

Cambodia's Third Cycle Universal Periodic Review

Free and Fair Elections in Cambodia

January 2019

1. Introduction

The report is jointly submitted by the follow organizations:

- a. The Committee for Free and Fair Elections in Cambodia (COMFREL)
- b. Cambodian Youth Network (CYN)
- c. Cambodian Center for Independent Media (CCIM)
- d. Cambodia Human Rights and Development Association (ADHOC)
- e. Center for Alliance of Labor and Human Rights (CENTRAL)
- f. Coalition for Integrity and Social Accountability (CISA)
- g. Khem Ley Foundation (KLFA)
- h. Khmer Youth Association (KYA)
- i. Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC)
- j. People Center for Development and Peace (PDP-Center)
- k. Youth Resource Development Program (YRDP)

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2. Methodology

2.1 This report provides an in-depth understanding on the development, regulations, and challenges facing electoral reform which upholds and safeguards the principle of multi-party democracy in Cambodia.

2.2 The methodology used for this report consists of desktop research, academic publications, digital documents, and the recommendations resulting from the 1st and 2nd cycle of the Universal Periodic Review (UPR). A consultation workshop was held on May 31, 2018 at the Committee for Free and Fair Elections in Cambodia (COMFREL) including the following CSOs: the Cambodian Youth Network (CYN), Cambodian Center for Independent Media (CCIM), the Cambodia Human Rights and Development Association (ADHOC), the Cambodian Center for Human Rights (CCHR), Center for Alliance of Labor and Human Rights (CENTRAL), the Khem Ley Foundation (KLFA), the Khmer Youth Association (KYA), the People Center for Development and Peace (PDP-Center), the Youth Resource Development Program (YRDP). The participants discussed implementation levels of 2nd cycle recommendations, developments in the area of elections, and developed suggested SMART recommendations for the upcoming review.

3. Introduction to the National UPR Context

3.1 During the 2nd cycle of the Universal Periodic Review (UPR) in 2014, the Royal Government of Cambodia, through its representative to the United Nations Human Rights Council, received a total of eight election-related recommendations; and, all of these recommendations were accepted by its representatives.

3.2 These recommendations aim to safeguard free and fair elections in Cambodia based on multi-party democracy principles to ensure inclusiveness, transparency and accessibility of all political parties and citizens of Cambodia.

The recommendations received have been partly implemented, but the core principle remains unimplemented. Voter registration and the voter list are significantly improved leading to the digitalization of voter registration which avoids duplication of names on the registry and ghost voters. The integrity and independence of the National Election Committee (NEC), however, is the key concern after the forced dissolution of the CNRP; and the resignation of its quota within the leadership of the National Election Committee (NEC) in protest of the dissolution.

4. Update on Implementation Level of Recommendations Made During 2nd Cycle of UPR

118.23: Take the necessary steps to strengthen the legal framework surrounding elections so as to ensure that future elections are free and fair, thereby allowing Cambodian citizens to have a say in the decisions that affect their lives and to elect the officials who reflect and respond effectively to their needs. **(Canada)**

The reformed of election regulations in 2015 has contributed positive impacts to a number of electoral procedures, such as: the voter registration and voter list, the political party list and the political party candidates list, the general procedure of the selection of the members of the National Election Committee (NEC), the immunity status for the members of NEC, and the authority and operation of NEC in general. The reformed, however, has also presented negative impacts. The amendment of Law on Political Party gives the ruling party the legal authority to dissolve any political party, including ban members from political participation and imprisoning its leadership. This extends to the observers and CSOs, that are viewed threats to political power. The legislation has threatened and undermined the principles of multi-party democracy and free and fair election in Cambodia. Particularly it is being used to restrict the active and meaningful participation of other political parties and the general public.¹

118.117: Address the electoral shortcomings raised by numerous actors, including the Special Rapporteur on Cambodia and the European Union technical assistance mission. **(Sweden)**

Some of the recommendations have been notably implemented. The NEC has been made a constitutionally mandated body which is theoretically independent. The check and balance principle within the leadership of the NEC has been improved by being composed of individuals selected by the political parties within the National Assembly. There are some important recommendations, however, that remain unimplemented, such as the recommendations to create the election court, to establish a mechanism to ensure fair access to the media, for a regulation to restrict the abuses of power and use of state resources for political gain, for a safe political environment free from threats and intimidation, for a regulation to adopt a single member district

and proportional representation system, and the legal framework which allows the Cambodian migrants abroad to exercise their vote.

118.118: By the end of 2014, adoption and implementation of the recommendations on electoral reform of the Special Rapporteur on Cambodia on electoral reform. **(United Kingdom)**

Some important recommendations remain unimplemented. These include the creation of the election court, a mechanism and legal framework to ensure fair access to the media, a regulation to restrict the abuses of power and use of state resources for political gain, a safe political environment from threats and intimidation, regulation to adopt a single member district and proportional representation system, a the legal framework which allows the Cambodian migrants abroad to exercise their vote, and the assurance to ensure active and meaningful participation from the opposition parties.

118.119: Undertake key electoral reforms to: improve the integrity of the voter registration system and voter list, ensure that all candidates have equal access to the media, and ensure that the National Election Committee retains full independence. **(United States of America)**

In terms of voter registration and the voter list, significant improvements have been made following the recommendations. As a result, duplication of voter names and ghost voters are minimized. The equal access to the media, however, for all candidates has remained not improved as the National Election Committee (NEC) has no demonstrated willingness to coordinate and produce policy guidance for the media. Media ownership in Cambodia is highly concentrated and largely owned by elites with ties to the ruling party, CPP. In addition, the independence and integrity of the National Elections Committee (NEC) remains questionable as it fails to accord with the fundamental principle of checks and balances among the members after the dissolution of the main opposition party, CNRP, and the resignation of some NEC members.

118.120: Ensure equal access of all candidates to the media, avoid manipulation of voters and foster a culture of dialogue amongst all political parties. **(Czech Republic)**

The access to the media has always been the fundamental challenge for the opposition parties as those media ownership is concentrated by those in or with ties to the ruling party, CPP. The NEC has failed to adopt regulations and legal framework which promotes and/or protects equal access to the media for all political parties. The culture of dialogue and legislative debate between parliamentarians from the ruling party and the opposition party were made briefly, but subsequently ignored; and legal and physical harassment² are made against parliamentarians from the opposition party.

118.121: The parties concerned should promote dialogue and cooperation, with regard to the outcome of the last year's general elections, in order to swiftly normalize the situation and to realize election reform. **(Japan)**

The political agreement was made between the ruling party and the opposition party after the National Election 2013 which has contributed to the electoral reform and the culture of dialogue. Those fruitful results, however, are being undermined since the early 2017, when the government adopted amendments to the Law on Political Party which has given the government the authority to dissolve the opposition party, re-allocated its seats, and ban its leadership from politics.

118.122: Implement electoral reform, as recommended by the Special Rapporteur on Cambodia, in order to prevent future recurrences of these issues. **(New Zealand)**

There is a small portion of the recommendation that has been implemented. There are some important recommendations, however, that remain unimplemented. These include the recommendation to create the election court, mechanism to ensure fair access to the media, regulation to restrict the abuses of power and use of state resources for political gain, a safe political environment free from threats and intimidation, regulation to adopt a single member district and proportional representative system, a the legal framework which allows Cambodian migrants abroad to exercise their vote, and, to ensure active and meaningful participation from the opposition parties.

118.123: Undertake electoral reforms to ensure credible electoral processes. **(Australia)**

Significant improvements have been made following the political agreement on electoral reform in 2014. The NEC was made a constitutional body which is theoretically independent. The voter registration and voter list have been improved. The check and balance principle within the leadership of the NEC was improved by being composed of selected individuals from political parties within the National Assembly. The Commune Council Election in 2017 was recognized by the general public, political parties, and the international community. The situation following the election steadily deteriorated which is evident in the adoption of amendments to the Law on Political Party which led to the dissolution of the opposition party. This current legal framework in place in Cambodia has threatened the independence media and restricted the activities of CSOs, and directly undermines the principle and practice of multi-party and liberal democracy in Cambodia.

5. Free and Fair Elections in Cambodia

5.1 Members of the main opposition party, Cambodia National Rescue Party (CNRP), have been facing systematic legal and physical harassment, particularly members of the parliament (MPs), despite their immunity privilege which is constitutionally protected. Given his unchallenged power, in August 2015; Prime Minister Hun Sen ordered an immediate arrest and jailing of senator³, Hong Sok Hour from Sam Rainsy Party accusing him of posting a fake Cambodia-Vietnam map on social media. Senator Sok Hour's immunity privilege was then removed by the Senate which is dominated by the ruling party, Cambodian People's Party (CPP), and was sentenced to 7 years in prison on charges of incitement and forgery and later was pardoned⁴ after serving more than 800 days. In October 2015, two MPs from the Cambodia National Rescue Party (CNRP) were beaten bloody⁵ right in front of the National Assembly by a large group of assailants which was orchestrated⁶ by CPP supporters and youth members who demanded the resignation of CNRP deputy leader Kem Sokha as the National Assembly's Vice President. Only three men, all from Prime Minister Hun Sen's Bodyguard Unit, were charged with intentional violence and given four-year prison terms with three years suspended⁷. And just a few weeks after their release, they were promoted⁸ to the rank of

brigadier general and colonel respectively resulting in a public outcry over the culture of impunity within the CPP's elites.

- 5.2 The members of civil society organization (CSOs) and independent media in Cambodia are not immune to legal harassments. Despite the collective responsibility to enhance sustained and independent development of Cambodia and her people, the Royal Government of Cambodia continues to question and threaten the legitimacy of CSOs. The Royal Government of Cambodia has imposed a set of unsupportive laws and regulations which restrict the activities and financial independence of members of CSOs in Cambodia. The independent media organization, the Cambodia Daily, was hit with a million dollar tax and forced to shut down⁹ in September 2017. Just like the Cambodia Daily, the last remaining independent newspaper, the Phnom Penh Post, was hit with a \$3.9 million tax bill¹⁰ and sold to a Malaysian investor linked to the Cambodian Prime Minister Hun Sen. The Law on Association and Non-Governmental Organizations (LANGO)¹¹ threatens the rights and fundamental freedom to assembly and association of Cambodians and CSO; particularly the free speech which is constitutionally protected. A number of local and international independent radio broadcasters were forced to shut down and a number of journalists are in self-exile or have been imprisoned¹².
- 5.3 The amendment of the Law on Political Parties which was proposed by Prime Minister Hun Sen and adopted by parliamentarians from the ruling party has given his government the legitimate and unchallenged authority to suspend and dissolve political parties, effectively removing their leadership from politics. It is considered to be politically motivated and aims to prevent competition from the activities of opposition political parties in elections. It violates the commitments and standards of the International Convention on Civil and Political Rights to which Cambodia is a state party.¹³
- 5.4 The president of the opposition party, the Cambodia National Rescue Party (CNRP), was arrested on September 2017 for treason¹⁴ accused of colluding with the United States to topple the government. This move is seen by the general public and the international community as politically motivated. He has been detained since then and is being denied release on bail.
- 5.5 The court ruling in November 2017 marks the death of democracy in Cambodia when the main opposition party, Cambodia National Rescue Party (CNRP), was forcefully dissolved at the hand of the Supreme Court¹⁵ based on the groundless complaint filed by the Ministry of Interior (Mol) claiming CNRP was attempting to overthrow the government through the so-called "colour revolution" funded by the United States. A total of 118 senior members of CNRP were banned from political activity for five years. As the result, of the 123 seats in the National Assembly, the CNRP's 55 seats (representing 44% of the popular vote), were re-allocated to unelected members of the ruling party and other political parties.
- 5.6 The estimated 1.5 million Cambodian migrants¹⁶ who work outside the country still have no access to exercise their right to vote as there no legal framework and mechanism to support them. The National Election Committee (NEC) failed to adopt the legal framework and mechanism which enables the voter registration and voting process in the embassies and consulates of other destination countries so that Cambodians abroad can exercise their right to vote.

6. Recommendations

- 6.1 Repeal the amendments to the Law on Political Party to promote democracy before 2020, such as: article 6 new (two), article 11 new, article 12 new, article 17 new, article 18 new, article 19 new, article 25 new article 16 new, article 29 new, article 34 new, article 38 new, article 39 new, article 40 new, article 41 new, article 42 new, article 43 new, article 44 new (two), article 45 new (double), article 46 new, article 47 new and article 48 new (double).
- 6.2 Repeal the amendments of the Constitution of Cambodia, i.e. article 34 new (one), article 42 new, article 49 new and article 53 (new), in order to ensure the exercise of civil and political rights of all Cambodian citizens, before 2022.
- 6.3 Create and safeguard an enabling environment for members of civil society organization (CSOs) to monitor elections by 2022 through lifting all undue restrictions on activities and funding of NGOs, including the Law on Associations and Non-Governmental Organizations (LANGO); and repeal Article 18, Article 84, Article 137, Article 148, Article 159; and Article 160 of the Elections laws which restricts and regulates the civil and political rights of Cambodian citizens that are constitutionally mandated.
- 6.4 Enable genuine election with the participation of the main opposition party based on the principle of inclusiveness, transparency and accessibility for all political parties, by 2022.
- 6.5 Adopt and safeguard a legal framework which will enable Cambodian citizens who resident abroad to exercise their right to vote and uphold the right to vote of all citizens, including those in pre-trial detention, by 2022.
- 6.6 Adopt the legal framework to ensure the achievement of the 50% of women candidates from all political parties, and ensure that the candidates are listed in order of alternating between women and men candidates, by 2022.
- 6.7 Adopt the legal framework to enhance and safeguard the budget transparency of each and every political party, including the adoption and implementation of regulations to limit the misuse of state resources for political gain, by 2022.
- 6.8 Adopt a legal framework to ensure the integrity and independence of the armed forces and court officials by restricting their engagement in political activities, by 2022.
- 6.9 Issue Cambodian National Identification Card and birth certificate to all eligible voters by 2022.
- 6.10 Amend the Election Law to ensure and safeguard the budget independence of the National Election Committee (NEC) by allowing NEC to be accountable to donors and have different accounts, rather than just with the National Treasury of Cambodia. Instill a practice wherein 100% of the budget shall be transferred to NEC during the election year, by 2022.
- 6.11 Create an independent committee composed of commissioners and legal officials of the National Election Committee to replace the mandate of the NEC secretariat to receive and investigate complaints by 2022.

7. Advanced Questions

- 7.1 When will the Royal Government of Cambodia commit to repeal the amendments of the Law on Political Party?
- 7.2 What made the Royal Government of Cambodia continue to accuse the coalition of the independent election watchdogs of being color-revolutionists?
- 7.3 When will the Royal Government of Cambodia commit to restore and safeguard genuine elections with the participation of the main opposition party?
- 7.4 Will the Royal Government of Cambodia commit to safeguard the right to vote for Cambodian citizens residing outside of the country?

Endnotes

¹ The assessment is made by the Electoral Reform Alliance (ERA), is a group of leading and reputable NGO that share common vision and value; and mandated to assess, study, and provide policy recommendation to enhance the electoral reform in Cambodia.

² Austin Ramzy, "Cambodian Leader's Bodyguards Convicted of Assaulting Opposition Figures", the New York Times; retrieved on June 5, 2018; available at: <https://www.nytimes.com/2016/05/28/world/asia/cambodia-hun-sen-bodyguards.html>

³ The CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS, "Timeline of harassment of opposition MPs, members, and supporters", retrieved on May 3, 2018; available at <http://www.licadho-cambodia.org/reports.php?perm=215>

⁴ Meta, Nachemson and Koemsoeum, "Former SRP senator Sok Hour receives pardon after serving more than two years in jail", the Phnom Penh Post: 26 October, 2017; retrieved on June 12, 2018; available at <https://www.phnompenhpost.com/national/former-srp-senator-sok-hour-receives-pardon-after-serving-more-two-years-jail>

⁵ The CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS, "Timeline of harassment of opposition MPs, members, and supporters", retrieved on May 3, 2018; available at <http://www.licadho-cambodia.org/reports.php?perm=215>

⁶ Chakrya, Parkinson and Turton, "Lawmakers beaten at the National Assembly", The Phnom Penh Post: October 27, 2015; retrieved on June 6, 2018; available at <https://www.phnompenhpost.com/national/lawmakers-beaten-national-assembly>

⁷ Austin Ramzy, "Cambodian Leader's Bodyguards Convicted of Assaulting Opposition Figures", the New York Times; retrieved on June 5, 2018; available at: <https://www.nytimes.com/2016/05/28/world/asia/cambodia-hun-sen-bodyguards.html>

⁸ Khuon Narim, "Third Elite's Bodyguard Promoted After Attack on Lawmaker", the Cambodia Daily; retrieved on June 5, 2018; available at: <https://www.cambodiadaily.com/news/third-bodyguard-promoted-after-attack-on-lawmaker-124129/>

⁹ The Guardian, "Cambodia Daily shuts with dictatorship parting shot at prime minister Hun Sen", retrieved on June 6, 2018; available at <https://www.theguardian.com/world/2017/sep/04/cambodia-daily-shuts-with-dictatorship-parting-shot-at-prime-minister-hun-sen>

¹⁰ AP NEWS, "Phnom Penh Post sold by Aussie owner to Malaysian investor", retrieved on June 12, 2018; available at <https://www.apnews.com/1b9303a89c7e42a0a6c30bdb1bfe80f1>

¹¹ The Cambodia Center for Human Rights, "LAW ON ASSOCIATION AND NON-GOVERNMENTAL ORGANIZATIONS", Phnom Penh: August 19, 2015; available at <http://sithi.org/admin/upload/law/Unofficial-Translation-LANGO.pdf>

¹² Prak Chan Thul, "Cambodia court charges two journalists with espionage", REUTERS: November 18, 2017; available at <https://www.reuters.com/article/us-cambodia-politics/cambodian-court-charges-two-journalists-with-espionage-idUSKBN1DIO7C>

¹³ Office of the United Nations High Commissioner for Human Rights in Cambodia, "A HUMAN RIGHTS ANALYSIS OF THE AMENDED LAW ON POLITICAL PARTIES," March 28, 2017: p. 10.

¹⁴ The Phnom Penh Post, "Sokha arrested for treason, is accused of colluding with US to topple the government", retrieved at June 4, 2018; available at <https://www.phnompenhpost.com/national/sokha-arrested-treason-accused-colluding-us-topple-government>

¹⁵ SOKHEAN, DARA and BALIGA, *“Death of democracy: CNRP dissolved by Supreme Court ruling”*, the Phnom Penh Post; retrieved at June 4, 2018; available at: <https://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrp-dissolved-supreme-court-ruling>

¹⁶ DAPHNE, YON, *“Migrant workers struggling to sign up to vote”*, the Phnom Penh Post: October 26, 2017; retrieved at June 10, 2018; available at <https://www.phnompenhpost.com/national/migrant-workers-struggling-sign-vote>