

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

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High Commissioner for Human Rights in Cambodia  
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## I. Introduction

The present analysis was embarked upon by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia as a contribution to the consideration of certain proposed amendments to the Political Parties Law. While 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 fully exercise their human rights, particularly their right to participate in public affairs, which is guaranteed in the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, both recognized in Article 31 of the Cambodian Constitution to be applicable in Cambodia.

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.’”<sup>1</sup> According to the SRFOAA, “associations” understood broadly, including political parties, are central vehicles through which individuals can take part in the conduct of peaceful affairs through chosen representatives.<sup>2</sup> 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 whom 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

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

<sup>2</sup> A/68/299, para. 9.

association.”<sup>3</sup> 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.”<sup>4</sup>

The integrity of elections in a liberal multi-party democracy cannot be ensured if political parties cannot 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.<sup>5</sup> This should allow people to form opinions independently, free of violence, compulsion, inducement or interference of any kind.<sup>6</sup> It is essential, therefore, that freedom of expression include protection from discrimination against the formation of parties that espouse unpopular ideas. Jurisprudence from the European Court of Human Rights reinforces State obligations in this regard on the protection “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”.<sup>7</sup>

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

The present analysis draws principally from the Cambodian Constitution<sup>9</sup> and the International Covenant on Civil and Political Rights (ICCPR), which establish the rights to take part 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

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<sup>3</sup> 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.

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

<sup>5</sup> A/38/299, para. 38.

<sup>6</sup> HRCte General Comment No. 34, para. 19.

<sup>7</sup> *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.

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

<sup>9</sup> 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](http://www.ccc.gov.kh/english/basic_text/Constitution%20of%20the%20Kingdom%20of%20Cambodia.pdf).

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.”

- 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.”<sup>10</sup>

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

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<sup>10</sup> 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.

restrictions on the free exercise of the rights to ...freedom of association are in accordance with their obligations under international human rights law.”<sup>11</sup>

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.<sup>12</sup>

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.”<sup>13</sup> In this regard, a number of vague terms contained in the Law, such as “national unity,” “security of the State” and “serious mistakes” would require clarification to comply with international human rights law.

Other concerns arise from the lack of due process guarantees. The Law on Political Parties designates the Ministry of Interior as the administrator of political parties, contrary to international standards that require regulatory bodies that are independent of the executive branch to ensure a level political playing field. The Ministry is entrusted with extensive powers to take actions that could amount to a *de facto* dissolution of political parties. The possibility of appeal is allowed only by direct appeal to the Supreme Court, instead of the conventional three-

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<sup>11</sup> A/HRC/RES/24/5, para. 2.

<sup>12</sup> 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).

<sup>13</sup> OSCE Guidelines, para. 49.

step process through a court of first instance, the Court of Appeals, and the Supreme Court as the final arbiter of disputes. A more fundamental concern is that the Law, in enumerating who may *not* lead political parties, does not include in this list members of Government, senior military officials and other public servants, including members of the judiciary. In such quintessential political matters as the registration and dissolution of opposition parties, the fact that they are legally permitted to be active members or leaders of a party gives ample reason to doubt the impartiality and fairness of their rulings on such matters, particularly when no safeguards against potential conflicts of interest are laid out.

In other respects, the amended Law reflects acceptable and common international practices, such as conferring only on the courts the competence to formally dissolve a political party, subject to the above reservations. Another example is the regulation of funding from foreign sources. While further precision, through clearer definitions of the terms “foreign” and “foreigners”, is needed to ensure that legitimate funding sources would not be restricted, such as contributions from Cambodian resident or migrant workers abroad, with such a revision the restriction on foreign funding would help prevent any deviation of party platforms and decisions from the will of its members.

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

OHCHR regrets 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 expresses hope that such a consultation will be organized, even after the adoption of the amendments, 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.

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<sup>14</sup> 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 restrictions might need to be placed on the enjoyment of freedom of 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,<sup>15</sup> 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 restriction for the specific objective 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.<sup>16</sup> 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

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<sup>15</sup> 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.

<sup>16</sup> 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.



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.”<sup>17</sup>

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 Rights<sup>18</sup> 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.”<sup>19</sup>

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.<sup>20</sup>

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

<sup>18</sup> 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>.

<sup>19</sup> Guy S. Goodwin-Gill, *Free and Fair Elections*. Inter-Parliamentary Union, Geneva, 2006, p. 137.

<sup>20</sup> 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. Most other Articles on which OHCHR has no comments to offer are not reproduced here, save some Articles shown without comment purely for ease of reference, to facilitate comprehension of those Articles that are analyzed that include a reference to them. The analysis is based on an unofficial English translation of the amended Law produced by OHCHR.

#### **Article 5**

Membership of any political party is the free own choice of every Khmer citizen. No individual has the right to force anyone to join any political party.

No individual shall be deprived of the right to exercise his/her civil or political rights or to industrial relations, on the grounds that he/she is or is not a member of any political party which is legitimately established.

#### **Article 6 new**

Political parties shall not carry out any of the following activities:

1. Create a secession that would lead to the destruction of national unity and territorial integrity;
2. Commit acts of sabotage that would lead counter to the liberal, multi-party democracy and constitutional monarchy regime;
3. Carry out an activity that would affect the security of the state;
4. Create an armed force;
5. Incitement to commit any activity which can lead to national disunity.

**Comments:** The vague and unclear language in subparagraphs 1, 2, 3 and 5 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.<sup>21</sup> Although the ICCPR allows for the limitation of

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<sup>21</sup> OSCE Guidelines on political party regulation, p. 10.

certain rights, these must be consistent with the State's obligations under international law.<sup>22</sup> 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."

Freedom of expression and association belongs to every person, regardless of their age, nationality, political orientation, or other status. According to the HRCte, "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...."<sup>23</sup>

Article 6 new appears to uphold the Constitutional principle, set out in Article 1 of the Constitution, that Cambodia shall be ruled according to the "principles of liberal multi-party democracy", which is reinforced in Article 51, which states that "The Kingdom of Cambodia adopts a policy of liberal multi-party democracy" and that "Cambodian citizens are masters of their country's destiny." It does this by preventing political parties from conducting "sabotage to counter liberal, multi-parties democracy and constitutional monarchy regime". To ensure that Article 6 will be enforced in a way that upholds liberal multi-party democracy and thus the Constitution, clarity is needed about the specific actions considered to constitute infringements of Article 6.

**OHCHR recommends** revising the terms "national unity," "sabotage to counter liberal, multi-parties democracy and constitutional monarchy regime" and "security of the state," or to define them in 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 7**

No political party shall be subordinate to or under command or order of any foreign political party or any foreign government.

#### **Article 9**

A group of Khmer citizens of at least 80 persons of 18 years old and who have permanent residences in the Kingdom of Cambodia have the right to form a political party by filing a notification letter with the Ministry of Interior. The Ministry of Interior must respond in writing within a period of 15 days, stating that the above mentioned notification letter has

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<sup>22</sup> See section above on "Permissible restrictions on human rights."

<sup>23</sup> See Communication No. 458/91, Mukong v. Cameroon, Views adopted on 21 July 1994.

been received. If the Ministry of Interior fails to respond in the specified period of 15 days, the notification letter will be considered as received.

A newly formed political party shall organize a vote to elect a transitional committee which consists of at least 7 members of at least 25 years old, to prepare formalities and fulfil the conditions to apply for registration in order to obtain accreditation as determined in Chapter V of this law.

During the above period, even if the political party has yet not obtained accreditation, it may hang a signboard at its offices.

### **Article 10**

Each political party shall establish a Statute and main policies in writing, which will have to include at least the following points:

- a. The Statute shall include:
  1. Full name, acronym and logo;
  2. Address of the head office
  3. Date of formation of the political party. This date cannot overlap with national or international festive days.
  4. Rules regarding admission and expulsion of members;
  5. Rights and duties of members;
  6. Organizational structure at the national level and at the local levels
  7. Competence of various organs of the political party;
  8. Procedures for selection and removal of members of the Board (Committee) of Directors;
  9. Modalities for the ordinary sessions of various organs of the political party;
  10. Number of members required for a meeting of various organs of the political party, in order to make it valid (Quorum);
  11. Finances and assets of the political party;
  12. Rules regarding the dissolution of a political party and administration of its assets after dissolution;
  13. Rules regarding the amendment of the political party's Statute
- b. Main policies and political agendas shall state the goals and objectives of the political party.

### **Article 12 new**

Only Cambodian citizens who are at least 18 (eighteen) years of age and in the possession of their civil rights can become members of a political party.

**Comments:** As currently drafted, Article 12 new allows persons to be prevented from becoming a member of a political party on three grounds: nationality, age, and whether one “holds civil rights.” This contradicts Article 22 of the ICCPR, by which “*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<sup>24</sup>.

The right to join or associate with a political party belongs to all persons, irrespective of nationality and age, and should be distinguished from the right to vote, which may legitimately be restricted to nationals of a certain age. According to the SRFOAA, legislation on freedom of association should not set specific limitations on individuals, including children and foreign nationals,<sup>25</sup> except in the case of persons who are professionally bound to respect political neutrality (see OHCHR comments on Article 18 new).

Political parties are an important mechanism for the exercise of political rights, for dialoguing about national priorities and policies, and for sharing a vision for the future among like-minded individuals, not only at election time but continuously. There is no apparent reason why youth should not be permitted to be involved in political parties, and indeed, many parties across the globe maintain youth branches for educational purposes.

The ambiguity surrounding the term “civil rights,” which allows scope for certain persons to be denied the right to be a member of a political party, should be minimized by identifying those provisions of law that define the specific civil rights that a person must hold in order to be able to become a member of a political party. For instance, it is unclear whether the “civil rights” referred to in Article 12 new includes the right to hold a leadership position in a political party under Article 18 new, so that if a person loses his or her position, he or she must also resign from the party. If it refers to the rights established under article 55 of the Criminal Code, the article should explicitly say so.

Finally, the SRFOAA has highlighted that “An important component of the right to freedom of association is that no one may be compelled to belong to an association.”<sup>26</sup> As political parties are a subset of associations, the same would apply to them: the right to freedom of association encompasses the converse right not to be compelled to belong to a political party against one’s will.

**OHCHR recommends** the deletion of Article 12 new and its replacement with the following: “*No one may be forced to join or associate with a political party.*”

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<sup>24</sup> See section above on “Permissible restrictions on human rights.”

<sup>25</sup> Reports of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association to the United Nations Human Rights Council, A/HRC/20/27, para 54 and A/HRC/26/29, para 18.

<sup>26</sup> A/HRC/20/27, para 55.

### **Article 15**

A Khmer citizen may not be a member of more than one political party at the same time. In the case a person has joined as member in many political parties simultaneously, only the membership of the last political party will be considered valid.

Priests, members of the judiciary, members of the Royal Cambodian Armed Forces and members of the National Police may join as members of political parties, but they shall not conduct any activity for supporting or opposing any political party. The political parties shall not organize their organizational structure within religious bodies, the judiciary, the Royal Cambodian Armed Forces or the National Police.

### **Article 17 new**

Each political party will be governed by at least the following governing bodies:

1. A General Assembly or Congress or an equivalent organ;
2. A National Council or Central Committee or an equivalent organ;
3. A Board (Committee) of Directors or Standing Committee or an equivalent organ;
4. A Committee of Arbitrators or Monitoring Committee or Committee for Dispute (Resolution) or an equivalent organ.

The name of the political party can be modified on all levels based on the Statute of each political party.

Each political party shall have a chair and can have deputy chair(s) as necessary. The chair and deputy chair(s) of the political party shall be selected in accordance with the Statute of each political party.

The mandate, tasks, organisation and functioning of the above mentioned, as well as other governing bodies, of the political party shall be defined in the Statute or internal rules of the political party.

**Comments:** Political parties and membership in them plays a significant role in the conduct of public affairs and the election process. In their internal management, all political parties should respect people's right to take part in the conduct of public affairs and to be elected, as established by the HRCte, by creating concrete opportunities for such engagement.<sup>27</sup> In 2012, the Special Rapporteur on the situation of human rights in Cambodia expressed concern that "Cambodian political parties are largely unregulated and generally have no clear democratic procedures for the selection of candidates. The party leadership controls the content of the list, making candidates more loyal to the party leadership than to their own constituents. This can also result in the arbitrary removal of candidates from lists, meaning that they then lose their

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<sup>27</sup> HRCte General Comment No. 25, para. 26.

seats. The combination of proportional representation and party-list systems results in the National Assembly being the weakest link in the Cambodian governance system.”<sup>28</sup>

**OHCHR recommends** the inclusion of the following phrase at the end of the Article: “*The organization and functioning of the management organs shall be democratic, and respect the human rights of its members, in particular the rights to participate in public affairs, to equality and non-discrimination.*”

#### **Article 18 new**

A citizen of either sex who has the Khmer nationality from birth and is at least 25 (twenty-five) years old can be the chair or deputy chair of a political party or a member of the governing body (ies) of the political party.

The chair, deputy chair and members of the Board (Committee) of Directors or the Standing Committee or any organ that has an equivalent rank of the Board (Committee) of Directors or Standing Committee of the political party shall not be a person convicted, without suspension, of a felony or misdemeanour.

The chair, deputy chair and members of the Board (Committee) of Directors or Standing Committee or any organ that has an equivalent rank of the Board (Committee) of Directors or Standing Committee of a political party shall lose her/his position in one of the following cases:

- The concerned individual passed away;
- The concerned individual has presented his/her resignation in writing;
- The concerned individual is convicted, without suspension, to a prison term of a felony or a misdemeanour, except in case where the sentence was pardoned by the King.

The concerned political party shall take measures to fill the vacant post of the chair who has lost his/her position as stated in the above paragraph within the period of 90 (ninety) days at the latest starting from the date of losing that position.

This provision shall also be applied to those individuals who hold the position or have authority equivalent to those of the chair or deputy chair of the political party or of the members of the Board (Committee) of Directors or Standing Committee or any organ that has an equivalent rank of the Board (Committee) of Directors or Standing Committee of the political party.

**Comments:** OHCHR concurs that all persons, including those that aspire to lead political parties, should abide by the law and recognizes that certain restrictions are permissible under

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<sup>28</sup> A/HRC/21/63, para. 54.

human rights law.<sup>29</sup> How they apply to the specific elements contained in this Article are explored below.

### ***Restriction based on nationality from birth***

As the international human rights standards do not allow for differentiated treatment between citizens by birth or by naturalization, this provision might be considered as a form of discrimination. It is also incompatible with the Cambodian Constitution, which does not make a distinction between the two. According to the HRCte, distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with the right to take part in the conduct of public affairs.<sup>30</sup>

### ***Restriction based on criminal convictions***

The reference to “felony or misdemeanour” indicates that Article 18 new addresses the prevention of persons convicted of any such offense from serving as “chair, deputy chair and members of the steering committee or permanent committee or any organ that has an equivalent rank of the steering committee or permanent committee of a political party.” According to the UN HRCte, certain restrictions are permissible, but would need to be assessed against the “reasonableness” criteria of necessity, proportionality and legality.<sup>31</sup>

It may be argued that not all misdemeanour offenses set out in Cambodian laws are so serious as to warrant disqualification from party leadership for life. The Criminal Code reflects a graduated scale of penal sanctions based on the gravity of the offense and defines a misdemeanour as an offence for which the maximum sentence is more than six days but no more than five years<sup>32</sup>, which includes offences such as drunk 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)<sup>33</sup>. In contrast with the approach of Article 18 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 offenses that could prevent a person from assuming such functions for their entire lifetime do not involve violence or incitement of

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<sup>29</sup> See section above on “Permissible restrictions on human rights.”

<sup>30</sup> HRCte General Comment No. 25, para. 3.

<sup>31</sup> 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 section above on “Permissible restrictions on human rights”.

<sup>32</sup> Article 47, Criminal Code 2009.

<sup>33</sup> Articles 76, 77 and 82, Road Traffic Law 2015.



hatred, including for “petty misdemeanours,” this provision would appear to be excessive and certain to fail a test of reasonableness required under the ICCPR<sup>34</sup>.

In general, modern democratic principles entrust voters to judge for themselves a candidate’s fitness for a leadership position in a political party. If the members of a political party would not wish to see convicted persons assume a position of leadership, they are free to include such a rule in their own statutes, as set out in Article 10 of the Law on Political Parties. They are free to associate with others who share their aims, opinions and values, as well as to not vote for certain individuals, including those who may have criminal records, but this should not be imposed by law. 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.<sup>35</sup>

In addition, some persons are convicted of offenses committed when they were minors. Consideration should be paid to the validity of a prohibition from holding positions of political leadership for life due to an offense committed before they obtained full legal capacity as adults. In this regard, 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.<sup>36</sup>

In general, 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.<sup>37</sup> The same principle should also apply to questions of replacing vacancies in the leadership. This is addressed in Article 10 of the Law, which requires each political party to establish its own statutes and main policies, including the method for selection and removal from function of members of the governing body, and thus also regulates any prohibition from holding office in a political party.

International practices reveal an array of ways that better balance the security concerns while respecting human rights. Rather than creating an absolute disqualification, they render the consequences more proportionate to the offense by, for example: limiting restrictions to only the most serious crimes, which are appropriately referenced; tying the gravity of the restrictions to the gravity of the offense, for instance, limiting restrictions to offenses that are subject to sentencing of a minimum number of years; specifying that the disqualification does not apply if the sentence includes an option to pay a fine instead of imprisonment; and/or setting a time limit on the disqualification.

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<sup>34</sup> 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.”

<sup>35</sup> See section on “Permissible restrictions on human rights” above.

<sup>36</sup> General Comment No. 10 of the United Nations Committee on the Rights of the Child, *CRC/C/GC/10*, para. 67.

<sup>37</sup> HRCte General Comment No. 25, para. 26.

### ***Omission of others who should be prohibited from positions of political leadership***

Article 18 new omits others that should legitimately be prevented from holding positions of leadership in political parties, due to their professional duties to enforce the law with strict neutrality and impartiality and to the importance of being seen to be doing so. Such persons would include those occupying leadership positions in the armed forces, law enforcement bodies (including police, judges and prosecutors), and the independent monitoring institutions that should serve as a check on all the branches of government, such as anti-corruption bodies, national human rights institutions, or constitutional courts. This concern is addressed in the Constitution, which establishes that “powers shall be separated between the legislative power, the executive power, and the judicial power.”<sup>38</sup> Such persons would also include those occupying such functions as granting them the ability and authority to possibly unduly mobilize State resources and personnel to act in favour of a particular party if they so wished. Such restrictions would conform with the Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union, whose article 4.1 states that it is the responsibility of States to “ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis.”<sup>39</sup>

Domestic legislation also establishes certain prohibitions. The Law on the status of soldiers prohibits them from using their function and state property to serve any political activities (Article 9). The Law on the status of civil servants entitles civil servants to be members of or to participate in the management of any lawful association (Article 36). However, they are prohibited from working in the interest of, in favor of or against any political candidate or party (Article 37). Article 2 of the Law on the civil servants of the legislative establishes that they “shall not affiliate with any political parties in carrying out their work”. The Law on the status of judges and prosecutors establishes that they shall behave in a neutral manner and adhere to their code of conduct (Article 50), which in turns sets out that they shall be neutral in political activities (Article 4). In the case of members of the judicial profession, questions arise about how impartial and fair judgments can be guaranteed on legal cases lodged by or against a political party if judges are permitted to be active members of another party.

With respect to the security forces, the SRFOAA has underscored that “members of the armed forces and of the police may have [the right of freedom of association] lawfully restricted. Any restrictions must, nevertheless, comply with States’ international human rights obligations as blanket restrictions shall not be considered lawful.”<sup>40</sup>

It is within the rights of States to place restrictions on the activities of “those who previously abused a position of executive or legislative authority,” according to research by the Inter-

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<sup>38</sup> Article 51, paragraph 4, of the Cambodian Constitution.

<sup>39</sup> Declaration on Criteria for Free and Fair Elections, adopted on 26 March 1994, <http://www.ipu.org/Cnl-e/154-free.htm>.

<sup>40</sup> A/HRC/20/27, para 54.

Parliamentary Union on free and fair elections.<sup>41</sup> Such crimes are enumerated in the Cambodian Criminal Code under Book Four, Title 3, Chapter 1, “Infringement of Public Administration by Representative of Public Authorities”.

**OHCHR recommends** a reformulation of Article 18 new as follows:

*1. A citizen of either sex can be the chair or deputy chair of a political party or member of a management organ of a political party.*

*2. The chair, deputy chair(s) and members of the steering committee or permanent committee or any organ that has an equivalent rank of the steering committee or permanent committee of a political party shall not be:*

*a. a person convicted to imprisonment of over five years for a felony involving the commission of violence, the incitement of hatred, or the abuse of executive or legislative authority as set forth in Book Four, Title 3, Chapter 1 of the Criminal Code, unless he or she has been pardoned or five years have elapsed since the completion of the sentence; or*

*b. a person occupying or assuming a position of senior leadership in the military, police, judiciary, or any other State institution requiring political neutrality, impartiality, and independence from political parties.*

*3. The chair, deputy chair(s) and members of the steering committee or permanent committee or any organ that has an equivalent rank of the steering committee or permanent committee of a political party shall lose their position in one of the following cases:*

*a. The concerned individual is dead;*

*b. The concerned individual has presented his/her resignation in writing;*

*c. The concerned individual is convicted to imprisonment of over five years, without the option of paying a fine, for a felony involving the commission of violence or incitement of hatred, unless pardoned by the King; or*

*d. The concerned individual assumes a position of senior leadership in the military, police, judiciary, or any other State institution requiring political neutrality, impartiality, and independence from political parties.*

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<sup>41</sup> Guy S. Goodwin-Gill, *Free and Fair Elections*. Inter-Parliamentary Union, Geneva, 2006, p. 137.

### **Article 19 new**

Following a period of at least 180 (one hundred and eighty) days after a political party was created pursuant to Article 9 of this law; the political party shall request registration at the Ministry of Interior in order to get accreditation and to be able to lawfully carry out activities as a legal entity. In this regard the political party shall have at least 4,000 (four thousands) members and shall fulfil the formalities and conditions as set out in Article 20 of this law.

The political party which has not been registered in accordance with the provision of this Chapter cannot carry out political activities in the Kingdom of Cambodia.

**Comments:** Human rights standards neither require nor preclude the registration of political parties. A registration regime is not necessary for the formation or operation of political parties, but where it is in place, it should not be subject to the prior approval of the authorities,<sup>42</sup> according to the SRFOAA, who has stated that the right to freedom of association applies equally to associations that are not registered.<sup>43</sup> The OSCE suggests that registration may be beneficial to political parties and thus it would be “reasonable to require the registration of political parties with a state authority.”<sup>44</sup> Such benefits could include, for instance, legal protection of the name and logo of the party, the ability to open and maintain bank accounts, or access to State funding. The benefits conferred on registered parties should be set out in the Law. The human rights approach would thus involve encouragement of registration through incentives, rather than enforcement through sanctions.

The SRFOAA considers that a minimum number of individuals may be required to establish a political party, but at a level that would not discourage people from engaging in them.<sup>45</sup> As the reasonableness of any threshold would depend on the population size and other national circumstances, the human rights mechanisms do not set an absolute figure that they would consider reasonable. Given the possibility of confusion or wasted efforts in the implementation of this provision which could result in violations of the right to freedom of association, “legislation should clearly state the means by which support must be evidenced”<sup>46</sup> – whether through signatures, thumbprints or other means.

The requirement in Article 19 new of securing at least 4,000 members within 180 days of creation could constitute an obstacle to the registration of political parties, particularly if, as established in under subparagraph 2, they are unable to undertake “political activities” prior to registration (see below). Without further clarification to the contrary, it would not appear that

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<sup>42</sup> A/68/299, para 31.

<sup>43</sup> A/HRC/20/27, para. 56.

<sup>44</sup> OSCE Guidelines on Political Party Registration, para. 65. Available at <http://www.osce.org/odihr/77812?download=true>.

<sup>45</sup> A/HRC/20/27, para. 54.

<sup>46</sup> OSCE Guidelines on Political Party Registration, para. 78.

this requirement would pass the test of objectivity and reasonableness for restrictions that may legitimately be imposed on the right of freedom of association.

The requirement for registration in order to be able to undertake “political activities” gives rise to multiple concerns under human rights law. The ambiguous term “political activities” could refer to activities that are within the legitimate rights of all persons to undertake regardless whether it is through the vehicle of a political party, including organizing or participating in debates on issues deemed to be of a political nature, conducting civic education, mobilizing support for or against policy initiatives, or other activities falling under the scope of freedom of expression, peaceful assembly or association. Moreover, new political parties that are in the process of enrolling the required number of members should not be prevented from undertaking “political activities”, upon which the recruitment of new members might depend.

**OHCHR recommends** the reformulation of Article 19 new as follows: *Political parties created in accordance with Article 9 of this Law shall register with the Ministry of Interior through the procedures and conditions set out in Article 20 of this Law when they have at least 4000 (four thousand) members. Evidence of membership shall be demonstrated through a collection of signatures or thumbprints of the members.*

## **Article 20**

Political parties shall fulfill the following formalities and conditions:

1. An application for registration, with signature of the chair of the political party;
2. Name written in full and in acronym, and logo of the political party;
3. Address of the head office of the political party;
4. 2 original versions of the political party's Statutes;
5. A copy of the Internal Rules of the political party, if any;
6. The political party's main policies and political agendas;
7. Statement of the political party regarding its commitment to respect the Constitution, Law on Political Parties and other provisions in force as well as the principles of liberal and multi-party democracy and the respect for human rights;
8. List of names with thumb prints of the 4,000 members of the political party with mention of ages, addresses, their serial numbers of the political party's membership cards and dates of joining as members of the political party;
9. Curriculum vitae of the chair or of at least 3 founding members of the political party, one copy of each and with a (4x6) photo attached;
10. Statement of the bank accounts by a bank in the Kingdom of Cambodia which is recognized by the National Bank of Cambodia;
11. A copy of the receipt of payment of the registration fees. The rates of these registration fees shall be determined by an Inter-Ministerial Proclamation (Prakas) of the Ministry of Interior and the Ministry of Economy and Finance.

### **Article 23**

In the case that after finding that the submitted documents of the political party are sufficient and appropriately in conformity with the Constitution, Law on Political Parties and other laws in force, the Ministry of Interior shall send a letter of response to the concerned political party to notify it of the approval for registration, with a copy of the Statute attached, on which the registration date of the political party with signature and seal of the Ministry of Interior is inscribed.

### **Article 24**

When it determines that the documents of the political party are not sufficient and not in full conformity with the Constitution, Law on Political Parties and other laws in force, the Ministry of Interior shall send a letter of notification to the political party concerned. That political party shall provide additional pieces of documents to fulfil the formalities in compliance with the letter of notification of the Ministry of Interior, within 15 days from the reception of this letter. If the political party fails to provide additional documents within 15 days, the Ministry of Interior shall send a letter of disapproval of registration to the political party concerned.

**Comment:** In the light of the fact that political parties have a decisive role in ensuring pluralism and the proper functioning of democracy, the SRFOAA has noted that “a presumption in favour of formation of political parties means that adverse decisions should be strictly justified in accordance with the standards established by article 22 of the International Covenant on Civil and Political Rights in relation to proportionality and necessity in a democratic society.”<sup>47</sup> In this regard, it is important that the ground for disapproval be clearly spelled out, all the more so as they can be appealed in court. See OHCHR comments on Article 38 new on the obligation of States to provide independent and impartial institutions, including electoral management bodies, as explained by the SRFOAA.

**OHCHR recommends** adding a requirement under the law that letters of disapproval clearly state the reason(s) why registration was rejected by the Ministry of Interior.

### **Article 25 new**

Any political party to whose registration request the Ministry of Interior issued a written letter of disapproval as per Article 24 of this law will have the right to file a complaint to the Supreme Court.

The Supreme Court shall decide within 30 (thirty) days after receipt of the complaint by that political party.

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<sup>47</sup> A/68/299, para 32.

After receiving the decision of the Supreme Court deciding that the documents provided by the political party are appropriate, the Ministry of Interior shall proceed to register such political party immediately in the register as stated under Article 23 of this law.

**Comments:** Article 25 new allows for a political party to file an appeal to the Supreme Court, rather than following the regular judicial procedure of first filing a case with a court of first instance, then appealing to the Court of Appeal, and finally with the Supreme Court as the court of final judgment. To be required to appeal straight away to the Supreme Court disallows the three stages of litigation that are the international norm and are set out in the Law on the Organization of the Courts.

**OHCHR recommends** the reformulation of Article 25 new as follows.

*“Any political party whose registration is denied approval in writing by the Ministry of Interior as stated in Article 24 of this law shall have a right to file an appeal to a court of first instance, the Court of Appeals, and the Supreme Court.*

*The relevant court shall decide within 15 days at the latest after receipt of the appeal by the concerned political party.*

*After the court issues a judgment on the correctness of the content of the registration dossier of the concerned political party, the Ministry of Interior must register that political party immediately as stated in Article 23 of this Law.”*

### **Article 28**

The State may allocate equal amounts of the national budget to all political parties, for the sole purpose of using them in the election campaign for the national election of members of parliament (deputies).

Any political party which fails to receive 3% of the total of valid ballots of the whole country or which fails to gain one seat in the Parliament, shall, within a period of 3 months, at the latest, from the date of proclamation of the election final result, pay back that allocated budget in full amount to the State.

### **Article 29 new**

The political party shall be banned from receiving contributions in any form from State institutions, associations, non-governmental organisations, public enterprises, public establishments, public institutes except for the case stated in Article 28 of this law.

The political party shall be banned from receiving contributions in any form from foreign institutions, foreign firms, foreigners or those organisations that has foreign financing source.

**Comments:** OHCHR recognizes the need to regulate funding for political parties, based on precise and objective criteria. The prohibition of funding from such a wide range of sources as proposed, however, would seem to limit legal financing to membership fees and contributions from private Cambodian individuals and domestic companies. In this regard, the HRCte established that “reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”<sup>48</sup> The SRFOAA added that “any constraints on associations’ ability to access foreign funding should be necessary in a democratic society and that common justifications offered by States, such as counter-terrorism measures, protection of State sovereignty, enhancement of aid effectiveness, and the improvement of transparency and accountability of civil society, often do not meet this strict standard.”<sup>49</sup>

In view of the large Cambodian diaspora, the large number of Cambodian migrant workers abroad, and the fact that Cambodia recognizes double nationality, the terms “foreign” and “foreigners” should be precisely defined so as to avoid precluding Cambodian nationals abroad from contributing if they wish.

With that caveat, the regulation of funding from foreign sources is generally considered to be acceptable and is a common practice. The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States establishes that “Any foreign donations, inclusive of those from foreign physical and legal entities, for candidates, political parties (coalitions), participating in elections, or to other public unions and organisations, which directly or indirectly, or in another manner relate to or are under a direct influence or control of the candidate, political party (coalition), and facilitate or contribute to accomplishment of goals of the political party (coalition) are not allowed.”<sup>50</sup>

Taking into account that political parties are a key vehicle by which people exercise their right to participate in public affairs, financing sources would be a concern if a source of financing should distort or alter the views, priorities, or any other aspect of the work of a party. In this regard, it is observed that no such safeguards are contained in Article 29 new. This view is supported by the Council of Europe, according to whom measures taken by states governing donations to political parties should include specific rules to: avoid conflicts of interest; ensure transparency of

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<sup>48</sup> HRCte General Comment No. 25 of the ICCPR, para. 19.

<sup>49</sup> A/68/299, para. 54.

<sup>50</sup> Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, European Commission for Democracy through Law (Venice Commission), art. 12.3.



donations and avoid secret donations; avoid prejudice to the activities of political parties; and ensure the independence of political parties.<sup>51</sup>

See OHCHR comments on Article 38 new on the obligation of States to establish independent and impartial institutions, including electoral management bodies, as explained by the SRFOAA.

**OHCHR recommends** the presentation of precise criteria to define the term “foreign” in the second subparagraph so as not to prevent Cambodian citizens who are currently residing or working outside of the country from contributing to a party of their choice. It further recommends replacing in the second paragraph “organizations which has foreign financing source” with “...*organizations whose sole funding comes from foreign sources.*” Additionally, OHCHR recommends adding a third paragraph that would entrust to a neutral body that is independent of the executive the responsibility to elaborate specific rules to avoid conflicts of interest, ensure transparency of donations and ensure the independence of political parties.

#### **Article 34 new**

No competent authority has the right to dissolve any political party, except when that political party is dissolved by the courts.

**Comments:** See OHCHR comments on Articles 6 new and 38 new. 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. Dissolution should only be applied if no less restrictive means can be found. The dissolution of political parties based on the activities of party members as individuals is incompatible with the protection that should be accorded to parties as associations. This incompatibility extends to the individual actions of party leadership, except cases in which they are proven to have acted as a representative of the party as a whole.<sup>52</sup>

**OHCHR recommends** including the following phrase at the end of the Article: “*The dissolution of a political party shall be pursued only as a last resort, when all other efforts to ensure compliance with the Law have been exhausted.*”

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<sup>51</sup> See Recommendations Rec(2003)4 of the Committee of Ministers to Members States on common rules against corruption in the funding of political parties, Adopted by the Committee of Ministers on 8 April 2003, article 3. Available at

[http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf).

<sup>52</sup> OSCE Guidelines on Political Party Regulation, pp. 10, 16.

### **Article 38 new**

All political parties shall respect the Constitution, the law on political parties and other laws currently in force in the Kingdom of Cambodia.

The Ministry of Interior may take the following measures against any political party which has acted in contradiction to the Constitution, law on political parties and other laws currently in force in the Kingdom of Cambodia:

- Issue a notification letter to that political party to make corrections within a specific timeframe;
- Issue a warning in writing and take action to stop the illegal activities if necessary;
- Decide to suspend the activities of that political party temporarily within a specific timeframe.
- File a complaint to the Supreme Court to dissolve that political party in case of having serious wrongdoing.

**Comments:** Although only the courts have the authority to dissolve a party, as established in Article 34 new, Article 38 new allows the Ministry of Interior to suspend a party's activities on broad grounds of having acted "acted in contradiction to the Constitution, Law on Political Parties and other laws currently in force in the Kingdom of Cambodia," which is the responsibility of an independent judiciary to determine. The absence of precise criteria for the duration of the "temporary" suspension of political parties permitted in this Article transforms the authority to suspend activities to a power of *de facto* dissolution of political parties. Additionally, the ambiguity in the last phrase concerning a "serious mistake" requires clarification, without which the Ministry of Interior would have considerable discretion in filing motions for the dissolution of any political party, possibly leading to violations of the rights of the members of any political party and serious impediments to their activities.

The formulation of these restrictions on freedom of association, which have implications for freedom of expression and peaceful assembly, is thus incompatible with Article 22, paragraph 2, Article 19 and Article 21 of the ICCPR. While the ICCPR foresees that restrictions on the enjoyment of freedom of association might be permissible under certain circumstances, such restrictions would need to be proportionate to the exigency, defined in law, needed to address a real threat, and ended when the objective is met.<sup>53</sup> The formulation also gives rise to questions about its compatibility with Article 35 of the Constitution, which establishes the right of all Khmer citizens "to participate actively in the political ... life of the nation," Article 41 establishing freedom of expression and assembly, and Article 42 on freedom of association.

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<sup>53</sup> See section above on "Permissible restrictions on human rights."

The SRFOAA offers advice on when political parties should be lawfully prohibited. According to the SRFOAA, that should be “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).”<sup>54</sup> 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 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.”<sup>55</sup> The Ministry of Interior is part of the executive branch and thus not an independent institution to whom this important regulatory function should be entrusted.

**OHCHR recommends** that Article 38 new be reformulated to empower only the judiciary with the authority to sanction political parties for the commission of a serious crime, and should detail the specific serious crimes that could lead to sanctions with a reference to the relevant provisions of the Criminal Code. It further recommends that the task of administering political parties should be entrusted to an independent electoral regulatory body.

#### **Article 39 new**

A fine of 5,000,000.00 (five millions) riels shall be imposed by the Ministry of Interior on any political party which has violated Article 31 of this law.

In case of repeated violation, the fine will be double and the Ministry of Interior may decide to suspend the activities of that political party temporarily within a specific timeframe.

#### **Article 40 new**

A political party that has violated Article 29 new of this law shall be fined by the Ministry of Interior for the amount of 20,000,000 (twenty millions) riels. In case of the political party receiving a contribution in violation of Article 29 new of this law that

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<sup>54</sup> A/68/299, para. 38.

<sup>55</sup> A/68/299, para. 41.

exceeds 20,000,000 (twenty millions) riels, the fine will be double the amount of the contribution. The Ministry of Interior may decide to suspend the activities of that political party temporarily within a specific time-frame.

In case of repeated violations, the fine will be double the previous fine, and the Ministry of Interior may file a complaint to the Supreme Court to dissolve that political party.

**Comment:** As indicated in regard to Article 38 new, the vague wording in Articles 39 new and 40 new do not set clear criteria for the lawful suspension of a party's activities by the Ministry of Interior, or set time limits for the suspension, which can lead to a *de facto* dissolution without judicial review. This could thus lead to possible violations of the rights of the members of any political party and seriously hamper their activities.

**OHCHR recommends** revising Articles 39 new and 40 new to empower only the judiciary with the authority to fine and sanction political parties for the commission of a crime.

#### **Article 41 new**

A fine of 3,000,000 (three millions) riels will be imposed by the Ministry of Interior on any individual who has violated Article 5 and paragraph 2 of Article 15 of this law.

**Comments:** See comments and recommendations for Articles 39 new and 40 new.

**OHCHR recommends** revising Article 41 new to empower only the judiciary with the authority to fine and sanction political parties for the commission of a crime.

#### **Article 42 new**

A fine of 10,000,000 (ten millions) riels to 20,000,000 (twenty millions) riels and/or the imprisonment from 01 (one) month to 01 (one) year shall be imposed on any individual who has violated one of the following cases:

1. Continue to govern or lead a political party which the Ministry of Interior denied to register in the political party register;
2. Continue to govern or lead a political party that the court has definitively decided to dissolve;
3. Govern or lead a political party which did not apply for registration in the political party register for a period over 180 (one hundred and eighty) days after the date of the election of the transitional committee as stated in Article 9 of this law;

4. Continue to carry out activities as a political party after the decision of suspension of its activities;
5. Continue to hold its political party's offices open after the court emitted a final decision to dissolve it

**Comments:** Taking into consideration that the rejection of registration by the Ministry of Interior is subject to judicial appeal, sanctions on individuals should not apply until the final appeal process has been exhausted. See OHCHR comments on Articles 19 new, 39 new and 40 new.

**OHCHR recommends** that registration be encouraged through incentives, rather than through sanctions for non-registration. See OHCHR recommendation on Article 19 new. OHCHR also recommends a reformulation of paragraph 1 to read: *“Continue to manage or lead the political party whose denial of registration by the Ministry of Interior is upheld by the Supreme Court.”*

#### **Article 43 new**

An individual who is directly affected by the decision of the Ministry of Interior as stated in this Chapter may file an appeal to the Supreme Court within 30 (thirty) days from the date of receipt of the said decision. During the period of appeal and that of appeal resolution, the decision of the Ministry of Interior does not take effect with exception of the decision to suspend activities of a political party temporarily.

**Comments:** See OHCHR comments on Articles 25 new, 39 new and 40 new.

**OHCHR recommends** modifying the article as follows: *“...may file an appeal to a court of first instance within 30 days from the date of receipt of the said decision. The case may be further appealed to the Appeals Court and the Supreme Court, as established in the Law on the Organization of Courts. At each stage, the concerned court shall issue a judgment within 15 days of the submission of appeal. During the period of appeal and of appeal resolution, the decision of the Ministry of Interior will not take effect.”*

#### **Article 44 new**

Regardless of other criminal penalties, for a political party that violates Article 6-new and Article 7 of this law, the court may decide to do the following:

- Suspend the activities of those political parties within a period of five years;
- Dissolve that political party.

**Comments:** See OHCHR comments on Articles 6 new, 34 new and 38 new. 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.<sup>56</sup> 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.<sup>57</sup>

**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 45 new**

The court that has the competence to examine the complaints submitted in accordance with this law is the Supreme Court. Exceptionally, Article 42 new of this law shall be implemented according to the Code of Criminal Procedure in force.

The representative of the General Prosecutor's Office attached to the Supreme Court shall participate to ensure the respect for this law when there is a complaint submitted to the Supreme Court

In case where a political party is dissolved, the court may decide to prohibit the conduct of political activities by the leadership of that political party for a period of 5 (five) years.

The Supreme Court shall hold its plenary session to decide on the facts and legality of the complaint. The verdict of the Supreme Court will be the final decision which cannot be appealed.

**Comments:** Through the phrase “Exceptionally, Article 42-new of this law shall be implemented according to the criminal procedures in force,” Article 45 new subjects the implementation of only one article in this Law to the “criminal procedures” in force. This presumably refers to the procedures set out in the Code of Criminal Procedure, which sets out many of the fair trial guarantees required under the ICCPR. If so, the Code should be explicitly mentioned. The limitation of the application of the Code to one article of the Law could result in a limitation of fair trial guarantees. The prohibition in subparagraph 3 could prevent individuals from conducting political activities for up to five years, which when taking into account the

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<sup>56</sup> See also section above on “Permissible restrictions on human rights.”

<sup>57</sup> OSCE Guidelines on Political Party Regulation, pp. 10, 16.

ambiguity of the “serious mistakes” that might lead to dissolution as provided for in Article 38 new could be considered excessively long and disproportionate to the “mistake.” See also OHCHR comments on Article 25.

**OHCHR recommends** replacing the first paragraph of this Article with the following phrase: “*Any political party whose registration has been disapproved has the right to file an appeal according to the procedure established in the Code of Criminal Procedure, guaranteeing a fair trial.*”

#### **Article 48 new**

Following the entry into force of this law, all political parties created and registered legally with the Ministry of Interior in accordance with the Law on Political Parties proclaimed by the King through a Royal Code Chor. Sor./Ror. Kor. Mor./1197/07 dated 18 November 1997 shall continue to have their validity and may continue to carry out activities in accordance with this law and other laws currently in force in the Kingdom of Cambodia, however these political parties shall fulfil the regulation formalities in accordance with the provisions of this law within the period of 90 (ninety) days at the latest, counting from the date when this law enters into force.

**Comments:** Article 18 new of the proposed amendments gives a political party 90 days to fill the post of chair, while Article 19 new allows 180 days to comply with other requirements for *registration*.

**OHCHR recommends** the extension of the period during which a political party must fulfill the legalization procedures to the same period of 180 days allowed to new parties. It further recommends that the term “legalization procedures” be clarified through reference to the specific articles in the law that establish the procedure for legalization.

#### **Article 49 new**

Any provision which is contrary to this law shall hereby be repealed.

#### **Comments:**

Article 49 new challenges the status of international human rights law, which is enshrined in the treaties ratified by Cambodia, the Constitution, and the laws adopted by Parliament. In respect of the treaties ratified by Cambodia, Article 27 of the Vienna Convention on the Law of Treaties stipulates that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Additionally, Article 2, paragraph 2, of the ICCPR, which is binding on Cambodia, obliges State Parties “to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present

Covenant.” Several articles of the present law conflict with international standards on the rights to freedom of association and expression that are binding upon Cambodia, as explained in the comments thereon. Thus, strict implementation of Article 49 new of the law would lead to violations of international law.

This Article also raises questions regarding the status of the present law in relation to other laws, particularly organic laws such as the Constitution in which fundamental human rights are set out. The contradictions of international law contained in the Law would thus also seem to contradict the Cambodian Constitution. Several procedural matters covered under the present law further conflict with the Criminal Procedure Code.

**OHCHR recommends** a thorough, substantive and consultative revision to the law to address the issues raised in the present analysis and thus prevent the contradictions summarised in this last comment.

**Article 50 new**

This law shall be declared as an urgency.

**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 controversial, directly affects the parties at stake in the law, and there is no evident reason provided for the urgency.

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