

A HUMAN RIGHTS ANALYSIS OF THE AMENDED LAW ON POLITICAL PARTIES (July 2017)

Prepared by the Office of the United Nations

High Commissioner for Human Rights in Cambodia

July 2018

Contents

I.	Introduction.....	1
II.	Permissible restrictions on human rights	7
III.	Analysis of the Law on Political Parties	9
	Article 6 new.....	9
	Article 11 New.....	11
	Article 44- New (two)	12
	Article 48- New (repeat)	13
	Article Two new	13

I. Introduction

The Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia presents this analysis as a contribution to the consideration of proposed amendments to the Political Parties Law. The rapid enactment and promulgation of the draft amended Law, following its designation as “urgent,” made it impossible to finalize the analysis in time for it to be taken into consideration by the institutions responsible for its review and approval, namely, the National Assembly, the Senate and the Constitutional Council. OHCHR nevertheless offers its analysis in anticipation of the next opportunity to bring the Law closer in conformity with the relevant international human rights standards. The importance of doing so derives from its direct implications for the ability of Cambodian people to exercise their human rights fully, particularly their right to participate in the conduct of public affairs as recognized in the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights and in Article 31 of the Cambodian Constitution.

The meaningful exercise of the right to participate in public affairs requires the enjoyment of various other established rights, including the rights to freedom of expression, opinion, assembly, association, protection from discrimination, and the rights to education and to information. These rights are particularly important for the democratic process, both during the election period and between elections, as highlighted by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (SRFOAA). He has emphasized that “these rights are essential components of democracy since they empower women, men and youth to ‘express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable’”.¹ According to the SRFOAA, “associations” understood broadly, including political parties, are central vehicles through which individuals can take part in the conduct of public affairs through chosen representatives.² The views of the SRFOAA reinforces those of the United Nations Human Rights Committee (HRCte), the expert body that monitors the implementation of the International Covenant on Civil and Political Rights, according to which citizens have the right to “take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”³ The HRCte further considers that “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”⁴

The integrity of elections in a liberal multi-party democracy depends upon political parties being able to exercise freedom of expression and opinion, including the right to seek, receive and impart information. Political parties should act as catalysts for debate and dialogue in democratic societies.⁵ This should allow people to form opinions independently, free of violence, compulsion, inducement or interference of any kind.⁶ It is essential, therefore, the formation of parties that espouse unpopular ideas is protected from unjustified restriction. Jurisprudence from the European Court of Human Rights reinforces State obligations in this regard, noting that the protection of freedom of expression relates “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb”.⁷

The responsibility rests on States, according to article 4.1 of the Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union, to “provide for the formation and free

¹ Resolution 15/21 of the United Nations Human Rights Council, preamble, as cited by the Special Rapporteur in A/68/299 (2013), para. 5.

² A/68/299, para. 9.

³ General comment of the United Nations Human Rights Committee (HRCte) on Article 25 of the International Covenant on Civil and Political Rights (ICCPR), 1996, para. 8.

⁴ HRCte General Comment No. 25, CCPR/C/21/Rev.1/Add.7, para. 12.

⁵ A/38/299, para. 38.

⁶ HRCte General Comment No. 34, para. 19.

⁷ Refah Partisi (The Welfare Party) and Others v. Turkey, European Court of Human Rights Grand Chamber, Application Nos. 41340/98, 41342/98 and 41344/98, 13 Feb. 2003.

functioning of political parties, ... and establish the conditions for competition in legislative elections on an equitable basis.”⁸

The present analysis draws principally from the Cambodian Constitution⁹ and the International Covenant on Civil and Political Rights (ICCPR), which establish the rights to take participate in public affairs, to freedom of expression, peaceful assembly and association. The relevant excerpts of these instruments are presented below.

- Article 1, paragraph 1, of the Constitution:
“Cambodia is a Kingdom where the King shall fulfill his functions according to the Constitution and the principles of liberal multi-party democracy.”
- Article 41, paragraph 1, Constitution:
“Khmer citizens shall have freedom to express their personal opinions, the freedom of the press, of publication and of assembly. No one can take abusively advantage of these rights to impinge on dignity of others, to affect the good mores and custom of society, public order and national security.”
- Article 42, Constitution:
“Khmer citizens shall have the right to create associations and political parties. This right shall be determined by law.
Khmer citizens may participate in mass organizations meant for mutual assistance, protection of national realizations and social order.”
- Article 51, Constitution:
“The Kingdom of Cambodia adopts a policy of liberal multi-party democracy.
Khmer citizens are masters of their country’s destiny.
All powers belong to the citizens. The citizens shall 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.”
- Article 160 new-two, Constitution:
“Laws and normative acts in Cambodia that guarantee the State properties, the rights, the liberties and the legal properties of private persons and that are in conformity with the national interests, shall remain in force until the new texts are made to amend or to abrogate them, except those provisions that are contrary to the spirit of the present Constitution.”

⁸ Declaration on Criteria for Free and Fair Elections, adopted on 26 March 1994, <http://www.ipu.org/Cn1-e/154-free.htm>.

⁹ Unofficial translation, version supervised by the Constitutional Council, October 2015. See:
http://www.ccc.gov.kh/english/basic_text/Constitution%20of%20the%20Kingdom%20of%20Cambodia.pdf.

- Article 25 of the ICCPR:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.”

- Article 19, ICCPR:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.”

- Article 22, ICCPR:

1. “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests;

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

These rights belong to every person, regardless of their age, nationality, political orientation, or other status, and they have been repeatedly reaffirmed by international bodies with respect to all countries, including Cambodia. In its latest Concluding Observations on Cambodia, the HRCte issued several recommendations specifically on these rights, including to “ensure that everyone can freely exercise his or her right to freedom of expression and association... In doing so, the State party should: ... (d) Review its current and pending legislation... to avoid the use of vague terminology and overly broad restrictions, to ensure that any restrictions on the exercise of freedom

of expression and association comply with the strict requirements of articles 19 (3) and 22 of the Covenant.”¹⁰

The United Nations Human Rights Council has “remind[ed] States of their obligation to respect and fully protect the rights of all individuals to … associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to … freedom of association are in accordance with their obligations under international human rights law.”¹¹

International human rights standards recognize that limitations on these rights may be necessary under certain circumstances and thus the conditions for permissible limitations are integrated within the standards themselves, as evidenced in the second paragraphs of articles 19 and 22. This is examined in the section below entitled “Permissible restrictions on human rights.”

The European Commission for Democracy through Law (the “Venice Commission” of the Council of Europe), in its Guidelines on Political Party Regulation, explains it as follows: legislation on political parties should not interfere with freedom of association and proportionality should be carefully weighed and prohibitive measures narrowly applied. The determination of the State’s proper role in the regulation of political parties requires consultation with the individuals and groups affected by such regulation as an integral part of the law drafting process. Limitations imposed on the right of individuals to free association and expression should not be the result of partisan political activity but be based on a legitimate aim necessary in a democratic society.¹²

The international human rights standards require certainty in the law. In this regard, there are several provisions in the proposed amendments that are vague or unclear, which could lead, for example, to the suspension or dissolution of a political party, or to the arbitrary limitation of political rights or the rights to freedom of expression and association enshrined in the ICCPR. People cannot be expected to comply with a law that they do not understand. “… [R]estrictions must be clear, easy to understand, and uniformly applicable to ensure that all individuals and parties are able to understand the consequences of breaching them. Restrictions must be necessary in a democratic society, and the full protection of rights must be assumed in all cases lacking specific restriction. To ensure that restrictions are not arbitrarily applied, legislation must be carefully constructed to be neither too detailed nor too vague.”¹³ In this regard, the terms “tacitly agree” and “opposing the interest of the Kingdom of Cambodia” would require clarification to comply with international human rights law.

The right of participation requires that, before a bill is enacted into law or proposed amendments are adopted, its contents be made accessible not only to those directly concerned, but to the general public. In this regard, the HRCte has recommended that Cambodia “should ensure transparency in

¹⁰ Concluding observations of the United Nations Human Rights Committee (HRCte) on the second periodic report of Cambodia, CCPR/C/KHM/CO/2, 27 April 2015.

¹¹ A/HRC/RES/24/5, para. 2.

¹² Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission - Adopted by the Venice Commission at its 84th Plenary Session, (Venice, 15-16 October 2010) , pp. 7, 9-10. Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e).

¹³ OSCE Guidelines on political party regulation, para. 49.

the legislative process and consider making public all draft legislation to facilitate public debate and dialogue by citizens with their representatives.”¹⁴

OHCHR notes that there was no public consultation process on the proposed amendments, which would have allowed for an in-depth review. That would have required sufficient time to be reserved to enable the interested public to thoroughly review and debate them. Indeed, gathering all views through genuine, meaningful consultations prior to adoption should be routine practice with respect to all draft legislation.

OHCHR encourages the organization of such a consultation, which could contribute to a revision of the present Law that will be acceptable to the Cambodian people and compliant with human rights law. OHCHR offers its observations and recommendations for any such eventual review in the hope of contributing to the adoption of a sound Law on Political Parties that fully respects human rights.

¹⁴ HRCte Concluding Observations on the second periodic report of Cambodia, CCPR/CO/KHM/2 (2015), para. 25.

II. Permissible restrictions on human rights

The ICCPR foresees that limitations might need to be placed on the enjoyment of freedom of expression and association under certain circumstances, as set out in the second paragraphs of Articles 19 and 22. In this way, international human rights law was elaborated with due attention to the careful balance needed for States to protect, respect and fulfill human rights without risking the legitimate aim of maintaining peace in a democracy.

Certain restrictions are simply not permitted. International human rights law specifies certain rights that are non-derogable under any circumstances,¹⁵ while Article 152 new-two of the Constitution states that “All the laws and decisions of the State institutions must be absolutely in conformity with the Constitution,” which includes the human rights set out in its Chapter 3.

As set out in Articles 19 and 22 of the ICCPR, restrictions are permitted when they are prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Similar restrictions are established in Article 41 of the Constitution. Any restriction would need to be judged against three criteria in order to be deemed permissible, as follows:

- The “*necessity*” of a proposed limitation for the specific objective (respect for the rights and freedom of others or the protection of national security, public order, public health or public morals) pursued must be objectively demonstrated.
- The proposed restriction must be subjected to a strict *proportionality* test to ensure that it is objectively proportionate to the actual threat. When various alternative measures are possible, the least restrictive among them should be selected, and applied only for as long as necessary to meet the objective.
- Restrictions may not be applied except on grounds which are *established by law*.

The combination of these three elements is sometimes referred to in their totality as the criteria for the “reasonableness” of proposed restrictions.¹⁶ All countries are concerned for public order or national security and may have reasonable justifications for such concerns. That, however, is not in itself sufficient for limiting freedom of association, and limitations thus imposed cannot be without clearly defined parameters. Through its jurisprudence, the HRCte has explained that State Parties “must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical, danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.”¹⁷

¹⁵ Including the right to life; the prohibition of torture, cruel, inhuman and degrading treatment or punishment; prohibition of medical or scientific experimentation without consent; prohibition of slavery, slave trade and servitude; prohibition of imprisonment because of inability to fulfill a contractual obligation; principle of legality in criminal law; recognition everywhere as a person before the law; freedom of thought, conscience and religion.

¹⁶ HRCte General Comment No. 25, para. 4: “Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.” See also Communication No. 932/2000, Gillot et al. v. France, Views adopted on 15 July 2002.

¹⁷ See Communication No. 1119/2002, Lee v. the Republic of Korea, Views adopted on 20 July 2005.

This is echoed in article 3.7 of the Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union, which establishes that restrictions should be of an exceptional nature, be in accordance with law and reasonably necessary in a democratic society, and consistent with State obligations under international law. It prohibits the discriminatory application of permissible restrictions on candidature, the creation and activities of political parties and campaign rights on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A common justification made for restrictions concerns national security. In this regard, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights¹⁸ explain when this is and is not permissible, as follows:

30. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.
31. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.
32. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

According to research by the Inter-Parliamentary Union on free and fair elections, “the prevailing jurisprudence on denial or restriction of political rights indicates that such measures will violate individual rights if unreasonable, arbitrary or disproportionate.”¹⁹

In sum, for the restrictions contained in the Law to be permissible under the applicable international standards, they would need to be elaborated with further precision. The process by which restrictions would be applied in specific cases would also need to be set out with precision and entrusted to an independent regulatory body. According to the HRCte, the burden of proof rests with the State to explain why any restrictions imposed are necessary.²⁰

¹⁸ UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, available at: <http://www.refworld.org/docid/4672bc122.html>.

¹⁹ Guy S. Goodwin-Gill, Free and Fair Elections. Inter-Parliamentary Union, Geneva, 2006, p. 137.

²⁰ See Communication No. 1383/2005, Katsora et al. v. Belarus, Views adopted on 25 October 2010 and Communication No. 2165/2012, Pinchuk v. Belarus, Views adopted on 24 October 2014, among other decisions of the Human Rights Committee. See also HRCte General Comment No. 25.

III. Analysis of the Law on Political Parties

The present analysis covers those Articles of the amended Law on Political Parties deemed to have implications for human rights, as listed in the Table of Contents. The Articles on which OHCHR has no comments to offer are not reproduced here. The analysis is based on an unofficial English translation of the amended Law produced by OHCHR.

Article 6 new

All political parties shall not:

1. Create a secession that would lead to the destruction of national unity and territorial integrity of Cambodia.
2. Conduct sabotage to counter liberal, multi-parties democracy and constitutional monarchy regime
3. Carry out an activity that would affect the security of the state
4. Create an armed force
5. Incite to break up the national unity
6. Use voice messages, images, written documents or activities of a person convicted of felony or misdemeanor, for their own political interests.
7. Openly or tacitly agree or conspire with a person convicted of felony or misdemeanor to carry out any activities, for their own political interests.
8. Support or develop any plans or conspire with any individuals who carry out activities aiming at opposing the interest of the Kingdom of Cambodia as provided for from point 1 to point 5 above.

Comments: Although the ICCPR allows for the limitation of certain rights, these must be consistent with the State's obligations under international law.²¹ Article 5 of the ICCPR further makes clear that it does not confer on States the "right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant." With regard to paragraphs 6 and 7, it should be an individual party's decision whether or not to "use voice messages, images, written documents or activities" or to agree with a person convicted of a felony or misdemeanor, and should not be prohibited by law.

Political parties should govern themselves, while ensuring that they respect people's right and opportunity to take part in the conduct of public affairs and to be elected, as established by the HRCte.²² This is addressed in Article 10 of the Law, which requires each political party to establish

²¹ See section above on "Permissible restrictions on human rights."

²² HRCte General Comment No. 25, para. 26.

its own statutes and main policies. If the members of a political party do not wish to use a convicted person's messages and images, or engage with them through any means, they are free to include such a rule in their own statutes, as set out in Article 10 of the Law on Political Parties. However, they should enjoy the freedom to associate with others who share their aims, opinions and values, including those who may have criminal records. Certain exceptions to this general rule are permitted under specific conditions as previously outlined, such as in the case of individuals who advocate violence, discrimination or hatred against others.²³

It may be argued that not all misdemeanour offences set out in Cambodian laws are so serious as to warrant a prohibition from engaging with political parties for life. The Criminal Code reflects a graduated scale of penal sanctions based on the gravity of the offence and defines a misdemeanour as an offence for which the maximum sentence is more than six days but no more than five years²⁴, which includes offences such as drink driving (punishable by six days to six months of imprisonment and a fine) or driving without a number plate or not stopping one's vehicle upon the order of traffic police (both punishable by six days to one month of imprisonment and a fine)²⁵. In contrast with the approach of Article 6 new, the Law on the Election of Members of the National Assembly only disqualifies persons from standing as candidates in elections for the National Assembly "who are convicted of a felony or misdemeanor by the courts *and have not been rehabilitated*" (Article 34-new of the LEMNA, *emphasis added*).

In light of the views of the SRFOAA, and the fact that many offences that could prevent a person from engaging with political parties for their entire lifetime do not involve violence or incitement of hatred, including for "petty misdemeanours," these provision would appear to be excessive and would not meet the test of reasonableness required under the ICCPR²⁶.

Additionally, some persons are convicted of offences committed when they were minors. Consideration should be paid to the validity of the prohibitions established in Article 6 due to an offence committed before they obtained full legal capacity as adults. The Committee on the Rights of the Child has recommended that States parties automatically remove the names of children who committed an offence upon reaching the age of 18, from the criminal records.²⁷

Finally, giving the rising numbers of convicted persons in Cambodia, it would be practically impossible for a political party to ensure that none of its members engages in any of the broad conducts foreseen in subparagraphs 6, 7 and 8. The vague and unclear language in subparagraphs 7 and 8 could lead to a subjective interpretation and thus limit the legitimate rights of people as exercised through political parties. International human rights standards require certainty in the law. The Venice Commission's Guidelines on Political Party Regulation state that laws on political parties must be clear and precise, specifying to political parties both the activities considered unlawful and the applicable sanctions in cases of violations.²⁸ As established in Article 22 of the

²³ See section on "Permissible restrictions on human rights" above.

²⁴ Article 47, Criminal Code 2009.

²⁵ Articles 76, 77 and 82, Road Traffic Law 2015.

²⁶ See Communication No. 1410/2005, Yevdokimov and Rezanov v Russian Federation, para. 7.5, on the issue of reasonableness in regard to blanket restrictions on Article 25 of the ICCPR. See also section above on "Permissible restrictions on human rights."

²⁷ General Comment No. 10 of the United Nations Committee on the Rights of the Child, CRC/C/GC/10, para. 67.

²⁸ OSCE Guidelines on political party regulation, p. 10.

ICCPR, “*everyone* has the right to freedom of association with others” (emphasis added), subject only to the narrow restrictions set out in subparagraph 2 of the same Article.²⁹

With regard to the term “interest of the Kingdom of Cambodia” mentioned in subparagraph 8, the HRCte has established that, “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights....”³⁰

OHCHR recommends deleting paragraphs 6 to 8. As recommended previously, the terms “national unity,” “sabotage to counter liberal, multi-parties democracy and constitutional monarchy regime” and “security of the state,” should be revised or defined in narrow terms of the precise activities to be prohibited so as to ensure that people belonging to any political party can fully understand the actions prohibited and exercise their rights without undue or disproportionate restrictions.

Article 11 New

All political parties shall have their name and symbol/logo as determined below:

1. The full name, the acronym and the logo of the party must be different from those of other political parties.
2. The name of a political party shall not be given just to make a slight rectification of the name of political parties or using the name of a physical person.
3. The logo of a political party shall not be copied or taken from a national symbol or picture representing a religion, Angkor Wat temple, royal photographs or sculptures of all Khmer Kings or the picture of a physical person.

Comments: The Venice Commission in its Guidelines on Political Party Regulation established that it is reasonable that legislation regarding political party registration prohibit the use of names and symbols associated with national or religious institutions.³¹ However, the prohibition of using the name or picture of a physical person may violate freedom of expression and association. Articles 19 and 22 of the ICCPR state that restrictions are permitted when they are prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Similar restrictions are established in Article 41 of the Constitution. However, in order for it to be deemed permissible, the “*necessity*” of a proposed restriction for the specific objective pursued must be objectively demonstrated. The proposed restriction must also be subjected to a strict *proportionality* test to ensure that it is objectively proportionate to the actual threat. When various alternative measures are possible, the least restrictive among them should be selected, and applied only for as long as necessary to meet the objective.³² In this regard, there is no apparent reason to justify the need to prohibit using the name or image of a physical person in

²⁹ See section above on “Permissible restrictions on human rights.”

³⁰ See Communication No. 458/91, Mukong v. Cameroon, Views adopted on 21 July 1994.

³¹ OSCE Guidelines on Political Party Regulation, para. 70.

³² See also section above on “Permissible restrictions on human rights.”

the name or logo of a political party. As it stands, the provision would appear not to pass the reasonableness test.

OHCHR recommends revising the article to remove the prohibition of using the name or image of a physical person in the name or logo of a political party.

Article 44- New (two)

Regardless of other criminal penalties, in case a political party violates Article 6 new (two) of this law and Article 7 of the Law on Political Parties, the court may decide the following:

- Pause/suspend the activities of that political party not exceeding 5 (five) years.
- Dissolve that political party.

Article 45- New (repeat)

The political parties whose activities have been suspended shall not be allowed to participate and compete in the election.

A political party whose activities have been suspended or that has been dissolved in accordance with this law shall be removed from the list of the political parties registered for election.

Comments: See OHCHR comments on Article 6. In its Guidelines on Political Party Regulation, the Venice Commission makes clear that proportionality should be carefully weighed and prohibitive measures against political parties should be narrowly applied.³³ In this regard, dissolution should only be applied if no less restrictive means can be found. Additionally, the dissolution of political parties based on the activities of party members as individuals is incompatible with the protections awarded to parties as associations. This incompatibility extends to the individual actions of party leaders, except cases in which they are proven to have acted as a representative of the party as a whole.³⁴

According to the SRFOAA, a political party should be lawfully prohibited “only when a political party or any of its candidates uses violence or advocates for violence or national, racial or religious hatred constituting incitement to discrimination, hostility or violence (art. 20, International Covenant on Civil and Political Rights, also reflected in art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination), or when it carries out activities or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5, International Covenant on Civil and Political Rights).”³⁵ OHCHR notes that references to violence or incitement to hatred are absent in the Law.

Moreover, the SRFOAA recommends that the responsibility to regulate political parties should be entrusted to an independent institution specialized in the matter. In his 2003 report to the General Assembly, the SRFOAA stressed that “States have an obligation to provide independent and impartial institutions, including electoral management bodies and media regulatory authorities, in

³³ See also section above on “Permissible restrictions on human rights.”

³⁴ OSCE Guidelines on Political Party Regulation, paras. 17, 20, 50-52.

³⁵ A/68/299, para. 38.

addition to an independent judiciary, to ensure that electoral processes are not exploited, thereby creating an uneven playing field for any political party. In order to be effective, the regulatory body should be independent from executive powers....These are the key conditions for ensuring the respect of the right to freedom of association in the context of elections.”³⁶

OHCHR recommends a revision of the sanctions in this Article to ensure the following phrase at the end of the Article: “*Before deciding on a measure, the court shall determine whether the sanction is necessary to achieve its objective; whether a less restrictive measure can be used to achieve the desired objective; and whether the measure is proportionate to the objective it seeks to achieve. The least restrictive measure shall always be taken.*”

Article 48- New (repeat)

Any political party that has as a name or logo, the name or picture of a physical person, shall change its name or logo to conform to the provisions of this law, within a period of 90 (ninety) days at the latest, counting from the date when this law enters into force.

Comments: Article 48 new of the proposed amendments gives a political party 90 days to change its name or logo, while Article 19 of the Law allows 180 days to comply with other requirements for registration. Also, this provision does not take into account the financial and logistical burden placed on all parties to modify its logo in all signs and printed material throughout the country in such a short period of time, which could make it impossible to comply with.

OHCHR recommends the extension of the period during which a political party must change its name or logo to at least the same period of 180 days allowed to new parties for registration.

Article Two new

This law shall be declared as “urgent”.

Comments: While this article refers to the entry into force of the amended law, OHCHR notes that the bill to amend the law was also determined as ‘urgent’. The determination of a bill as “urgent” by the executive may not in itself pose a human rights concern if it is accepted for fast-tracking through a process that guarantees public participation and debate. However, the use of this designation to bypass consultative processes is reason for concern, particularly when the subject matter is of significant public interest, directly affects the parties at stake in the law, and there is no evident reason provided for the urgency.

- END -

³⁶ A/68/299, para. 41.