes to any of the 10 articles.¹⁷⁵

As a result of the consultative process, when the amendments to the law were passed by the legislature, the Ministry of Labor could claim that the changes were a response to requests from the International Labor Organization and unions and that the concerns of all stakeholders, including employers, were taken into consideration. Also, it was emphasized that a stakeholder working group was formed to draft the changes. However, workers' representatives and labor rights advocates have said the changes were insufficient to address the major concerns of the unions and ensure protection of fundamental rights of workers consistent with international labor conventions Cambodia has joined. The changes were passed by 107 ruling party lawmakers. The amendments meant changes to articles 3, 17, 20, 21, 27, 28, 29, 54, 55, and 59 of the law.

A statement prepared by the RGC and read at the NA session declared:

¹⁷² <https://www.khmertimeskh.com/50664409/national-assembly-approves-trade-union-law-amendments>;
<https://www.phnompenhpost.com/national/trade-union-bill-changes-passed>;

<https://www.khmertimeskh.com/50664409/national-assembly-approves-trade-union-law-amendments>

¹⁷³ <https://www.phnompenhpost.com/national/senate-passes-amendments-10-articles-trade-union-law>

¹⁷⁴ <https://www.phnompenhpost.com/national/ccc-passes-amendments-10-articles-trade-union-law>

¹⁷⁵ <https://www.phnompenhpost.com/national/ministry-and-trade-unions-discuss-law-amendments>

“[The law] eases procedures for union registration. For Cambodian workers, the new Articles 20 and 21 no longer require them to declare their education level before registration or require them to at least be able to read and write Khmer. For foreign workers/employees and employers who wish to hold managerial or administrative positions in a professional association or union, they are no longer required to declare beforehand that they have been cleared of a conviction for a misdemeanor or a felony. [The law] eases procedures for maintaining union registration by not requiring them to submit reports of their activities and finance to the ministry in charge of labour. But [the ministry] has an obligation to audit these reports in case there is a request from any member or donor as stipulated in the new Articles 17 and 27. The law also eases procedures for the dissolution of a union or professional association. It is automatically dissolved in case an enterprise or establishment where it is based closes down and has paid wages and other benefits for workers/employees as stipulated in the new Article 28.”¹⁷⁶

The statement also claimed that the changes to the law represented the realization of guarantees of the right to association and the RGC’s policy of connecting working conditions and international trade to make investment more attractive. It asserted that this would generate employment, which showed the government’s commitment to worker’s rights. The statement also clarified that as of September 2019 there were 1,692 professional organizations registered with the Ministry of Labor and Vocational Training, with 1,566 local unions, 106 union federations, 15 union confederations, and 5 employer associations.¹⁷⁷

Independent unionist Pav Sina, the president of the Collective Union of Movement of Workers, lamented that input from unions was not fully taken into consideration and asserted: “The amendment made to this trade union law did not follow our input. So this law still causes as many obstacles as before because its content was not changed. Only spelling and wording had been changed, nothing else. The law does not serve the interests of workers as it reduces the power of workers and unions that represent them.”¹⁷⁸ He noted that the amended law limits unionists to accompanying workers but prevents them from representing them. Other problematic provisions restrict workers’ rights to choose their representatives, or require financial reporting and authorize independent auditing and inspection of

¹⁷⁶ <https://www.phnompenhpost.com/national/trade-union-bill-changes-passed>

¹⁷⁷ The Minister of Labor Ith Sam Heng reported in April that as of the first quarter of 2019 there were 4,949 labor organizations registered with the ministry, of which 4,722 were local unions, 189 union federations and 29 confederation unions, and 9 employers’ associations. See: <https://www.phnompenhpost.com/national/ministry-and-trade-unions-discuss-law-amendments>

¹⁷⁸ Ibid.

union activities which raise the specter of significant interference in union affairs.

¹⁷⁹

On 18 December 2019, 35 national and international labor and rights organizations issued a joint statement calling upon PM Hun Sen to recognize the problems with the amendments to the law and requesting a legislative remedy.¹⁸⁰ They found that Art. 3, as it does not extend the law to all persons, undermines right to form and join trade unions (as set out in art. 36 of the Constitution. Art. 5 restricts the purposes of the formation of unions, which impinges on the right of workers and citizens to determine the aims of their association and thereby undermines the right to association. Art. 12 (unchanged) sets high standards for the requirements that must be met to form a union and grants the government excessive discretion, and as a result, unions may be rejected arbitrarily. Art. 17 undermines the right to the association by restricting the capacity of unions to determine their internal affairs. Art. 18 (unchanged) allows for lawsuits filed by the Ministry against unions if it fails to fulfill its obligations, but that determination of such failure is also under the authority of the Ministry. Articles 20, 21 and 38 continue to infringe the right to the association by restricting the free and fair selection of representatives by the members of the union. Art. 54 does not protect the right to collective bargaining and dispute resolution to all unions and thereby fails to meet the standards of international law. Additional problems concern the registration requirements for unions. The requirements violate art. 2 of ILO convention no. 87, because they necessitate authorization by the government. Moreover, they infringe on the freedom of unions to enact their constitutions and internal rules. The recognition of a union should fall under the authority of an independent body rather than the government. Finally, the law does not remedy the problem of short-term contracts used as a means to pressure workers against forming a or joining a union with the threat of non-renewal of employment.¹⁸¹

The next step in union organizing and government support for a labor sector capable of weathering the challenges of decreased access to preferential trade status and the inevitable expansion of automation is the evolution of sectoral bargaining. In the context of the decision-making process for the minimum wage (discussed in the next section), unions discussed separate coordination and

¹⁷⁹ <https://www.rfa.org/english/news/cambodia/amendments-12182019140541.html>

¹⁸⁰ <https://www.central-cambodia.org/archives/3322>

¹⁸¹ <https://www.central-cambodia.org/archives/3322>; <https://www.hrw.org/news/2019/12/18/joint-letter-prime-minister-hun-sen>

consultation that had conducted with regard to their mission of attaining a ‘livable wage for all’. IndustriALL and affiliate unions in Cambodia met for two days to devise strategies to promote a living wage through improving brands’ purchasing practices, recognizing that poor practices resulted in undesirable levels of overtime work, underpaid wages, and increased use of short-term contracts. Christina Hajagos-Clausen, IndustriALL’s director for textile and garment, Christina Hajagos-Clausen noted that: “Sectoral bargaining has the potential to address all union demands by building sector-specific wages and conditions on top of the minimum wage and linking these to brand prices, something that the minimum wage cannot do.” Athit Kong, President of CCAWU and IndustriALL textile and garment sector co-chair, pointed out that for a living wage to materialize in the garment sector, greater support for coordination with IndustriALL was needed from brands such as Adidas, Timberland and North Face.¹⁸²

Many sectors of the Cambodian labor force are not unionized and do not have the same legal protections for the association as the garment sector, as well as access to dispute resolution mechanisms. The evolution of sectoral bargaining is essential to ensuring continuing protections for workers and safeguarding achievements made so far. However, it is also becoming more and more apparent that sectoral bargaining will be a key to the management of the labor force in an effective manner to provide for the continued development of the Cambodian economy. The National Council on Minimum Wage may provide a model of an institutional mechanism for labor management and the protection of labor rights, which could inform the development of bargaining practices in other sectors.

In the conclusion of this part, the passage of the amendments has been significant deficient remained in the law. The changes to the law did reduce obstacles for workers; only a small amount of the unions’ suggestions had been input into the draft law. The law still requires unions to register with the Ministry of Labor before carrying out actions in support of workers, which restricted workers’ fundamental rights and the free association of the unions. Multiple national and international organizations already criticized the law for the failure to extend the scope of the law to legalize unions for crucial areas of the labor force such as the informal sector, teachers, and public servants. Cambodian Labor Confederation president

¹⁸² <http://www.industrialunion.org/cambodian-unions-demand-sectoral-bargaining-to-achieve-living-wage>. A spokesperson for Adidas indicated the brand is committed to fair labor standards, and pointed out its participation in the Fair Labor Association as a founding member and its ongoing ‘independent and unannounced’ inspection of supplier factories as well as external evaluation of its inspection practices. https://www.just-style.com/news/unions-call-for-collective-bargaining-on-cambodia-wages_id137124.aspx

Ath Thorn said: “Out of 15 articles that the unions proposed amending, less than 10 percent of suggestions put forward by the unions’ side were accepted.”¹⁸³

CHAPTER 3 – PART 3

The Tripartite National Council on Minimum Wage

The 2019 minimum wage for garment and footwear sector workers was 182 USD per month (an increase of 12 USD from the 2017 rate of 170 USD per month). Every year since 2014, the RGC has increased the minimum wage for the sector.

The minimum wage for 2020 was increased by 4.4 percent to the amount of 190 USD per month. The figure was the result of the negotiation process, which occurred through the institutional mechanism of the National Council on Minimum Wage. The Ministry of Labor and Vocational Training (MLVT) indicated that other allowances for workers would remain in place at the same rate, including 7 USD per month for transportation; 10 USD per month for accommodation; 0.50 USD per day for meals; and a seniority bonus of 2 to 11 USD per month. As a result, the base salary for a worker in the garment sector would be from 207 to 218 USD per month. Workers on probationary employment would receive 185 USD per month, an increase of 20 USD from the amount of 165 USD last year.

In July 2019, the Ministry of Labor and Vocational Training announced that discussions with employer and union representatives would begin in August related to the 2020 minimum wage for the garment and footwear industry, which would come into effect on 1 January 2020. The MLVT also indicated that a national council meeting would be held in October 2019, where the actual 2020 minimum wage rate would be determined. The Ministry instructed stakeholders to base their proposed wage rates on social and economic factors, such as inflation, expenses, the situation of families, productivity and competitiveness, and profitability in the sector. (Article 5 of the Law on Minimum Wage sets out seven criteria for consideration.) Cambodian Labor Confederation president Ath Thorn expressed that he expects an increase between 20 and 25 USD per month, but that most workers would be content with an increase of 10 to 15 USD per month. He alleged that based on economic conditions, such as inflation and cost of living,

¹⁸³ <https://www.phnompenhpost.com/national/trade-union-bill-changes-passed>

the minimum wage should be approximately 300 USD per month.¹⁸⁴ The International Labor Organization (ILO) calculated that the minimum wage should increase between four and five percent.¹⁸⁵

Formal minimum wage negotiations between government, employers, and unions began on 29 August 2019 with the formation of the National Council on Minimum Wage¹⁸⁶, with the MLVT expecting the outcome to be reached by 25 September.¹⁸⁷ On 29 August, the Council selected its two vice-presidents, one to represent employers and one to represent workers (Som Aun, president of the National Union Alliance Chamber of Cambodia, and Nang Sothy, a representative of the Garment Manufacturer's Association in Cambodia).¹⁸⁸ The Council was established under the Law on Minimum Wage and met for the first time in 2019.¹⁸⁹ On 3 September 2019, the MLVT gave the different stakeholders until 6 September to arrive at the proposal for the 2020 wage, which would be brought into negotiations. The process was structured such that each party would have its own negotiations prior to the tripartite bargaining, wherein they would arrive at an agreed-upon figure. Then six meetings of the trilateral National Council on Minimum wage would be held so that a final agreed-upon amount could be decided. If the parties could not reach an agreement, a figure from the MLVT would be stipulated and put to a democratic vote. The resulting amount would then be subject to approval by the Minister of Labor.

As of that time, Som Aun, the vice-chair of the National Council of Minimum Wage representing garment workers, indicated that the 17 people from the workers' side had not agreed on an amount.¹⁹⁰ In the course of the negotiations, Union representatives called for consideration and decisions regarding diverse provisions for workers, including a 1 USD daily food allowance; the re-establishment of canceled holidays; the provision of safe transportation for

¹⁸⁴ <https://www.phnompenhpost.com/national/govt-discuss-garment-wage>

¹⁸⁵ <https://www.phnompenhpost.com/national/negotiations-continue-next-years-minimum-wage>

¹⁸⁶ <https://www.phnompenhpost.com/national/minimum-wage-meeting-held>.

¹⁸⁷ <https://www.khmertimeskh.com/50640403/gmac-urges-government-to-reduce-financial-burden-on-employers>

¹⁸⁸ <https://www.khmertimeskh.com/638520/minimum-wage-council-selects-vice-presidents/>

¹⁸⁹ The Council was established with the enactment of the Law on Minimum Wage of 6 July 2018, Royal Kram RS/RK0718/15. See: <https://kh.rajahtannasia.com/media/3092/2018-07-labour-law-on-minimum-wage.pdf>; <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-legal-update-law-on-minimum-wage-dated-6-july-2018-law-on-minimum-wage/>

¹⁹⁰ <https://www.phnompenhpost.com/national/ministry-extends-deadline-propose-minimum-wage>

workers; and expanding the minimum wage to the tourism, construction, and services sectors.¹⁹¹

On 3 September 2019, Kaing Monika, GMAC deputy secretary-general, asserted that an increase of the minimum wage was not financially tenable for the employers. He based his contention on the reduction in the number of orders from buyers faced by the industry. He also noted that the minimum wage was already higher than in competing states, with a rate of 180 USD per month in Vietnam. However, Heng Sour, spokesman for the Labor Ministry said that workers needed a higher wage.¹⁹² Kaing Monika said employers did not have to propose an increase of the minimum wage in the negotiations: “We have held regular meetings, and more than 60 percent of our members have told us that they cannot increase the minimum wage because it has currently reached a point where it is difficult for them to compete.”¹⁹³

On 4 September 2019, the secretary-general for the Garment Manufacturers of Cambodia (GMAC), Ken Loo, indicated that the employers position was that PM Hun Sen should not add 5 USD to the final agreed-upon wage rate, as he had done in the past, as it would undermine the industry’s competitiveness: He asserted: “Next year, on top of the wage increase, if any, factories will also be required to pay quite a heavy pension fund contribution of another four percent. We respectfully request the government not to add in another \$5 as in the past. This is to reduce cost pressure and help the industry to stay afloat.”

Pav Sina, president of the Collective Union of Movement of Workers, opined that the RGC would follow the GMAC request, as it tended to enact their policy recommendations, as it had done with amending the trade union law and eliminating some public holidays. However, he argued that the RGC should consider the living conditions of workers and continue with the practice of adding 5 USD to the wage rate. He noted that union concerns regarding transport for workers and meal stipends had not been met. Mann Seng Hak, vice president of the Free Trade Union, yesterday said the 5 USD increase should continue because of the loss of public holidays.

GMAC cited multiple costs increasing the financial burden of employers: accident insurance (requiring employers to pay 0.8 percent of work gross salary to the

¹⁹¹ <https://www.phnompenhpost.com/national/vote-decide-minimum-wage-if-compromise-not-reached>

¹⁹² <https://www.khmertimeskh.com/50640019/gmac-eyes-no-minimum-wage-increase>

¹⁹³ <https://www.phnompenhpost.com/national/ministry-extends-deadline-propose-minimum-wage>

NSSF); health insurance (requiring employers pay 2.6 percent); pension (which will require employers to pay 5.4 percent beginning in 2020 according to a draft law to expand the NSSF which affects the garment sector along with private and informal industry and civil servants). Ken Loo stated that trends in wage growth did not correspond to productivity increases. He alleged: “This trajectory cannot continue and we have to see much lower rates of increase over the next few years in order to remain competitive.”¹⁹⁴

The wage proposed by the workers was 199 USD per month, and the wage proposed by the employers was 184 USD per month. From the beginning of the negotiations, the RGC had proposed a salary of 187 USD per month. By 15 September, the workers had agreed to reduce their expected wage to 197 USD per month, and the employers had agreed to raise their figure to 184.5 USD per month.

Nang Sothy, the deputy director of the National Council on Minimum Wage, and a representative of employers during negotiations indicated that the figure tendered resulted from technical calculations, and the employers were economically unable to offer a higher rate. He cited the losses from the end of the EU EBA trade arrangement and potential exclusion from the US General System of Preferences as key factors (see the chapter on Cambodian International Relations).¹⁹⁵

As of 19 September, after meeting 18 times since the beginning of formal negotiations, the employers had increased their offer to 186 USD per month, while unions had agreed to decrease their demand to 195 USD per month. Labor Minister Ith Sam Heng, chairman of the National Council on Minimum wage, said: “As per the Law on Minimum Wage, if on September 20, the parties cannot agree, then the National Council on Minimum Wage will vote on setting a formal figure for the Minister of Labor and Vocational Training to consider and approve.”¹⁹⁶

Nang Sothy, who represented employers as deputy president of the National Council on Minimum Wage, said the government would offer 187 USD per month. Although the employers favored 186 USD, the government figure would be accepted if put to the vote.

¹⁹⁴ <https://www.khmertimeskh.com/50640403/gmac-urges-government-to-reduce-financial-burden-on-employers>

¹⁹⁵ <https://www.phnompenhpost.com/national/negotiations-continue-next-years-minimum-wage>

¹⁹⁶ <https://www.phnompenhpost.com/national/vote-decide-minimum-wage-if-compromise-not-reached>

At the final round of negotiations, the government suggested the salary rate remained at 187 USD per month, which the workers called for 195 USD, and the employers proposed 186 USD per month. Ultimately, the parties could not agree and it was necessary to conduct a vote. It was reported that 43 out of 51 members of the Council voted in favor of 187 USD per month. After the figure was decided and submitted to the PM for approval, Hun Sen increased the amount by 3 USD per month.¹⁹⁷

In the brief of this part, although the wage increase to 190 USD per month but the living condition still not improve because the prices of goods and facilities also increase, especially room rents and electricity continue to rise, the increased wages won't end up in workers' pockets. Higher wages into consideration can contribute to increased productivity and decreased migration.

CHAPTER 3 – PART 4

Right to Strike

This section briefly mentions statistics on strikes provided by the Ministry of Labor for 2018, and the situation on International Worker's Day 2019 in relation to worker's right to assembly. The discussion then turned to high-profile strikes in 2019, and it is argued that an overview of certain strikes as case studies provides insights into the conditions of labor and the challenges that workers and unions face.

On 5 March 2019, the Ministry of Labor announced that for 2018 it recorded 47 strikes. In 2017 there were 97 strikes, so there had been a 51.5 percent decrease in the amount. The number of workers that went on strike in 2018 was reported to be 10,890, indicated a marked decrease from the 2017 amount of 32,133. Of the 47 strikes in 2018: 35 cases entailed government intervention; 6 cases entailed blocking roadways; 3 cases entailed marches; and, 1 case entailed violence.¹⁹⁸ Eight major unions requested permission to march for May Day 2019 (International Worker's Day). The request was submitted on 7 March, and they were informed

¹⁹⁷ <https://www.phnompenhpost.com/national/minimum-wage-set-190-2020>

¹⁹⁸ <https://www.khmertimeskh.com/50585027/no-show-by-wd-management-at-meeting-with-workers/>

that the request was rejected on 23 April. Phnom Penh City Hall allowed for rallies as pre-determined locations (Freedom Park and in front of the Council for Development of Cambodia).¹⁹⁹

At the Better Factories Cambodia Business Forum, on 16 January 2019, Labor Ministry spokesman Heng Sour clarified that there were approximately 6,000 unions in Cambodia and that approximately 1,300 of them had been formed after the enactment of the Trade Union Law in 2016. He touted the achievements in the garment industry to the benefit of both employers and workers. However, he critiqued strikes on the basis of a misunderstanding of rights and obligations. He emphasized that illegal strikes would not be acceptable and that workers must accept employers have to comply with the labor law. He also claimed that excessive strikes would lead to a failure of the industry, which would have the largest negative effect on the workers. Ath Thorn, president of the Cambodian Labour Confederation, said that unions were not entirely free and that the Trade Union Law had not provided real protections for worker association. He asserted: “I do not think the freedom of unions has been any better – we can see that because union leaders are still being accused [of crimes]. We are outside of prison, but we can still be charged.”²⁰⁰

On 3 January 2019, several hundred workers from the Prestige factory demonstrated in front of the Ministry of Labor to demand a solution to their dispute with factory owners. The case shows important problems that continued to plague the labor sector in Cambodia. First, the source of the dispute: contrary to the law the factory owners had refused to enable workers to obtain social security cards and had refused emergency leave days as well as equal pay for employees. Second, the co-optation of organized labor by pro-government elements which actually work in the interests of employers: as Cambodian Workers of Economic Union president Sreng Narith was functioning as an adviser to the Labor Minister and advocating for the interests of the factory owner in the case.²⁰¹

At the end of 2018 and the beginning of 2019, garment factory workers staged mass strikes and demonstrations to protest working conditions. In the cases of

¹⁹⁹ Labor Minister Ith Sam Heng touted gains in social protections for workers. He claimed that he RGC had ensured a situation where “88 per cent of enterprises have medical personnel on standby, break rooms where employees can eat, breastfeeding rooms, nurseries, libraries and other such facilities for employees on their premises.” <https://www.phnompenhpost.com/national/may-day-marches-not-allowed>

²⁰⁰ <https://www.khmertimeskh.com/569723/ministry-urges-curb-of-factory-strikes/>

²⁰¹ <https://www.khmertimeskh.com/50565937/kandal-garment-factory-workers-on-strike-to-demand-healthcare>

two factories (W&D Cambodia and Seduno Investment Cambo Fashion) workers were instructed to return to work, but refused to comply because they did not trust their employers to comply with the labor law and provide health benefits and/or seniority pay.²⁰² Without remedy from or response from the state in support of labor rights or existing law, factory owners proceeded with large-scale dismissals.²⁰³ More than 1,200 workers were fired by W&D, following their unpaid demand benefits.²⁰⁴ Despite their claim being based in existing law, the Phnom Penh Municipal Court backed the company, and the Ministry of Labor argued that workers were at fault for not returning to work within an appropriate amount of time.²⁰⁵ By 3 January 2019, pro-government unions were labelling certain workers as inciters, and the Ministry of Labor was announcing that 90 percent of the workers had returned to work; however, workers indicated that only about 100 had returned.²⁰⁶ Workers indicated that they refused to return to work out of solidarity with fired coworkers, and because of fear after some fingerprints were being collected by management.²⁰⁷

After being ordered by the court to return to work, worker representatives indicated that the company announced that ‘inciters’ would not be rehired. Several workers were put on a company blacklist for alleged incitement. Additionally, some senior male workers, pregnant women, and elderly workers were not rehired.²⁰⁸ For the workers that were not rehired, the company refused to follow established rules which require payment of the last month’s wages, missing benefits, and one month’s notice before dismissal. By 4 January, the employer announced the mass dismissals. The decision was supported by the Ministry of Labor and the Cambodian Council of National Unions, whose president Sam Soeun claimed to

²⁰² <https://www.khmertimeskh.com/50564714/garment-workers-continue-strike-2>

²⁰³ <https://peoplesdispatch.org/2019/01/13/1200-garment-workers-fired-in-cambodia-a-week-after-strike/>. “The garments sector has been at the epicentre of Cambodia’s workers’ movement and its famed trade unions. Ever since the democratization process that began after the Paris Accords of 1993, unions have been central in mobilizing political opposition against the government that has been dominated by Hun Sen-led Cambodian People’s Party (CPP) since 1985. With the lack of any real parliamentary opposition, except for the brief period when Cambodia National Rescue Party (CNRP) was active, the trade unions have acted as the veritable opposition against the government.”

²⁰⁴ According to labor law and standards set by the Labor Ministry (which came into effect on 1 Jan 2019), every six months, employers must pay factors a seniority payment, and when dismissed or an employment contract ends, the workers are entitled to severance pay. Seniority payment applies to employees who have undetermined duration contracts, and entails 15 days’ wages paid in two instalments in June and December.

²⁰⁵ <https://www.phnompenhpost.com/national/factory-workers-fired-protesting>

²⁰⁶ <https://www.khmertimeskh.com/50565345/striking-workers-given-ultimatum/>

²⁰⁷ <https://www.phnompenhpost.com/national/wd-workers-refuse-return-work>

²⁰⁸ <https://www.khmertimeskh.com/566431/factory-sacks-striking-garment-workers/>

have investigated the situation and found inciters. By 9 January, the company was announcing that the dismissals were legal and that it had no intention of rehiring the workers. It also announced it would not be providing seniority payments to the fired workers.²⁰⁹ Garment Manufacturers Association in Cambodia Deputy Secretary-General Kaing Monika said that unions had used disinformation to deceive workers.²¹⁰ Khun Tharo, a program coordinator at the Center for Alliance of Labor and Human Rights, said: “It sends a kind of fear through the industry, particularly for those workers who have limited knowledge of the law. It is not 100 percent clear how the new rules should be implemented, and I am concerned that without more education on that, we could be headed toward another period of labor unrest.”²¹¹

On 26 January 2019, GMAC issued a press release which said the mass firing was legal and justified given that workers were protesting for indemnity payments and not for improved working conditions. “GMAC would like to point out to the public that the factory’s refusal to pay seniority indemnity as a lump sum payment for workers of W&D complies with Directive 443 dated 21 September 2018 while the job termination for workers continuing to strike is the employer’s right.”²¹² GMAC did not account for the fact that most of the protestors had agreed to return to work, but refused to accept the dismissal of a certain portion of the workers as warranted. By the end of January, most workers were willing to return to work, but the company had reportedly only rehired 760. The limits of freedom of association and labor organizing became apparent as the dispute continued with 127 workers being refused re-employment because they were considered to incite the workers to strike. Seang Yaut, a Coalition of Cambodian Apparel Workers Democratic Union legal officer, said: “The company released the names of the 127 workers and said it would not reinstate them because it found that they persuaded the workers to strike which affected the company’s revenue.” The rehiring of the other worker’s occurred only after an intervention from the Ministry of Labor. Those who were not rehired held a protest on 14 February and again on 25 February.²¹³

Soeun Bros, one of six workers’ representatives, asserted that workers had complied with the court decision, which required them to return to work by January

²⁰⁹ <https://www.phnompenhpost.com/national/factory-lawyer-sackings-legal>

²¹⁰ <https://www.phnompenhpost.com/national/wd-workers-refuse-return-work>

²¹¹ <https://www.reuters.com/article/us-cambodia-women-garments/mass-sackings-send-chill-through-cambodian-garment-factories-idUSKCN1P41QH>

²¹² <https://www.khmertimeskh.com/572860/wd-followed-law-when-firing-workers-gmac/>

²¹³ <https://www.khmertimeskh.com/50578300/former-garment-workers-protest-sackings/>

3, but the employer fired them anyways on 4 January. Lim Borei, also one of the six workers' representatives, said that during the strike, the company had removed machines and equipment and then complained that the workers were not working when they return from the strike, taking photos as evidence of sloth to use against them. The factory representative and defense lawyer, Taing Meng, claimed that the factory was in compliance with legal procedures. However, he admitted to media that the workers had returned to work and claimed they were fired because they wanted to go back on strike, contradicting the earlier claim that workers refused to return to work by the court-mandated strike deadline. Seang Yuth, an official at the Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU), asserted that the workers had returned to work, but had requested the court to had asked the court to issue a new ruling which respected the right to peaceful protest and expression, as guaranteed by the Cambodian Constitution.²¹⁴

On 7 March, the workers and management were supposed to hold a meeting to seek resolution to the labor dispute, but the management failed to show. It was not the first time either. Chea Sokpha, a representative of the workers, said "We have stopped believing that any solution can be found because they [the management] keeps delaying meeting us. Both the authorities and company keep blaming the workers for the dispute." Workers indicated that many had already been evicted from their homes because of their inability to pay rent.²¹⁵ On 19 March the meeting was held between employer representatives and approximately 1,000 of the workers that had been fired, while more than 100 workers continued to protest outside the factory. The meeting yielded no results, as factory owners claimed to be implementing the law resulting from the decision of the court, and despite the workers adjusting demands, the factory refused to compromise. Saing Chanry, one of six workers' representatives permitted at the meeting, claimed that the factory refused to recognize them as genuine representatives of the workers: "The factory said we [representatives] had incited [the workers] to participate in the protests, even though this is untrue. All of us were workers; there was no one then acting as a representative. At our previous demonstration, we demanded the factory give us seniority indemnity. However, after listening to explanations from experts from the Ministry of Labor and the Arbitration Council, we only want the factory to rehire us without any conditions or discrimination."²¹⁶

²¹⁴ <https://www.phnompenhpost.com/national/wd-workers-protest-sackings>

²¹⁵ <https://www.khmertimeskh.com/50585027/no-show-by-wd-management-at-meeting-with-workers/>

²¹⁶ <https://www.phnompenhpost.com/national/wd-meeting-fails-resolve-dispute>

As of 25 March, with 1,127 workers still fired, PM Hun Sen intervened in the dispute and publicly asserted: “I appeal to W&D to allow the workers to return to work because they are no longer demanding for seniority indemnity, they are demanding to return to work. All sides must understand each other. Workers must not make excessive demands and hold strikes.”²¹⁷ On 26 March, the company announced its demand the government compensates it for losses incurred due to the strike and firings, claiming that it had adhered to the law.²¹⁸ On 27 March, the company announced that it would reinstate the fired workers, but not pay wages for the period of the strike, as stipulated by Article 332 of the labor law. Ath Thon, the president of the Coalition of Cambodian Apparel Workers’ Democratic Union (C.CAWDU), expressed approval of the outcome. However, he made clear that it only resulted from the intervention of the PM: “The workers demanded reinstatement and the company had been unclear, saying they would reinstate them on this day and then on that day. But then there was an appeal from the Prime Minister, and the company agreed to reinstate the workers.”²¹⁹

Originally, following the mass strikes of early January and subsequent mass firings, on 9 January, the PM announced that workers should not strike in demand for seniority pay.²²⁰ In the context of unpaid seniority benefits owed to workers by law, Hun Sen accused workers of risking the closure of factories by making unrealistic demands.²²¹ The next month, after the initiation of intensive monitoring by the EU in relation to Cambodia’s participation in the EBA framework, the PM announced that factories should cease firing workers in response to strikes or labor disputes. National Union Alliance Chamber of Cambodia (NACC) president Som Aun deemed the protection from the PM as a positive development: “Some employers have discriminated against unions, dismissing their representatives, and fired workers illegally. Therefore, the comments from the prime minister, I think, sends a message that will urge employers to better follow the law.”²²² On the one hand, any improvements overall respect for labor rights or remedies for specific labor disputes should be viewed positively. On the other hand, the fact that such measures only occur with an intervention from the PM both demonstrates

²¹⁷ <https://www.khmertimeskh.com/50590340/pm-supports-fired-wd-garment-factory-workers/>

²¹⁸ <https://www.phnompenhpost.com/national/wd-demands-govt-reimbursement>

²¹⁹ <https://www.phnompenhpost.com/national/dispute-ends-wd-factory-rehires-workers>

²²⁰ Demonstrating the rule by decree politics at work in the Cambodian political system the PM has played the fundamental role in directing the manner in which labor law and policy has been implemented in Cambodia.

²²¹ <https://www.voacambodia.com/a/pm-hun-sen-warns-of-unrest-in-garment-sector-over-seniority-pay-demands/4737432.html>

²²² <https://www.phnompenhpost.com/national/pm-stop-firing-workers-way-end-disputes>

institutional weaknesses and the power of the PM to set policy for the labor sector arbitrarily.

On 12 January, approximately 420 workers went on strike at the Long Victory International factory in the capital. They returned to work on 14 January. The two-day protest resulted from fear the factory would close as the workers observed management removing machinery and textiles from the factory. Chan Thoeun, a worker at the factory, said rumors that were going to close started a year before the strike, and witnessing the removal of the machinery seemed to confirm those rumors. As a result, the workers feared the loss of compensation and severance pay: “We were scared that we would lose our salary and other benefits if the owner closed it and ran away.”²²³ This case showed that workers are at serious financial risk of factory closures without an effective mechanism to ensure that employers are held accountable. As a result, insecurity and strikes occur in relation to both factory closures and the fear of factory closures. On 22 January 2019, despite assurances to workers that it would continue operations, the Long Victory International factory closed. Workers had continued protesting over unpaid furlough pay, and of the 1,4000 workers, 420 had been suspended, while the company continued to remove equipment from the factory. The failure to provide benefits and compensation to the suspended workers lead to protests by them, which prevented factor operations. Pav Sina, the president of the Collective Union of Movement of Workers, emphasized that the company was evading responsibilities set out by the law. He argued that the suspension of workers violated the law and that if the factor were to shut down, it must settle outstanding accounts with the workers. president Pav Sina said, “the evasion of responsibilities committed by the company goes against the Kingdom’s law”. Ministry of Labour spokesman Heng Sour instead said: “The government guarantees that all workers will not lose their benefits when a factory goes bankrupt. Prime Minister Hun Sen has said several times that the government would allocate a budget to compensate the workers of factories that go bankrupt or closed because their owners ran away.” Chea Pisey, the governor of Russey Keo said, and intervention by the Ministry of Labor was necessary: “Only the [labour] ministry can provide solutions.”²²⁴

On 13 January 2019, 2,180 suspended workers at King Maker Footwear Co began a protest demanding half of their back pay, following the suspension of factory

²²³ <https://www.phnompenhpost.com/national/striking-garment-workers-return-work-monday>

²²⁴ <https://www.phnompenhpost.com/national/factory-shut-amid-mounting-protests>

activities. The factory had been a major producer of footwear, exported under the Asics brand name. Work was suspended, from 20 January to 20 February, by the owners after a reduction in orders. The factory promised each worker compensation during the suspension period of 13 USD; however, workers demanded half of their monthly salary. Voice Khmer Youth Union Federation deputy director On Sakhorn said the Svay Rieng provincial Labour and Vocational Training Department and the Garment Manufacturers Association of Cambodia mediated talks, resulting in the owners increasing their offer to 30 USD for the month. However, workers took the position that they needed at least 75 USD, considering the cost of living and maintaining families. The MLVT sent the case to the arbitration council, while King Maker Footwear Co representative Vong Samnang took the claimed that the workers would have to accept the financial situation of the factory: “The workers should understand that the factory is receiving no orders and is trying to find a new partner to get a new job for them after the one-month suspension is over.”²²⁵

In June 2019, 1,562 workers went on strike at the Sunrise Light Enterprise company because the company had denied them basic standards which are stipulated in law, such as the right to choose representatives. The workers also demanded the company begin to pay for overtime work for those compelled to work on weekends or holidays. A worker who spoke to media on condition of anonymity posited: “Workers do not have representation, that’s why it is difficult to demand something from the company. When someone who wants to protect workers appear, that someone is going to be accused of persuading workers to protest.”²²⁶

In early July, approximately 400 workers demonstrated after the NowCorp factory (based in Kandal province) terminated their employment. They had already been put on mandatory leave for two months as the company suspended operations, and when they returned to work, they were told their jobs would be terminated. The workers protested to demand fair compensation for the severance, as the company was not willing to base indemnity pay on the amount of time employed.²²⁷ The factory was only willing to offer indemnity pay in the amount of 2.5 years even though some workers had been employed for more than 10 years. The case is notable as well because it showed how the mechanism for dispute resolution is not

²²⁵ <https://www.phnompenhpost.com/national/footwear-protests-continue-fourth-day>

²²⁶ <https://www.khmertimeskh.com/50613797/thousands-of-workers-demand-better-conditions>

²²⁷ <https://www.phnompenhpost.com/national/over-400-garment-workers-protest>

clear, with workers refusing the factory's offer dividing into two groups: one group pursuing submission of a complaint to the arbitration council, and another group pursuing a resolution through the courts.²²⁸ Eventually, the striking workers agreed to send the complaint to the arbitration council, given that the amount of compensation owed by the company was in violation of existing labor law.²²⁹

In July, workers from the tourism industry, service sector, and agriculture mobilized. Union representatives joined them. Although small in number, the demonstration was significant for two reasons. First, because it involved solidarity and collaboration between workers from diverse sectors. Second, because it was the first time that workers from those sectors had staged a protest. Their demands centered on reforms establishing a minimum wage, as had occurred in the garment sector and a mandatory gratuity charge of ten percent. They emphasized that there are no current laws protecting labor in that sector or regulating their working conditions. Without regulations, they asserted, employers set minimum wage arbitrarily. Workers from the agriculture sector noted that the work was exhausting, and the wage provided was so minimal that they could not support their families.²³⁰

Also, in July 2019, Thousands of Bowker Garment Factory workers in Kandal province went on strike to protest against the unwarranted firing of their worker representative and discrimination against union members, including dismissals. The petition from the workers entailed 18 points, including addressing the water leakage and poor roof of the factory, the use of private security guards on the factory floor, and increasing the number of male workers. However, the company resisted agreeing on the reinstatement of the worker representative.²³¹

On 16 July 2019, GMAC released a statement that said there had been an increase in the number of illegal strikes in the garment and footwear industry. It claimed that such strikes put Cambodia's EBA status at risk and, as a result, undermined the entire industry. The statement proclaimed: "These illegal actions led by some ill-intentioned unions negatively impact the investment climate in this sector at a time when we are currently facing the threat of the withdrawal of EBA by the European Union." It also claimed: "GMAC condemns such illegal behavior related to any non-procedural strike, which could lead to the loss of confidence from

²²⁸ <https://www.phnompenhpost.com/national/factory-talks-fall-through>

²²⁹ <https://www.phnompenhpost.com/national/now-corp-garment-factory-compensation-dispute-be-sent-arbitration-council>

²³⁰ <https://www.phnompenhpost.com/national/workers-gather-ministry-labour>

²³¹ <https://www.khmertimeskh.com/50623263/thousands-of-garment-workers-on-strike-in-kandal-province>

buyers and loss of benefits for both parties. GMAC would like to request and appeal to all unions and workers to respect the law and related regulations, including the labor dispute resolution procedures.” The dispute had been submitted to the arbitration council, but in contravention of existing procedures, some workers continued to strike because their demand was not met regarding the reinstatement of their union representative, Hean Sroeun, and a cessation of discrimination by the company against the members of the Cambodian Development Union.²³²

On 12 October 2019, more than 10,000 workers of Taieasy International Co Ltd’s factory in Pursat province went on strike. They demanded a year-end bonus, a daily allowance of 500 riels (0.13 USD), a five percent seniority payment, and a monthly stipend of 15kg of milled rice. Following an intervention by the provincial governor, with the factory agreeing to pay an unspecified amount, a compromise was reached, and the workers returned to work. Union of Movement of Workers (CUMW) president Pav Sina said that the workers had submitted a complaint alleging rights violations and exploitation of workers benefits. He pointed out that powerful government officials provided the factory owners with impunity. He stated: “There is a serious violation of their rights. [The factory] looks down on them and exploits workers. Besides this, we will submit a letter to international organizations doing this work to urge the factory to abide by the labor laws of Cambodia.”²³³

In November 2019, more than two-thirds of the 900 workers at Monopia (Cambodia) factory in Kampong Speu province went on strike following the firing of worker representatives. Seven workers were fired for allegedly staging an illegal protest. The factory filed a complaint with the Provincial Court seeking a protective measure, which was subsequently issued by the court, and the workers were compelled to return to work. The factor alleged that the worker representatives were not performing their job-related tasks adequately and were rude to factor management. The head of the Kampong Speu provincial Department of Labor and Vocational Training Cheuk Borin said that inspection officials were conducting an investigation. Borin said: “Normally, the companies do not have the right to fire the union leaders who represent workers without the permission of inspection officials. Our officials need seven days to investigate to find out the reason and fault and to see if the allegations are true. If we found out that there is a serious

²³² <https://www.khmertimeskh.com/624938/gmac-slams-recent-garment-factory-strikes-2/>

²³³ <https://www.phnompenhpost.com/national/more-10000-factory-workers-resume-work-after-compromise>

mistake, we will allow the company to sack them. But if no serious mistake is found, we will instruct the company to take them back to work.” The company asserted that following the court protective measure, the workers were suspended and not fired. Oeun Channy, a worker representative, said protests would continue following the expiration of the protective measure if worker demands were not met, including reinstatement of suspended workers, an end to discrimination against the workers’ union and the dismissal of the factory’s administrative head.²³⁴

More than a week after they were required to return to work, protests in front of the MLVT continued, demanding the reinstatement of the 7 workers and 2 worker representatives. The inspection by the MLVT found the two worker representatives to be guilty of misconduct and decided their firing was warranted. One of the fired worker representatives Oeun Channy said: “I asked all workers to return to work first because the court issued an ultimatum. We will follow the procedures of the Arbitration Council, where we filed a complaint seeking a resolution. After the council makes a decision, we would still have the right to protest.” Nevertheless, Monopia administrative manager Sam Sochea told media: “The factory will not reinstate the worker representatives as after one week of observation, the Labor Inspector of the provincial Department of Labor approved their dismissal due to serious misconduct.” Collective Union of Movement of Workers president Pav Sina noted how labor disputes intensified when employers utilized the court system instead of the dispute resolution mechanism provided through arbitration. He noted the courts had a legal responsibility to investigate uses of the court system by owners to use court orders to fire workers, instead of following the labor law. He pointed out that the Ministry of Labor should have the authority to order worker reinstatements and that such decisions much have the power to compel owners to comply and to dissuade them from using the courts.²³⁵

Chhim Sithar, a union leader for workers at the NagaWorld casino in Phnom Penh was fired for organizing workers to demonstrate in support of higher wages. The union had submitted a request for higher wages in June, and the company committed to giving an official response by 21 September. NagaWorld employs 8,600 workers, of which more than 4,000 belong to the union. In the context of the labor dispute, 3,826 employees took a three-day leave of absence during the

²³⁴ <https://www.phnompenhpost.com/national/kampong-speu-protesting-workers-agree-end-strike>

²³⁵ <https://www.phnompenhpost.com/national/monopia-workers-handed-ultimatum>

Pchum Ben holiday. In response, the company asserted that those taking leave would be fired.

Sithar had printed t-shirts for union members which made a statement concerning the need for workers to receive a living wage. After security confiscates the shirts, the human resource department accused her of hurting the company's image and violating internal policy. In addition to Sithar, 27 other employees were suspended, but then subsequently reinstated. She asserted: "Suspending from work a union leader who represents thousands of workers is serious discrimination against unions by the NagaWorld company." Ry Sovandy, a dealer at NagaWorld, said: "We work for NagaWorld and we need to survive in Phnom Penh, where costs of renting a house and other things are expensive. So I ask the government to intervene and find a solution, and urge the company to respect the law, especially regarding the rights of unions." Notably, the company made more than 390 million USD in profits in 2018.²³⁶ According to NagaCorp's company report, in the first half of 2019, it made 245 million USD in profit (an increase of 36 percent from the previous year, and gross gaming revenue increased 22 percent to the amount of 872 million USD).²³⁷ 24 Unions and NGOs, including COMFREL, issued a joint statement which declared:

Based on previous experience, NagaWorld has a history of union discrimination in which complaints were filed with the International Labor Organization (ILO) for violations of core conventions, and the ILO later issued recommendations to the Royal Government of the Kingdom of Cambodia. Termination of the union leader's contract at that time caused hundreds of workers to protest and demand the reinstatement of their leader, but the company refused to do so.

Following a careful investigation and legal study of this case, we observe that the indefinite suspension of this active union leader without clear basis or an investigation since 20 September 2019 is not in accordance with Article 71 of the Cambodian Labor Law and the internal regulations of the company and violates the fundamental rights and freedoms of workers' associations and professional organizations which are guaranteed by the Constitution and Labor Law of the Kingdom of Cambodia, as well as core conventions of the ILO which Cambodia has ratified.²³⁸

As no agreed wage increase was reached and Sithar was not reinstated, the union declared it would strike on 9 January 2019. The labor rights group Central,

²³⁶ <https://vodenglish.news/naga-union-leader-suspended-amid-campaign-for-higher-salaries/>

²³⁷ <https://cambojanews.com/nagaworld-workers-set-date-for-strike/>

²³⁸ <https://www.central-cambodia.org/archives/3156>

emphasized how the company had deviated from the correct procedure in managing the dispute by failing to distinguish the individual case of Sithar from the collective demands of the union.²³⁹ The Phnom Penh Municipal Court ordered ruled the strike to be illegal. The court subsequently ordered an investigation for breaching a court order, which the potential charge of being in contempt of court²⁴⁰ for Chhim Sithar, the president of and vice-president of Labor Rights Supported Union of Khmer Employees of NagaWorld, Chhim Sithar, and Chhun Sokha, as well as several other members of the union that assisted in organizing the demonstration. Pro-government media reported the worker's demonstration to be augmented by non-employee 'provocateurs', and emphasized interviews with workers who alleged they had been threatened and insulted by union members.²⁴¹

The different cases here allow for certain conclusions²⁴² regarding labor rights and working in Cambodia in 2019. First, institutions and the rule of law remain weak

In many cases, ad hoc interventions by powerful officials are necessary for dispute resolution. This, however, only sediments personalized authority rather than formal-institutional authority in the sector. Second, there were continued failures to adhere to labor law standards related to compensation as well as failures to respect the law allowing for unionization. Third, as a result, strikes are often the last resort for workers after pre-existing labor violations persisted over time. Such violations may be made possible by impunity provided to factory owners through connections to powerful people. When this is not the case, the persistence of labor violations can only be explained incompetence on the part of the MLVT.

In most cases, workers appeal to the MLVT for an intervention, but the fact that the problem was not resolved prior to the strike meant that the MLVT was not enforcing labor law and standards in a timely and effective manner. Fourth, substantial harassment and intimidation of unions occur through dismissals of worker representatives and allegations of incitement. Fifth, working conditions in some factories continue to fail to meet basic standards for the health and safety of workers. Because of these different problems, progress made in terms of labor

²³⁹ <https://cambojanews.com/nagaworld-workers-set-date-for-strike/>

²⁴⁰ Article 523 of the Criminal Code, punishable by up to 6 months in prison and a fine from 100,000 to 1,000,000 million riels.

²⁴¹ <https://www.khmertimeskh.com/50678385/phnom-penh-municipal-court-orders-investigation-into-naga-union-leader>

²⁴² A more comprehensive comparative study of factory conditions and labor disputes is needed to provide for more sound generalizations to be possible.

rights and standards could easily wither without concerted, coordinated efforts by the various stakeholders in the labor sector.

CHAPTER 3 – PART 5

Status of Legal Prosecution of Unionists

On 28 November 2018, Prime Minister Hun Sen instructed all relevant government bodies to resolve court cases against union leaders. Despite frequent declarations of judicial independence and non-interference in court cases by the executive, the PM's statement had a direct impact on several ongoing prosecutions of worker representatives, both at the end of 2018 and in the first half of 2019.²⁴³

The following briefly outlines the main events related to the prosecution of union leaders in 2019.

Case 1-

Kong Athit was convicted in relation to a protest and related violence which occurred in 2016 as Capitol Bus Company drivers staged a demonstration to protest wrongful dismissals. Following the protest criminal charges were issued for six persons. They included Ath Thorn, president of the Cambodian Labor Confederation, and Kong Athit, the group's secretary-general, who were charged with intentional violence, obstructing public officials and obstructing a public road.²⁴⁴

²⁴³ See also: <https://www.phnompenhpost.com/national/union-leader-wins-appeal>

²⁴⁴ <https://english.cambodiadaily.com/news/six-charged-after-attack-capital-bus-drivers-107835/>. The violence ensued on 6 February 2016 when members of the Cambodia Confederation, at the behest of the company, deployed a large number of strike busters or union busters which assaulted both workers as well as innocent bystanders. The company had denied the workers a union, despite their legal right to do so. Attempts from the union resulted in the dismissals of 45 employees. On 29 July 2015 the Arbitration Council had ordered the company to permit the workers to return to their jobs, and on 31 July the Municipal Court had issued an injunction requiring the workers to return to work within 48 hours. However, the company refused to comply with the law. As a result, the workers engaged in a peaceful demonstration to call attention to their situation and demand their rights be respected. However: “during a peaceful protest by approximately 50 bus drivers and their supporters. A group of around 50 tuk-tuk drivers brutally attacked the protestors with sticks, metal bars, hammers and a knuckleduster, leaving at least 14 people injured. The entire incident was recorded on film by human rights monitors. Despite the ferocity of the violence, the police failed to intervene and there are suggestions that some police officers participated in the violence. None of the attackers have been arrested while two of the victims were

Case 2-

On 8 January 2019, Cambodian Confederation of Unions president Rong Chhun filed a complaint to the Appeal Court to contest his conviction with suspended sentence which was decided by the Phnom Penh Municipal Court when he was found guilty of fomenting the protests at Veng Sreng Boulevard which turned violent with several protesters being killed by police.²⁴⁵ On 11 December 2018 six unions leaders had been found guilty and given a 2.5-year sentence with the sentence suspended.²⁴⁶ This fomented the narrative that the unions were ultimately responsible for the violence that ensued and the deaths of protesters.²⁴⁷ The unionists convicted were: Pav Sina of the Collective Union of Movement of Workers, Yang Sophorn, of the Cambodian Alliance of Trade Unions, Ath Thorn, of the Coalition of Cambodian Apparel Workers Democratic Union, Mom Nhim, of the National Independent Federation Textile Union of Cambodia, former unionist Rong Chhun, and Chea Mony, the former president of the Free Trade Union. Sina, Sophorn, and Thorn had already filed appeals, beginning in mid-December 2018.²⁴⁸ The court had ruled to convict the accused even after being made aware that Chhun, Sina, and Sophorn were attending a meeting with the Ministry of Labor and Vocational Training regarding workers' wages at the time of the incident.²⁴⁹ In total 23 protestors were arrested in relation to the Veng Sreng boulevard demonstrations. At the time of the convictions of the union leaders, both the accused and the International Labor Organization called for an independent

arrested during the protest and charged on 08 February 2016 with intentional violence, obstructing public officials and blocking traffic. On the same day, four prominent trade union leaders - Cambodian Labor Confederation (CLC) President Ath Thorn, CLC General-Secretary Kong Athit, Cambodian Informal Economy Workers Association (CIWA) President Sok Chhun Oeung, and Cambodian Transport Workers Federation (CTWF) Secretary Ean Kim Hong - were also charged with the same three offenses despite none of them being present at the incident on 06 February 2016." <http://www.licadho-cambodia.org/pressrelease.php?perm=400>. See also:

<https://english.cambodiadaily.com/news/six-charged-after-attack-capital-bus-drivers-107835/>;

<https://www.phnompenhpost.com/national/capitol-protesters-charged-over-brawl>;

<https://english.cambodiadaily.com/editors-choice/union-leaders-blast-charges-over-capitol-tours-protest-107981/>

²⁴⁵ The case against Rong Chhun was part of the ruling party action to undermine and neutralize the impact of the National Election Committee (the national electoral body) which occurred in 2016. At that time 2 of the non-CPP aligned NEC officials were prosecuted. See: <https://www.phnompenhpost.com/national/old-veng-sreng-case-revived-nec-member>

²⁴⁶ <https://www.khmertimeskh.com/557431/court-opens-trial-of-unionists/>

²⁴⁷ In the events of Veng Sreng boulevard, workers demonstrated seeking a minimum wage of 160 USD per month, after being given an increase in the wage from 80 USD to 95 USD. The protests lasted for weeks with the security forces using deadly force resulting four protestors being killed and dozens of protestors wounded.

²⁴⁸ <https://www.phnompenhpost.com/national/union-leaders-set-appeal>

²⁴⁹ <https://www.phnompenhpost.com/national/union-chief-rong-chhun-lodges-complaint-court>

investigation; however, it never occurred. Gen. Khieu Sopheak, the spokesman for the Ministry of Interior, used judicial independence as the pretext for the lack of an investigation. He stated: “What I want to inform you is that this case falls in the remit of the courts, meaning the courts obtained all information from the authorities, including photos and evidence. So, all the decisions made by the courts are at the discretion of the courts. The Ministry of Interior will comply with the court’s instructions.”²⁵⁰

On 28 May 2019, the Appeal Court overruled the sentence of the Phnom Penh Municipal Court, which had found six union leaders guilty in relation to demonstrations on Phnom Penh Veng Sreng Boulevard at the end of December 2013 and beginning of January 2014. The six union leaders (Ath Thorn, Chea Mony, Yang Sophorn, Pav Sina, Rong Chhun, and Mam Nhim) had been given sentences of 2.5 years for the crime of ‘intentional acts of violence with aggravating circumstances’ and ordered to pay 35 million riel (8,750 USD) to the two plaintiffs in the case. Although the sentences were suspended, the conviction stood. Following the decision by the Appeal Court, Pav Sina stated that unions should be able to support workers without fear of prosecution by the courts. Rong Chhun, said that he hoped the government would end prosecutions of union leaders in relation to other cases. The outcome of in the Appeal Court hearing came after PM Hun Sen had publicly declared that the unionist should appeal their conviction and instructed the courts to review the decision.²⁵¹ Despite the apparent influence of an intervention by the PM, government spokesman Phay Siphon claimed that the judiciary was independent. He asserted: “Please don’t try to interpret from outside the judgment of the courts because they make their rulings based on facts and the law. The prime minister only requested an acceleration of the judgment process.”²⁵²

Case 3 -

On 14 January 2019, Collective Union of Movement of Workers (CUMW) president, Pav Sina, along with six members of the union (Chheng Chhoan; Chheng Sina; Pen Sitho; Huon Bunna; Tuy Suot; and Un Vanduy), was summoned

²⁵⁰ <https://www.voacambodia.com/a/four-convicted-union-leaders-call-for-new-independent-investigation-into-deadly-2014-crackdown/4718587.html>. See also: <https://www.phnompenhpost.com/national/ninety-five-ngos-condemn-convictions-union-leaders>

²⁵¹ See: <https://www.phnompenhpost.com/national-politics/pm-three-protest-union-leaders-innocent>; <https://www.phnompenhpost.com/national/pm-urges-ministers-end-all-cases-against-union-leaders>

²⁵² <https://www.khmertimeskh.com/609128/appeal-court-overturms-convictions-of-six-unionists/>; <https://www.phnompenhpost.com/national/veng-sreng-union-six-sentences-overturmed>

to appear before the capital's municipal court on 25 January in relation to charges stemming from a protest which had occurred in almost seven years earlier, in 2012. In relation to a protest which occurred on August 13 and 14, 2012, at the Ocean Garment Co (since shuttered), the seven unionists were charged with public insult and intentionally causing damage (articles 3017 and 410 of the criminal code).²⁵³ Workers had been suspended without pay from May 26 to June 26, 2012. Approximately 1,500 garment workers participated in the protest. Sina argued that the case should be dropped because it pertains to events that happened so long ago. He also noted that he had had seven lawsuits filed against him, and his colleagues had had 14 lawsuits filed against them. Of the seven lawsuits, three were still active: the 2014 strike on Veng Sreng boulevard; one relating to a protest at a factor in Kampong Speu, and this case related to the Ocean Garment Co.²⁵⁴

Notably, just prior to the renewed prosecution, Pav Sina had responded critically in national media to an announcement by the Labor Ministry. On 15 January 2019, Labour Minister Ith Samheng ordered ministry officials to strictly follow provisions in the Trade Union Law, emphasizing provisions which set out protections for unions. However, Sina pointed out that the letter was dated December 14 but only issued publicly on January 15. The letter highlighted the procedures for registering unions and for labor inspections and disputes. The Minister asserted: "In order to ensure and improve the freedom of vocational organizations in Cambodia, I am requesting all officials in labor departments to follow the Trade Union Law, especially the implementation of procedures to protect union officials and union leaders." His statement made clear that an important problem for labor leaders had been potential intimidation resulting from the collection of personal information related to themselves or their families. He also pointed out that, under the law, unions can register with federations rather than with the Ministry. However, Sina criticized the delay in the publication of the letter and asserted that legal provisions to protect union leaders were not being implemented. He noted how union leaders were fired and there was no response from the Ministry and contended that if the Ministry was serious about implementing the policy it could order employers to allow fired unions to return to work.²⁵⁵

²⁵³ Article 410 criminalizes intentional damage to the property of another, and is punishable by up to two years in prison. Article 307 criminalizes defamation or public insults and is punishable by a fine of up to 10 million riel (approximately 2,500 USD).

²⁵⁴ <https://www.phnompenhpost.com/national/unionists-called-court-seven-years-after-protest>

²⁵⁵ <https://www.khmertimeskh.com/50569274/labour-officials-must-follow-procedures>

On 21 March 2019, the Phnom Penh Municipal Court dropped the charges against Pav Sina. However, co-accused unionists (Chheng Chhoan, Chheng Sina, Pen Sithou, Huon Bunna, Tuy Suot, and Un Vanduy) were not included in the decision of the court, although they indicated to media they would submit appeals. Sina had lodged his appeal after the January 2019 summons to appear before the court. He said: “I have decided to appeal because the court delivered a fair judgment because we did not commit the offenses we are charged with by Ocean Garment.”²⁵⁶

Case 4 -

On 16 January 2019, eleven former teachers submitted a complaint to the municipal court to alleging the illegality of their dismissal. Rong Chhun, the ex-president of the Cambodian Independent Teachers Association and a former member of the National Election Committee (NEC), along with 10 other teachers were fired by the Ministry of Education, Youth and Sport the Minister Chuon Naron in January 2018. Their dismissal was based on the grounds of being absent from work without permission. told The Post that they sought to have the decision reversed and their positions at the ministry reinstated. The complaint requested the court order their reinstatement. Rong Chhun stated: “I think if the court is not pressured politically, it will practice the law professionally and accept our petition because we did not act as the Ministry of Education, Youth and Sport has accused us. The ministry’s decision was politically motivated.” According to the group of teachers, temporary leave from work was requested in order to work on the elections as members of councils (commune, district, and provincial), or in Chhun’s case, as a member of the NEC. They were fired from their post after the opposition party CNRP was dissolved. The Ministry had indicated that they were fired for abandoning their post. This was challenged in the complaint which also asserted the Ministry had violated articles 40 and 47 of the Law on Civil Servants.²⁵⁷

On 13 March 2019, the court summoned the complainants to appear for the second time on 27 March. Subsequently, the hearing would be held, and then the court would issue a ruling on the case. Chhun stated: “I will go to clarify the case without fear because the case is a civil complaint. We believe our sacking by the Ministry of Education was unjust. The ministry did not follow procedure, deciding

²⁵⁶ <https://www.phnompenhpost.com/national/charges-against-union-leader-pav-sina-dropped>. See also: <https://www.khmertimeskh.com/50588074/pav-sina-appears-in-court-over-property-damage-allegation>

²⁵⁷ <https://www.phnompenhpost.com/national/sacked-teachers-file-complaint>. See also: <https://www.phnompenhpost.com/national/international-unions-urge-education-ministry-reinstate-ex-cnarp-teachers>; <https://www.phnompenhpost.com/national/sacked-education-officers-request-pm-grant-them-return>.

only by themselves and without speaking to us as in accordance to the laws on civil servants.”²⁵⁸ The court issued its decision on 22 April, ruling against the teachers on the grounds that the complaint had exceeded the timeframe for submission was not in accordance with the law. Media reported the court determined that several problems with the lawsuit, but did not specify what they were, and only stipulated that the court decided in accordance with Art. 81 of the Civil Code. The Cambodia Alliance of Trade Unions (Catu), the Cambodian Independent Teachers’ Association (Cita) and the Cambodian Confederation of Trade Unions (CCTU) had issued a joint statement requesting the reinstatement of the teachers.²⁵⁹

Case 5 -

In February 2019, the Phnom Penh Municipal Court decided to drop charges against Chea Mony for the crime of incitement to commit.²⁶⁰ Mony is the former president of the Free Trade Union of Workers of the Kingdom of Cambodia and brother of union leader Chea Vichea (who was murdered in broad daylight on a busy street in 2004, and to date no effective investigation and prosecution has occurred). The court spokesman Y Rin said investigating Judge Seng Rithy based the decision on the lack of evidence in the case. Mony had been charged under articles 494 and 495 of the criminal code, which are punishable by up to two years in prison. The charges resulted from a complaint submitted by a group of 120 union leaders, alleging that Mony called for economic sanctions by the EU and US in an interview with Radio Free Asia on 15 December 2017.²⁶¹

Case 6 –

On 9 May 2019, the Coalition of Cambodian Apparel Workers’ Democratic Union yesterday issued a statement requesting the release of two union members who had been subjected to violence in relation recruitment of union members but then subsequently faced with criminal charges. The two unionists were arrested by the Kandal provincial military police for instigating the violence after they were

²⁵⁸ <https://www.phnompenhpost.com/national/court-summons-sacked-teachers-second-time>

²⁵⁹ <https://www.phnompenhpost.com/national/sacked-teachers-appeal-denied>

²⁶⁰ The letter pertaining to the court decision was dated 28 December 2018, but only made public on 21 February 2019.

²⁶¹ <https://www.khmertimeskh.com/50580521/former-unionist-cleared-of-charge;>
<https://www.phnompenhpost.com/national/former-union-president-monys-charges-dropped>. See also:
[https://www.phnompenhpost.com/national-politics/pro-government-unions-slam-calls-sanctions;](https://www.phnompenhpost.com/national-politics/pro-government-unions-slam-calls-sanctions)
[https://www.phnompenhpost.com/national/case-against-unionist-chea-mony-brother-murdered-labour-leader-proceeds;](https://www.phnompenhpost.com/national/case-against-unionist-chea-mony-brother-murdered-labour-leader-proceeds)
[https://www.phnompenhpost.com/national/court-summons-union-leader-chea-mony-second-time;](https://www.phnompenhpost.com/national/court-summons-union-leader-chea-mony-second-time)
<https://www.khmertimeskh.com/101007/court-summons-ex-trade-unionist/>

assaulted by members of the QMI factory's internal union on 7 May. A CCAWDU statement asserted: "We suspect that the factory's union leaders plotted to have our members arrested because the management called police to break up the violence and its union members were released while ours were detained." The CCAWDU representatives requested that the provincial authorities review the evidence in the case. Photograph image of the violence accompanied the news report in the pro-government Khmer Times newspaper. Although two members of the factory's union were arrested as well, they were subsequently released while the CCAWDU unionists remained in custody. The union president, Ath Thorn, said: "CCAWDU expresses disappointment that its members continue to be detained. It is unfair and we cannot accept this." He added: Why not arrest all those involved in the confrontation instead of only those from my union. It looks like officials discriminated against the CCAWDU."²⁶²

In conclusion to this part, there was progress made to reducing the use of lawfare to repress unions and worker organizing at the end of 2019, however, problems remained. The repression has shifted to silencing independent and critical opinions, and to broaden fears among rank-and-file workers to assert their rights. The current environment for labor rights advocates, trade union leaders, and civil society activists is not conducive to ensure a genuine improvement of the human rights and labor rights situation in Cambodia. Attention was called to the continuing lack of respect for labor rights by a large coalition of national and international rights organizations. The coalition included international non-government organizations (such as Amnesty International, ANFREL, Human Rights Watch, NGO-Forum, Civicus, the Clean Clothes Campaign, Solidar, and FIDH), national CSOs (such as Comfrel, Adhoc, CCHR, Licadho), and emphasized the lack of progress in addressing problematic prosecutions and harassment of local-level union officials.²⁶³

CHAPTER 3 – PART 6

International Brands and Labor Associations

²⁶² <https://www.khmertimeskh.com/602643/union-urges-police-to-free-two-members/>

²⁶³ <https://www.amnesty.org/download/Documents/ASA2316042019ENGLISH.pdf>

On 1 November 2018, the Fair Labor Association and American Apparel and Footwear Association sent a statement to Cambodian Minister of Commerce Pan Sorasak.²⁶⁴ The statement referenced concerns that had first been raised by the organizations in March of 2018. It reiterated: "...we have continuing concerns about the ongoing criminal charges against labor leaders, charges that have now been pending for five years, the negative effects resulting from the Trade Union Law of 2016, many of which are specified in the attached note, and the diminished role and reduced independence of the Arbitration Council which previously had been a very effective dispute resolution mechanism. Each of these recent developments undermines progress towards improving worker rights, but also appear to have contributed to an overall weakening of broader protections of human rights in Cambodia."²⁶⁵ This was followed by communication dated 4 April 2019 and another statement on 2 May 2019.²⁶⁶ The aim of the Multiple clothing brands within the Dutch Agreement on Sustainable Garments and Textile was to express their concerns regarding the labor and human rights situation in the garments and textile industry.²⁶⁷ They noted that the growth and success of the garment industry was a result of improving labor rights over time and the effectiveness of the Better Factories Program. The signatory brands also indicated to significant negative impact on the Cambodian economy that EBA withdrawal would have, which would be compounded by removal from the US Generalized System of Preferences (GSP) benefits based on the declining respect for labor standards, including freedom of association, and other issues related to respect for human rights issues in Cambodia. Recommendations for improving labor standards were attached.

On 29 January 2019, FashionatingWorld released a report that noted continuing human rights problems in the garment sector, despite improvements that had been detailed by a Better Factories Cambodia (ILO program) survey which found improvements. The report called for new mechanisms for accountability and transparency. It noted a continuing high level of faintings, gender discrimination,

²⁶⁴ <https://www.phnompenhpost.com/national/labour-ministry-receives-counsel-labour-rights>

²⁶⁵ <https://www.imvoconvenanten.nl/-/media/imvo/files/kleding/nieuws/2019/20181101-cambodia-delegation.pdf?la=en&hash=B300E45C7F7F8CC5EC3COD333B9FDECA>

²⁶⁶ <https://www.fairlabor.org/blog/entry/21-companies-sourcing-cambodia-express-concerns-about-labor-and-human-rights?fbclid=IwAR1ro-nCVUyxSjQI17yz5cVxOUG6n2zDNtQgGxthbJ9VZUoC64M29NcZds;>
https://www.fairlabor.org/sites/default/files/cambodia_brand_ltr_190502_-_final.pdf

²⁶⁷ <https://www.imvoconvenanten.nl/en/garments-textile/news/brief-aan-cambodja>. The letter along with a list of signatories can be found at: <https://www.imvoconvenanten.nl/-/media/imvo/files/kleding/nieuws/2019/20190502-cambodia.pdf?la=en&hash=0083D30B4DC6BCCAAC7E066EAF845D>

and the potential for persistent child labor abuses. It asserted: “Hun Sen government and the international race to search the cheapest labor, have created an economy that forces Cambodians, especially women, to rely on these low-paying jobs that still expose them to rights violations. It’s crucial that the government, garment industry corporations and international allies support the Cambodian people in pushing for transparency, accountability, and better conditions.”²⁶⁸

On 21 January 2020, major brands, claiming to account for 9.5 billion USD in Cambodian exports in 2019, issued a letter to PM Hun Sen urging improvements in the labor conditions in the garment industry in Cambodia. The brands included: Adidas, Esprit, Levi Strauss, and Puma, among others (20 signatories in total). The letter was also signed by labor rights organizations such as the American Apparel and Footwear Association and CNV International. The letter specified four needed reforms: amendments to the trade union law, repeal the law on associations and NGOs, and end to criminal prosecutions of labor leaders, and recognize and fortify the activities of the Arbitration Council. The signatories categorized the LANGO law as legislation that “enables an atmosphere of harassment and repression against civil society organizations and unions”, and it alleges there exists in Cambodia an ongoing climate of “baseless judicial proceedings against labor activists.” According to the signatories, the 2019 amendments to the Trade Union Law were insufficient to address shortages in the area of labor rights and standards. The letter asserted: “The credibility of Cambodia’s apparel, footwear and travel goods sectors are at stake. We urge the government of Cambodia to publicly present a roadmap, together with an inclusive tripartite national mechanism that sets out and implements, specific, concrete and time-bound steps to bring Cambodia in line with international standards on the above issues.” For the employer, Kaing Monika, the deputy secretary-general of the Garment Manufacturers Association in Cambodia, alleged that the letter was issued under duress as a result of political pressure put on the signatories. He claimed: “Our industry and the brands are just under external political pressure to do more in terms of workers and unions’ freedom. Freedom is good, but freedom with no responsibility and accountability would be devastating for any nation.”²⁶⁹

²⁶⁸ http://www.fashionatingworld.com/new1-2/a-wake-up-call-for-the-cambodian-textile-industry#disqus_thread

²⁶⁹ <https://www.phnompenhpost.com/national-politics/govt-answers-garment-buyers-complaint>; <https://www.voacambodia.com/a/global-brands-urge-Cambodia-to-reform-labor-amid-EU-sanction-threat/5261757.html>; <https://www.usnews.com/news/world/articles/2020-01-24/global-brands-urge-cambodia-to-reform-labor-amid-eu-sanction-threat>

The GMAC issued a press release on 24 January 2019, which blamed the brands for putting continued participation in the EU EBA at risk and accused them of flawed analysis. It stipulated: “We are, however, concerned that the letter dated January 22, which follows similar letters issued in May 2019 and November 2018, was done without any prior consultation with us. It reflects an unbalanced representation that puts at risk the 750,000 workers in Cambodia that rely on our sector for livelihood. However, Pav Sina, president of the Collective Union of Movement of Workers, said that unions agreed with the desired reforms stipulated in the statement from the brands.

In the sum for this part, there is an increased the risk of the loss of EBA and GSP benefits – something noted the recommendations of the brands because of the absence of addressing the current lack of compliance with international labor standards.

CHAPTER 3 – PART 7

Remedying Violence Against Unionists – Remembering Chea Vichea

Although not involving labor protests or prosecutions of union leaders, the ongoing failure to provide an objective and effective investigation into the murder of union leader was recalled in anniversary events to mark the killing. The events highlight the lack of judicial remedy available to labor organizers. On 14 January 2019, the Phnom Penh Municipal Hall spokesman Met Meas Pheakdey informed media that the RGC would allow an anniversary ceremony to mark the death of murdered union leader Chea Vichea on 22 January, although approval from Phnom Penh governor Khung Sreng was still forthcoming. Vichea was killed in 2004 in the center of the city next to Wat Langka. Born Samnang and Ouk Sam Ouen were convicted of murder, but unions and much of the public do not believe that due diligence and due process were respected. The municipal hall spokesman indicated that event organizers would be prosecuted if they deviated from the activities stipulated in their application letter. Governor Sreng said: “So far we have never prohibited them ... As long as everything is [well] organized, not affecting the three million road users in the capital, it will remain that way.” The Coalition of Cambodian Apparel Workers Democratic Union president Ath Thorn asserted: “I think the assassination of Vichea represents a violation against freedom of the

unions. It poses threats to the movements; it scares and traumatizes the unions. The government needs to ensure that other unionists, including Chea Mony, will not be threatened anymore.” Ministry of Interior spokesperson Khieu Sopheak dismissed concerns about the security of unionists: “The murder of Vichea happened in the past...15 years ago! Since then, it has been quiet, so stop worrying and work harder.”²⁷⁰

On 22 January 2020, approximately 100 people gathered at the location of the killing to mark the anniversary of the death of Chea Vichea. Cambodian Labour Confederation president Ath Thorn claimed that violence against union leaders remained a problem. He posited: “The authorities must ensure that unions are allowed to carry out their work and that workers’ rights are respected. Laws that cut back benefits for workers must be stopped.” Cambodian Confederation of Unions president Rong Chhun also said that union leaders and human rights activists were subjected to violence and persecution. He claimed: “The government must work to protect the rights and freedoms of union leaders and workers and recognise the difficulties they face.” Despite the prior conviction of two killers in the Chea Vichea murder case, the Ministry of Interior spokesman Khieu Sopheak informed media that the government was working hard to find Vichea’s murderer.²⁷¹

²⁷⁰ <https://www.phnompenhpost.com/national/unionist-memorial-proceed>

²⁷¹ <https://www.phnompenhpost.com/national/unionists-honour-vicheas-legacy>. After being convicted by the Phnom Penh Municipal court, and the conviction was upheld by the Appeals Court, the two accused killers were released by the Supreme court in 2013. They had already served about six years of a 20-year prison sentence. In 2015, following instructions by the PM, the RGC formed an interministerial committee to conduct the investigation. However, after two years with no results, it was dissolved. In 2017, the government formed a committee to review and monitor the investigation in response to a recommendation by the ILO. In August 2017, a national committee was established to monitor and review investigation progress, but no new evidence had been found. Unionist Ath Thorn pointed out: “I was permitted to join the committee and by late 2017, it reviewed the murder cases of Chea Vichea, Hy Vuthy and Ros Sovannareth, and the case of Veng Sreng Street protest [that ended in violence]. But the committee does not have solutions yet because it needs to wait for the authorities to make arrests.” See: <https://www.phnompenhpost.com/national/prayers-vichea-anniversary>. On 27 March 2017, the National Police formed an investigative working group to investigate the murder of Free Trade Union leader Chea Vichea (murdered in January 2004) and factory presidents Ros Sovannareth (murdered in May 2004) and Hy Vuthy (murdered in February 2007). The working group included the Phnom Penh Municipal Police commissioner Chhoun Sovann, and the head of penal crimes Sok Khemarin. The order stipulates that: “The investigative working group has the duty to investigate the killing[s] . . . and to arrest and take legal action against the murderers, accomplices and other involved persons.” However, almost two years prior to the creation of the working group, PM Hun Sen had ordered the formation of an interministerial committee to investigate the same murders and there had not been any outputs. See: <https://www.phnompenhpost.com/national/police-create-group-probe-vichea-murder>

CHAPTER 4-

The Legislative Branch

Introduction

The 2018 parliamentary elections occurred without the participation of the major opposition party which had been dissolved by the Supreme Court in 2017. This dissolution occurred on the basis of amendments to the Law on Political Parties which had been advanced by the ruling party majority in parliament. Following amendments to election laws, such that they work in tandem with the Law on Political Parties in the event a party is disbanded, the seats of the former opposition party at both the parliamentary and sub-national levels were redistributed. This occurred even though the seats had been one in elections classified as fair by the RGC and even though the new occupants of the seats had not been given a democratic mandate by voters. As a result of the redistribution, the ruling party took all commune council seats across the country.²⁷² As a result of the changes to the political party landscape eliminating political competition, the ruling party won all parliamentary seats in the 2018 national election. Cambodia, therefore, became a one-party state without political pluralism at both the national and sub-national levels. Correspondingly, the parliament cannot be considered to provide a check on the executive or serve as a forum of debate on laws or party platform items. Functioning in the service of the executive, it completely the case that legislation occurs in the Council of Ministers under the direction of the PM, and the parliament merely functions to provide ritualistic approval of decisions on legislation already made. Therefore, it is not appropriate to seek an analysis of parliamentary politics or treat the legislature as having the independence required of a checks-and-balances framework. Taking that into consideration, this section will focus only on a brief description of the laws undergoing or completing the parliamentary process of approval in 2019.

²⁷² In September 2018, 38 MPs were replaced following their resignation and taking up posts in the RGC. See: <https://www.phnompenhpost.com/national/crop-new-legislators-sworn-parliament>

Legislation in 2019

On 5 January 2019, Peng Long, the spokesman for the National Assembly, announced that after the 2018 elections the fifth mandate of the National Assembly saw the approval of 38 draft laws. Long clarified that the legislation pertained to all areas of governance, such as economic management, trade, social welfare, environmental management, security governance, and integration into multilateral arrangements. He asserted: “The greatest success for the National Assembly is in serving people at the grassroots level and lawmakers from the various committees have visited their respective constituencies to help resolve issues within their capacity.” Without providing further specifics, he claimed that a multitude of complaints had been resolved at the local level or submitted to the relevant institutions. Mok Mareth, a lawmaker for Takeo province, said parliamentarians had extensively engaged with constituents at the local level to solve problems, ensure social protections, and deliver infrastructure and services. He declared: “We also held public forums for villagers to speak out about their concerns. We have fulfilled our promises to them [voters].”²⁷³

On 1 April 2019, the National Assembly held the second session of its 6th mandate. The King issued a royal message which congratulated MPs on responsiveness and outreach to citizens and the PM for maintaining peace and development. Several promotions were approved by the parliamentary body including appointing former Appeal Court president Ly Vuoch Leng to the Constitutional Council for its 2019-28 mandate; former governor of Prach Chan was appointed to the National Assembly’s Human Rights Commission; and former Battambang governor Chan Sophal was appointed to the National Assembly Commission on Interior, National Defense, and Public Functions.²⁷⁴

In June 2019, the seat for MP Prey Veng was filled by Sok Pheng after it had been vacated by the death of Pov Samy, although he died in 2015.²⁷⁵ In the same session, the NA approved a law for petroleum production and administration. The draft law regulating the petroleum industry was initiated in 1996. The enacted law

²⁷³ <https://www.phnompenhpost.com/national/national-assembly-approves-38-draft-laws>

²⁷⁴ <https://www.phnompenhpost.com/national/national-assembly-holds-second-session-its-sixth-mandate>

²⁷⁵ <https://www.phnompenhpost.com/national/assembly-approves-sok-pheng-prey-veng-seat>

is composed of 9 chapters and 72 articles. The law allows for the licensing of oil developers for 30-year periods of time. The Mines and Energy Minister Suy Seum claimed that the law provided for sustainable development to the energy resources in order to ensure long-term development. There was no mention of the fact that fossil fuels are not considered a sustainable energy source, and that long-term development must address the challenges posed by climate change. The Minister also indicated the law would attract investment to Cambodia, which is likely to be the primary incentive for the passage of the law. The PM has already indicated that 2020 will see substantial energy blackouts during the hot season, but the extraction of fossil fuels is unlikely to contribute to electricity provision within that time frame. Cambodia currently imports 2.5 million tons of petroleum on an annual basis, which makes up the full amount of its domestic consumption. It imports from Singapore, Thailand, and Vietnam. KrisEnergy, a Singapore based oil company, has been developing Cambodia's Apsara oil field (located in Block A)²⁷⁶ in the Gulf of Thailand. However, extraction from Block A had not yet begun at the time the law was enacted.²⁷⁷ Notably, the NA took pains to adopt a pretense of independence and oversight during the process of enacting the oil law. It pointed out that the draft law was submitted to the parliament on 5 April, reviewed by the NA Permanent Commission on 26 April, and then sent to Assembly's ninth commission for further research and review. The ninth commission was reported to have held two separate workshops on the proposed law, with the second on 6 June serving to address questions and recommendations of lawmakers. Members of that commission then met with specialist commissions and the Ministry of Mines

²⁷⁶ Block A has is situated in Cambodian national territorial waters in the Gulf of Thailand. It has a sizes of 3,083 square kilometers.

²⁷⁷ http://www.xinhuanet.com/english/2019-06/17/c_138150520.htm Transparency of the petroleum industry and politics of extraction remain a problem in Cambodia. In March 2018, Cheap Sour, spokesman at the Ministry of Mines and Energy, said the RGC had approved an application for an exploration license related to Block D for the Cambodian Resource Energy Development Co., and that an interministerial committee would be established to conduct negotiations with the company. Although the ministry did not release the names of the companies, the spokesman indicated that negotiations were ongoing with a Chinese oil company its Canadian partner company. The Ministry of Mines and Energy registered the Cambodian Resource Energy Development Co. Ltd. in April 2017. The website for the company listed Chen Bo as the Chairman of the Board, but no contact information was provided for him. See: <https://www.phnompenhpost.com/business/preliminary-negotiations-over-block-d-exploration-begin>. In 2017 Cambodia was ranked 90 out of 97 countries assessed by the Fraser Institute of Canada, decreasing by ten points to from the previous year. The assessment found multiple problems such as disputed territorial claims, as well as regulatory costs and trade. The institute's report stipulated: "Cambodia has been plagued by ambiguous fiscal terms and the government of Cambodia took steps to make the terms more demanding – effectively dispelling further sector investment." At that time only Kris-Energy of Singapore has invested in the oil sector in Cambodia, with the plan of beginning extraction of Block A in 2020. <https://www.phnompenhpost.com/business/kingdom-drops-oil-investment-survey>

and Energy specialists, in an inter-committee meeting on 10 June. Nin Saphon, chairperson of the National Assembly's commission on public works, transport, telecommunications, post, industry, energy, commerce, and land management, said: "As per representations by the senior leadership of the Ministry of Mines and Energy on June 16, the June 6 workshop and the June 10 inter-committee meeting with government representatives, both supported the draft bill without requesting any revision of the original government content."²⁷⁸

On 1 July 2019, the National Assembly on Monday unanimously voted in favor of enacting the law "Approval of the National Strategic Development Plan 2019-2023".²⁷⁹ The law is a cornerstone component of phase IV of the RGC's Rectangular Strategy for development. Chea Vandeth, chairman of the National Assembly's Commission of Planning, Investment, Agriculture, Rural Development, Environment, and Water Resources, said the PM submitted the strategic development plan to the NA on 11 June along with instructions to approve it urgently. On 19 June 19, a meeting was held to review the draft law by the third committee of the National Assembly. Minister of Planning Chhay Than represented the RGC and responded to questions regarding the draft law. The minister posited that there were three objectives of the proposed law: first, to assess achievements and obstacles in the implementation of the NSDP; second, to ascertain the priorities of the different bodies of government for realizing the sustainable development goals, economic growth, and the reduction of poverty; third, the establishment of a monitoring system for the NSDP. The other

²⁷⁸ <https://www.phnompenhpost.com/business/draft-oil-bill-unanimously-approved>. Also, the government released a statement regarding the history of the development of oil production in Cambodia, following the National Assembly session in which the law was adopted. It indicated that oil exploration began in the 1960s in Cambodia with research by Chinese and Polish geologists, resulting a geological map. The first related national regulations were issued in 1991, setting up a framework for the bidding on oil extraction by investors in line with international standards. However, the regulations were later deemed inadequate for Cambodia's national conditions. The existing oil bill was re-drafted in order to increase transparency with the aim of attracting international investment. The draft bill adopted in 2019 was first formulated in 1996 with the assistance of experts from the Asian Development Bank. It was subsequently reviewed by the advisors from a Japanese oil company, and then later reviews in 2006 by the Cambodian National Petroleum Authority on the basis of advice from international technical and legal experts. In 2013, the CNPA was incorporated into the Ministry of Mines and Energy, and the draft law was further altered under the guidance of experts from multiple countries (such as Australia, Brunei, East Timor, Indonesia, Japan, Malaysia, Norway, Thailand, and Vietnam). In 2012, the Cambodian Petrochemical Company was granted a license to construct and operate an oil refinery, estimated to cost 620 million USD and be completed in 2022 with the capacity to process 5 million tons of oil annually. <https://www.khmertimeskh.com/50615017/national-assembly-approves-draft-oil-management-law>

²⁷⁹ "The National Strategic Development Plan (NSDP) 2014-2018, the government's guiding policy document, was passed unanimously by 65 ruling party lawmakers, along with a law on legal cooperation between Cambodia and Vietnam and an extradition treaty with the neighboring country." See: <https://www.phnompenhpost.com/national/cpp-passes-3-more-laws-without-cnrrp>

three laws related to government payments to energy companies. Four laws received unanimous support, while the draft law “Approval of Guarantee of Payment by the Royal Government of Cambodia to Schneitec Co Ltd” received one dissenting no vote.²⁸⁰

In response to power blackouts, which began in March 2019, the RGC approved several energy projects, with 112 of 125 MPs attending the session.²⁸¹ On 1 July 2019, the National Assembly unanimously voted to approve the construction of a hydroelectric dam by SPHP (a Cambodian firm). It also approved solar farm development by the firm Schnei Tech. The dam will be built in Pursat province with a cost of 231million USD, and produce 80 MW of energy. The company will operate the dam through a 39-year licensing agreement. Whereas the dam will be constructed in accordance with a build-operate-transfer (BOT) agreement, the solar power projects will be developed in accordance with the build-operate-own (BOO) agreement at the cost of 58 million USD and produce 60MW of energy each. The hydroelectric dam is estimated to require the destruction of 347 homes and inundate the farmland of 296 families with the size of 5,355 hectares, as well as forested land with a size of 600,724 hectares. At the NA, the Minister of Mines and Energy Minister, Suy Sem, announced that there was a master plan in place for future national capacity for energy production of 5,000MW.²⁸²

On 23 December 2019, the National Assembly approved four more solar energy projects for development in the provinces of Banteay Meanchey, Battambang, Pursat, and Svay Rieng. The projects are estimated to produce a total of 140 MW of energy. The relevant laws included guarantees on payments for the projects. The projects include a 17.5 million USD development of a 20 MW production by Green Sustainable Ventures Co. Ltd. with a size of 30 hectares (in Svay Rieng) and an annual output of 34.67 million kilowatt-hours; a 28.8 million USD development by Ray Power Supply Co. Ltd. of a 30MW production (in Banteay Meanchey) with an annual output of 50 million kilowatt-hours; a 57.2 million USD development by Risen Energy Co. Ltd. of a 60MW production (in Battambang) with a size of 80 hectares and an annual output of 107 million kilowatt-hours; and, a 29

²⁸⁰ <https://www.phnompenhpost.com/national/natl-assembly-green-lights-strategic-development-plan-four-other-draft-laws>

²⁸¹ Curiously he attributed current levels of energy production to natural factors. While apologizing for energy cuts, he asserted: “Because of what? It is purely because of natural factors.”

²⁸² “According to the Mines and Energy Ministry, Cambodia produced 2,650 megawatts of electricity last year, of which 1,329 megawatts, or 50 percent, came from hydroelectric dams.”
<https://www.khmertimeskh.com/50619937/parliament-approves-power-projects>

million USD development by SchneiTec Infinite Co. Ltd. of a 30MW production (in Pursat) with an annual output of 38 million kilowatt-hours. The four projects have been approved as build-operate-own developments, and are estimated to be fully functional by the end of 2020. Based on the agreements in place, the companies will sell electricity to the Electricity of Cambodia, a price of 0.076 USD per kilowatt-hour. At the time the developments were approved through guarantees of payment by the NA, there were two solar power projects in operation in Cambodia (one in Svay Rieng and one in Kampong Speu) generating a combined energy production of 90MW. In total, 7 solar projects were approved in 2019, with a total capacity of 320 MW. In 2018, Cambodia consumed 2,650 MW (an increase of 15 percent from 2018), of which 442 MW was imported from Laos, Vietnam, and Thailand.²⁸³

On 7 October 2019, the National Assembly passed a law to establish safety regulations for construction sites.²⁸⁴ The law followed the August 2019 building collapse in Sihanoukville, which resulted in 28 dead and 26 injured. The draft was developed and introduced to the government in 2017, and then discussed at the ministry level on 16 July 2019. The Ministry of Land Management reported that in the first half of 2019, investment in the construction sector increased 57 percent over the same period in 2018. During the period from January to June 2019, the Ministry approved 2,047 building projects valued at the amount of 3.3 billion USD.²⁸⁵ The law, composed of 22 chapters and 111 articles, sets out punishments for negligent investors involved in building projects, as well as protection for owners of construction sites. The law's article 90 establishes that when investors break the law, they will receive a warning letter. If issues are not remedied, developers could lose construction licenses and permits or potential is fined and face jail time. As well, it stipulates that buildings could be taken down. Articles 93 to 102 of the law established that imprisonment for those found to be guilty of those not having permits or in violation of technical standards could be sentenced to between 1 month and 15-years imprisonment. Fines range from 4,000 USD to 15,000 USD. Chheang Vun, a CPP lawmaker, said: "When our law is weak, we can't solve problems for our people. There is no guarantee in the construction sector because we have seen accidents in the past. When this law comes into force, it will solve problems for construction workers and everyone in the sector." Land Management Minister Chea Sophara said: "The draft Law on Construction

²⁸³ <https://www.khmertimeskh.com/50672968/national-assembly-says-yes-to-four-solar-projects>

²⁸⁴ <https://www.khmertimeskh.com/50648788/parliament-passes-construction-bill-aimed-at-regulating-sector>

²⁸⁵ <https://www.khmertimeskh.com/50638869/construction-law-gets-the-go-ahead>

enhances accountability and effective management in the construction sector to build trust in investors and push the real estate market.” Chiv Sivpheng, general manager of the Cambodia Construction Association, said: “On behalf of us in the private sector, we congratulate the passing of the draft Law on Construction because it will regulate companies or constructors who do not meet technical standards.”²⁸⁶

In July, the European Chamber of Commerce of Cambodia published its annual ‘White Book’, containing recommendations for the Cambodia government to foment the development of the real estate and construction sectors. The recommendations that it set out included: that company safety officers should be required to undergo training on health and safety before the company initiates a new development project; that the RGC and related stakeholders put into practice requiring structural materials produced within Cambodia to be subjected to independent quality assurance inspections; that a regulatory framework be adopted for the property management industry including establishing standard operating procedures for that sector.²⁸⁷

On 13 August 2019, the Supreme Consultative Council challenged the quality of the law in the questioning of the Minister of Land Management Chea Sophara. SCC members charged that the law lacked sufficient enforcement measures to ensure quality standards in building construction. Kong Monika, president of Khmer Will Party and rotating president of the SCC, reported that members of the council expressed concerns the law will not sufficiently regulate building without permits, or provide for safety and fire prevention measures. At the same time, in discussion with media, he indicated that the issue was not with the law but rather with its implementation. Seng Lot, Land Management Ministry spokesman, said the law was drafted with input from the relevant stakeholders, as well as with assistance of experts from the government of Japan. Sok Kin, president of the Building and Woodworkers Trade Union of Cambodia, yesterday Sok Kin, told media that the draft law insufficiently included input from civil society groups and unions to ensure protections for workers.²⁸⁸

On 8 October 2019, the National Assembly approved a law on e-commerce. The Ministry of Industry and Handicraft stipulated that at the time the law was enacted,

²⁸⁶ <https://www.khmertimeskh.com/50648788/parliament-passes-construction-bill-aimed-at-regulating-sector>

²⁸⁷ <https://www.bangkokpost.com/business/1741164/cambodian-govt-approves-much-awaited-construction-law>

²⁸⁸ <https://www.khmertimeskh.com/50633298/scc-concerned-over-construction-law>

Cambodia had more than 500,000 SMEs. However, less than 15 percent were formally registered with the RGC. According to a National Assembly statement, the purpose of the law is to support small and medium-size business enterprises (SMEs) to access supply chains and sales at the national and international levels, spur innovation, and productivity of both goods and services. The text of the law is composed of 12 chapters and 67 articles which stipulate different rules and regulations for the governance of e-commerce. Commerce Minister Pan Sorasak said: “Work on the e-commerce legislation began in 2012 with the technical assistance of the Asian Development Bank and has been verified against a sample law of the United Nations.”²⁸⁹ The law is expected to provide support for businesses in an area that was previously unregulated. As a result, Chhea Layhy, director of the General Department of Small and Medium Enterprises and Handicraft under the Ministry of Industry and Handicraft, said the law is expected to benefit both investors and the government. The law is needed because of the significant challenges faced by SMEs in Cambodia. Loek Sinrithy, the executive director of the Federation of Associations for Small and Medium Enterprises of Cambodia, said the sector is plagued by low product and service quality, low-level of uptake of technology advances in production, a limited market and insufficient access to capital. He claimed: “For me, the law on e-commerce will contribute a lot in promoting the use of technology and expanding the Cambodian market internationally.” Hong Vannak, a researcher at the Royal Academy of Cambodia, said one of the primary benefits of the law is the prevention of disputes resulting from the electronic conduct of business. He posited: “This is another step towards increasing compliance in e-commerce in Cambodia. However, due to limited knowledge and law enforcement, Cambodia still needs more time to manage online commerce.”²⁹⁰

Two significant pieces of legislation were enacted at the end of 2019 pertaining to Cambodian international relations. On 23 December 2019, the parliament approved Cambodian ratification of the UN Convention on the Law of the Sea.²⁹¹ This is of special significance given the current context of competition and tensions related to the South China Sea. Although not a claimant in that dispute, Cambodia has backed Chinese claim by preventing the formation of a joint ASEAN position. Notably, the UNCLOS does not accord with Chinese territorial claims. Also, on 4 November 2019, the NA adopted two laws related to establishing the border of

²⁸⁹ <https://www.khmertimeskh.com/649249/e-commerce-law-gets-the-go-ahead/>

²⁹⁰ <https://www.phnompenhpost.com/business/na-approves-e-commerce-draft-law>

²⁹¹ <https://www.phnompenhpost.com/national/national-assembly-approves-un-convention-sea-law>

Vietnam which has been treated as demarcated differently by the two states in the past and has been the source of societal tensions between the two long-time allied states. The parliament ratified a 1985 supplementary treaty and 2005 border demarcation agreement.²⁹²

COMFREL monitoring of parliamentary performance findings supports the claim that government officials tend to be motivated by one political party agendas rather than constituency interests. The COMFREL Parliamentary Watch monitoring program found that continued a decrease in the responsiveness of representatives. The National Assembly still does not function as an autonomous institution developing law or providing independent input on draft law set out by the RGC. The Assembly of one-party has functioned primarily for the speedy enactment of the above laws once they were drafted and approved by the Council of Ministers while there were no politically pluralist debates on draft laws. As a result, responsiveness by the NA in the form of ensuring input and concerns of constituencies are addressed before the enactment of laws was not a feature of the legislative branch of government in Cambodia. There was a reduction in constituency visits by members of the parliament, with 1,324 field visits conducted by members of NA in 2019 from CPP. This was a decrease in the number of field visits compared to the previous mandate when there were 1,756 field visits in 2017.

Of the 125 lawmakers, only 64 were active. There were 1,855 visits on average, 18 of which were on average for one of the mission's deputies. The MPs who made the mission, as a percentage of the number of MPs in their party, were more less than the first year of the 5th mandate. Of these 1,855 visits, 68.8% were visits and visits and expressed appreciation to the local authorities.

There weren't any for intervention letters to the government to solve the people's problems. There were 95 activities of the Expert Committees while almost of the activity were to study tasks of the local authorities and to learn about challenges of law enforcement and authorities. The expert committees, in the first year of the sixth mandate, had summoned only the Minister of Justice for hearing, but the did not question the minister about issues of the justicial reforms while just aksed the minister to report it's activity.

The One-party National Assembly has convened nine plenaries with 29 agendas. Among the most approved agendas was a draft of 14 laws, including the passage of the National Budget Report Settlements 2017 and the National Budget for the Management of 2019. The one- party National Assembly also approved three major amendments including the Political Party Act and two electoral laws. There were no critical discussions on the draft laws while only

²⁹² <https://www.khmertimeskh.com/50657175/national-assembly-ratifies-two-border-agreements>

12 MPs made 23 comments, with a duration of 151 minutes in terms of the number of MPs and much less time compared to the first year of the fifth term.

A 2019 COMFREL report on political gender watch found out that

between September 2018 and August 2019, only CPP lawmakers were elected and have seats in the National Assembly. The number of female MPs who made comments at the plenary session for the first term of the sixth legislative year was 1 (3.84%) of the total 26 female parliamentarians. There were 11 male MPs, accounting for (11.11%) of the total of 99 male members. The number of comments was a very low 9.60% compared to the total of 125 lawmakers.

The total percentages of women MPs and men MPs that conducted field visits was similar to the percentage of male MPs at 53.84%, This was equal to 14 out of 26 women MPs, slightly more than the percentage of male MPs, 50.50% equals to 50 out of 99 male MPs. Compared to the 5th mandate that the two parties hold seats in the National Assembly, the percentage of women MPs on the mission decreased from 83.33% in the 5th mandate 2016 to 53.84% the 6th mandate of 2019, while the percentage of male MPs on the mission also decreased significantly, from 78.79% in the 5th mandate 2016 to 50.50% in the 6th mandate.

In conclusion to this part, the single-party legislature enacted the laws in 2019 without politically pluralist debates that addressed all areas of governance in Cambodia. Still, the overall theme shared by most of the resulting laws was economic management. 2019 did not see legislation that would support a return to democratic standards, and the changes to the laws which undermined democracy (Law on Political Parties and elections laws) in 2017 and 2018 were not reversed.

CHAPTER 5 -

The Judicial Branch

Introduction: Rule by Law trumps Rule of Law

The World Justice Project Rule of Law Index found that out of 126 countries evaluated, the rule of law in Cambodia was as poor as 125th place. That indicates that despite frequent public declarations regarding reform efforts by high ranking officials, Cambodia has not improved the judicial system or the overall rule of law. This is manifest in Cambodia in citizen's continued use of informal methods for conflict resolution, political trust in the police and courts is very low. This is also demonstrated in the reluctance to solicit government services from ministries or other offices because of the requisite payments.

The WJP index measured Cambodia's rule of law status using eight indicators: constraints on government powers (124th), the absence of corruption (125th), open governance (124th), fundamental citizen rights (117th), order and security (87th), regulatory enforcement (124th), civil justice and criminal justice (124th). Personal security from crime is better in Cambodia than in many other developing states. However, the investigative capacities of the police remain extremely low, and the security situation results from more societal enforcement of norms than from

effective police and judiciary. World Justice Project's executive director Elizabeth Andersen on the situation in Cambodia said "This slide in the rule of law in general and checks on government power, in particular, is deeply concerning."

Cambodia provides an exemplary case of more global trends towards authoritarianism with justice systems based on rule by law rather than the rule of law. The world justice project showed the largest decline from 2018 to 2019, occurring in the area of constraints on government power. Cambodia has seen the rise of a hegemonic party system (with one-party dominance over the legislative and bureaucracy) as well as dictatorship or sultanism (with power concentrating in the hands of the PM, then at any time since the Khmer Rouge totalitarian regime). The PM himself relies on a vast system of patronage, which is grounded on the threat of force through control over the military and police apparatuses. The second most decline in the rule of law at the global level occurred in terms of criminal justice. Cambodia has seen the justice system play a primary role in eliminating democracy and political competition. It has been used to punish fundamental freedom, such as expression, assembly, and association. Multiple, purposely visible, demonstrations of state power have entailed prosecutions of opposition figures, political analysts, media personalities and journalists, trade union advocates, human rights defenders, and non-governmental organizations. The most significant factor in the absence of more numerous prosecutions for behavior critical of the government is the imposition of self-censorship following the climate of fear that has been created through these prosecutions. Unable to get involved in public space, many youths have become more apathetic, turning to consumerism to occupy their time.

The response from ruling party officials to the World Justice Project was predictable and familiar. During the past several years, they have taken aim with the annual report's findings using three lines of argumentation: discounting it as bias (claiming it is a Western effort to demean the RGC), questioning its fairness (saying that Cambodia is treated worse than other countries or singled out), or challenging its methodology (without indicating specific problems). The RGC Ministry of Justice spokesman, Chin Malin, said: "The evaluation is not scientific and does not reflect the reality of Cambodia's progress in comparison with other countries in the region. Some countries that are in worse situations than Cambodia get a better ranking. The evaluation is not comprehensive. It seems to depend on only one factor – a country's political situation – and does not take into account general levels of freedom and institutions successfully working with the rule of law,

democracy, and justice.”²⁹³ Tellingly, he expressed concern that the report would embolden opposition political parties. CPP spokesman Sok Eysan said the index was biased in favor of Western countries and claimed it was an outsider’s evaluation, which did not reflect the real conditions in the country. He claimed that the absence of rebellion or color revolution proved that the rule of law was good, a surprising statement since an imminent threat of color revolution has been a major theme of ruling party discourse since the ban on the major opposition party in 2017. Government spokesman Phay Siphon claimed that achieving sovereignty and independence was the sole priority of the RGC and that the Rule of Law Index evaluation was politically motivated.

However, the RGC consistently refuse to concede that there are problems with the judiciary and public trust in the police and took no steps to elaborate transparent strategy for reform. The courts continue to be a tool for the ruling party to quash dissent and eliminate the viable opposition.

Multiple cases of prosecutions which provide evidence of the general practice of rule by law in Cambodia are discussed in this report (sections on Political Rights and Pluralism, Freedom of the Press).

CHAPTER 5 – PART 1

Lack of Justice

A very public and visible example of the lack of justice, including active investigation, due process, and fair trial rights) has been the prosecution for the killing of Kem Ley. The case has ensured effective messaging that the public cannot rely on the police and judiciary and that they must be afraid of the state. Independent political analyst Kem Ley was shot and killed in broad daylight on 10 July 2016. (The subsequent arrest and extremely problematic prosecution of Oeuth Ang, who was given a life sentence, are thoroughly discussed in previous COMFREL Democracy Reports.) Ley was killed just days after calling public attention to a Global Witness report outlining the different business interests of the Hun Sen family, which given its thorough control over most sectors of the economy and showed massive amounts of hidden wealth only possible through

²⁹³ <https://www.phnompenhpost.com/national/government-rejects-rule-law-ranking>

vast levels of corruption. On 1 March 2017, the Phnom Penh Municipal Court tried the alleged killer guilty of premeditated murder and illegal possession of a firearm, under articles 200 and 490 of the criminal. On 23 March 2017, the alleged killer was convicted and sentenced to life imprisonment, after a highly suspect prosecution and trial which failed to establish any links between the victim and the accused, or any reasonable motive for the act, despite an investigation that lasted almost a year.²⁹⁴ More information was uncovered by independent media in the immediate wake of the murder than by the authorities in the entire period of the investigation.²⁹⁵ On 24 May 2019, the Supreme Court rejected the accused Oeuth Ang's second appeal.²⁹⁶

On 24 May 2019, the Supreme Court ruled to uphold the guilty verdict and life sentence of Oeuth Ang. The court gave no indication that it found flaws in the investigation or the prosecution process. At the hearing, the Ang reiterated his confession to the killing. The defense lawyer for the accused, Im Mach, told media after the hearing that his client had been unfairly treated by the court. He stated: "He filed an appeal with the Supreme Court because he thinks a whole-life jail sentence is too harsh, but the sentence was upheld. My client finds the ruling of the Supreme Court really unfair. I personally think other murders were far more brutal and the offenders in these cases were not given whole-life jail sentences. My client's punishment is most severe when compared to those handed down in other murder cases."²⁹⁷ However, the defense did not argue on the basis of the or the various problems evident of the investigation and prosecution.

During the hearing, Ang stated that he could not remember much concerning the killing.²⁹⁸ Presiding Judge Soeung Panhavuth announced that the decision to uphold the ruling the Appeals Court was based on the confession: "The Supreme Court has rejected the request of Oeuth Ang because he confessed to being the person who killed the victim. The court upholds the verdict of the Court of Appeal, which had been made correctly." He claimed that because of the confession, the court was not obligated to reduce the sentence. Mr. Ang's legal representative, Im

²⁹⁴ <https://www.bbc.com/news/world-asia-39362264>

²⁹⁵ <https://www.phnompenhpost.com/national/choub-samlab-gets-life-prison>

²⁹⁶ Although the investigation was announced as completed, and a conviction resulted with the RGC ruling the Oeuth Ang acted alone (designating the motive as well to be the anger over money not repaid), after the Supreme Court decision on the sentencing appeal in 2019, the MoJ spokesman told media that the murder was still being investigated. See: <https://www.phnompenhpost.com/national/choub-samlab-gets-life-prison>

²⁹⁷ <https://www.phnompenhpost.com/national/court-upholds-kem-ley-killers-unfair-conviction>

²⁹⁸ <https://www.phnompenhpost.com/national/kem-ley-murderer-requests-reduction>

Mach, claimed that the sentence should have been reduced on the basis of the cooperation with the prosecution shown by the confession. Am Sam Ath, monitoring manager for Licadho human rights CSO declared: “Even if the Supreme Court upheld the life sentence against Chuob Samlap, people behind the killing have not yet been prosecuted. No one believes Chuob Samlap acted alone to kill Kem Ley.”

United Nations human rights experts affirmed that despite the prosecution and conviction of the alleged killer, after three years, there still has not been an independent and impartial investigation into the murder. They stated: “We are concerned at the apparent failure to conduct adequate investigations to clarify Kem Ley’s murder. We call on the Government to commission an independent body to undertake a transparent and impartial investigation as soon as possible.”²⁹⁹

On 13 July 2016, the International Commission of Jurists issued five key recommendations to the RGC to make sure the investigation and prosecution adhered to the standards of due diligence, due process, and fair trial.³⁰⁰ These recommendations included: the independence of investigating judges and prosecutors; a public and transparent investigation process; protecting the rights of family members during the investigation to enable their secure participation; protection of witnesses or other individuals involved in the investigation; seek out and accept offers of assistance from supporting States or international organizations with regard to forensics investigation and data collection. However, the RGC never implemented any of those recommendations. Now more than 3.5 years after the murder, the public is still not convinced of the outcome of the prosecution.

On 23 March 2017, the ICJ, Human Rights Watch, and Amnesty International set out eight points of problems evident in the initial trial by the Phnom Penh Municipal Court.³⁰¹ These different rights and the rule of law organizations emphasized how the investigation and prosecution failed to meet international standards set out in the ICCPR and the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

²⁹⁹ <https://www.rfa.org/english/news/cambodia/trial-07262019170337.html>

³⁰⁰ <http://www.licadho-cambodia.org/pressrelease.php?perm=442>

³⁰¹ <https://www.icj.org/wp-content/uploads/2017/03/Cambodia-KemLey-Verdict-News-Press-releases-2017-ENG.pdf>

On 7 July 2017, 164 organizations issued a joint letter to Sar Keng, the Deputy Prime Minister of Cambodia, requesting the formation of an independent commission to address the case. The organizations agreed that the investigation was fundamentally flawed and that there was a total absence into investigations of possible accomplices.

Amnesty International Regional Director for East and Southeast Asia, Nicholas Bequelin, asserted: “The apathy of the Cambodian authorities could be seen to protect the masterminds of this killing. Fearless activists like Kem Ley only want to make their country better. They deserve justice from their government – not brazen indifference.” Human Rights Watch Deputy Asia Director stated: “The farcical trial of Oeuth Ang fell far short of international fair trial standards and raised more questions than answers about who was really behind the killing of a respected political analyst who dared to harshly criticize Prime Minister Hun Sen. What’s known is Kem Ley’s family had to flee Cambodia out of fear and anyone who now alleges government involvement in the murder faces immediate harassment and retaliation.” Debbie Stothard, Secretary-General of the International Federation for Human Rights (FIDH) declared: “The trial of Kem Ley’s killer still points to a cover-up. The Cambodian authorities’ ongoing failure to identify and prosecute the masterminds behind Kem Ley’s murder shows that an independent investigation is urgently needed to deliver justice to his family and to make progress towards ending impunity for the killing of human rights defenders in Cambodia.”

The upholding of Oeuth Ang’s sentence by Cambodia’s highest court in May 2019 has increased concerns about the lack of independence of the judiciary. The lower courts that considered the case were the Phnom Penh Municipal Court and then the Court of Appeal, which rejected Oeuth Ang’s first appeal before he then appealed to the Supreme Court. These courts did not address the clear shortcomings that had marred the investigation and the original trial before the municipal court. Instead of providing justice and remedying the flawed investigation and prosecution of the case, the government has instead turned to repression of those seeking justice or the memorialization of the victim (see the section on civil and political rights), and accused them of seeking private and partisan gain from the murder.³⁰²

³⁰² <https://www.khmertimeskh.com/50622093/stop-politicising-kem-leys-murder-cpp>

CHAPTER 5 – PART 2

Legal Reform

Judicial corruption and the failure to reform, amid much-publicized efforts to do so, has been a major feature of the ruling party's government in both the 5th and now 6th mandate of the National Assembly.

Following instructions from PM Hun Sen to speed up court procedures for detainees because of the problem of overcrowding, the MoJ held a meeting with the joint technical working group in order to discuss the issue on 20 March 2019.³⁰³ MoJ spokesman and secretary of state Chin Malin indicated that the practice of discussion followed the development of the 2014-2018 Joint Monitoring Indicators on Legal and Judicial Reform, and the process will continue until 2023. He also informed that the discussion occurs once every three months, and claimed that it ensured the views of development partners and civil society are taken into account. Moreover, he stated: “The mechanism of resolving the overcrowding is still moving forward. We have not stopped, as we have not achieved the goal. [We] will continue until 2023. The mechanism that we have discussed involves taking immediate steps, preliminary steps and what we do in the long-term.” Immediate or short-term steps included a review of laws to assess the impact of speeding up court procedures and ensure it does not detrimentally impact the law. More long-term steps would involve the discussion of the pardon procedure and procedure for the implementation of non-prison punishment.

High Commissioner for Human Rights in Cambodia (OHCHR) country representative Simon Walker said applauded the forum as an effective method for ensuring relevant parties collaborate to advance improvements in the justice system. However, he indicated that although legal assistance has improved, the issue of prison overcrowding is a pressing concern that has not been addressed, and there has not been progressing on the integrity of the court system. According to UN human rights assessments of Cambodia, another area of past improvement was the inclusion of the right to access for legal services for disabled persons in the 2019-2023 development plan.

³⁰³ <https://www.phnompenhpost.com/national/malin-addresses-legal-reforms>. The technical working group is composed of MoJ representatives along with representatives of 30 development partners and civil society organizations.

In a sub-decree issued by PM Hun Sen on 24 May 2019, the RGC announced that the salaries of judges and prosecutors would be increased by 74 USD per month. It stipulated that the salaries for the head of the Supreme Court and the chief prosecutor of the Supreme Court would not increase. Civil society figures indicated that the salary increase was insufficient to provide incentives to avoid committing acts of corruption, with the appropriate salary estimated at 2,000 USD per month.

In the 2nd session of the 6th session of the National Assembly, the accountability mechanism of the legislature over the executive, which rarely used was employed with the questioning of the Minister of Justice by MPs. The MoJ was called respond to questions by the Permanent Committee of the National Assembly, on the issue of resolution of citizen's complaints. On 4 July 2019, Vong Vathana, the Minister of Justice, was questioned by Pen Panha, chair of the Committee of Legislation and Justice Chair at the National Assembly. Other MPs in attendance included Sam Rithy, Hun Many, Chheang Vun, and Pen Siman. The Minister highlighted efforts to develop the physical infrastructure of the court system in order to meet increasing demand from citizens for judicial services. To that end, The minister asserted that every province would have a provincial court—such courts have been constructed in Kampong Speu, Tbong Khmum, and Stung Treng, and in Kampong Chhnang and Svay Rieng construction is on hold waiting for funds allocation from the Ministry of Economy and Finance. The Minister also claimed that in 2020 Appeals Courts would be erected in Battambang, Preah Sihanouk, and Tbong Khmum provinces.

Although advances in this area are welcome, the fact that such courts have not been created before the 6th mandate of the NA is an indication of how weak RGC support for the judicial system has been over time. In fact, the policy of constructing an Appeals Court in each province was already being heralded by the Ministry of proof of its commit to judicial reform in 2015, and seven of such courts were supposed to be created by 2018.³⁰⁴ Moreover, simply increasing the infrastructure of the judiciary by building more courthouses will not achieve much-needed reforms. In its 2018 report on fair trial rights, the Cambodian Center for Human Rights (CCHR) found that in almost all hearings there were significant violations of due process, such as judges failing to cite legal provisions and

³⁰⁴ <https://www.phnompenhpost.com/national/provinces-tapped-appeal-court-project>. On the expansion of the court system, see also: <https://www.phnompenhpost.com/national/battambang-tbong-khmum-courts-be-finished-year>; <https://www.phnompenhpost.com/national/battambang-tbong-khmum-courts-be-finished-year>.

evidence; decisions by the Appeals Court without explanation; an absence of the presumption of innocence; a lack of adequate investigation of allegations that confessions were obtained under duress; and a failure of the judge to explain the right to remain silent of the defendant.³⁰⁵

The full scope of concrete legal reform efforts was elaborated by the Ministry of Justice spokesman Chin Malin on 1 August 2019. He specified: “Throughout history, we have created new administrative courts, such as Phnom Penh Municipal Court and provincial courts, the Court of Appeal and the Supreme Court. We have also modernized by developing human resources, technical skills, and incorporate a computer system database to manage case files.” He also claimed the MoJ had increased provision of legal consultation, established a dispute resolution mechanism to function outside of the courts, provided legal aid for the poor, and in cooperation with the Bar Association, the creation of the Justice Service Center. He posited: “All the work done to reform the judicial system is in order to promote the rights of villagers.” However, Am Sam Ath, monitoring manager with the human rights group Licadho, said the reform efforts have been insufficient. He noted that public trust of the judiciary has not improved, independence of the judiciary is still compromised and asserted: “The government has to avoid double standards when it comes to implementing laws. Poor people always lose cases, while the rich and powerful always win cases.”³⁰⁶

On 22 October 2019, PM Hun Sen publicly declared that respect for the rule of law in Cambodia was consistent with abandoning the Paris Peace Agreements. He drew on public sentiment of approval for the monarch by claiming that if the Paris Agreement was upheld, there would be no king, and the Khmer Rouge leaders that have faced trial would be set free.³⁰⁷ Civil society groups look to the Agreement as a foundation for both peace and human rights in Cambodia and

³⁰⁵ <https://www.phnompenhpost.com/national/ngo-puts-appeal-court-trial>

³⁰⁶ <https://www.khmertimeskh.com/50629768/justice-ministry-pushes-forward-with-reforms>

³⁰⁷ Hun Sen himself and the majority of the older generation of ruling party elites are former Khmer Rouge cadres. PM Hun Sen bases his legitimacy on ending the genocidal regime, but was an ardent supporter through most of the Khmer Rouge period until he believed he would be purged. He reached the status of battalion commander, by his own admission leading 2000 troops, which would have been impossible without strict ideological commitment to the fervently paranoid regime. Hun Sen generally blames the US for the Khmer Rouge regime, and has publicly asserted that the Paris Agreements were dead, in response to calls for dialogue and compromise with the opposition party. See: <https://www.phnompenhpost.com/national/peace-accords-ghost-says-hun-sen-dismissing-treaty-established-democracy-cambodia>. The public support for the Paris Agreements means the latter provides an alternative narrative to that of his ‘win-win’ policy which credits him with ending the genocide. However, his dogged resistance to the expansion of prosecutions at the ECCC is a tacit recognition that the win-win policy was grounded on including high-ranking KR officials in his government.

frequently invoke the spirit of the agreement in support of democracy in Cambodia. Esteemed political analyst Lao Mong Hay, a highly respected figure by civil society groups, opined that Cambodia was still obligated to respect the agreements.³⁰⁸

Moreover, in early November 2019, PM Hun Sen rejected the fundamental principle of judicial independence under a separation of powers. Despite stated intentions to conduct significant reform (rhetoric of 2019 that had already been present in 2014, with little practical output during that period), PM Hun Sen sought to legitimize and internationalize the lack of independence of the judiciary by affirming the need for executive management of the courts. At the 12th Asean-China Prosecutors-General Conference with the theme, The Role of Prosecutors in Combating Trafficking in the Region, Hun Sen extolled the necessity of executive control and presented it as a necessary component to a regional judicial system, effectively calling into question the principle of separation of powers. His argument was that without government approval of warrants and appeals regulating the autonomy of prosecutors, states would lose control of their judicial systems. More specifically, he claimed it was necessary to have executive oversight and authority over prosecutions and appeals. He stated: “For example, if a case is going to result in charges, then who is going to press those charges? The prosecutor is an accuser [in that case], but what if he represents the state and he or she must charge [the government]? [What if] a case is in the lower courts and the judge acquits the accused of charges or is too lenient with his sentencing and the prosecutor fails to file an appeal? We must ask if the state is still in control of its crime-related policies at this stage. This system is currently under reform for [Cambodian] courts.”³⁰⁹

On 9 January 2020, Deputy PM Sar Kheng publicly asserted the commitment of the RGC to undertake extensive reform of the judiciary of the RGC. However, other than reiterating the policy of increasing funding at the commune level in relation to decentralization efforts by the state³¹⁰, no mention was made of specific targets or milestones for implementing the policy. Ministry of Justice spokesman Chin Malin argued that the recognition of the importance of reform Ministry Justice

³⁰⁸ <https://www.phnompenhpost.com/national-politics/pm-government-focus-constitution-and-rule-law>

³⁰⁹ <https://www.phnompenhpost.com/national/prime-minister-hun-sen-advocating-asean-justice-reforms>

³¹⁰ This policy was originally a platform proposal of the former opposition CNRP party. After eliminating the CNRP by outlawing the party and occupying all commune seats with ruling party officials without an election-based mandate, the RGC began its own policy of increasing funding at the commune level. These funds are ostensibly supposed to support the government, but without transparency and the accountability resulting from political competition, they become resources to fortify local-level patronage.

was evident in efforts to develop human resources, legal frameworks, and policies. He referred to a series of monitoring mechanisms but failed to elaborate further. He also mentioned the creation of a working group to resolve land disputes outside the court system.

In October 2019, at the 24th annual convention of the bar association, a major theme was the need to adhere to a code of ethics.³¹¹ Appeal Court prosecutor Uk Savuth, gave an example of a judicial officer changing his account of information in a case, said: “When [the innocent] become wrongdoers they are handed an unfair sentence, while wrongdoers walk free having escaped justice.” Ministry of Justice secretary of state Chiv Songhak described ongoing reform efforts in the justice system but only listed the creation a Court of Commerce and a process of monitoring lawyers’ professional without giving any details regarding the latter. As for the Court of Commerce, it was announced that it will be under the Phnom Penh Municipal Court. The municipal capital court has played a prominent role in the rule by law, which has seen long-term prosecution of opposition political figures, civil society professionals and activists, trade unionists, and media. BAKC president Suon Visal conceded the Association continues to be challenged in resolving the abuses of the code of conduct that plague the profession. He indicated that efforts to address the issue have resulted in a disciplinary council; however, the disciplinary actions he described pertained to defense attorneys and not prosecutors.³¹²

On 28 August 2019, the Supreme Consultative Council (formed after the elimination of the major opposition party as a means to demonstrate that minor opposition parties had an actual role to play policy-making) raised the issue with PM Hun Sen, who then met with the Minister of Justice and instructed him to take action to remedy the corruption problem. As a result, the Bar Association of the Kingdom of Cambodia (BAKC) announced it would monitor all lawyers to end corruption in the judiciary.³¹³ Strictly monitor the activities of all professional lawyers to end corrupt practices among them in the judicial system. The Supreme Consultative Council general secretary, Chhim Phal Virun, indicated that: “To

³¹¹ It remains to be seen whether or not the BAKC will take a more assertive approach to strengthening professionalism and moral conducted in the judiciary. Its latest president, Suon Visal, was first elected to be association president in 2004 when he defeated Ky Tech, the lawyer of PM Hun Sen. Tech then sued Visal in court in a dispute that lasted two years, and was followed by a re-election in which Tech took the position.

<https://www.khmertimeskh.com/61242/bar-association-gets-new-president/>

³¹² <https://www.phnompenhpost.com/national/bar-association-monitoring-ethics>

³¹³ <https://www.khmertimeskh.com/50639365/bar-association-to-screen-lawyers-over-corrupt-practices>

strengthen the implementation of the law and social justice, BAKC had created an inspection department to monitor and punish lawyers who violate the law and code of conduct. The department has been tasked with receiving complaints, investigating and referring the complaint to BAKC's discipline committee and council for a decision." Effective reform will require a much more proactive and morally committed Bar Association. In the past, the Bar Association of the Kingdom of Cambodia (BAKC) has not challenged the interference of the executive which has undermined judicial independence, and it has not admitted to extensive corruption in the courts or in its own organization, much less developed a strategic plan to address the problems. There were key changes to BAKC policy announced in 2019, but it remains to be seen whether or not they will remedy root problems.

Preap Kol, the executive director of Transparency International Cambodia, a broader comprehensive policy of reducing corruption was necessary to foment public trust and confidence of international stakeholders. He noted: "Addressing corruption among lawyers alone will not be effective. The appointment of judges must be made through a competitive recruitment process. All judges shall not be affiliated with any political party or be required to resign from political parties before they are officially appointed."³¹⁴

BAKC partisanship was made evident by the promotion of director Bun Honn, to the position of undersecretary of state at the Interior Ministry, despite his tenure as director was marred by severe corruption in the association.³¹⁵ Another example is how the Bar is used as a political tool was demonstrated when the association sought the disbaring of a lawyer representing the victims in a land dispute for the act of holding a press conference criticizing the court processes.

Moreover, in the past, when disciplinary processes have occurred, they have not been transparent, resulting in a mechanism wherein the BAKC itself is not held accountable to a clear set of rules and public scrutiny.³¹⁶ The BAKC must do more to challenge the consolidation of control over the judiciary by the Ministry of Justice, which is wholly beholden to the PM and takes direction unswervingly from his office. A good example of this was the challenge made by the BAKC to the draft law stipulating the procedure for court clerks to become lawyers which placed the control of the decision to accept new lawyers under the authority of the

³¹⁴ <https://www.phnompenhpost.com/national/bar-association-takes-corruption-among-lawyers>

³¹⁵ <https://www.phnompenhpost.com/national/ex-bar-chief-tapped-ministry-post>

³¹⁶ <https://www.phnompenhpost.com/national/lawyer-disbarred-ethics-breaches>

Ministry rather than the BAKC.³¹⁷ Despite stated policies of reform in a context of pervasive, Bar Association disciplinary actions in 2019 were meager, and limited to the temporary suspension of six lawyers for the offense of delaying defending clients after taking payment.³¹⁸

In the sum of this part, the public had already lost confidence in the judiciary. There are two major problems with the proposed working group: first, there has been no indication it would address past disputes; second, it simply avoids the problem of the judiciary's failure to adequately enforce the law and provide a legal remedy for those dispossessed of their land unlawfully. The judicial processes have not been transparent. The essential step for the transparency is not an increase in monitoring from bias and partisan professional association, but a strict policy of addressing the problematic fidelity to the ruling party by both prosecutors and judges. It remains to be seen whether or not complaints result in active investigations and disciplinary action against high ranking judges and the powerful prosecutors within the court system. The Cambodia legal system does not require judges to publish decisions on cases, which prevents analysis and discussion of jurisprudence, as well as fundamentally limiting the transparency, which would make politically motivated prosecutions more accountable to the letter and spirit of the law.³¹⁹

CHAPTER 5 – PART 3

Legal Aid

There were significant advances in the policies for the provision of legal aid in 2019. The Ministry of Justice and the United Nations Office of High Commissioner for Human Rights formed the Technical Working Group on Legal and Judicial Reform, which resulted in the goal of legal aid policy and increased budget for legal aid in the Joint Monitoring Indicators of 2017. In 2018, the Ministry of Justice began a process of drafting a legal aid policy. However, the OHCHR has found that the provision of legal aid in Cambodia is highly insufficient.³²⁰ On 20 February 2019,

³¹⁷ <https://www.phnompenhpost.com/national/bar-seeks-removal-clerk-section>

³¹⁸ <https://www.khmertimeskh.com/50651599/bar-disciplines-six-lawyers-over-ethics>

³¹⁹ <https://globalfreedomofexpression.columbia.edu/cases/cambodia-v-kong-raiya/>

³²⁰ <https://cambodia.ohchr.org/en/rule-of-law/legal-aid-support>

PM Hun Sen announced the creation of a legal aid team for assisting ‘poor women’ and ‘garment workers’ who could not afford legal representation. He stressed the group would be funded from his pocket, rather than from the state budget.³²¹

National Union Alliance Chamber of Cambodia president Som Aun said this was a positive step in support of workers who could not afford lawyers and a result generally lost their cases in court. Centre for Alliance of Labour and Human Rights (Central) executive director Moeun Tola indicated support for the policy but pointed out other serious problems undermining labor rights. He called for the Ministry of Labour and Vocational Training to recognize freedom of association and organization for unions and respect for labor rights. Specifically, he indicated the need for improving the quality of work of mediators in labor disputes to decrease abuses. “Labour inspectors have the rights to judge who is right and wrong. Mediating officials do not have the right to do so...In general, we observe that mediators act beyond their remit. They act as judges in deciding whether employers are right or workers are wrong . . . Workers have pointed out that when mediators behave like that, it can involve corruption.”

Independent legal expert Sok Sam Oeun said that lawyers were needed which were not also taking paid clients. He noted: “According to my experience, volunteer lawyers should not get paid at all, because if some clients pay them and some can’t pay them, the lawyers will pay less attention to the poor clients.”

In March 2019, the Justice Ministry admitted that Cambodia did not have a policy of legal aid in support of the poor, in distinction from other countries in the region. The Ministry spokesman also conceded that there were in the process of developing a policy at the behest of European donors. The workshop where the discussion of the legal aid issue was organized by Konrad Adenauer Stiftung and the KAS country director indicated that the organization had given funding for legal aid to the Justice Ministry.³²²

In the 4 July 2019 meeting with parliamentarians, concerning legal aid, the Minister of Justice claimed that the Ministry was actively supporting support for the poor as well as increasing use and effectiveness of out of court settlement processes. He said that through a collaboration with the Bar Association (see below) that 415 of the 1,000 lawyers in Cambodia were on call to volunteer when

³²¹ <https://www.phnompenhpost.com/national/prime-minister-hun-sen-announces-free-legal-aid-garment-workers>

³²² <https://www.khmertimeskh.com/589418/justice-ministry-collaborating-on-national-legal-aid-policy/>

needed, with a capacity to support 2,000 cases each year, in addition to a legal consultation service which provided for 300 cases each year. As a result, there were at least five lawyers on standby to provide legal support for the poor, capable of travel to any province in the country.

In the 4 July 2019 questioning of the MoJ by the Permanent Committee of the National Assembly, the Minister focused mostly on improving access to legal aid, including legal services for out settlement. He emphasized the role of the Justice Service Centre which was created in 2006, and claimed: “JCS has been providing consultation on the law and helping resolve disputes out of the court system,” he said. “It resulted in the resolution of 2,753 cases last year and the provision of consultative legal assistance in 455 cases involving local people.” He also asserted: “JCS has carried out its duty effectively in providing legal services to people and taking part to reduce the lodging of complaints in courts and addressing inundated case files.” According to the MoJ, there are 69 JCS centers in Phnom Penh and some provinces, and expansion to all provinces is planned. Additionally, he claimed that although the Ministry provided 50,000 USD in legal aid funding in 2018, from Jan to July of 2019, the amount increased to 295,000 USD. The Minister also indicated that, in collaboration with the Bar Association, it supported the legal aid team established by PM Hun Sen. The team was said to be composed of 415 lawyers and provided legal consultation on 300 cases. (It is notable that the information reported here is very unclear given that the PM legal team for legal aid was only established in 2019).

Mr Vong Vathana, the minister of MoJ emphasized the cooperation with international partners in the areas of capacity building for judges and prosecutors, human trafficking, and the dissemination and implementation of laws. He conceded that resources were insufficient to effectively address the problems of human trafficking and money laundering. Finally, he averted: “The ministry has also been urging the implementation of laws to promote an effective judicial system and the improvement of legal services. We have also ensured the independence of the courts.”³²³

In August 2017, the Cambodian Human Rights Committee (CHRC) of the government announced through social media that it was forming a legal aid support component, indicating its intention of supporting the poor. Chin Malin, spokesman for both the Ministry of Justice and the CHRC, claimed the purpose of

³²³ <https://www.khmertimeskh.com/621145/justice-minister-briefs-parliament-on-legal-reforms-2/>

the group would be to contribute existing legal aid support mechanisms provided by the Ministry of Justice, the Bar Association, and Ministries of Interior, Defense, and Women's Affairs, as well as private legal aid programs such as PM Hun Sen's group. He indicated that legal aid from the Human Rights Committee would focus on legal consultancy, conflict resolution outside the court system, and the provision of legal defense for accused persons. The OHCHR communicated its support for the move, as did Yung Phanit, the deputy head of the BAKC's department of legal defense for the poor. Phanit conceded that the BAKC was having difficulty managing the increasing number of requests for aid it received: "If their targets are poor people, their work would reduce the burden that the BAKC is facing."³²⁴

The voluntary legal aid team met on 5 March 2019 and would be operating under the direct supervision of the PM, with a fund of 500,000 USD provided by the PM rather than the state budget. The group was made up of 67 lawyers (2 in each province, six in Phnom Penh and six on standby). Ky Tech said that the group would establish a communication system but did not provide information about how those seeking legal aid could contact the group. At the same time, he indicated that 10 women in Phnom Penh had already applied for legal assistance. Tech stated: "There are a bar association and lawyers from the Ministry of Women's Affairs to help the poor, but the [volunteer] team act as a separate entity. We help poor women across the country, and for female inmates who have already been convicted, it's beyond our authority. We can only assist poor women whose cases are still proceeding."³²⁵

On 10 October 2019, the president of the Bar Association announced that they would begin the provision of legal aid to migrants in Thailand. He indicated that the Thai government had accepted the proposal, and the RGC would develop an MOU for the project by the end of 2019. He added that the project would include the establishment of a hotline for migrant workers facing legal problems, and the legal aid offices would be located in the headquarters of the Bar Association of Thailand. However, at the time, he also conceded that there were no funds available to support the project, which was estimated to require 10,000 USD per month. Ms. Chou Bun Eng, an Interior Ministry secretary of state and vice chair of the National Committee for Counter Trafficking of Cambodia, said the provision of

³²⁴ <https://www.phnompenhpost.com/national/chrc-form-legal-assistance-team>

³²⁵ Nuth Veasna, the spokesman for the Ministry of Interior's General Department of Prisons, announced that as of March 2, there were 2,511 female inmates in Cambodia, while a Ministry of Interior report from 10 December 2018 stipulated that amount of female prisoners was 2,657.

legal aid could complement existing programs for migrant support conducted by the Cambodian embassy. Moeun Tola, executive director at Centre for Alliance of Labour and Human Rights, also supported the proposal but indicated that more time was needed to assess its implementation and effectiveness.³²⁶

In the conclusion, the judicial system in Cambodia has been criticised by the public for not being fair due to interference from government and political bias. the Kingdom needs to reform a judicial system which is a powerful, independent and neutral entity under democratic principles, and it should not be corrupted or under the influence of the government. COMFREL recommendations related to the provision of legal aid as follows: first, increase the available funding for aid making it a formal component of the state budget, rather than an informal policy dependent on the PM's largesse; second, conduct a comprehensive overview of the different legal aid policies in place with different institutions and coordinate these efforts under a single legal aid platform in order to reduce overlap and fill gaps in the provision of aid (this would also enable better policy implementation through setting targets and milestones for policy implementation); third, ensure legal aid information dissemination and support for women through the Ministry of Women's Affairs and for the disabled through the Ministry of Social Affairs; fourth, ensure improved compensation for lawyers so that they have incentives to provide legal aid instead of feeling mandated to do so which leads to resentment and potential lack of commitment.

³²⁶ <https://www.khmertimeskh.com/50652259/bar-association-to-set-up-legal-aid-office-in-thailand/>

CHAPTER 6 – The Executive Branch

Introduction

This chapter addresses some of the governance challenges faced by the RGC with the intention of providing an empirical basis for assessments of progress and challenges. In Cambodia, the executive branch has clear dominance over the other two branches of government. The legislature and court officials belong entirely to the ruling party. Within the party, power is concentrated in the central committee, with the PM dominating. As a result, in many respects, Cambodia fits the political science definition of a Sultanistic regime. At the same time, the elimination of opposition parties means that Cambodia continues to carry out ritualistic elections without any genuine political competition, and some scholars have referred to this a transition from a competitive authoritarian regime to a hegemonic party system. Lastly, as the elections in Cambodia are no longer meaningful for determining a popular mandate for the ruling party, and the PM frequently dons his military uniform with the highest rank in the security services (along with his official title as Lord Commander), it is reasonable to categorize Cambodia as a military rule system. In 2019, the civil-military relations entailed security services totally controlled by the ruling party, with the strongest military force in the country being the PM's bodyguard unit. Executive discourse has frequently been threatening and made clear that the use of large-scale violence against political dissidents is wholly acceptable and could be deployed without hesitation. Moreover, peaceful protests or expressions of criticism are treated as a crime and not tolerated by the police and courts. Given that executive discourse and civil-military relations are addressed in the chapter on civil and political rights, this chapter focuses on issues related to executive management of the economy.

Economic Conditions and Forecast

In April 2019, the World Bank released an assessment of the Cambodian economy, which concluded that growth would slow in 2019, but remain robust overall. It predicted a growth rate of 7.5 percent with the decline resulting from a reduction in exports due to macroeconomic conditions, which include a decrease in global demand.³²⁷

The Cambodian economy grew at a rate of approximately 7.1 percent in 2019. However, growth is projected to slow down in 2020. GDP per capita is expected to hit \$1,816 in 2020.³²⁸ A press release by the Council of Ministers on 25 October 2019 indicated that the rate of Cambodian economic growth would drop to 6.5 percent next year, resulting in a GDP of the amount of approximately 29.36 billion USD. At that time, PM Hun Sen declared there two new policy strategies would be put in place in support of economic stability: the “Strategy to Reform the Public Investment Management System 2019-2025” and the “Strategy to manage the public debt 2019-2023.”³²⁹

Budget

On 25 October 2019, the Council of Ministers issued a press release related to the Budget.³³⁰ The collected ministries and government institutions can be grouped into four areas of budgeting: general administration, national defense and public security, social welfare sector, and the economic sector. According to the proposed budget discussed by the Council of Ministers in October, the following information regarding the 2020 budget can be ascertained. The general administration contingent is comprised of 15 ministries, which include the main legislative bodies (National Assembly and Senate) as well as the primary executive body (the Council of Ministers). The budget for this group of institutions is set to increase from 615 million USD in 2019 to 628 million USD in 2020. The area of national defense and public security will see a budget increase from 1.1 billion USD to 1.2 billion USD, with 630 million USD of that amount allocated for national defense. The social welfare sector is composed of 9 ministries and institutions,

³²⁷ <https://www.phnompenhpost.com/business/economy-track-despite-rising-debt-gdp-ratio>

³²⁸ <https://www.khmertimeskh.com/50664298/national-budget-for-2020-approved>

³²⁹ <https://www.phnompenhpost.com/national/national-budget-next-year-set-766-billion>

³³⁰ <https://www.phnompenhpost.com/national/national-budget-next-year-set-766-billion>

which will see an increase in funding from 1.81 billion USD to almost 2 billion. Of that, 1.4 billion USD is earmarked for the ministries of education and health. The economic sector is composed of 10 ministries and institutions and will see an increase in funding from 1.65 billion to 1.8 billion. Of that, the Ministry of Public Works will receive approximately 800 million USD.³³¹

The 2020 National Budget Law was approved by the one-party parliament with little or no deliberation, as most of the law was determined in advance by the ruling party-controlled Council of Ministers. The Law was only made publicly available at the very end of 2019 on December 24, after approval in the National Assembly on 26 November, and acceptance by the Senate on Dec 9, and promulgation by the King on with a royal decree on 20 December.³³² According to the 2020 budget, the RGC will spend 8.196 billion USD, including 6.5 from revenues, and borrow approximately 1.7 billion USD in loans from foreign lenders.³³³ The amount of spending is equal to just over 28 percent of national GDP, and entails an increase of 22.7 percent from 2019.

Salaries for civil servants will increase from 270 USD per month to 281 USD in January and 288 USD in April. Salaries for teachers and doctors are set to increase from 295 USD per month to 306 USD in January and 313 USD in April. Salaries for National Police sergeants will increase from 291 USD per month to 302 USD in January and 309 in April (which includes an allowance for milled rice). For military personnel with the rank of staff sergeant, salaries will increase from 260 USD per month to 270 in January and then 276 in April (not including an additional milled rice allowance). Seeking to ensure popular support among the security sector services, the PM publicly assured that the CPP government would “continue not to tax government officials and armed forces of all kinds on the minimum salary, no matter how much the minimum salary is raised.”

Approximately one year earlier, civil society organizations expressed the need to improve funding in four key areas: health, agriculture, natural resource management, and the sub-national level budget.³³⁴ COMFREL finds that increases in some areas are insufficient and the budget shows the potential to unduly prioritize funding for the security sector. One issue is that base salaries for

³³¹ <https://www.khmertimeskh.com/654360/national-budget-for-2020-under-discussion-today/>

³³² <https://www.phnompenhpost.com/national/govt-spend-82-billion-year>

³³³ <https://www.khmertimeskh.com/50664298/national-budget-for-2020-approved>

³³⁴ <https://www.phnompenhpost.com/national/ngos-appeal-more-government-funding-four-crucial-sectors>

many important professionals, such as teachers, are not sufficient to sustain an adequate standard of living. Another problem is that the amount assigned to natural resource management and protection is insufficient given the serious challenges becoming clear in relation to climate change (such as drought, deforestation, and loss of fisheries sustainability).

Even more of a concern is the fact that public understanding and participation in the budget process is quite limited. The process lacks transparency. Although key information related to the proposed budget under discussion at the Council of Ministers as made accessible through information given to media, no official and detailed release of the draft budget under discussion was made available. Moreover, the working methods of the Council of Ministers are opaque such that the discussion and changes to the draft budget that result from the debate in that body are not transparent to the citizenry. The details of the budget were not made available to the public prior to the enactment of the budget law by the parliament, thereby rendering the representative role of MPs null and void as constituents were not availed of the opportunity to make suggestions or provide information to their MP.

Tax Collection and Revenues

For a five-year period, tax revenue collection has increased on average 20 percent per year. As such, revenues in USD amounted to 1.06 billion in 2014, more than 1.3 billion in 2015, more than 1.5 billion in 2016, 1.97 billion in 2017, and 2.19 billion in 2018.³³⁵

On 2 October 2019, the RGC announced that it for the first 9 months of 2019 tax and customs revenues amounted to 4.567 billion USD. That included 2.183 billion USD from taxation and 2.384 billion from customs and excise duties. This meant the goal for customs excise targets was reached three months in advance.³³⁶ The General Department of Taxation (GDT) announced that for that time period tax collection had increased 30 percent compared to the same period of the previous year. 2019 tax revenues overall were expected to exceed the annual targets by 800 million USD.³³⁷ The GDT announced a collection of 2.63 billion USD in tax

³³⁵ <https://www.phnompenhpost.com/business/kingdoms-2020-tax-revenue-collection-set-rise-once-again>

³³⁶ <https://www.khmertimeskh.com/50647257/govt-reaches-customs-revenue-goal-three-months-in-advance>

³³⁷ <https://www.phnompenhpost.com/business/government-collects-45b-revenue-tax-customs>

revenues during the period from January to November of 2019. That meant the collection of 115 percent of the target for revenues for the year and indicated an increase of 27.68 percent from the previous year.³³⁸

In November 2019, the RGC announced that it planned to collect 20 percent more in tax revenues in the 2020 fiscal year. The GDT announced that a further sub-decree to improve tax collection procedures could be expected in 2020.³³⁹ The approved 2020 budget sets a target of a 28.1 percent increase in revenue collections from customs and excise, reaching 17.72 percent of gross domestic product with an amount of 2.87 billion USD. At the same time, the Ministry of Economy and Finance stipulated that there would be no new taxes or increases in tax rates for 2020. As a result, it indicated that the actual increase from tax collection was expected to be 2.33 billion USD (7.93 percent of GDP), resulting from a 21.3 percent gain in revenues.³⁴⁰ By the end of 2019, it was announced that the Cambodian government collected \$6 billion USD in income from tax and customs in 2019, exceeding its target by 1.485 billion USD.³⁴¹

The improvements in tax collection and increased revenues said to result from increased economic growth following the effective implementation of the RGC's Rectangular Strategy and Revenue Mobilization Strategy. A key component of the latter is fiscal administration reform. The Ministry indicated that tax reform centered on improving tax administration, implementing the use of information technology for auditing, and fomenting a tax culture among the population. The reforms include modernization of the tax administration functions and systems, including the uptake of an 'e-VAT' system.

The International Monetary Fund determined that: "Looking ahead, strong implementation of the authorities' new Revenue Mobilisation Strategy 2019-23 should help sustain revenue growth through tax policy and revenue administration reforms."³⁴² However, in July 2019, the Ministry of Economy and Finance indicated that revenue collection needs improvements in two key areas: real estate and casinos.³⁴³ Franck Vault, the EU delegation to Cambodia's head of

³³⁸ <https://www.phnompenhpost.com/business/gdt-tax-reforms-wont-harm-corporations>

³³⁹ <https://www.khmertimeskh.com/50663299/tax-departments-director-touts-biggest-collection-yet>

³⁴⁰ <https://www.phnompenhpost.com/business/govt-raise-20-more-tax-revenue>

³⁴¹ <https://www.khmertimeskh.com/50675723/billion-plus-bonus-for-government>

³⁴² <https://www.phnompenhpost.com/business/govt-raise-20-more-tax-revenue>

³⁴³ <https://www.phnompenhpost.com/business/tax-collection-rises-66-h1>

cooperation, said: “Cambodia is one of the best performers in terms of domestic revenue mobilization...”

In November 2019, the GDT announced that it was seeking further modernization of the tax system through acquiring an advanced IT system. This entailed human resource capacity building through a 3-day seminar in Singapore focusing on skills related to the management of the system, efficient application of technology with smart devices, and the adoption of automated mechanisms. The GDT also claimed that it has effectively implemented an IT management system and ensures transparency in the processing of taxpayer data. The ‘E-filing’ system automatically stores data and carries out calculations, which reduces the opportunity for bribery by taxpayers to avoid taxes. The GDT also announced it would conduct annual audits of companies in Cambodia to reduce the risk of forged payments, but did not specify the scope of the new practice.³⁴⁴

The Vice-President of the Cambodia Chamber of Commerce indicated that the increase in revenues was primarily a result of robust economic activity in the construction sector, an increase in the amount of investment into Cambodia. He also noted improvements in import-exports, with the availability of online requests for imports and improved efficiency in the procedures for exports. He indicated that tax evasion remained a challenge for revenue collection. At the same time, the International Monetary Fund released a working paper which found that tax revenues from the real estate sector fell significantly below the regional average, and composed only 0.1 percent of GDP. Of the revenues collected in 2018, 97 million USD resulted from taxes on the transfer of ownership of properties in Phnom Penh.³⁴⁵ Anthony Galliano, chief executive officer of Cambodia Investment Management, asserted that efforts improved tax collection has resulted from increased prevention of smuggling and better enforcement of laws, as well as a greater amount of imports.³⁴⁶ He claimed: “The stability and reliability of tax collection, leading to a national treasury base, will avail the country of a foundation for social and infrastructure spending and an increased standard of living.”³⁴⁷

³⁴⁴ <https://www.phnompenhpost.com/business/singapore-tech-increase-national-tax-revenue>

³⁴⁵ <https://www.phnompenhpost.com/business/government-collects-45b-revenue-tax-customs>

³⁴⁶ In order to attract investment, the policy has been to maintain a comparatively low corporate tax rate. Trading Economics, an online economic statistics platform, finds Cambodia’s rate of 20 percent (which is the same for Vietnam and Thailand) to be the third lowest in Southeast Asia, after Singapore and Brunei.

<https://www.khmertimeskh.com/50647262/cambodia-has-one-of-the-lowest-corporate-tax-rates-in-sea>

³⁴⁷ <https://www.khmertimeskh.com/50675723/billion-plus-bonus-for-government>

As emphasized by Transparency International Cambodia, reduction and elimination of corruption depend ultimately on taking effective measures to ensure accurate declarations by high-ranking government officials.³⁴⁸ This is in line with improving the implementation of the existing Anti-Corruption Law. As stipulated by the Director-General of the GDT, Kong Vibol, Failure to obey the law and pay taxes is detrimental to both state revenues and anti-corruption efforts by weakening overall levels of transparency. He has claimed that GDT efforts have been aimed at both increasing government budget capacities as well as reducing corruption. Preap Kol, the Executive Director of Transparency International, noted that not all large corporations had been held accountable by the tax law, and it was important to improve tax collection for businesses importing automobiles. However, he also emphasized: “The increase in tax revenue demonstrates the incentive for fighting corruption and the effectiveness of joint efforts from the Ministry of Economy and Finance, development partners and civil society organizations to undertake reforms with genuine political will.”³⁴⁹

In August 2019, Kong Vibol conceded that the GDT had a history of problems with corruption among tax collectors.³⁵⁰ Om Yentieng, chairman of the Anti-Corruption Unit, claimed that action disciplinary action would be undertaken for tax collectors who solicit bribes. San Chey, executive director of the Affiliated Network for Social Accountability, has expressed that the only way to effectively reduce corruption is to simplify the tax collection process in a manner that ensures equal treatment of rich and poor taxpayers. He affirmed: “To ensure the effectiveness of tax reforms, especially to prevent officials from illegally soliciting from taxpayers ... it is necessary to simplify the process.”³⁵¹

COMFREL finds that improved transparency of tax collection procedure and audit results are needed to ensure democratic accountability over the tax department as a subordinate body of the Ministry of Economy and Finance. The GDT could improve overall legitimacy by issuing annual reports related to major achievements and challenges related to bribery and fraud. Moreover, clear and transparent channels of collaboration with the ACU are needed. Improved tax collection

³⁴⁸ <https://www.phnompenhpost.com/business/kingdoms-2020-tax-revenue-collection-set-rise-once-again>

³⁴⁹ <https://www.khmertimeskh.com/50647257/govt-reaches-customs-revenue-goal-three-months-in-advance>

³⁵⁰ Investigative Reporting uncovered potential abuse by Kong Vibol himself in terms of misleading the Australian government regarding property and residence in Australia. Falsely reporting residency is considered a crime under the Australian Corporations Act. <https://www.voanews.com/east-asia/cambodian-tax-chief-lied-australian-corporate-regulator>

³⁵¹ <https://vodenglish.news/tax-department-reminds-officers-collect-for-state-not-yourself/>

procedures impacting the general public should be accompanied by a policy of public disclosure of tax payments of elected officials and ministers to ensure a reduction in corruption pertaining to political elites. Given the importance of the Rectangular Strategy and Revenue Mobilisation in accounting for improved tax collection, specific targets, timelines, and benchmarks for the implementation of the strategy should be made publicly available.

Public and Private Debt

National Debt

As of June, Cambodia's public debt stood at \$7.2 billion, according to the draft law for the 2020 budget.³⁵² The Minister of Economy and Finance claimed that: "We will borrow, but not too much. We have high economic growth, and this strengthens our debt repayment capacity." He noted that Cambodia maintained sustainable levels of debt, as shown by debt analysis, which finds Cambodia below the threshold for four key indicators regarding the risk of debt burdens on the economy.

In October 2019, the International Monetary Fund (IMF) assessed Cambodia to have a strong economic performance, buttressed by improved revenue collection. The IMF determined that the public debt of Cambodia at 28.6 percent of GDP, remained low. As a result, Cambodia is at a low risk of debt stress even though there has been an increase in public-private partnerships for infrastructure development and an increase in debt disbursements.³⁵³

The 2020 Budget Law allows the RGC to borrow up to 1.4 billion USD on conditions of Special Drawing Rights, based on a reserve fund created by the International Monetary Fund. The loans would prioritize key sectors needed for growth and development, including energy, health, infrastructure, and water supply. The loans would, however, significantly add to Cambodia's debt burden and increase its debt-to-GDP ratio.³⁵⁴

A senior economist at the International Monetary Fund (IMF) and leader of the IMF team that consulted Cambodia in 2018, Jarkko Turunen, assessed the debt-to-

³⁵² <https://www.khmertimeskh.com/50664298/national-budget-for-2020-approved>

³⁵³ <https://www.phnompenhpost.com/business/govt-raise-20-more-tax-revenue>

³⁵⁴ <https://www.phnompenhpost.com/national/govt-spend-82-billion-year>

GDP ratio to be low enough that the RGC could borrow more for infrastructure development if the loans are put to good use.³⁵⁵ As a result, one can conclude the levels of corruption and clientelism have an impact on whether borrowing can be considered advisable.

In early April 2019, the Ministry of Finance releases key information related to Cambodia's national debt. It announced that as of the end of 2018, public debt amounted to 7.02 billion USD (with 99.9 percent of that being external public debt). Furthermore, it indicated that in by March it had paid 9 percent, and 19 percent by April. In the 25 years from 1993 to 2018, the government took loans in the amount of 11.3 billion USD. Of that, 86.9 percent went to infrastructure development, and 13.1 percent was allocated to private sector support. At the same time, only 7.29 billion USD of the total was actually disbursed.³⁵⁶ In that time period, the RGC had paid 1.39 billion USD in debt service payments from 1993 to the end of 2018, with 265.6 million USD paid in 2018 alone.³⁵⁷

There are four key indicators of over-indebtedness. The threshold indicates the point at which debt becomes a serious problem or crisis. External debt-to-GDP, with a threshold of 40 percent, but for Cambodia, it stood at 21.4 percent. Public external debt to exports, with a threshold of 180 percent, but for Cambodia, it stood at 30.4 percent. Public external debt service to exports, with a threshold of 15 percent, but for Cambodia, it stood at 1.5 percent. Debt service to revenue, with a threshold of 18 percent, but for Cambodia stood at 5.3 percent. It is this last indicator which is the largest cause of concern, as Cambodia accrues more debt, it runs the risk of its debt service payments outpacing increases in revenues that result from economic growth.

Another area of concern stems from the potential political leverage of donors, which results from bilateral borrowing. As of the beginning of 2019, 4.6 billion USD had been borrowed from China, 1.39 billion USD had been borrowed from Japan, 767 USD had been borrowed from South Korea, and 337 million USD had been borrowed from France. Slightly more than 4 billion USD had been borrowed from multilateral lending agencies, including the Asian Development Bank and the World Bank.

³⁵⁵ <https://www.phnompenhpost.com/business/kingdoms-public-debt-gdp-ratio-remains-low-risk-says-imf>

³⁵⁶ <https://www.khmertimeskh.com/50593267/cambodia-has-repaid-19-pct-of-external-debt-ministry>

³⁵⁷ <https://www.phnompenhpost.com/business/government-repays-139b-debt-service-payments>

In bilateral terms, as of the end of 2018, Cambodia had borrowed \$4.6 billion from China, \$1.3 billion from Japan, \$767 million from South Korea, and \$337 million from France, while just over \$4 billion were borrowed from international institutions like the Asian Development Bank and the World Bank.

COMFREL and other CSOs recommend that increased borrowing should not reach the debt-to-GDP ratio as that would make put the Cambodian in a precarious position, undermining its ability to respond to or weather external shocks. Risks such as a burst-bubble in the construction sector, a decline in tourism, or problems for food and water security resulting from climate change should be taken into consideration. Infrastructure projects run a high-risk of pork-barrel corruption, and economic growth could also be stimulated by increased spending in the education and health sectors. Overall, it is found that the major problem is not the degree of borrowing, but rather the poor level of transparency related to the specific projects financed by dispersal of funds. Targets, milestones, and beneficiaries should be made more clear. For infrastructure projects, this includes targets for the durability of projects. For example, many renovated roads have only lasted a short time before their surfaces are degraded and eroded by weather and use. This is likely party a result of cost-cutting to sustain pork-barrel profiting.

Private Debt

The 2018 report of the National Bank of Cambodia's 2018 held that by the end of 2018, combined loans from banks and microfinance institutions increased 19 percent to the amount of 24.5 billion USD. That amount included 19.4 billion in loans from banks and 5.4 billion USD in loans from microfinance institutions.³⁵⁸

Representatives from Aceda Bank, the Credit Bureau of Cambodia, and Emerging Markets Consultants gave similar assessments regarding the private debt situation in Cambodia and its impact on the economy. They agreed that, despite a rising debt to GDP ratio, most loans in Cambodia were productive and that debt was not a cause for serious concern.³⁵⁹

³⁵⁸ <https://www.phnompenhpost.com/business/economy-track-despite-rising-debt-gdp-ratio>

³⁵⁹ <https://www.phnompenhpost.com/business/economy-track-despite-rising-debt-gdp-ratio>

Aceda Bank president and CEO In Channy expressed that large productive loans for Cambodia were an indicator of economic progress rather than a problem. He pointed out that whereas Cambodia's debt-to-GDP ratio was approximately 90 percent, it was much higher for other countries, such as Japan, whose ratio is approximately 200 percent. In terms of private debt inside Cambodia, of the two types of credit, which include consumer loans and productive loans, most of the debt was in productive loans. The Cambodia Bureau of Credit (CBC) indicated that as of March 2019, the total amount of consumer credit was 6.7 billion USD, with an increase of 7.4 percent from December 2018. The number of the population apply for consumer credit reached 1.14 million by the end of March, an increase of 5.3 percent from December 2018.

However, Dos Dinn, a board member of the Cambodia Microfinance Association (CMA) and CEO of Amret, noted that the industry-recognized a problem of over-indebtedness undermining sustainability. Emerging Markets Consulting senior adviser Ngeth Chou expressed concerns about the quality of economic growth in Cambodia. He credited the real estate and construction sectors with driving current growth. However, he indicated that better laws and better implementation of laws were need for the banking sector to prevent excessive debt burden, as well as improved education regarding financial literacy for the population. He pointed out: "Because Cambodia is not a productive country, if the debt for consumer goods increases, it will have a negative impact on the national economy."³⁶⁰

In contrast to these assessments, a study by local human rights NGOs Licadho and Sahmakum Teang Tnaut (STT) found that private debt incurred by small farmers to microfinance institutions was resulting in the loss of land and livelihoods. Unsustainable debt payments were found to force rural families to sell their land, and as a result, there is an increase in migration and child labor abuses. The report said: "This form of lending has significantly boosted revenue for microfinance institutions and their foreign loan partners, but it has negatively impacted the security of people's land ownership, especially in vulnerable communities."³⁶¹

This study echoes findings of a 2017 survey study by the Microfinance Centre of Poland and the Good Return thinktank of Australia. That study found that 28

³⁶⁰ <https://www.phnompenhpost.com/business/economy-track-despite-rising-debt-gdp-ratio>

³⁶¹ <https://www.phnompenhpost.com/business/breaking-mfi-loans-forcing-land-sales-increase-child-labour-says-report>

percent of Cambodia borrowers could be considered insolvent, as their expenditure for debt repayment was greater than their net household income. Additionally, another 22 percent more than half of the net income on payments on debt incurred. As a result, the researchers concluded that more than 50 percent of borrowers were overly indebted. A microfinance researcher who consults for the Cambodia Microfinance Association named Danial Rozas (author of the Microfinance Index of Market Outreach and Saturation (MIMOSA) reports on Cambodia) has argued that the growth rate of the microfinance sector has been too high for years leading to an unsustainable industry. Moreover, according to the Cambodia Socio-Economic Survey of 2017, of the 3.4 million rural households in Cambodia, approximately 40 percent were in debt. This number has likely risen considerably since then.³⁶²

The introduction of the global Smart Campaign in Cambodia follows the recognition of the need for greater protection for microfinance borrowers.³⁶³ Current effort in the MFI sector includes implementing the global Smart Campaign with 95 different criteria for regulating lending practices, as well as the CMA's Lending Guidelines, which focus on reducing high-risk loans. There are also developments of monitoring mechanisms under the direction of the National Bank and foreign investors. Rozas indicated that the CMA is developing lending guidelines and affirmed the priority should be decreasing multiple loans, reducing the need for refinancing, and land sales. He argued that acceptance of the leading MFIs to submit to monitoring was a positive sign that the industry is moving towards improvements.

The 2017 study by the Microfinance Center and Good Return found that land was the most common form of collateral for microfinance loans for farmers. Moreover, although formal cases of land repossession have been uncommon, with just a couple of cases per year, the Licadho-STT study found that borrowers tend to sell their land rather than go to court. The report stipulated: "The lack of extensive legal knowledge among MFI clients, low levels of financial literacy, and the very low levels of public trust in the highly corrupt Cambodian judiciary result in few clients ever exercising their right to a court-monitored default process."³⁶⁴ Licadho director Naly Pilorge asserted that the report's findings went beyond the

³⁶² <https://vodenglish.news/mounting-debt-outpaced-borrowers-ability-to-repay-report/>

³⁶³ <https://www.smartcampaign.org/news-a-highlights/whats-happening/70-2014/1061-need-for-client-protection-in-cambodia>

³⁶⁴ <https://vodenglish.news/predatory-microlenders-abusing-rights-of-poor-borrowers-report-says/>

recrimination of individual MFIs. Rather: “It is about a sector that perpetuates abuses and relies on human rights abuses, at least in part, to sustain current levels of lending and repayment. The sector as a whole needs to reckon with reckless lending and over-indebtedness, and needs to stop requiring land titles as collateral.”

At the conclusion of its consultation with the RGC in December 2019, the IMF found that: “...the Cambodian financial system is profitable, has sizeable capital buffers, and has low nonperforming loan ratios. They noted, however, that credit has accelerated and is increasingly concentrated in the real estate sector and consumer lending. They called for prompt actions to moderate credit growth, including through additional macroprudential measures and a broad-based policy response to address risks stemming from the real estate sector.”³⁶⁵

In the conclusion of this part, the Cambodian economy concluded that growth would slow in 2019 and next year. For other areas of concern, it stems from the potential political leverage of donors, which results from bilateral borrowing as of the end of 2019, public debt amounted to 7.2 billion USD (with 99.9 percent of that being external public debt) of which 4.6 billion USD had been borrowed from China. There has been the pressure building on the microfinance economy asserts that a significant economic risk could follow a trigger or shock to the economy, such as manufacturing a downturn or sharp reduction in foreign investment. The risks would be huge oversupply, pressure-selling of more microloans, real social problems created by an inability to repay, growing land loss as potential defaulters pressured into selling their land, and streets and streets of informal microenterprise each selling only a handful of items daily and becoming very resentful of having to work harder and yet make less money.

³⁶⁵ https://www.einnews.com/pr_news/505807586/imf-executive-board-concludes-2019-article-iv-consultation-with-cambodia

CHAPTER 7-

Democratic Elections

CHAPTER 7 – PART 1

2019 Sub-national Elections

In early January of 2019, the Law on Municipality, Provincial, and District council elections was amended to increase the number of seats on the different bodies. These bodies play an essential role in governance at the sub-national level, and as representative bodies, they should function to ensure the best interests and policy aims of their constituencies are supported at different sub-national levels of government. The amended law stipulated that the number of councilors in Phnom Penh increased from 21 persons to 27, and councilors in each province increased from 15 to 27 persons, while councilors in each district increased from 11 to 21 persons.³⁶⁶ Prior to the amendment, there were 393 seats in Phnom Penh and the 24 provinces and 2,931 seats for all districts. Following the amendment, there are now 559 municipal and provincial seats up for Phnom Penh and the 24 provinces and 3,555 council seats in the rest of the Kingdom's districts and cities.

In February 2019, the National Election Committee (NEC) identified three key tasks to accomplish in 2019: voter screening and registration, conducting the provincial and municipal council elections, and organize the selection of the provincial and municipal secretariats.³⁶⁷ NEC secretary-general Tep Nytha asserted that “The legal framework and plan for these three tasks have been

³⁶⁶ <https://www.khmertimeskh.com/50565724/national-assembly-adopts-council-seat-amendment/>; <https://www.khmertimeskh.com/50572827/king-sihamoni-signs-off-on-council-law-amendment>

³⁶⁷ In addition, at the end of 2018, the NEC conducted budgeting training (“Procedure on Checking, Tracking, and Assessing in Practice Budget Programmes”) for its personnel with the aims of improved budget accuracy, transparency, and accountability. The NEC indicated that this was part of its role in contributing to effective implementation of the RGC's public finance reforms. The national elections of 2013 cost 19.3 million USD and cost of the national elections in 2018 increased to more than 53 million USD.

<https://www.phnompenhpost.com/national/election-committee-trains-budget-officers>

prepared and have been worked on simultaneously since the end of 2018.” He emphasized that parties should assess and verify voter data and closely monitor the process of correlating voter list information with identification documents. The NEC also indicated it would conduct training at the provincial and municipal levels as well as clarify the responsibilities of provincial and municipal election committees.

Political party registration to compete in the elections took place between April 25 and May 2. Whereas 20 parties registered to compete in the 2018 national elections, for the 2019 elections, only 7 parties participated. They were the ruling Cambodian People’s Party, the Cambodian Youth Party, Funcinpec, the Khmer United Party, the Cambodian Nationality Party, and the Khmer Republican Party.³⁶⁸

Sam Kuntheamy, the director of the Neutral and Impartial Committee for Free and Fair Elections, said: “Other parties are only registering for the elections for the sake of it, in order to create a picture of multiparty polls, but the result remains the same. Nothing will change. The CPP will control all the parliamentary, senate and commune council seats. The CPP will win 100 percent.” . The NEC and the government did not take a public position which recognized fundamental challenges to genuine political pluralism and did not see the basic absence of political competition to be a problem for ensuring fair elections and real choice for the electorate.³⁶⁹

Registration of national and international elections monitors occurred from 1 February to 22 February 2019. The National Election Committee indicated that 19 national institutions would participate in monitoring the elections. NEC spokesman Dim Sovannarom informed media that in total, from these different institutions, there would be 1,010 observers. No international observers participated in monitoring. The bulk of the observers came from pro-government associations and NGOs such as the Union of Youth Federations in Cambodia, which is under the direction of Hun Many, the son of PM Hun Sen. The NEC indicted that: “Five political parties have been registered to have their observers monitor polls and count ballots. These parties are the CPP with 406 observers, Funcinpec with 109, the Khmer National United Party with 97, Khmer Will Party with 64, and Cambodian Youth Party with 28.”

³⁶⁸ <https://www.khmertimeskh.com/50607628/campaignings-over-elections-ahead>

³⁶⁹ <https://www.phnompenhpost.com/national/nec-names-three-key-tasks>

Khmer Will Party deployed 64 observers to major parts of the country, including Phnom Penh and the provinces of Kampong Cham, Banteay Meanchey, Kampong Thom, Kandal, and Prey Veng. Kong Monika, the KWP president, said: “The deployment of KWP observers will give youths an opportunity to participate. They will also be aware of the various procedures of an election and get experience to prepare for a major one like the commune and parliamentary elections.”³⁷⁰

Sam Kuntheamy, executive director of election watchdog Nicfec, said that Nicfec would not deploy its observers. Korn Savang, deputy of the executive director election watchdog Comfrel, said that his organisation would not deploy observers because it was not a national election and because the results of the election were a foregone conclusion. He informed national media: “We will not register our observers to monitor council elections because it is a non-universal election. We have already known the election result regarding which political parties will win council elections.” Instead of deploying monitors to observe polling COMFREL focused on monitoring the human rights situations for the election period.³⁷¹

In a statement released on 19 April, the NEC set out the main regulations for the campaign period. Parties were authorized to campaign from 6 am until 10 pm, although activities had to cease for a 2-hour lunch period each day. Loudspeakers and rallies were barred in the proximity of schools and hospitals. Rallies or marches were permitted on public roads two times during the 8-day campaign period. All campaign activities were required to stop 24 hours before election day, ensuring a cooling day.³⁷² Following the campaign period, the NEC announced that all competing political parties had adhered to the rules for campaigning, and no violations were recorded.³⁷³

All parties sought NEC assistance in running television advertisements on the National Television of Kampuchea (TVK) channel, except the Khmer Republican Party (led by Lon Rith, the son of the late General Lon Nol). The NEC spokesman reported that KRP barely campaigned despite having the freedom to do so. The President of the Khmer Will Party indicated that his party had conducted little

³⁷⁰ <https://www.khmertimeskh.com/50606921/more-than-a-dozen-institutions-set-to-observe-upcoming-elections>

³⁷¹ <https://www.khmertimeskh.com/50572827/king-sihamoni-signs-off-on-council-law-amendment>

³⁷² <https://www.khmertimeskh.com/50596387/nec-oks-campaigning>. Despite the absence of competition the ruling party used the elections to make a public demonstration of its support and unify party members through the ritual performance of campaigning. This was evident in a large demonstration which took place at the beginning of the campaign period. <https://www.khmertimeskh.com/50605778/cpp-knp-begin-council-election-campaigns>

³⁷³ <https://www.phnompenhpost.com/national-politics/campaigning-sunday-polls-come-end>

campaigning made up of small meetings at the local level or grassroots level, due to a lack of funds and reliance on volunteers. Political party registration for the election took place from 7 to 11 March 2019. As of 19 May 2019, six of the seven parties were observed to have begun campaign activities. The exception was the Khmer Republic Party).³⁷⁴ The KRP did not publicly campaign during the allotted period.³⁷⁵

The elections for the third mandate of provincial, municipal, district and town councils were held on 26 May 2019, with the election campaign lasting for an eight-day period from 17 May until 24 May. In the election, 559 capital and provincial council seats were contested, along with the 3,555 municipal, district, and khan council seats.³⁷⁶ There were 21,692 candidates, and the electorate was composed of 11,572 commune council members, with 228 polling stations (25 for municipal and provincial council elections and 203 are for the city, district, and commune council elections).³⁷⁷ Political parties could register to compete in the election from February 25 to May 1. Civil society organizations and associations seeking to monitor the polls could apply from February 1 and May 15. International observers could apply to monitor the election from February 1 to May 22.³⁷⁸

Of the 559 municipal and provincial seats and 3,555 district and town seats contested, the ruling CPP won all municipal and provincial seats and 3,484 of the district and town seats. Only two other parties won seats—the Khmer National United Party gained 38 seats, and Funcinpec obtained 33 seats.³⁷⁹ The National Election Committee announced that aside from the CPP, five other parties were able to obtain votes. Funcinpec won 226 votes, Khmer National United Party won 175, Khmer Nationality Party won 14, Cambodian Youth Party won eight, and the Khmer Will Party won two, and the Khmer Republic Party did not get any votes. The number of votes tallied was 11,548, with the remainder of the ballots being

³⁷⁴ <https://www.phnompenhpost.com/national-politics/nec-announces-local-elections-set-may-26>

³⁷⁵ <https://www.khmertimeskh.com/50607628/campaignings-over-elections-ahead>

³⁷⁶ <https://www.phnompenhpost.com/national/nec-releases-council-candidates>. It showed there were a total of 559 candidates for capital and provincial councils and 3,555 for district councils.

³⁷⁷ According to the NEC: “The total number of capital and provincial councilors is 559, the total number of municipal, district and Khan councilors is 3,555, the total number of voters is 11,572, the total number of polling stations is 203 and the number of communes/Sangkat is 1,646.”

<https://www.nec.gov.kh/english/content/press-release-number-councilors-kingdom-cambodia-councils-election-3rd-mandate-2019>

³⁷⁸ <https://www.phnompenhpost.com/national/nec-invites-observers-parties-monitor-polls>

³⁷⁹ <https://www.khmertimeskh.com/50612629/cpp-dominates-local-council-elections>

deemed invalid.³⁸⁰ On polling day, NEC deputy president Nuth Sokhom said: “Out of the voters, seven were absent, one of whom one was killed in a traffic accident, while the other six were absent without reason. A large number of polling stations closed early as all the voters had voted.”³⁸¹ Following the poll, the NEC declared the competing political parties were said to have “showed their maturity in following the law, regulations elections procedures.”³⁸²

Statements by the NEC and Political Parties

On 30 May 2019, NEC vice president Nuth Sokhom “Election day was smooth and so is the ballot review process. We are very proud of the way the council elections were handled.”³⁸³

Pich Sros, the president of the Cambodian Youth Party (CYP), which did not hold any seats in the district or commune councils, announced that the party would compete in elections. The CYP has prepared more than 1,300 candidates to run in 10 provincial cities. Party president, Pich Sros, claimed the polls were an opportunity to prove the competitiveness of the party.³⁸⁴

The Khmer Will Party did not have a single eligible voter but decided to participate in the polls. The president of the Khmer Will Party, Kong Monika, said: “We have decided to participate in the elections. First, we want multiple parties to participate in making Cambodian democracy vibrant. We do not want democracy to stay quiet after the former Cambodia National Rescue Party was dissolved. We are a new party made up of lovers of democracy. We want democracy to be vibrant, so we are participating in the elections despite having no eligible voters. But we are hopeful that through most voters belong to the ruling party, some of them will voice their support for the Khmer Will Party because it has made constructive criticism for the benefit of the nation. I think that having a single ruling party is not effective

³⁸⁰ <https://www.khmertimeskh.com/608291/cpp-dominates-council-elections/>. Prior to that the NEC had announced that the ruling Cambodian People’s Party earned 11,123 out of 11,565 votes cast by commune councilors. <https://www.khmertimeskh.com/50609652/nec-to-announce-council-election-preliminary-results>

³⁸¹ <https://www.phnompenhpost.com/national-politics/nec-cpp-expected-win-polls>

³⁸² <https://www.phnompenhpost.com/national-politics/campaigning-sunday-polls-come-end>

³⁸³ <https://www.khmertimeskh.com/50609652/nec-to-announce-council-election-preliminary-results>

³⁸⁴ <https://www.phnompenhpost.com/national/nec-start-party-candidate-registrations-elections>

governance, so other parties should support democracy by constructively criticizing the government for benefiting the Kingdom's development."³⁸⁵

However, following the election, the President of the Khmer Will Party, Kong Monika, supported the legality of the election, stated that the outcome was expected, and commended the NEC on its work. No mention was made of a problematic lack in political pluralism or the vast inequality in funding and resource capacities between parties.³⁸⁶

Related to campaigning and expected outcomes, Kong Monika acknowledged that his party only organized small events at the grassroots level. He noted limitations faced by the party due to a lack of finances. However, he affirmed: "I have used this opportunity to meet with the people and explain my party's policies and hopefully deepen the relationship between the party and local people and activists." He claimed: "In the future, we will consider whether there should be a law on funding political parties to enable them to function equally because some countries have a law like that."³⁸⁷

The Cambodian Nationality Party had ten voters participating in the poll. Seng Sokheng, the president of the Cambodia Nationality Party, said: "We hope that other parties will participate in the democratic process to join the government and contribute to the safeguarding of the nation's peace and development."

The Khmer National United Party entered candidates to compete in 16 provinces. Run Meatra, the spokesman of the Khmer National United Party, said: "We are fielding candidates from provinces and districts who we think have a good chance of winning seats. We have enough commune councilors to help our party candidates to win seats."³⁸⁸ Run Meatra noted that the KNUP expected to see a decrease in seats because the seats it held prior to the poll used to belong to the now-dissolved CNRP.³⁸⁹ Following the elections, Nop Sothearith, spokesman for Funcinpec, said that the election process was smooth and that the party has no complaints.

In a statement, the CPP announced that it accepted the results, which it considered valid: "This shows Cambodia's strong commitment in pursuing unwaveringly on a

³⁸⁵ <https://www.phnompenhpost.com/national-politics/nec-announces-local-elections-set-may-26>

³⁸⁶ <https://www.khmertimeskh.com/50612629/cpp-dominates-local-council-elections>

³⁸⁷ <https://www.phnompenhpost.com/national-politics/campaigning-sunday-polls-come-end>

³⁸⁸ <https://www.khmertimeskh.com/50585502/seven-parties-register-to-contest-upcoming-polls>

³⁸⁹ <https://www.khmertimeskh.com/50609652/nec-to-announce-council-election-preliminary-results>

path of peace, multi-party democracy, and development.” The statement added the results prove that ruling party members have confidence that the party is leading to national progress.³⁹⁰

CPP spokesman Sok Eysan conceded that the almost total victory of the ruling party resulted from the composition of the electorate, which was made up almost entirely of CPP members. He said: “It is true that it is not difficult for us to calculate the results of the elections. It does not need the NEC to announce the results. Four or five other parties joined the polls who have voters, but they are very small in number.”

Sam Rainsy, in his capacity as “acting president” of the Supreme Court-dissolved Cambodia National Rescue Party (CNRP) (dissolved by the ruling party-controlled Supreme Court in 2017), posted on social media that the election should be considered a fake election of a one-party state. He asserted: “This council election, which elects council members at the capital, provincial, town and district levels, is the third fake election after the Hun Sen administration dissolved the CNRP unilaterally on November 16, 2017.”³⁹¹

Evaluation and Assessment of the Election

In the conclusion of this part, COMFREL and other Cambodian CSOs and International Organizations decided that this election cannot be considered a legitimate democratic exercise that it was not competitive, resulting in a dearth of truly free choice in the selection process for the citizenry. The poll not reflected voter wills, because of both the elimination of all political competition and an increasingly repressive environment. 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 politicians from the CNRP have all been barred from politics and were not allowed to run as candidates.

³⁹⁰ <https://www.khmertimeskh.com/50612379/council-election-results-released>

³⁹¹ <https://www.phnompenhpost.com/national-politics/nec-cpp-expected-win-polls>

The abovementioned statements by the different opposition parties that participated in the election show that that opposition parties do not have the will or capacity to challenge the prevailing practices of the ruling party, which corrupts the potential for free and fair elections in Cambodia. As a hegemonic party system, the pretense of multiparty pluralism and competition are maintained, but the opposition is not allowed to achieve the gains that would be sufficient to have an actual impact on the governance of sub-national territorial units. No opposition party mentioned the manner in which approximately half of the electors (commune councilors) were not given a mandate by the people in a free and fair election but instead occupied their seats through the forcible elimination of the prior major opposition party. No opposition party campaigned on a platform of reforming subnational elections to make resulting councilors directly chosen by the people in their constituencies or proposing a mechanism to make councils more accountable. Ultimately, the electoral process makes resulting councilors accountable to the party, which supported them and voted for them, rather than to the people, and given that the electorate was almost entirely the ruling party, it reinforces the hegemonic party system in place.

CHAPTER 7 – PART 2

2019 Voter Registration

On 27 June 2019, the National Election Committee (NEC) released its first list of voters for the 2022 communal elections and the national elections in 2023.³⁹² The preliminary voter list was made available to media, political parties, and government ministries. The NEC indicated that the preliminary voter list should be disseminated by media and civil society in order to increase its availability which would make it possible for eligible voters to ensure their names were accurately included on the list. According to a press release of 14 March, the official voter list would then be later made available on 31 July.

The NEC announced 8,629,356 voters were included in the list, which accounted for 84.78 percent of eligible Cambodian voters. However, 42,918 voters were removed from the prior voter list. Citizens and eligible voters were provided copies of the list for viewing and evaluation through posting the list at commune halls until

³⁹² <https://www.phnompenhpost.com/national-politics/nec-releases-first-list-voters-commune-national-polls>

2 July 2019. The list was also made available at the NEC website www.voterlist.org.kh, and through a downloadable app 'Voterlist KH'. On 14 March 2019, the NEC announced that the final official voter list would be released on July 31.

The NEC clarified that complaints could be filed by citizens in the event of misspelled names, or if they found the name of a person on the list who was not qualified to vote, including foreigners and underage citizens. Five days were given to file the complaints, and according to regulations afterward, the commune halls should address the complaint through solving within three days. If the solution was not satisfactory, the complaint could be submitted to the NEC, and it would respond to the complaint within five days from the submission. If the NEC solution was not suitable, a complaint could then be filed with the Constitutional Council, which would address the complaint in 10 days.

On 29 March 2019, the NEC met for the purpose of arranging the voting registration schedule, the dissemination of census data, and the estimated number of polling stations. Nuth Sokhom, a Senior Official of the National Election Committee, commented to national media that the NEC had observed a sharp decline in citizens' interest in elections with little attention and participation related to the third mandate council elections. He also emphasized the need for an increased number of eligible voters to register in the 2019 registration (held from 1 to 22 May).³⁹³ Prior to the 2019 Voter Registration, there were 10,178,809 eligible voters. 8,544,885 people were registered to vote in 2018. The NEC aimed to register 372,628 new voters and announced that 88,626 names would be removed from the voter list. Nevertheless, the lack of interest in participation in elections made it challenging to meet such targets. Mr. Nuth Sokhom stated: "I make an urgent and respectful appeal to citizens who have recently turned 18, and anyone who was born before August 1, 2001, but has never registered to vote, to please come and register to vote..." Additionally, there were fewer political party agents and representatives of civil society organizations that registered to participate as election observers.

Whereas the NEC claims the sharp reduction in participation was because the polls were not a national election, civil society groups point to the change in the political party landscape and loss of citizen trust in the integrity of the electoral process. As the official noted, the elections were important for determining the

³⁹³ <https://www.phnompenhpost.com/national-politics/interest-council-polls-down>

course of governance of the nation. As a result, one can conclude that the significant decline in participation was a reflection of a loss in confidence in the electoral process following the elimination of fair elections, including genuine political competition.

Sam Kuntheamy, the executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia, indicated: “Investment in the election process has declined because the previous election just ended. Secondly, the NEC’s public campaign was not extensive enough, and participation from civil society organizations was minimal. Now in a new political environment after the parliamentary elections in 2018, the people are not paying much attention because there are no real opposition parties, and things are going to remain the same.” Civil society organizations in support of democracy and political rights have sought to foment and facilitate citizen participation; however, the lack of prospects for genuinely free and fair elections means they confront a fundamental challenge in rebuilding public political trust. The low rates of voter participation (registration, turn out, and spoiled ballots) began in 2017 with the crackdown on the major opposition party.³⁹⁴

COMFREL found that in the 2019 audit, there was a low turnout for the 2019 voter registration. According to the NEC’s 2019 registration results, there were only 108,272 registrations of newly eligible voters which reached the age of years old by 2019. This was equal to only 28.99% of the estimate. COMFREL was not able to get access to information about budgets for the registration to understand the efficiency. There were 44 of 8,629,357 voter names that had duplicate data. In 2018, there were 89 duplicate voter names. So, in 2019 the number of duplicate voter names has decreased. It is also noted that according to 2018 audit findings, COMFREL communicated those 89 duplicated names to the NEC to possibly clean the voter list. Despite that, 26 of the voter names were still found in the 2019 voter list. COMFREL is still committed to discuss the reason for those cases with the NEC.

According to the study of the registration documents, including the Khmer Identity Card (ID) and the Identity Certificate for registration (ICR), 26,169 of about 8.6 million voter names had registered with duplicate ID and ICR number. COMFREL also found that 8,196,034 voters equal to 95% had registered with ID and 433,323

³⁹⁴ <https://www.phnompenhpost.com/national/voter-enrolment-low>

(equal to 5%) had registered with ICR. Among the 8,196,034 voters, 608,641 (7.4%) voters were registered with ID version I, 342,951 (4.2%) voters with ID version II, and 7,244,442 (88.4%) voters with ID version III.

CHAPTER 8 –

The EU and EBA Status

EBA stands for ‘Everything but Arms’. The EBA system is considered by the EU to be one pillar of its larger Generalized Scheme of Preferences. Under the EBA, the EU unilaterally grants duty-free and quota-free access to the European market for all products from the least developed countries (LDCs) in the world but does not include arms and ammunition. The EU utilizes the United Nations definition of LDC. According to the arrangement, trade preferences may be suspended in cases of “serious and systematic violation of principles,” which are set out in international human rights and labor Conventions. The relevant international standards are listed in Annex VIII of the GSP Regulation.³⁹⁵ The garment and footwear industry in Cambodia is estimated to have an annual production value of US\$8-billion USD. The EU is the second-largest trading partner for Cambodia, but it is currently unclear whether or not Cambodia will continue to have access to the EBA trade arrangement. Losing access would have the most significant negative effects on the approximately 750,000 garment and footwear industry workers, will the Cambodian economy undergoing large-scale loss of employment and decreased overall consumer spending.

On 11 February 2019, the European Union (“EU”) Commission decided to begin the formal procedure for the suspension of the Cambodian access to the EU’s Everything But Arms (EBA) trade framework.³⁹⁶ The decision was based on the sharp decline in political rights and labor rights as well as increased repression of civil society.³⁹⁷ Initiating the procedure did not mean an immediate withdrawal of Cambodia from the trade framework but rather the adoption of a period of intense monitoring and diplomatic engagement in order to support policy changes that

³⁹⁵ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2080>

³⁹⁶ https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_988

³⁹⁷ <https://www.omct.org/statements/cambodia/2019/06/d25369/>

would improve respect for human rights in the country. The EU had conducted a fact-finding mission to Cambodia in July 2018.

Statements by key EU officials made clear the basis of the decision:

“Over the last eighteen months, we have seen the deterioration of democracy, respect for human rights, and the rule of law in Cambodia. In February 2018, the EU Foreign Affairs Ministers made clear how seriously the EU views these developments. In recent months, the Cambodian authorities have taken a number of positive steps, including the release of political figures, civil society activists, and journalists and addressing some of the restrictions on civil society and trade union activities. However, without more conclusive action from the government, the situation on the ground calls Cambodia’s participation in the EBA scheme into question. As the European Union, we are committed to a partnership with Cambodia that delivers for the Cambodian people. Our support for democracy and human rights in the country is at the heart of this partnership,” said High Representative for Foreign Affairs and Vice President of the European Commission Federica Mogherini.

“It should be clear that today’s move is neither a final decision nor the end of the process. But the clock is now officially ticking, and we need to see real action soon. We now go into a monitoring and evaluation process in which we are ready to engage fully with the Cambodian authorities and work with them to find a way forward. When we say that the EU’s trade policy is based on values, these are not just empty words. We are proud to be one of the world’s most open markets for least developed countries, and the evidence shows that exporting to the EU Single Market can give a huge boost to their economies. Nevertheless, in return, we ask that these countries respect certain core principles. Our engagement with the situation in Cambodia has led us to conclude that there are severe deficiencies when it comes to human rights and labour rights in Cambodia that the government needs to tackle if it wants to keep its country’s privileged access to our market,” said EU Commissioner for Trade Cecilia Malmström.³⁹⁸

In August 2019, the EU completed a three-month investigatory period and transmitted its findings in a report to the RGC on 12 November 2019. In a statement made in relation to the report, the EU Commission asserted that substantive changes leading to improvements in the human rights situation were required if Cambodia were to retain EBA status. The statement declared: “While

³⁹⁸ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1981&title=Cambodia-EU-launches-procedure-to-temporarily-suspend-trade-preferences>

the European Union remains committed to working with the Cambodian authorities on this aim, a real and credible improvement on the issues of concern is needed in order to avoid the withdrawal of EBA preferences.” Just prior to the release of the report, former CNRP leader Kem Sokha was granted relaxed bail conditions. Afterwards, an EU representative stated that for the EU, it was necessary that Kem Sokha was freed, and the political rights be restored for the members of the former major opposition party CNRP. Cecilia Malmström, the EU commissioner for trade, tweeted: “We are very concerned about the human rights situation there. The Cambodians now have one month to respond, and we will make our final decision in [February] next year.”³⁹⁹

On 14 November 2019, the RFA news outlet released information from what it claimed was a leaked copy of the confidential report. According to RFA, the report stipulated that rather than progress, Cambodia had undergone ‘further deterioration’ of its human rights situation, and made only ‘tangible progress’ in the areas of land and labor rights. The report was rejected as fake news by RGC officials. For example, Sok Sopheak, secretary of state at the Ministry of Commerce, said that the proof that RFA was reporting faking news was the incorrect number of pages that they attributed to the report.⁴⁰⁰ The Ministry of Foreign Affairs released a statement claiming that RFA had made false claims concerning obtaining the report, as proven by misquotes and erroneous references to page numbers. Koy Kuong, the spokesman for the Foreign Affairs Ministry, said: “Such false information creates unnecessary worries among the hundreds of thousands of workers involved, misleads the public and tarnishes the reputation of government officials whom RFA claimed to have leaked the document.”

The European Union External Action Spokesperson statement of 11 November 2019, set clear conditions for Cambodia retaining EBA status: “In particular, we expect Kem Sokha to be fully released, and his political rights reinstated so that he can play a full part in political life. We also expect the Cambodian authorities to reinstate the political rights of all opposition members banned from political life and

³⁹⁹ <https://www.voacambodia.com/a/eu-commissions-completes-preliminary-eba-report-sam-rainsy-says-pressure-on-eba-working/5163852.html>

⁴⁰⁰ <https://www.khmertimeskh.com/659994/leaked-eu-report-suggests-cambodian-efforts-to-retain-eba-are-insufficient/>

to fully release all opposition members, supporters, and activists recently put under detention.”⁴⁰¹

The report is likely to have impacted RGC behavior as just prior to its release more than 70 former members of the opposition party that had been detained on trumped-up charges were released from jail, and before that former president of the CNRP Kem Sokha was ‘partially freed’ (see section on Political Rights and Pluralism). Nevertheless, no fundamental improvements have been made in the area of human rights, and all the laws institutionalizing the transition from a competitive authoritarian state (authoritarianism with elections) to a single-party system are intact. The 5th mandate of the National Assembly entailed a progression of laws that provided a legal basis for the persecution of political competition and government critics (lawfare) pertaining to political parties, the judiciary, the media, trade unions, and civil society organizations.

Economic Factors and Assessment

The impending removal of Cambodia from the EBA arrangement has not resulted in an agreed-upon assessment of the impact that this will have on the Cambodian economy. However, most experts agree that it leads to a significant decrease in economic performance, at least in the short-term. At issue is whether or not the potential loss of export revenues has resulted in the adoption and implementation of policies to reform the economy and generate productivity effectively enough to offset the costs.

On 19 December 2017, the Phnom Penh Post newspaper reported that a leaked letter from the Cambodian Commerce Minister to PM Hun Sen estimated that the loss of EBA status would result in Cambodian exports to the EU incurring 676 million USD in tariffs, based on 2016 export levels.⁴⁰² In 2018, Cambodian exports made up and amounted greater than 18 percent of the total imports to the EU under the EBA framework. This made Cambodia the second-most beneficiary state of the EBA arrangement. EU imports from Cambodia totaled 5.3 billion euros (the U.S. \$5.8 billion) that year, with approximately 95 percent

⁴⁰¹ https://eeas.europa.eu/headquarters/headquarters-homepage/70204/statement-spokesperson-latest-developments-cambodia_en

⁴⁰² <https://www.phnompenhpost.com/national-politics/hun-sen-goads-west-minister-quietly-notes-massive-cost-sanctions>

of them being important duty-free, because of the conditions allowed for by the EBA framework.⁴⁰³ The largest export sector in the Cambodian economy is the garment and footwear industry, which entails 750,000 jobs and 1,100 factories. The World Bank has indicated that a loss of EBA participation would result in tariffs on garments (12 percent), footwear (16 percent), and bicycle products (10 percent).⁴⁰⁴ A World Bank report estimates lost export revenue of \$654 million -- \$510 million for garments and footwear and \$144 million for milled rice -- if the European Commission (EC) ends the EBA privileges, which have been in place for 18 years.⁴⁰⁵

In April 2019, the World Bank found that: “Robust economic growth is expected to result in continued poverty reduction. The longer-term outlook, however, depends on the country’s ability to absorb rising FDI [foreign direct investment] inflows, while promoting domestic investment.” World Bank senior economist Ly Sodeth said: “The key driver, which is actually the export of garments and footwear to the US and EU, grew rapidly, with the US market growing even faster than the EU market. That is the main factor behind the better than expected GDP growth last year.”⁴⁰⁶

On 22 October 2019, the International Monetary Fund released its regional outlook, and it indicated that Cambodia’s economic growth would remain strong (around 7 percent for 2019 and decreasing slightly to 6.8 percent in 2020). At those levels, Cambodia was predicted to have the highest rate of economic growth in the region for 2020. Hiroshi Suzuki, the chief economist and CEO of the Business Research Institute for Cambodia, indicated that Cambodia was benefiting from the trade war between the US and China, with Chinese companies shifting production to Cambodia.⁴⁰⁷

On 27 November 2019, the World Bank released an economic update on Cambodia. The international financial institution found that the economy had remained stable, although growth in 2019 would slow to 7.0 percent from the rate of 7.5 percent in 2018. It noted that garment and footwear exports accounted for 70 percent of total exports, and growing 17.7 percent in 2018 and slowing to 15.3 percent growth as of June 2019. It also noted the sharp increase in production in

⁴⁰³ <https://www.rfa.org/english/news/cambodia/amendments-12182019140541.html>

⁴⁰⁴ <https://www.khmertimeskh.com/50673593/cambodias-economy-remains-robust-amidst-concerns-over-eba-deal-loss>

⁴⁰⁵ <https://www.bangkokpost.com/business/1761524/cambodia-at-the-crossroads>

⁴⁰⁶ <https://www.phnompenhpost.com/business/economic-growth-set-slow-year-wb-report>

⁴⁰⁷ <https://www.phnompenhpost.com/business/imf-cambodias-economic-growth-be-highest-asean>

the construction sector with growth as of June with the rate of growth, reaching 63.5 percent year-on-year, as compared to 15.3 percent growth one year prior. However, it noted that risks in the financial sector increased with a rise in indebtedness impacting the exposure of the construction and real estate sectors. Of concern, it found that bank and microfinance credit combined amounted to more than 100 percent of gross domestic product. The two major external risks noted by the bank were a slowdown in the Chinese economy following from the US-China trade war and the loss of admission to the EU's Everything but Arms trade scheme. To increase competitiveness, the country manager from the World Bank, Inguna Dobraja, said that authorities must devise and implement policies to ease trade, such as decreased logistics costs and red tape. She also noted that: "A relatively large fiscal stimulus to be financed by the government could be introduced in 2020 to mitigate the negative impacts of the potential withdrawal of the EBA."⁴⁰⁸

On 26 December 2019, the IMF released a statement concerning its Art. IV consultation with the government of Cambodia, which concluded on 6 December 2019. The statement asserted: "Cambodia's economic outlook is subject to significant downside risks. The on-going Everything but Arms (EBA) review by the EU—Cambodia's primary export partner—could lead to a suspension of preferential trade access later next year, which could have a large negative impact on economic activity."⁴⁰⁹

In addition to the trade decrease with the EU impacting the garment and footwear sector with the loss of EBA status, trade-in rice has declined. In January 2019, ostensibly to provide protections to EU rice producers the EU imposed customs duties on rice from Cambodia and Myanmar which amounted to €175 (\$195) per ton for the first year, which would be reduced to €150 in the second year and €125 in the third year. Following the move, Cambodian milled rice exports to the EU declined 58% in February 2019 to only 10,080 tons. In 2018, Cambodia sold 270,000 tons to the EU, making up 43 percent of its total milled rice exports.⁴¹⁰

Banking officials indicated that they were not concerned about EBA withdrawal. In Channy, president of Acleda Bank, and president of the Association of Banks in Cambodia, asserted that the banking sector would remain strong despite the loss

⁴⁰⁸ <https://www.phnompenhpost.com/business/world-bank-growth-7-year>

⁴⁰⁹ https://www.einnews.com/pr_news/505807586/imf-executive-board-concludes-2019-article-iv-consultation-with-cambodia

⁴¹⁰ <https://www.bangkokpost.com/business/1761524/cambodia-at-the-crossroads>

of EBA participation by Cambodia. He pointed to strong growth in the banking sector in 2019. He argued that EBA membership was only one of several factors contributing to the growth of the economy. He based his assertion on two points: that Cambodia would exit from EBA eventually anyways with economic growth; and that multiple factors contributed to a sound economy including socio-political stability and investment attractiveness. He also pointed to the relationship with China, including a free-trade agreement that would ensure trade volumes in the future. He claimed: “We have a supportive, pro-business government that implements pro-business policies to ensure growth, not just in the banking sector, but in other industries and business segments.” Canada Bank Plc CEO Raymond Sia also claimed that EBA withdrawal was not a concern for the banking sector.⁴¹¹

In April 2019, the Ministry of Economy and Finance, taking into consideration external factors, indicated that growth in 2020 would decline. Vongsey Visoth, secretary of state at the Ministry of Economy and Finance, said comprehensive reforms across different areas of government were necessary to increase competitiveness and attract investment. He claimed that in 2020, an economic growth rate of 6.5 percent was possible if reforms were successful. He claimed: “If the EBA is withdrawn, we must undergo deep reforms. Ultimately, the revocation will be better for us in the long run as it will force us to make our economy stronger. If the EBA is withdrawn and we do nothing, we cannot say what will happen.”⁴¹² On 28 November 2019, Hav Ratanak, the director-general of the Ministry of Economy and Finance’s General Department of Budget, said the government was holding 3 billion USD as a reserve to be used to weather the shock of EBA withdrawal. The funds could serve to function as a stimulus in the event of a recession.⁴¹³

At the end of December 2019, the IMF adjusted its economic forecast for Cambodia, indicating an expectation of a sharp and substantial economic decline with the loss of EBA status, as demonstrated in a drop of GDP growth rate by up to 3 points. Even without EBA loss, GDP growth is expected to decline to 6.8 percent (from 7.5 percent in 2018 and 7 percent in 2019). The IMF forecast also

⁴¹¹ <https://www.phnompenhpost.com/business/channy-banking-will-stay-strong-or-without-eba>

⁴¹² <https://www.khmertimeskh.com/50626637/deep-reforms-needed-to-continue-healthy-growth-ministry>

⁴¹³ <https://www.phnompenhpost.com/national-politics/3-billion-reserve-ahead-possible-eba-withdrawal>

expected that the decline in exports would: “lead to a permanent decline in garment sector output and employment in the long-run.”⁴¹⁴

Discourse and Policy

Government and Ruling Party

On 14 January 2019, Hun Sen declared: “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.” Just two days prior to that, he stated that the EU was “using EBA as a threat to sanction Cambodia ... and take about 16 million Cambodians as the hostage of the so-called EBA”.⁴¹⁵ RGC spokesman Phay Siphon claimed that the decision by the EU was unfair and failed to recognize progress in terms of peace and development made in the post-UN-period. However, he was less confrontational than the PM, and asserted: “We consider the EU not our enemy, just a partner, and we try our best to explain to them and maintain cooperation.”⁴¹⁶ Siphon also stated that it was impossible for the RGC to reinstate the former opposition party (CNRP) following its dissolution by the Supreme Court on the grounds of judicial independence.

Following the announcement by the EU that the process of temporary EBA suspension would move forward, Hun Sen declared that the decision was external interference in Cambodian sovereignty. He posted on social media (his Facebook account has more than 10 million followers), that Cambodia: “cannot exchange its independence and sovereignty for anything. We want to be good friends with other

⁴¹⁴ <https://www.voacambodia.com/a/unions-push-gov-t-for-eba-talks-as-imf-forecasts-serious-economic-risks/5227200.html>

⁴¹⁵ <https://theowp.org/cambodian-prime-minister-threatens-opposition-over-eu-sanctions/>

⁴¹⁶ <https://www.aljazeera.com/news/2019/02/ticking-eu-tells-cambodia-trade-scheme-threat-190212045950434.html>

partner countries that want to see Cambodia progress without interference in the country's internal affairs.”⁴¹⁷ Throughout 2019, Hun Sen has never waived from his outright refusal to compromise with the EU and maintained the position that maintaining his own absolute power is equivalent to Cambodian independence.

On 13 February 2019, PM Hun Sen told Irish Premier Enda Patrick Kenny that removing Cambodia from the EBA trade arrangement would be the EU's third big mistake against Cambodia. He said: “The EU's first mistake was supporting coup in Cambodia during the 1970s; the second was supporting Khmer Rouge to occupy the UN seat for 12 years; and the third, even the EU just decided to set in motion the formal procedure, once realized, it will become the third mistake of EU's democratic countries against Cambodia.”⁴¹⁸

Minister of Interior Sar Kheng conducted a mission to Germany from 24 September 2019 to 1 October 2019, which was aimed at strengthening bilateral cooperation with the German Federation. He took the opportunity to advocate for Cambodian participation in the EBA trade scheme by emphasizing achievements in the area of government decentralization. In addition to the government of Germany, he aimed his address at the Cambodia diaspora. He made the claim that the government had conducted public forums across the entirety of country and, as a result, effectively addressed many local-level problems. However, he neglected to provide concrete examples of achievements.

The director of the International Relations Institute at the Royal Academy of Cambodia Kin Phea said the remarks were an indication of the sincere efforts being made to retain EBA status. He claimed: “The government is aware of the importance of the EBA and the GSP. So the government has the goodwill to make the EU and US keep our EBA and GSP status because the agreements help our country compete with exports to the EU and US markets.”⁴¹⁹

In November 2019, within a week of the EU submission of its findings report to the RGC, PM Hun Sen declared that the loss of EBA status would have no significant effect on Cambodia. He declared: “Someone said we will suffer if the EBA is withdrawn. There will be no suffering because we do not depend on the EBA;

⁴¹⁷ <https://www.japantimes.co.jp/news/2019/02/12/asia-pacific/politics-diplomacy-asia-pacific/face-trade-threat-eu-2018-election-cambodian-leader-warns-interference/>;

⁴¹⁸ <http://m.en.freshnewsasia.com/index.php/en/localnews/12956-2019-02-12-08-08-36.html>

⁴¹⁹ <https://www.phnompenhpost.com/national-politics/sar-kheng-cambodia-still-negotiating-keep-eba-gsp-status>

most of our income comes from tax collection.” Moreover, he claimed: “Currently, we have \$3 billion in our national budget. The most difficult job for a Prime Minister is when we do not have money in hand. We have already passed that difficulty.”⁴²⁰

On 11 December 2019, PM Hun Sen gave an informal response to the EU, basically stipulating that the RGC would refuse to meet the conditions required to maintain EBA status. In a speech given to the audience of thousands, the PM asserted: “The achievements you have helped me make would be annulled. Your words to me would not be meaningful anymore, and it would also contribute to the death of the opposition group. “The court has already announced its procedure, how and when it will proceed with the case.” He also made it a point to emphasize that the negative impact EBA withdrawal would have for EU businesses. He declared that the RGC response to the EU was a ‘reply’ to its ‘accusations’. He asserted: “I have already told [Minister of Foreign Affairs] Prak Sokhonn that this is just a reply to what you [the EU Commission] have sent to us. I reply in terms of a dialogue, not elaboration. You have to understand this.”⁴²¹

The formal statement of response to the EU, issued in early December, from the Cambodian Ministry of Foreign Affairs, stipulated: “The government expects that the European Commission will take into consideration the government’s good-faith efforts to implement all the relevant international conventions under the EBA regulations, the potential social impact of nearly one million female workers and the indirect effects on the families and relatives supported by these workers’ wages, as well as respecting the principles of sovereignty and non-interference in Cambodia’s internal affairs.”⁴²² As such, the statement indicated that the RGC expected the EU decision to reflect the efforts made toward reform during the course of 2019. The statement differed sharply from the confrontational statements that had been made by the PM who had staunchly refused compromise with the EU.⁴²³

On 15 December 2019, the Cambodian Minister of Foreign Affairs and International Cooperation Prak Sokhonn met with Josep Borrell Fontelles, the High Representative of the EU, and the Vice-President of the European Commission.

⁴²⁰ <https://www.khmertimeskh.com/50660990/pm-confident-eba-outcome-will-not-impact-kingdom>

⁴²¹ <https://www.phnompenhpost.com/national-politics/eba-withdrawal-destruction-eu-achievements-pm-says>

⁴²² <https://www.phnompenhpost.com/national-politics/europe-expected-consider-eba-efforts-impact>;
<https://cambodianess.com/article/cambodia-urges-eu-to-consider-workers-fate-in-eba-review>

⁴²³ <https://www.rfa.org/english/news/cambodia/amendments-12182019140541.html>

Following the meeting, Borrell communicated on social media: “We talked about the possibility of a withdrawal of trade preferences. Efforts are still needed to improve the situation of human rights and democracy.”⁴²⁴ The European External Action Service issued a press release on 15 December 2019, which asserted: “The High Representative reiterated the importance of Cambodian authorities taking immediate action to open the political space in the country, establish the necessary conditions for a credible, democratic opposition and initiate a process of national reconciliation through genuine and inclusive dialogue.”⁴²⁵

Kin Phea, the director of the International Relations Institute at Royal Academy of Cambodia, said that Borrell’s post indicated that the EU was keeping the possibility open of Cambodia retaining EBA membership. He exclaimed: “It looks like the door is still open and there is still an opportunity to work together to improve human rights and democracy and obtain the EU’s contribution to developing Cambodia. If the EU withdraws the EBA scheme, it will have no influence to talk with the government on human rights, democracy, or other matters on their agenda. So, it must keep a path for the government to walk on while the government thinks of how to deal with this matter so that both sides do not lose face.”⁴²⁶

At the end of December 2019, ruling party Senator Sok Eysan maintained that although aver Cambodia did not want the EBA to be withdraw, the RGC could not accept to submit to EU expectations such as dropping treason charges against Kem Sokha. He averred that Cambodia would weather the impact effectively: “I think Vietnam and Thailand don’t have EBA, but why can they survive until now? Cambodia will not die immediately without EBA. It will not be unfortunate like that.”⁴²⁷

PM Hun Sen issued a New Year’s message for 2020 via social media as well. He stated: “A peaceful [Cambodia] provides all citizens an opportunity to travel freely near and far, inside and outside the country, especially during this New Year, without any concerns.” Deputy PM and Minister of Interior Sar Kheng claimed great development results had been achieved because of peace and stability, and that development had according to democratic principles. He communicated two messages to the policy and public. In his post, he stated: “I would like to place a

⁴²⁴ <https://www.rfa.org/english/news/cambodia/envoy-12162019162956.html>

⁴²⁵ <https://www.phnompenhpost.com/national-politics/sokhonn-meets-eu-officials-ahead-decision-eba>

⁴²⁶ <https://www.phnompenhpost.com/national-politics/sokhonn-meets-eu-officials-ahead-decision-eba>

⁴²⁷ <https://www.voacambodia.com/a/finance-ministry-forecasts-growth-slowdown-in-2020-points-to-eba/5226609.html>

high value on the commitment of police at all levels and civil servants under the ministry to maintaining peace, public order, and social security, particularly to preventing a plot by a treasonous rebel group to destroy peace.” In his message to the public, Kheng said, “I would like to express my gratitude and appreciation to the spirit and patriotism of people from all walks of life for their contribution to protecting peace, territory, and political stability. The people jointly placed their priorities on our national interests and defeated all destructive attempts to break up unity, solidarity, and harmony in society.”⁴²⁸

On 7 January 2020, Prime Minister Hun Sen repeated the ruling party position that Cambodia enjoyed full democracy and human rights. The PM declared that sovereignty, democracy, and rule of law were consolidated in Cambodia with the country adhering to “its own national law”. Before an audience of ruling party members, he declared: “The reality clearly shows that democracy, the rights, and freedoms of the Cambodian people are being respected, preserved, and promoted steadily in the interests of the Cambodian nation and people.”⁴²⁹ However, as independent political analyst Meas Nee pointed out, any concessions by the PM would undermine his tight grip on power: “It is very difficult for the ruling party to restore the situation since they are worried about [losing] power.”⁴³⁰

Former Major Opposition Party

In his New Year’s message for 2019, leader of the former major opposition party, Sam Rainsy stated that EBA withdrawal was necessary for advancing real democracy in Cambodia. He claimed that workers would accept the negative effects in the short-term. In his message for 2020, Rainsy expressed that he supported the RGC making the policy changes required to retain EBA status. He asserted: “May Cambodia’s current leadership realize their faults and mistakes and reform their unjust and destructive policies by abiding by democratic principles, which would help, among other things, to preserve Cambodia’s current EBA status.”⁴³¹

⁴²⁸ <https://www.phnompenhpost.com/national-politics/peace-eba-focal-point-politicians-ny-messages>

⁴²⁹ <https://www.voacambodia.com/a/hun-sen-denies-cambodia-s-democracy-needs-restoring-as-eba-decision-looms/5235748.html>

⁴³⁰ <https://www.voacambodia.com/a/hun-sen-denies-cambodia-s-democracy-needs-restoring-as-eba-decision-looms/5235748.html>

⁴³¹ <https://www.phnompenhpost.com/national-politics/peace-eba-focal-point-politicians-ny-messages>

Garment Manufacturers of Cambodia

Ken Loo, secretary-general of the Garment Manufacturers Association in Cambodia (GMAC), stated: "Currently, 46% of our total exports go to the EU. We will still be able to export to the EU, albeit without any trade preferences. [But] this means that we will be less competitive price-wise as Cambodian products will be required to pay the prevailing import duties."⁴³² On 16 December 2019, *Kaing Monika, the deputy secretary-general of the Garment Manufacturers Association in Cambodia, published an op-ed lambasting the EU for the hypocritical application of its standards because of its willingness to include, in the EBA framework, countries with lower levels of human rights protection and democracy than Cambodia, using Vietnam as an example.*⁴³³

European Chamber of Commerce

On 21 January 2019, the European Chamber of Commerce in Cambodia, together with approximately 30 business associations, unions, and members of civil society, sent a letter to the European Commissioner for Trade, Cecilia Malmström, which claimed to represent the view of the entire private sector of Cambodia. The letter lamented the potential loss of EBA status for Cambodia, emphasized that achievements for development in Cambodia have been made possible in large part due to partners such as the EU, and stressed that the loss of EBA status predominantly affects rural women. It asserted: "Furthermore, the private sector and many Cambodians are concerned about the long-term implications that the removal of the EBA arrangement will have on the relationship between the European Union and Cambodia, as it signifies an end to the engagement and open dialogue that has facilitated Cambodia's progress."⁴³⁴

On 11 February 2019, following the decision by the European Commission to begin the process of withdrawal of Cambodia from the EBA, the European Chamber of Commerce in Cambodia released a press statement. It stated: "The launch of EBA withdrawal investigation by the European Commission is counterproductive to Cambodia's socio-economic transformation. This decision not only jeopardizes the past and future achievements of this partnership but also other development

⁴³² <https://www.bangkokpost.com/business/1761524/cambodia-at-the-crossroads>

⁴³³ <https://www.phnompenhpost.com/opinion/inconsistent-actions-former-eu-trade-commissioner>

⁴³⁴ <https://www.eurocham-cambodia.org/post/580/EuroCham-Press-Release-on-EBA-Update>

initiatives funded by the European Union over the last two decades, which have helped to vastly improve the socio-economic status of millions of Cambodians.”⁴³⁵

On 25 September 2019, the European Chamber of Commerce in Cambodia characterized the loss of EBA status as a form of sanctions on Cambodia. It further asserted that it would: “jeopardize European investments, the European business community, European development initiatives, and the livelihoods of Cambodian citizens.”⁴³⁶

Labor Groups

Moeun Tola, executive director of the Centre for Alliance of Labor and Human Rights, said the Cambodian industry would suffer considerably without the EBA. He noted: “The EBA helps us compete in the EU market. Without it, prices would severely increase, making penetrating the EU market more difficult for investors. The EBA helps by reducing base prices while saving about \$700 million per year in taxes. The ones who would suffer are garment workers; most of our garment workers took loans from microfinance institutions, so if they lost their job, they would be faced with trouble.”⁴³⁷

Ath Thorn, of the Cambodian Labor Confederation, urged the RGC to improve its dialogue efforts and outcomes with the EU in order to convince them not to remove Cambodia’s EBA status. He said: “I think that the EBA is a crucial issue, which is able to maintain macroeconomic stability, as well as decent job growth and income stability for workers. If we lost the EBA in any way, I think it will not be good for Cambodia.”⁴³⁸

In the conclusion of this part, many critics of the ruling party and supporters of democratization have advocated for the use of EBA status and its potential loss as a means to promote liberalization in Cambodia. On the other hand, there have

⁴³⁵ <https://www.eurocham-cambodia.org/post/584/EuroCham-Regrets-EU-decision-on-EBA>

⁴³⁶ <https://www.prnewswire.com/news-releases/the-european-chamber-of-commerce-in-cambodia-calls-the-european-commission-for-sober-second-thought-on-everything-but-arms-trade-partnership-withdrawal-300920852.html>; <https://aecnewstoday.com/2019/eu-should-have-a-sober-second-thought-over-eba-removal-eurocham-cambodia/>

⁴³⁷ <https://www.central-cambodia.org/archives/3310>; <https://www.khmertimeskh.com/50660990/pm-confident-eba-outcome-will-not-impact-kingdom>

⁴³⁸ <https://www.voacambodia.com/a/unions-push-gov-t-for-eba-talks-as-imf-forecasts-serious-economic-risks/5227200.html>

been two major arguments set out against such a policy. First, that the loss of EBA status will result in large-scale unemployment in the garment sector without actually effectively pressuring the RGC to reform. Second, that removing Cambodia from the EBA trade arrangement will decrease EU influence in Cambodia and drive the RGC to seek out closer ties with China. Many CPP critics welcome sanctions as a vehicle to force the government to make democratic concessions or instigate protests against it. PM Hun Sen has made it clear that the potential loss of EBA membership will not compel the ruling party to allow for the return of a genuine opposition party in Cambodia.

Moreover, he has consistently threatened to tactics of severe repression against democratic elements inside the country. Buttressed by growth in other areas of the economy, and substantial aid from China, the influence of Western states has declined. In February 2020, the EC decided to rescue Cambodia's participation in the EBA framework, approximately 20 percent. While this is certain to setback the garment sector in Cambodia and provide an incentive for manufacturers to shift production to other states such as Vietnam and Bangladesh, it is unlikely to pressure Cambodia to pursue further reforms significantly. At this point two major questions remain: how significant with the effect be on Cambodian growth; and whether or not some of the reforms of 2019 (for example, Trade Union law and decreased criminalization of unionists, Lango law and decreased repression of CSO activities, increased use of the Press law rather than criminal law to regulate journalists) will continue to be implemented in 2020 now that the threat of EBA loss has receded.

CHAPTER 9-

Cambodia and Major Powers

Cambodian relations with the US declined throughout the 5th mandate of the Cambodian National assembly, and have been evidently poor at least since the RGC canceled joint military exercises with the US in January 2017 (foreshadowing the ruling CPP's move to eliminate the major opposition party and have its leaders jailed). China's influence over Cambodia was secured by 2010 when it became the country's largest ODA donor.⁴³⁹ However, the impact of China extends to non-state actors and the private sector in terms of vast flows of investment, tourism, and workers. Carl Thayer, a Southeast Asia expert at the University of New South Wales in Australia, has characterized Cambodia's relationship with China as

⁴³⁹ China surpassed Japan, however, Japan has continued to engage with Cambodia extensively in terms of both ODA and private investment. Maintaining a cooperative relationship with the RGC, likely in large part to ensure the vitality of that private investment, has meant Japan has not been critical of the democratic regression in Cambodia, and the major democratic donor states have not coordinated policies. Japan has continued to support the electoral process in Cambodia as an overall strategy which combines maintaining good relations with the RGC and democracy support (see: <https://www.reuters.com/article/us-cambodia-japan-politics/japan-donates-ballot-boxes-worth-7-5-million-for-cambodia-election-idUSKCN1G50CR>) Japan took a stance that was only tacitly critical of the legitimacy of the 2018 elections (see: <https://www.reuters.com/article/us-cambodia-election-japan/japan-wont-be-sending-election-monitors-to-cambodia-idUSKBN1KF1EB>) As a result, it has been argued that the acknowledgement of the electoral process and results provided support to PM Hun Sen, and was a reflection of the larger concern for countering China's influence in Cambodia (see: <https://www.japantimes.co.jp/news/2018/07/27/national/politics-diplomacy/untangling-japans-curious-support-cambodias-undemocratic-election/>; <https://www.cnn.com/2018/07/18/japan-and-china-compete-for-influence-in-cambodia.html>; <https://www.lowyinstitute.org/the-interpreter/why-japan-supporting-cambodias-election>) Notably, prior to the second visit by Chinese warships to Cambodia in 2019, Japanese warships also visited (see: <https://www.khmertimeskh.com/36009/chinese-warships-dock-in-sihanoukville/>)

follows: “China is Cambodia’s biggest trading partner, major source of foreign investment, largest provider of development assistance and staunchest supporter of the Hun Sen regime and the Cambodian People’s Party. “Chinese influence is so extensive that it may be compared to European extraterritoriality in Asia during the colonial era. China has a huge stake in Cambodia politically, diplomatically, economically and commercially, and Cambodia is a client state that serves as a conduit for Chinese influence in the Association of Southeast Asian Nations.”⁴⁴⁰

The major issue in 2019, for US-Cambodia relations, was the possibility of Cambodia providing territory to host a Chinese military base. Thus two factors have framed US policy with regard to Cambodia, ideological and strategic. Ideologically, the US is concerned about the decline of democracy in Cambodia and its detrimental impact on political rights. Strategically, the US is concerned with the rise of China’s influence over Cambodia, and the latter serving as a proxy for China in both diplomatic and military spheres.

In mid-November 2018, in response to news reports concerning the development of a Chinese naval base in Cambodian national territory, Hun Sen declared that a foreign military base would never be permitted.⁴⁴¹ An Asia Times report of 15 November cited unnamed sources that China was building the naval base using the 45,000-hectare development project of the Tianjin Union Development Group.⁴⁴² Cambodian Minister of Information Khieu Kanarith posted on social media that Hun Sen rejected the rumors in a Council of Ministers meeting, stating: “Does Cambodia need to violate its Constitution to allow a foreign military base on Cambodian territory? With whom does Cambodia need foreign troops to fight with? And I do not need foreigners to fight in Cambodian territory like in the past, nor does Cambodia allow her to be a place for ideology or weapon experiment”. A Reuters investigation visit to the area in June 2018 found it guarded by the Cambodian military.⁴⁴³

In November 2018, Hun Sen announced that U.S. Deputy Secretary of State John Sullivan met with Cambodia’s Deputy Prime Minister Prak Sokhonn about

⁴⁴⁰ <https://www.scmp.com/news/china/diplomacy/article/3040211/how-west-could-drive-cambodia-further-chinas-clutches>

⁴⁴¹ <https://www.japantimes.co.jp/news/2018/11/19/asia-pacific/politics-diplomacy-asia-pacific/cambodian-leader-hun-sen-says-wont-allow-foreign-military-bases-country/#.XiIRfGgzbid>

⁴⁴² <https://cms.ati.ms/2018/11/cambodia-at-the-center-of-a-new-cold-war/>

⁴⁴³ <https://www.reuters.com/article/us-cambodia-politics/cambodian-pm-says-wont-allow-any-foreign-military-base-in-his-country-idUSKCN1NO0BK>

the issue and that the PM had received a letter from US Vice President Mike Pence. PM Hun Sen announced: “I want to make clear to our compatriots and foreign friends that Cambodia will not violate its own constitution. Cambodia’s Constitution prohibits the presence of foreign armies or military bases inside the country ... Cambodia will not permit any foreign military base for a navy, army or air force.”⁴⁴⁴ On the same day as the Asia Times report, Cambodia’s Ministry of Foreign Affairs issued a press release that noted that Sullivan had raised the issue with Prak Sokhonn. The Cambodian Ministry of Defense also issued a statement rejecting the Asia Times report as fake news. In relation to the letter from US Vice President Pence, PM Hun Sen stated: “Please do not mistreat Cambodia anymore. If you are not here to help, please don’t be jealous. The Chinese are here to develop [...] I really do not understand why Mr Pence wrote me such a letter.”⁴⁴⁵

The presence of Chinese warships at the Cambodian port of Sihanoukville in January of 2019, provided an example of the increasingly friendly military ties between the two states.⁴⁴⁶ Cambodia and China have conducted several joint military exercises, and just prior to the 2018 national elections, China provided 100 million USD in military aid.⁴⁴⁷

In January 2019, Cambodia continued to foment already staunch ties with China, partly in response to the pressure from the announcement that the EU would undertake a process of evaluating Cambodia’s compliance with the ‘Everything but Arms’ trade framework. In terms of trade, Cambodia and China advanced a free-trade agreement. PM Hun Sen requested the FTA in a Jan 21 meeting with the president of China. However, it was only on 3 December 2019 that a feasibility consultation on the agreement would begin.⁴⁴⁸ Spurred by the US-China trade war, 2019 saw a large influx of Chinese manufacturing into Cambodia. However, the recent rapprochement between the two giant economies⁴⁴⁹ could undermine

⁴⁴⁴ <https://www.rfa.org/english/news/cambodia/base-11192018155126.html>

⁴⁴⁵ <https://www.khmertimeskh.com/50570720/no-chinese-naval-base-in-kingdom>

⁴⁴⁶ <https://thedi diplomat.com/2019/01/warships-spotlight-china-cambodia-defense-ties-amid-military-base-hype/>;
<https://www.khmertimeskh.com/567327/three-chinese-warships-dock-in-sihanoukville/>

⁴⁴⁷ <https://www.straitstimes.com/asia/se-asia/chinese-warships-dock-in-cambodia-to-boost-military-cooperation>

⁴⁴⁸ <https://www.scmp.com/news/china/diplomacy/article/3040211/how-west-could-drive-cambodia-further-chinas-clutches>

⁴⁴⁹ <https://www.wsj.com/articles/u-s-china-to-sign-deal-easing-trade-tensions-11579087018>;
<https://www.bloomberg.com/news/articles/2020-01-15/u-s-china-sign-phase-one-of-trade-deal-trump-calls-remarkable>; <https://www.nbcnews.com/business/economy/u-s-china-sign-phase-one-trade-deal-after-almost-n1116201>; <https://www.usatoday.com/story/news/politics/2020/01/15/trump-sign-china-trade-deal-details-remain-mystery/4434592002/>;

that source of economic stimulus in Cambodia around the same time that Cambodia loses EBA access. In 2018 trade between Cambodia and China increased by 12 percent from the amount of 5 billion USD in 2017, reaching 5.6 billion USD. However, exports to China were minor when compared with EU and US markets, which combined made up 70 percent of Cambodia exports.⁴⁵⁰ As per capita income in China increases, it will become more important for Cambodian exports.

This has already been evident in the area of agriculture with China increasing purchases of Cambodian rice. In January, China agreed to increase the rice quota from Cambodia to 400,000 metric tons from the 2018 quota of 300,000.⁴⁵¹ Based on the total rice exports for Cambodia from 2018, that would mean China was the export destination of more than 62 percent of Cambodian rice.⁴⁵² The announcement came as the EU decided to impose import duties (tariffs) on rice from Cambodia, claiming that the sharp rise in imports had hurt EU rice farmers.⁴⁵³ For the first six months of 2019, rice exports to the EU declined by 32 percent (to 93,503 tons), while exports to China increased 66 percent (to 118,401).⁴⁵⁴ In December 2019, China also authorized an additional 18 rice millers to export rice to China, increasing the total to 44.⁴⁵⁵

In conjunction with his state visit to China, Hun Sen posted on social media: “China will continue to increase its cooperation with Cambodia. The Chinese president said Cambodia would be victorious for 60 years to come.”⁴⁵⁶ Moreover, China

⁴⁵⁰ <https://www.khmertimeskh.com/50571329/premier-pushes-for-fta-with-china>

⁴⁵¹ <https://www.khmertimeskh.com/571328/china-to-increase-cambodian-rice-quota/>

⁴⁵² <https://www.phnompenhpost.com/business/china-increases-rice-import-quota>. Despite this, major problems persist for the Cambodian rice sector. In the past, Chinese buyers have preferred the price-quality ratio of Thai and Vietnamese rice to Cambodian rice, making increase competitiveness of Cambodian rice agriculture a priority that has not been addressed. Additionally, as of November 2019, China had not yet made purchases of Cambodian rice as part of the fulfillment of the quota. See: <https://www.khmertimeskh.com/50664440/rice-exports-to-china-still-under-last-years-quota-crf>

⁴⁵³ <https://www.aljazeera.com/news/2019/01/190118061520515.html>; http://www.xinhuanet.com/english/2019-01/17/c_137751756.htm. As a result, Cambodia initiated a case against the EU in the International Court of Justice. See: <https://www.reuters.com/article/us-eu-cambodia-rice/cambodia-takes-eu-to-court-over-rice-import-tariffs-idUSKCN1RN17S>

⁴⁵⁴ <https://www.reuters.com/article/us-cambodia-rice-china/cambodias-eu-rice-exports-fall-sharply-after-tariffs-china-sales-up-idUSKCN1U30GZ>

⁴⁵⁵ <https://www.phnompenhpost.com/business/china-greenlights-18-more-cambodian-rice-exporters>

⁴⁵⁶ <https://www.khmertimeskh.com/50571452/china-vows-to-continue-to-support-the-government>

pledged 4 billion yuan (\$588 million) in aid to Cambodia for the time period from 2019 to 2021.⁴⁵⁷

In January 2019, Cambodian Foreign Minister Prak Sokhonn met with Australian Senator Scott Ryan and gave assurances that no Chinese military base was being planned or constructed in Cambodia and that the RGC would not allow one in the future. Ministry spokesman Ket Sophann said: “Cambodia has complied with its constitution by not allowing foreign troops to be present on Cambodia’s territory, nor does it require the involvement of foreign troops to attack another country.”⁴⁵⁸

In January, a visiting US official stated that the allegations that the US was attempting to overthrow the government were false. The US had taken a stance critical of the 2018 elections and stated that they failed to express the people’s will and were a setback for democracy. *U.S. Department of Defense Deputy Assistant Secretary for South and Southeast Asia Joseph H. Felter* met with Gen. Neang Phat along with senior members of his staff from the Ministry of Defense. In an interview with VOA news, Felter indicated that officials from the two countries discussed regional and international security, as well as bilateral and multilateral cooperation. He noted that they had reached an agreement to resume cooperation in relation to POW/MIA recovery in Cambodia, with a plan to conduct joint search operations. He also recognized the progress in Cambodia’s contribution to peacekeeping operations. Felter asserted: “I think we have a shared vision with Cambodia for the Free and Open Indo-Pacific region. I think Cambodia shares our vision. We want Cambodia to be a strong, independent, and sovereign country. And we stand by them. Anyway, they might invite us to do so, to help them to maintain their sovereignty and build the capacity of the military. In the case that we were discussing, we would help them to protect their sovereignty.” However, he also made clear that improved cooperation would be dependent upon a degree of democratization of Cambodia’s public sphere. Specifically, he addressed the prosecution of Kem Sokha: “The charges against him were directly related to conspiring with the US. And they’re just false and I think that would be a nice gesture on Cambodia’s part to drop those charges and I think that would be one example of an area that would help us move down that path that I just described

⁴⁵⁷ <https://www.scmp.com/news/asia/southeast-asia/article/2183145/cambodian-pm-hun-sen-welcomes-extra-us600-million-aid>; <https://abcnews.go.com/International/wireStory/cambodia-leader-china-give-600-million-grant-aid-60535552>; <https://theaseanpost.com/article/china-promises-cambodia-us600-million-aid>

⁴⁵⁸ <https://www.khmertimeskh.com/50570720/no-chinese-naval-base-in-kingdom>

towards improving our military relationship and increasing military-to-military cooperation.”⁴⁵⁹

In Feb 2019, Hun Sen made a public speech that claimed that US policy on Venezuela was evidence that the US was attempting to overthrow the Cambodian government and destroy peace in Cambodia. This echoed similar claims regarding the situation in Syria made by the RGC in 2017. In a speech before a large assembly of workers, Hun Sen posed the question of US intervention and declared: “There is no need to wonder. This is to create trouble, and that is why I insist on being careful with Cambodia’s peace. We must not allow the foreigners to interfere and collude with people inside to attempt to destroy our hard-earned peace.”⁴⁶⁰

On 1 February 2019, PM Hun Sen made a public announcement rejecting rumors that the ruling party was intending to amend the Cambodian constitution in order to allow a Chinese naval base in Cambodia. Hun Sen was responding to a 29 January threat assessment by US Director of National Intelligence, which was submitted to the Senate Select Committee on Intelligence. Coats indicated that the dissolution of the major opposition party in Cambodia created authoritarian conditions allowing for the legal changes which would pave the way for Chinese military expansion.

By mid-February 2019, it was announced that China was giving funding for special projects in Cambodia in the amount of 7.66 million USD in relation to Lancang-Mekong Cooperation Special Fund 2018. The funding augmented China’s soft power in Cambodia by supporting capacity building, education, research and exchange programs at the Foreign Affairs Ministry.⁴⁶¹ On 26 February 2019, in conjunction with a 5-day visit by an RCAF delegation headed by likely heir to the PM-position, Lt. General Hun Manet, the PLA released a statement that hailed the deep friendship and steadfast ties between the Chinese military and the Cambodian military. Cambodian army spokesman Brigadier General Mao Phalla said: “The visit is to strengthen the relationship between the two armies and seek continued assistance from China.”

⁴⁵⁹ <https://www.voacambodia.com/a/interview-senior-pentagon-official-visits-cambodia-talks-phnom-penh-ties-indo-pacific-strategy/4749209.html>

⁴⁶⁰ <https://www.asiatimes.com/2019/02/article/hun-sen-invokes-venezuela-to-stir-anti-us-fear/>

⁴⁶¹ <https://www.khmertimeskh.com/50578298/china-signs-off-on-special-funds-projects-2>

On 29 March 2019, China and Cambodia jointly pledged to increase security cooperation. In a meeting between Guo Shengkun, a member of the Political Bureau of the Communist Party of China (CPC) Central Committee, and head of the Commission for Political and Legal Affairs of the CPC Central Committee, and visiting Cambodian Deputy Prime Minister and Interior Minister Sar Kheng, the officials agreed to increase collaboration in law enforcement to ensure security and stability.⁴⁶² Mr Kheng met with Public Security Minister Zhao Kezhi and signed three agreements on security cooperation. These were an MoU on anti-telecommunication fraud, a five-year plan of action between the Cambodian MOI and the Chinese public security ministry, and an agreement for initiating the '2019 Year of Law Enforcement Cooperation'.⁴⁶³ Interior Ministry spokesman General Khieu Sopheak described the agreement as necessary for combatting transnational crimes and emphasized the importance of repatriating foreign criminals.⁴⁶⁴ By the end of April, PM Hun Sen had announced that China was giving 90 million USD worth of military aid to Cambodia.⁴⁶⁵ Hun Sen also indicated that the meeting had taken place with several large Chinese companies that pledged to increase investment in Cambodia.⁴⁶⁶ This came after an announcement by Hun Sen that although Taiwanese investment and business were welcome in Cambodia, formal diplomatic relations were discounted and a Taiwanese consulate was rejected.⁴⁶⁷ At a reception for the Chinese-Khmer community, the PM declared: "Under my leadership, I will continue to strongly support the One-China Policy. You all have to support that."

Another issue in US-Cambodia relations, in connection to the decline of democracy in Cambodia, has been the continued participation of Cambodia in the US GSP (Generalized System of Preferences) trade arrangement. States participating in the GSP trade framework must comply with eligibility criteria set by US law, which include a demonstration of compliance with internationally recognized labor rights,

⁴⁶² http://www.xinhuanet.com/english/2019-03/29/c_137934617.htm; http://www.xinhuanet.com/english/2019-03/29/c_137934806.htm;

⁴⁶³ <https://www.khmertimeskh.com/50592100/agreements-signed-during-sar-khengs-trip>

⁴⁶⁴ <https://www.khmertimeskh.com/591530/sar-kheng-to-sign-security-deal-with-china/>. "According to a GID report, Cambodia has deported a total of 14,909 foreigners from 93 different countries since 2014. Among them, 1,649 Chinese nationals were deported for allegedly committing economic crimes." Security agreements to extend law enforcement cooperation have intensified over the course of the 5th mandate of the National Assembly and into the 6th mandate. See: <https://www.khmertimeskh.com/55842/china-cambodia-vow-to-enhance-cooperation-on-law-enforcement-security/>

⁴⁶⁵ <http://en.freshnewsasia.com/index.php/en/localnews/13837-2019-04-29-05-57-10.html>;

⁴⁶⁶ <https://www.khmertimeskh.com/50599134/hun-sen-announces-90-million-defence-grant-from-china>

⁴⁶⁷ <https://www.khmertimeskh.com/50595518/hun-sen-against-taiwanese-consulate>

eliminating the worst forms of child labor, and protection of intellectual property rights.⁴⁶⁸ Three pieces of legislation relevant to US-Cambodia relations and Cambodia's participation in the GSP arrangement were introduced in the US legislature in 2019.⁴⁶⁹ These were the Cambodia Democracy Act⁴⁷⁰, Cambodia Trade Act of 2019, and the Cambodia Accountability and Return on Investment Act of 2019.

On 8 January 2019, US Senators introduced a bill calling for the review and removal that proposed Cambodia be removed from the Generalized System of Preferences trade arrangement, which gives trading partners preferential treatment, S. 34: Cambodia Trade Act of 2019.⁴⁷¹ On 26 February 2019, two US congressmen, Alan Lowenthal, and Steve Chabot⁴⁷², submitted an identical bill (H.R. 1736: Cambodia Trade Act of 2019) to the US House of Representatives.⁴⁷³

⁴⁶⁸ <https://ustr.gov/sites/default/files/files/gsp/GSP%20Guidebook%20April%202018.pdf>

⁴⁶⁹ On 12 December 2017, a bill was introduced in the House of Representatives by US Congressmen Lowenthal and Chabot. H.Res. 661 (115th): Reaffirming the commitment of the United States to promote democracy, human rights, and the rule of law in Cambodia. The proposed law was introduced in the 115th Congress (2017-2019). The bill was not enacted and is considered to have 'died in congress'.

<https://www.govtrack.us/congress/bills/115/hres661>; <https://www.govtrack.us/congress/bills/115/hres661/text>

⁴⁷⁰ On 25 July 2018, just days before the Cambodian National Election, the Cambodia Democracy Act of 2018 (H.R. 5754) was passed by the US House of Representatives. The proposed legislation was introduced by House Foreign Affairs Subcommittee Chairman Ted S. Yoho (R- FL). It established a policy of increased sanctions in the form of asset freezes on RGC officials (both government and military). US Representative Yoho released a statement which asserted: *"The Cambodian people are being cheated out of their right to have free and fair elections. Hun Sen, Cambodia's strongman Prime Minister, has tightened his grip on that country for decades and has no intention of relinquishing power. Hun Sen has decided that if he can no longer dominate the polls even in a rigged election system, he will retain control through force. His actions are a direct assault on democracy and the peaceful people of Cambodia. Hun Sen's relentless and systematic consolidation of power means that his numerous abuses, which include, violence, threats, attacks against NGOs, and the shuttering of critical media outlets, will only continue. The Cambodia Democracy Act of 2018 will push back against the Hun Sen regime's undermining of democracy and related human rights abuses by applying financial sanctions to the individuals who carry out this despicable agenda and codifying the Administration's existing visa restrictions for these individuals."* <https://yoho.house.gov/media-center/press-releases/house-passes-yoho-bill-to-punish-hun-sen-s-assault-on-democracy>. See also:

<https://www.phnompenhpost.com/national/sanctions-bill-introduced-us>. The bill was approved in the US House but then stalled in Senate Committee, and died there as committee staff indicated in December 2018 that there were no plans to review the bill. <https://www.voacambodia.com/a/cambodia-sanctions-bill-to-die-in-senate-/4705842.html>. For the RGC response to the bill see: <https://www.phnompenhpost.com/national/new-us-bill-violation-cambodian-independence>

⁴⁷¹ <https://www.govtrack.us/congress/bills/116/s34>; <https://www.govtrack.us/congress/bills/116/s34/text>. This bill was the first stage of the legislative process. It was introduced into Congress on January 8, 2019. Ordinarily, it would typically be considered by committee before potentially be sent on to the House or the Senate as a whole.

⁴⁷² <https://lowenthal.house.gov/media/press-releases/congressmen-lowenthal-and-chabot-introduce-bill-suspend-cambodias-preferential>

⁴⁷³ <https://www.congress.gov/bill/116th-congress/house-bill/1376> <https://www.govtrack.us/congress/bills/116/hr1376>; <https://www.govtrack.us/congress/bills/116/hr1376/text>; <https://www.voacambodia.com/a/us-congressmen-introduce-cambodia-trade-sanctions-bill/4806172.html>

Seang Thay, a Cambodian commerce spokesman, said the effect would be highly detrimental to the Cambodian economy. The trade arrangement has been in place since 1997, and in 2018 Cambodia exported garments to the US duty-free for the amount of 400 million USD.⁴⁷⁴ The bill was stipulated that the change in GSP status should result from the deterioration of the human rights situation in Cambodia.⁴⁷⁵ US Senator Coons declared to media: “I think this is an important signal to the Cambodian government that they need to reconsider some of the recent actions or face a very real possibility of review of their GSP eligibility. This is a bi-partisan expression of concern about the direction of the Cambodian government.” A joint press release by US senators Ted Cruz and Chris Coons asserted that Cambodia should be removed from the GSP arrangement because of undermining democracy and violating both labor standards and intellectual property rights. It also accused PM Hun Sen of showing long-term disdain for the rule of law, fundamental freedoms, and fair elections. It also rejected Cambodia’s turn to China.⁴⁷⁶

Also, in January, the Cambodia Democracy Act was revived in the US legislature in the form of the Cambodia Democracy Act 2019 (H.R. 526). It was introduced on 11 January 2019, by Congressman Yoho. This legislation has since passed in the US House of Representatives (see below).⁴⁷⁷ The proposed law was also introduced in the US Senate on 18 December 2019 (S. 3081 companion legislation to H.R. 526).⁴⁷⁸ It has been reviewed twice and sent to the Senate Foreign Relations Committee.

In mid-March 2019, the American Chamber of Commerce in Cambodia released a statement rejecting the proposal to review and/or remove Cambodia from the GSP.⁴⁷⁹ AmCham Cambodia declared: “We believe the use of the GSP review process as a means for sending a political message, which is unrelated to the spirit

⁴⁷⁴ <https://www.voacambodia.com/a/commerce-ministry-slams-us-congressman-over-trade-sanctions-bill/4807957.html>

⁴⁷⁵ <https://www.khmertimeskh.com/582341/two-us-congressmen-seek-review-of-cambodias-duty-free-exports-status/>

⁴⁷⁶ <https://www.phnompenhpost.com/business/us-senators-call-gsp-trade-privilege-cut>

⁴⁷⁷ <https://www.voacambodia.com/a/us-lawmakers-confident-cambodia-sanctions-bill-will-pass/4763568.html>

⁴⁷⁸ <https://riponadvance.com/stories/gardner-proposes-bipartisan-bill-to-uphold-democracy-human-rights-in-cambodia/>

⁴⁷⁹ <https://amchamcambodia.net/amcham-responds-to-cambodia-trade-act-of-2019/>

of the 1974 Trade Act, will drastically decrease the goodwill and progress this system has created among the ordinary Cambodian citizens.”⁴⁸⁰

Also in March 2019, the US State Department released its 2018 Human Rights Report for Cambodia, which stated: “Human rights issues included unlawful or arbitrary killings carried out by the government or on its behalf; forced disappearance carried out by the government; torture by the government; arbitrary arrests by the government; political prisoners; arbitrary interference in the private lives of citizens, including pervasive electronic media surveillance; censorship and selectively enforced criminal libel laws; interference with the rights to peaceful assembly and freedom of association; restrictions on political participation; pervasive corruption, including in the judiciary; and use of forced or compulsory child labor. The government did not provide evidence of having prosecuted any officials for abuses, including corruption. A pervasive culture of impunity continued.”⁴⁸¹ Chin Malin, spokesman for the Ministry of Justice, rejected the report as politically motivated. He claimed: “We don’t count it as rights abuses. We consider it following the law, which any government does.”⁴⁸²

On 22 March 2019, Washington State Senator Doug Ericksen met with Prime Minister Hun Sen. Ericksen validated the 2018 elections resulting in a legitimate popular mandate for the government and categorized them as “free, just and non-violent”. Ericksen had led a delegation of US officials to observe the election on 29 July 2018.⁴⁸³ Ericksen is widely known to be on the payroll of the RGC as an advisor and, as a result, has fallen into disrepute with experts on Cambodian politics in the US. He has conceded to lobbying for the government of Cambodia and registered as a foreign agent in the US. Moreover, his position as a state senator, makes him an ineffective conduit to foreign policy policymakers in Washington, D.C.⁴⁸⁴

⁴⁸⁰ <https://www.khmertimeskh.com/50586315/introduction-of-trade-act-is-unacceptable-amcham-cambodia/>; <https://www.khmertimeskh.com/50586570/amcham-trade-privileges-cutbacks-would-be-counterproductive>

⁴⁸¹ <https://www.state.gov/wp-content/uploads/2019/03/CAMBODIA-2018.pdf>

⁴⁸² <https://www.voacambodia.com/a/cambodia-rejects-findings-of-us-rights-report/4830816.html>

⁴⁸³ <https://www.khmertimeskh.com/50589681/us-politician-lauds-progress-during-meet-with-hun-sen>

⁴⁸⁴ <https://www.seattletimes.com/seattle-news/politics/state-sen-doug-ericksen-gets-500000-lobbying-contract-from-cambodian-government-he-praised/>; <https://thediplomat.com/2019/12/why-is-a-washington-state-senator-lobbying-for-cambodia/>; https://www.lyndentribune.com/news/sen-ericksen-now-also-an-agent-for-cambodia/article_3b93e9ce-60a5-11e9-8614-c38ab52b41bb.html

In May 2019, the Cambodia Accountability and Return on Investment Act of 2019 (CARI Act or S-1468) was proposed in the US Senate by lawmakers Sens. Lindsey Graham, R-S.C., Dick Durbin, D-Ill., and Marco Rubio, R-Fla. The Senators asserted that they aimed to foment compliance of the Cambodian government with the 1991 Paris Peace Agreement. The bill reflects the view that Cambodia has become subservient to China and stipulates that Cambodia is required to “protect its sovereignty from interference”. The proposed legislation also sets out penalties for the RGC’s failure to comply with the stipulated reforms. It established that Cambodia would face US opposition to loans through the World Bank and IMF, that the US would impose visa restrictions on Cambodian officials, as well as potential asset freezes. Senator Graham asserted that the bill reflected the growing concern with Chinese influence on Cambodia and the decline in democracy in Cambodia. It sets out conditions for the restoration of democracy expected of the RGC, such as release of political prisoners and the dropping of charges against opposition leaders, as well as government critics. Specifically, the bill calls for the “immediate and unconditional release from house arrest of opposition politician Kem Sokha and the dismissal of the politically motivated charges against him.” As well, it mentions the prosecution of the former RFA journalists and a reversal of the amendments to the law on political parties.⁴⁸⁵

On 15 July 2019, the US embassy in Cambodia released a statement which asserted the US government was “concerned by the Cambodian government’s ongoing practice of using baseless, politically motivated charges to harass its citizens, including the recent arrests of several people peacefully remembering the life of Kem Ley.” It declared further: “All Cambodians should be able to exercise their rights to express their views freely and assemble peacefully. We have consistently urged the Cambodian government to remove undue political restrictions on all persons in Cambodia, release those prisoners who have been arbitrarily or unlawfully detained, and uphold human rights and fundamental freedoms.” The response of the RGC was evident from the public commentary by ruling party spokesperson Sok Eysan, who rejected the claim that there were any restrictions on rights in Cambodia. He claimed: “This is just their opinion. Their view is politically biased. This is why they have said what they have. There are no restrictions if [people] don’t violate the law.”⁴⁸⁶

⁴⁸⁵ <https://www.voacambodia.com/a/us-senate-bill-targets-chinese-influence-in-cambodia/4938967.html>

⁴⁸⁶ <https://www.phnompenhpost.com/national-politics/us-concerned-governments-ongoing-harassment-citizens>

Also on 15 July 2019, the US House of Representatives passed the Cambodia Democracy Act 2019.⁴⁸⁷ If the bill becomes a law, it will stipulate that the US President applies property and visa restrictions against all senior RGC officials, including both the government and military, as a response to dismantling democracy and committing human rights violations.⁴⁸⁸ The Cambodian Ministry of Foreign Affairs responded with the statement: “The ministry reiterates Cambodia’s unwavering commitment to pursuing a liberal multi-party democracy and upholding the rule of law and respect for fundamental freedoms in conformity with Cambodia’s constitution,” it said. “The ministry urges all foreign legislative bodies to maintain their impartiality and to refrain from any unnecessary moves that are disrespectful to the sovereignty and the internal affairs of Cambodia.”⁴⁸⁹

Cambodian government spokesman, Phay Siphan claimed that the bill was in contrary to the will of the Cambodian people and the results of peaceful and democratic elections. He asserted: “U.S. politicians’ intention on Cambodia always doomed to fail. This legislation only aims to destroy the democracy that Cambodia continues to strengthen that starts from election rights for the people. Secondly, this legislation aims to destroy efforts to build relationships and cooperation between the two peoples.”⁴⁹⁰

Leader of the former major opposition party CNRP, Sam Rainsy, asserted: “This legislation will revive democracy in Cambodia. This legislation directly puts sanctions on the current Cambodian leaders and family members of the dictator. This legislation won’t affect the living conditions of the Cambodian people. The pressure is not going to be from the U.S. alone. Once the legislation is enacted, the pressure will also come from within the ruling Cambodian People’s Party as well, because some leaders are not happy with what Hun Sen has done to upset the U.S.”

US representative Yoho (Rep, FL) said, “This is a step showing that America believes that the people of Cambodia should have democracy. ... It’s a step in the right direction to put pressure on the people that are denying them of that. From Hun Sen down to his army generals — the people that are blocking free speech in

⁴⁸⁷ The vote in the US House of Representatives was unanimous, with representatives addressing the floor referring to PM Hun Sen as a dictator. <https://vodenglish.news/us-house-passes-bill-to-sanction-cambodian-officials/>

⁴⁸⁸ <https://www.khmertimeskh.com/624563/government-slams-us-over-possible-sanctions/>

⁴⁸⁹ <https://www.khmertimeskh.com/50624717/officials-defend-kingdoms-record-amid-us-concern/>

⁴⁹⁰ <https://www.voanews.com/east-asia-pacific/us-house-passes-bill-sanction-cambodias-top-officials>

that country and fair and open elections.” On the floor of the US House of Representatives, Congressman Engel (Dem, NY), chairman of the House Foreign Affairs Committee, asserted: “This bill sends a clear message that the United States stands shoulder to shoulder with the people of Cambodia, and that the Congress will hold Cambodia’s leaders accountable for their assault on democracy and violations of human rights.”⁴⁹¹

Following the US House of Representative's decisions, Hun Sen asserted that: “Sanctions against Sar Kheng equals cutting police cooperation. Sanctions against Prak Sokhonn equals cutting diplomatic ties.”⁴⁹² The RGC characterized the bill as partisan in support of the banned opposition party. Government spokesman Phay Siphon asserted: “This is a wrong political decision because it’s against a Cambodian hero who has been recognized by more than 50 percent of Cambodians. Therefore, this is like an anti-Cambodia law as well as anti-good cooperation between Cambodia and the US. This is also a continued failure of US policy since the 1970s.”⁴⁹³ The Cambodian Minister of Defense rejected the sanctions as unjust and demonstrative of a trend of opposition to Cambodia and its development. He stated: “They do not acknowledge Cambodia’s efforts that have been made so far, but instead use their rights and power to find ways to impose sanctions like this or like that. They prevent that which can boost Cambodia’s growth. [The sanctions] seem to be based on their sentiments or whatever they want to do. Some countries have vast resources and budgets, but they do not use them to help countries that face difficulties. Instead, they use it to hinder them, impose sanctions, blame and find a pretext to claim that there is no respect for human rights, to kill democracy, and to affect the development of poor countries.” However, independent political analyst Lao Mong Hay noted that the countries the Minister was rebuking had made large contributions to Cambodian development since the Paris Peace Agreements of 1991.⁴⁹⁴

On 2 June 2019, Chinese Defense Minister General Wei Fenghe dismissed a US Department of Defense report that alleged China was developing a military base in Cambodia. The US Department of Defense had released a report of an updated

⁴⁹¹ <https://www.voanews.com/east-asia-pacific/us-house-passes-bill-sanction-cambodias-top-officials>

⁴⁹² <https://www.voacambodia.com/a/amid-souring-relations-us-appoints-experienced-asia-diplomat-to-cambodia/5043406.html>

⁴⁹³ <https://www.voacambodia.com/a/us-house-passes-cambodia-sanctions-bill/4502948.html>

⁴⁹⁴ <https://www.phnompenhpost.com/national-politics/banh-takes-aim-sanctions>

US Indo-Pacific Strategy.⁴⁹⁵ However, on 22 July 2019, a major US newspaper published a report on a ‘secret deal’ between Cambodia and China for a Chinese military base in Cambodia. The article contended:

China has signed a secret agreement allowing its armed forces to use a Cambodian navy base near here, as Beijing works to boost its ability to project military power around the globe, according to U.S. and allied officials familiar with the matter. The pact—signed this spring but not disclosed by either side—gives China exclusive rights to part of a Cambodian naval installation on the Gulf of Thailand, not far from a large airport now being constructed by a Chinese company. Some details of the final deal were unclear, the officials said, but an early draft, seen by U.S. officials, would allow China to use the base for 30 years, with automatic renewals every 10 years after that. China would be able to post-military personnel, store weapons and berth warships, according to the draft.⁴⁹⁶

The Wall Street Journal report claimed Cambodia and China had already signed the agreement, and afterward it was kept secret and not released. The alleged agreement allowed Cambodia to use the base for 30 years, and automatically renew use every ten years. Chhum Socheat, the spokesman for Cambodia’s Ministry of National Defense, asserted that the report was “made up and baseless”. The Chinese foreign ministry declined to respond to repeated questions from the media.⁴⁹⁷

Following the report, the US embassy in Cambodia released a statement that declared: “This causes us to wonder if the Cambodian leadership’s plans for Ream Naval Base include the possible hosting of foreign military assets and personnel on Cambodian soil. We are also monitoring media reports about the potential military use of Dara Sakor by China.” A Financial Times investigation to the area reported that workers on the project and local villagers who were told to sell their land stated they believed the development was to be used for military purposes. Carl Thayer, a professor emeritus at the University of New South Wales Canberra,

⁴⁹⁵ <https://www.khmertimeskh.com/50611488/china-again-denies-building-of-naval-base;>
<https://www.voacambodia.com/a/chinese-defense-minister-denies-military-presence-in-cambodia/4943615.html>.
The US Indo-Pacific Strategy report can be found at: <https://media.defense.gov/2019/Jul/01/2002152311/-1/-1/1/DEPARTMENT-OF-DEFENSE-INDO-PACIFIC-STRATEGY-REPORT-2019.PDF>

⁴⁹⁶ <https://www.wsj.com/articles/secret-deal-for-chinese-naval-outpost-in-cambodia-raises-u-s-fears-of-beijings-ambitions-11563732482>

⁴⁹⁷ It was also reported the Australian Ministry of Foreign Affairs, Marise Payne, that the US would be developing a military installation in Northern Australia near the port of Darwin. Already, approximately 2000 US troops are stationed there on a rotating basis. The US installation would function to counterbalance to Chinese development near Darwin related to a 99-year lease obtained by China’s Landbridge Group in 2015. See: <https://www.telegraph.co.uk/news/2019/07/30/cambodia-increase-arms-purchases-china-secret-deal-lend-naval/>

opined that a Chinese military agreement was likely, but probably not entail a full military base because there was not a lot to gain for China given that it could already count on Cambodia a fully compliant client state.⁴⁹⁸

Shahriman Lockman, senior analyst at the Institute of Strategic and International Studies in Malaysia, noted that it was inevitable that China's largesse would eventually produce strategic gains. He claimed that although a naval base would certainly add the apprehension for Vietnam by increasing pressure, he also opined: "But on a regional scale, it's not entirely clear what such a facility would add to what China already has in Hainan and on the various artificial islands it occupies in the South China Sea."⁴⁹⁹

At the end of July, Hun Sen conducted a publicly displayed inspection of the National Sports Complex, which would be the primary site for hosting the 2023 Southeast Games, financed by China in the amount of 170 million USD. There he rebuked the US Democracy Act, declaring the US should freeze assets of corrupt officials. Hun Sen asserted: "Cambodia and China have no need to sign a secret deal. No need at all. Now I can say frankly that I am transporting [weapons] by ship. I have spent \$40 million on buying arms from China, in addition to the \$200 million previously spent on such purchases."⁵⁰⁰ It was reported that the purchase would include tens of thousands of small arms to update old stock.⁵⁰¹

On 1 August 2019, at the ASEAN Foreign Ministers Meeting in Bangkok, Thailand, US Secretary of State Mike Pompeo acknowledged the RGC denial of the alleged military base and issued a call for other states to buttress their sovereignty against pressures from Chinese militarization. He asserted: "Cambodia refuted reports that it is allowing a Chinese military installation to be built on its territory. The United States welcomes Cambodia's strong defense of its national sovereignty, and we encourage other nations in the region to follow Cambodia's lead in protecting it." In response, RGC spokesman Phay Siphan said: "He has provided justness to Prime Minister Hun Sen who has sacrificed himself in protecting

⁴⁹⁸ <https://www.ft.com/content/861d20ce-ad39-11e9-8030-530adfa879c2>

⁴⁹⁹ <https://www.aljazeera.com/news/2019/11/exiled-cambodian-opposition-leader-calls-peaceful-uprising-191112103230263.html>

⁵⁰⁰ <https://www.phnompenhpost.com/national/breaking-kingdom-spent-40-million-year-chinese-weapons-says-pm>

⁵⁰¹ <https://www.reuters.com/article/us-china-cambodia/cambodia-says-to-increase-arms-purchases-from-china-idUSKCN1U00HS>. Note that Reuters reported that Hun Sen announced that the 40 million USD would be in addition to 290 million previously spent on Chinese arms.

national sovereignty, making friends with other countries, and has never interfered in other countries' internal affairs."⁵⁰²

On 1 August 2019, after a delay of several months, W. Patrick Murphy was approved by the U.S. Senate to take over as U.S. ambassador for Cambodia. That position had remained empty since former Ambassador William A. Heidt left the position at the end of 2018. Murphy, was formerly the U.S. Deputy Assistant Secretary of State, in charge of Southeast Asia. In December 2017, speaking at the US Ambassador's residence in Phnom Penh, he declared: "When we had said that we had a concern, we also said that we would be required to take measures if there were further backtracking of democracy." Murphy had previously served as deputy chief of mission and chargé d'affaires at the U.S. Embassy in Thailand, during the period when Thailand shifted to military rule and with a military coup ending substantial democracy in Thailand that has only been restored partially through flawed elections. Murphy also served to lead a 2012-13 reconciliation mission to Myanmar, engaging with a highly militarized government. At his Senate confirmation hearing in 2018, Murphy asserted: "If confirmed, I will work closely with Congress to advance U.S. interests in Cambodia, promoting democracy, human rights, and fundamental freedoms, building on the strong support the United States enjoys among the Cambodian public."

Former U.S. Ambassador to Myanmar and current head of the National Democratic Institute, Derek Mitchell, highlighted his confidence in Murphy's capacities. Kurt Campbell, formerly the US Assistant Secretary of State for East Asian and Pacific Affairs until 2013, emphasized that Murphy is one of the most experienced and knowledgeable diplomats on Asia and Southeast Asia. CPP spokesman and Senator Sok Eysan viewed the appointment of the new Ambassador as an indication that Cambodia was a high priority, and that US-Cambodia relations were likely to improve. He asserted: "I am confident [that our relations will improve], because he has years of diplomatic experience. He is very experienced and knowledgeable about [regional] diplomacy." He also claimed: "Given Murphy's experience, Cambodia would be at the center of [U.S.] diplomacy."

Ear Sophal, an associate professor in diplomacy and world affairs at Occidental College: "You've got China propping up Phnom Penh, and it really makes it hard

⁵⁰² <https://www.khmertimeskh.com/50630142/us-welcomes-cambodias-denial-of-chinese-military-presence>

to come to the table with something Phnom Penh wants that China can't provide. Phnom Penh doesn't want human rights and democracy, only fake human rights and fake democracy."⁵⁰³ On the other hand, Andrew Mertha, director of China Studies at Johns Hopkins School of Advanced International Studies, said: "The fact that he is a 'democracy hawk' means he will almost certainly clash with Hun Sen, but that is not necessarily a bad thing. Hun Sen respects strength."

Murphy's appointment came at a time when US-Cambodia relations had reached an abysmal low, and multiple experts on Cambodian politics urged for a new approach.⁵⁰⁴ Merta has argued for a needed reset in relations and advocated for debt forgiveness from the US, centering on the Sebastian Strangio, a journalist and expert on Cambodia (author of *Hun Sen's Cambodia*), interpreted Murphy's appointment as a positive step centering on a 500 million USD debt from before the Khmer Rouge regime. Sebastian Strangio has argued that focusing bilateral relations on criticism and pressure related to the decline of respect on human rights in Cambodia had yielded little results, and fomented a closer relationship between Cambodia and China. Strangio asserted: "Hun Sen has looked around for another large power that can offer him the aid of infrastructure funding that he needs to sustain himself in power, but is not going to criticize about the set of Cambodian democracy and is not going to 'meddle in Cambodian affairs.'"⁵⁰⁵

At the end of August 2019, US Brigadier General Joel B Vowell, a senior officer in the Indo-Pacific Command, said the US had solid evidence that Cambodia and China were entering into a partnership involving a PLA Naval installation in Cambodian territory. According to Vowell, the US was also concerned about the construction of a large airstrip for a resort development located 70 kilometers from

⁵⁰³ <https://www.voacambodia.com/a/amid-souring-relations-us-appoints-experienced-asia-diplomat-to-cambodia/5043406.html>

⁵⁰⁴ US Ambassador Murphy was active after taking up his post, and although still emphasizing democratization in Cambodia, he shifted focus to improving security cooperation and military relations. See:

<https://www.phnompenhpost.com/national-politics/murphy-confirmed-us-envoy>;
<https://www.phnompenhpost.com/national-politics/new-envoy-murphy-aims-bolster-ties>;
<https://www.khmertimeskh.com/652764/us-ambassador-meets-king-as-he-looks-to-strengthen-ties/>;
<https://www.phnompenhpost.com/national-politics/king-sihamoni-us-envoy-murphy-meet>;
<https://www.phnompenhpost.com/national-politics/hun-sen-set-meet-foreign-envoys-us-ambassador-murphy>;
<https://www.phnompenhpost.com/national-politics/pm-meets-new-german-us-and-japanese-envoys>;
<https://www.phnompenhpost.com/national-politics/us-ambassador-meets-sar-kheng>;
<https://www.phnompenhpost.com/national-politics/banh-talks-ongoing-over-us-cooperation>;
<https://www.phnompenhpost.com/national-politics/us-cambodia-pledge-strengthen-military-ties>

⁵⁰⁵ <https://www.voacambodia.com/a/experts-say-us-Cambodia-relationship-at-crisis-point/5058503.html>

the naval base. US policymakers and military officials suspect that the naval base is part of Beijing's 'string of pearls' strategy, which includes Chinese naval installations at Hambantota in Sri Lanka, Gwadar in Pakistan, and a full military base in Djibouti. As such, the Cambodian base would function as a force-multiplier.⁵⁰⁶

On 10 September 2019, Royal Armed Forces Commander Lieutenant General Hun Manet, met with United States Army Pacific Commander General Robert B. Brown, with both expressing a commitment to improving military ties between the two countries.⁵⁰⁷ This occurred in a meeting of military officials of Indo-Pacific states held in Bangkok, with the theme 'Achieving Sustainable Security: A new perspective for Indo-Pacific Armies'. Only a day prior, on 9 September 2019, Hun Manet met with Lieutenant General Chang Ming Kai, China's People's Liberation Army deputy commander, to discuss fortifying ties between the two militaries. Hun Manet stated: "Over the years, relations between the two peoples, especially between the two armies, have been one of mutual trust."⁵⁰⁸ The meeting on 10 December was the second time in 2019 that Hun Manet engaged in military

⁵⁰⁶ <https://www.asiatimes.com/2019/09/article/buying-cambodia-chinas-long-embrace-of-a-tyrant/>

⁵⁰⁷ Hun Manet conducted multiple military diplomacy engagements during the course of 2019, in addition to those mentioned in this report. For example: on 25 March, Hun Manet Lt Gen Manet met with Russian Army General and Commander-in-Chief of the Russian Ground Forces General Oleg Salyukov to strengthen cooperation (<https://www.khmertimeskh.com/50590662/cambodian-army-delegation-discusses-cooperation-in-russia>) ; at the beginning of April 2019 Lt Gen Manet, who is commander of the Royal Cambodian Army, met with Thai Defence Minister General Prawit Wongsuwan and army commander-in-chief General Apirat Kongsompong in order to "strengthen solidarity and cooperation between armies" (<https://www.khmertimeskh.com/50593369/hun-manet-returns-from-thailand-after-meeting>); in mid-May Hun Manet conducted a four day visit to Vietnam where he met with Lieutenant General Phan Van Giang, Vietnam's Deputy Defence Minister and Chief of General Staff of the People's Army, Major General Hoang Xuan Chien, Vietnam's Border Protection commander and the directors of several Vietnamese army training schools (<https://www.khmertimeskh.com/605212/hun-manet-in-vietnam-to-boost-army-ties/>); in June he met with Singapore's senior minister and Coordinating Minister for National Security Teo Chee Hean and Minister of Foreign Affairs Vivian Balakrishnan to discuss increasing ties and cooperation (<https://www.khmertimeskh.com/613550/hun-manet-in-singapore-to-boost-military-ties/>); in October Manet met with Major General Lenard Agustin, the Philippines Army's 7th Infantry Division commander and the two agreed on increased cooperation in terms of training and information sharing (<https://www.khmertimeskh.com/50651346/philippine-army-vows-to-boost-ties-with-rcaf>); in October Hun Manet held bilateral talks with South Korean Defence Ministry Vice Minister Park Jae Min and met with General Suh Wook, general officer of the South Korean army to fortify bilateral military relations (<https://www.khmertimeskh.com/652258/hun-manet-visits-south-korea-to-boost-army-ties/>); also in October Hun Manet met with Lieutenant General Muhammad Chiragh Haider, chief of staff of the General Command Headquarters of Pakistan and reached an agreement on training assistance and a joint military exercise (<https://www.khmertimeskh.com/50649709/pakistani-military-to-offer-training-to-cambodian-army>); and in December Hun Manet met with Lieutenant General Igor Mishutkin, commanding officer of the Ministry University of the Russian Defence Ministry which announced an agreement to increase training assistance for the Cambodian military (<https://www.khmertimeskh.com/50670319/russia-to-train-rcaf>).

⁵⁰⁸ <https://www.khmertimeskh.com/50642104/hun-manet-and-us-general-discuss-army-ties>

diplomacy with the US. In April 2019, he also attended the United States Special Operations Command Pacific conference with the theme of “Resilience in Sovereignty”. Hun Manet led a delegation of five senior military officials. Major General Leng Lin, Lt Gen Manet’s attaché, said: “He will hold discussions with Brigadier General Jonathan P. Braga, Commander of Special Operation Command Pacific, to strengthen corporation and boost ties between the two countries’ armies.”⁵⁰⁹ Afterwards, Hun Manet stated that military cooperation between the two countries would strengthen both armies.⁵¹⁰

In mid-October 2019, the Cambodian Minister of Defense met with military officials in China. Gen Banh attended the opening ceremony of the World Military Sporting Event and then participated in the Xiangshan Forum in Beijing. Banh gave the welcome address at the forum, which had the theme *‘Interests of Small and Medium Countries and Joint Peace’*.⁵¹¹ He discussed regional security and increased cooperation with his Chinese counterpart Wei Fenghe. Ministry spokesman General Chhum Socheat said that China trained approximately 200 Cambodian troops annually.⁵¹² As a result of that visit, Cambodia and China reached an agreement on human resource development, regional and global collaboration, and joint military exercises. Wei Fenghe asserted: “China and Cambodia are intimate friends. Under the leadership of Chinese President Xi Jinping and Prime Minister Hun Sen, bilateral relations between our countries have reached the highest level in history. China will continue to provide assistance and support to develop Cambodia’s defense sector.”⁵¹³

Following the meeting, Banh announced that China would be donating 84 million USD for capacity building of the Cambodian armed forces.⁵¹⁴ RCAF General Command spokesman Thong Solimo clarified that the 2020 joint military exercise, the Golden Dragon exercises would occur in March and entail 2,000 Cambodian troops and 200 Chinese troops. Speaking to national media, Banh asserted: “[The Chinese] are dedicated fully to helping us address our deficiencies, enabling us to

⁵⁰⁹ <https://www.khmertimeskh.com/50594760/hun-manet-in-hawaii-to-boost-ties-with-us-2>

⁵¹⁰ <https://www.khmertimeskh.com/596067/lt-gen-hun-manet-in-us-to-boost-military-ties/>

⁵¹¹ <https://www.phnompenhpost.com/national/defence-minister-china-military-games-forum>

⁵¹² <https://www.khmertimeskh.com/50651558/general-banh-off-to-china-for-military-talks>

⁵¹³ The Cambodian delegation included Hun Manith, the son of PM Hun Sen and director-general of the General Directorate of Intelligence at the Ministry of National Defense. Manith also participated in the delegation headed by Banh to Vietnam in December 2019 where agreements were also reached. See:

<https://www.phnompenhpost.com/national/banh-travels-hanoi-bilateral-military-collaboration-meets>

⁵¹⁴ The military aid (in the amount of 600 million yuan) is likely the same military assistance which was announced by PM Hun Sen earlier in the year, rather than additional aid.

move forward. If [the US] helps us partially and then demands something else, it makes it difficult for us to follow them. It is normal to cooperate when there is agreement on both sides, and we have to follow this agreement. But if cooperation comes hesitantly and requires Cambodia to do this or that, we cannot do that. That is why we have had to postpone some things.”⁵¹⁵

In the last week of October 2019, Colonel Zhang Yuang Song, chief of staff of Angkor Alliance Unit 75 of the People’s Liberation Army, met with General Ith Sarath, deputy RCAF commander, for planning the 2020 Golden Dragon exercises. It was subsequently announced that the 2020 event would include counterterrorism training and would be the first time that monitors from other states were invited to observe.⁵¹⁶

Moreover, at the end of the first week of November, the US was again criticizing Cambodia on the grounds of a lack of respect for human rights and democracy. U.S. Embassy in Cambodia spokeswoman Emily Zeeberg announced: “We call on ASEAN member states to comply with their obligations under international law and to respect the principle of non-refoulment where individuals may be at risk of persecution or torture if returned.” Human Rights Watch deputy Asia director Phil Robertson expressed criticism of Thailand’s policy of complying with requests by the RGC to no allow former CNRP officials to transit through Thailand territory, and proclaimed: “Thailand should stop playing footsie with Cambodian dictator Hun Sen, and recognize that all people have the right to both leave and return to their home country.”⁵¹⁷ On 11 November 2019, US Ambassador Murphy met with former CNRP leader Kem Sokha. Following the meeting, the ambassador asserted: “Our advice, as a friend of the Kingdom of Cambodia, is that the authorities find a way to restore Mr. Kem Sokha’s entire freedoms and liberties, to drop the charges against him, but also to use this important time and place to

⁵¹⁵ <https://www.phnompenhpost.com/national-politics/china-provide-84m-grant-strengthen-kingdoms-military>

⁵¹⁶ <https://www.khmertimeskh.com/50653801/golden-dragon-2020-to-be-held-in-kampot-province>. The 2019 Golden Dragon joint military exercise occurred in March. See:

<https://www.phnompenhpost.com/national/golden-dragon-drills-start-not-threat-says-rcaf>;

<https://www.phnompenhpost.com/national/minded-friends-forever-golden-dragon-cambodias-17-day-military-exercise-china-kicks>; <https://www.phnompenhpost.com/national/sino-cambodian-golden-dragon-joint-military-exercise-concludes>

⁵¹⁷ <https://www.bloomberg.com/news/articles/2019-11-07/cambodia-opposition-s-mu-sochua-released-plans-return-by-land-hun-sen-sam-rainsy>

do the same for many other people who have had their freedoms and liberties denied.”⁵¹⁸

Nevertheless, by the end of November, it appeared as if a significant improvement in US-Cambodia relations was on the horizon. This followed what the RGC interpreted as a statement of recognition by the Trump administration. US President Trump had issued a letter to PM Hun Sen dated 1 November 2019, which called on the Cambodian PM to “put Cambodia back on the path of democratic governance.” The US Ambassador delivered the letter to PM Hun Sen on in a meeting that took place on 21 November.⁵¹⁹ Hun Sen’s correspondence in reply stated: “I am reassured by your explicit statement whereby you seek genuine engagement to pursue democracy, individual liberty and the rule of law rather than through regime change.”⁵²⁰ Kao Kim Hourn, Minister attached to the Prime Minister, asserted: “The letter emphasizes that the US intends to continue to improve the bilateral relationship. The important thing is that the US is highly committed to supporting Cambodia, especially respecting Cambodia’s sovereignty.”⁵²¹

Prior to the meeting with PM Hun Sen, on 8 November 2019, US Ambassador Murphy met with Minister of Interior Sar Kheng. Murphy informed media that the discussion entailed potential cooperation in the areas of wildlife crime, human trafficking, child protection, and combatting international crime. Murphy stated: “We agreed to talk frankly on issues in which both sides had held differing views. I hope Cambodia can make progress in achieving full multi-party democracy in accordance with the Constitution, and that all Cambodians, whether inside or outside the country, can participate in the political process, even if they hold different views. We have noted that recent detentions have denied some freedoms for some Cambodians, and we hope that this can be restored. That would be good for Cambodia and bilateral ties, as well as for Cambodia's international standing.”

⁵¹⁸ <https://www.rfa.org/english/news/cambodia/ambassador-11112019161650.html>

⁵¹⁹ <https://www.khmertimeskh.com/50663152/prime-minister-hun-sen-meets-with-us-ambassador-patrick-murphy>

⁵²⁰ <https://www.usnews.com/news/us/articles/2019-11-27/cambodias-hun-sen-tells-trump-he-welcomes-better-relations>; <https://www.bostonglobe.com/news/world/2019/11/27/cambodia-hun-sen-tells-trump-welcomes-better-relations/mmPSmhHn9n0gxufrihGxM/story.html>; <https://www.aljazeera.com/news/2019/11/cambodias-hun-sen-tells-trump-welcomes-relations-191128030001780.html>. It is noteworthy that Trump’s letter predated the release of a massive number of detained former CNRP members or supporters. See: <https://www.aljazeera.com/news/2019/11/hun-sen-orders-release-70-cambodia-opposition-activists-191114054116701.html>

⁵²¹ <https://www.khmertimeskh.com/50667179/us-ambassador-meets-rcaf-officials>

When the Interior Minister was asked if the RCG would allow for reconciliation with the former opposition party, he replied: “I cannot tell, but we will do everything for the interests of our country.”⁵²²

On 13 November 2019, Cambodian Minister of National Defense Tea Banh met with US Ambassador Murphy and reached an agreement on renewing military cooperation. Banh informed national media the two countries agreed to joint military exercises and training, as well as permitting US naval forces to dock in Cambodia.⁵²³ On 3 December 2019, US Ambassador met with Cambodian Armed Forces (RCAF) commander-in-chief General Vong Pisen, when the agreement was reached regarding cooperation for training Cambodian troops for UN peacekeeping operations. On social media, General Pisen stated: “[Cambodia] continues to collaborate with the US by exchanging visits and finding the remains of US soldiers who had gone missing in Cambodia.” The US Ambassador indicated that the US position was that the presence of the Chinese military base in Cambodian territory was false information that had been spread to undermine the relations between the US and Cambodia. Regarding the meeting, he asserted: “[We] discussed the necessary steps for expanding security collaboration, including the promotion of human rights and democracy and the protection of Cambodia’s sovereignty from the presence of a foreign military base.”⁵²⁴

By the end of November, the US and Cambodia were again discussing cooperation in the form of increased investment from the US. On 22 November 2019, the US ambassador met with Commerce Minister Pan Sorasak in which the latter took the opportunity to tout improvements made in labor conditions in Cambodia. The Minister also solicited increased business investment in Cambodia from the US. Via social media, the Ministry announced: “Minister of Commerce Pan Sorasak asked the US to boost investments here, particularly in agriculture, gem processing, light manufacturing, and electronics.” For his part, the US ambassador indicated that the US embassy would organize a forum on agriculture for small and medium business enterprises in Feb 2019. US Embassy Spokeswoman Emily V. Zeeberg said “The United States values our economic relationship with Cambodia and our Embassy has worked to attract more US companies to the Kingdom as well as connect Cambodian companies to US businesses. We plan to follow-up

⁵²² <https://www.phnompenhpost.com/national-politics/us-ambassador-meets-sar-kheng>

⁵²³ <https://www.phnompenhpost.com/national-politics/banh-talks-ongoing-over-us-cooperation>

⁵²⁴ <https://www.phnompenhpost.com/national-politics/us-cambodia-pledge-strengthen-military-ties;>
<https://www.khmertimeskh.com/50667179/us-ambassador-meets-rcaf-officials>

this event by inviting some of the United States' top companies to Cambodia in February to explore trade and investment opportunities in Cambodia's agriculture sector."⁵²⁵

At the same time, the US government pursued a more hardline approach to diplomacy with Cambodia. On 9 December 2019, the US Treasury Department announced that it had leveled sanctions against Cambodian tycoon Try Pheap and former Joint Chief of Staff of the Cambodian military, Kun Kim.⁵²⁶ The sanctions against Pheap included 11 companies under his own control. The US treasury department noted that Pheap had created a corruption network composed of government officials and military personnel, which enabled the smuggling of logged timber. The US Treasury found that Kun Kim, now the senior minister for Veteran's Affairs, along with three of his family members, had also developed informal institutions functioning to provide graft from the illegal extraction of natural resources. The sanctions will effectively mean a freeze of assets in the US and a ban on US companies doing business with them.

The next day, the Cambodian Ministry of Foreign Affairs issued a statement refuting the sanctions and claiming that the US Treasury Department was trying to undermine the restoration of relations between the US and Cambodia. The statement asserted: "We are disappointed ... because the accusations are groundless and without respect for local law and justice." It also claimed: "[The sanctions are] a serious violation of international principles respecting sovereignty and non-interference in internal affairs. It is an attack on efforts to restore trust between the U.S. and Cambodia." The Ministry claimed that Kun Kim was publicly recognized for his actions to defend Cambodia and Try Pheap for his actions in developing the country.

Kun Kim's wife, Kim Chandy, was interviewed by RFA's Khmer Service. She stated that her family had no assets in the US and that the companies mentioned by the US Treasury had been shut down, but when they operated, they were legal under Cambodian law. The ruling party CPP spokesman Sok Eysan said that sanctions were an attempt to support the opposition party in Cambodia, claiming the US: "did this just to support their puppets, it's not effective." The

⁵²⁵ <https://www.khmertimeskh.com/50663745/us-companies-urged-to-invest-in-cambodia>

⁵²⁶ On 19 June 2018, the US Treasury Department imposed sanctions on General Hing Bun Hieng, the head of Prime Minister Hun Sen's Bodyguard Unit. The sanctions were authorized by the Global Magnitsky Act 2016, which allows the US government to freeze assets of human rights abusers and corrupt officials. See: <https://www.voacambodia.com/a/us-lawmakers-welcome-sanctions-on-hun-sen-bodyguard-chief/4447289.html>

anti-corruption NGO Global Witness director, Patrick Alley, released a statement which held: “As Hun Sen's supporters have accumulated more and more wealth and impunity, their incentive to help him cling to power has increased. Accountability for those sustaining the corrupt dictatorship that is oppressing Cambodians on a daily basis is long overdue.”⁵²⁷

On 12 December 2019, US Ambassador Murphy met with Aun Pornmoniroth, the Minister of Economy and Finance. The Minister recognized the significant contribution that the US has made to Cambodian development and clarified that from 1992 to 2019, the US government provided approximately \$1.5 billion USD in development aid. The funding supported areas such as education, health, agriculture, and the environment. The Minister also emphasized the increasing US private sector connections to Cambodia. The trade relationship between the US and Cambodia became more important to the Cambodian economy in 2019, with exports to the US reaching the amount of 3.9 billion USD from January to September (up 38 percent from 2018).⁵²⁸ On 18 December 2019, US Ambassador Murphy met with Energy and Mines Minister, and afterwards stated on social media: “The US private sector is ready to support the Kingdom’s potential to produce oil and gas, integrate renewable energy and consider the environmental impacts of mining.”⁵²⁹ On 19 December 2019, US AID announced a substantial 5-year program to improve public service delivery following from monitoring government performance by citizens through the use of technology in the areas of healthcare, education, waste management, and administration.⁵³⁰

On 8 January 2020, the US embassy held a celebration of 70 years of diplomatic relations with Cambodia.⁵³¹ The US ambassador indicated that the two countries could build cooperative relations from common interests in areas such as public health and education. Ambassador Murphy spoke on the achievement of peace and development in Cambodia, stating: “We very much admire that Cambodia has

⁵²⁷ <https://www.rfa.org/english/news/cambodia/sanctions-12102019171904.html>

⁵²⁸ <https://www.khmertimeskh.com/50670375/minister-praises-us-contribution-to-kingdoms-economic-development>

⁵²⁹ <https://www.khmertimeskh.com/50671915/united-states-shows-interest-in-energy-sector>

⁵³⁰ <https://www.khmertimeskh.com/50672321/usaid-announces-major-accountability-initiative>

⁵³¹ <https://www.khmertimeskh.com/50679220/cambodia-and-usa-70th-anniversary-of-diplomatic-relations>. US Ambassador Murphy announced that during the course of 2020 there would be monthly themes: “January-Agriculture; February-Youth, Education and Technology; March-Women and Gender Equality; April-Environment; May-Public Health; June-People to People Ties; July-Celebration of the 70th Anniversary; August-Humanitarian Assistance; Sept-Trade & Investment; Oct-Law Enforcement; Nov-Regional Cooperation/ASEAN; and, Dec-Democracy & Human Rights.”

come from a challenging and dark period, especially over the past two and a half decades.” CPP spokesman Sok Eysan applauded Ambassador’s Murphy’s approach while rebuking his predecessor. He declared: “Patrick Murphy has shown he respects the strengthening of relations, friendship, solidarity, and cooperation, especially regarding the diplomatic relations of the past 70 years. Since he has arrived, he has not intruded into the internal affairs of Cambodia. Past differences resulted from the previous ambassador, who did not know how to carry out diplomatic work and derailed the foreign policy of US President Donald Trump’s government. William A Heidt and his successor Patrick Murphy are as different as the land and the sky.”⁵³²

However, despite the improvement of US-Cambodia relations that occurred in the second half of 2019, the issue of the potential Chinese military base in Cambodia has remained high on the list of US concerns. On 22 December 2019, the New York Times published an article detailing the suspicions regarding Chinese intention in relation to the airstrip at Dara Sakor. Pentagon spokesman Lt. Col. Dave Eastburn said: “We are concerned that the runway and port facilities at Dara Sakor are being constructed on a scale that would be useful for military purposes and which greatly exceed current and projected infrastructure needs for commercial activity. Any steps by the Cambodian government to invite a foreign military presence would disturb peace and stability in Southeast Asia.” Ear Sophal, an expert on Cambodian politics who teaches political science at Occidental College in the US, posited: “Why would the Chinese show up in the middle of a jungle to build a runway? This will allow China to project its air power through the region, and it changes the whole game.” However, RGC spokesman Phay Siphon rebuked the allegations of intended military use of the airstrip, stating: “There will be no Chinese military in Cambodia, none at all, and to say that is a fabrication. Maybe the white people want to hold Cambodia back by stopping us from developing our economy.”⁵³³

On 22 January 2020, three US congressmen met with Foreign Affairs Minister Prak Sokhonn and Defence Minister General Tea Banh, in order to request their verification that a Chinese military base was not being constructed in Cambodia. Both RGC officials stated that no Chinese military base existed in the kingdom. The US lawmakers expressed continuing concern about the human rights and

⁵³² <https://www.phnompenhpost.com/national-politics/us-ambassador-marks-70-years-diplomatic-relations-kingdom>

⁵³³ <https://www.nytimes.com/2019/12/22/world/asia/cambodia-china-military-bases.html>

democracy situation in Cambodia. Also, they did not confirm whether or not they accepted the explanation of the Ministers of Foreign Affairs and Defense.⁵³⁴

At the beginning of January 2020, Political analyst Lao Mong Hay pointed out that, in addition to the EBA issue, Cambodia was challenged by the deteriorating relations with the US. He asserted: “America perceives its geostrategic interests in this region will be in jeopardy if and when Cambodia no longer adheres to its policy of neutrality and is sucked into China’s sphere, and it has to use its coercive diplomacy to get Cambodia out of that sphere. And to what extent will the decision of both the EU and the US negatively affect Cambodia’s economy and its ensuing domestic politics is left to be seen.”⁵³⁵

In conclusion of this part, reflecting its primary concern of balancing the power of China, the US has altered its strategy toward Cambodia in 2019 and begun decreasing pressure for democratic reforms. This shift became evident in the diplomacy of the new US Ambassador to Cambodia in the second half of 2019. However, at the same time, the US federal government in Washington, which has advanced pressure to reform. This came in two forms: progress toward legislation supporting an intensive use of targeted sanctions against Cambodian officials and legislation, which establishes the removal of Cambodia from the GSP. Incentives for democratization by western states have been effectively dismissed by the RGC because of the strong support (both financial and political) from China. As such, despite the partial warming of relations between Cambodia and the US, there has not been a corresponding liberalization of the Cambodian political system. At the same time as increasing its proximity to China, Cambodia has increased hedging by seeking out other alliances outside of Western states, and augmenting its military diplomacy with Vietnam, Russia, Pakistan, and other ASEAN states.

⁵³⁴ <https://www.khmertimeskh.com/50682503/three-united-states-congressmen-meet-with-sokhonn-banh>

⁵³⁵ <https://www.phnompenhpost.com/national-politics/peace-eba-focal-point-politicians-ny-messages>

CHAPTER 10 – Conclusion

Democracy in Cambodia further declined on the u-turn road in 2019. Hun Sen, his party, and the government continued to consolidate its authoritarian power over the political system, and there were no significant improvements in liberal pluralism. The reforms were not sufficient in any areas to meet the standards of an established democratic system. There was deterioration of the civil and political environment in Cambodia due to the chilling effects of judicial prosecutions and other actions taken against members of political parties, civil society, and the media, in particular the continued judicial supervision of former political opposition leader Kem Sokha. The Government of Cambodia continues to restrict the right to freedom of expression and freedom of association and assembly and did not fulfill its accountability for the cases concerned. In the area of civil and political rights, intimidation and a sense of insecurity of the public has amply expanded, following several months before November of massive arrests and proclamations that anyone supporting the plan of the opposition leader returning to Cambodia were arrested and the Cambodian people no longer able to express support for a political party based on free choice or express their sentiments in public space. The repression cases over the opposition members are a clear violation of political rights. Although, the government defended by claiming the repression of the opposition was necessary for national security and public order, and its actions aren't abuse of human rights. However, human rights organizations made statements and condemned the serious and systematic misuse of laws to target, intimidate, and harass individuals for merely exercising their fundamental freedoms. The Hun Sen government has made a clear attempt to threaten and

silence opposition members and any activists showing support for the return of CNRP leaders. Other Cambodian citizens raising dissenting voices are similarly being silenced and deprived of their right to free expression, increasingly on social media and online platforms. They are threatened, intimidated, or face criminal charges for any dissent expressed.

The repression has functioned to silence independent and critical opinions, and to broaden fears among rank-and-file workers to assert their rights. The current environment for labor rights advocates, trade union leaders, and civil society activists is not conducive to ensure a genuine improvement of the human rights and labor rights situation in Cambodia.” Attention was called to the continuing lack of respect for labor rights by a large coalition of national and international rights organizations. The alliance included international non-government organizations (such as Amnesty International, ANFREL, Human Rights Watch, NGO-Forum, Civicus, the Clean Clothes Campaign, Solidar, and FIDH), national CSOs (such as Comfrel, Adhoc, CCHR, Licadho)⁵³⁶ emphasizing the lack of progress in addressing problematic prosecutions and harassment of local-level union officials.⁵³⁷

Moreover, human rights defenders in Cambodia have been subject to constant acts of harassment Civil society space has further closed since the Government initiated its political crackdown., and The main obstacles for the exercise of defenders’ work include the harassment of dissenting voices including NGOs and media outlets and journalists, an increasingly oppressive security presence and restrictive legal amendments.

The multiple UN, Human Rights Experts,⁵³⁸ asserted: “ concern about the arrest, detention and criminal charges brought against Kong Raiya and Soung Neakpaon engaged in the legitimate exercise of their freedom of speech, andthat, yet again, the authorities are targeting free speech and peaceful assemblies.”⁵³⁹ They

⁵³⁶ <https://crd.org/2019/12/18/cambodias-law-on-trade-unions-and-cases-against-union-leaders/>

⁵³⁷ <https://www.amnesty.org/download/Documents/ASA2316042019ENGLISH.pdf>

⁵³⁸ Ms Rhona Smith, Special Rapporteur on the situation of human rights in Cambodia; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders.

⁵³⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24850&LangID=E;>
<https://www.khmertimeskh.com/50627866/un-experts-call-for-release-of-two-activists-arrested-over-kem-ley->

pointed out that the policies of the Cambodian government were contrary to sustainable development and lasting peace. an Amnesty International statement noted that detention conditions fell far below international standards.⁵⁴⁰

In 2019, the government intended to amend some articles of LANGO that the government gains legitimate control over NGOs and CSOs while interpreting this law to entail many restrictions. The government's motivation was to create an image of toleration of NGOs and amendments of LANGO to show its politics responding to conditions of the EU and the international community for trade benefits. For the trade unions, the passage of the amendments has been significant deficient remained in the law. The changes to the law did reduce obstacles for workers, but only a small amount of the unions' suggestions had been input into the draft law. The law still requires unions to register with the Ministry of Labor before carrying out actions in support of workers, which restricted workers' fundamental rights and the free association of the unions. Multiple national and international organizations already criticized the law for the failure to extend the scope of the law to legalize unions for crucial areas of the labor force such as the informal sector, teachers, and public servants.

The degree of freedom of the press and online freedom has not improved significantly in 2019. The presence of independent media with the capacity for investigative journalism and analysis is sorely lacking. The shift to online news has resulted in a proliferation of media outlets, but many are of poor quality. The media landscape remains reduced and has not recovered the reduction of independent media outlets. Journalists continue to be easily prosecuted for defamation and incitement. Coverage of land and resource grabbing, corruption, and impunity for government officials puts journalists at serious risk of prosecution. The potential for citizen journalists remains restricted by substantial self-censorship by the citizenry. Importantly, overly lengthy prosecutions of journalists for serious crimes, without the provision of evidence continues unabated. As a

anniversary; <https://www.khmertimeskh.com/50627866/un-experts-call-for-release-of-two-activists-arrested-over-kem-ley-anniversary>

⁵⁴⁰ <https://www.amnesty.org/download/Documents/ASA2312912019ENGLISH.pdf>. On July 11, Kong Raiya began a hunger strike, which added to the negative impact on his health resulting from poor detention conditions. He requested permission to read, exercise and meditate. His wife reported significantly declining health including chest pains. Nuth Savana, a spokesperson for the Interior Ministry's Prison Directorate, told media that he was not aware of the case, and asserted that on the one hand, the matter would be investigated, and on the other hand, the poor detention conditions were to be expected. He stated: "[We] know that—it is normal that our prisons are overcrowded." See: <https://www.rfa.org/english/news/cambodia/strike-07152019165359.html>

result, journalists cannot trust the judicial system to provide an effective mechanism for protection. The government intends to create laws to restrict freedom of social media and online speech criminalizing the news that the government claims that it is fake. The draft laws are not yet open to public consultation, while UN human rights experts and CSOs are a concern. United Nations Special Rapporteur to Cambodia, Rhona Smith indicated that she was aware of multiple cases of arrests related to online commentary or posts. She stated: any law will give effect to Cambodia's international obligations to ensure the appropriate balance between protecting national security and internet freedom."

The single-party legislature enacted laws in 2019 without politically pluralist debates that addressed all areas of governance in Cambodia. The overall theme shared by most of the resulting laws was economic management. 2019 did not see legislation that would support a return to democratic standards, and the changes to the laws which undermined democracy (Law on Political Parties and elections laws) were not reversed.

The public has already lost confidence in the judiciary. Despite frequent public declarations regarding reform efforts by the government, Cambodia has not improved the judicial system or the rule of law. The largest decline from 2018 to 2019, occurring in the area of constraints on government power. Cambodia has seen the rise of a hegemonic party system (with one-party dominance over the legislative and bureaucracy) as well as dictatorship or sultanism (with power concentrating in the hands of the PM, greater than at any time since the Khmer Rouge totalitarian regime). The PM himself relies on a vast system of patronage, which is grounded on the threat of force through control over the military and police apparatuses. The government has used the justice system play a primary role in eliminating democracy and political competition. It has been used to punish fundamental freedom, such as expression, assembly, and association. Multiple, purposely visible, demonstrations of state power have entailed prosecutions of opposition figures, political analysts, media personalities and journalists, trade union advocates, human rights defenders, and non-governmental organizations.

The executive branch has shown no disposition to real substantial reforms that would support a separation of powers or an increase in liberal pluralism. Essential reforms that did occur in 2019 were almost certainly made out of an attempt to appease the EU and prevent the loss of EBA trade status. There has been an overlap between the government, the ruling party, and the military, which has been

evident in military rule systems. The security services continue to operate most effectively as a tool to eliminate criticism and political competition, rather than support for the rule of law. As a result, public trust in the security services remains low, and fear remains high. The areas where the executive continues to fall far below the standards of established democratic government are high levels of impunity, corruption, and natural resource management. The executive has not been able to keep the same levels of economic growth and it would slow in 2019 and next year. Other areas of concern stem from the potential political leverage of donors, which results from bilateral borrowing as of the end of 2019, public debt amounted to 7.2 billion USD (with 99.9 percent of that being external public debt) of which 4.6 billion USD had been borrowed from China. There has been the pressure building on the microfinance economy, and a significant economic risk could follow a trigger or shock to the economy, such as manufacturing a downturn or sharp reduction in foreign investment. The risks would be huge oversupply, pressure-selling of more microloans, real social problems created by an inability to repay, growing land loss as potential defaulters are pressured into selling their land, and streets lined with informal microenterprises, each selling only a handful of items daily and becoming very resentful of having to work harder and yet make less money.

The 2019 sub-national elections cannot be considered a legitimate democratic exercise that it was not competitive, resulting in a deficiency of genuinely free choice in the selection process for the citizenry. The poll not reflected voter wills, because of both the elimination of all political competition and an increasingly repressive environment. 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 politicians from the CNRP have all been barred from politics and were not allowed to run as candidates. The quality of Cambodian elections continues to decline. Advances made with the voter list and voter registration procedure following the 2013 national elections, for the most part, continue to be in place. However, given the sharp decline in the relevance of elections to providing a popular mandate and as a mechanism of accountability, it is not surprising that interest in voting or participation in elections has declined.

There is increased concern that because of balancing the power of China, the US, that has altered its strategy toward Cambodia in 2019 and begun decreasing

pressure for democratic reforms. This shift became evident in the diplomacy of the new US Ambassador to Cambodia in the second half of 2019. However, at the same time, the US federal government and legislature in Washington, have advanced pressure to reform. This came in two forms: progress toward legislation supporting an intensive use of targeted sanctions against Cambodian officials, and legislation which establishes the removal of Cambodia from the GSP. There have been significant issues in Cambodian international relations in 2019 included the potential loss of participation in the EU's Everything But Arms trade arrangement and Cambodia's connections to the major powers. The EU's ultimate decision in February 2020 to only exclude part of Cambodian imports from the EBA framework raises the question of whether democratic backsliding will continue.

Incentives for democratization by Western states have been effectively dismissed by the RGC because of the strong support (both financial and political) from China. As such, despite the partial warming of relations between Cambodia and the US, there has not been a corresponding liberalization of the Cambodian political system. At the same time as increasing its proximity to China, Cambodia has increased hedging by seeking out other alliances outside of Western states, and augmenting its military diplomacy with Vietnam, Russia, Pakistan, and other ASEAN states. Cambodia's foreign policy has moved increasingly close to China, with an increase in borrowing, military aid, and advances toward a free trade agreement. Joint military exercises and inspections by Chinese military officials demonstrate that the security ties between the two countries strengthened in 2019.