

Ratifications and amendments. A turning point for Cambodia?

The Cambodian People's Party (CPP), Cambodia's long standing ruling party, has recently adopted a strategy of ratifying laws that increase their legal capability to intervene in civil society beyond what some believe to be amenable to a multi-party democracy. The recent ratification of The Law on Associations and Non-Governmental Organisations (LANGO) and the amended Law on Political Parties drew intense scrutiny from civil society opponents and the international community, the latter being directly addressed by the Office of the UN High Commissioner for Human Rights (OHCHR) for its contravention of international treaties safeguarding political rights that the Cambodian constitution is party to. This significant, if not belated, criticism from the mainstream international community warrants interest. However, there is also a domestic avenue of investigation with regard to what further power these laws provide to a party that has proved already capable of pursuing its domestic political interests through an informal patrimonial network within which the judiciary is subjugated.

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LANGO WAS RATIFIED into practice on 1 January 2016. The law provides the state with a legal framework for controls and restrictions over the activities of all domestic and foreign associations or non-governmental organisations (NGOs) that operate in Cambodia. LANGO provides a legal basis to deny registration, which is required for activities to be legalised, on the basis of any activity that may "jeopardise peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society", stipulating political neutrality specifically as a requisite for approval.¹ This puts the legality of many organisations that the Cambodian state may find troublesome at risk. As part of its special consultative status to the 30th UN Human Rights Council, Human Rights Now stated "LANGO is inconsistent with Cambodia's obligations under both international and domestic law, beginning with freedom of association guaranteed by ICCPR Article 22 and the Cambodian constitution Article 42".²

The amendments to the Law on Political Parties provide the state with a legal capacity to dissolve political parties. Of particular interest is Article 6, which deems unlawful any political activity that affects the "security of the state", sabotages the multi-party democracy and constitutional monarchy regime, or incites to "break up the national unity"; as well as Article 18, which bars from leadership positions those convicted of a "prison term of a felony or misdemeanour" unless the sentence was pardoned by the King. Furthermore, regulations around the registration criteria for political parties are also introduced. In a similar fashion to LANGO, the Ministry of Interior has discretion to reject the registration of political parties on the basis of diverting from the "vigour" of the laws of the Kingdom of Cambodia.³

To grasp the full implications of these laws, further information around Cambodia's legal system is forthcoming. Formally Cambodia has a continental style legal system with a separation of powers between executive, legislative and judicial branches and legal mandates that stem from a mixture of the 1993 constitution, legislation, government decrees and international treaties. This system, as with all legal systems, exists within a politicised space. The latest Bertelsmann Stiftung Transformation Index (2016)⁴ report found that the judicial system is subjugated by the executive and a spate of recent politically motivated legal activity on behalf of the state has highlighted the malleability of the law in Cambodia. In 2016 the CPP arrested numerous prominent opposition politicians and civil society leaders on apparently spurious charges. If one were to pursue this line of enquiry they would find a slew of cases against CPP opponents such as the quagmire-like case against Kem Sokha, the current leader of the opposition, and defamation cases against outspoken civil society critics such as Ou Virak. Over the last two years Cambodia has held 35 political prisoners, 20 of whom remain incarcerated, from a mix of environmental activist groups, human rights organisations, and the main opposition party, the Cambodian National Rescue Party (CNRP).⁵ Indeed, comments on the inadequacies of judicial independence and capability in Cambodia are not new. For example, in 2009 Kheang Un, with the assistance of anonymous interviews, found that judges and prosecutors generally acquiesce when faced with intervention by high-ranking government officials.⁶ One of their interviewees, an anonymous Cambodian judge, added that officials "send their fixers who are connected



Above: Adhoc officials Ny Sokha (right) and Yi Soksan sit in a police vehicle after their pre-trial detention was extended in April at the Phnom Penh Municipal Court. Photo by Pha Lina/The Phnom Penh Post.

to big people to the court to talk directly with judges and prosecutors". On this arrangement another judge added that "maintaining one's stance is difficult. For example, they used to help our interests. What can we do in such a case?"

The state of the law is of interest; Articles 8 and 31 of LANGO, for example, stipulate that the organisations subject to the law must file appeals through the court system if they are denied registration, suspended or deleted from the register. Concordantly, Articles 19 and 24 of the amended Law on Political Parties give proviso for dissolution or disapproval of registration of political activities by political parties that must also be appealed through the courts. With corruption seemingly immanent in the courts process, it is no wonder civil society organisations are fearful. Global Witness has suggested this enables the CPP to legally "pick and choose which groups can exist and criminalise those deemed to be trouble makers".⁷ Yet, one must also acknowledge that the Cambodian government has been oppressive of opposition in this way for decades by arresting human rights and community activists and running unfair elections. When one considers that the strategy of oppressing civil society has been undertaken effectively through the courts without its formalisation in particularised laws, one could consider these laws as an extension of the CPP's strategy, rather than a true departure, that comes in response to fears of electoral unpopularity ahead of the 2018 elections. The trend from the 2013 elections, including the 2017 commune elections, show a steady decline in support for the CPP and a steady increase in support for the CNRP opposition party.

Case study: the Kem Sokha affair

To understand the nuances these laws bring to bear on Cambodian politics one could assess their impact on one of Cambodia's largest recent political scandals involving the current leader of the opposition CNRP, Kem Sokha. In 2016, Kem Sokha, then deputy leader of the CNRP, was embroiled in a scandal following the leak of audio recordings supposed to contain defamatory remarks by Kem Sokha to an alleged mistress going by the moniker of Mon Srey. The supposed affair subsequently evolved into a larger scandal that saw the court summons of Kem Sokha and the arrest of Cambodian members of the human rights organisation ADHOC, who came to

be known as the ADHOC 5, accused of bribery to conceal evidence, as well as the issuing of an arrest warrant for a OHCHR official on the same charges. These were well known and respected employees, some of whom had been working for ADHOC in Cambodia for over 25 years. The audio recording was first leaked on the alleged mistress Mon Srey's Facebook page; initially Mon Srey denied any association with the recording, claiming her Facebook account had been hacked. Following the leak she was summoned to hear a disinformation case by the Ministry of Interior. Mon Srey sought advice from ADHOC because she was scared by the court summons; the group provided her with a lawyer and an accompanying witness to the court proceedings.⁸ However, there was a twist during the court proceedings when Mon Srey admitted that Kem Sokha was her lover, and that her voice was the one recorded in the leaked audio clip. She then filed a complaint against ADHOC and Kem Sokha for allegedly offering her hush money to keep the affair under wraps.⁹ Following the complaint, the government anti-corruption unit was deployed to question seven members of the human rights community, arresting four of them and a deputy member of the National Election Committee. In the end, Kem Sokha was given a Royal Pardon and was allowed to continue as CNRP leader, for a while. However, at the time of writing (Sept. 2017) Kem Sokha has been arrested once more and formally charged for treason and collusion with the United States to overthrow the government. Under the amendments to the Law on Political Parties this leaves the opposition CNRP with a choice: either their leader resigns or they face the possible dissolution of the party. The ADHOC 5 were released after 427 days of imprisonment. Their imprisonment triggered the Black Monday protests, which were violently oppressed by the authorities, leading to more arrests. Under the auspices of LANGO such a protest may be defined as an unregistered organisation and legally shut down. Of course, Hun Sen himself proclaimed that anyone participating in a 'colour co-ordinated' protest would be immediately arrested; a clue, perhaps, of his receptiveness to the symbolism of popular unrest.

The theatre of law and its players

What is interesting about the Kem Sokha scandal is that one sees the mobilisation of the full neopatrimonial oppressive machinery. Firstly there is the selective application of the court's system, whereby the initial obtaining of audio recordings without Kem Sokha and Mon Srey's permission, which is illegal and inadmissible as evidence, is not considered. We then have the curious case of Kem Sokha and ADHOC staff members being charged for bribing a witness to a non-crime, as not only is the audio tape inadmissible, but adultery is itself not illegal in Cambodia. In fact Kem Sokha has political immunity due to his position in parliament, but has been criminalised due to a clause in Cambodia's legal system, which states that politicians who are caught in the act can be prosecuted. Of course Kem Sokha was not caught in the act of having an affair, as the conversation was an audio recording. However, authorities state he was caught in the act of not arriving to the court proceedings of his non-crime thus constituting a crime itself. There are threatening statements from politicians, including the PM Hun Sen, threats of intimidation, violently oppressed protests, and a subjugated court procedure with dubious evidence. Yet, despite the new legitimisation, or formalisation, of the CPP's approach through these laws, this intersectionality, particularly in this case, seems less co-ordinated and ultimately driven by interpretations of elite interest. Indeed, Kem Sokha was simply arrested for treason some months later. What is created is a broad convergence of forces with varying strategic dynamics that secure state interests against the various forms of resistance that civil society manifests. The different arms of the state mostly create chaos and confusion behind a veil of neopatrimonial informality that is difficult to apprehend or hold accountable. One could speculate on the prudence of the CPP flexing their muscles and providing a symbol of martyrdom for civil society out of a jailed Kem Sokha. Generally speaking, whilst the ratifications and amendments may not signal a fundamental break from the CPP's political strategy, they do provide extra avenues for leverage that can be used to force dissenting actors into making deals with the state to avoid legal punishment. In other words, the CPP are using the law as a theatre to co-opt opponents into the patrimonial network, or arrest those who resist.

It is also worth mentioning the less tangible effects of these ratifications and amendments as deterrents to civil society resistance. The enactment of LANGO has triggered a burst of precautionary action from organisations attempting to resist oppressive land concessions in anticipation of the law's use. For example, in the Areng Valley, one Mother Nature activist stated that while LANGO has not been used directly against the group,

they have acted pre-emptively to avoid “future headaches” by removing operating funds from Cambodian bank accounts: “The reason is simple: this new repressive law obliges all NGOs to share with the [Ministry of Interior] information related to funds [...] which can then be used by the [ministry] to pressure donors into not supporting the NGOs they don’t like”.¹⁰ There have also been reports of over-zealous officials warning off civil society organisations from carrying events with threats to disbar them due to a lack of registration, or for any other reason applicable under the vague wording of these laws. As already discussed, registration must be acquired in writing from the Ministry of Interior. There is no rigid bureaucracy in place to systematically apply the laws. Therefore, for the numerous mid and low level civil society groups operating in Cambodia who may lack the capital to negotiate a settlement with the Ministry, the reality of compliance creates further opportunities for administrative gaps to be exploited through rent-seeking by officials, creating potential for co-optation into the informal system of patrimonial exchange.

A turning point?

International pressure began to accumulate with the enactment of LANGO in late 2015 and 2016, but the Amendments to the Law on Political Parties caused the OHCHR to produce a document, in English, entitled ‘A Human Rights Analysis of the Amended Law on Political Parties’. It provides a litigious article-by-article analysis of the law, including suggestions for how each article could be brought in line with Cambodia’s Human Rights responsibilities. For example, where the law suggests that any persons with criminal convictions be barred from leadership positions in any political party, the OHCHR analysis recommends introducing a penal scale to the law to prevent minor misdemeanours barring a person from such positions for life. It then goes on to highlight and revise the omission that those members of the courts, military or police, who require political neutrality or impartiality to fairly prosecute their civil obligations, are currently free to associate with a political party. There are numerous cases where the OHCHR analysis highlights the difficulties posed by the ambiguous wording of the law, particularly in cases where political activity can be denied at the discretion of the ministry without justification, but with only an interpretation of whether this activity may “break up national unity”, for example. Although it is not possible to discuss every revision, comment or suggestion here, this direct response is somewhat divergent from the approach to Cambodia that was formerly typical of the mainstream international community, which considered Cambodia a relatively successful example of liberal development. In response, the Cambodian Ministry of Foreign Affairs produced a document entitled ‘Cambodia, Democracy and Human Rights: To Tell the Truth’. Intended to “set the record

straight” this critical document directly addresses what it perceives to be “the distortion of facts, lies and amplification of minor issues” that represent a supposedly concerted effort by Western Governments, media and NGOs to undermine Cambodian sovereignty. The report addresses a number of historical issues and ongoing controversies that have been levelled at the Cambodian government; it name checks the UN’s own Special Rapporteur for Human Rights, and refuses to back down over the aforementioned arrests of political opponents and human rights activists. In summary it provides a simplified, one sided account of contemporary Cambodian history that justifies the CPP’s record against Western imperialism.

The Cambodian rebuttal borrows from some of the arguments concerning economic growth and legalistic development that mainstream development institutions have been using to defend a strategy of mass donor-led development in Cambodia. Since the UNTAC programme in 1993, Cambodia has been regarded as a partial example of successful liberal development by mainstream institutions such as the UN and the World Bank. Despite ongoing complaints about Cambodia’s human rights record over the last few decades, in particular the oppressive consequences of Cambodia’s Economic Land Concessions programme, the EUs latest round of development assistance, €410 million from 2014-2020,¹¹ and the \$2.2 billion contributed by Japan in 2012,¹² exemplify a consensus that donor-assisted development was on track. Until now, mainstream Western development institutions and their state counterparts have been reluctant to provide a substantial reaction to Cambodia’s increasing authoritarianism. Indeed, the latest Government-Donor Partnership Working Group where Cambodian government officials met with foreign ministers and the UN Development Programme (UNDP) Country Director for Cambodia to discuss the 2014-2018 National Strategic Development Goals, took place in March 2016, after LANGO was ratified. However, the minutes of the meeting focus on tracking development trends, reviewing timelines and monitoring the success of administrative system implementation.¹³ The closing remarks made by the UNDP Country Director emphasised the economic growth of 7% per year, but there was no recorded discussion or reference to the implementation of LANGO, the effect it has on partnering institutions or on civil society groups. One thing Hun Sen appears to fear is a challenge from a competing domestic democratic populist narrative, which will require a strong and free domestic civil society. Perhaps the steadfast determination to ignore Cambodia’s long-standing neopatrimonial development has left mainstream development institutions with neither theory nor a practical tool kit with which to approach this particular neopatrimonial state that is drifting further away from the development ideal. The question remains as to how this practical gap can be filled, and who should be filling it.

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Below: NGO Law protest outside National Assembly in Phnom Penh in 2015. Photo by Heng Chivoan/The Phnom Penh Post.

