



## CCHR Briefing Note – September 2015

### Cambodia: Democracy Under Threat

#### **EXECUTIVE SUMMARY**

In recent months, the Royal Government of Cambodia (“RGC”) has severely restricted fundamental freedoms and attempted to stifle dissenting voices, gravely threatening the future prospects for a peaceful and democratic Cambodia in which human rights are respected. Despite legal protection being enshrined in both domestic and international law, violations of human rights and fundamental freedoms are increasing at an alarming rate in Cambodia. Moreover, the RGC’s recent clampdown on democracy and peaceful dissent cannot be properly understood outside of the context of the upcoming commune and national elections in 2017 and 2018, respectively. As the upcoming elections draw ever closer, the RGC appears determined to do everything in its power to suppress critical voices. In practice, this has resulted in widespread violations of the rights to freedom of expression, assembly, and association, as well the creation of an increasingly hostile political climate and menacing rhetoric from senior political and military figures.

Episodes of unlawful restrictions of fundamental freedoms have become increasingly frequent and severe in recent months. Political opponents, civil society organizations, trade unions, and ordinary people using social media to express opinions and criticism have been systematically targeted, while the government exercises political control over the judiciary and introduces oppressive laws that violate international human rights standards. Meanwhile, statements by senior military leaders outlining their loyalty to the ruling party, along with warnings of “civil war” by Prime Minister Hun Sen should he lose power, add the very real threat of physical violence to the oppressive atmosphere that is engulfing the country in the lead up to local and national elections. All of these developments are deeply interconnected, and represent a grave threat to democracy and human rights in Cambodia. Free and fair elections are only the starting point of a true democracy. Respect for human rights, particularly fundamental freedoms, along with a genuine separation of powers, are essential components of a true democracy.

In September 2005, more than 170 Heads of States and Governments reaffirmed at the World Summit in New York that “*democracy is a universal value based on the freely expressed will of people to determine their political, economic, social and cultural systems and their full participation in all aspects of their lives.*”<sup>1</sup> They went on recognizing that “*democracy, development and respect for all*

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<sup>1</sup> United Nations General Assembly Resolution, ‘2005 World Summit Outcome’, A/RES/60/1 (16 September 2005), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

*human rights and fundamental freedoms are interlinked and mutually reinforcing.*"<sup>2</sup> Ten years later, this link is more imperative than ever, and yet increasingly fragile.

This briefing note aims to offer an analysis of the primary threats to democracy in Cambodia today, in the context of fundamental freedoms. The first section of this briefing note briefly considers the legal framework surrounding the freedoms of expression, association, and assembly in Cambodia. Secondly, recent restrictions on fundamental freedoms and democratic space in Cambodia are analyzed. Next, the briefing note examines the various actors that have been targeted by the RGC as part of the government's systematic clampdown on dissent, namely: the political opposition; NGOs and associations; trade unions; internet users; and journalists. Emblematic case studies of recent restrictions of fundamental freedoms, which translate into threats to democracy and the right to participate actively in the life of the nation, are outlined to illustrate current trends and identify patterns. The final section concludes and offers recommendations to the Royal Government of Cambodia. These recommendations include:

- *Repeal the recently passed LANGO;*
- *Refrain from passing the Cybercrime Law until transparent consultations with civil society have been conducted and the legislation respects human rights, particularly the right to freedoms of expression online;*
- *Amend the election laws in order to guarantee freedom of expression to civil society organizations during the election period, and to prevent the interference of military and judicial officials in electoral affairs;*
- *Refrain from passing the Trade Union Law unless it is significantly amended, and hold genuine consultation with sufficient time for analysis and comments on the draft by relevant stakeholders, including workers and civil society organizations;*
- *Stop the judicial harassment of human rights defenders, political activists and opposition politicians, and immediately and unconditionally release those currently detained for politically motivated charges or convictions that have no basis in law and no place in a liberal democracy;*
- *Ensure that cases of harassment against journalists, NGO workers, union members and other civil society actors are duly investigated and all perpetrators are brought to justice irrespective of their status;*
- *Ensure that members of the Royal Cambodian Armed Forces and the judiciary exercise party-political neutrality and ban military figures from holding official positions in any party.*
- *Ensure that all recommendations from the United Nations Human Rights Council's Universal Period Review of Cambodia in 2014 are implemented.*

This Briefing Note is written by the Cambodian Center for Human Rights ("CCHR"), a leading, non-aligned, independent, non-governmental organization that works to promote and protect

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<sup>2</sup> Ibid.

democracy and the respect for human rights – primarily civil and political rights – in Cambodia. The information presented in the briefing note is based on data documented or verified by CCHR.

## I. LEGAL PROTECTION – FUNDAMENTAL FREEDOMS

Article 41 of the Constitution of the Kingdom of Cambodia guarantees for all Cambodian citizens the rights to freedom of expression, information and publication.<sup>3</sup> Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”), to which Cambodia acceded in 1992, also protects the right to freedom of expression.<sup>4</sup> Yet, the situation of freedom of expression in Cambodia – ranked 139<sup>th</sup> out of 180 countries in the 2015 World Press Freedom Index of Reporters without Borders<sup>5</sup> – remains dire. Freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and to the exercise of the right to vote. Citizens take part in the conduct of public affairs through public debate and dialogue with their representatives or through their capacity to express constructive criticism. Ensuring freedom of expression is in turn essential to democratic participation.

The right to freedom of association is enshrined in both the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Civil and Political Rights. Article 20 of the UDHR states that *“everyone has the right to freedom of peaceful assembly and association,”* while Article 23 specifies that *“everyone has the right to form and to join trade unions for the protection of his interests.”* Article 22 of the ICCPR also provides for the universal right to freedom of association and union membership. In addition to recognizing the rights to freedom of association, Article 22 of the ICCPR provides guidance on acceptable restrictions to freedom of association, stating that any restrictions must be *“necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others.”* The Cambodian Constitution also protects the right to establish associations under Article 42. Despite these guarantees, freedom of association in Cambodia has been the subject of severe curtailment in recent months.

The right to freedom of assembly is also enshrined in both the UDHR and the International Covenant on Civil and Political Rights. Furthermore, the Cambodian Law on Peaceful Assembly (the “Demonstration Law”) provides a relatively solid legal ground for the enjoyment of the right to freedom of assembly in Cambodia. The law regulates all peaceful gatherings and marches in Cambodia except electoral campaign rallies, gatherings related to labor disputes, and other gatherings for the purposes of serving religion, art, culture, national customs and tradition, and educational dissemination activities for social interests such as public forums. It provides for specific notification periods and the objective requirement of *“clear information”* indicating that the demonstration may cause danger or jeopardize public order as grounds for denial. The law’s provisions are generally in line with international standards. Nonetheless, the demonstration law has been repeatedly abusively implemented, to the detriment of the right to freedom of assembly. In fact, despite complying with the requirements of the law, political opponents, grassroots activists,

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<sup>3</sup> See Article 41 of the Constitution: *“Khmer citizens shall have freedom of expression of their idea, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security.”*

<sup>4</sup> See Article 19 of the ICCPR: *“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.”*

<sup>5</sup> Reporters Without Borders, 2015 World Press Freedom Index, Cambodia < <https://index.rsrf.org/#/index-details/KHM> >

and demonstrators have been recurrently prevented from exercising their right to peaceful assembly through arbitrary bans on rallies, arrests, and judicial harassment.

## II. RESTRICTIONS ON FUNDAMENTAL FREEDOMS AND THREATS TO DEMOCRACY

*“The Royal Government also has a strong commitment to **crack down** and prevent all activities and tricks under the auspices of democracy and human rights to serve individual political gain or a handful of people.”*

– Prime Minister Hun Sen, 21 September 2015 (U.N. International Day of Peace)

### ***The new Law on Associations and Non-Governmental Organizations***

The recently promulgated Law on Associations and Non-Governmental Organizations (“LANGO”) is a prime example of the worrying trend toward shrinking democratic space in Cambodia. Since Prime Minister Hun Sen’s announcement in April 2015 to resume the adoption process of the LANGO, several hundred civil society organizations, the UN Office of the High Commissioner for Human Rights, various UN experts, the European Union, and several diplomatic delegations in Cambodia have voiced in vain their deep concern regarding the LANGO. On 5 June 2015, the Council of Ministers approved the fifth draft of the LANGO. After minor changes were made to the text, the draft was sent to the National Assembly in mid-June. Pro forma consultations were held on 8 July 2015 during the “*National Workshop on Understanding the LANGO*”, where very few of the concerns raised were given any consideration. On 13 July 2015, the National Assembly adopted the draft LANGO with minor amendments, despite the boycott of the session by the opposition and the widespread call to halt the legislative process and hold meaningful consultations with all relevant actors, or reject the law. The LANGO was approved by the Senate on 24 July 2015 without any further discussion and finally promulgated by the King on 12 August 2015.

The LANGO violates international human rights standards and Cambodia’s international legal obligations concerning fundamental freedoms. The text contains deeply worrisome provisions with regard to the imposition of mandatory registration, as well as onerous registration requirements, reporting obligations, and broad and vague grounds for denial of registration and deregistration.

The LANGO raises serious concerns not only with regard to national entities, but also with regard to foreign associations and NGOs wishing to operate in Cambodia. The new LANGO prescribes mandatory registration for all associations and NGOs, not only in order to be recognized as a legal entity, but to conduct any activity whatsoever. Prohibiting unregistered entities from conducting any activity is inconsistent with the right to freedom of association under international human rights law. Cambodian associations and NGOs must register with the Ministry of Interior (“MOI”), while foreign entities must discuss and agree on all projects with an unspecified public authority, before submitting a request to enter into a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation (“MOFAIC”). These provisions allow the authorities to exercise highly invasive powers over the activities of CSOs. Furthermore, the text of the law is sufficiently vague to cause significant confusion regarding its application to community-based organizations (“CBOs”) and other informal popular movements. The law does not explicitly exclude CBOs, leaving it to the interpretation of the authorities whether to include them under the spectrum of associations. CCHR [wrote to the Mol](#) seeking clarification on this matter on 21 August 2015, and received a

response on 22 September.<sup>6</sup> Encouragingly, the response letter from the MoI indicated that the LANGO should not apply to small CBOs; however, there is still significant scope for local authorities and officials to misapply the law due to the vague wording of the LANGO. Precisely this type of misapplication is documented in a case study in Section III, below.

The new law fails to set out clearly the grounds on which registration applications can be rejected. Every association and NGO is now subject to the threat of being arbitrarily shut down due to non-compliance with broadly worded criteria. Particularly concerning is the vaguely worded provision contained in Article 8(4), stating that the MoI may reject the request for registration of any domestic association or NGO, the purpose and objective of which it is deemed to adversely affect public security, stability and order, or generate a threat to national security, national unity, or the culture, traditions, and good customs of Cambodian national society. Article 8 further confers upon the MoI the power to examine the documents submitted by the requesting association or NGO and the legality of the statute, and to decide on the request. Despite obliging the MoI to notify the applicant in writing of necessary corrections to the application, the law does not require the MoI to communicate in writing the reasons for its final decision. Applications are therefore opened up to the possibility of being rejected for opaque and unexplained reasons. Article 8(3) states that in cases of late decisions (beyond 45 working days), the association or NGO shall be automatically considered as legally registered, and the MoI must process the registration documents. Concerns remain, though, as to the practical implementation of this provision. In particular, an attestation of reception should be issued upon submission of the application and be a valid title for operating in case of automatic registration.

Article 24 of the LANGO also requires, under threat of de-registration, neutrality vis-à-vis political parties for all foreign associations and NGOs, as well as for domestic NGOs. This vague provision, which does not apply to domestic associations, leaves space for serious violations of freedom of association by authorities in order to silence dissent and criticism. Temporary suspension and deletion of CSOs from the register due to non-compliance with reporting requirements carries further risks of abuse. The suspension or deletion of CSOs for actions contrary to the statute equates to an unnecessary interference in issues internal to CSOs. Finally, in a deeply concerning provision, Article 30 states that the MoI must delete from the list of registered organizations domestic associations and NGOs conducting activities adversely affecting public security, peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society, leaving room for the arbitrary deletion of CSOs. Similar provisions apply to foreign associations and NGOs according to the provisions contained in Article 34 and Article 35. Significant administrative sanctions are also imposed on associations and NGOs that conduct activities without registration or continue their activities despite suspension/deletion.

The LANGO confers broad and intrusive powers upon the government that go beyond the permissible limitations allowed by international human rights law. There is real concern within Cambodian civil society and the international community at large that the newly adopted LANGO will be used to significantly restrict the right to freedom of association and stifle the capacity of civil society to operate in Cambodia.

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<sup>6</sup> CCHR Open Letter Seeks Clarification Regarding Application of the LANGO to CBOs and Informal Groups, 21 August 2015, < [http://cchrcambodia.org/index\\_old.php?title=CCHR-Open-Letter-Seeks-Clarification-Regarding-Application-of-the-LANGO-to-CBOs-and-Informal-Groups&url=media/media.php&p=press\\_detail.php&prid=569&id=5](http://cchrcambodia.org/index_old.php?title=CCHR-Open-Letter-Seeks-Clarification-Regarding-Application-of-the-LANGO-to-CBOs-and-Informal-Groups&url=media/media.php&p=press_detail.php&prid=569&id=5) >

### ***The newly adopted Election Law***

On 19 March 2015, the Law on the Organization and Function of the National Election Committee and the Law on Election of Members of the National Assembly (“LEMNA”) were adopted following a highly rushed and opaque process. The election reform laws were drafted by the two major Cambodian parties, the ruling Cambodian People’s Party (“CPP”) and the opposition Cambodian National Rescue Party (“CNRP”) as part of their political agreement from July 2014. No public consultation with civil society was held, while an invitation to participate in a workshop was sent to civil society organizations (“CSOs”) only a few days before the adoption of the laws.

The new election laws significantly restrict freedom of expression, especially during election campaigns, while also failing to establish a genuinely independent national election committee (“NEC”). Vaguely worded provisions imposing penalties on CSOs who participate in political activities during election campaigns, polling, and vote counting seriously curtail the role of civil society in election monitoring and other election-related activities.

In particular, Articles 84 and 137 of the LEMNA impose upon all local and international NGOs and associations the duty to exercise neutrality and impartiality relating to the conduct of electoral affairs. Article 84 prohibits an extensive list of activities directly or indirectly related to the elections, including *“releasing a statement or doing any activities with the aim of supporting or showing bias towards or against a political party or a candidate.”* It also outlaws undefined *“insults,”* and could be interpreted by the authorities to mean that monitoring groups commenting on elections violate the requirements of impartiality and neutrality. Equally restrictive of freedom of expression is Article 85 that plainly bans *“foreigners”* from *“direct or indirect activities in the election campaign to support or oppose a political party or a candidate.”* Thousands of non-nationals are legally permitted to live and work in Cambodia; over 25,000 foreigners were granted work permits in the first half of 2015 alone,<sup>7</sup> and many more legal residents are estimated to work without official permits. Additionally, the RGC is home to many refugees, and has recently initiated a policy of accepting refugees from the Australian government. Cambodia is also home to many undocumented and stateless persons; up to 300,000 of Cambodia’s estimated 1 million-strong Khmer Krom population are believed to remain undocumented.

Article 160 of the LEMNA states that election observers provided by political parties and NGOs must also remain neutral and cannot instruct and disturb election officials while observing election processes. The article says that written warnings followed by a fine of between \$250 and \$2,500 will be administered to *“party agents or observers who give instruction or place blame on election officers and officers who are counting ballots.”* This will curb the observers’ capacity to criticize the actions of parties’ members, army, police, gendarmerie, or other officials that act in a biased manner or commit election-related violations.

While the capacity of civil society during election times is subject to strict limitations, Article 83 of the LEMNA allows security force members and court officials to participate in electoral campaign activities in support of a political party or a candidate outside working hours. Article 128 of the Constitution of the Kingdom of Cambodia states: *“the judicial power shall be an independent power.”*

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<sup>7</sup> Pech Sotheary, “Permitted More than 25,000 get work cards”, Phnom Penh Post, 17 July 2015 < <http://www.phnompenhpost.com/national/permitted-more-25000-get-work-cards> >

*The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”* However, this provision of the LEMNA will allow judicial officials to act in a partisan manner. Worryingly, it also opens the door for military officials to act in an intimidating manner during the conduct of election campaigns. Considering the fact that the ruling CPP’s standing committee includes the commander of the Royal Cambodian Armed Forces, General Saroeun, as well as Kun Kim, a deputy commander, and many other military leaders, this provision must be seen as a genuine menace to the conduct of free and peaceful elections.

Article 152 of the LEMNA states that *“any person who, by all means, publicly insults a political party or a candidate running in the election or incites to create discrimination against members of any particular ethnics, groups of nationalities, races or religions during the electoral campaigns and the polling”* shall be fined.<sup>8</sup> Article 162 of the LEMNA adds that offenses committed by representative[s] or individual who hold decision-making rights will be offenses committed by the party as an organization for the benefit of that political party, thus punishing entire parties for offenses committed by individual members. Penalties will include the disqualification of parties.

While freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected, the LEMNA disproportionately restricts these fundamental rights, hence violating international standards and the Constitution of the Kingdom of Cambodia. Article 35 of the Constitution states that Cambodian citizens have the right to actively participate in political life. All citizens, as well as non-governmental organizations and associations, should therefore be encouraged to contribute to public debate, including by exercising freedom of expression and political rights during the election period. It is equally important that members of the judiciary and armed forces are not allowed to utilize their positions to unduly influence the outcome of elections. The LEMNA – by silencing civil society, and simultaneously facilitating bias on the part of the judiciary and military - constitutes a significant threat to democracy in Cambodia.

### ***The Draft Trade Union Law***

A first draft Law on Trade Unions was introduced by the RGC in 2011, but was shelved after civil society groups and trade unions raised concerns, including that (i) the law would make trade unions highly vulnerable to dissolution and de-registration; (ii) that it provided for burdensome and discriminatory requirements for individuals seeking leadership positions in unions, such as having a clean criminal record (particularly worrying given that labor activists are regularly subjected to criminal proceedings); and (iii) that it provided the RGC with too much discretion over decision-making in these areas, resulting in a curtailment of workers’ rights and freedom of association.

A new draft was released in October 2014, which excluded domestic workers and other workers in the informal economy from forming unions. It also set a requirement that at least 20% of the total workforce would be required to assent for a union to be formed, thereby imposing an unreasonably onerous threshold for the creation of independent unions. According to recent unofficial declarations, this threshold has been lowered in a latest undisclosed version of the draft so to let as

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<sup>8</sup> The UN Human Rights Committee has stated that in the context of public political debate “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties....” See General Comment No. 34, ‘Article 19: Freedoms of opinion and expression’, CCPR/C/GC/34 (12 September 2011).

few as 10 people at a factory form a union.<sup>9</sup> The draft from 2014 also gives the Ministry of Labor the power to suspend unions that engage in joint activities with groups deemed as “*economic saboteurs*” or that have “*damaged*” the national interest, thus limiting freedom of association through the use of broad and vague terms.

The draft Trade Union law, as of its 2014 version, remains far from compliant with international labor rights instruments ratified by Cambodia, including the International Labour Organization (“ILO”) Convention No. 87 on Freedom of Association and Convention No. 98 on the Right to Organise and Collective Bargaining. In addition, the draft law would significantly impinge Article 36 of the Constitution of the Kingdom of Cambodia, which provides that Cambodian citizens shall have the right to “*form and be members of trade unions,*” and Article 37, which guarantees the right to strike and engage in non-violent demonstrations. Furthermore, it would also contravene Article 266 of the Labor Law that stipulates that workers and employers have the right to form professional organizations for the exclusive purpose of studying, promoting the interests, and protecting the rights of the persons covered by the organization’s statutes.

Despite these concerns, the RGC has reportedly vowed to pass the law by the end of 2015. The current status of the law is unclear and the updated draft has yet to be publicly disclosed, in conflict with the principle of transparency and democratic governance.

### ***The undisclosed Draft Cybercrime Law***

In May 2012, the RGC announced its intention to adopt Cambodia’s first ever ‘Cybercrime Law’ in order to regulate online content and to prevent the “*ill-willed*” from spreading false information.<sup>10</sup> Attempts by civil society to acquire a copy of the draft law from the government were met with vague, noncommittal answers. The draft law was then leaked in April 2014, but the RGC has refused to publicly release an official version of the draft. In response, CCHR wrote to the Minister of Post and Telecommunications, expressing concerns regarding the proposed Cybercrime Law.<sup>11</sup> Also in late 2014, the Council of Ministers’ Press and Quick Reaction Unit announced the creation of a “*Cyber War Team*”,<sup>12</sup> with the stated aim of monitoring all online activity to “*protect the government’s stance and prestige*”, while the Ministry of Interior announced that it would install surveillance equipment in all of Cambodia’s mobile phone networks and Internet Service Providers (“ISPs”). On 11 December 2014, Council of Ministers spokesman Phay Siphon stated that the controversial draft Cybercrime Law had been “*scrapped,*” as it was “*not a priority.*”<sup>13</sup> Worryingly, the RGC appears to have reprioritized the law; in late May 2015, the Minister of Post and Telecommunications announced that the Cybercrime Law was still under consideration, and that the law would include criminal sanctions for “*people with bad intentions*” who “*criticize the government*”.<sup>14</sup>

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<sup>9</sup> Zsombor Peter, ‘ILO Says Latest Draft Law on Trade Union an Improvement’, The Cambodia Daily, 9 September 2015, < <https://www.cambodiadaily.com/news/ilo-says-latest-draft-law-on-trade-union-an-improvement-93690/> >

<sup>10</sup> Bridget Di Certo and Kim Yuthana, ‘The ‘ill-willed’ spark cyber law: officials’, The Phnom Penh Post, 24 May 2012, < <http://www.phnompenhpost.com/national/%E2%80%98ill-willed%E2%80%99-spark-cyber-law-officials> >

<sup>11</sup> Chak Sopheap, ‘Open Letter from CCHR concerning draft Cybercrime Law,’ 28 April 2014

<sup>12</sup> Matt Blomberg and Kuch Naren, ‘Cyber War Team to Monitor Web’ The Cambodia Daily, 20 November 2014, < <https://www.cambodiadaily.com/news/cyber-war-team-to-monitor-web-72677/> >

<sup>13</sup> Chris Muller and Khuon Narim, ‘Controversial Cybercrime Law ‘Scrapped’’, The Cambodia Daily, 12 December 2014, < <https://www.cambodiadaily.com/news/controversial-cybercrime-law-scrapped-74057/> >

<sup>14</sup> Mech Dara, ‘Cyber Law to Protect Gov’t Honor, Ministry Says’, The Cambodia Daily, 27 May 2015, < <https://www.cambodiadaily.com/news/cyber-law-to-protect-govt-honor-ministry-says-84431/> >



The highly controversial draft Cybercrime Law contains several provisions which, if passed, could severely restrict freedom of expression online, and are likely to result in self-censorship. CCHR has previously raised concerns regarding the draft law's potential negative impacts on freedom of expression.<sup>15</sup>

Of particular concern is Article 28, which prohibits publications on a number of vaguely defined grounds and provides for heavy prison sentences and fines. Some of the most problematic provisions seek to prohibit content deemed to "*generate insecurity, instability and political incohesiveness*" (Article 28(3)) or "*deemed damaging to the moral and cultural values of the society,*" including "*manipulation, defamation, and slanders*" (Article 28(5)(c)). These unreasonably vague provisions give excessive discretion to the government to determine what type of content falls foul of these provisions. Content that is going to be regulated should be narrowly and unambiguously defined so as to avoid the possibility of abusive interpretation. Furthermore, content restriction should be exceptional and implemented only where absolutely necessary.

Furthermore, Article 28(4), which prohibits content "*undermining the integrity of any governmental agencies,*" could hinder the ability of civil society to monitor the RGC's activities – a crucial role in an emerging democracy – as well as serve to silence activists and political opposition. Moreover, Article 35 includes "*dissolution*" as an accessory penalty for legal entities – which would include civil society organizations – that commit offenses under Articles 21 to 32, and places an improper restriction on freedom of expression.

Finally, the proposed inclusion of predominantly high-ranking members of the government in the National Anti-Cybercrime Committee (the "NACC"), as outlined in Article 6, will not lead to the creation of an independent review institution for internet usage. Instead, if it is to be introduced, the Cybercrime Law should legislate the establishment of an independent working group made up of, *inter alia*, technical experts, members of civil society organizations, and academics to properly investigate and analyze website content prior to prosecution or blocking requests and before requests are forwarded to the judiciary.

### ***The proposed Telecommunications Law***

Finally, concerns exist that efforts to draft a new Telecommunications law will increase the government's control over the industry and further threaten freedom of expression.

According to an unofficially translated version of the document from 2014, the draft law contains vaguely worded provisions which allow for very harsh and disproportionate prison sentences for people found to be using telecommunications to make threats or conspire to commit crimes. Penalties, as stated in Chapter XIII, range from \$2,400 to as much as \$1.2 million and carry between 1 week and 15 years in prison. Additionally, the Ministry of Posts and Telecommunications will have authority to order telecom service-related providers to hand over data, systems and equipment, or transfer control of telecommunication systems to the Ministry in the interest of "*national interest, security and stability and public order.*"

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<sup>15</sup> CCHR Briefing Note, "Cyber Laws: Tools for Protecting or Restricting Freedom of Expression?" (February 2014) < [http://www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=analysis\\_detail.php&anid=51&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=51&id=5) >

On 22 September 2015, the Ministry of Posts and Telecommunications and the National Police Department jointly announced that as of 23 September, a new regulation would be enforced, whereby mobile service providers are obliged to supply the police with the identification details of all SIM card holders in Cambodia.<sup>16</sup> Retailers who do not comply with this regulation will be subject to criminal sanctions.

While regulating the telecommunications industry would generally not be an issue in a country genuinely upholding democracy and human rights, these moves by the RGC leave too much room for interpretation and could be used to further restrict freedom of expression.

### ***The proposed Access to Information Law***

The public right of access to information is not only the other side to freedom of expression, it is the backbone of democracy. Article 19 of the International Covenant on Civil and Political Rights states that the right to freedom of expression “*shall include freedom to seek, receive and impart information and ideas of all kinds.*”

Since 2001, NGOs working in Cambodia have pushed for greater transparency and education of democratic rights that would in turn enhance the exercise of the right to freedom of expression. Cambodian and international civil society organizations have sought to plug gaps in public access to information, facilitated by the growth of internet access. As a result of a joint civil society effort, a solid draft law and an amended version were submitted to the National Assembly in 2010 and 2012 respectively. Both were rejected. Despite some positive engagement with civil society from the RGC since then regarding the introduction of an access to information (“A2I”) law, Cambodia has not adopted any law on access to information.

The lack of access to adequate and unbiased information severely hinders the formation and dissemination of free opinions in Cambodia. It remains a major impediment for civil society and media wishing to operate as democratic watchdogs. In particular, the lack of access to sufficient and accurate information severely hinders the ability of journalists and civil society to provide information and encourage debate. Increasing public access to information through the adoption of a comprehensive A2I Law will allow Cambodians to exercise their democratic rights to participate in decision-making processes and to freedom of expression. It will also equip them with the necessary information to make informed decisions about issues that affect them, in turn increasing the transparency and accountability of those individuals and bodies that wield power in Cambodia.

Democracy requires an informed citizenship and an accountable leadership. For these goals to be realized, the public’s right to know must be protected and positively enforced through legislation and the active implementation of freedom of information principles.

In 2014, the Cambodian government accepted Universal Periodic Review (“UPR”) recommendations urging Cambodia to establish a law on A2I as an essential component of freedom of opinion and expression.<sup>17</sup> The steps that have been taken towards adopting freedom of information legislation

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<sup>16</sup> Vong Sokhneg and Jamie Elliot, ‘Sim Card Crackdown’, Phnom Penh Post, 23 September 2015, <  
<http://www.phnompenhpost.com/national/sim-card-crackdown> >

<sup>17</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review – Cambodia, A/HRC/26/16 (27 March 2014), recommendation 118.17. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement>

and policy are encouraging, including close cooperation between the Ministry of Information, UNESCO, and civil society. It is hoped that these steps can lead to genuine reform in the realm of access to information for civil society and ordinary Cambodians.

### **Military Links to the CPP**

In addition to the wide-ranging legislative assault that is being undertaken by the RGC against the freedoms of expression, assembly, and association, an additional and grave threat to democracy in Cambodia comes in the form of the increasingly obvious loyalty of the Royal Cambodian Armed Forces (“RCAF”) to the ruling CPP.

As discussed under the analysis of the LEMNA, above, the standing committee of the ruling CPP (the party’s highest executive body) counts an extravagant number of senior military figures amongst its members, including the current commander of the RCAF, his predecessor, and a number of deputy commanders and four-star generals. At the party’s annual conference in February 2015, the CPP added 306 new members to its central committee; among this number, 80 were military figures. The links between the CPP and the RCAF are nothing new, however, with the close relationship tracing back beyond the beginning of Hun Sen’s rule in 1985. In addition to regular military units, the RCAF also comprises the feared Royal Gendarmerie (military police) and the Prime Minister’s Bodyguard Unit (“PMBU”), a force loyal to Hun Sen, with formidable military capabilities and a membership reportedly reaching 10,000 guards.<sup>18</sup> The PMBU was formed in the lead up to the ouster by Hun Sen of his then co-Prime Minister, Prince Norodom Ranariddh, in 1997; with Hun Sen seizing power after his bodyguard unit defeated that of Prince Ranariddh. Since then, the PMBU has retained its position as the protector of Hun Sen’s rule.

Having benefitted from 30 years of CPP rule, senior military leaders have much to lose, should a transition of power occur in Cambodia. In recent years, the CPP has cemented its mutually dependent and dangerous relationship with the RCAF by a variety of means, most notably enriching the armed forces by introducing formal partnerships between the RCAF and private businesses. On 29 July 2015, the RCAF celebrated the 10-year anniversary of this partnership, at which Defense Minister Tea Banh explained the deal in simple terms: *“lots of private companies gave us money to buy weapons.”*<sup>19</sup> Sponsors include both domestic tycoons and foreign investors, such as infamous timber magante Try Pheap, and China’s Unite Group, the latter sponsoring the PMBU. This corporate-military nexus, which has been nurtured by the ruling CPP, constitutes another major threat to democracy in Cambodia, and serves as a reminder that the vast majority of money and weapons in Cambodia have a major interest in the CPP retaining power, by whatever means.

These observations are supported by recent statements from both military and political leaders, reinforcing the impression that a peaceful transition of power is far from guaranteed in the event of an opposition victory at the next national election in 2018. On 28 July 2015, Four-Star General Chea Dara, during a speech at Hun Sen’s Peace Palace, stated: *“I speak frankly when I say that the army belongs to the Cambodia People’s Party.”*<sup>20</sup> Although the CPP later distanced itself from these remarks, they are nonetheless a telling indication of the relationship between the party and the military. In the same speech, General Chea Dara further stated that it is the military’s duty to suppress any *“color revolution”* that may be formenting in the country, referring to the predominantly peaceful movements advocating for democracy and social reform which occurred in

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<sup>18</sup> Kevin Doyle, ‘Challenging Cambodia’s strongman Hun Sen’, Al Jazeera, 01 January 2014 < <http://www.aljazeera.com/indepth/features/2014/01/challenging-cambodia-strongman-hun-sen-20141184836510703.html> >

<sup>19</sup> Vong Sokheang and Danile Pye, ‘In Praise of RCAF Inc’, Phnom Penh Post, 30 July 2015, < <http://www.phnompenhpost.com/national/praise-rcaf-inc> >

<sup>20</sup> Joshua Lipas, Cambodia’s Armed Forces ‘Belong’ to The Ruling Party: Four-Star General, Radio Free Asia, 29 July 2015 < <http://www.rfa.org/english/news/cambodia/military-07292015145855.html> >

the former Soviet Union. The General's remarks echo a statement by Hun Sen from 04 March 2015, in which he stated: "[The] RCAF has to be vigilant for acts of colour revolution and must not allow it to happen. We will not hesitate to take action against any group that could bring the country towards civil war."<sup>21</sup> More recently, on 08 September 2015, the Prime Minister again stated in a live television address that "the country will have war if the CPP does not lead the country."<sup>22</sup> At a meeting attended by some of Cambodia's most powerful businesspeople on 23 September 2015, Hun Sen warned that a CNRP victory in the election would lead to civil war, due to the opposition party's policies conflicting with the interests of big business. He stated: "I dare say that the men here are [the CNRP's] enemies. So would there be peace?... All tycoons are [the CNRP's] class enemies."<sup>23</sup> Hun Sen has frequently used vague references to the possibility of violence in public speeches throughout his leadership; warnings which can deeply impact a people that have yet to fully recover from years of bloody conflict. However, in the context of the overall shift by the government towards clamping down on fundamental freedoms and democratic space, these words seem especially ominous.

### III. PILLARS OF DEMOCRACY TARGETED

The overall environment for critical and independent voices is becoming increasingly menacing in Cambodia. In October 2014, a journalist in Kratie province became the thirteenth journalist killed in Cambodia since 1994, while attempting to report on illegal logging. Throughout Cambodia, members of opposition parties, NGO workers, journalists, human rights defenders and other activists continue to be threatened and harassed by both local authorities and powerful private actors because of their work. Judicial harassment, including through the misuse of criminal charges and an abuse of provisional detention, remains a serious concern and a challenge for independent civil society and the political opposition. The situation has been worsening in recent months. The following cases illustrate how the space for popular dissent is progressively shrinking.

#### The Political Opposition

Following the shock result of the 2013 national election, in which the opposition Cambodian National Rescue Party ("CNRP") won 55 seats, the shaky political truce that has existed between the two major parties is looking increasingly close to collapse. The "culture of dialogue," as it is known, was arrived at following a yearlong boycott of parliament by the CNRP, who disputed the election result and alleged electoral fraud on the part of the government. In exchange for promises to depoliticize the National Election Committee, among other things, the CNRP assumed their seats in August 2014 and party leaders Hun Sen and Sam Rainsy promised to pursue a more cooperative, less antagonistic relationship. The culture of dialogue has often appeared to be a shaky détente, but recent events have pushed it to the limits of credibility. A string of tactically-timed and politically-motivated arrests and convictions of CNRP activists and politicians have been orchestrated by the RGC, leading to major questions being raised in relation to the viability of the culture of dialogue and the likelihood of peaceful, free, and fair elections in 2017 and 2018. The cases below illustrate this worrying trend.

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<sup>21</sup> Vong Sokheng, 'Military's role to help government, PM says', Phnom Penh Post, 05 March 2015 < <http://www.phnompenhpost.com/militarys-role-help-government-pm-says> >.

<sup>22</sup> Kuch Naren, 'In Sweeping Address, PM Defends Border Work,' The Cambodia Daily, 09 September 2015 < <https://www.cambodiadaily.com/news/in-sweeping-address-pm-defends-border-work-93682/> >.

<sup>23</sup> Kang Sothear and Alex Willems, 'PM Says CNRP's Land Plans Will Stoke War', The Cambodia Daily, 23 September 2015 < <https://www.cambodiadaily.com/news/pm-says-cnmps-land-plans-will-stoke-war-95150/> >

### **Case Study: Opposition Senator jailed for Facebook post**

On 15 August 2015, Sam Rainsy Party (“SRP”) Senator Hong Sok Hour was sent to Prey Sar prison after being charged with forging public documents, using forged documents, and incitement to cause chaos in social order under Articles 629, 630, and 495 of the Penal Code, respectively.

Mr. Sok Hour, who supposedly held parliamentary immunity from arrest, detention and prosecution, was arrested by police armed with assault rifles. The arrest came just three days after a speech by Prime Minister Hun Sen, urgently calling for his arrest for “*treason*” after the Senator posted a video on Facebook, which included text from a fake 1979 treaty between the Cambodian and Vietnamese governments.

Article 104 of the Constitution of the Kingdom of Cambodia states that Senators shall be immune from prosecution, arrest, and detention for opinions expressed in the exercise of their Senatorial duties. This constitutional immunity can only be lifted by a two-thirds majority vote of the Senate, an event which did not occur prior to Senator Sok Hour’s arrest. The only exception to this requirement arises in cases of “*in flagrante delicto*” offences, whereby the perpetrator is caught in the act of committing a crime. This exception was invoked as a justification for the Senator’s arrest by Investigating Judge Kor Vandy. However, the fact that the arrest occurred three days after the video was initially posted, and only upon the intervention of Prime Minister Hun Sen, provides strong evidence that this was not, in fact, an *in flagrante delicto* offence.

Furthermore, Article 495 of the Penal Code states that the crime of incitement to cause chaos in social order requires an act of “*direct*” incitement. While it was irresponsible for Senator Sok Hour to publicize a fake treaty, this plainly does not amount to directly inciting anyone to commit a felony. Forgery is defined under Article 626 of the Penal Code as a “*fraudulent alteration of the truth.*” Article 629 states that the crime of forgery of a public document relates only to “*authenticated documents*” or documents “*issued by a public body for the purpose of establishing a right, an identity or a capacity, or to grant an authorisation.*” In this context, as there was no evidence that the Senator himself altered the fake treaty, the requirements for a conviction on grounds of forgery were not met.

This unconstitutional arrest, the timing of which suggests political motives, comes in the context of a far-reaching and systematic attack on dissent and freedom of expression in Cambodia. Fearing arrest for helping to post the treaty, three other CNRP staff members have fled, via Thailand, to a third country and are seeking asylum.

### **Case Study: Opposition Lawmaker banned from National Assembly**

In July 2015, opposition parliamentarian Um Sam An was banned from the National Assembly for 15 sessions and his salary cut for two months for “*insulting*” National Assembly president Heng Samrin. Um Sam An’s legal immunity was de facto suspended for criticising the National Assembly President and accusing him of abusing the constitution over his refusal to forward a letter about the Vietnam border demarcation process to Prime Minister Hun Sen. His comments, which were posted on social media, requested explanations for the refusal, and were deemed by the National Assembly’s Standing Committee as violating Article 87 of the Constitution, Article 5 of the Civil Servant Status Law and Articles 77 and 78 of the internal regulations of the Assembly. In a document signed by

President Heng Samrin himself, the comments were assessed as affecting his honour and that of the National Assembly. The order was issued just a few days after Um Sam An and three other CNRP lawmakers staged a rally near the disputed Vietnamese border in Svay Rieng province.

***Case Study: 11 CNRP activists convicted in connection with 2014 protests at Phnom Penh's Freedom Park***

On 21 July 2015, 11 opposition activists affiliated to the Cambodian National Rescue Party ("CNRP") were sentenced to lengthy jail terms, ranging between 7 and 20 years, on trumped up insurrection charges, due to their involvement in protests in Phnom Penh's Freedom Park in July 2014. In early August, just two days after Prime Minister Hun Sen called for more arrests, three more CNRP activists were also charged with joining an insurrection movement related to the same protest. The verdict appears to have been based on a complete lack of evidence. No credible evidence supporting the claim that the defendants had planned an "*insurrection*," or that any of the 11 had themselves committed acts of violence, was produced during the trial.

On 15 July 2014, demonstrators gathered at Freedom Park in Phnom Penh to support a CNRP rally calling for an end to the ban on public gatherings in the park. The peaceful protest escalated into violence with clashes occurring between Daun Penh district's security guards and protestors. Between August and November 2014, the 11 defendants were arrested for allegedly instigating or taking part in the violence and subsequently charged despite reports that protest leaders had been trying to calm the violence, rather than instigate it. The trial started in December 2014 and continued on a discontinuous basis until 20 July 2015, when the presiding judge announced his decision to schedule the hearings on a daily basis, ignoring defense requests to take account of their clients' health issues. On 21 July 2015, the Court called for closing arguments, despite only one of the nine defense lawyers being present and the request from the defendants for a delay. The judges then retired to deliberate and after 15 minutes announced the guilty verdict and the heavy sentences.

The entire trial was marred by political interference. The activists were arrested during negotiations on reforming the National Election Committee ("NEC"), suggesting probable political motivation for the arrests. In April 2015, the five activists who were being held in provisional detention were released on bail immediately following the formation of the new NEC, indicating further political interference in the judicial process. The sentences were handed down amid an opposition walk-out following the adoption of the LANGO and continuing CNRP involvement with tensions along the Cambodian-Vietnamese border.

**NGOs and Associations**

The United Nations Transitional Authority in Cambodia ("UNTAC"), which effectively ran the country for 18 months in 1992-1993, counted among its primary goals the creation of a vibrant civil society space for Cambodia. Other goals included building a lasting peace, ensuring respect for free and fair elections, and disarming the fighting factions that were operating within the country. To many observers, the only truly lasting success of the UNTAC era was the creation of a vibrant NGO sector. Cambodia's NGOs have played a vital role in ensuring a minimum level of respect for democracy and human rights since the early 1990's. However, recent legislative moves by the RGC are threatening

to obliterate the positive influence of civil society in Cambodia, and criminalize those who would dare to challenge the actions of the government.

***Case Study: Arrest of Mother Nature activists in Koh Kong province***

On 17 August 2015, three youth members of the environmental organization Mother Nature were arrested after refusing to appear for questioning over their alleged involvement in protests against a Vietnamese company dredging sand in Koh Kong Province's Botum Sakor District. All three men were charged with "*threats to destroy followed by an order*", which carries a maximum prison sentence of two years.

The Mother Nature activists were involved in peaceful, non-violent, protests against the controversial sand dredging activities. The dredging operations have stirred up serious concern from environmentalists, tourism operators and villagers in the area, who have said it is severely damaging the mangroves system and the local environment. They also accuse the company of polluting the estuary, causing riverbank collapses and driving off fish stocks. Koh Kong provincial police chief Somkhith Vean reportedly said the arrests were connected to two complaints – one lodged by the company alleging damages, and another by district authorities who claim the activists caused a disturbance at a public forum.

Previously, on 25 June 2015, three other Mother Nature activists were arrested for protesting without authorization while attempting to hold a peaceful demonstration in front of the National Assembly in Phnom Penh, and brought to Khan Chamkar Morm police station for questioning. They were released after several hours without charge. In order to be released, the activists were requested to sign statements pledging that they would not join, lead or incite unauthorized protests in the future.

Later, on 02 September 2015, a group of 17 human rights monitors, journalists, a medic, and protesters were arrested outside Koh Kong provincial court, where protestors had gathered to demand the release of the three aforementioned Mother Nature activists. Just weeks previously, the Koh Kong authorities had announced an arbitrary ban on protests outside the Koh Kong provincial hall. Witnesses state the police arrived and violently broke up the protest, leading to one woman being left unconscious and others also suffering injuries. The arrest of conspicuously-dressed human rights monitors, who were themselves not part of the protest, is evidence of the Cambodian authorities' increasing disregard for human rights standards.

***Case Study: The first case of misapplication of the LANGO***

Since the circulation of the first draft, civil society has been concerned about the application of the LANGO to community-based organizations and other informal popular movements. Days after the final adoption of the law, and despite previous reassurances that the LANGO would not be used to restrict grassroots movements, those concerns have proved real.

Last year, a group of 69 families in Khsoem commune, Snuol district, Kratie province came together to express their concerns regarding a dispute over a 250-hectare plot of land. On Saturday, 15 August 2015, Snuol district deputy police chief Nom Srun summoned two representatives of the families to the district police office, and told the community representatives that they must register their group with the Ministry of Interior ("Mol") as required by the new LANGO. According to one of

the representatives, the deputy police chief asked the group to sign a contract promising to refrain from all protest activity until the Mol approved their registration under the LANGO, and threatened punishment if the group did not comply. When contacted, deputy police chief Nom Srun confirmed that he told the community that, under the LANGO, they were required to be registered with the Mol.

On 21 August 2015, CCHR [wrote to the Ministry of Interior](#) seeking clarification on this matter, and received a response on 22 September.<sup>24</sup> Encouragingly, the response letter from the Mol indicated that the LANGO should not apply to small CBOs; however, it also stated that the community in Khsoem must be registered because they are seeking official recognition as an indigenous community. CCHR welcomes this positive engagement from the Mol, especially the clarification on the proper application of the LANGO to CBOs. However, CCHR believes that the Khsoem case requires further clarification. While local officials in Khsoem told the community they needed to register under the LANGO, the Mol is referring to registration under the Land Law. CCHR believes that these two issues are unrelated. The local community's claim for communal land title should not determine whether they fall under the LANGO or not, nor should their fundamental freedoms such as the right to peaceful assembly be affected by their claims for communal title.

### ***Case Study: Boeung Kak Lake activists***

On 10 November 2014, seven women from the Boeung Kak Lake community were arrested while protesting for the authorities to take action to remedy flooding in their community. The area has suffered flooding problems since 2008, when almost 20,000 people were forcefully evicted and the lake was filled by the Shukaku Company, which is owned by CPP Senator Lao Meng Khin.

Within 36 hours of their arrest, the seven were charged with obstructing public traffic, tried, convicted and sentenced to a maximum term of one-year imprisonment and a US\$500 fine. On the day of the hearing, three other female activists and a monk were also arrested for peacefully calling for the activists' release. They were charged with aggravating obstruction of a public official and received the same punishment as the original seven protestors.

Whilst partially reducing some of the terms and fines, the Appeal Court upheld their conviction on 25 January 2015 following proceedings that did not meet the fair trial standards. On 11 April 2015, the activists were granted a Royal Pardon and freed after spending several months in prison simply for exercising their fundamental freedoms. They should never have been convicted for peacefully demonstrating and highlighting the plight of their community.

### **Internet Users**

Internet use has gained momentum in Cambodia and an increasing number of “netizens” – including bloggers, journalists, news outlets, non-governmental organizations (“NGOs”), activists, and university students – have started to use the internet, especially social media sites, to spread information and opinions that could be deemed critical of the RGC. The number of internet users in Cambodia is growing exponentially, and the most recent estimate (from the second quarter of 2015)

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<sup>24</sup> CCHR Open Letter Seeks Clarification Regarding Application of the LANGO to CBOs and Informal Groups, 21 August 2015, < [http://cchrcambodia.org/index\\_old.php?title=CCHR-Open-Letter-Seeks-Clarification-Regarding-Application-of-the-LANGO-to-CBOs-and-Informal-Groups&url=media/media.php&p=press\\_detail.php&prid=569&id=5](http://cchrcambodia.org/index_old.php?title=CCHR-Open-Letter-Seeks-Clarification-Regarding-Application-of-the-LANGO-to-CBOs-and-Informal-Groups&url=media/media.php&p=press_detail.php&prid=569&id=5) >



placed Internet users at over 41% of the population– an enormous leap compared with World Bank statistics from 2010, which indicated that internet penetration stood at just 1.3%. The internet is fast becoming the primary arena for free political debate in Cambodia, where the activism and advocacy of ordinary Cambodians is connecting and democratizing a predominantly rural population. During the 2013 election campaign, online campaigning was viewed as central to the ruling party suffering its biggest ever electoral defeat. From a CSO perspective, online communications have grown to be an essential tool in the realm of human rights and election monitoring, enabling rapid reactions to incidences of human rights violations. In the past, the internet has been a relatively free space in Cambodia; however, this protected status is currently being destroyed by an all-out attack on internet freedom and digital rights by the RGC.

### ***Case Study: Student jailed for Facebook post***

On Friday, 21 August 2015, university student Kong Raya was arrested at Khemarak University and detained in Phnom Penh's Prey Sar prison. The next day, he was charged with incitement at the Phnom Penh Municipal Court. Mr. Raya had one month previously posted on his personal Facebook page, calling for a *"color revolution... to change the regime for Khmer society."*<sup>25</sup> For expressing this view, Kong Raya faces up to two years imprisonment. Defending the arrest, Interior Minister Sar Kheng stated that a color revolution would *"destroy national security and peoples' peace and lives and property."*<sup>26</sup> This is despite the fact that the term "color revolution" is drawn from the predominantly peaceful protests which occurred in the former Soviet Union, calling for democracy and social reform. Kong Raya remains in pre-trial detention awaiting trial.

This case, along with the case of convicted Senator Hong Sok Hour detailed above, shows that the RGC is already targeting internet users and cracking down on the right to freedom of expression online at will, without needing to resort to a Cybercrime Law.

### **Trade Unions**

Cambodia's trade unions have won vital victories for their vulnerable and low-paid employees in recent years, particularly in the country's significant garment sector. Serious violence has frequently erupted at Cambodia's garment factories in recent times, as striking garment workers clash with state security forces. Protests by striking workers which occurred in the aftermath of the 2013 national election were particularly brutally suppressed, with 5 protestors killed in a single incident in January 2014. Much like the NGO sector, the trade union movement has long been viewed with suspicion by the RGC, and is now faced with legislation which has the potential to significantly impinge on the rights to freedom of association, assembly, and expression.

The dire situation of freedom of association in Cambodia has the potential to be made worse by the impending adoption of the Trade Union Law, which is discussed in Section II, above. This controversial draft law, which aims to weaken the power of organized labor, is currently under discussion and is reportedly about to reach the Parliament for approval.

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<sup>25</sup> Aun Pheap, 'Student Jailed Over Facebook Post on 'Color Revolution,' The Cambodia Daily, 24 August 2015 < <https://www.cambodiadaily.com/news/student-jailed-over-facebook-post-on-color-revolution-92344/> >.

<sup>26</sup> Mech Dara, 'Interior Minister Defends Facebook Post Arrests,' The Cambodia Daily, 17 September 2015 < <https://www.cambodiadaily.com/news/interior-minister-defends-facebook-post-arrests-94489/> >.

### ***Case Study: Crackdown on Trade Unionists, January-May 2014***

On 19 January 2014, police and security guards arrested Sok Chhun Oeung, the vice president of Independent Democracy of Informal Economy Association (IDEA), while attempting to hold a vigil for the 23 persons that had been detained since the violent clashes between security forces and striking workers that occurred on 2 and 3 January 2014. He was held overnight at the Phnom Penh Municipal Police Station and released around 10:00 am the next morning, only after signing a written statement in which he agreed not to undertake unlawful activities; not to incite to illegal demonstrations; and to report any illegal activities and to cooperate with government.

On the morning of 21 January 2014, security forces arrested and took into custody 11 human rights defenders for several hours at Phnom Penh Municipal Police Station. The 11 had attempted to submit petitions to foreign embassies, including those of the US and France, calling for the release of 23 demonstrators who authorities detained in a crackdown on striking garment workers on January 2-3. Among them were 8 Boeung Kak Lake rights activists; Cambodian Independent Teachers Association (“CITA”) President, Rong Chhun; Cambodian Alliance of Trade Unions (“CATU”) member Cheang Thida; and Housing Rights Task Force (“HRTF”) communication officer, Long Kimhaeng. The arrests took place during a demonstration that started in front of the embassy of the United States to deliver a petition calling for the release of the 23 people jailed during the violent crackdown on garment workers demonstrations earlier in the month. All 11 were released later in the day after they were forced to sign statements pledging that they would not join, lead or incite ‘illegal’ activities or protests in the future.

On 23 May 2014, eight union leaders and union members from the Coalition of the Cambodian Apparel Workers’ Democratic Union (“CCAWDU”) were arrested in Bati District, Takeo Province, during a garment factory strike at the JSD Textile Co. Ltd Factory. The strikers were calling for improved working conditions. The eight were then detained for 48 hours and questioned in relation to possible charges of instigating a felony, threats to cause damage, discrediting a judicial decision and of being instigators. They were all released on bail on 25 May after the President of CCAWDU signed a letter guaranteeing that the eight would not cause trouble at the factory and would present themselves when requested by the Prosecutor. They were placed under judicial supervision (under Article 223 of the Code of Criminal Procedure) for exercising their right to strike, and they were charged with incitement to cause violence and protesting illegally.

### **Journalists**

Another essential component of any healthy democracy is a strong and independent media, which is capable of holding the government to account. This is a crucial component of the enjoyment of the right to freedom of expression and information, and the right to participate fully in the political, economic, and social life of the nation. In recent years, Cambodian journalists and media workers have been attacked, detained and even murdered, and publications have been censored or shut down.

Khmer-language newspapers and television stations in Cambodia have long been dominated by publishers who are loyal to the ruling CPP. As a journalist in Cambodia, highlighting wrongdoing on the part of the government and private sector has frequently been a matter of life and death; 13 journalists have been killed for their work since 1994, with the most recent case occurring in

October 2014. An interactive map containing profiles of each of the journalists who have lost their lives is available via CCHR's human rights portal, [Sithi.org](http://Sithi.org).<sup>27</sup>

***Case Study: VOD journalists harassed by security guards while reporting on Boeung Kak protesters***

In the latest episode of violence against journalists, two reporters from Voice of Democracy (“VOD”), an entity of the Cambodian Center for Independent Media (“CCIM”), were attacked by Daun Penh district security guards at the beginning of August in Phnom Penh. They were reporting on Boeung Kak community members that were demonstrating in front of the City Hall. The reporters were harassed and threatened to have their equipment seized while trying to interview some of the demonstrators.<sup>28</sup>

Daun Penh district security guards are not new to this kind of behavior. In May 2014, Lay Samean, another reporter from Voice of Democracy was beaten and left unconscious in the street upon attempting to take photographs of security guards chasing a monk at a rally held by opposition party supporters at Phnom Penh's Freedom Park. He sustained head injuries and a broken cheekbone, necessitating his travel to Bangkok for surgery, costing US\$30,000. His vision has been permanently affected. CCIM filed a lawsuit for damages against the officials responsible for the security guards, requesting compensation for medical expenses, but the Phnom Penh Municipal Court dismissed the case without any explanation. No other criminal investigation by police or the judiciary has been conducted, despite widespread condemnation.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

Democracy in Cambodia is at a crucial crossroads. As the 2017 and 2018 elections draw ever closer, the RGC is intensifying its campaign to ensure that dissenting voices are shut down. Oppressive legislation, politically motivated arrests and convictions, the harassment of civil society actors, and the silencing of dissent have characterized this attack on democracy. In a deeply worrisome trend, the Cambodian government is stifling democracy by restricting fundamental freedoms and crippling the capacity of civil society and Cambodian people to freely express their will and participate in public affairs. Aside from the RGC's legislative crackdown on fundamental freedoms, and the judicial harassment of dissenting voices, it is increasingly obvious that the holders of Cambodia's weapons and money are overwhelmingly invested in the ruling party remaining in power. Should the opposition secure a legitimate victory at the next election, the likelihood of a peaceful transition of power and respect for the democratic process appears to be diminishing.

Despite repeated promises from the government to engage in significant reforms, including more cooperation with civil society, recent actions and statements suggest the opposite. Secrecy and a lack of transparency continue to characterize the lawmaking process in Cambodia, thus preventing civil society, and those who will be directly affected by the law, to give input or contribute to the development of the law. Episodes of unlawful restrictions of fundamental freedoms have become increasingly severe in recent months. Political opponents, civil society organizations, trade unions, and ordinary people using social media have seen their voices shut down, while the government continues exercising control over the judiciary and introducing oppressive laws that violate fundamental freedoms.

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<sup>27</sup> Sithi Portal, Human Rights Maps, Journalists Killed in Cambodia < [http://sithi.org/temp.php?url=jour\\_killed/journalists.html&lg=](http://sithi.org/temp.php?url=jour_killed/journalists.html&lg=) >

<sup>28</sup> Phak Seangly and Shaun Turton, 'Press clubs denounce attack on journalists', Phnom Penh Post, 7 August 2015, < <http://www.phnompenhpost.com/national/press-clubs-denounce-attack-journalists> >.

In light of the situation described above, CCHR remains deeply concerned about the state of democracy in Cambodia and wishes to make the following recommendations to the RGC:

- *Amend the election laws in order to guarantee freedom of expression to civil society organizations during elections period. Amendments should include:*
  - *Removing vaguely worded provisions under Articles 84, 137, 148, and 159 of the LEMNA on NGOs participation in election-related activities;*
  - *Removing Article 162 of the LEMNA on disqualification of contesting parties;*
  - *Removing Article 83 of the LEMNA, which allows military and court officials to partake in election campaigning; and,*
  - *Reconsidering provisions under Article 160 on penalties for election observers during voting/counting.*
- *Refrain from passing the Cybercrime Law until transparent consultations with civil society have been conducted, and ensure that any regulation of Internet users to be introduced fully complies with the Cambodian Constitution and international human rights standards.*
- *Engage as a priority in a transparent legislative process for the adoption of a clear, concrete Access to Information Law, which upholds the right to freedom of expression and access to information.*
- *Repeal or amend human rights-abusive provisions of the recently passed LANGO.*
- *Refrain from passing the Trade Union Law, and hold genuine consultation with sufficient time for analysis and comments on the draft by relevant stakeholders, including workers and civil society organizations.*
- *Ensure respect for the right to freedom of assembly, and put a formal end to arbitrary or sweeping bans on the holding of public gatherings.*
- *Stop the judicial harassment of human rights defenders, political activists and opposition politicians, and immediately and unconditionally release those currently detained for politically motivated charges or convictions that have no basis in law and no place in a liberal democracy.*
- *Ensure that cases of harassment against journalists, NGO workers, union members and other civil society actors are duly investigated and all perpetrators are brought to justice irrespective of their status.*
- *Ensure that all recommendations from the United Nations Human Rights Council's Universal Period Review of Cambodia in 2014 are implemented.*
- *Ensure that members of the Royal Cambodian Armed Forces and judicial officials exercise party-political neutrality and ban military figures from holding official positions in any party.*

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