



# DEMOCRACY



## Elections and Reform in Cambodia (2016)



គ.ជ.ប COMFREL

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# **Democracy, Elections and Reform in Cambodia 2016**

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## Acronyms

ACU	Anti-Corruption Unit
ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Organization
ASEAN	Association of Southeast Asian Nations
BSDP	Beehive Social Democratic Party
CATU	Cambodian Alliance of Trade Unions
CAWDU	Coalition of Cambodian Apparel Worker’s Democratic Union
CBOs	Community Based Organizations
CCC	Cooperation Committee of Cambodia
CCDA	Cambodia for Confederation Development Association
CCHR	Cambodian Centre for Human Rights
CITA	Cambodian Independent Teacher Association
CNRP	Cambodian National Rescue Party
CPP	Cambodian People’s Party
CSOs	Civil Society Organizations
CUMV	Collective Union of Movement of Workers
ERA	Electoral Reform Alliance
FTU	Free Trade Union
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia
GDP	Grassroots Democratic Party
GDT	General Department of Taxation
GNI	Gross National Income
HRP	Human Rights Party
ILO	International Labour Organization
ICVR	Identity Card for Voter Registration
LANGO	Law on Non-Governmental Organizations
LDP	League of Democracy Party
LEMNA	Law on the Elections of Members of the National Assembly
LICADHO	Cambodian League for the Defence and Promotion of Human Rights
MoI	Ministry of Interior
NAA	National Audit Authority
NEC	National Election Committee
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
RII	Reform Inventory Initiative
SRP	Sam Rainsy Party
UN`	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNHCHR	United Nations High Commissioner for Human Rights

## 1. Introduction

Since 2009, the Committee for Free and Fair Elections (COMFREL) has extended its observations and analysis of Cambodia's electoral process to an annual assessment of the state of democracy in Cambodia. The research reports titled *Democracy, Election and Reform* generate empirical data on Cambodia's annual political development and provide an evaluative analysis of Cambodia's state of democracy. To reach a wide audience of national and international stakeholders, the reports are published in print and online editions. The evaluative analysis is hereby guided by the definition of democracy as stipulated in the Cambodian constitution, adopted in September 1993 and its amendments till 2015. The constitution provides a normative concept of democracy that the constitutional monarchy functions according to the principles of a liberal multiparty democracy (Chapter I, Article 1). These principles are outlined in the constitution as follows:

- Chapter XV, Article 152: 'The present constitution is the supreme law of the Kingdom of Cambodia. All the laws and decisions of all the state institutions must be absolutely in conformity with the Constitution' (Chapter XV, Article 152)
- Chapter IV, Article 51: 'Khmer citizens are masters of their country's destiny. All powers shall belong to the citizens. The citizens should exercise their powers through the National Assembly, the Senate, the Royal Government and the Jurisdictions. The powers shall be separated between the legislative power, the executive power and the judicial power'
- Chapter VII, Article 76: 'The members of the National Assembly shall be elected by a universal, free, equal, direct suffrage and secret'
- Chapter VII, Article 77: 'The Members of the National Assembly are the representatives of the whole Khmer Nation and not only citizens from their constituencies'
- Chapter III, Article 35: 'Khmer citizens of both sexes have the right to participate actively in the political, economic, social and cultural life of the nation'
- Chapter XV, Article 150: 'The National Election Committee shall exercise its competence independently and impartially in order to ensure free, accurate, and fair elections in accordance with the principles of liberal multiparty democracy'
- Chapter XVI, Article 155: 'Revisions, or amendments cannot be done, if affecting the system of liberal multiparty democracy and the constitutional monarchy regime.'

Guided by the constitutional definition of a liberal multiparty democracy, COMFREL developed a qualitative roster of three democracy indicators to assess the state of Cambodia's democracy. (1) *Democratic governance* assesses if Cambodia's state institutions are effective, transparency, accountable and comply with the principle of separation of powers and a due democratic legislative process under the rule of law. (2) *Democratic Space* assesses if Cambodia's political parties promote and protect a variety of forms of active political participation, protect and promote political and civic rights and public political discourses, with the aim to foster the development of a democratic political culture. (3) *Democratic Elections* assesses if Cambodia's state institutions ensure free and fair elections while free will of voters and rights to stand for elections are promoted, respected and protected.

Empirical data generated for this report are based on primary and secondary research findings from COMFREL's Advocacy and Monitoring Units *Government Watch*, *Parliamentary Watch*, *Media Watch*, *Election Watch* and the *Election Reform Alliance* (ERA). COMFREL adopts a qualitative research method. It relies on analysis of primary data from a variety of sources as follows: direct observations, interviews and public documents, secondary data carefully selected from publications of diverse national and international stakeholders, and media examining Cambodia's development and state of democracy. All sources are cited and listed in the bibliography at the end of the report.

The report begins with an executive summary of the main findings and a brief on the political context in 2016. It follows an evaluative analysis of the democracy indicator *Democratic Governance*, which includes: (a) executive responsiveness, performance and accountability with emphasis on corruption, the misuse of state recourses and the political neutrality of law enforcement and security forces (b) the legislative process and (c) the independence of the judiciary. This follows an evaluation of the democracy indicator *Democratic Space*, which includes: (a) the freedom of peaceful assembly, (b) the freedom of expression and (c) the freedom of association. The report then proceeds with an evaluative analysis of the democracy indicator *Democratic Elections*, which includes: (a) the performance of the National Election Committee (NEC) and (b) on-going electoral reforms focusing on last year's voter registration. The report concludes with an analysis and political outlook for 2017 and prospects for the upcoming commune council elections scheduled for June 4<sup>th</sup>.

## 2. Executive Summary: Political Oppression Paralyzes Democracy

- *The political atmosphere remained very tense throughout 2016. The relations between the CPP led government and the CNRP led opposition remain tense and accompanied by oppression the third year in a row mainly due to the close defeat of the CNRP in the 2013 national elections, followed by a yearlong post-election crisis and failed attempts to reconcile through a 'culture of dialogue' after a political agreement in 2014. The agreement led to reforms of the National Assembly and the National Election Committee but by mid-2015 the culture of dialogue had failed.*
- *By the end of 2016, 24 opposition members and supporters, including two lawmakers remained in custody. Opposition leader Sam Rainsy has been officially exiled from the country since October 2016. One CNRP Senator fled the country after being prosecuted for defamation. The murder in July 2016 of the popular political commentator and activist Kem Ley further heightened political tensions. Arrests and detention of human rights activists pressured human rights and civil society organisations not to interfere in the political deadlock. It was only by the end of 2016, that tensions appeared to have somehow eased after deputy opposition leader Kem Sokha was amnestied, allowing the CNRP to commence its election campaign for the upcoming commune council elections in June.*
- *The executive has strengthened efforts to speed up responsiveness earning the government better performance ratings in 2016. But reports from development agencies opinion polls and government watch found out those reforms do not keep pace with political promises. The people being satisfied every sector, except the development of the economy, which remained the same, has decreased. In contrast, the dissatisfied people in each sector have increased, while the dissatisfied people have been found to have only slightly changed. Growth rate of people dissatisfied with improvement of public administration, decentralization and de-concentration, law and justice, and anti-corruption activities is highest, and declining rate of people satisfied with national defence, security and public order is also the highest.*

- *The legislative process was dysfunctional because of the political tension and oppression. The judiciary appeared instrumental for the legal reprisals against the opposition questioning yet again the independence of the judiciary. High-ranking members of the court, the law enforcement agencies and the military continued to publicly claim loyalty to the CPP led government and threatened to use force against the opposition.*
- *Democratic space continued to shrink in 2016. On numerous occasions' peaceful assemblies organised by civil society organizations (CSOs), trade unions and political parties other than the ruling party, critical of the government, were prohibited. The assassination of the popular political commentator and activist Kem Ley raised suspicions about political motives, and fear of publicly expressing opinions critical of government. The government continued a restrictive freedom of expression policy. A number of lawsuits bringing charges for defamation, insults and incitement against the opposition party CNRP, human rights defenders, civil society activists and political analysts remain controversial. The current legal practice also raises the concern on independence of the judicial system. However other concerns were also raised about LANGO and a new trade union law, which could enable the government to restrict the freedom of association of workers. Both laws could also negatively impact freedoms of expression, assembly and association.*
- *The electoral reform process seems to have progressed in 2016, allowing for some restrained optimism regarding the upcoming commune council elections. The newly formed bipartisan National Election Committee (NEC) appears to enjoy more public confidence. However, lawsuits against two bi-partisan appointed NEC member and its official raises concerns over potential undue political influence on the independence of the electoral body while they are not free from fear. The quality of the voter registration and voter list for the next elections improved when compared to earlier voter registration exercises, but shortcomings remain. The shortcoming arose over the declining voter registration rate because Cambodians and migrant workers living abroad who were not able to come to register. The CNRP also alleged that non-citizens were registered to vote.*

- *Recent political developments raise concerns for the future prospects of meaningfully political pluralism. The opposition was faced with new legal reprisals and stripped of its minority leader position in the National Assembly. The questioning of ministers in parliamentary commissions by the opposition was temporarily prohibited. Amendments to the law on political parties could constrain political competition and put oppositional political parties at risk by having their activities temporarily suspended for up to five years or even to be dissolved. The amendments to the law on political parties are widely perceived to target the CNRP. The party is the only main challenger of the governing CPP in the next commune council and national assembly elections. The leader of the primary opposition party, Sam Rainsy and other senior officers of CNRP have been charged and convicted by the court who were compelled to resign as opposition leader in response to the amendments in order to avoid repercussions against CNRP as a whole.*
- *Setting the new unsettling conditions for political competition under political oppression and the amendments on the law on political parties aside, the upcoming commune elections are expected to be fiercely contested. A fierce political competition in the upcoming elections can be expected to close race between CPP and CNRP. However, voting patterns in past commune council elections did differ from those of national assembly elections. An estimation of the studies indicates that around thirty percent of Cambodian eligible voters are indecisive about their political party preferences.*

### **3. Political Context 2016**

The political atmosphere remained very tense throughout 2016. The relations between the government, the ruling Cambodian People's Party (CPP) and the opposition, mainly represented by the Cambodian National Rescue Party (CNRP) and were accompanied by oppressions against the opposition. The CNRP had won 55 National Assembly seats in the 2013 national assembly elections, 7 seats short of a majority. The CNRP did not recognize the election results leading to mass protests and a boycott of the inauguration of the new parliament until mid-2015. Since the post-election crisis, the CPP continues to accuse the CNRP of inciting revolution. Prime Minister Hun Sen repeatedly issued 2016 public warnings against a so-called 'colour revolution'

referring to former political upheavals in Eastern Europe, the Middle East and North Africa and the danger of a new civil war should the CPP lose the next election. The warnings were shared by high-ranking military officials stating a colour revolution need to be prevented by any means. The CNRP denied the allegations, stating it wants to gain power through fair and free elections.

The government responded with new legal reprisals against the opposition. In April 2016, CNRP parliamentarian Um Sam An was arrested and charged with incitement after he had posted online comments critical of the government's border policy with Vietnam. Tensions ran high when Kem Ley, a popular political commentator and activist was murdered in the capital in July. The CNRP accused the government of being behind the murder, prompting the government in return to suggest that in fact the CNRP committed the murder for political gain.<sup>1</sup> In August, opposition leader Sam Rainsy and CNRP Senator, Thak Lany were sued by Prime Minister Hun Sen for defamation and incitement based on the earlier the allegations about government involvement. In September, deputy opposition leader Kem Sokha was sentenced to a five-month prison term for failing to appear at a court for questioning over an alleged sex scandal. In October 2016, Sam Rainsy was prohibited returning to his home country while airplane companies are instructed to not allow him being on board. In October, CNRP parliamentarian Um San Am was sentenced to 21/2 years in prison for incitement to commit a felony and discrimination. In November, Senator Thak Lany was charged and sentenced in absentia to 11/2 years in prison for incitement to cause chaos and defamation. She fled the country. By the end of 2016, a total of nineteen opposition members of the CNRP had been detained on various charges, including two CNRP parliamentarians. In addition, four ADHOC human rights activists and NEC deputy secretary general were arrested and charged related to the alleged sex scandal of Kem Sokha.

In September, the CNRP threatened mass-protests after police attempted to arrest deputy opposition leader Kem Sokha at the CNRP headquarters, but were refused entry after failing to produce an arrest warrant. Threats from high-ranking military officials to arrest Kem Sokha, should the court order them to do so, were followed by military exercises close to CNRP headquarters. Kem Sokha had been in hiding for four months in CNRP headquarters to avoid arrest. Political tensions eased somewhat in September after the government announced that Kem Sokha will not be arrested. In October, he left for the first time the CNRP headquarters to

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<sup>1</sup> Phnom Penh Post: Who Does Kem Ley's Killing 'Benefit', asks PM, 12.07.2016; Radio Free Asia: Murder Accusations Cause Cambodia's Hun Sen to Seek Redress in Court, 01.08.2016

register to vote for the upcoming commune elections. In December, Kem Sokha was amnestied by King Norodom Sihamoni upon a request of Prime Minister Hun Sen.

## **4. Democratic Governance**

In 2016, the government continued with reforms in recognition of increased political competition with the opposition, forcing the governing party to improve its responsiveness and performance. A public opinion poll of the Asia Foundation from 2015 and a COMFREL voter's survey on government performance in 2016 indicates that the government appears to have partly succeeded to strengthen public perception that its responsiveness and performance has improved since the 2013 national assembly elections. However, recent reports from international development agencies suggest that the government cannot keep pace with the reform pressure. Also, the public opinion poll from 2015 indicates that the majority of Cambodian voters are indecisive about a change of government in the next elections. The government remains behind public expectations to improve government accountability. Current anti-corruption policies are ineffective. Also, the misuse of state resources for political party purposes has increased compared to the previous year, and law enforcement and security forces continued to publicly pledge their loyalty to the CPP despite being required by law to exercise strict political neutrality. Because of the political deadlock, the legislature was dysfunctional in 2016. It could only partly exercise its oversight powers and failed to improve the relations between the CPP and CNRP. The judiciary was in 2016 instrumental in excluding the CNRP from the political process.

### **4.1 Executive Responsiveness and Performance**

The Royal Government of Cambodia (RGC) continued its reform efforts to respond to political gains made by the opposition in the 2013 elections. In April, the RGC undertook a midterm reshuffling of the cabinet following an initiative of Prime Minister Hun Sen.<sup>2</sup> Two ministers and one deputy prime minister were retired, two ministers were newly appointed, six ministers assigned to other ministries, and thirty secretaries of state added to the government. Retired government officials include Hor Namhong, who served seventeen years as Minister of Foreign Affairs, Keat Chhon, who was former long-serving finance minister (1993-2013) and Deputy Prime Minister until 2016, and Im Lum Chin, who was the Minister of Rural Development from 2008 to 2016. New ministers are the former Secretary of State for Water Resources and Meteorology, Veng Sakhon who is now the Minister of Agriculture, Forestry and Fisheries and

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<sup>2</sup> COMFREL Government Watch 2016; see also Phnom Penh Post: Details of PM's Cabinet Reshuffle Announced, 18.03.2016

the former Secretary of State for Commerce, Pan Sorasok, who is now the Minister of Commerce. Six ministers swapped the ministries. Sun Chanthol, the former Minister of Commerce (2013-16) is now the Minister of Public Work and Transport (a position he also held from 2004 to 2008). Ouk Rabon, the former Minister of Agriculture, Forestry and Fisheries (2013-16) is now the Minister of Rural Development. Chea Sophara, the former governor of Phnom Penh (1998-2003) and Minister of Rural Development (2008-2016) replaced Ouk Rabon. Tram Iv Ek, the former Minister of Public Work and Transport (2013-16) is now the Minister of Posts and Telecommunications. Him Chhem, the former Minister of Culture and Fine Arts is now the Minister of Cults and Religion and Prak Sokhon, the former Minister of Posts and Telecommunications (2013-16) replaced Hor Namhong.<sup>3</sup>

In December, the National Assembly approved by a majority vote of the CPP an increase in government spending by 16% for 2017. The budget is to increase salaries for the government officials and civil servants. For instance, salary for school teachers and public health officials received at least 800,500 riel (or US\$200) in 2016 while from April 2017 their salary will increase at least 953,500 riel (or US\$ 230). Reform of the tax system and a more effective implementation of tax policies under the so-called 'Revenue Mobilization Strategy' launched in September 2014 appear to be effective. According to data from the Ministry of Commerce, tax revenue as a percentage of Gross Domestic Product increased from 15.2% in 2013 to 17% in 2014 and 18% in 2015.<sup>4</sup> In 2016, tax revenues were up 15%, totalling \$1.5 billion, according to the General Department of Taxation (GDT).<sup>5</sup> Further increases are expected because of economic growth, more effective tax policy and better public awareness about the tax laws. In order to regain public support, the government increased spending especially in sectors perceived to foster its support. The 2017 state budget will allocate more funds to education, health and agricultural sectors, and increase salaries for civil servants including soldiers.<sup>6</sup> The RGC also drafted a new tax law, which stipulates that low incomes in the future are exempt from income tax, putting the threshold at 250USD income per month.<sup>7</sup>

Recent international development agencies reports indicate that government responsiveness and performance has also improved in other sectors. The World Bank reported that Cambodia's economy grew constantly over the past decade, sustained economic growth of 7%, and predicts

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<sup>3</sup> Khmer Times: Cabinet Reshuffle Approved by Assembly, 04.04.2016

<sup>4</sup> Cambodian Ministry of Economic and Finance: Cambodia Macroeconomic Monitor, August 2016, p. 13

<sup>5</sup> GDT cited from Khmer Times: \$1,5 Billion Tax Revenue, 16.01.2017

<sup>6</sup> Economic Intelligence Unit (EIU): The first two election year budgets, 01.12.2016; Cambodia Daily: Salaries to Drive 16 Percent Increase in Government Spending, 22.10.2016

<sup>7</sup> Phnom Penh Post: Income-tax Threshold to Rise, 10.11.2016

for 2017 a growth rate of 6.9%.<sup>8</sup> The UN called Cambodia in 2016 ‘an early achiever’<sup>9</sup> in combating extreme poverty, maternal health and infant mortality. The World Bank also re-classified Cambodia’s economy from a low- to a low-middle income economy after the annual average gross national income per capita (GNI) reached in July 2016 the threshold of 1,026USD.<sup>10</sup>

A study of the Reform Inventory Initiative of the Asia Foundation (RII), which evaluates government policies based on data provided by Cambodia’s ministries, and emphasizes positive performance indicators, identified three top reforms in 2016. These were education reforms to improve the professional development of teachers (Teacher Policy Action Plan), tax reforms boosting state revenues, and reforms of urban water supply.<sup>11</sup> In 2015, the RII reported five top reforms. They included: education reforms to strictly monitor the national high school exam, which had been long plagued by cheating and maladministration, followed by health reforms to expand the national health insurance scheme to cover all nation’s poor and the establishment of a national exam for health professionals to ensure competence. In addition, like in the previous year, reforms to increase the tax revenue and promote a culture of tax compliance were appraised.<sup>12</sup>

COMFREL’s ‘Assessment and Voters Scorecard on the Third-Year Fulfilment of Political Platform of the Fifth Mandate of the Government’, found that the executive has fulfilled six of its sixteen political platforms in 2016. This includes an annual economic growth rate of 7%, an annual 1% poverty reduction, the halting of economic land concessions, reforms of housing and transportation policies and the development of employment policies. Only partly fulfilled were policies to reach the export target of one million tons of rice, policies to improve rural water supply and fisheries, policies to improve the registration of land titles, policies to improve water- and electricity access in rural areas and policies to construct more secondary schools. Platform promises unlikely to be fulfilled by the government to maintain the existing forest coverage, to annually construct 300 to 400kms of roads in rural areas and to establish a public pension insurance system for the private sector.<sup>13</sup>

A public opinion survey of the Asia Foundation conducted between July and September 2015, found that a majority of Cambodians has positive future outlook, perceive an income increase over the past two years and a general improvement in their socioeconomic situation. Based on a multistage cluster sample and sample size of 3,000 interviews nationwide with a standard error of

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<sup>8</sup> World Bank Group: Cambodia – Economic Update, October 2016, p. 22

<sup>9</sup> UN cited in Phnom Penh Post: Time’s Up for MDG targets, 25.09.2015, [www.phnompenhpost.com](http://www.phnompenhpost.com)

<sup>10</sup> Phnom Penh Post: Cambodia’s Economic Status Raised to Lower-Middle Income, 05.07.2016

<sup>11</sup> Reform Inventory Initiative (RII), [www.refrominventory.wikispaces.com](http://www.refrominventory.wikispaces.com), accessed on 18.01.2017, see also: Phnom Penh Post: Top Three Reforms of 2016, 16.12.2016

<sup>12</sup> Phnom Penh Post: Top Five Reforms in 2015, 18.11.2015, [www.phnompenhpost.com](http://www.phnompenhpost.com)

<sup>13</sup> COMFREL Government Watch 2016

1.8%, the survey found that 50.1% perceive their living standard to be better than two years ago, 30.1% said that their living standard was the same as two years ago and 19.8% found that their living standard is worse than two years before.<sup>14</sup> COMFREL's voters scorecard survey in 2016 found that of 429 citizens participating in focus group interviews in 24 provinces, 19% of participants were satisfied with the executive's performance, 62% were partly satisfied and 19% were dissatisfied.<sup>15</sup> When compared to the voter's scorecard survey in 2015, the number of voters satisfied with executive performance has increased. In 2015, the percentage of voters interviewed in focus groups was lower, with 10% satisfied, 40% partly satisfied and 50% dissatisfied.<sup>16</sup> Looking at the score of each of the four executive performance sectors surveyed by COMFREL, the indicators are also not significantly different from the overall scores provided, though they have slightly declined in the second sector. In the first sector, 'Defence, Security and Public Order', 18% of focus group participants were satisfied, 60% partly satisfied and 21% dissatisfied. In the second sector, 'Public Administration, Decentralization and De-concentration, Law and Justice, and Anti-corruption', 17% of participants were satisfied, 60% partly satisfied and 22% dissatisfied. In the third sector, 'Economic Development', 19% of participants were satisfied, 62% partly satisfied and 19% dissatisfied. In the fourth sector, 'Education, Health, Labour, Culture and Social Affairs', 20% focus group participants were satisfied, 63% partly satisfied and 15% not satisfied.<sup>17</sup>

Despite these overall positive trends in government responsiveness and performance, other recent international development agency reports suggest that current reforms continue to lack pace and will further increase pressure on the government to go further. This could strengthen the opposition in the upcoming elections. The World Bank reported in 2016 that the socioeconomic situation of the majority of Cambodia's population remains fragile. The World Bank stated that *'up to two third of Cambodia's population live in economic insecurity, or 8.1 million remains near-poor'*<sup>18</sup>. Near-poor means that a loss of only 0.30USD income per day would double the poverty rate to 40% of Cambodia's population. The studies also found that the positive economic development trends over the past decade might reverse. The World Bank stated that *'despite the reduction of extreme poverty, the share of non-poor but economically insecure households has been growing'*<sup>19</sup>. The United Nations Conference on Trade and Development (UNCTAD) continues to classify Cambodia as a Least-Developed Country and expects that Cambodia is not graduating

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<sup>14</sup> Vukovic, Danilo; Babovic, Marija: Cambodia – A Survey of Livelihood Strategies and Expectations for the Future, (Ed. Asia Foundation), Phnom Penh 2015. p. 26

<sup>15</sup> COMFREL Government Watch 2016

<sup>16</sup> COMFREL: Democracy, Elections and Reform 2015, February 2016. p. 11

<sup>17</sup> COMFREL Government Watch 2016

<sup>18</sup> World Bank: Cambodia – Overview, September 2016, [www.worldbank.org](http://www.worldbank.org)

<sup>19</sup> World Bank Group: Cambodia – Economic Update, October 2016, p. 12

before the year 2025 to a developing country.<sup>20</sup> In addition to this criteria, The UNCTAD assessment contradicts the World Bank's upgrading of Cambodia's economy and RGC claims to reach a middle-income status by 2030. The World Bank assesses development with only one criteria, that is the GNI per capita. In addition to this criterion UNCTAD also assesses economic vulnerability and human assets.<sup>21</sup>

For example, the agriculture sector, on which the majority of Cambodians depend for a living, experienced a drastic economic downturn since 2013. According to the World Bank, economic growth in the agriculture sector has declined from an annual average growth rate of 6% between 2002 and 2012 to only 0.2% between 2013 and 2015.<sup>22</sup> Current agriculture policies appear to be not sustainable, even though government policies until recently were appraised by the World Bank for being pro-poor and credited for the rapid decline of the extreme poverty rate. In September 2016, Cambodia was for the first time hit by a rice industry crisis due to droughts, falling global rice prices and increased international competition leading to declining rice exports.<sup>23</sup> Media reported rice protests in the province of Battambang, which only had been contained by the RGC after promises for loans, and appeals to farmers to store their rice until global rice prices recovered.<sup>24</sup> The RGC has also fallen behind reforms to strengthen land tenure security for Cambodia's population, which is particularly sensitive for farmers. In the past two decades, only 4,451,817 land titles have been issued equal to 63.6% of the total land titles to be issued. Land conflicts increased in 2016. The Land Management Ministry registered 757 land disputes in 2016, of which only 44 were resolved. In 2015, 637 complaints were registered with RGC authorities of which 376 cases had been resolved.<sup>25</sup>

## 4.2 Executive Transparency

For almost two decades the RGC has paid little attention to executive accountability. Only in 2010, was an initiative to combat corruption launched by the RGC with the establishment of an Anti-Corruption Unit (ACU). National auditing began only in the 2002 with the establishment of a National Audit Authority (NAA). But both institutions are widely perceived to be ineffective.<sup>26</sup> The November 2015 report from the Open Budget Survey found that among 102 states examined, Cambodia ranked at the very bottom with rank 97. In the region, only Myanmar

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<sup>20</sup> Phnom Penh Post: Cambodia to remain among Least Developed Countries, for now, 14.12.2016

<sup>21</sup> UNCTAD: Least Developing Countries Report 2016, United Nations 2016. p. 76, [www.unctad.org](http://www.unctad.org)

<sup>22</sup> World Bank Group (2016), p. 11

<sup>23</sup> Cambodia Daily: Agriculture Minister Blames Business people for Rice Crisis, 22.09.2016

<sup>24</sup> ADB/ILO (2015), p. 56, p. iii

<sup>25</sup> Cambodia Daily: Land Disputes Up, Resolutions Down, Ministry Data Shows, 18.01.2017; Khmer Times: Land Title Total Soars, 18.01.2017, [www.khmertimeskh.com](http://www.khmertimeskh.com)

<sup>26</sup> NGO Forum of Cambodia/Open Budget Survey 2012: Budget Transparency Brief, No. 3, January 2011, p. 3-4

performed worse. The Open Budget Survey assesses budget transparency, public participation in the budget process and the strength of the legislative and the supreme audit institution to oversee the budget.<sup>27</sup> According to the survey, budget transparency has not improved but declined over the past years. The study found that only the pre-budget statement and enacted budget are available to the public, the executive's budget proposal and mid-year review are only available, internally the in-year report and citizens budget are published late and that year-end reports and audit reports are not produced. Cambodia thus doesn't score sufficient for any of the mentioned criteria set by the survey.<sup>28</sup> Illustrative of the lack of budget transparency is also the national budget for 2017. It includes a vaguely worded '*reserve fund*'<sup>29</sup> of 17% of the total budget of five billion USD. It is publicly not disclosed, if and how this money is spent. This national budget post existed also in preceding national budgets. COMFREL concurs with the survey results. Investigations on the national budget process in 2016 found that the RGC's fiscal policy continues to lack transparency in the management of budgetary expenditure and revenues and in drafting national budget laws.<sup>30</sup>

#### 4.2.1 Corruption and Use of State Resources

The late initiation of an anti-corruption campaign has so far not been able to contain the persistent problem of corruption. The ACU is widely perceived to lack independence and effective investigation and enforcement mechanisms.<sup>31</sup> To this day, no law to protect whistleblowers and witnesses of corruption cases has been put in place. The ACU announced in June that such a law will be drafted at the end of 2016, but failed to keep up to its promise.<sup>32</sup> Similar announcements had already been in 2014 and in 2015.<sup>33</sup> In 2016, the ACU appraised its work, reporting that the number of corruption complaints has decreased and corruption in public services declined. The ACU reported to have received in 2016 a total of 575 complaints, a decline when compared with the year 2015, when 781 complaints were received and in 2014

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<sup>27</sup> International Budget Partnership (IBP): Open Budget Survey 2015, September 2015. p. 1, [www.internationalbudget.org](http://www.internationalbudget.org)

<sup>28</sup> IBP (2015), p. 7 and 69; see also Phnom Penh Post: Kingdoms budget transparent as mud. Budget Transparency at all-time low: report, 18.11.2015

<sup>29</sup> Economic Intelligence Unit (EIU): The first two election year budgets, 01.12.2016

<sup>30</sup> COMFREL Government Watch 2016

<sup>31</sup> See in particular, the lack of independence of the ACU in the COMFREL report: Democracy, Elections and Reform 2014, March 2015, pp. 20-21

<sup>32</sup> Cambodia Daily: Anti-Corruption Unit Wants New Protection Laws Drafted by Year's End, 30.06.2016

<sup>33</sup> Phnom Penh Post: ACU To Make Law to Protect Sources, 27.11.2014

when 1,009 complaints were received.<sup>34</sup> However, it is unclear if the decline is caused by a decrease in corruption in public services or a decrease in public confidence in the ACU's work.<sup>35</sup>

Among cases (complaints and allegations), COMFREL found in 2016 that at least 223 cases concerned bribery and embezzlement by public officials and the appointment of relatives to government positions<sup>36</sup>.

Since 2010, only two high-profile cases concerning an RGC official in the anti-drug department and one ambassador to South Korea were prosecuted. The ACU is criticized for mainly targeting low-profile cases.<sup>37</sup> Also, the appointment of two sons of ACU President Om Yenteng as assistants equalling the rank of undersecretary and secretary of state has not increased public confidence in the ACU work.<sup>38</sup>

For the third year in a row in 2016, the International Corruption Perceptions Index listed Cambodia as the *'most corrupt country in Southeast Asia'*<sup>39</sup> with a score of 21 out of 100. NGO and media reports about alleged corruption cases in 2016 received wide public attention. In July, the human rights and environment organization Global Witness alleged that *'...Hun Sen's immediate family has registered interest in 114 private domestic companies worth 200 million USD and that companies associated with the Hun family span the majority of Cambodia's most lucrative business sectors, including trade, finance, energy and tourism. They also cooperate within a number of sectors notorious including gambling, construction, agriculture and mining ...this is likely just only the tip of the iceberg'*<sup>40</sup>. The government dismissed the accusations as *'personal propaganda against Hun Sen'*<sup>41</sup>. Local media were accused by the Prime Minister's children to have colluded with Global Witness ahead of the upcoming elections.<sup>42</sup> Similar media and NGO reports suggesting a large-scale sand-dredging scandal involving the government also drew wide public attention. Cambodia's government reported to have exported between 2007 and 2015 about five million USD worth of sand to Singapore whereas Singaporean authorities reported imports of and from Cambodia worth 752 million USD. The Ministry of Mines and Energy responsible for the issue explained to media that an investigation found that the discrepancy might have been a result of differences in reporting regimes of both countries, but also acknowledged that they might have been caused by

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<sup>34</sup> Anti-Corruption Unit (ACU): Announcement of the outcomes of the 18<sup>th</sup> Session of the National Council Against Corruption in its 2<sup>nd</sup> Mandate, 03.01.2017

<sup>35</sup> Phnom Penh Post: ACU sees complaints drop, 05.01.2017

<sup>36</sup> Further details can be found in a separate COMFREL report on these cases, which will be for the reference

<sup>37</sup> Phnom Penh Post: A Big Year with So Little, 05.01.2017

<sup>38</sup> Cambodia Daily: Corruption Czar's Sons Appointed as Assistants, 27.04.2016

<sup>39</sup> Transparency International: International Corruption Perception Index 2016, 25.01.2017

<sup>40</sup> Global Witness: Hostile Takeover – The Corporate Empire of Cambodia's Ruling Family, July 2016, pp. 3-5

<sup>41</sup> Reuters News Agency: Cambodia Dismisses Report Detailing PM's Family Business, 07.07.2016

<sup>42</sup> Cambodia Daily: Prime Minister's Children Accused Media of Colluding with NGO, 08.07.2016

illegal mining, corruption or/and collusion to evade taxes.<sup>43</sup> NGO's, including Global Witness have released reports on Cambodia's sand-dredging industry for a number of years because of its devastating environmental impacts and demanded a ban of exports. The government banned sand exports in 2009, but sand dredging continued.<sup>44</sup> In December, the Minister of Mines and Energy, Suy Sem was questioned during a closed session of the CNRP chaired parliamentary anti-corruption commission on the discrepancies. The CNRP claimed the minister failed to explain the discrepancy. In a press conference following the questioning session, a ministry spokesperson dismissed the discrepancies and explained that they were caused by price changes at different points of production and sale, and suggested that Singapore might use a different code for sand imports, registering also other items under the same code leading to the discrepancies.<sup>45</sup>

COMFREL found in 2016 that at least 129 cases concerned the use of state resources (human resources and buildings/equipment) with the aim to carry out activity and campaign to the advantage of the governing party. COMFREL also found that state media were in 2016 producing news content with a bias towards the ruling party. . A total 80% of content news monitored had such biased information.<sup>46</sup>

#### **4.2.2 Political Neutrality of Law Enforcement Agencies and Armed Forces**

Law enforcement agencies and armed forces continued interfering in the political process on behalf of the ruling party. The CPP, as outlined in the previous *Democracy, Election and Reform* report, maintains party structures within the Royal Cambodian Armed Forces (RCAF), the national police and the gendarmerie (also known as military police). At least eighty high ranking members of the RCAF, the Supreme and Deputy Commissioner of the National Police and the Commander of the military police are members of the Central Committee, the leading party organ of the CPP. This contradicts Article 15 and 6 of the Law on Political Parties and Article 9 of the Law on General Statutes for the Military Personnel of the Royal Cambodian Armed Forces. In addition, Hun Manet and Hun Manith, both sons of Prime Minister Hun Sen, are members of the CPP Central Committee and in high-ranking positions of the RCAF and the Prime Minister's Bodyguard unit.<sup>47</sup>

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<sup>43</sup> Phnom Penh Post: Dredging for Answers, 03.11.2016

<sup>44</sup> CCHR: Briefing Note – The Human Rights Impact of Sand Dredging in Cambodia, September 2016, p. 8; Global Witness: Shifting Sand – How Singapore's Demand for Cambodian Sand threatens Ecosystems and undermines Good Governance, May 2010; Cambodia Daily: NGO's Ask Government to Suspend Sand Dredging, 12.11.2016

<sup>45</sup> Phnom Penh Post: Minister Faces Music on Sand, 16.12.2016

<sup>46</sup> Further details can be found in a separate COMFREL report on these cases, which will be for the reference.

<sup>47</sup> COMFREL: Democracy, Elections and Reform 2015, Phnom Penh March 2016. pp. 17-18

Since the 2013 elections high-ranking officials of the RCAF, military police and the bodyguard unit frequently stated their loyalty to the ruling party. In January 2016, an RCAF four-star general told hundreds of soldiers at a military institute to ‘eliminate’ any attempts by the opposition to stage a colour revolution or foment ‘*instability in society*’<sup>48</sup>. In May, armed units of the national police raided the CNRP headquarters, leading to an armed standoff with CNRP members before leaving without arresting deputy opposition leader Kem Sokha.<sup>49</sup> In the same month, national police arrested a CNRP commune council member in Takeo province for collecting thumbprints for a petition calling for the release of four human rights officials of ADHOC and an NEC official. He was only released after signing an agreement to stop collecting thumbprints. Police had also temporarily arrested two CNRP activists in the province of Kampong Thom for collecting thumbprints for the same campaign.<sup>50</sup> In May, Defence Minister Tea Banh warned protesters to get permission for demonstrations or go to jail. Current laws do not require protesters to receive permission to organize demonstrations but only to notify authorities.<sup>51</sup> In July, Defence Minister Tea Banh has been recorded to have called for the elimination of ‘*people, who have the wrong kind of mentality*’<sup>52</sup> leading to concerns among US officials, if military cooperation with Cambodia can continue. According to media reports, the Defence Minister also appealed to army officers to work with local authorities to prevent ‘*any tendencies to cause instability to the nation or any movements and activities to attempting to destroy peace*’<sup>53</sup>. In August RCAF deputy commander-in-chief, Kun Kim declared that his troops would arrest the CNRP leaders if they receive an order, and a spokesman of the PM’s bodyguard unit stated that ‘*we will absolutely not allow people who want to trigger a colour revolution and some ill-intentioned people who want to destroy this peace – we will not let them do it*’<sup>54</sup>.

One day later, on 1<sup>st</sup> September, troops were deployed in close proximity to the CNRP headquarters. Four military helicopters swooped repeatedly over the CNRP building and another seven helicopters circled Phnom Penh in the early afternoon. In addition, two speedboats and a larger patrol vessel and trucks with masked and armed members of the bodyguard unit moved close to the CNRP headquarter. The government claimed the troops were deployed for exercises in preparation of the 26-anniversary of the bodyguard unit and were not related to the political

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<sup>48</sup> Cited from Phnom Penh Post: US Official Says Military Cooperation at Risk, 20.07.2016, see also: CCHR: Briefing Note - Democracy under Threat: Fulfilling the Promise of the Paris Agreements, 25 years on, Phnom Penh September 2016. p. 11 and LICADHO: Human Rights in 2016: Six Months in Review, August 2016, p. 6

<sup>49</sup> Radio Free Asia: Cambodian Police Raid Opposition Party Headquarters, 26.05.2016

<sup>50</sup> Cambodia Daily: One More Arrested Over Thumbprint Campaign, 26.05.2016

<sup>51</sup> Cambodia Daily: General Banh Tells Protestor to Get Permission or Go to Jail, 20.05.2016

<sup>52</sup> Tea Banh cited from Phnom Penh Post: US Official Says Military Cooperation at Risk, 20.07.2016

<sup>53</sup> Ibid.

<sup>54</sup> Cited from Phnom Penh Post: Bodyguard Unit Ready for ‘Colour Revolution’, 03.08.2016

tensions.<sup>55</sup> Four days later, during the bodyguard unit's anniversary meeting, the unit's deputy commander Deang Sarun stated that *'We are strongly committed to support Samdech Techo Hun Sen as prime ministerial candidate of Cambodia for the sixth mandate and all mandates forever'*<sup>56</sup>. In November, the three bodyguard unit members, who had savagely beaten two CNRP lawmakers in October 2015, including kicking the head of one lawmaker, were released from prison.<sup>57</sup> It is public knowledge, that all three had been promoted to full colonels or general's star<sup>58</sup>. Their release appears to signal to the public the impression that security forces can physically assault, intimidate and threaten lawmakers, supporters and members of the opposition and other government critics with only minor legal consequences considering the severity of the attack against the lawmakers. In December, the Chief of the Military Police, Sao Sokha told a meeting of 500 military police officers from around the nation that he hopes people would use their right to vote *'correctly'*<sup>59</sup>. The spokesperson of the military police confirmed later to media by telephone, that Sao Sokha referred to Hun Sen and the CPP when he said he hoped citizens would vote correctly.

### 4.3 The Legislative Process

The legislative process was dysfunctional for most of 2016 because of the political deadlock following the 2013 elections. Four CNRP seats in the Senate and National Assembly remained vacant (in each two seats) after CNRP lawmakers were prosecuted despite their parliamentary immunity. In April, CNRP lawmaker Un Sam An was arrested for a Facebook posting of an alleged faked border treaty with Vietnam and sentenced in November to 2,5 years in prison. In May, armed police stormed the CNRP headquarters in an attempt to arrest CNRP lawmaker Kem Sokha. In June CNRP lawmaker Yem Ponearith was threatened with legal action for allegedly using faked thumbprints for a petition delivered to King Norodom Sihamoni asking him to intervene in the political deadlock.<sup>60</sup> In August CNRP Senator Thak Lany was sued by Prime Minister Hun Sen for defamation and incitement, for allegedly having claimed during a public speech that he was behind the murder of the political commentator and activist Kem Ley and sentenced in November to eighteen months in prison.<sup>61</sup> In September, Kem Sokha was

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<sup>55</sup> Phnom Penh Post: 'Exercises' Bring Military Helicopters and Vessels to CNRP's Doorstep, 01.09.2016

<sup>56</sup> Phnom Penh Post: Premier's Elite Bodyguard Unit Marks Founding, 05.09.2016

<sup>57</sup> Cambodia Daily: PM's Bodyguards Get One for Beating, 28.05.2016; Radio Free Asia: Cambodia Frees Hun Sen Bodyguards Who Beat Opposition Lawmakers, 04.11.2016

<sup>58</sup> Phnom Penh Post: Third Member of PM's Bodyguard Unit Seen Kicking the Head of MP Promoted, 26.01.2017

<sup>59</sup> Phnom Penh Post: Use Vote Correctly, Military Police Told, 15.12.2016

<sup>60</sup> Phnom Penh Post: Opposition MP Could Face Court over Petition: Official, 23.06.2016; CNRP Deliver Petition calling on King to intervene in political crisis, 31.05.2016, CNRP compiles new Petition for King, 14.06.2016

<sup>61</sup> Phnom Penh Post: Senator sentenced to 18 months for linking PM to Ley murder, 18.11.2016

sentenced to five months in prison for failing to appear at a court for questioning over an alleged sex scandal.<sup>62</sup> In October, opposition leader Sam Rainsy was officially exiled from the country.<sup>63</sup> The CNRP responded to the legal reprisals with a parliamentary boycott and threats of mass demonstrations calling for an end to what they perceived a politically motivated campaign against its party.<sup>64</sup> The government denied this, claiming the lawmakers had violated the law and countered with threats to employ armed forces against any mass demonstration.<sup>65</sup> Only in December did the government appear to give in to the pressure. Kem Sokha was amnestied by King Sihamoni upon a request of Prime Minister Hun Sen. The CNRP resumed its work in the parliament.<sup>66</sup>

Considering the tense political atmosphere and the constant legal reprisals against the CNRP, lawmakers in 2016 were only to a very limited extent able and willing to hold the government accountable, scrutinize draft laws and debate alternative policy options and to question ministers. Between June and November, the CNRP boycotted the parliament in response to the legal reprisals against its lawmakers. Only during the boycott-free period (January to May, and December) the CNRP attended parliament sessions. From 32 agenda items brought before the plenary sessions of the National Assembly in 2016, 11 were passed with CNRP support and 21 were unilaterally passed by the ruling party.<sup>67</sup> In May, the CNRP voted against the new trade union law, claiming that the government was unresponsive to demands for changes to the law.<sup>68</sup> In the same month, the CNRP with exception of two of its lawmakers abstained from the vote for the mid-term cabinet reshuffle. The CNRP also abstained from a vote for the 2017 national budget law (officially Financial Management Law). The new budget law will allow salary increases for civil servants and soldiers, a core demand of the opposition. The CNRP defended its abstention, stating that the party was not against salary increases, but has questioned the transparency of the budget process.<sup>69</sup>

COMFREL found that the questioning of ministers and deliberations in plenary sessions in parliament has significantly declined in 2016. The opposition was only able to question two ministers in the last year compared to eight ministers in 2015. In December, Health Minister

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<sup>62</sup> Cambodia Daily: Kem Sokha sentenced to five months in prison, 09.09.2016

<sup>63</sup> Cambodia Daily: Sam Rainsy Officially Exiled from Cambodia, 24.10.2016

<sup>64</sup> Phnom Penh Post: Sokha Says CNRP May Have No Option, But ‘Mass Demonstrations’, 12.09.2016

<sup>65</sup> Cambodia Daily: CNRP Plans Protests; PM Threatens Use of Force, 13.09.2016

<sup>66</sup> Phnom Penh Post: Breaking: Royal Pardon for Kem Sokha, 02.12.2016

<sup>67</sup> Phnom Penh Post: Assembly Approves PM’s Ministerial Reshuffle, 05.04.2016

<sup>68</sup> Phnom Penh Post: Trade Union Law Passes, 05.04.2016

<sup>69</sup> Phnom Penh Post: CNRP Lawmakers End Boycott but Can’t Thwart Budget’s Passage, 23.11.2016; Phnom Penh Post: MP Calls Out CNRP On Wages, 28.11.2016

Mam Bunheng attended a plenary session of the National Assembly on alleged corruption charges against the former director of the National Malaria Centre, who had resigned in 2011.<sup>70</sup> In the same month, Minister Sum Sey was questioned on the alleged sand-dredging scandal as outlined earlier. An opposition initiated questioning session of the Minister of Justice, Ang Vong Vathana **about** his alleged links to the Panama Paper leaks, in which he is named as one of five shareholders in an offshore holding company, and questions relating to the role of the Ministry of Justice in arresting opposition lawmakers and human rights activists went ahead in June, but was boycotted by the CNRP. The CNRP wanted to postpone the questioning because of the escalating political tensions surrounding the alleged sex scandal of Kem Sokha. But the request was refused by the National Assembly's permanent committee on the grounds that the questions already have been forwarded to the minister and to prevent the legislature from interfering into ongoing court proceedings against Kem Sokha.<sup>71</sup> A request by the opposition to question Minister of Interior Sar Kheng about the on-going investigations on the murder of the popular political commentator and activist Kem Ley was also blocked after intervention by National Assembly President Heng Samrin. He explained in a press release: '*...Kem Ley's case is in the competence of the court...and both, the government and the National Assembly have not the right to interfere in the courts*'.<sup>72</sup> The CNRP also failed to initiate a parliamentary debate about changes to the Law on the Statute of Judges and Prosecutors, the Law on the Organization and Function of Supreme Council of Magistracy and the Law on the Organization of Courts to strengthen the independence of the judiciary.<sup>73</sup> The CPP controlled Permanent Committee of the National Assembly refused to open a plenary session for debate, explaining the CNRP has not demanded only amendments, but actually a major revision of the laws. The CNRP claimed the refusal violated parliamentary procedure.<sup>74</sup> COMFREL also found that the amount of time for plenary debates has decreased significantly when compared to the previous year. The majority of lawmakers did not express their opinions during the plenary sessions, leaving it to only eighteen lawmakers (ten from CNRP and eight from CPP) to lead debates for only about 5.5 hours in 2016.<sup>75</sup> In 2015, lawmakers were more actively involved in plenary debates. Total 43 lawmakers (20 CPP and 23 CNRP lawmakers) participated in debates for about twenty hours.<sup>76</sup>

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<sup>70</sup> Cambodia Daily: Health Minister Evades Tough Questions at Plenary Session, 30.12.2016

<sup>71</sup> Phnom Penh Post: CNRP Sits Out Assembly Questioning of Justice Minister, 10.06.2016

<sup>72</sup> Press Release cited in Phnom Penh Post: Minister Summons Blocked, 23.12.2016

<sup>73</sup> Cambodia Daily: CNRP, CPP to Discuss Judicial Reform at National Assembly, 26.10.2016

<sup>74</sup> Phnom Penh Post: Judiciary Law Changes Brushed Aside by CPP, 27.10.2016

<sup>75</sup> COMFREL: Press Release – National Assembly and Parliamentary Watch for the 3<sup>rd</sup> of the 5<sup>th</sup> Mandate, 20.02.2017

<sup>76</sup> COMFREL: Democracy, Elections and Reforms Annual Report 2015, February 2016, p. 12

The parliament secretariat also issued an order to temporarily prohibit the questioning of ministers by the opposition further undermining the CNRP influence in the National Assembly. Prime Minister Hun Sen had declared one day before the order was issued that he would block any further attempt by the CNRP to question ministers in parliament as long the party continued to boycott parliamentary sessions. This raised doubts about the independence of the legislature, and if such an order is compatible with the constitution. Allegations that the order is unconstitutional were denied by the parliament secretariat, which explained that the prohibition is only temporary until the opposition ends its parliamentary boycott.<sup>77</sup> Before the temporary order was issued, the CNRP had boycotted the plenary session, in which Kem Sokha was stripped of his position as minority leader. According to the constitution, Article 97, *'The Commissions of the National Assembly can invite any minister to give clarifications on issues relating to her/his responsibility'*. The CNRP currently chairs five of the ten parliament commissions and had requested to question the Minister of Defence, the Minister of Agriculture and the Minister of Labour.<sup>78</sup>

#### 4.4 Independence of Judiciary

Despite judicial reforms in 2014 and announcements by the government to have strengthened the judicial independence, it is widely perceived that the reforms have reinforced executive control over the judiciary rather than strengthen its independence.<sup>79</sup> CNRP Initiatives in 2016 to change respective laws in parliament failed. The legal reprisals against the opposition appear to confirm that the judiciary is instrumental for the executive to target its main challenger for the next elections.<sup>80</sup> In 2015 alone, eighteen CNRP members and supporters, including lawmakers were detained. In 2016, there followed court proceedings against four more CNRP lawmakers, including opposition leader Sam Rainsy and deputy opposition leader Kem Sokha. One CNRP lawmaker was imprisoned and another convicted in absentia. In addition this followed court proceedings and imprisonment of five human rights activists from ADHOC, including one former ADHOC official, who is now Deputy General-Secretary of the NEC, for alleged involvement in the case put forward against Kem Sokha. By the end of 2016, a total of 24 opposition members and supporters along with human rights and civil society activists were in prison. The human rights organisation LICADHO considers them political prisoners.<sup>81</sup> The

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<sup>77</sup> Cambodia Daily: Parliament Issues Unconstitutional Order on Questioning, 03.02.2017

<sup>78</sup> Cambodia Daily: PM Vows Unconstitutional Block of Minister's Questioning, 02.02.2017

<sup>79</sup> See previous COMFREL, Democracy, Elections and Reforms reports.

<sup>80</sup> Prime Minister Hun Sen cited from Phnom Penh Post: 'The Law Follow Politics', 17.03.2016

<sup>81</sup> LICADHO: Cambodia's Political Prisoners 2016, [https://www.licadho-cambodia.org/political\\_prisoners/](https://www.licadho-cambodia.org/political_prisoners/) accessed on 03.02.2017

government denied the claims. Prime Minister Hun Sen stated in public that *'there are no political prisoners, only politicians who commit illegal acts and are punished according to the laws'*<sup>82</sup>. The government warned LICADHO that its webpage documenting alleged political prisoners could contradict the Law on Non-Governmental Organisations (LANGO)) requiring political neutrality for NGOs.<sup>83</sup>

Looking at all cases, the majority of prosecutions (total 17 cases) concerned the involvement of opposition members and supporters in violent clashes with security guards during protests in July 2014, when 37 security guards and at least six protesters were injured. They are controversial because none of the law enforcement officials involved in violent crackdowns on protesters during this and preceding protests were ever held accountable despite that such cases have been well documented.<sup>84</sup> In addition, those opposition members and supporters convicted for violence during the 2014 protests were not only convicted for committing intentional violence, but for incitement to commit a felony and for leading and participating in an insurrectionary movement carrying much higher prison sentences. Of the 17 charged, three were sentenced to twenty years in prison and the others to seven years. LICADHO claimed that the court proceedings in these cases were *'blatantly unfair'*<sup>85</sup> as only one lawyer attended the trial of the 17 defendants. The cases also raised suspicions, if they complied with the principal of equality before the law (guaranteed by Article 31 of the constitution). As outlined earlier, in October 2015 two CNRP lawmakers were viciously attacked in front of the National Assembly. Afterwards, three members of the Prime Minister's bodyguard unit were held accountable for the attack and sentenced to four years in prison, but three years were suspended for unknown reasons. In November, the three men were released from prison, serving only a one year sentence.<sup>86</sup> That the principal of equality before the law seems to be not always accounted for by the courts is also illustrated with another case in 2016. Norng Sarith, an SRP commune councillor and Sok Sem San, a CNRP supporter have been held in pre-trial detention since November 2015, far longer than the above mentioned bodyguard members. Both are alleged to have forged a birth certificate and posted it on Facebook leading to charges of forging a public document and incitement to commit a crime.<sup>87</sup>

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<sup>82</sup> Phnom Penh Post: No Political Prisoners Here: PM, 04.01.2017

<sup>83</sup> Cambodia Daily: Rights Group Warned Over 'Political Prisoners' Webpage, 20.05.2016

<sup>84</sup> Amnesty International: Taking To the Streets – Freedom of Assembly in Cambodia, London 2015; Cambodia Daily: Guards Too Violent to Police Protests: Amnesty, 04.06.2015; Lawmakers Call for End to Notorious Guards, 03.11.2016

<sup>85</sup> LICADHO: Statement – LICADHO Condemns the conviction and sentencing of 11 CNRP officials and supporters, 21.07.2015; Timeline of harassment of opposition MPs, members, and supporters, April 2016

<sup>86</sup> Radio Free Asia: Cambodia Frees Hun Sen Bodyguards Who Beat CNRP Lawmakers, 04.11.2016

<sup>87</sup> Phnom Penh Post: CNRP Duo Jailed for Birth Certificate 'Lies', 21.11.2015

Public suspicions over the independence of the judiciary raised in 2016 also includes cases against four CNRP lawmakers who were stripped of their constitutional guaranteed immunity without following the proper procedures prescribed by the constitution in at least two of the cases. Those cases concerned CNRP Senator Hong Sok Hour, opposition leader and CNRP lawmaker Sam Rainsy and CNRP lawmaker Um Sam An. CNRP Senator Hong Sok Hour was arrested in August 2015 despite his immunity and prosecuted in November 2016 on charges of forgery of public documents, use of forged public documents and incitement to commit a crime. Two days before, Prime Minister Hun Sen had called for his arrest. A vote in the Senate to strip his immunity followed only after his arrest.<sup>88</sup> The government defended his arrest, claiming it was a case of *'in flagrante delicto'* because at the time of his arrest the Facebook posting was still accessible. The constitution according to Article 80 allows the arrest of lawmakers in case of *'in flagrante delicto'*, and can be approved reactively by a two-third majority vote in the Senate. The CPP holds a two-third majority in the Senate. The Senator had published a video on Sam Rainsy's Facebook account displaying a forged Vietnam-Cambodia border treaty claiming Cambodia has agreed to have no border between Cambodia and Vietnam. The Senator was sentenced to seven years in prison after being held in pre-trial detention for an excessive 450 days, raising questions over the proportionality of the sentence handed down by the courts. The Senator claimed that he did not know the document was forged. It appeared that he had not forged the alleged faked border treaty, but just posted it on Sam Rainsy's Facebook account.<sup>89</sup> The other case concerned Sam Rainsy, who was charged, along with two of his Facebook assistants, as accomplices in the case of Hong Sok Hour and sentenced to five years in prison. Unlike the Senator, Sam Rainsy is a lawmaker in the National Assembly, where the CPP does not hold a two-third majority to strip a lawmaker's immunity.<sup>90</sup> According to Article 80, the National Assembly is required to approve to strip the immunity of a lawmaker with a two-third majority vote. Similar is the case of CNRP lawmaker Um Sam An. He was arrested and prosecuted on charges of incitement to commit a felony and incitement to racial discrimination after intervention of the Prime Minister in October 2016. His immunity was stripped with only an absolute majority vote of 68 CPP lawmakers what also appears to contradict the constitution.<sup>91</sup> Um Sam An had written on Facebook on the border demarcation with Vietnam claiming the

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<sup>88</sup> Phnom Penh Post: Hun Sen Calls for Senator's Arrest, 13.08.2016; Senator Hong Sok Hour Arrested, 15.08.2016

<sup>89</sup> Joint Press Release: CSOs call for the immediate release of opposition Senator, Phnom Penh 18.08.2016; see also Phnom Penh Post: Senator Sok Hour Given Seven Years for Forgery and Incitement, 08.11.2016

<sup>90</sup> Cambodia Daily: CNRP President Sam Rainsy Sentenced to a Further Five Years in Prison, 27.12.2016

<sup>91</sup> Cambodia Daily: Immunity No Use for Jailed Lawmaker Hun Sen Says, 13.04.2016

RGC uses incorrect maps. In October, he was sentenced to 2.5 years in prison and a fine of 1,000 USD.<sup>92</sup>

Other publicly controversial and widely discussed cases concerned lawsuits against deputy opposition leader Kem Sokha.<sup>93</sup> Leaked phone recordings had appeared in social media in March, in which a man communicates with an alleged mistress of Kem Sokha named Kim Chandaraty. The man accused media celebrity Thy Sovantha, of having joined the CNRP *‘to do politics and get money’*<sup>94</sup> and defraud CNRP supporters in the US. Thy Sovantha filed a lawsuit for defamation and demanded one million USD in compensation from Kem Sokha, alleging he had been the man speaking on the leaked recordings. The social media activist had formerly been seen campaigning for the CNRP specifically using the chant *‘Hun Sen, Step Down.’*<sup>95</sup> However, she was expelled in 2014 from the party after allegations that she worked with the CPP in an effort to divide the CNRP.<sup>96</sup> The Prime Minister lauded her later in a speech in July for her environmental activism.<sup>97</sup>

In a separate, but related case, it was further claimed that Kem Sokha had an affair the with Kim Chandaraty. The woman first denied affair, but changed her testimony after having been interrogated by the anti-terrorism police confirming that she indeed had an affair with him.<sup>98</sup> She further alleged that ADHOC human rights officials, the NEC Deputy Secretary General and a CNRP commune chief, have bribed her with 500USD to deny the affair. This led to investigations by the Anti-Corruption Unit.<sup>99</sup> The accused denied the claims, stating they only provided her the usual financial and legal support for clients who are investigated by the police.<sup>100</sup> In May 2016, court proceedings against Kem Sokha began with alleged charges of defamation and the procurement of prostitution. He was summoned to court twice for questioning, but refused. The court responded by sentencing him to five months in prison for non-appearance despite his parliamentary immunity.<sup>101</sup> However, attempts to arrest Kem Sokha failed after the police did not provide an arrest warrant during a raid at the CNRP headquarters

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<sup>92</sup> Phnom Penh Post: Sam An Sentenced to Jail, 11.10.2016

<sup>93</sup> Phnom Penh Post: Alleged Mistress of Kem Sokha Slandered for Political Gain: Experts, 19.04.2016

<sup>94</sup> Phnom Penh Post: Sovantha Suit Opens Door for Probe of Sokha, 11.03.2016

<sup>95</sup> Cited from Cambodia Daily: The Rise and Revolt of ‘Rescue’ Girl, Thy Sovantha, 06.07.2016

<sup>96</sup> Cambodia Daily: CNRP Says Activists Planning to Split the Opposition, 20.10.2016

<sup>97</sup> Phnom Penh Post: PM Praises Sovantha’s Environmental Activism, 04.07.2016

<sup>98</sup> Cambodia Daily: Sokha Sued in Mistress Case as CNRP Official Arrested, 25.04.2016; Voice of America (VOA): Anti-Terror Police Question Woman Embroiled in Kem Sokha Affair Allegations, 11.03.2016

<sup>99</sup> Voice of America (VOA): Right Workers, Election Official Charged with Bribery, 04.05.2016

<sup>100</sup> Cambodia Daily: In Mistress Case, ‘Strange’ Use of Police Unit, 21.04.2016; Cambodia Daily: Anti-Corruption Unit Poised to Investigate Sokha Sex Scandal, 23.03.2016; Anti-Terror Police Question Woman Embroiled in Kem Sokha Affair Allegations, 11.03.2016

<sup>101</sup> Phnom Penh Post: Kem Sokha Summoned over Sovantha Suit, 04.05.2016; Sokha Called to Court Again Over ‘Prostitution’, 09.05.2016

and later because of the threats of the opposition to organize mass protests.<sup>102</sup> Along with court proceedings against Kem Sokha, legal proceedings were opened against two other CNRP lawmakers for alleged procurement of prostitution despite their parliamentary immunity. Both lawmakers refused along with Kem Sokha to appear at the court.<sup>103</sup> These cases were followed by the arrest of four ADHOC officials, one CNRP commune chief and NEC Deputy Secretary General Ny Chakrya on charges of bribery.<sup>104</sup> However, after almost eight months of court proceedings, Kem Sokha was then suddenly amnestied by King Norodom Sihamoni upon a request from Prime Minister Hun Sen after the political negotiation.<sup>105</sup> The other accused CNRP lawmakers were not charged. A CNRP commune chief arrested in relation to the case was released from prison in the same month. The ADHOC officials and the election official, however, remained in pre-trial detention. Bail requests were denied on the grounds that investigations continue.<sup>106</sup> The public remained in the dark about these sudden changes in the case, which had been reported for months in media and raised further suspicions about the credibility and the independence of the judiciary and as well as contravening domestic law. The extended pre-trial detention of the five also violates international human rights standards, which are directly applicable in Cambodian law. As demonstrated above, there is no justifiable legal basis for the imposition or extension of their detention, nor to deny their request for bail; no adequate justification or evidence for the detention has been provided by the Cambodian authorities. Both the initial detention of the five, and its continuation and recent extension, should therefore be considered arbitrary and unlawful, in violation of Article 38 of the Constitution and Article 9 of the ICCPR. UN experts with endorsement of heads the UN Working Group on Arbitrary Detention call for the immediate release of five human rights defenders detained in May 2016 on charges relating to assistance lent to a woman who was allegedly pressured by the Anti-Corruption Unit to lie about a false allegation. The charges were seen as politically motivated, and in November 2016, the UN Working Group on Arbitrary Detention ruled their detention to be ‘arbitrary’.

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<sup>102</sup> Phnom Penh Post: Sokha Charged with ‘Red-Handed Crime’ as CNRP Threatens Protests, 27.05.2016

<sup>103</sup> Cambodia Daily: Assembly Asked to Strip CNRP Lawmakers of Immunity, 04.07.2016; Phnom Penh Post: Kem Sokha, Two Fellow CNRP Lawmakers Reject Summons, 05.05.2016

<sup>104</sup> Cambodia Daily: Rights Workers, Election Official Arrested over Sex Scandal, 29.04.2016

<sup>105</sup> Phnom Penh Post: Breaking: Royal Pardon for Kem Sokha, 02.12.2016

<sup>106</sup> Cambodia Daily: Seven Months On, ADHOC Officials Denied Bails 01.12.2016; Commune Chief Fined and More Pardons to Come, 09.12.2016

## 5. Democratic Space

Democratic space continued to shrink due to the crackdown on the CNRP. Peaceful assemblies by civil society organisations, trade unions and political parties other than the ruling party critical of government were on numerous occasions prohibited. The murder of the popular political commentator and activist Kem Ley raised suspicions that the assassination was politically motivated. . The RGC continued in 2016 with its restrictive policy on freedom of expression. A number of controversial lawsuits put forward against individuals on charges of defamation, insults and incitement remained in the public limelight. Although some of these cases appear to provide justifications for restrictions, the convictions with hefty fines and prison sentences appear in a number of cases disproportionate to the alleged offence committed. The cases also raise the question, if the current restrictive policy on freedom of expression can improve Cambodia's political discourse? In regard to freedom of association, no major obstructions by the RGC were observed with one exception. For the first time, the human rights organization (LICADHO) was threatened with legal measures for a webpage based on the new Law on Non-Governmental Organizations (LANGO) deemed to be critical of the government. Concerns were also raised about the newly approved trade union law, which could enable the RGC to restrict the freedom of association of workers.

### 5.1 Freedom of Peaceful Assembly

In 2016, government authorities continued to take a restrictive stance on the right to peaceful assembly. Although the tense political atmosphere between the opposition and government suggests that some restrictions on the right to peaceful assembly might have been justified, it appeared that the authorities have not always been impartial in issuing permissions for peaceful assemblies. Whereas the CNRP, other political parties, CSOs and labour unions critical of government were often prohibited or limited from holding peaceful assemblies, authorities did not hesitate to allow public protests criticizing the CNRP. Even annual peaceful assemblies held in Cambodia for more than a decade, particularly on Human Rights Day<sup>107</sup>, Labour Day<sup>108</sup>, Women's Day<sup>109</sup> and World Habitat Day<sup>110</sup> were scaled down by authorities, and led in some instances to reprisals by law enforcement agencies, including beatings, arbitrary arrests, detention and prosecution of activists. The only important exception to the government's restrictive policy

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<sup>107</sup> Cambodia Daily: Human Rights Day Goes Off Without a Hitch or a March, 12.12.2016

<sup>108</sup> Phnom Penh Post: Assembly Off-Limits to Marchers on May Day, 02.05.2016

<sup>109</sup> Cambodia Daily: Women's Day Bike Ride Blocked by Police, Security Guards, 09.03.2016

<sup>110</sup> Cambodia Daily: Police Block Marchers on World Habitat Day, 06.10.2016

on peaceful assemblies in 2016 was the funeral processions and ceremonies for the popular political commentator and activist Kem Ley, which was attended by tens of thousands of mourners in Phnom Penh. Authorities had put few limitations on the procession, although initially they hesitated they allowed the second traditional 100-day funeral ceremony lasting three days to move ahead in October. A march through the capital's centre for the ceremony was prohibited.<sup>111</sup>

Following repeated threats by the RGC in 2016 that protests of the opposition will be met with full force, including the deployment of the military as outlined earlier; the CNRP refrained from holding larger protests and marches. The authorities allowed the CNRP only the delivery of petitions to embassies and King Norodom Sihamoni, appealing to intervene in the political deadlock. Threats by the CNRP to hold mass demonstrations in September, should Kem Sokha be arrested, did not take place as authorities refrained from arresting him.<sup>112</sup> Only small-scale rallies outside the CNRP headquarters were tolerated by authorities. CNRP supporters, who wanted to join the rallies from the countryside, were blocked from travelling to the capital.<sup>113</sup> Also, other peaceful assemblies critical of government were prohibited by authorities in 2016. In July, a protest organised by the newly found Beehive Social Democratic Party (BSDP), led by popular radio moderator Mom Sonando did not go ahead after authorities denied permission.<sup>114</sup> So-called 'Black Monday Campaigns' of civil society activists were also prohibited (protests were always held on Monday's and participants wear black T-shirts). Activists, however, ignored the ban and held about seventeen campaigns in 2016 with a dozen protesters, demanding the release of ADHOC and NEC officials referred to above.<sup>115</sup> Authorities responded with arbitrary arrests and temporary detentions. Two protesters were convicted of insults and sentenced to six days in prison.<sup>116</sup> After the negotiation between CPP and CNRP, the minister of the interior ministry in December the ADHOC and NEC officials will be released from prison, although they were actually not released.<sup>117</sup>

In October, a peaceful land rights march was met with violence by security forces. 300 villagers from 99 communities in Phnom Penh had marched for World Habitat Day through the city. Five participants were beaten, including a LICADHO human rights official.<sup>118</sup> Only a party

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<sup>111</sup> Phnom Penh Post: City Grants Approval for Kem Ley's 100-Day Ceremony, 13.10.2016; Cambodia Daily: Sea of Mourners Carries Kem Ley Home, 25.07.2016

<sup>112</sup> Phnom Penh Post: Sokha Say's CNRP May No Have Option, but 'Mass Demonstrations', 12.09.2016

<sup>113</sup> Phnom Penh Post: CNRP Set to Rally, Deliver Petitions Over City's Ban, 05.09.2016; Radio Free Asia: Phnom Penh Allows Opposition Rally, But Police Keep Protesters Out of the City, 08.09.2016

<sup>114</sup> Phnom Penh Post: Mam Sonando Protest Denied by City, 07.07.2016

<sup>115</sup> Phnom Penh Post: Black Monday Activist Arrested as CNRP Gives Campaign Nod, 09.08.2016

<sup>116</sup> CCHR: Fact Sheet – Recent Official Interference with Freedoms of Assembly and Expression, March 2016, p.1

<sup>117</sup> Cambodia Daily: Black Monday Protests Cease Protests, For Now, 20.12.2016

<sup>118</sup> Phnom Penh Post: Rights Workers Beaten at Rally, 11.10.2016

Congress of the League for Democracy Party (LDP) with 5,000 party members in November in Phnom Penh went ahead, but no public rallies or marches were held.<sup>119</sup>

Also prohibited in 2016 were labour protests and when ignored, labour protest could face violence by law enforcement forces and members of pro-government associations. In February, a peaceful strike of recently unionized employees from a bus company turned violent, when members of the government-organized Cambodia for Confederation Development Association (CCDA) violently dispersed the protesters using metal bars and hammers. None of the attackers were held responsible, but two protesters were detained for two months before being released on bail.<sup>120</sup> Union leaders and workers, who had assembled in front of the National Assembly to protest against the approval of the new and controversial trade union law, were also dispersed violently as explained later in this report.<sup>121</sup> In April 2016, the Ministry of Labour filed a lawsuit against labour unionists for public defamation, insulting public servants and blocking a public road after the Collective Union of Movement of Workers (CUMV) had held a protest in front of the ministry.<sup>122</sup> In May, court proceedings were open against Rong Chhun, the former union leader of the Cambodian Independent Teacher Association (CITA) and currently member of the bi-partisan National Election Committee (NEC) suggested by the CNRP. He, among other union leaders is alleged to have been involved in violent labour protests in Veng Sreng Street in Phnom Penh in 2014 during where five protesters were shot dead by security forces, none of whom had been held accountable. Although the case against Rong Chhun did not progress in 2016, he was provisionally charged for intentional violence, property damage, threats to cause damage and obstructing traffic. Along with Raong other union leaders critical of government were charged, including Ath Thorn from the Coalition of Cambodian Apparel Worker's Democratic Union (CAWDU), Yang Sophorn from the Cambodian Alliance of Trade Unions (CATU), Chea Mony, the former President of the Free Trade Union (FTU) and Pav Sina, leader of the earlier mentioned CUMV.<sup>123</sup> Based on statistics from the Labour Ministry, the number of strikes and labour related demonstrations has decreased from 582 in 2015 to 220 in 2016. The ministry claimed in 2017 that the decrease was caused by its new more effective resolution mechanisms. But it remains questionable if this can explain the decrease considering the reported cases of restrictions on peaceful assemblies of labour unions and lawsuits filed in 2016.<sup>124</sup>

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<sup>119</sup> Phnom Penh Post: League for Democracy Party Holds Congress, 04.04.2016

<sup>120</sup> LICADHO (2016), p. 3

<sup>121</sup> Phnom Penh Post: Guard Beat Demonstrators at Union Law Protest, 04.04.2016

<sup>122</sup> Cambodia Daily: Labor Ministry Sues Union Leader, Officials for Defamation, 22.04.2016

<sup>123</sup> Phnom Penh Post: Old Veng Sreng Case Revived for NEC Member, 19.05.2016

<sup>124</sup> Phnom Penh Post: Competing Explanations for Sliding Strike Numbers, 17.01.2017

Anti-opposition protests were apparently handled differently by authorities in 2016. In March, a number of anti-CNRP protests accompanying the court proceedings against Kem Sokha for an alleged sex scandal were allowed in Phnom Penh. A self-proclaimed student group with about sixty participants demanded Kem Sokha respond to the alleged sex scandal.<sup>125</sup> Likewise, a protest in Phnom Penh with about a hundred participants against opposition leader Sam Rainsy was permitted by the authorities. The protesters were garment workers led by Thy Sovhanta, and a self-proclaimed student leader spreading fear of job losses after opposition leader Sam Rainsy had called on European Union member states to pressure the government with bans on textile exports.<sup>126</sup> Authorities were also indifferent to calls from CPP supporters for anti-opposition protests in Phnom Penh after the CNRP was alleged to have organized an anti-Hun-Sen demonstration in the USA during an ASEAN-US summit.<sup>127</sup> The CNRP requested protection from law enforcement agencies fearing attacks against its party, but according to media, law enforcement agencies did not respond to the request.<sup>128</sup> In October 2015, anti-opposition protesters had gathered in front of Kem Sokha's house hurling rocks followed by demonstrations in front of the National Assembly leading to the vicious beating of two CNRP lawmakers. Except for the three above mentioned members of the bodyguard unit, no other protesters at that time were arrested or detained for the violence.<sup>129</sup>

## 5.2 Freedom of Expression

The tense political atmosphere and accompanying polarizing political discourses of supporters and members of the political parties appeared to have reached a point in which it becomes increasingly difficult to determine what content of freedom of expression needs to be protected and that which needs to be restricted. Cambodia's political discourses are often fed with allegations, fake news, fake leaks, counter-allegations, rumours, insults, discrimination and defamation, through media. . Whereas the CNRP is often blamed as an instigator of negative political discourses, the party claims the CPP is not doing better. Only the CNRP appeared to have appealed in 2016 to its supporters to refrain from public insults in online social media.<sup>130</sup> The RGC maintained a restrictive policy on freedom of expression in 2016. Also, there have been one case that CPP filed defamation lawsuits targeted political commentator to ask large amount of compensation. . In addition, the murder of the popular political commentator and

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<sup>125</sup> Cambodia Daily: Students Protest Over Sex Scandal at CNRP HQ, 05.03.2016; Voice of America (VOA): Youth Group Continues Protesting Campaign Against Sokha's Scandal, 27.03.2016

<sup>126</sup> Phnom Penh Post: Protest Against Sam Rainsy Gets Quick Green Light, 25.07.2016

<sup>127</sup> Phnom Penh Post: CNRP 'Behind' US Protests, Says PM's Son, 08.02.2016;

<sup>128</sup> CNRP Appeals for Protest Protection Go Unheeded, 15.02.2016

<sup>129</sup> Phnom Penh Post: Pro-CPP Youth Group Vows Counter-Protests, 12.02.2016

<sup>130</sup> Cambodia Daily: CNRP Appeals to Supporters to Refrain from Online Insults, 15.01.2016

activist Kem Ley in the capital in July 2016 increased public fears about expressing critical political opinions.<sup>131</sup>

In 2016, political communication through social media appear to have been more intensively scrutinized by authorities than in previous years, and provided reasons for a number of high-profile lawsuits against the CNRP. Some of the cases appear to be justified, but raise questions in procedural terms about the proportionality of sentences. One of those cases concerned CNRP Senator Thak Lany, who allegedly claimed during a public speech in the province of Rattanakiri, that Hun Sen was behind the murder of the political commentator and activist Kem Ley. The Senator was stripped of her immunity in the Senate in which the CPP holds a two-third majority. She was convicted in absentia of slander and incitement and sentenced to one-and-a-half years in prison. She fled to Sweden and claimed she had not made this claim. Should she have made the claim as suggested by the government, a defamation lawsuit appeared to be justified, though the proportionality of the sentence can be questioned.<sup>132</sup> Another case in 2016 concerned Sam Rainsy. He had posted on his Facebook a video about former King Norodom Sihanouk in the 1980s, in which a caption says that the People's Republic of Kampuchea (1979-81) tried Sihanouk in absentia for treason and sentenced him to death. In fact, the Vietnam backed government led by Heng Samrin at this time had not tried Sihanouk and sentenced him to death. Heng Samrin, the current President of the National Assembly and CPP Honorary President sued Sam Rainsy for posting the video on his Facebook account.<sup>133</sup> Sam Rainsy did not acknowledge the veracity of the content of the video stating instead it not did not mention Heng Sarmin by name. Sam Rainsy was convicted in absentia and ordered to pay 2,500 USD in fines and compensation of 37,200USD to Heng Sarmin.<sup>134</sup> Another lawsuit against the opposition leader followed after he also suggested, along with Senator Thak Lany, that the government was behind the murder of the popular political commentator and activist Kem Ley. Sam Rainsy was sued by Hun Sen and charged by courts for defamation and incitement. Sam Rainsy defended the allegations, stating: *'All the persons assassinated – or targeted in the case of the 1997 grenade attack – were among the staunchest government critics'*<sup>135</sup>. But as he failed to provide substantial evidence for his allegations, either to courts or to the public, the lawsuits appeared to be justified, though they can be questioned on procedural terms because Sam Rainsy is a lawmaker. Contrary to these cases, another lawsuit against Sam Rainsy, raised doubt about the sincerity of the charges.

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<sup>131</sup> Cambodia Daily: Popular Political Analyst Kem Ley Shot Dead, 10.07.2016

<sup>132</sup> Phnom Penh Post: Immunity on Line for Senator Accused of Slandering Hun Sen, 31.08.2016

<sup>133</sup> Cambodia Daily: Rainsy Told To Pay \$37,500 for Defaming Heng Samrin, 29.07.2016

<sup>134</sup> Phnom Penh Post: Sam Rainsy Hit with Guilty Verdict for Samrin Defamation Suit, 29.07.2016

<sup>135</sup> Sam Rainsy cited in Cambodia Daily: Rainsy Defends Murder Claim After Lawsuit, 03.12.2016

Claiming that Prime Minister Hun Sen bought faked ‘likes’ to artificially boost his Facebook popularity, Sam Rainsy was convicted for defamation and ordered to pay a 2,500USD fine, and a compensation payment to Hun Sen of 3,750USD.<sup>136</sup>

Also, other controversial lawsuits for Facebook postings were brought against CNRP lawmakers, including lawmaker Um Sam an and Senator Hong Sok Hour. Their conviction might be justifiable with regard potential impacts on nationalistic sentiments but raises questions on the proportionality of the sentences, not to mention its constitutionality (the latter has been already outlined earlier in this report). Um Sam An was sentenced to 2,5 years and Hong Sok Hour to seven years in prison for Facebook postings critical of the government’s border policy with Vietnam, and in the case of Hong Sok Hour for the use of an alleged faked public document. The anti-Vietnamese border campaigns on social media did serve the CNRP in gaining political support. As mentioned earlier in this report, a 2015 Asia Foundation poll found that that 39% of Cambodians surveyed explained that in the past two years, the government had ‘*not improved at all*’ in areas concerning ‘*problems with Vietnam*’<sup>137</sup>. The nationalistic campaigns of the CNRP might have raised concerns in government that they will lead to diplomatic rows with Vietnam, increase public nationalistic sentiments and potentially lead to discrimination against -Vietnamese. However, the online postings of the lawmakers did not trigger such violence, leaving doubts about the proportionality of the sentences.

While the above cases remain controversial, other restrictions on the freedom of expression in 2016 appear to be counterproductive for improving Cambodia’s political discourse. In April, Prime Minister Hun Sen warned in a Facebook posting that from now on legal action will be taken against those who ‘*twist*’ the truth to malign the CPP and that the CPP ‘*would preserve its right to defend its honour and dignity*’<sup>138</sup>. The same day, CPP spokesman Sok Eysan announced to media, that he had filed a lawsuit against Ou Virak, a prominent political analyst and founder of the Future Forum Think Tank ([www.futureforum.asia](http://www.futureforum.asia)) on behalf of the CPP. Ou Virak is alleged to have said in an interview with Radio Free Asia that the court proceedings against Kem Sokha are a strategy of the CPP to put pressure on Sokha. Sok Eysan explained that Ou Virak’s case is a defamation offence because of ‘*intentional exaggeration*’ and sued him for 100,000USD in compensation. The case was pending by the end of 2016.<sup>139</sup> Doubts were also raised concerning a defamation lawsuit by the court official against Ny Chakrya, a former senior official of ADHOC, who had been appointed in 2015 as deputy secretary general of the National Election

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<sup>136</sup> Cambodia Daily: Rainsy Guilty In Hun Sen Facebook ‘Likes’ Case, 09.11.2016

<sup>137</sup> Vukovic, Danilo; Babovic, Marija (2015), p. 36

<sup>138</sup> cited in Phnom Penh Post: PM Threatens to Use Courts to Silence Pundits, with Virak Top List, 24.04.2016

<sup>139</sup> Phnom Penh Post: Ou Virak Requests Court to Drop Case, 13.05.2016

Committee (NEC). He was convicted for defamation and sentenced to six months' in prison and fined 1,460USD.<sup>140</sup> His conviction followed a complaint by two court officials, who accused him of defamation, because Ny Chakrya had criticized them during a public speech about the rightfulness of the detention of two villagers in a land dispute on charges of incitement to destroy property.<sup>141</sup> Likewise, doubts were raised about the conviction of a 24-year old student and a hefty 18-months prison term under incitement charges in March 2016 for a Facebook posting in which the student called Cambodians to join him for a '*colour revolution*'.<sup>142</sup> Long-standing land activist and human rights defender Tep Vanny convicted of "intentional violence with aggravated circumstances" in relation to charges dating back to 2013, which were suddenly reactivated following Vanny's arrest in August 2016 while protesting for the release of the Khmer Five. In a clear attempt to silence one of the Cambodian authorities' most fearless and outspoken critics, Vanny was sentenced to two years and six months' imprisonment, as well as a series of fines and compensation payments amounting to the equivalent of \$2250 USD. A group of Vanny's supporters, who had peacefully gathered outside the court building, were also violently dispersed by police and security forces, leaving some in need of hospital treatment. These events follow on the heels of a 2016 conviction for 'obstruction of a public official' in relation to a 2011 protest, despite a lack of any credible evidence. The six-month sentence is yet to be enforced.

The Criminal Penal Code, particularly articles 305 (defamation) provide, beside fines and prison terms, apparent unlimited compensation demands. The current cases appear to confirm concerns raised by human rights and civil society organizations, including COMFREL that the new law can be used to restrict, government critics and political opponents.<sup>143</sup> A recent UN Special Rapporteur on the Situation for Human Rights report in Cambodia shares these concerns, stating in 2016 that '*information received on arrest, investigations and court proceedings over the past year indicated that many of the provisions and other laws are being invoked in a discriminatory manner, giving the impression of restrictions applied in furtherance of political objectives*'.<sup>144</sup> These concerns raise also the question, if the current restrictive policy on freedom of expression can improve Cambodia's public political discourse and can contribute to improvements in the relations between opposition and government? It seems more viable to improve political discourse through a

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<sup>140</sup> Phnom Penh Post: Ex-ADHOC Official Chakrya Guilty of Defamation, 23.09.2016

<sup>141</sup> Phnom Penh Post: Phnom Penh Court Charges Ny Chakrya, 20.07.2016

<sup>142</sup> Voice of America (VOA): Student Sentenced to 18 Months Prison for 'Revolution' Facebook Post, 16.03.2016

<sup>143</sup> sFor concerns in this regard see for example CCHR: Briefing Note – The Criminalization of Defamation and Freedom of Expression in Cambodia, May 2014; LICADHO: Statement - New Penal Code a Setback for Freedom of Expression Issues, 09.12.2010

<sup>144</sup> Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/33/62, 05.09.2016, p. 10-11

‘culture of dialogue’ as originally intended and to educate Cambodia’s public through unbiased state media and educational institutions about political communication and public policies instead of legal reprisals.

Restriction of Cambodia’s freedom of expression continued in 2016 chiefly because of the unchanged media focus in favour of the ruling party. This has been covered extensively in previous COMFREL reports.<sup>145</sup> Despite the July 2014 political agreement, the CNRP has so far not been able to launch its own TV station. Although the CNRP received a TV license in 2015 from the RGC, the party has been unable to find a location for the TV station. In April 2016, the CNRP was prohibited from erecting a TV antenna in the city of Takhmao because residents had complained about feared health risks caused by radioactivity. The CNRP suspects that authorities used the complaint as a pretext to prevent an opposition allied TV station to be opened.<sup>146</sup> It can be expected that the CNRP will need to rely mainly on new media to conduct campaigns for the upcoming commune council and national assembly elections in 2017 and 2018. The sole exception might be the state television and radio stations. They are required to provide equal airtime for all political parties, but only during the limited time of the official election campaign for both elections. Considering that internet penetration in Cambodia has in recent years significantly increased, what might allow the CNRP to be able to counterweight the pro-CPP media campaigns, traditional media still play an important role in Cambodia’s public, particular in rural areas? The CPP has also increased its efforts to launch online media campaigns against the opposition.<sup>147</sup> How can public political discourse and relations between government and opposition improve when media are not genuinely independent, but are biased in favour either the CPP or CNRP.

### **5.3 Freedom of Association**

The right to freedom of association continues to be respected by the government. Since 2014, the Ministry of Interior (MoI) registered 4,378 civil society organizations (CSOs). According to a 2013 study commissioned by the Cooperation Committee of Cambodia (CCC), it is estimated that about a third of them are active.<sup>148</sup> In 2014, an Oxfam report found that 25,000 unregistered

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<sup>145</sup> COMFREL: Democracy, Elections and Reform Report, February 2016, pp. 21-23

<sup>146</sup> Cambodia Daily: CNRP Prohibited from Erecting TV Antenna, 28.04.2016

<sup>147</sup> COMFREL (2015), p. 23

<sup>148</sup> CCC: CSO Contributions to the Development of Cambodia 2012 – Opportunities and Challenges, May 2013, p. 18; see also Cooperation Committee of Cambodia (CCC): Assessment of the Enabling Environment for Civil Society – Cambodia Country Report, Phnom Penh 2013, p. 18

and community-based organizations (CBOs) operate in Cambodia.<sup>149</sup> As of May 2015, the Ministry of Labour registered 3,166 trade unions of which 90% are organized in the garment and textile industry employing 521,152 workers.<sup>150</sup> However, the new Law on Associations and Non-Governmental Organizations (LANGO) and the new Law on Trade Unions which was approved in 2016 potentially could limit the right to freedom of association and could also negatively reflect on the right to freedom of expression and assembly. As outlined in the previous democracy report, the LANGO requires any national or international association or NGO to register with the MoI and to be political neutral towards political parties or otherwise risk being down or refused registration. This provision could target mainly organizations critical of government, and brings into question the freedom of national members of NGOs and associations exercising their political rights.<sup>151</sup> 48 NGOs were threatened with legal action for “putting pressure on the court” – a criminal offense that appears uniquely reserved for those critical of government - following their legitimate criticism of the conviction of three environmental activists.<sup>152</sup>

Also, the new trade union law, adopted in April, makes the registration of trade unions with the Labour Ministry mandatory and prohibits ‘*to agitate for purely political purposes*’ (Article 65). This raises concerns that this provision could be used against unions critical of government. Although the new law appears to make an important distinction not limiting all political activities of union members by stating only ‘*purely political purposes*’ are prohibited. Of greater concern is that the new law appears to be more restrictive on the freedom of assembly of workers than the previous laws. The new law now requires an absolute majority vote of approval of all trade union members to strike. Trade unions could find it logistically difficult to organize strikes under this provision. The new law was strongly contested by trade unions,<sup>153</sup> and human rights organizations<sup>154</sup>, and was also questioned by the International Labour Organization (ILO)<sup>155</sup> and the United Nations High Commissioner for Human Rights (UNHCHR).<sup>156</sup> Although no trade unions, associations or NGO’s were dissolved or refused to register in 2016, t precedence was set in a case for potential legal reprisals against organizations critical of government in May. RGC

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<sup>149</sup> USAID: 2015 CSO Sustainability Index for Asia, 2<sup>nd</sup> Edition, Washington 2016, p.10

<sup>150</sup> Cambodian Federation of Employers and Business Associations: Cambodia’s Trade Union Law. A Necessity. Employer’s Position Paper, Phnom Penh 2015, p. 5

<sup>151</sup> COMFREL: Democracy, Election and Reform, Phnom Penh February 2016, p. 30

<sup>152</sup> JOINT STATEMENT: 78 international and Cambodian civil society groups condemn the continued arbitrary detention of the #FREETHHE5KH detainees and call for an immediate end to ongoing judicial harassment and violence against human rights defenders in Cambodia in 2017

<sup>153</sup> Voice of America: Unions and Employers Deeply Divided Over Cambodia’s Trade Union Law, 15.06.2016

<sup>154</sup> CCHR: Fact Sheet – Trade Union Law 2016, CCHR Law Classification Series, Volume 10, August 2016

<sup>155</sup> ILO: Statement on Trade Unions Law in Cambodia, 04.04.2016

<sup>156</sup> OHCHR: A Human Rights Analysis of the Draft Law on Trade Unions, March 2016

authorities warned human rights organisation LICADHO that it could face legal action for being not politically neutral with regard to the new LANGO. As outlined earlier in this report, the NGO runs a web page listing the cases of imprisoned CNRP members and supporters, human rights and election officials as *‘political prisoners’*<sup>157</sup>. Although no legal action was taken and the webpage is still online, the warning signalled that the LANGO can be useful for the executive to exercise pressure on CSOs who criticise government actions. .

## 6. Democratic Elections

The electoral reform process continued in 2016 under the newly formed bi-partisan National Election Committee (NEC) raising public expectations that the upcoming commune council elections in June 2017 and the national assembly elections in July 2018 will enjoy more public confidence and credibility. But the political deadlock between opposition and government raises doubts about these expectations. In 2016 it appeared that political pressure on the four opposition appointed NEC members increased after legal proceedings were brought against two of them, and one member was arrested and detained in May. The newly formed bi-partisan NEC has been put to the test in 2016 with the voter registration process using a new electronic system. The new system has been widely perceived by the public and among stakeholders to have improved when compared to the old manual system. However 1.8 million eligible voters were not able to register due to most of them are migrant workers living abroad. Although the new system is more secure to control double names of registered voters, migrant workers under the new system still need to return to their communes to register, but time and financial constraints often hinder them.<sup>158</sup>

The political stakes in the upcoming commune council and national assembly elections are high. There expecting close race between CPP and CNRP. Based on past voting patterns and public opinion surveys, a fierce political competition in the upcoming elections can be expected to close race between CPP and CNRP. . As in the past, however, voting patterns in the commune elections could differ from those in the national elections.

### 6.1 National Election Committee (NEC)

Legal proceedings were brought against two NEC officials. This raises the question, if the current legal pressures on these board members will allow the NEC to fulfil its mandate effectively and operate free from intimidation and fear as required by law? Moreover, suspicions

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<sup>157</sup> Cambodia Daily: Rights Group Warned Over ‘Political Prisoners’ Page, 20.05.2016

<sup>158</sup> Ibid., p. 32

about possible undue political pressure on the NEC could increase, if a solution not be found. NEC deputy general secretary and former senior ADHOC officer, Ny Chakrya, appointed by the new NEC, was arrested in May and remains in pre-trial detention without clear evidence while case related to ADHOC offices with this alleged sex scandal involving of Kem Sokha even though , Mr. Kem and opposition commune chief were amnestied in December. In September, Ny Chakrya was also convicted for defamation and sentenced to six months in prison in an unrelated case (see above). Up until now his seat on the NEC remained vacant.<sup>159</sup> In May, legal proceedings against NEC commissioner Rong Chun, favourably endorsed by the CNRP, were opened. Although Rong remained in his post in 2016 he faces the prospect of conviction for his alleged role in a violent labour protest in 2014. The authorities so far have not pursued the case.<sup>160</sup> Both cases raise concerns about the future effectiveness of the NEC, and if the CNRP will receive approval from CPP lawmakers, should be replaced. Current laws require the NEC to replace the commissioner and official should they be convicted.<sup>161</sup>

#### 1. Recruitment of Voter Registration Staff at the Province and District Levels

It was observed that the recruitment commission was composed in accordance with the mandate of the NEC and its authority and responsibility as stipulated by law. The announcement of the recruitment was made in accordance with the Decision of the NEC, occurring first at the level of Provincial/Capital Election Secretariats, and then at the level of Municipality/District/Khan. The announcement occurred via media in both the provinces and the capital. Additionally, it was observed that some provinces such as Kandal and Pursat announced the recruitment by using loud speakers in key locations or social media outreach (Facebook).

From 22 July 2016 to 05 December 2016, the NEC announced job vacancies for short-term contract staff, including 741 positions of master trainer, to work at Provincial/Capital Election Secretariats for the operation of producing a new voter list 2016. In this recruitment, the NEC provided information on candidacy requirements and separate skill requirements for each post, as well as the duration of work and salary.

The disclosure of the Decisions and Guidelines following the process of recruitment of their staff and officials for the voter registration was done well and in accordance with acceptable practices. Meanwhile, the investigation and evaluation also revealed some problems with the

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<sup>159</sup> Cambodia Daily: NEC Decides Not to Seek Bail for Its Deputy in Bribery Case, 04.05.2016

<sup>160</sup> Cambodia Daily: If Rong Chhun Goes, CPP Can Veto Any New NEC Member, 20.05.2016

<sup>161</sup> Phnom Penh Post: NEC Repercussions for Chakrya Case: Analysts, 26.09.2016

recruitment, such as that the quality and number of announcements were still not satisfactory, there were some difficulties in recruiting the right candidates for certain positions, and the inclusion of women candidates was insufficient.

## 6.2 Voter Registration

With technical and financial support of the European Union and the Japanese government, the new voter registration system is expected to increase the integrity of the voter lists. In the past, the voter registration was conducted manually creating numerous errors in the voter list leading to the disenfranchisement of large numbers of voters and creation of room for voting manipulation. These shortcomings have been a major cause of conflict in previous elections. It is expected that the new system will be more effective with new safeguards including biometric data and photo to reduce the numbers of errors and making it more difficult to manipulate. . The NEC registered a total of 7.87 of 9.6 million eligible voters for the 2017 commune elections scheduled for June. Voter registration was conducted from August, 23<sup>rd</sup> to December, 6<sup>th</sup>, 2016. About 1,000 election observers from COMFREL and the Election Reform Alliance (ERA) observed the process in 546 communes. Although the observation sample is not representative as no systematic nationwide sampling of registration centres could be conducted. The findings of election observers suggest the 2016 Voter Registration, approximately 7.87 million people successfully registered of the 9.6 million total eligible voters, giving a registration rate of 81.47%. This contrasts with the Electoral Reform Alliance (an umbrella group of CSOs) estimate that at least 95% of eligible voters would be able to register using the new modernized voter registration system. However, shortcomings remain, and will require improvements for the national elections in 2018.

A major shortcoming of the new voter registration system appears to be that the voter registration rate has declined compared to previous elections whereas for the 2013 national election 9.6 million voters registered, 9.2 million for the 2012 commune elections.<sup>162</sup> The drop in registration numbers raises major concern is that particular groups of citizens seem to have been marginalized by the process and not enjoy full voting rights. These are one million migrants especially workers working abroad, and large numbers of Buddhist monks. Many Buddhist monks did not have Khmer Identity Card and were not well informed about their right to vote as citizens. Migrants were principally dissuaded from participation in the registration process by the structural obstacles of cost and time required for registration. A separate but recurrent

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<sup>162</sup> COMFREL: Final Assessment and Report of Commune Council Elections 2012, Phnom Penh Oct. 2012, p. 43

controversial issue was whether monks should be allowed to vote or not. According to the constitution every citizen has the right to vote, however, a Supreme Patriarch circular from September 2014 advises monks not to vote, reasoning their apolitical mandate. The majority of the 50.000 Buddhist monks followed his advice. Only 8.000 monks registered for the upcoming commune council elections.<sup>163</sup>

There was still significant demand more times for registration by eligible voters after the closing date of registration, of November 30, 2016. The decision to extend registration one day, following a request from CSOs, should be applauded. However, the request for additional extensions was denied. The NEC explained that it could not extend for more than one day, stating time constraints in the releasing new voter lists for verification, and preparation of lists of commune council candidates for the 1,646 communes.<sup>164</sup> Another important reform to counter the decline in the registration rate would be to ensure that Cambodians, who still lack proper identification to register to vote, obtain required documents for the next registration in 2017. On 31 March 2016, the NEC announced that 1,991,025 eligible voters have not yet obtained a national identity card. Although those voters can register with an alternative document, the Identity Certificate for Voter Registration (ICVR). The required procedure is burdensome. Voters need to provide the respective commune chief a birth certificate, two photographs, an application form and bring along two witnesses to obtain an ICVR.<sup>165</sup> In addition, procedures would need to be considered to facilitate an estimated 1.1 million Cambodians migrant workers to register to vote. Migrant workers under the new system still need to return to their communes to register, but time and financial constraints often hinder them.<sup>166</sup> Positively, the accuracy of the voter list improved under the new system. The NEC found more than 20,000 duplicate names and a data entry error of around 3% of the total number of voters registered.<sup>167</sup>

Other shortcomings of the new system concerned procedural and technical irregularities during the exercise. Election observers reported to have witnessed a total 15,540 such irregularities. Most cases concerned a disorganized and unregulated entry to the registration centres (4,360 cases). This was followed by 739 cases of voters who failed to check if their names were correctly entered into the database. Another 3,139 cases concerned the failure of registration centre chiefs to interview applicants as required. Mistakes made in registration notes handed to voters also created confusion. A further 1,313 cases were observed in which citizens were not

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<sup>163</sup> COMFREL: 2016 Voter Registration and Monitoring Report, Phnom Penh March 2017

<sup>164</sup> Radio Free Asia: Cambodia Voter Registration Ends with 7.8 million of 9.6 million Eligible Voters Signed Up, 30.11.2016

<sup>165</sup> COMFREL: COMFREL: 2016 Voter Registration and Monitoring Report, Phnom Penh March 2017. p. 9

<sup>166</sup> Ibid., p. 32

<sup>167</sup> Ibid., p. 2

properly instructed on the registration process, 449 cases were observed concerning citizens who were refused to register, but were not handed the denial forms, and 199 cases were observed concerning members of the police, military and citizens wearing clothes with party logos. Even though the number of irregularities observed raises concerns and demands further improvements to ensure the integrity of the process, COMFREL/ERA did not see them as a systematic effort to undermine the registration operation. Also, election observers found no cases of intimidation or threats to prevent citizens from registering to vote and few complaints were filed during the registration period. The NEC received a total of 97 formal complaints, 45 of which were settled at the commune level and the remaining cases at the NEC.<sup>168</sup>

Other issue is the existence of barriers and an overall lack of support by authorities for voter education and dissemination of voter registration information by the authorities. It is in this area of the 2016 voter registration that the efforts of civil society were met with the most repression. Stronger advocacy is needed by the NEC in its engagements with Sub-National Administrations for the role and responsibilities of civil society for voter education.

The political parties appeared to have widely accepted the outcome of the voter registration process, but identified concerns. Issues raised by the CNRP included, that the registration period was not extended and that demands for the creation of mobile registration teams on the Thai borders to register migrant workers were refused by the NEC. The NEC argued that it would not have the authority to extend the registration for migrant workers.<sup>169</sup> The NEC also launched investigations into claims made by the CNRP that soldiers in communes of three provinces (Battambang, Preah Vihear and Siem Reap) were registered despite not living or working there, leading to suspicions that they were registered to manipulate the vote.<sup>170</sup> The NEC declared that the soldiers were wrongly registered but still might be allowed to vote because they may be employed to monitor security at these polling stations.<sup>171</sup> COMFREL raised concerns that these procedures were not transparent. Likewise, the opening of some new polling stations suggested that soldiers and police were registered in closely contested communes to favour the CPP. However, it was found that only three polling stations in three different provinces where this had happened. . What appeared to be isolated cases do not prove if this affects the electoral outcome. Another issue raised by the CNRP were claims that 5,000 Vietnamese immigrants were registered to vote. But the NEC defended that those immigrants have identity documents as citizen, because the NEC did send some registered names claimed by the CNRP alleging non-

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<sup>168</sup> Cambodia Daily: Voter Registration Ends With 81% Enrolment, 01.12.2016

<sup>169</sup> Phnom Penh Post: NEC to mull targeted extension of voter registration, 28.11.2016

<sup>170</sup> Radio Free Asia: Cambodian Opposition: Army Soldiers Deployed to Manipulate Vote, 15.09.2016

<sup>171</sup> Cambodia Daily: NEC Says Soldiers Registered for Vote in Wrong Commune, 04.12.2016

citizens to the Ministry of Interior. The Ministry confirmed that they have legitimated identity card.

### **6.3 Political Outlook and Prospects for Commune Council Elections in 2017**

Political tensions did not cease in the first months of 2017. This could negatively impact the legislative process and the prospects for the upcoming commune and national elections. Of particular concern are the following: new legal attacks against the CNRP, the weakening of the legislative process with the abolition of the opposition held minority leader position in the National Assembly, and the temporary prohibition of questioning of ministers in parliament, and new amendments to the Law on Political Parties. The latter might constrain political competition and put political parties at risk of being temporarily suspended from their activities, or even to be dissolved. Because of the legal changes, opposition leader Sam Rainsy resigned from his position in February, after raising concerns that the new law could be used to ban or dissolve the CNRP before or after the elections.<sup>172</sup>

#### **6.3.1 Unilateral Changes in the Legislative Rule**

In January, the National Assembly decided to strip deputy opposition leader Kem Sokha of his position as minority leader and revoke respective Article 48 (3) of its internal regulations. This considerable weakens the just recently gained political influence of the opposition in the National Assembly. The CNRP held the minority leader position to which opposition leader Sam Rainsy was appointed since 2015. The CPP held the majority leader position referring to the Prime Minister. Kem Sokha took over the minority leader position in December 2016. Although the function of the new mechanism was hampered by the on-going political deadlock between opposition and government, the mechanism could still have provided both parties an open communication channel to gradually improve relations. As an institutional mechanism, it could have also been effective in facilitating potential future power transitions, and incorporate other political parties entering the parliament. In addition, the mechanism could have strengthened the legislative process by increasing transparency, access to information and deliberations on new legislation. The CPP defended the revocation under the pre-text, that the CNRP misused the

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<sup>172</sup> Phnom Penh Post: Sam Rainsy Resigns from CNRP, 11.02.2017

position to negotiate legal cases against its members and would have contradicted the constitution which prohibits the legislature from interfering with court proceedings.<sup>173</sup>

### 6.3.2 Amendments to the Law on Political Parties

A fresh controversy followed in February. Prime Minister Hun Sen suggested, during a public speech, that the Law on Political Parties from 1997 should be amended in order to enable the executive and judiciary to hold political parties responsible for any wrongdoing of individual party members, including the possibility to dissolve the political party by the Supreme Court.<sup>174</sup> Within two weeks, amendments to the Law on Political Parties were drafted and reviewed by the CPP led legislative and justice commission of the National Assembly raising doubts about the independence of the legislature. On 20<sup>th</sup> February, the initial proposal was approved without any changes by a unanimous vote of 66 of the 68 CPP lawmakers.<sup>175</sup> The CNRP boycotted the vote. Also, other political parties criticized the amendments, including the Khmer Power Party and the Grassroots Democracy Party.<sup>176</sup> Various CSOs, including COMFREL called for changes to the proposed draft law.<sup>177</sup> NEC board member Rong Chhun, threatened to resign, if the new law be approved as he could not oversee an election under such conditions.<sup>178</sup> It is likely that the amended law on political parties will soon come into force. The Senate, controlled by a CPP two-third majority has no veto power, but only can delay the amendments with proposals for changes. Although King Sihamoni is not able to sign in case of the absence the president of the senator will proposed laws once they have been approved by the National Assembly. Likewise, the Constitutional Council is widely perceived to lack of politically independent power to challenge the amendments.

The amendments to the Law on Political Parties lists new offences for which political parties and its leadership can be held accountable and provide authorities new powers to temporarily suspend and dissolve political parties. The newly amended Article 6 not only prohibits political parties to ‘*cause secession that leads to the destruction of national unity and territorial integrity*’, to ‘*organize armed forces*’ and to ‘*subvert the liberal multiparty democracy and the constitutional monarchy*’, but also prohibits activities which ‘*affect the security of the state*’ and ‘*incitement that would lead to national*

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<sup>173</sup> Voice of America (VOA): Opposition Decries Decision to Change Rules of Parliament, 25.01.2017; Khmer Times: Sokha Loses Minority Leader Title, 01.0.2017

<sup>174</sup> Phnom Penh Post: Hun Sen Mulls Rules to Dissolve Parties for Individual’s Wrong Doing, 03.02.2017

<sup>175</sup> Phnom Penh Post: CPP Amends Party Law, Opening Door to Dissolving Opposition, 21.02.2017

<sup>176</sup> Phnom Penh Post: CPP Amends Party Law, Opening Door to Dissolving Opposition, 21.02.2017

<sup>177</sup> Joint Statement of CSOs ‘To Respect and Protect the Freedom of Politicians, Political Parties and People’s Political Will Ensuring Liberal Democracy and Free and Fair Elections, 17.02.2017

<sup>178</sup> Phnom Penh Post, 09.02.2017

*disintegration*’, but now according to the amendment also explicitly stipulates – different from the previous law - that political parties are prohibited to contravene the Constitution, the Law on Political Parties and other existing laws of the Kingdom of Cambodia. In case of violations, the Ministry of Interior can take different measures according to the new Article 38, including *‘to issue a note to that political party to make a correction in a limited period’*, *‘to issue a written warning and take measures to stop illegal activities as necessary’*, *‘to decide to temporarily suspend the activities of that political party for a limited period’* and *‘to file a complaint to the Supreme Court in order to dissolve that political party in case the mistake is serious’*.<sup>179</sup>

When a complaint is filed by the Ministry of Interior, the Supreme Court can decide according to the new Article 44, either *‘to suspend the activities of that political party during a period of not more than five years’* or *‘to dissolve that political party’*. Under the previous law, no provisions existed to dissolve a political party. The Ministry of Interior could only execute financial penalties against a political party and temporarily cease its activities when a political party fails to report annually their finances and activities (Article 31). The MoI also could refuse to register a new political party only under less restrictive conditions, and political parties had the possibility to appeal to the Constitutional Council when their registration was refused (Article 23, 24 and 25).<sup>180</sup> Under the amended law, appeals against a decision of the Supreme Court cannot be appealed and the Constitutional Council appear to have no role in these cases. The newly amended law also allows the enforcement to change of leadership of political parties. According to the new Article 18, *‘The President and Vice president of a political party and components of its steering committee or permanent committee of a political party, shall not be an individual who has a conviction for a crime or misdemeanour carrying a non-suspended jail sentence’*. Violations of this article might lead to a suspension or dissolution of the political party.<sup>181</sup> After announcements by the government in the beginning of February to approve the law, opposition leader Sam Rainsy decided to resign as president of the CNRP out of concerns that the newly amended law could lead to the dissolution of the CNRP.<sup>182</sup> The government denied that the newly amended party law targets the CNRP only, but claimed - according to CPP spokesman Chheang Vun - that it applies to all political parties and only the courts can dissolve parties by citing the new Article 34. Articles 6, 38, and 43 of the amendments empower the Ministry of Interior to halt or suspend political activities and to file a complaint to the Supreme Court requesting the dissolution of a political party if it is found to have committed

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179 COMFREL Parliamentary Watch 2016; see also Cambodia Daily: Law to Dissolve Political Parties Fast-Tracked, 15.02.2017

180 Law on Political Parties as of 18. November 1997

181 COMFREL Parliamentary Watch 2016

182 Phnom Penh Post: Party Over for Opposition? Cambodia Watchers Wonder If CPP really will dissolve CNRP, 10.02.2017

an infraction serious enough to impact upon the security of the state or incite actions which undermine national unity. Enforcement of the amendment also lead to the elimination of the will of citizens which elected to their representatives because an elected political party is dissolved while the political party loses all its' seats as parliamentarian, senators and/or members of commune/ district/city/ province according to the law on elections and the law on the administration of commune/ district/city and province. The empowerment to the Ministry of Interior, an institution of the government controlled by the ruling party, results in a conflict of political power interest undermining the legitimacy of the ministry in terms of performing the corresponding enforcement duties. Moreover, the judiciary lacks the necessary capacity, independence and impartiality to carry out oversight and enforcement of the law, and it is unlikely that implementation is free from political pressure and interference since their officials have been the ruling political party officer<sup>183</sup>. Preceding the approval of the new law, Sam Rainsy was faced in January with another defamation lawsuit after he had alleged that the Prime Minister Hun Sen had paid social media celebrity Thy Sovantha one million USD to fund her campaign against the opposition. Thy Sovantha had a few days prior sued Sam Rainsy on the same charges. Hun Sen demands one million USD in compensation. Thy Sovantha demanded first US\$ 250,000 in compensation and doubled its compensation request in February to 500,000 USD.<sup>184</sup> Allegations made by the opposition leader were made after leaked Facebook chats published on YouTube in November 2016, allegedly between Thy Sovantha and Hun Manith, a son of Hun Sen and major general and director of the Ministry of Defence military intelligence unit, appeared to record communications elaborating on the organization of protests against Kem Sokha. Thy Sovantha denied the claims stating her Facebook account was hacked.<sup>185</sup> If prosecuted, Sam Rainsy would face an additional prison sentence to the already seven years he faces for defamation, incitement, and publication of forged public document charges.

### **6.3.3 Commune Council Elections in June 2017**

The fourth commune council elections will take place on 4th June 2017 following a directive of Prime Minister Hun Sen released in May.<sup>186</sup> Commune elections are held at five-year intervals beginning in 2002. 11,572 commune councillor seats in 1,646 communes are for political party

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<sup>183</sup> Joint Statement 'To Respect and Protect the freedom of Politician, Political Parties And People's Political Will Ensuring Liberal Democracy and Free and Fair Elections Phnom Penh, February 17, 2017

<sup>184</sup> Phnom Penh Post: Prime Minister Piles on With Lawsuit, 19.01.2017; Sovantha Ups Damage Claim Against Sam Rainsy, 08.02.2017

<sup>185</sup> Cambodia Daily: Alleged Chats Between Thy Sovantha and Hun Manith Leaked, 29.11.2016

<sup>186</sup> Phnom Penh Post: Date Set for 2017 Commune Elections, 25.05.2016

contests (since the 2012 commune elections 15 new communes were formed). The elections function is not only select both commune councillors and a political party winning commune chiefs but also show the pattern of the political parties winning senators, sub-national councillors (district, city and provinces) and village chiefs because they subsequently will be selected by commune councillors.

The commune council sizes range between 5 and 11 councillors depending on the population size of the commune. Voters will cast their ballots in 22,148 polling stations. The party holding the majority in the commune councils elects the commune chief. The CPP, the CNRP and other minor political parties began to select candidates for the elections in 2017.<sup>187</sup> All political parties contesting the elections are required to register reserve candidates for each contested commune. In February it was not known, how many political parties will contest as the candidate registration is on-going. However, it is expected that only the CPP and CNRP will be able to recruit enough candidates to contest the elections in all 1,646 communes. According to the Ministry of Interior, there were a total of 64 political parties up to 2015, of which 41 were officially registered. But apart from the two major political parties, it is expected that others ten will register and gain seats in the upcoming commune elections.<sup>188</sup> In the last commune elections, only FUNCINPEC, the Norodom Ranariddh Party (NRP), the League for Democracy Party (LDP) and the Cambodian Nationality Party (CNP) won seats.<sup>189</sup>

Unfortunately, the political tension, oppression and the recent political developments set the stage for a potentially highly contested and intense constrained political competition. The amended law on political parties puts the CNRP at substantial risk of being either suspended or dissolved considering that 24 opposition members and supporters, including lawmakers are already detained on various charges and a number of lawsuits against the CNRP are pending. Since insults or incitement charges have been criminalized for imprisonment under the new 2010 criminal penal code and the amendments to the law on political parties takes those cases into account, new defamation/incitement/insult lawsuits against the CNRP could also further pile up during the election campaign. This could also increase the political pressure for on other opposition parties under the new party law to frame their electoral campaign in ways that are less

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<sup>187</sup> Voice of America (VOA): Opposition Prepares to Nominate 23,000 Candidates for Local Elections, 19.01.2017; Cambodia Daily: Candidate Nominations Begin for Upcoming Commune Elections, 10.01.2017

<sup>188</sup> Agency Kampuchea Press (AKP): 8 New Political Parties Registered, 04.01.2016

<sup>189</sup> FUNCINPEC won total only 151 commune council seats and one commune chief seat, the NRP won only 52 commune council seats, the LDP 8 commune council seats and the CNP one commune council seat, compare COMFREL: Final Report and Assessment 2012 Commune Council Elections, December 2012

critical of the ruling party. Though it is yet unclear how restrictive the new law on political parties will be when implemented by the government, it is widely perceived that the hastily initiated amended law on political parties will be instrumental in targeting the CNRP. Considering the party is the only genuine main challenger of the CPP in the upcoming elections it not clear how the CNRP will conduct its election campaigns in the context of possible new lawsuits.

Because of these unsettling new conditions for political competition, the upcoming commune elections will probably be less openly contested than previous elections. Leaving these considerable constraints on campaigns aside, the upcoming election results might still provide new insights about the political support enjoyed by the government and the opposition, and potentially allows predictions for the election outcome in 2018. However, voting patterns between commune and national elections have differed significantly in the past. In the 2012 commune elections, the CPP won 1,592 communes (commune chiefs) with 3,631,082 votes. The opposition, at this time was not united and won 1,804,943 votes and only 40 communes (commune chiefs) (SRP: 22; HRP: 18). By contrast, in the 2013 national elections, the CPP won only 3,235,969 votes while the newly formed united opposition of SRP and HRP calling themselves the CNRP, won 2,946,176 votes, almost one million votes more than in the 2012 commune elections.<sup>190</sup> Would the HRP and SPR had merged already before the 2012 commune council elections, the CNRP would have won 143 commune chief seats in these 2012 elections. According to the 2013 national election results, the CNRP would have won 613 commune chiefs.

Taking another looks at the 2015 Asia Foundation survey, an accurate prediction of the electoral outcome in 2017 remains impossible except for stating that the elections will probably be fiercely contested. The survey found that 63% of those surveyed approved of the work of the CPP and 51.4% of the work of the CNRP, revealing that one third of those surveyed approved of the work of both. There are two political scenarios viewed by respondents as most likely, though they are contradictory: The first is that the CPP will implement reforms while still in power, with over half of respondents identifying this as the likely outcome (55.9%). On the other hand, just over half believe that opposition party will win the elections and implement reforms (52.1%). This indicates that support for a multi-party system is strong, as both political parties appear to enjoy strong legitimacy. But the survey results do not allow a determination of which political party leads in the poll ahead of the upcoming elections. To better understand the party

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<sup>190</sup> COMFREL Election Watch 2016

preferences and allow predictions, the survey made a cross-tabulation with a third variable, which was defined as follows: *‘Those who agree with the CPP, and disagree with the CNRP or are undecided about it, we call pro-CPP. Those who agree with the CNRP, and disagree with the CPP or are undecided about it, we call pro-CNRP. This is a moderate definition of “support” for a party, as a strong definition would exclude the undecided. This is the proxy indicator of political preference that is used in this analysis.’*<sup>191</sup>

One reason for the difference in the voting pattern might be that commune elections are more a personality vote as citizens interact closely with their commune councillors and commune chiefs. National elections are by contrast more impersonal and might be perceived among Cambodian voters to not have a direct impact on local policy issues and their relationship with local authorities.<sup>192</sup> Another reason could be that the voter turnout for commune elections is generally lower than for national elections, making it easier for the governing party to mobilize its supporters through its strong local party networks.<sup>193</sup> The survey of Asia Foundation in 2015 found that elections are important to Cambodian citizens. This is particularly true of national elections, which almost two thirds of respondents (65.7%) say are very important to them. Less importance is placed on commune elections. 44.3% said that commune elections are very important to them.

However, because of the demographic change (according to the NEC total 2,621,190 are youth voters will vote in June 2017)<sup>194</sup>, the fragile socio-economic situation of a majority of the Cambodian population, the unification of the opposition, the increased internet penetration and the higher mobility of voters (internal and external migrant workers), the ruling’s party support base might not be any longer as effective as in the past, consequently leading to significant gains for the CNRP. However, the cross-tabulation found no clue to the possible electoral outcome of the next elections as about one third voted for the CPP, one third for the CNRP and one third stayed away from the polls or indecisive .<sup>195</sup>

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<sup>192</sup> Hughes, Caroline: Understanding the Elections in Cambodia 2013, Journal of Area-Based Global Studies, Special Issue: Workshop and Symposium 2013-14: 1-20, Sophia University 2015. pp. 7-8

<sup>193</sup> COMFREL Election Watch 2016

<sup>194</sup> NEC: Disclosure of Official Voter Lists 2016, 13.02.2017, [www.ncelect.org.kh](http://www.ncelect.org.kh)

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