

Annex 1: Legal analysis of the July 2017 proposed amendment to the LPP

This annex analyzes selected provisions of the proposed amendment to the Law on Political Parties (“LPP”), which were passed by the National Assembly on 10 July 2017. The analysis is based on the Cambodian Constitution and binding international human rights treaties. The applicable and relevant legal provisions are presented in Annex 2.

Article 6- New (two)¹

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

Comments on proposed amendment to Article 6:

The first amendments to Article 6 of the LPP (paragraphs 1-5), adopted in March 2017, have received widespread criticism for their vague and ambiguous language.² Paragraphs 1 to 5, which prohibits behavior that “could” threaten “national unity” and “national security”, are open to the risk of subjective and politicized interpretation due to their vague nature.

Rather than taking the opportunity to rectify these deficiencies, the new additions to Article 6 (paragraphs 6 - 8) drastically expand the scope of those provisions, and place further unjustifiable restrictions on the freedoms of association and expression. Under the proposed amendment to Article 6, any breach of any of its paragraphs may result in the suspension (of unlimited duration) of a political party’s activities by the Ministry of Interior under Article 38-New, and ultimately its dissolution under Article 44-New (two).

The new proposed paragraphs 6 - 8 are analyzed below.

Analysis of Proposed Article 6- New (two) (paragraph 6)

¹ Proposed amendments are in bold.

² For a full analysis of the Amendment to the Law on Political Parties from 07 March 2017, see OHCHR Cambodia. “Analysis of the Amended Law on Political Parties”, 28 March 2017 at < <http://bit.ly/2nxRx8M> >.

- This provision would prohibit the use by political parties of the “voice message, image, written document, or activity” of a convicted person for the political gain or interest of the party.
- This provision is unacceptably vague, violating the principle of legal certainty, which requires that law must be clear and predictable, enabling individuals to understand in what circumstances they may be subject to criminal or administrative liability. For example, it is unclear what is meant by the terms “use” or “activity.”
- Further, the provision is excessively broad, prohibiting an unreasonably wide range of possible actions. It constitutes a disproportionate, and therefore unjustified restriction on the rights to freedom of expression and freedom of association of political parties and their members.
- While some human rights may be lawfully restricted, this is only possible in certain narrowly defined circumstances, as described in Annex 2. None of these conditions are present in this instance. In particular, the prohibition of the mere use of the “voice, image, document or activity” of a convicted person could not be deemed “necessary” to the LPP’s stated aim of regulating political parties.
- This provision may also entail a disproportionate logistical and financial burden for any political party that is not in compliance with the law’s provisions at the time of enactment. See the ‘*Comments on proposed Article 48*’, below, for further analysis.

Analysis of Proposed Article 6- New (two) (paragraph 7)

- This proposed provision would prohibit political parties from “[o]penly or tacitly agreeing or conspiring with a person convicted of felony or misdemeanor to carry out any activities for political gains/interests of its party.”
- This provision would entail a far-reaching, unjustifiable and permanent restriction of the rights of convicted persons to participate in public affairs (guaranteed under Article 35 of the Cambodian Constitution and Article 25 of the ICCPR). It would also unduly restrict their rights to freedom of expression and freedom of association (Articles 19 and 22 of the ICCPR, respectively). Although this provision and its related sanctions (under Article 38-New and Article 44-New) target political parties, rather than individuals, the practical effect of this provision would be to severely hinder the civil and political rights of individuals – by sanctioning the political parties which they would seek to support.
- According to UN Guidelines,³ even convicted persons currently serving prison sentences “shall retain the human rights and fundamental freedoms set out in the Universal

³ OHCHR, 'Basic Principles for the Treatment of Prisoners', General Assembly resolution 45/111 of 14 December 1990 < <http://bit.ly/1bDgrVi> >.

Declaration of Human Rights” [...] “[e]xcept for those limitations that are demonstrably necessitated by the fact of incarceration”. The effective denial of convicted persons’ rights to political expression and political association would constitute a severe restriction of their human rights, and as such, would need to be based on the “necessity” of achieving a legitimate aim, and subject to a proportionality test, as described in Annex 2. It is highly unlikely that such a sweeping effective prohibition of convicted persons’ political activity could be deemed to be the least restrictive means of achieving the LPP’s stated aim of regulating political parties.

- As such, any law or regulation which prevents all convicted persons, including those who have already served their sentences, from expressing support for a political party, or participating in public life, constitutes an impermissible restriction on individual rights under Articles 19, 22 and 25 of the ICCPR as well as Articles 31, 41, 42 and 51 of the Constitution.
- Further, the prohibition on “tacit agreement” is particularly troubling as, it could allow intention to be subjectively imputed on the omissions of political parties; any failure to condemn the activities of a convicted person could feasibly be construed as “tacit agreement” and incur severe sanctions. Further, this appears to create the risk that a political party may be subject to sanction for such simple omissions, without any requirement that the party leadership had knowledge of the facts that created the liability.
- For example, a political party could potentially be sanctioned – including suspension and dissolution – for failing to denounce an endorsement from a convicted person, even if its leadership were unaware of such an endorsement and had no intention to agree with such a statement. In such a situation, the circumstances that may lead to the party being sanctioned would be entirely outside the party’s control. Given the fact that there are thousands of convicted persons in Cambodia, and the apparent creation of a positive obligation on political parties to condemn individual statements that would be practically impossible to monitor, full compliance with this provision is virtually impossible and leaves political parties at permanent risk. Given the practical difficulties associated with ensuring compliance with such a regulation, this provision is inconsistent with the right to participate in public affairs under Article 35 of the Cambodian Constitution and Article 25 of the ICCPR.

Analysis of Proposed Article 6- New (two) (paragraph 8)

- This provision would ban political parties from “[s]upport[ing] or develop[ing] any plans or conspir[ing] with any individual who carries out activities for the purpose of opposing the interest of the Kingdom of Cambodia as stipulated in paragraphs 1 through 5.”
- This provision would dramatically expand the scope of Article 6, and further exacerbate its broad and ambiguous nature. It appears that it would apply even if the individual concerned is not a member of a political party, and therefore not themselves within the

scope of the prohibitions contained in paragraphs 1-5, or if the “plans” are entirely unrelated to the prohibited activities in paragraphs 1-5.

- Given the already vague and ill-defined nature of “national unity” as referenced in paragraph 5, the expansion of Article 6’s application is particularly concerning, as it widens the scope for arbitrary and/or targeted implementation on subjective or politicized grounds.

Article 11- New

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

- 1- *The name in full writing and in abbreviation and the symbol/logo of the party must be different/ distinct from that of already existing political parties.*
- 2- *The name of a political party shall not be given just to make a slight rectification of the name of political parties or using the name of a physical person.*
- 3- *The symbol/ logo of a political party should not be copied or taken from a national symbol or picture representing a religion, Angkor Wat temple or pictures or sculptures of all Khmer Kings or the picture of a physical person.*

Comments on proposed Article 11:

- Article 11 regulates the selection of names and symbols which can be utilized by political parties. Several of these provisions represent permissible restrictions of freedom of expression, while others constitute excessive interference with the activities of political parties, and thereby fail to meet international human rights standards, as detailed in Annex 2.
- While it is not atypical or unreasonable for states to regulate the names and symbols adopted by political parties, the regulatory framework must respect the rights to freedom of expression and freedom of association.

Analysis of Proposed Article 11 (paragraph 1)

- This provision states that “[t]he name in full writing and in abbreviation and the symbol/logo of the party must be different/ distinct from that of already existing political parties.”
- This provision constitutes a reasonable and justifiable restriction on the rights to freedom of expression and freedom of association in light of Article 19 (3) of the ICCPR, as there is a genuine public interest in maintaining clarity around the identity of political parties, and these restrictions are proportionate to that aim.

Analysis of Proposed Article 11 (paragraph 2)

- This provision states that “[t]he name of a political party shall not be given just to make a slight rectification of the name of political parties or using the name of a physical person.”
- The prohibition on a “slight rectification” again constitutes a reasonable and justifiable restriction on the rights to freedom of expression and freedom of association, as there is a genuine public interest in maintaining clarity around the identity of political parties, and the restrictions are proportionate to that aim. However, the restriction on using the name of physical person is problematic, as discussed in the context of Article 11 (paragraph 3), below.

Analysis of Proposed Article 11 (paragraph 3)

- This provision states that “[t]he symbol/ logo of a political party should not be copied or taken from a national symbol or picture representing a religion, Angkor Wat temple or pictures or sculptures of all Khmer Kings or the picture of a physical person.”
- The prohibition of the use of national symbols and imagery constitutes a minor restriction on the right to freedom of expression. The purpose of this restriction is unclear, and as such cannot be deemed to satisfy the criteria outlined in Article 19(3) of the ICCPR.
- The prohibition on the use of “the picture of a physical person”, however, constitutes an excessive and unjustifiable restriction on freedom of expression. Banning all images of all individuals from political party symbols does not serve any legitimate aim, such as public health or national security, as outlined in ICCPR Article 19 (3). As such this provision would constitute an impermissible restriction on freedom of expression.

Article 45 - New (repeat)

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

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

Comments on proposed Article 4:

- This article would exacerbate the disproportionate nature and severity of the sanctions enacted in the previous amendment to the LPP, by providing that suspended parties would be banned from participating in elections as a result of violations of this impermissibly vague law. Such suspensions could be for an unlimited period according to Article 38-New, without any judicial oversight. Exacerbating this issue is the fact that there appears to be no mechanism in the LPP for political parties to appeal these suspensions and electoral bans.

- Prohibiting a political party from standing in elections obstructs its primary purpose, as well as thwarting the right to democratic participation of its members, candidates, and supporters. This constitutes a severe restriction on freedom of association and the right to participate in public affairs, which is only permissible in exceptional circumstances, none of which are present in this case. This disproportionate nature of this sanction is in direct contradiction with the principles of democracy and pluralism which Cambodia is bound to respect, thus conflicting with Articles 1(1) and 51 of the Constitution, as well as Article 25 of the ICCPR.
- This provision also contradicts key provisions of the binding Paris Peace Agreements. In Article 4 of Annex 5 of the Agreement on a Comprehensive Political Settlement for Cambodia, a requirement that “electoral procedures provide a full and fair opportunity to organize and participate in the electoral process” is explicitly stated. However, this provision could strip opposition political parties of their “full and fair opportunity” to participate in future elections, on the basis of provisions which are contrary to the Cambodian Constitution and international human rights law.

Article 48 - New (repeat)

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

Comments on proposed Article 48:

- This article could entail a disproportionate logistical and financial burden for any political party that is not in compliance with the law’s provisions at the time of enactment. It is unclear whether this provision necessitates the alteration or removal of all physical manifestations of the offending symbol/logo (e.g. printed materials and signage), or if it simply requires a change to the ‘official’ symbol/logo.
- The lack of clarity in the law is of itself problematic and violates the principle of legal certainty. Further, if the provision were interpreted to entail a requirement for physical alterations to all signage, *etc.*, it would constitute an undue financial burden on political parties, thereby restricting the right to freedom of association.

Annex 2: Relevant human rights obligations

This annex outlines the relevant human rights provisions enshrined in the Cambodian Constitution and applicable international human rights law, for consideration of the proposed amendment to the Law on Political Parties (“LPP”), which was passed by the National Assembly on 10 July 2017.

Constitution of the Kingdom of Cambodia

Article 1, paragraph 1:

Cambodia is a Kingdom where the King shall fulfill his functions according to the Constitution and the principles of liberal multi-party democracy.

Article 31:¹

The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights.

Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

Article 35:

Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. All requests from citizens shall be thoroughly considered and resolved by institutions of the state.

Article 41:

Khmer citizens shall have freedom of expression of their ideas, 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.

The regime of the media shall be determined by law.

Article 42:

Khmer Citizens have the right to establish associations and political parties. These rights shall be determined by law.

Khmer citizens may take part in mass organizations to work together to protect national achievement and social order.

Article 51- New (as amended in March 1999):²

¹ A 2007 decision of the Constitutional Council – based on their interpretation of Article 31 - confirmed the direct applicability of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights under Cambodian law. Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

² In the Paris Peace Agreements, Cambodia also committed to a specific political system: one characterized by liberal democracy and pluralism. In Annex 5 of the Agreement on a Comprehensive Political Settlement for Cambodia, ‘Principles for a New Constitution for Cambodia,’ Article 4 set out the following principles: “The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process”.

The Kingdom of Cambodia adopts a liberal multi-party democratic policy.

Khmer citizens are the masters of their own country.

All power belongs to the citizens.

The citizens exercise their powers through the National Assembly, the Senate, the Royal Government and the Judiciary.

The legislative, executive and judicial powers shall be separate.

International Covenant on Civil and Political Rights (ICCPR)³

Article 2 (1):

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 19:

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 (ordre public), or of public health or morals.

Article 22:

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.

Article 25:

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

³ Cambodia is State Party to the ICCPR, having ratified the covenant in 1992.

Permissible Restrictions on Human Rights

Under the ICCPR, certain restrictions to freedom of expression and freedom of association are permitted, in specific circumstances.

Regarding freedom of expression, any restriction must be:

1. provided by law, and,
2. necessary:
 - a. in order to respect the rights or reputation of others, or,
 - b. for the protection of national security, or,
 - c. for the protection of public order, or,
 - d. for the protection of public health, or,
 - e. for the protection of morals.
3. proportional to the aim sought, and,
4. applied only for those purposes for which they were prescribed, and,
5. directly related to the specific need on which they are predicated.⁴

The law providing for the restrictions for freedom of expression must be formulated with sufficient precision as to enable an individual to regulate his or her conduct accordingly.⁵ The UN Human Rights Committee has held that, in the context of political discourse, the value placed upon uninhibited freedom of expression is “particularly high”.⁶

Similarly, any restriction to freedom of association must be:

1. provided by law, and,
2. necessary in a democratic society, namely be necessary:
 - a. in the interests of national security, or,
 - b. in the interests of public safety, or,
 - c. in the interests of public order, or,
 - d. for the protection of public health, or,
 - e. for the protection of morals, or,
 - f. for the protection of the rights and freedom of others.
3. proportional to the aim sought, and,
4. applied only for those purposes for which they were prescribed, and,
5. directly related to the specific need on which they are predicated.

Article 1 of the LPP states that the law aims to “determine formalities and conditions for the establishment, registration and activities of political parties in the Kingdom of Cambodia”. Such an objective, in principle, constitutes a component of the legitimate aim of protecting public order. As a result, assessments of the proportionality of any restriction on freedom of expression and freedom of association, as contained in Annex 1, are undertaken against this goal.

⁴ UN CCPR Human Rights Committee, General Comment 34 (Article 19), UN Doc CCPR/C/GC/34, 12 Sep 2011, para. 22, available at <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

⁵ UN CCPR Human Rights Committee, General Comment 34 (Article 19), UN Doc CCPR/C/GC/34, 12 Sep 2011, para. 25, available at <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

⁶ UN CCPR Human Rights Committee, General Comment 34 (Article 19), UN Doc CCPR/C/GC/34, 12 Sep 2011, para. 38, available at <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.