



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
Cambodian Center for Human Rights



**គោលដៅ**  
**យុត្តិធម៌**  
**DESTINATION JUSTICE**



**ifex**



**របាយការណ៍រួមគ្នាជូនក្រុមប្រឹក្សាសិទ្ធិមនុស្សនៃអង្គការសហប្រជាជាតិ**  
**សម្រាប់ការពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់លើកទី ៣**  
**លើព្រះរាជាណាចក្រកម្ពុជា**

**ការទទួលបានយុត្តិធម៌ក្នុងប្រទេសកម្ពុជា**

ថ្ងៃទី១២ ខែកក្កដា ឆ្នាំ២០១៨

របាយការណ៍របស់មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា (“ម.ស.មក”) អង្គការគោលដៅយុត្តិធម៌

សមាគមការពារសិទ្ធិមនុស្ស និងអភិវឌ្ឍន៍នៅកម្ពុជា (“អាដហុក”) និងចូលរួមគាំទ្រដោយ វិទ្យាស្ថាន តស៊ូមតិ និងគោលនយោបាយ, អង្គការតម្លាភាពកម្ពុជា និងបណ្តាញអង្គការសកលដើម្បីការពារ និងលើកម្ពស់សេរីភាពបញ្ចេញមតិ។

<b>មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា</b> (“ម.ស.ម.ក”)	<b>អង្គការគោលដៅយុត្តិធម៌</b>	<b>សមាគមការពារសិទ្ធិមនុស្ស និង អភិវឌ្ឍន៍នៅកម្ពុជា (“អាដហុក”)</b>
អ៊ីមែល៖ <a href="mailto:info@cchrcambodia.org">info@cchrcambodia.org</a>	អ៊ីមែល៖ <a href="mailto:justicematters@destinationjustice.org">justicematters@destinationjustice.org</a>	អ៊ីមែល៖ <a href="mailto:info@adhocccambodia.org">info@adhocccambodia.org</a>
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**១. សេចក្តីផ្តើម**

១. របាយការណ៍រួមសម្រាប់ការត្រួតពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់លើកទី៣ (“យូភីអ”) លើព្រះរាជាណាចក្រកម្ពុជា (“ប្រទេសកម្ពុជា”) រៀបចំឡើងដោយ មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា (“ម.ស.ម.ក”),<sup>1</sup> អង្គការគោលដៅយុត្តិធម៌<sup>2</sup> និងសមាគមការពារសិទ្ធិមនុស្សនិង អភិវឌ្ឍន៍នៅកម្ពុជា

<sup>1</sup> The Cambodian Center for Human Rights (“CCHR”), founded in 2002, is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. Since the first cycle, CCHR has participated actively in the UPR Process. In preparation for Cambodia’s Second UPR in January 2014, CCHR produced two joint-submissions, and CCHR staff participated in pre-sessions in Geneva. Following the adoption of the Outcome Report in June 2014, CCHR co-organized a two-day National Consultation in Phnom Penh. In 2017, CCHR and the United Nations Office of the High Commissioner for Human Rights in Cambodia (“OHCHR Cambodia”) cooperated with UPR Info, based in Geneva, and with the government’s Cambodian Human Rights Committee, to co-organize Cambodia’s ‘Mid-Term Universal Periodic Review National Consultation and Assessment Workshop,’ which was held on 29 and 30 June 2017 in Phnom Penh. Ahead of the Third Universal Periodic Review of Cambodia to be held in 2019, CCHR, UPR Info, and OHCHR Cambodia organized a two-day ‘National Consultation Workshop on CSOs submissions’, a two-day ‘follow-up Workshop on CSOs submissions’ in Phnom Penh’ and one day ‘workshop for the validation of CSO Submissions for the Third UPR of Cambodia’.

<sup>2</sup> Destination Justice (“DJ”) is a social change organization. We are changemakers who believe that justice is key to a peaceful society - particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love. Destination Justice previously submitted a joint-submission for the Second Universal Periodic Review of France.

(“អាដហុក”)<sup>៣</sup> ហើយត្រូវបានគាំទ្រដោយវិទ្យាស្ថានតស៊ូមតិ និងគោលនយោបាយ<sup>៤</sup> អង្គការតម្លាភាពកម្ពុជា<sup>៥</sup> និងបណ្តាញអង្គការសកលដើម្បីការពារ និងលើកម្ពស់សេរីភាពបញ្ចេញមតិ<sup>៦</sup>។

២. នៅអំឡុង ការត្រួតពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់ ដំណាក់កាលទី ២ របស់ប្រទេសកម្ពុជា អនុសាសន៍ចំនួន ៥៩ ត្រូវបានធ្វើឡើងពាក់ព័ន្ធនឹងការទទួលបានយុត្តិធម៌ ដែលក្នុងនោះ អនុសាសន៍ចំនួន ២៩ មានពាក់ព័ន្ធជាពិសេសនឹងប្រព័ន្ធតុលាការ ២០ ពាក់ព័ន្ធនឹងសិទ្ធិទទួលបានការជំនុំជម្រះប្រកបដោយយុត្តិធម៌ ១៧ ពាក់ព័ន្ធនឹងឯករាជ្យភាពនៃប្រព័ន្ធយុត្តិធម៌ និង ៣ ពាក់ព័ន្ធនឹងជំនួយផ្នែកច្បាប់។ ក្នុងចំណោមអនុសាសន៍ទាំងអស់នេះ រាជរដ្ឋាភិបាលកម្ពុជាបានទទួលយកចំនួន ៤៥ និងបានធ្វើការកត់សម្គាល់ចំនួន ១៤។ សរុបមក និងដូចដែលបានរៀបរាប់លម្អិតនៅក្នុងរបាយការណ៍នេះ ប្រទេសកម្ពុជា នៅតែត្រូវការជាចាំបាច់នូវវឌ្ឍនភាព ដើម្បីអនុវត្តអនុសាសន៍ដែលបានផ្តល់ជូន<sup>៧</sup>។ នៅក្នុងឆ្នាំ២០១៧-២០១៨ ប្រទេសកម្ពុជាបានជាប់ចំណាត់ថ្នាក់ទី ១១២ ក្នុងប្រទេសចំណោម ១១៣ ពាក់ព័ន្ធនឹងបញ្ហានីតិវិធី<sup>៨</sup> និង ទទួលបានពិន្ទុសូន្យពាក់ព័ន្ធនឹងឯករាជ្យភាពនៃតុលាការ<sup>៩</sup>។

<sup>3</sup> The Cambodian Human Rights and Development Association (“ADHOC”) was founded by a group of former political prisoners in December 1991, after the signing of the Paris Peace Agreements on 23 October 1991. ADHOC is an independent, non-partisan, non-profit and non-governmental organization. For more than 26 years, ADHOC has worked to address the absence of basic rights, freedoms and liberties in Cambodia by providing people with knowledge and understanding of human rights, law and democracy, and how to defend their rights and freedoms. ADHOC is comprised of two sections: The Human Rights and Land Rights Section, and the Women’s and Children’s Rights Section. ADHOC’s Vision is a society that respects human rights and law. ADHOC’s Mission is to strengthen the capacity of ordinary citizens, enable them to defend their own rights and lobby and advocate for better governance and full respect for human rights that every citizen can practice. ADHOC’s Goals are (1) to strengthen the capacity of ordinary citizens to claim their rights and to assist victims of human rights abuses in their quest for justice; and (2) to help ordinary citizens to assert their human rights fully by lobbying and advocating for improvement and enhancement of laws, institutions and law enforcement.

<sup>4</sup> Advocacy and Policy Institute (“API”)’s mission is to serve the long term democratic and social development needs of Cambodia through the empowerment of people to interact with their Government to protect their rights and provide for their needs.

<sup>5</sup> Transparency International Cambodia (“TIC”)’s mission is to work together with individuals and institutions at all levels to promote integrity and reduce corruption in Cambodia.

<sup>6</sup> IFEX (established 1992) is the global network of 118 organisations working to promote and defend the right to freedom of expression and information in over 60 countries worldwide. Through its local members, IFEX supports awareness raising, campaigning and advocacy on a range of issues related to freedom of expression and information in Cambodia.

<sup>7</sup> See **Annex 2**. Recommendation 118.95: Strengthen the means at the disposal of the justice system and make it more accessible to indigent persons. (Senegal).

<sup>8</sup> Measures of the rule of law adherence across the globe. In “Rule of Law Index 2017-2018”, World Justice Project, 2018, p.6, available at [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf) (last visited 4 July 2018).

<sup>9</sup> “The judiciary is marred by corruption and a lack of independence. Judges have played a central role in the government’s ability to pursue charges against a broad range of opposition politicians.” In “Freedom in the World 2018, Cambodia”, Freedom House, 2018, para. F1, available at <https://freedomhouse.org/report/freedom-world/2018/Cambodia> (last visited 4 July 2018).

៣. របាយការណ៍នាពេលនេះ លើកឡើងអំពីធាតុសំខាន់ៗនៃសិទ្ធិទទួលបានយុត្តិធម៌ រួមមាន ឯករាជ្យភាព និងភាពមិនលម្អៀងនៃប្រព័ន្ធតុលាការ ជំនួយផ្នែកច្បាប់ ការទទួលបានព័ត៌មានផ្នែកច្បាប់ និងសិទ្ធិទទួលបានការជំនុំជម្រះប្រកបដោយយុត្តិធម៌។

៤. ខ្លឹមសារនៃរបាយការណ៍នេះ ត្រូវបានមើលឃើញ ដោយមានភាពកង្វះខាតព័ត៌មាន/ទិន្នន័យដែលផ្ទៀងផ្ទាត់ប្រកបដោយសន្យានុម័ត និងអាចរកបានជាសាធារណៈ ព្រមទាំងកង្វះខាតជាទូទៅនូវមូលនិធិទាំងខាងរដ្ឋាភិបាល និងវិស័យឯកជន ក្នុងកិច្ចគាំទ្រដល់ការស្រាវជ្រាវ។ នៅពេលដែលព័ត៌មាន/ទិន្នន័យដែលឧបត្ថម្ភដោយរដ្ឋត្រូវបានផ្សព្វផ្សាយ តែងតែពុំមានការចង្អុលបង្ហាញអំពីវិធីសាស្ត្រ ឬនីតិវិធីស្រាវជ្រាវដែលបានប្រើប្រាស់ឡើយ ដែលនេះជាការរារាំងដល់លទ្ធភាពនៃការផ្ទៀងផ្ទាត់ ឬការវិភាគ។ ដោយសារអង្គការមិនមែនរដ្ឋាភិបាល ទាំងក្នុងស្រុក និងអន្តរជាតិមួយចំនួន បានព្យាយាមបំពេញនូវចន្លោះខ្វះខាតទាំងនេះ រួមមានតាមរយៈ ការតាមដានជាប្រចាំថ្ងៃ ទៅលើសាលាឧទ្ធរណ៍ ដើម្បីវាយតម្លៃការគោរពរបស់តុលាការនេះ ចំពោះសិទ្ធិទទួលបានការជំនុំជម្រះប្រកបដោយយុត្តិធម៌<sup>10</sup> ក៏ប៉ុន្តែ កង្វះការផ្តល់មូលនិធិពីអន្តរជាតិ បានធ្វើឱ្យមានផលប៉ះពាល់យ៉ាងខ្លាំងចំពោះកិច្ចខិតខំប្រឹងប្រែងនេះ។ ជាលទ្ធផល ផ្នែកភាគច្រើននៃរបាយការណ៍នេះ គឺផ្អែកទៅលើការស្រាវជ្រាវពីមុនៗ ដែលទទួលបានតាមរយៈ អ្នកសារព័ត៌មានស៊ើបអង្កេត ឬឃើញមាននៅក្នុងមតិយោបល់របស់មន្ត្រីសាធារណៈ។ ទោះបីយ៉ាងណា របាយការណ៍នេះឆ្លុះបញ្ចាំងយ៉ាងត្រឹមត្រូវ អំពីស្ថានភាពជាក់ស្តែង តាមរយៈការឆ្លងកាត់កន្លងមករបស់អ្នកធ្វើរបាយការណ៍នេះ ដែលមានបទពិសោធន៍អស់រយៈពេលជាយូរនៅក្នុងការដោះស្រាយបញ្ហាផ្សេងៗ ពាក់ព័ន្ធនឹងការទទួលបានយុត្តិធម៌ក្នុងប្រទេសកម្ពុជា។

**២. ឯករាជ្យភាព និងភាពមិនលម្អៀងនៃតុលាការ**

៥. នៅអំឡុងរដ្ឋនៃការត្រួតពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់ លើកទី ២ របស់ប្រទេសកម្ពុជា ៨% នៃអនុសាសន៍ទាំងអស់ដែលបានទទួល ហើយ ៦៨% ក្នុងចំណោមនោះអំពីការផ្តល់យុត្តិធម៌ និងសិទ្ធិទទួលបានការជំនុំជម្រះប្រកបដោយយុត្តិធម៌<sup>11</sup> មានជាប់ពាក់ព័ន្ធនឹងឯករាជ្យភាពនៃប្រព័ន្ធតុលាការ<sup>12</sup>។ ទោះជាយ៉ាងនេះក្តី ស្ថានភាពទាំងនេះហាក់មិនត្រូវបានធ្វើឱ្យប្រសើរឡើង

<sup>10</sup> “Fair Trial Rights Monitoring Project”, Cambodian Center for Human Rights, available at [https://www.cchrcambodia.org/index\\_old.php?url=project\\_page/project\\_page.php&p=project\\_profile.php&id=3&pro=FTR&pro\\_id=107&show=show](https://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=FTR&pro_id=107&show=show) (last visited 4 July 2018); “Cambodian Trial Monitoring Database”, CCHR, available at <http://tmp.sithi.org/> (last visited 4 July 2018).  
<sup>11</sup> Cambodia received a total of 205 recommendations. Of these, 25 related broadly to the administration of justice whilst 17 of these related specifically to independence of the judiciary.  
<sup>12</sup> recommendations 118.24, 118.79-118.92, 118.133, 119.20 In United Nations Office of the High Commissioner on Human Rights, *Universal Human Rights Index*, Advanced Search, filter by D51

ឡើយ ដោយសារតែប្រព័ន្ធតុលាការតែងតែត្រូវបានប្រើប្រាស់ជាឧបករណ៍ដោយមុខអ្នកនយោបាយ ជំទាស់<sup>13</sup> សកម្មជនដីធ្លី<sup>14</sup> អ្នកសារព័ត៌មាន<sup>15</sup> និងអ្នកប្រើប្រាស់បណ្តាញសង្គមសំខាន់ៗជាដើម<sup>16</sup> ។

**២.១. កំណែទម្រង់តុលាការឆ្នាំ២០១៤ បានធ្វើឱ្យចុះខ្សោយដល់ការបែងចែកអំណាច**

៦. នៅក្នុងខែកក្កដា ឆ្នាំ២០១៤ ច្បាប់ស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃតុលាការ ច្បាប់ស្តីពីការ រៀបចំ និងការប្រព្រឹត្តទៅនៃឧត្តមក្រុមប្រឹក្សានៃអង្គចៅក្រម និងច្បាប់ស្តីពីលក្ខន្តិកៈចៅក្រម និងព្រះ រាជអាជ្ញា (“ច្បាប់ទាំងបីស្តីពីប្រព័ន្ធតុលាការ”) ត្រូវបានដាក់ឱ្យប្រើប្រាស់។<sup>17</sup> ការរៀបចំសេចក្តីព្រាង

“administration of justice and fair trial”, available at <http://uhri.ohchr.org/en/search/results?searchtype=Annotations&symbol=A/HRC/26/16&ResultsExpanded=false> (last visited 4 July 2018).

<sup>13</sup> See **Annex 1**, cases of former Cambodia National Rescue party (“CNRP”) lawmaker Um Sam An (**entry 43**), former CNRP Senator Thak Lany (**entry 40**), former CNRP leader Kem Sokha (**entry 17**), former CNRP leader Sam Rainsy (**entry 33**), Former Funcipec official and ex-Deputy Prime Minister Lu Lay Sreng (**entry 23**).

<sup>14</sup> See **Annex 1**, cases of land activist and HRD Tep Vanny (**entry 39**), of two Mother Nature Cambodia environmental activists, Doem Kundy and Hun Vannak (**entry 14**).

<sup>15</sup> See **Annex 1**, cases of former Radio Free Asia (“RFA”) journalists Oun Chhin and Yeang Sothearin (**entry 44**), former Cambodia Daily journalists Aun Pheap and Zsombor Peter (**entry 2**), former Cambodia Daily Deputy Publisher Deborah Krisher-Steele, (**entry 10**), former RFA reporter Chun Chanboth (**entry 8**).

<sup>16</sup> See **Annex 1**, cases of Leng Seng Hong, the head of the Federation of Cambodian Intellectuals and Students, (**entry 22**), labor activist Sam Sokha (**entry 34**), San Rotha (**entry 35**). Since the murder of the political commentator and activist Kem Ley, several people have been arrested and convicted of incitement for accusing the Cambodian Government of being responsible for the murder. For instance, in January 2018, a woman who uses the name “Heng Leakhana” on Facebook was sentenced to a year in prison for “*incitement to commit a felony*” for a live video posted in July 2017 in which she accused Prime Minister Hun Sen of killing political analyst Kem Ley. See Niem Chheng, “Woman who Accused Hun Sen of Kem Ley Assassination on Facebook Sentenced”, The Phnom Penh Post, 11 January 2018, available at <https://www.phnompenhpost.com/national/woman-who-accused-hun-sen-kem-ley-assassination-facebook-sentenced> (last visited 4 July 2018). Hin Vansreypov (**entry 13**). A concerning trend is that over the reporting period, individuals have been charged for Facebook posts which sometimes date from several years back, which seems to indicate that the authorities are monitoring the web for contents. In one example, a man was arrested and charged with “*incitement*” in September 2017 for a video of a song criticizing the Prime Minister’s policies posted on his Facebook in 2013. In Mech Dara & Ananth Baliga, “Man Charged Over Song Criticising Hun Sen”, The Phnom Penh Post, 24 September 2017, available at <https://www.phnompenhpost.com/national/man-charged-over-song-criticising-hun-sen> (last visited 4 May 2018).

In May 2018, the Government adopted an inter-ministerial regulation (*prakas*) which instructed the Ministry of Posts and Telecommunications to “*block or close*” websites and social media pages containing content “*considered as incitement, breaking solidarity, discrimination and willfully creating turmoil leading to undermining national security, public interest and social order*”. It also required all Internet Service Providers are now obliged to “*install software programs and equip internet surveillance tools to easily filter and block any social media accounts or pages*” deemed illegal. The Government also announced all domestic and international internet traffic would pass through a Data Management Centre (“DMC”) created by the state-owned Telecom Cambodia, which creates cause for concerns regarding invasion of privacy and restrictions on freedom of expression online. In Mech Dara & Hor Kimsay, “Ministry’s plan for net sparks fears”, The Phnom Penh Post, 21 May 2018, available at <https://www.phnompenhpost.com/national/ministrys-plan-net-sparks-fears> (last visited 4 July 2018); Mech Dara & Hor Kimsay, “Three ministries set up web-monitoring group to look out for ‘fake news’”, The Phnom Penh Post, 7 June 2018, available at <https://www.phnompenhpost.com/national/three-ministries-set-web-monitoring-group-look-out-fake-news> (last visited 4 July 2018). These have been heavily condemned as violating freedom of expression; See “Civil Society Rejects Government Attack on Freedom of Expression”, Joint Statement, 8 June 2018, available at <https://www.licadho-cambodia.org/pressrelease.php?perm=434> (last visited 4 July 2018).

<sup>17</sup> *Law on the Organization and Functioning of the Courts*, [Unofficial translation], 16 May 2014, available at [http://www.sithi.org/temp.php?url=law\\_detail.php&id=260&lg=](http://www.sithi.org/temp.php?url=law_detail.php&id=260&lg=) (last visited on 4 July 2018); *Law on the Organization and Functioning of the Supreme Council of the Magistracy*, N° 941222, publish 17 September 2011,

នៃច្បាប់ទាំងនេះ ត្រូវបានធ្វើឡើងដោយគ្មានការផ្សព្វផ្សាយ ឬការពិគ្រោះយោបល់ជាមុន ជាមួយសង្គមស៊ីវិល សាធារណជន ឬភាគីពាក់ព័ន្ធផ្សេងៗទៀតឡើយ<sup>18</sup>។ ច្បាប់ទាំងនេះទទួលបានការរិះគន់ជាទូទៅដោយសារបានធ្វើឱ្យចុះខ្សោយយ៉ាងខ្លាំងដល់ការបែងចែកអំណាច និងឯករាជ្យភាពនៃប្រព័ន្ធតុលាការ<sup>19</sup> ដោយផ្តល់ដល់ស្ថាប័ននីតិប្រតិបត្តិ នូវការគ្រប់គ្រងដោយផ្ទាល់ទៅលើប្រព័ន្ធយុត្តិធម៌ ដោយធ្វើឱ្យកើនឡើងនូវឥទ្ធិពលរបស់រដ្ឋមន្ត្រីក្រសួងយុត្តិធម៌ទៅលើចៅក្រម និងព្រះរាជអាជ្ញា តាមរយៈការពាក់ព័ន្ធនៅក្នុងថវិកាតុលាការ ការតែងតាំង ការដំឡើងឋានៈ ការកាន់មុខតំណែង និងការដកពីមុខតំណែង<sup>20</sup>។

**អនុសាសន៍**

- i. ត្រូវធ្វើវិសោធនកម្មច្បាប់ទាំងបីស្តីពីប្រព័ន្ធតុលាការដើម្បីធានាការគោរពចំពោះរដ្ឋធម្មនុញ្ញ និងបទដ្ឋានសិទ្ធិមនុស្សអន្តរជាតិ ស្របទៅតាមអនុសាសន៍របស់ការិយាល័យឧត្តម

available at [http://www.cambodiainvestment.gov.kh/law-on-the-organization-and-function-of-the-supreme-council-of-magistracy\\_941222.html](http://www.cambodiainvestment.gov.kh/law-on-the-organization-and-function-of-the-supreme-council-of-magistracy_941222.html) (last visited 4 July 2018); *Law on the Statute of Judges and Prosecutors*, [Unofficial translation], available at [http://www.sithi.org/judicial/docs/Judicial\\_Laws/Draft\\_Law\\_on\\_the\\_Statute\\_of\\_Judges\\_and\\_Prosecutors\\_NA\\_Eng.pdf](http://www.sithi.org/judicial/docs/Judicial_Laws/Draft_Law_on_the_Statute_of_Judges_and_Prosecutors_NA_Eng.pdf) (last visited 4 July 2018).

<sup>18</sup> Press Release, “Cambodia: Lack of consultation on key laws sets worrying pattern for future legislation, warns UN expert”, OHCHR, 27 May 2014, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14648&LangID=E> (last visited 4 July 2018).

<sup>19</sup> See *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2lcL3M1> (last visited 4 July 2018); *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2yiq83t> (last visited 4 July 2018); *Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2tdgRnN> (last visited 4 July 2018); Legal Analysis, “Three Draft Laws Relating to the Judiciary”, CCHR, May 2014, available at [https://cchrcambodia.org/admin/media/analysis/analysis/english/2014\\_06\\_17\\_CCHR\\_Analysis\\_of\\_the\\_Draft\\_Laws\\_on\\_Judicial\\_Reforms\\_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf) (last visited 4 July 2018); Robert Carmichael, “Legal Experts: Cambodia Judicial Laws of 'Deep Concern'”, Voice of America, 15 July 2014, available at <https://www.voanews.com/a/legal-experts-say-cambodia-judicial-laws-of-deep-concern/1957799.html> (last visited 4 July 2018).

<sup>20</sup> *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Independence of the judiciary”; *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Composition of the SCM”; *Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Independence of the courts”; See also “Three Draft Laws Relating to the Judiciary”, Legal Analysis, CCHR, May 2014, pp. 3-6, 8-10. “Judicial Reform”, Briefing Note, CCHR, October 2014, available at [https://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing\\_Note\\_Judicial%20Reform\\_ENG\\_2014%E2%80%8B.pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing_Note_Judicial%20Reform_ENG_2014%E2%80%8B.pdf) (last visited 4 July 2018); “Justice versus corruption. Challenges to the independence of the judiciary in Cambodia,” International Bar Association’s Human Rights Institute, September 2015. p. 17, available at <https://globalanticorruptionblog.com/2015/10/12/justice-v-corruption-challenges-to-the-independence-of-the-judiciary-in-cambodia/> (last visited 4 July 2018); Robert Carmichael, “Legal Experts: Cambodia Judicial Laws of 'Deep Concern'”, Voice of America, 15 July 2014.

ស្នងការទទួលបន្ទុកសិទ្ធិមនុស្ស<sup>21</sup> និងគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.៣ និង ១៦.៦ នៅត្រីមាស្តាំ២០២១។

**២.២. កង្វះឯករាជ្យភាព និងភាពមិនលម្អៀង**

៧. តុលាការរបស់ប្រទេសកម្ពុជាត្រូវបានយល់ឃើញថាខ្វះឯករាជ្យភាពតាមរយៈកិច្ចការមួយចំនួន រួមមានដូចជា៖<sup>22</sup>

ក. ការរំលាយគណបក្សជំទាស់ដ៏ធំជាងគេ កាលពីខែវិច្ឆិកា ឆ្នាំ២០១៧ ដោយផ្អែកលើការចោទ ប្រកាន់ពីបទក្បត់ជាតិរបស់ប្រធានគណបក្សនេះ<sup>23</sup> មុនពេលធ្វើការជំនុំជម្រះដ៏ពិតប្រាកដ មួយ<sup>24</sup>។

ខ. ការប្រកាសជាសាធារណៈអំពីសេចក្តីសម្រេចលើសំណើសុំនៅក្រៅឃុំរបស់លោក កឹម សុខា ដោយឥស្សរជននយោបាយ មុនសេចក្តីសម្រេចរបស់តុលាការជាក់ស្តែង<sup>25</sup>។

គ. ការកាត់ទោសអ្នកនយោបាយជំទាស់ និងអ្នកវិភាគនយោបាយ ពីបទបរិហារកេរ្តិ៍<sup>26</sup> ការកាត់

<sup>21</sup> *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Independence of the judiciary”; *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Composition of the SCM”; *Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 “Independence of the courts”.

<sup>22</sup> See also “Freedom in the World 2018, Cambodia”, Freedom House, 2018, para. F1,

<sup>23</sup> Ben Sokhean, “Breaking: Supreme Court rules to dissolve CNRP”, The Phnom Penh Post, 16 November 2017, available at <https://www.phnompenhpost.com/national/breaking-supreme-court-rules-dissolve-cnrp> (last visited 4 July 2018).

<sup>24</sup> At the time of writing, no trial date has been set for Kem Sokha. Kem Sokha was arrested on 3 September 2017, he was charged with treason and remains in pre-trial detention. See Annex 1 (entry 16); see also Niem Chheng & Ananth Baliga, “Kem Sokha’s pre-trial detention extended by six months”, The Phnom Penh Post, 5 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-pre-trial-detention-extended-six-months> (last visited 4 July 2018); Niem Chheng & Ananth Baliga, “Kem Sokha’s detention upheld as guards scuffle with ex-leader’s supporters outside courthouse”, The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018).

<sup>25</sup> On 27 March 2018, Prime Minister Hun Sen publicly stated that he did not believe Mr Sokha would be released, and admitted that had ordered his arrest as no one would have dared to arrest the former opposition leader had he not done so. See Khy Sovuthy, “Appeal Court upholds Kem Sokha’s detention,” Khmer Times, 28 March 2018, available at <https://www.khmertimeskh.com/50116382/appeal-court-upholds-kem-sokhas-detention/> (last visited 24 April 2018). Shortly after, the Appeal Court rejected Kem Sokha’s request for bail. See Niem Chheng & Ananth Baliga, “Kem Sokha’s detention upheld as guards scuffle with ex-leader’s supporters outside courthouse,” The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018). See Annex 1 (entry 17).

<sup>26</sup> See Annex 1, cases of political analyst and commentator Kim Sok (entry 20), former CNRP leader Sam Rainsy (entry 33), former CNRP Senator Thak Lany (entry 40), CNRP Commune Candidate in Ansar Chambak commune, Krakor district, Pursat Province Khin Samorn (entry 19), former Head of the Human Rights and Legal Aid Section at the Cambodian Human Rights and Development Association (“ADHOC”) and Deputy Secretary-General of the National Election Committee (“NEC”), Ny Chakrya, (entry 26). Several individuals were charged

ទោសព្រហ្មទណ្ឌទៅលើអ្នកប្រើប្រាស់បណ្តាញសង្គមហ្វេសប៊ុក ដែលបានបញ្ចេញមតិវិះគន់ គណបក្សកាន់អំណាច<sup>27</sup> និងការមិនបានកាត់ទោស ក្នុងសំណុំរឿងមន្ត្រីសាធារណៈប្រើដេហា សាស្ត្រហិង្សាទៅលើអ្នកតវ៉ា ឬអ្នកនយោបាយជំទាស់<sup>28</sup>។

យ. ការចាប់ខ្លួន ការឃុំខ្លួន និងការចោទប្រកាន់ពីបទផ្តល់ឱ្យរដ្ឋបរទេសនូវព័ត៌មានជាអាទិ៍ ដែលនាំឱ្យអន្តរាយដល់ការការពារជាតិទៅលើអ្នកសារព័ត៌មានពីរនាក់ ដែលធ្វើការលើបញ្ហា សង្គម និងអំពើពុករលួយ ហើយធ្វើការឲ្យសារព័ត៌មានដែលមានលក្ខណៈវិះគន់រដ្ឋាភិបាល<sup>29</sup>។ ឯ. ប្រធានតុលាការកំពូលក្នុងរយៈពេល ១០ ឆ្នាំកន្លងមកនេះ គឺលោក**ឱត មន្ទី**<sup>30</sup> មានឈ្មោះជា មន្ត្រីលំដាប់ថ្នាក់ទី ១៥ ក្នុងជួរគណៈកម្មការអចិន្ត្រៃយ៍របស់គណបក្សប្រជាជនកម្ពុជា និងជា សមាជិកនៃគណៈកម្មាធិការមជ្ឈិម និងអចិន្ត្រៃយ៍របស់គណបក្សប្រជាជនកម្ពុជា<sup>31</sup> ហើយអនុ

for “death threats” over Facebook posts threatening the life of the Prime Minister, *See Annex 1* cases of Pich Roth Tha (**entry 30**); Rom Chamroeun, (**entry 31**); Ven Sopheap (**entry 45**).

<sup>27</sup> *See Annex 1*, cases of Leng Seng Hong, the head of the Federation of Cambodian Intellectuals and Students, (**entry 22**), labor activist Sam Sokha (**entry 34**), San Rotha (**entry 35**).

Since the murder of the political commentator and activist Kem Ley, several people have been arrested and convicted of incitement for accusing the Cambodian Government of being responsible for the murder. For instance, in January 2018, a woman who uses the name “Heng Leakhana” on Facebook was sentenced to a year in prison for “*incitement to commit a felony*” for a live video posted in July 2017 in which she accused Prime Minister Hun Sen of killing political analyst Kem Ley. *See* Niem Chheng, “Woman who Accused Hun Sen of Kem Ley Assassination on Facebook Sentenced”, The Phnom Penh Post, 11 January 2018. A concerning trend is that over the reporting period, individuals have been charged for Facebook posts which sometimes date from several years back, which seems to indicate that the authorities are monitoring the web for contents. In one example, a man was arrested and charged with “*incitement*” in September 2017 for a video of a song criticizing the Prime Minister’s policies posted on his Facebook in 2013. *In* Mech Dara & Ananth Baliga, “Man Charged Over Song Criticising Hun Sen”, The Phnom Penh Post, 24 September 2017.

<sup>28</sup> Violent rhetoric used by government official against political opponents and critics, such as threats to beat protesters with Bamboo sticks, or asking them to prepare their coffins, have not been subject to prosecution, *See e.g.* Mech Dara, “Cambodia Defends Call for Protesters to be Beaten with Bamboo”, The Jakarta Post, 7 August 2017, available at <http://www.thejakartapost.com/seasia/2017/08/07/cambodia-defends-call-for-protesters-to-be-beaten-with-bamboo.html> (last visited 4 July 2018); Van Roenun, “‘Prepare Your Coffin’: Hun Sen Repeats Bloody Power Promise”, The Cambodia Daily, 22 June 2017, available at <https://www.cambodiadaily.com/news/prepare-coffin-hun-sen-repeats-bloody-power-promise-131626/> (last visited 4 July 2018); Khuon Narim, “Tea Banh warns protesters they face legal action”, Khmer Times, 10 August 2017, available at <https://www.khmertimeskh.com/5077548/tea-banh-warns-protesters-face-legal-action/> (last visited 18 June 2018).

<sup>29</sup> *See Annex 1*, case of Former RFA journalists Uon Chhin and Yeang Sothearin (**entry 44**).

<sup>30</sup> “តុលាការកំពូល និង មហាអយ្យការ”, Official Website of the Cambodian Supreme Court, available at <http://www.supremecourt.gov.kh/index.php/km/about-us/supreme-court/judges> (last visited 4 July 2018); Dith Munty was appointed in June 1998. *In* “New Supreme Court Chief Justice Appointed”, The Phnom Penh Post, 5 June 1998, available at <https://www.phnompenhpost.com/national/new-supreme-court-chief-justice-appointed> (last visited 4 July 2018).

<sup>31</sup> Mech Dara & Daphne Chen, “Analysis: Judge who will decide the fate of the CNRP is a trusted member of the CPP”, The Phnom Penh Post, 15 November 2017, available at <https://www.phnompenhpost.com/national-post-depth-politics/analysis-judge-who-will-decide-fate-cnrp-trusted-member-cpp> (last visited 4 July 2018). The article further notes Munty’s involvement in other controversial decisions including, *inter alia*, to uphold a politically tinged incitement conviction against former opposition leader Sam Rainsy in 2011, as well as a defamation conviction against senior opposition lawmaker Mu Sochua in 2010.



ប្រធានតុលាការកំពូល លោក ជីវ កេង ព្រះរាជអាជ្ញាតុលាការកំពូល លោកស្រី ជា លាង និង ប្រធានសាលាឧទ្ធរណ៍ លោក យូ ប៊ុនឡេង ក៏មានឈ្មោះក្នុងបញ្ជីគណៈកម្មាធិការមជ្ឈិមរបស់ គណបក្សប្រជាជនផងដែរ<sup>32</sup>។

ច. ការចោទប្រកាន់ពីបទល្មើសប្រព្រឹត្តដោយមន្ត្រីសាធារណៈ និងអ្នកដែលជាប់ពាក់ព័ន្ធជា មួយនឹងរដ្ឋាភិបាលកម្រនឹងត្រូវបានស៊ើបអង្កេតម៉ត់ចត់ណាស់ កុំថាដល់ទៅត្រូវបានកាត់ ទោស<sup>33</sup>។

ឆ. មេធាវីតែងតែពាក់ព័ន្ធនៅក្នុងការស្តីប៉ាន់ដោយដឹងថា ការស្តីប៉ាន់គឺជាមធ្យោបាយតែ

<sup>32</sup> List of the Supreme Court's judges, available at <http://www.supremecourt.gov.kh/index.php/km/about-us/supreme-court/judges> (last visited 4 July 2018); “CPP releases list of 342 new members of the Central Committee”, Fresh News Asia, 21 January 2018, available at <http://en.freshnewsasia.com/index.php/en/6995-2018-01-21-05-26-28.html> (last visited 4 July 2018) where Chiv Keng is listed in entry 270, You Bunleng, entry 271, and Chea Leng, 272, under the Commission K-18.

<sup>33</sup> For instance, in April 2018, the Appeal Court rejected a plea from **two Boeung Kak activists to reopen an investigation into a nighttime attack on lake residents**, journalists and others in 2013 at Phnom Penh’s Wat Phnom by thugs and plainclothes police officials. The Phnom Penh Municipal Court had provisionally charged unnamed individuals for intentional violence and had questioned some of the lake residents and Daun Penh officials, but an investigating judge dropped the charges. The Boeung Kak lawsuit also named four Daun Penh district officials, whom they claimed were at the crackdown, *see* Kim Sarom & Ananth Baliga, “Court rejects activists’ appeal to reopen case,” The Phnom Penh Post, 5 April 2018, available at <https://www.phnompenhpost.com/national/court-rejects-activists-appeal-reopen-case> (last visited 4 July 2018); Over a year after **sex worker, Pen Kunthea**, drowned in a case implicating Daun Penh district security guards, no one has been held accountable for her death, despite numerous calls by women’s rights activists and former opposition lawmakers for an independent investigation, *see* **Annex 1 (entry 28)**; *see also* Leonie Kijewski, “Sex worker’s death still unpunished,” The Phnom Penh Post, 4 January 2018, available at <https://www.phnompenhpost.com/national/sex-workers-death-still-unpunished> (last visited 24 April 2018). One notable example is that of three members of the Prime Minister’s bodyguard unit who attacked former Cambodia National Rescue Party (CNRP) lawmakers Nhay Chamroeun and Kong Sophea in October 2015 before the National Assembly. All three were found guilty of intentional violence with aggravating circumstances and sentenced to 4 years in prison, with 3 suspended. They were released in November 2016 after serving 12 months, and two were later promoted within the army; *see* **Annex 1 (entry 24)**; *see also* Mech Dara & Shaun Turton, “Bodyguard Unit trio released one year after MP beatings”, The Phnom Penh Post, 7 November 2016, available at <https://www.phnompenhpost.com/national/bodyguard-unit-trio-released-one-year-after-mp-beatings> (last visited 4 July 2018); Ben Sokhean, “MPs beaten outside National Assembly in 2015 appeal”, The Phnom Penh Post, 21 March 2018, available at <https://www.phnompenhpost.com/national/mps-beaten-outside-national-assembly-2015-appeal> (last visited 4 July 2018); Mech Dara & Shaun Turton, “Third member of PM’s Bodyguard Unit seen kicking head of MP promoted”, The Phnom Penh Post, 26 January 2017, available at <https://www.phnompenhpost.com/national/third-member-pms-bodyguard-unit-seen-kicking-head-mp-promoted> (last visited 4 July 2018); *for background see* “Nhay Chamroeun and Kong Sophea Timeline”, Asian Parliamentarians for Human Rights, March 2017, available at <https://aseanmp.org/wp-content/uploads/2017/03/APHR-Cambodia-MPs-Report-Nhay-Chamroeun-Kong-Sophea-Timeline.pdf> (last visited 4 July 2018).

The 2012 murder of environmental activist Chut Wutty was never fully and objectively investigated, *see* **Annex 1 (entry 9)**. The police forces accused of intentional violence against garment workers, including trade unionists in 2014 were never investigated, *see also* the cases of garment workers Khem Sophat (**entry 18**), Chea Vichea (**entry 5**), Ros Sovannareth (**entry 32**); *see also* Send David, “Hopes fade for protest victims”, Khmer Times, 29 August 2017, available at <https://www.khmertimeskh.com/5080415/hopes-fade-protest-victims/> (last visited 4 June 2018). Attacks against journalists are also seldomly investigated or prosecuted, *see e.g.* **Annex 1**, cases of journalists Chan Dara (**entry 3**), Hang Serei Oudom (**entry 12**), Suon Chan (**entry 37**), Taing Try (**entry 38**), Chour Chetharith (**entry 7**), Dok Sokhan (**entry 11**), Ou Saroeun (**entry 27**), Pich Em (**entry 29**), Chet Duong Daravuth (**entry 6**), Thun Bun Ly (**entry 42**), Thou Char Mongkol (**entry 41**), Nun Chan (**entry 25**).

មួយគត់ដើម្បីឈ្នះក្តី។<sup>34</sup> ដោយសារតែមេធាវីជំនួយផ្នែកច្បាប់ទំនងជាមិនផ្តល់សំណូកជំនុំ ទើបចៅក្រមនឹងមិនចាត់ការសំណុំរឿងរបស់គាត់ឡើយ ហើយពួកគាត់មានទំនាក់ទំនងមិន ស្មើភាពជាមួយមេធាវីតំណាងរដ្ឋាភិបាល។ មេធាវីជំនួយផ្នែកច្បាប់បានរាយការណ៍ថា គាត់ បានចាញ់នៅក្នុងសំណុំរឿងភាគច្រើនដោយសារតែមិនបានប្រព្រឹត្តការស៊ីសំណូក<sup>35</sup>។

**អនុសាសន៍**

- ii. ត្រូវបង្កើតយន្តការបណ្តឹងសម្រាប់សាធារណជន សម្រាប់ការចោទប្រកាន់ពីកង្វះឯក រាជ្យភាព ឬភាពមិនលម្អៀង ឬចោទប្រកាន់ពីអំពើពុករលួយ ឬការស៊ីសំណូករបស់មន្ត្រី យុត្តិធម៌ (រួមទាំងមន្ត្រីនគរបាល និងសមាជិកនៃគណៈមេធាវីនៃព្រះរាជាណាចក្រ កម្ពុជា) អាចដាក់ពាក្យប្តឹង និងធានាថាមានការស៊ើបអង្កេតភ្លាមៗ ហ្មត់ចត់ និងដោយ មិនលម្អៀង ហើយជនរងគ្រោះ ត្រូវបានផ្តល់នូវមធ្យោបាយផ្លូវច្បាប់ប្រកបដោយ ប្រសិទ្ធភាព ស្របទៅតាមគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.៥ និង ១៦.៦។
- iii. ត្រូវធានាការអនុវត្តប្រកបដោយប្រសិទ្ធភាព និងមិនលម្អៀង នូវរដ្ឋធម្មនុញ្ញ ច្បាប់ និង សេចក្តីសម្រេចរបស់តុលាការ តាមរយៈប្រព័ន្ធយុត្តិធម៌ផ្លូវការ ស្របទៅតាមគោលដៅ អភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.៣។
- iv. ត្រូវធ្វើវិសោធនកម្មនីតិវិធីតែងតាំងចៅក្រម ជាពិសេសនៅក្នុងតុលាការកំពូល ដើម្បី ធានាថាចៅក្រមមានលក្ខណៈឯករាជ្យ មិនពាក់ព័ន្ធនយោបាយ និងគ្មានទំនាស់ផល ប្រយោជន៍។

**២.៣. និទណ្ឌភាព**

៨. និទណ្ឌភាព នៅតែជាការព្រួយបារម្ភមួយយ៉ាងធ្ងន់ធ្ងរ នៅក្នុងប្រទេសកម្ពុជា។ សំណុំរឿង ដែលពាក់ព័ន្ធនឹងបទល្មើសដែលបានប្រព្រឹត្តទៅលើសកម្មជនបរិស្ថានដូចជា **ឈុត រុទ្ធី**<sup>36</sup>

<sup>34</sup> *Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study*, International Commission of Jurists (ICJ), October 2017, p. 18; *Justice versus corruption: Challenges to the independence of the judiciary in Cambodia*, IBAHRI, September 2015, p. 8.

<sup>35</sup> *Justice versus corruption: Challenges to the independence of the judiciary in Cambodia*, IBAHRI, September 2015, p. 47.

<sup>36</sup> See **Annex 1**, case of environmental activist Chut Wutty (**entry 9**); see also Rachel Nuwer, “Wildlife Watch - Illegal Logging Has Become More Violent Than Ever”, National Geographic, 3 February 2016, available at <https://news.nationalgeographic.com/2016/02/160202-Illegal-loggers-murders-violence-defending-land/> (last visited 4 July 2018); “Cambodian forest defenders killed after confronting illegal loggers”, The Guardian, 31 January 2018, available at <https://www.theguardian.com/environment/2018/jan/31/cambodian-forest-defenders-killed-after-confronting-illegal-loggers> (last visited 4 July 2018); Human Rights Defender Alert, “Environmental activist Ven Aet was shot at in Areng Valley, but sustained no injury”, CCHR, 17 May 2018, [https://cchrcambodia.org/index\\_old.php?url=media/media.php&p=alert\\_detail.php&alid=71&id=5&lang=eng](https://cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=71&id=5&lang=eng) (last visited 4 July 2018).

សកម្មជនសិទ្ធិដីធ្លី<sup>37</sup> កម្មកររោងចក្រកាត់ដេរ ដូចជា **យឹម សុផាត**<sup>38</sup> និងប្រធានសហជីព ដូចជា **ជា វិជ្ជា** និង**រស់ សុវណ្ណវ៉េត**<sup>39</sup> ព្រមទាំងអ្នកសារព័ត៌មាន ដូចជា **ច័ន្ទ តារា ហង្ស សិរីឧត្តម** និង **ពេជ្យ ឯម**<sup>40</sup> មិនដែលត្រូវបានស៊ើបអង្កេតទាល់តែសោះ ឬស៊ើបអង្កេតដោយគ្មានតម្លាភាព ឯក រាជ្យភាព និងភាពមិនលម្អៀង។ នៅពេលដែលឧក្រិដ្ឋជនត្រូវបានកាត់ទោស ពួកគេតែងតែ ទទួលទោសស្រាល ឬដោះលែងមុនពេលកំណត់។<sup>41</sup> ឃាតកម្មលើបណ្ឌិត **កែម ឡី** ដែលជាអ្នក វិភាគ និងអ្នកវិគ្គវដ្ឋាភិបាលដ៏ល្បីឈ្មោះកាលពីថ្ងៃទី១២ ខែកក្កដា ឆ្នាំ២០១៦<sup>42</sup> ប្រហែលអាច ជាឧទាហរណ៍យ៉ាងជាក់ស្តែងអំពីវប្បធម៌និទណ្ឌភាព។ អ្នកបាញ់ប្រហារឈ្មោះ **អៀត អាង** ត្រូវ បានកាត់ទោសពីបទឃាតកម្មគិតទុកជាមុន ពាក់ព័ន្ធនឹងការស្លាប់របស់ បណ្ឌិត **កែម ឡី** កាល ពីថ្ងៃទី២៣ ខែមីនា ឆ្នាំ២០១៨ និងត្រូវបានកាត់ទោសឱ្យជាប់ពន្ធនាគារអស់មួយជីវិត ប៉ុន្តែ ដំណើរការឆ្ពោះទៅរកការកាត់ទោសគាត់នេះ រងការវិគ្គវដ្ឋាភិបាលខ្លាំងក្លា។<sup>43</sup> ការស៊ើបអង្កេត

<sup>37</sup> Amelia Woodside & Khouth Sophak Chakrya, “Land activists ‘under threat’”, The Phnom Penh Post, 18 April 2014, available at <https://www.phnompenhpost.com/national/សិទ្ធិដីធ្លី-%E2%80%98%E2%80%99-under-threat%E2%80%99> (last visited 4 July 2018); *see also*: in April 2018, the Appeal Court rejected a plea from **two Boeung Kak activists to reopen an investigation into a nighttime attack on lake residents**, journalists and others in 2013 at Phnom Penh’s Wat Phnom by thugs and plainclothes police officials. The Phnom Penh Municipal Court had provisionally charged unnamed individuals for intentional violence and had questioned some of the lake residents and Daun Penh officials, but an investigating judge dropped the charges. The Boeung Kak lawsuit also named four Daun Penh district officials, whom they claimed were at the crackdown, *see* Kim Sarom & Ananth Baliga, “Court rejects activists’ appeal to reopen case,” The Phnom Penh Post, 5 April 2018.

<sup>38</sup> *See Annex 1*, case of garment worker Khem Sophat (**entry 18**); *See also* Send David, “Hopes fade for protest victims”, Khmer Times, 29 August 2017, available at <https://www.khmertimeskh.com/5080415/hopes-fade-protest-victims/> (last visited 4 July 2018).

<sup>39</sup> *See Annex 1*, cases of Chea Vichea (**entry 5**), Ros Sovannareth (**entry 32**).

<sup>40</sup> *See Annex 1*, cases of journalists Chan Dara (**entry 3**), Hang Serei Oudom (**entry 12**), Suon Chan (**entry 37**), Taing Try (**entry 38**), Chour Chetharith (**entry 7**), Dok Sokhan (**entry 11**), Ou Saroeun (**entry 27**), Pich Em (**entry 29**), Chet Duong Daravuth (**entry 6**), Thun Bun Ly (**entry 42**), Thou Char Mongkol (**entry 41**), Nun Chan (**entry 25**).

<sup>41</sup> One notable example is that of three members of the Prime Minister’s bodyguard unit who attacked former Cambodia National Rescue Party (CNRP) lawmakers Nhay Chamroeun and Kong Sophea in October 2015 before the National Assembly. All three were found guilty of intentional violence with aggravating circumstances and sentenced to 4 years in prison, with 3 suspended. They were released in November 2016 after serving 12 months, and two were later promoted within the army; *See Annex 1 (entry 24)*; *See also* Mech Dara & Shaun Turton, “Bodyguard Unit trio released one year after MP beatings”, The Phnom Penh Post, 7 November 2016; Ben Sokhean, “MPs beaten outside National Assembly in 2015 appeal”, The Phnom Penh Post, 21 March 2018; Mech Dara & Shaun Turton, “Third member of PM’s Bodyguard Unit seen kicking head of MP promoted”, The Phnom Penh Post, 26 January 2017; *for background see* “Nhay Chamroeun and Kong Sophea Timeline”, Asian Parliamentarians for Human Rights, March 2017.

<sup>42</sup> *See Annex 1 (entry 16)*, Case Profile, “Kem Ley: Breaking down the façade of justice”, IFEX, 21 September 2017, available at <https://www.ifex.org/noimpunity/cases/kem-ley-no-impunity/> (last visited 4 July 2018).

<sup>43</sup> “Former Soldier Admits to Killing Cambodian Political Analyst”, Radio Free Asia, 1 March 2017, available at <https://www.rfa.org/english/news/cambodia/former-soldier-admits-to-killing-cambodian-political-analyst-03012017160256.html> (last visited 4 July 2018); Niem Chheng & Shaun Turton, “‘Choub Samlab’ gets life in prison”, The Phnom Penh Post, available at <https://www.phnompenhpost.com/national/choub-samlab-gets-life-prison> (last visited 4 July 2018); Ouch Sony & George Wright, “Kem Ley Killer Gets Life; Investigation Still Open”, The Cambodia Daily, 24 March 2017, available at <https://webcache.googleusercontent.com/search?q=cache:7OxsMy>

ដែលរងការចោទប្រកាន់ទៅលើជនសង្ស័យផ្សេងទៀត ប្រសិនបើមាន គឺពុំស្របទៅតាម លក្ខខណ្ឌអប្បបរមានៃតម្លាភាព និងឯករាជ្យភាពឡើយ។<sup>44</sup>

**អនុសាសន៍**

- v. ត្រូវចាត់រាល់វិធានការទាំងអស់ ដើម្បីប្រយុទ្ធប្រឆាំងនឹងវប្បធម៌និទណ្ឌភាព សម្រាប់ រាល់សកម្មភាពហិង្សាទៅលើបុគ្គលទាំងអស់ ជាពិសេសអ្នកការពារសិទ្ធិមនុស្ស សកម្មជនដីធ្លី និងក្រុមដែលមិនត្រូវបានគិតគូរ ព្រមទាំងធ្វើការស៊ើបអង្កេត កាត់ ទោស និងដាក់ទណ្ឌកម្មប្រកបដោយឯករាជ្យភាព ទៅលើអំពើហិង្សាទៅលើក្រុមទាំង នេះពីសំណាក់ភ្នាក់ងាររដ្ឋ និងបុគ្គលផ្សេងទៀតស្របទៅតាមគោលដៅអភិវឌ្ឍន៍ ប្រកបដោយចីរភាព ១៦.៣។

**៣. ជំនួយផ្នែកច្បាប់ក្នុងប្រទេសកម្ពុជា**

**៣.១. ប្រទេសកម្ពុជាខ្វះខាតគោលនយោបាយជំនួយផ្នែកច្បាប់គ្រប់ជ្រុងជ្រោយ**

៩. ច្បាប់ជាតិ និងអន្តរជាតិធានាអំពី សិទ្ធិទទួលបានជំនួយផ្នែកច្បាប់ សម្រាប់បុគ្គលដែលត្រូវ បានចោទប្រកាន់ពីបទល្មើសព្រហ្មទណ្ឌ។<sup>45</sup> ក្រមនីតិវិធីព្រហ្មទណ្ឌនៃព្រះរាជាណាចក្រកម្ពុជា លើកឡើងអំពីសិទ្ធិរបស់ជនជាប់ចោទ នៅក្នុងការពឹងពាក់មេធាវី ដែលបានចាត់តាំង ស្របទៅ

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1Lb6kJ:<https://www.cambodiadaily.com/news/kem-ley-killer-gets-life-investigation-still-open-127017/+&cd=1&hl=en&ct=clnk&gl=kh> (last visited 4 July 2018).  
<sup>44</sup> “Joint Letter on Investigation Into Killing of Kem Ley. Request for Cambodian Government to Create a Commission of Inquiry,” Human Rights Watch, 7 July 2017, available at <https://www.hrw.org/news/2017/07/07/joint-letter-investigation-killing-kem-ley> (last visited 4 July 2018).  
<sup>45</sup> See, Article 14(3)(d) of the *International Covenant on Civil and Political Rights* (“ICCPR”), 1966, available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (last visited 4 July 2018), Articles 37(d), 40(2)(b) of the *Convention on the Rights of the Child*, 1989, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited 4 July 2018); Articles 31 and 38 of the *Constitution of the Kingdom of Cambodia*, 2008, available at [http://sithi.org/admin/upload/law/2008\\_02\\_19\\_Constitution\(KH\)\\_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(KH)_including%20Amendment%20(1).pdf) [official version in Khmer] and [http://sithi.org/admin/upload/law/2008\\_02\\_19\\_Constitution\(EN\)\\_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(EN)_including%20Amendment%20(1).pdf) [unofficial translation in English] (last visited 4 July 2018); Articles 29-30 of the *Criminal Procedure Code of Kingdom of Cambodia*, 2007, available at [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_2007\\_Khm.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf) [official version in Khmer] and [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_Code\\_in\\_Eng\\_2007.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf) [unofficial English translation] (last visited 2 July 2018); Articles 6, 50 of the *Law on Juvenile Justice*, 2016, available at <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice-2016-Khmer-version.pdf> [official version in Khmer] and <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> [unofficial translation in English] (last visited 4 July 2018).

តាមច្បាប់ស្តីពីគណៈមេធាវី<sup>46</sup> ដែលចែងអំពីជំនួយផ្នែកច្បាប់សម្រាប់ “ពលរដ្ឋក្រីក្រ”<sup>47</sup>

១០. ទោះបីក្រសួងយុត្តិធម៌ជាស្ថាប័នដែលទទួលខុសត្រូវក្នុងការគ្រប់គ្រង និងផ្តល់នូវប្រព័ន្ធ យុត្តិធម៌ រួមទាំង ការផ្តល់ជំនួយផ្នែកច្បាប់<sup>48</sup> ក៏ដោយ ប៉ុន្តែពុំមានស្ថាប័នណាបានទទួលភារកិច្ច និងហិរញ្ញវត្ថុដើម្បីអនុវត្តកិច្ចការនេះឡើយ។ មុខងារនេះត្រូវបានប្រគល់មួយផ្នែកទៅឱ្យគណៈ មេធាវីកម្ពុជា (“គណៈមេធាវី”) ដែលជាស្ថាប័នចុះបញ្ជីមេធាវីប្រកបវិជ្ជាជីវៈទាំងអស់នៅក្នុង ប្រទេសកម្ពុជា។<sup>49</sup> គណៈមេធាវីត្រូវបម្រុងទុកមូលនិធិសម្រាប់ “ផ្តល់ប្រាក់ចំណូលដល់មេធាវី ដែលការពារពលរដ្ឋក្រីក្រ”<sup>50</sup> ដែលក្រសួងយុត្តិធម៌ចូលរួមវិភាគទានតាមរយៈថវិកាប្រចាំឆ្នាំ ហើយនៅក្នុងការអនុវត្តជាក់ស្តែង ធ្វើការតែងតាំងមេធាវីជំនួយផ្នែកច្បាប់។<sup>51</sup> ទោះបីយ៉ាងណា ការបែងចែកទំនួលខុសត្រូវរវាងក្រសួង និងគណៈមេធាវីមានភាពមិនច្បាស់លាស់ឡើយ ជា ពិសេសពាក់ព័ន្ធនឹងទំនួលខុសត្រូវគោលនយោបាយ និងការគ្រប់គ្រង។<sup>52</sup>

<sup>46</sup> Article 300 of the *Criminal Procedure Code of the Kingdom of Cambodia* determines that “The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar” and Article 304 determines that “The Royal Prosecutor shall inform the accused of his right to defense by a lawyer of his own choice, or of one pursuant to the Law on the Bar”, See *Criminal Procedure Code of Kingdom of Cambodia*, 2007, available at [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_2007\\_Khm.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf) [official version in Khmer] and [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_Code\\_in\\_Eng\\_2007.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf) [unofficial English translation] (last visited 4 July 2018).

<sup>47</sup> Article 29 of the *Law on the Bar* determines that “A special account shall be established in this Fund for providing income to lawyers who defend poor people. This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people. All lawyers are obligated to defend poor people according to the same procedures and internal rules and in the same manner as the defense of their own clients” and Article 30 determines that ““Poor people” are defined as those people who have no property, no income, or who receive insufficient income to support their living. The determination of “poverty” shall be accomplished by the Chief Judge of the Courts and the Chiefs of the Court Clerks following an on-site investigation”, See *Law on the Bar*, 1995, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_50.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf) [unofficial translation in English (last visited 4 July 2018)].

<sup>48</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 47-48

<sup>49</sup> Article 4 of the *Law on the Bar* determines that “Apart from those lawyers who are members of the Bar Association, no one may perform this Profession”, See *Law on the Bar*, 1995, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_50.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf) [unofficial translation in English (last visited 4 July 2018)].

<sup>50</sup> Article 29 of the *Law on the Bar* determines that “A special account shall be established in this Fund for providing income to lawyers who defend poor people. This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people”, see *Law on the Bar*, 1995, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_50.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf) [unofficial translation in English (last visited 4 July 2018)].

<sup>51</sup> Following an assessment of eligibility by the Court in accordance with Article 30 of the *Law on the Bar* (see above), a request for legal aid is made to the BAKC which approves a request and assigns a lawyer. See Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 48.

<sup>52</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 76.

១១. ភាពតំណាងផ្នែកច្បាប់ជាលក្ខខណ្ឌចាំបាច់សម្រាប់តែសំណុំរឿងព្រហ្មទណ្ឌដែលពាក់ព័ន្ធនឹងបទឧក្រិដ្ឋ ឬ អនីតិជនតែប៉ុណ្ណោះ<sup>53</sup> ហេតុដូច្នោះ គណៈមេធាវីផ្តល់ជំនួយផ្នែកច្បាប់សម្រាប់តែករណីជាលក្ខខណ្ឌចាំបាច់នេះតែប៉ុណ្ណោះ<sup>54</sup> ដោយមិនរាប់បញ្ចូលនូវបទមជ្ឈិមហើយពុំស្របទៅនឹងបទដ្ឋានអន្តរជាតិឡើយ។<sup>55</sup>

១២. ស្រដៀងគ្នានេះដែរ ពុំមានការចែងពីការធ្វើតេស្តលក្ខណៈសម្បត្តិគ្រប់ជ្រុងជ្រោយឡើយដើម្បីអោយដឹងថាតើជំនួយផ្នែកច្បាប់ត្រូវបានតម្រូវសម្រាប់ផលប្រយោជន៍នៃយុត្តិធម៌<sup>56</sup> ឬ យ៉ាងណា ដែលតាមរយៈនេះ ពុំបានធានាដល់ជំនួយផ្នែកច្បាប់ ឬសេវាករណ៍សម្រាប់ក្រុមងាយរងគ្រោះដូចជា ស្ត្រី ក្រុមស្ត្រីស្រឡាញ់ស្ត្រី ក្រុមបុរសស្រឡាញ់បុរស ក្រុមអ្នកស្រឡាញ់ភេទទាំងពីរ ក្រុមប្តូរយេនឌ័រ ក្រុមអន្តរភេទ និងក្រុមដែលមិនដឹងអំពីអត្តសញ្ញាណភេទខ្លួនឯង

<sup>53</sup> Article 301 of the *Code of Criminal Procedure* determines that “The assistance of a lawyer is compulsory if: 1. The case involves a felony; 2. The accused is a minor. If the accused has not selected a lawyer, a lawyer shall be appointed upon the initiative of the court president in accordance with the provisions of the Law on the Bar” See *Criminal Procedure Code of Kingdom of Cambodia, 2007*, available at [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_2007\\_Khm.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf) [official version in Khmer] and [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_Code\\_in\\_Eng\\_2007.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf) [unofficial English translation] (last visited 4 July 2018); Article 6 of the *Law on Juvenile Justice* determines that “Every minor suspected or accused of having committed an offence shall have the following basic procedural rights (...) the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure” and Article 50 determines that “The minor shall be assisted by a lawyer during trial. In case the minor cannot afford a lawyer, the president of the court, via his or her own initiative, shall assign a pro-bono lawyer in accordance with the conditions stipulated in the law on statutes of lawyer. The expense on the defence and copy of case files is the burden of state,” see *Law on Juvenile Justice, 2016*, available at <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice-2016-Khmer-version.pdf> [official version in Khmer] and <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> [unofficial translation in English] (last visited 4 July 2018).

<sup>54</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 60.

<sup>55</sup> Article 14(3) of the *ICCPR* specifies that “In the determination of **any criminal charge** against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (d) ... to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it” (emphasis added); *The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems* further outlines “States should ensure that anyone who is detained, arrested, suspected of, or charged with a **criminal offence punishable by a term of imprisonment or the death penalty** is entitled to legal aid at all stages of the criminal justice process” (emphasis added), See UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 3, para. 20, available at [http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN\\_principles\\_on\\_legal\\_aid\\_March\\_2013\\_Eng.pdf](http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN_principles_on_legal_aid_March_2013_Eng.pdf) (last visited 4 July 2018); see also UN Human Rights Committee, *Concluding observations on the second periodic report of Cambodia*, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 17, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En) (last visited 4 July 2018).

<sup>56</sup> Article 14(3)(d) of the *ICCPR* enshrines the right “to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, **in any case where the interests of justice so require**, and without payment by him in any such case if he does not have sufficient **means** to pay for it” (emphasis added).

(“LGBTIQ”) ឬក្រុមជនជាតិដើមភាគតិច ជាដើម។<sup>57</sup>

១៣. ប្រទេសកម្ពុជាពុំមានគោលនយោបាយស្តីពីជំនួយផ្នែកច្បាប់គ្រប់ជ្រុងជ្រោយឡើយ ពោលគឺ ពុំមានក្របខណ្ឌ ដើម្បីធានាដល់សិទ្ធិទទួលបានព័ត៌មានអំពីសេវាជំនួយផ្នែកច្បាប់ បញ្ជាក់អំពីពេលវេលាសម្រាប់រៀបចំសំណុំរឿង ចំនួនសំណុំរឿងប្រចាំខែ ឬលក្ខណៈវិនិច្ឆ័យ សម្រាប់មេធាវីជំនួយផ្នែកច្បាប់ឡើយ។<sup>58</sup>

១៤. គោលនយោបាយគ្រប់ជ្រុងជ្រោយ មានភាពចាំបាច់ដើម្បីដោះស្រាយចន្លោះខ្វះខាត ផ្តល់ នូវយុទ្ធសាស្ត្រគ្រប់ជ្រុងជ្រោយ និងកំណត់ស្តង់ដារសេវាកម្ម។<sup>59</sup> យ៉ាងណាក៏ក្រុមការងារ បច្ចេកទេសទទួលបន្ទុកកំណែទម្រង់ច្បាប់ និងប្រព័ន្ធយុត្តិធម៌ ដែលធ្វើជាសហប្រធានដោយ ក្រសួងយុត្តិធម៌ និង ការិយាល័យឧត្តមស្នងការទទួលបន្ទុកសិទ្ធិមនុស្ស បានកំពុងធ្វើការ ពិគ្រោះយោបល់ដើម្បីរៀបចំគោលនយោបាយស្តីពីជំនួយផ្នែកច្បាប់នៅក្នុងឆ្នាំ២០១៨។<sup>60</sup>

**អនុសាសន៍**

- vi. នៅពាក់កណ្តាលឆ្នាំ២០២១ ត្រូវបង្កើត ឬចាត់តាំងនាយកដ្ឋានមួយ នៅក្នុងក្រសួង យុត្តិធម៌ ដែលទទួលខុសត្រូវ និងទទួលបានធនធានដើម្បីគ្រប់គ្រងទៅលើការផ្តល់ជំនួយ ផ្នែកច្បាប់។
- vii. ធានាថា រាល់បុគ្គលដែលត្រូវបានចោទប្រកាន់ពីបទល្មើសព្រហ្មទណ្ឌ រួមទាំងជនជាប់ ចោទពីបទមជ្ឈិម និងបទឧក្រិដ្ឋផង អាចទទួលបានជំនួយផ្នែកច្បាប់ ស្របទៅតាមក្រម

<sup>57</sup> The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems outlines “Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures” and “States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups” see UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 10, para. 32-33.

<sup>58</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 70.

<sup>59</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 44.

<sup>60</sup> See UN Human Rights Council, *Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*, 2 February 2018, UN DOC. A/HRC/37/64, para. 19, available at <http://cambodia.ohchr.org/sites/default/files/Ohchr-report/G1802262.pdf> (last visited 4 July 2018); “legal aid support”, United Nations Human Rights Office of the High Commissioner, 28 September 2015, available at <http://cambodia.ohchr.org/en/rule-of-law/legal-aid-support> (last accessed 4 July 2018).

នីតិវិធីព្រហ្មទណ្ឌនៃព្រះរាជាណាចក្រកម្ពុជា, សន្និសីទសញ្ញាអន្តរជាតិស្តីពីសិទ្ធិពលរដ្ឋ និង សិទ្ធិនយោបាយ និងគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.៣។

viii. នៅត្រឹមឆ្នាំ២០២២ ធ្វើការបញ្ចប់ និងអនុវត្តគោលនយោបាយ ស្តីពីជំនួយផ្នែកច្បាប់ បន្ទាប់ពីបានពិគ្រោះយោបល់ជាមួយភាគីពាក់ព័ន្ធ រួមទាំងសង្គមស៊ីវិលផងដែរ។

**៣.២. ថវិកាជំនួយផ្នែកច្បាប់មិនគ្រប់គ្រាន់**

១៥. នៅចន្លោះឆ្នាំ២០១៤ និង២០១៨ ថវិកាជំនួយផ្នែកច្បាប់ដែលឧបត្ថម្ភដោយរដ្ឋ បានកើន ឡើងយ៉ាងច្រើនពីប្រមាណ ៧៥.០០០ ទៅ ២២២.០០០ ដុល្លារអាមេរិក<sup>61</sup> ដែលបង្ហាញអំពីការ ប្តេជ្ញាចិត្តរបស់រាជរដ្ឋាភិបាលកម្ពុជានៅក្នុងការលើកកម្ពស់ជំនួយផ្នែកច្បាប់។ ទោះជាយ៉ាង នេះក្តី ថវិកាជំនួយផ្នែកច្បាប់របស់ប្រទេសកម្ពុជានៅតែមិនគ្រប់គ្រាន់ដោយទឹកប្រាក់នេះមាន ចំនួន ០,០១ ដុល្លារអាមេរិកក្នុងមនុស្សម្នាក់ បើប្រៀបធៀបជាមួយចំនួន ០,០៣ ដុល្លារអាមេរិក ក្នុងមនុស្សម្នាក់នៅក្នុងប្រទេសថៃ និង ០,១៩ ដុល្លារអាមេរិកក្នុងមនុស្សម្នាក់នៅក្នុងប្រទេស ចិន។<sup>62</sup> នៅក្នុងឆ្នាំ២០១៧ គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា បានទទួលសំណើប្រមាណ ៥,០០០ សម្រាប់ជំនួយផ្នែកច្បាប់នៅក្នុងសំណុំរឿងតម្រូវដោយច្បាប់ ប៉ុន្តែថវិកាឧបត្ថម្ភដោយ រដ្ឋអាចផ្គត់ផ្គង់បានសម្រាប់តែ ២.០០០ សំណុំរឿងប៉ុណ្ណោះ។<sup>63</sup>

១៦. ថវិកាមានកំណត់ជាសញ្ញាបង្ហាញថា មេធាវីអាចត្រឹមតែទាមទារប្រាក់សំណង សម្រាប់ ការចំណាយដែលកើតមានប៉ុណ្ណោះ ដែលនេះជាទម្រង់នៃការផ្តល់សេវាដោយមិនគិតប្រាក់។ ជាមធ្យមទឹកប្រាក់ពី ៥០ ទៅ ៧០ ដុល្លារអាមេរិកត្រូវបានផ្តល់សម្រាប់មួយសំណុំរឿង។<sup>64</sup> ដំណើរការផ្តល់ប្រាក់មានភាពយឺតយ៉ាវ តម្រូវឱ្យមានការធ្វើដំណើរមកទីក្រុងភ្នំពេញ ហើយ ពេលខ្លះចំណាយនេះមិនអាចទទួលបានការឧបត្ថម្ភឡើយ។<sup>65</sup> មេធាវីបានរាយការណ៍អំពីការ

<sup>61</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 49; Pech Sotheary, “legal aid budget to rise by half”, *Khmer Times*, 30 August 2017, available at <https://www.khmertimeskh.com/5080576/legal-aid-budget-rise-half/> (last visited 4 July 2018); Mech Dara, “Bar chief talks reform”, *The Phnom Penh Post*, 20 January 2017, available at <https://www.phnompenhpost.com/national/bar-chief-talks-reform> (last visited 4 July 2018); Ben Sokhean, “Bar members bemoan low payment for pro bono work”, *The Phnom Penh Post*, 17 October 2017, available at <https://www.phnompenhpost.com/national/bar-members-bemoan-low-payment-pro-bono-work> (last visited 4 July 2018).  
<sup>62</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 72.  
<sup>63</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 47.  
<sup>64</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 48.  
<sup>65</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy*



ប្រើប្រាស់ទឹកប្រាក់ផ្ទាល់ខ្លួនដើម្បីផ្តល់ភាពជាតំណាង បានទាមទារទឹកប្រាក់បន្ថែមពីកូនក្តី ឬ ទទួលយកសំណូកពីភាគីវិវាទ។<sup>66</sup>

១៧. មេធាវីដែលតែងតាំងដោយ គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា ពុំទទួលបានការ ឧបត្ថម្ភដើម្បីផ្តល់ជំនួយផ្នែកច្បាប់នៅក្នុងដំណាក់កាលស៊ើបសួរ និងប្តឹងឧទ្ធរណ៍ឡើយ ឬ ដំណើរការក្តីត្រូវបានពន្យារពេល។<sup>67</sup> គួរកត់សម្គាល់ថា លក្ខខណ្ឌឱ្យមានតំណាងផ្នែកច្បាប់នៅ ក្នុងសំណុំរឿងពាក់ព័ន្ធនឹងបទឧក្រិដ្ឋ ឬអនីតិជនបានដាក់កាតព្វកិច្ចទៅលើតុលាការដើម្បី ធានាថាមានការធ្វើជាតំណាងនៅមុនពេលសវនករចាប់ផ្តើម។ ករណីបានបណ្តាលឱ្យមាន ការស្នើសុំមេធាវីជំនួយផ្នែកច្បាប់នៅពេលសវនករ ដើម្បីឱ្យដំណើរការកាត់ក្តីអាចដំណើរការ ទៅបាន។<sup>68</sup> ដូច្នោះ មេធាវីតែងតែជួបកូនក្តីរបស់ខ្លួនជាលើកដំបូងនៅក្នុងពេលកាត់ក្តីដែល ករណីនេះធ្វើឱ្យមេធាវីមិនអាចត្រៀមខ្លួន ដើម្បីផ្តល់ការការពារប្រកបដោយប្រសិទ្ធភាព ឡើយ។<sup>69</sup>

១៨. គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា បានអំពាវឱ្យមានការផ្តល់ថវិកាច្រើនជាងមុនពីរ ដង ឬបីដង។<sup>70</sup> បើគិតអំពីសំណើរបស់ គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា នៅក្នុងការដាក់ ថ្លៃសេវាចំនួន ១០០ ដុល្លារអាមេរិក ក្នុងមួយសំណុំរឿង នោះគេនឹងត្រូវការទឹកប្រាក់ប្រមាណ ៥០០.០០០ ដុល្លារអាមេរិក ដើម្បីផ្តល់ជំនួយនៅក្នុងសំណុំរឿងតម្រូវដោយច្បាប់ចំនួន ៥.០០០

*recommendations*, Final Draft, June 2018, p. 48.

<sup>66</sup> Ben Sokhean, “Bar members bemoan low payment for pro bono work”, The Phnom Penh Post, 17 October 2017; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 48, 52.

<sup>67</sup> The United Nations Principles and Guidelines on Access to legal aid In Criminal Justice Systems outlines “States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at **all stages of the criminal justice process**” (emphasis added), see UN General Assembly, *United Nations Principles and Guidelines on Access to legal aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 3, para. 20; Ben Sokhean, “Bar members bemoan low payment for pro bono work”, The Phnom Penh Post, 17 October 2017; Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 67.

<sup>68</sup> See “Options for Approaches to legal aid Services Delivery in Cambodia, Prepared for the Council for Legal and Judicial Reform”, Draft Version 1.0, DANIDA, 2011, available at <http://cambodia.ohchr.org/sites/default/files/DANIDA%20Legal%20Aid%20for%20Cambodia%20ENG%20Sept%202011.pdf> (last visited 4 July 2018). However, CCHR noted that out of 340 cases it monitored at the Court of Appeal over 1 year, only one defendant’s lawyer raised the issue of preparation and he had asked the judges to read the facts of the case in order to defend his client. See “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para. 2.1.4, Figure 5, available at [https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights\\_%20ENG\\_.pdf](https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights_%20ENG_.pdf) (last visited 4 July 2018).

<sup>69</sup> “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 8.

<sup>70</sup> Ben Sokhean, “Bar members bemoan low payment for pro bono work”, The Phnom Penh Post, 17 October 2017.

ករណីដោយពុំគិតអំពីបទមជ្ឈិម។<sup>71</sup>

១៩. ដើម្បីបំពេញចំនួនខ្លះខាតនៃថវិកាជំនួយផ្នែកច្បាប់ឧបត្ថម្ភដោយរដ្ឋ មេធាវីឯកជនឥតគិតថ្លៃសេវា និងមេធាវីដែលឧបត្ថម្ភដោយអង្គការមិនមែនរដ្ឋាភិបាល ក៏ផ្តល់ជំនួយផ្នែកច្បាប់ផងដែរ។<sup>72</sup> ទោះបីយ៉ាងណាក៏ដោយ លទ្ធភាពតិចតួច ដែលជាការឆ្លើយតបរបស់ម្ចាស់ជំនួយបាននាំឱ្យមានការកាត់បន្ថយទឹកប្រាក់សម្រាប់អង្គការមិនមែនរដ្ឋាភិបាល សម្រាប់ផ្តល់សេវាជំនួយផ្នែកច្បាប់។<sup>73</sup> នៅក្នុងឆ្នាំ២០១៧ មេធាវីជំនួយផ្នែកច្បាប់ចំនួន ៣៧ នាក់ត្រូវបានជ្រើសរើសដោយអង្គការមិនមែនរដ្ឋាភិបាលចំនួន ១៥ ដែលតិចជាងឆ្នាំ២០០៦ ចំនួន ៥៣%។<sup>74</sup>

**អនុសាសន៍**

- ix. ត្រូវធ្វើការវាយតម្លៃតម្រូវការលម្អិតដើម្បីកំណត់ថវិកាជំនួយផ្នែកច្បាប់ប្រចាំឆ្នាំដែលត្រូវការចាំបាច់តាមរយៈការពិគ្រោះយោបល់ជាមួយភាគីពាក់ព័ន្ធ រួមទាំងសង្គមស៊ីវិល និងផ្តល់ថវិកាជំនួយផ្នែកច្បាប់គ្រប់គ្រាន់ស្របទៅតាមទឹកប្រាក់មូលនិធិរបស់ខ្លួន ដែលអនុញ្ញាតឱ្យមានការផ្តល់ជំនួយផ្នែកច្បាប់ នៅគ្រប់ដំណាក់កាលនៃដំណើរការព្រហ្មទណ្ឌ រួមទាំងដំណាក់កាលស៊ើបសួរ និងប្តឹងឧទ្ធរណ៍ផងដែរ។

**៣.៣. មេធាវី និងសេវាជំនួយផ្នែកច្បាប់នៅមានកម្រិត**

២០. ប្រទេសកម្ពុជាខ្វះខាតមេធាវីជាទូទៅ និងមេធាវីជំនួយផ្នែកច្បាប់មួយចំនួន។<sup>75</sup> នៅឆ្នាំ២០១៧ ប្រទេសកម្ពុជាមានមេធាវីចុះបញ្ជីចំនួន ១០១៩ នាក់<sup>76</sup> ដែលស្មើនឹងមេធាវីចំនួន ៦នាក់

<sup>71</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 72.  
<sup>72</sup> See “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, International Commission of Jurists (ICJ), October 2017, p. 22, available at <http://www.refworld.org/pdfid/5a212f144.pdf> (last visited 4 July 2018).  
<sup>73</sup> Due to the lack of a state-based legal aid strategy, donors are discouraged from providing funding for legal aid. As a result of limited donor funding, numerous NGOs have collapsed or reduced their geographical and thematic scope, focusing on particular interest areas rather than general legal aid, see “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, ICJ, October 2017, p. 23; Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 51; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 47.  
<sup>74</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, pp. 51, 59.  
<sup>75</sup> Reports are made that admission to the BAKC is not consistently based on qualifications, but rather on bribery or political affiliation. Admission to the BAKC often relies on payment of bribes, ranging from US\$20,000 to US\$50,000, plus fees associated with law school. This artificially restricts the number of lawyers practicing in Cambodia, see “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, ICJ, October 2017, p. 19; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, pp. 40, 49-50.  
<sup>76</sup> CEDAW, *Sixth periodic report submitted by Cambodia under article 18 of the Convention, due in 2017*, 12

នៅក្នុងចំណោមប្រជាជនចំនួន ១០០.០០០ នាក់ បើប្រៀបធៀបនឹងមេធាវីចំនួន ៨៥ នាក់ក្នុង ចំណោមប្រជាជនចំនួន ១០០.០០០ នាក់នៅសហភាពអឺរ៉ុប។<sup>77</sup> ក្នុងចំនួនទាំងនេះ មេធាវីត្រឹម តែ ៩៨ នាក់ប៉ុណ្ណោះដែលបានចុះបញ្ជីដើម្បីផ្តល់ជំនួយផ្នែកច្បាប់តាមរយៈគណៈមេធាវីនៃព្រះ រាជាណាចក្រកម្ពុជា<sup>78</sup> ដែលសរុបទៅមានមេធាវីជំនួយផ្នែកច្បាប់តែម្នាក់ប៉ុណ្ណោះនៅក្នុង ចំណោមប្រជាជនចំនួន ១៦៣.៣២០ នាក់។<sup>79</sup> កង្វះខាតនេះកាន់តែធ្ងន់ធ្ងរនៅពេលមេធាវីមួយ ចំនួនតូចប៉ុណ្ណោះដែលមានឆន្ទៈ និងមិនព្រមទៅប្រកបការងារផ្នែកផ្សេងដែលអាចរកប្រាក់ បានច្រើនជាងការផ្តល់សេវាក្នុងនាមជាមេធាវីជំនួយផ្នែកច្បាប់។<sup>80</sup> ចំនួនមេធាវីមានកម្រិតកើន ឡើងជាទូទៅនៅក្រៅតំបន់ទីក្រុងភ្នំពេញ<sup>81</sup> ដែលប៉ះពាល់មិនស្មើភាពទៅលើពលរដ្ឋដែលរស់ នៅតាមសហគមន៍ជនបទ និងជាចម្រុះយាលជាពិសេសស្ត្រី<sup>82</sup> និងក្រុមដែលមិនត្រូវបានគេ យកចិត្តទុកដាក់។

២១. ភាពទន់ខ្សោយនៃប្រព័ន្ធជំនួយផ្នែកច្បាប់គួបផ្សំនឹងកង្វះព័ត៌មានអំពីសេវាជំនួយផ្នែក ច្បាប់<sup>83</sup> និងកង្វះឯករាជ្យភាពនៃប្រព័ន្ធយុត្តិធម៌<sup>84</sup> ជាកត្តារួមចំណែកធ្វើឱ្យបាត់បង់ទំនុកចិត្តជា ទូទៅនៅក្នុងចំណោមសាធារណៈជនកម្ពុជាមកលើប្រព័ន្ធយុត្តិធម៌ និងមេធាវីជំនួយផ្នែកច្បាប់ ដែលជ្រើសតាំងដោយគណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា ។<sup>85</sup>

June 2018, UN Doc. CEDAW/C/KHM/6, Annex, table 27, p. 8, available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/INT\\_CEDAW\\_ADR\\_KHM\\_31420\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/INT_CEDAW_ADR_KHM_31420_E.pdf) (last visited 4 July 2018).

<sup>77</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 76.

<sup>78</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 51.

<sup>79</sup> Based on a population of 16,005,373 people in 2017, In “Population, total”, The World Bank, available at <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KH> (last visited 4 July 2018).

<sup>80</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 52.

<sup>81</sup> See UN Human Rights Committee, “Concluding observations on the second periodic report of Cambodia”, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 17, available at <https://bit.ly/2HU0yBy> (last accessed 17 June 2018); “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 65; Kai Hauerstein, “Assessment Report: Assessing the provision of legal aid and proposing policy recommendations”, Final Draft, June 2018, p. 72.

<sup>82</sup> See below Section 5.5, “Women Continue to be Disproportionately Affected”; Of Cambodia’s 1019 registered lawyers in 2017, only 206 (20%) were women, further compounding the challenges faced by women in accessing justice see “Sixth periodic report submitted by Cambodia under article 18 of the Convention, due in 2017”, UN Doc. CEDAW/C/KHM/6 12 June 2018, para. 216, p. 35, available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/CEDAW\\_C\\_KHM\\_6\\_7162\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/CEDAW_C_KHM_6_7162_E.pdf) (last visited 4 July 2018).

<sup>83</sup> See below Section 4, “Access to Legal Information”; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 47.

<sup>84</sup> See above Section 2: “Independence and Impartiality of the Judiciary.”

<sup>85</sup> “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 8; See Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 73.

២២. សរុបមក ប្រព័ន្ធជំនួយផ្នែកច្បាប់ដែលពុំគ្រប់គ្រាន់បានរួមចំណែកធ្វើឱ្យមានការធ្វើជា តំណាងមិនគ្រប់គ្រាន់ជាលក្ខណៈប្រព័ន្ធ ជាពិសេសសម្រាប់សំណុំរឿងពាក់ព័ន្ធនឹងបទមជ្ឈិម និងសំណុំរឿងទាំងឡាយដែលកើតឡើងនៅក្រៅទីក្រុងភ្នំពេញ។ ពេលខ្លះមេធាវីដែល គណៈ មេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា បានជ្រើសតាំងពុំមានវគ្គមាននៅក្នុងតុលាការឡើយ ជា ពិសេសសម្រាប់ករណីនៅតាមបណ្តាខេត្ត ដោយសារមេធាវីទាំងនោះមានមូលដ្ឋាននៅទីក្រុង ភ្នំពេញ ហើយតម្រូវឱ្យមានការធ្វើដំណើរឆ្ងាយ។<sup>86</sup> ទោះបីការតាមដានបង្ហាញថា ចុងចោទ បណ្តឹងភាគច្រើននៅចំពោះមុខសាលាឧទ្ធរណ៍ត្រូវបានតំណាងដោយមេធាវីក៏ដោយ<sup>87</sup> ក៏ពុំ មានព័ត៌មានអំពីថាតើមេធាវីទាំងនោះជាមេធាវីជំនួយផ្នែកច្បាប់ឡើយ។ ជាងនេះទៅទៀត អត្រាតំណាងផ្នែកច្បាប់នៅសាលាឧទ្ធរណ៍ដែលមានទីតាំងនៅទីក្រុងភ្នំពេញ មានកម្រិតខ្ពស់ ជាងតុលាការនៅតាមបណ្តាខេត្ត។<sup>88</sup>

២៣. លើសពីនេះទៅទៀត ទាំងក្រសួងយុត្តិធម៌ និង គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា ពុំ បានបង្កើតប្រព័ន្ធគ្រប់គ្រងគុណភាពឡើយ។<sup>89</sup> ជាមធ្យម មេធាវីដែល គណៈមេធាវីនៃព្រះរាជា ណាចក្រកម្ពុជា បានជ្រើសតាំងធ្វើការដោះស្រាយសំណុំរឿងចំនួនពី ១០ ទៅ ១៥ ករណីក្នុង មួយខែ ចំណែកមេធាវីអង្គការមិនមែនរដ្ឋាភិបាលដោះស្រាយបានចំនួន ៣ ករណីក្នុងមួយ ខែ។<sup>90</sup> ជាទូទៅ មេធាវី គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា មានវ័យក្មេង ពុំមានបទ ពិសោធន៍ និងកំពុងស្វែងរកការសាកល្បង ប៉ុន្តែធ្វើការដោះស្រាយសំណុំរឿងធំៗពាក់ព័ន្ធនឹង បទឧក្រិដ្ឋ ឬអនីតិជន។<sup>91</sup>

២៤. ស្របពេលដែលពុំមានភាពជាតំណាងគ្រប់គ្រាន់ គេក៏សង្កេតឃើញថាពុំមានដំណើរការ ផ្តល់លទ្ធភាពឱ្យទទួលបានសំណងសមរម្យនោះដែរ នៅពេលដែលសិទ្ធិទទួលបានជំនួយផ្នែក

<sup>86</sup> “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 48.  
<sup>87</sup> Of 558 defendants involved in monitored cases at the Court of Appeal between November 2016 and October 2017, 439 (79%) were represented by a lawyer. Of these, 6 were charged with a felony for which representation is mandatory. See “Fair Trial Rights in Cambodia: Monitoring at the Court of Appeal”, CCHR, June 2018, p. 37.  
<sup>88</sup> See for example, “Fair Trial Rights in Cambodia”, Sixth Bi-annual Report, CCHR, December 2013, p. 29, available at [http://sithi.org/tmp/admin/article/files/CCHR\\_Sixth%20Bi-annual%20Reports%20on%20Fair%20Trial%20Rights\\_December\\_2013\(English\).pdf](http://sithi.org/tmp/admin/article/files/CCHR_Sixth%20Bi-annual%20Reports%20on%20Fair%20Trial%20Rights_December_2013(English).pdf) (last visited 4 July 2018); “Fair Trial Rights in Cambodia”, Fifth Bi-annual Report, CCHR, November 2012, p. 33, available at [http://sithi.org/tmp/admin/article/files/2012\\_11\\_15\\_CCHR\\_TMP\\_5th\\_Bi-annual\\_Report%20 Eng.pdf](http://sithi.org/tmp/admin/article/files/2012_11_15_CCHR_TMP_5th_Bi-annual_Report%20Eng.pdf) (last visited 4 July 2018).  
<sup>89</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 77.  
<sup>90</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 53.  
<sup>91</sup> Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 77.

ច្បាប់ ឬសិទ្ធិទទួលបានការការពារប្រកបដោយប្រសិទ្ធភាពត្រូវបានបំពាននោះ។

២៥. ទោះបីជំនួយការមេធាវី ការិយាល័យមេធាវី ឬស្ថាប័នផ្សេងៗទៀតអាចដើរតួនាទីសំខាន់ នៅក្នុងការផ្តល់ជំនួយផ្នែកច្បាប់ក៏ដោយ ប៉ុន្តែច្បាប់ស្តីពីគណៈមេធាវីចែងថា មានតែមេធាវី ដែលបានចុះបញ្ជីប៉ុណ្ណោះដែលអាចផ្តល់សេវាពិគ្រោះយោបល់ផ្នែកច្បាប់ ដែលត្រូវបានប្រើ ប្រាស់ជាមូលដ្ឋានដើម្បីរឹតបន្តឹងការចូលរួមចំណែករបស់មេធាវីទាំងនោះ នៅក្នុងការផ្តល់ ជំនួយផ្នែកច្បាប់។<sup>92</sup>

**អនុសាសន៍៖**

- x. ត្រូវបង្កើនចំនួនមេធាវីចុះបញ្ជីជារៀងរាល់ឆ្នាំនៅ គណៈមេធាវីនៃព្រះរាជាណាចក្រកម្ពុជា ស្របទៅតាមតម្រូវការជាក់ស្តែងរបស់ប្រទេសហើយ ដែលធានាថា ការស៊ើសំណួរ និង សម្ភារៈភាពនយោបាយពុំរឹតបន្តឹងទៅលើការទទួលយកមេធាវីឡើយ។
- xi. ត្រូវធ្វើវិសោធនកម្មមាត្រា ៤ នៃច្បាប់ស្តីពីគណៈមេធាវីដើម្បីអនុញ្ញាតឱ្យជំនួយការមេធាវី ផ្តល់សេវាជំនួយផ្នែកច្បាប់ និងធ្វើឱ្យមានលក្ខណៈផ្លូវការនូវតួនាទី និងលក្ខខណ្ឌបណ្តុះ បណ្តាលជំនួយការមេធាវីនៅត្រីមឆ្នាំ២០២០។
- xii. នៅត្រីមឆ្នាំ២០២០ ត្រូវចែងនៅក្នុងច្បាប់អំពីដំណើរការផ្តល់លទ្ធភាពទទួលបានសំណង នៅពេលដែលសិទ្ធិទទួលបានជំនួយផ្នែកច្បាប់ ត្រូវបានរំលោភបំពាននៅត្រីមឆ្នាំ ២០២០។

**៤. ការទទួលបានព័ត៌មានផ្នែកច្បាប់**

២៦. រាជរដ្ឋាភិបាលកម្ពុជាបានទទួលស្គាល់សិទ្ធិទទួលបានព័ត៌មានអំពីច្បាប់ជាបុរេលក្ខខណ្ឌ មូលដ្ឋានសម្រាប់ដំណើរការនីតិវិធីត្រឹមត្រូវ<sup>93</sup> ដូចមានចែងនៅក្នុងអនុសាសន៍ខាងដើមនៅ

<sup>92</sup> Article 3 of the *Law on the Bar* determines “The lawyer may advise and prepare documents in the judicial field. The lawyer may be assigned by the parties or the judge to fulfill the function of conciliator or mediator. The lawyer may be assigned as an arbitrator only where permitted by the law” and Article 4 determines “Apart from those lawyers who are members of the Bar Association, no one may perform this profession or provide legal consultation or prepare judicial documents for compensation, except when such legal consultation or preparation of documents is an ancillary job to their profession or is a function permitted by the law” see *Law on the Bar*, 1995, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_50.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf) [unofficial translation in English (last visited 2 July 2018)].

<sup>93</sup> Although there is no global consensus on the universality of the right of public access to legal information, it remains one of the basic principles of the rule of law: see Leesi Ebenezer Mitee, “The Right of Public Access to Legal Information: A Proposal for its Universal Recognition as a Human Right”, *German Law Journal*, Vol. 18 No. 06, 2017, [https://static1.squarespace.com/static/56330ad3e4b0733dccc0c8495/t/5a088d8c41920291507b818c/1510509965/672/05\\_Vol\\_18\\_No\\_06A\\_Mitee.pdf](https://static1.squarespace.com/static/56330ad3e4b0733dccc0c8495/t/5a088d8c41920291507b818c/1510509965/672/05_Vol_18_No_06A_Mitee.pdf) (last visited 29 June 2018); Maeve McDonagh, “The Right to Information in International Human Rights Law”, Oxford University Press, 20 February 2013, available at

ក្នុងរដ្ឋ ការត្រួតពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់លើកទី 2<sup>94</sup> នៅក្នុងផែនការយុទ្ធសាស្ត្រជាតិ២០១៤-២០១៨ របស់ខ្លួនដោយកំណត់អាទិភាពទៅលើ “ការលើកកម្ពស់ការទទួលបានព័ត៌មានអំពីប្រព័ន្ធតុលាការ”<sup>95</sup> និងពង្រឹងច្បាប់ខែមករា ឆ្នាំ២០១៨ របស់ខ្លួនអំពីការទទួលបានព័ត៌មាន។<sup>96</sup> ទោះជាយ៉ាងនេះក្តីការទទួលបានព័ត៌មានផ្នែកច្បាប់ និងយុត្តិសាស្ត្រក្នុងប្រទេសកម្ពុជានៅតែមានកម្រិត មិនទៀងទាត់ យឺតយ៉ាវ និងវិមជ្ឈការ ដូច្នោះ ករណីនេះជាឧបសគ្គចំពោះនីតិវដ្តប្រកបដោយប្រសិទ្ធភាព។

**៤.១. ការទទួលបានឯកសារច្បាប់ និងបទប្បញ្ញត្តិនៅមានកម្រិត និងមិនទូទៅ**

២៧. ដោយអនុវត្តតាមអនុសាសន៍មុន<sup>97</sup> សេចក្តីព្រាងច្បាប់ខែមករា ឆ្នាំ២០១៨ របស់រាជរដ្ឋាភិបាលកម្ពុជា ស្តីពីការទទួលបានព័ត៌មាន<sup>98</sup> ទទួលស្គាល់ថា រដ្ឋមានកាតព្វកិច្ចនៅក្នុងការធ្វើ

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<http://www.corteidh.or.cr/tablas/r30698.pdf> (last visited 29 June 2018). Under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), the public has the “freedom to seek, receive and impart information and ideas of all kinds”, which include to access laws passed by their government, while General Comment n°34, which interprets that article, specifically notes that the public has “a right of access to information held by public bodies”: see *ICCPR General Comment*, 12 September 2011, UN Doc. CCPR/C/GC/34 para. 18, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (last visited 29 June 2018). Cambodia is a signatory to the ICCPR, and the ICCPR applies to Cambodian laws through its Constitution: see Article 31: *The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights.* Everyone must be accountable to laws that are publicly promulgated and consistent with international human rights standards. This obligation to provide access to information was highlighted by the UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, developing that “All persons, institutions and entities must be accountable to publicly promulgated, independently adjudicated laws which are consistent with international human rights standards.”, *In UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, para. 11, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22819&LangID=E> (last visited 29 May 2018).*

<sup>94</sup> See **Annex 2**. recommendation 118.91: “Continue its efforts to enhance the rule of law as enshrined in its Constitution” (Singapore); recommendation 118.27: “Give continuity to legislative and institutional reforms for the promotion and protection of human rights” (Nepal). See also recommendation 118.64: “Increase the awareness-raising campaign on the rights of women and children, involving journalists and media professionals as one of its focus groups” (Italy).

<sup>95</sup> RGC, National Strategic Development Plan, 2014-2018, para. 2.16, available at [http://cdc-crdb.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 1 May 2018).

<sup>96</sup> Draft released by the Ministry of Information with the collaboration of UNESCO, which is currently being publicly discussed. Draft of the *Law on Access to Information*, Ministry of Information, Website, available at [http://www.a2i.info.gov.kh/html/law\\_eng.php](http://www.a2i.info.gov.kh/html/law_eng.php) (last visited 6 June 2018).

<sup>97</sup> See **Annex 2**. recommendation 118.17: “Establish a law on freedom of information in accordance with international standards” (Belgium); recommendation 118.18: “Adopt legislative and other measures that promote the enjoyment of freedom of expression” (Belgium).

<sup>98</sup> Draft released by the Ministry of Information with the collaboration of UNESCO, which is currently being publicly discussed. Draft of the *Law on Access to Information*, Ministry of Information, Website, available at [http://www.a2i.info.gov.kh/html/law\\_eng.php](http://www.a2i.info.gov.kh/html/law_eng.php) (last visited 4 July 2018). See recommendation 118.17 (accepted by Cambodia): “Establish a law on freedom of information in accordance with international standards” *In Report of the Working Group on the Universal Periodic Review: Cambodia*, recommendation 118.17 (Belgium), 27 March 2014, UN Doc. A/HRC/26/16, available at <https://documents-dds->

បច្ចុប្បន្នភាព និងផ្សព្វផ្សាយព័ត៌មានអំពី “ច្បាប់ បទប្បញ្ញត្តិ គោលនយោបាយ សេចក្តីសម្រេច និងកាតព្វកិច្ចរបស់ស្ថាប័នសាធារណៈពាក់ព័ន្ធនឹងសិទ្ធិ សេរីភាព កាតព្វកិច្ច និងផលប្រយោជន៍សាធារណៈ”។<sup>99</sup> ទោះបីយ៉ាងណា ស្របពេលនោះ ស្ថាប័នសាធារណៈត្រូវបានផ្តល់ឆន្ទានុសិទ្ធិនៅក្នុងការ “កាត់បន្ថយ ឬពន្យារពេលក្នុងការ [បញ្ចេញ] ព័ត៌មានសម្ងាត់មួយផ្នែក ឬទាំងស្រុង” ក្នុងរយៈពេលរហូតដល់ ២៥ ឆ្នាំ នៅក្នុងកាលៈទេសៈជាច្រើន។<sup>100</sup> ខ្លឹមសារនេះមានលក្ខណៈមិនច្បាស់លាស់ ដែលមិនស្របតាមលក្ខខណ្ឌតូចចង្អៀតនៃច្បាប់អន្តរជាតិឡើយ។<sup>101</sup>

២៨. នៅក្នុងការអនុវត្តជាក់ស្តែង រាជរដ្ឋាភិបាលកម្ពុជាខ្វះវិធីសាស្ត្ររួមនៅក្នុងការផ្តល់ព័ត៌មានអំពីច្បាប់។ ព័ត៌មានមានកម្រិតដែលត្រូវបានផ្សព្វផ្សាយ ត្រូវបានបញ្ជូនយ៉ាងទូលំទូលាយនៅលើគេហទំព័រ<sup>102</sup> និងទំព័រហ្វេសប៊ុកជាច្រើន<sup>103</sup> របស់រាជរដ្ឋាភិបាលកម្ពុជា។ ឧទាហរណ៍ ទំព័រ

[ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement](http://ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement) (last visited 4 July 2018).

<sup>99</sup> Article 6 of the *Draft Law on Access to Information*: “All public institutions shall abide by the principle of maximum disclosure. Forward this end, they shall regularly update and broadly disseminate information about action plans, budgeting, fulfillment of tasks, responsibilities, and other decisions in connection with national and public interests such as: (...) d) Laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests.”

<sup>100</sup> Article 21 of the *Draft Law on Access to Information* says this discretionary power is between “7 (seven) days to 1 (one) year from the date of issuance, for documents related to secret internal meetings of public institutions, secret appointments, and other secret examinations.” (para 1) and “25 (Twenty-five) years from the date of issuance or the date on which a matter has been settled, for documents related to national defense and security matters, diplomatic relations, public orders, economy, technology, civil status books, notarial letters, and court cases.” (para 2).

<sup>101</sup> “The State party had an obligation either to provide the author with the requested information or to justify any restrictions of the right to receive State-held information under article 19, paragraph 3, of the Covenant, which allows certain restrictions but only as provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.” In UN Human Rights Committee, *Toktakunov v. Kyrgyzstan*, 21 April 2011, UN Doc. CCPR/C/101/D/1470/2006, available at [http://www.worldcourts.com/hrc/eng/decisions/2011.03.28\\_Toktakunov\\_v\\_Kyrgyzstan.pdf](http://www.worldcourts.com/hrc/eng/decisions/2011.03.28_Toktakunov_v_Kyrgyzstan.pdf) (last visited 4 July 2018).

<sup>102</sup> See: RGC, “Ministry of Education, Youth and Sport”, Website, available at <http://www.moeys.gov.kh/en/home.html> (last visited 4 July 2018); RGC, “Ministry of Commerce”, Website, available at <https://www.moc.gov.kh/en-us/> (last visited 4 July 2018); National Assembly, “រដ្ឋសភា នៃព្រះរាជាណាចក្រកម្ពុជា”, Website, available at <http://www.national-assembly.org.kh/> (last visited 4 July 2018) And also National Assembly, “National Assembly Of Cambodia”, Website, available at <https://www.facebook.com/CambodiaAssembly/> (last visited 4 July 2018).

<sup>103</sup> In Cambodia, social medias, in particular Facebook, remains important for the Cambodian social life. In 2015, Internet and Facebook have surpassed TV to become Cambodians’ most important source of news about Cambodia, and the importance that the users give to Internet is increasing every year: see Kimchhoy Phong, Lihol Srou, & Javier Solá, “Research Study on Mobile Phones and Internet Use in Cambodia 2016”, USAID, Development Innovations, The Asia Foundation & Open Institute, December 2016, available at [http://www.open.org.kh/research/phones\\_2016.pdf](http://www.open.org.kh/research/phones_2016.pdf) (last visited 4 July 2018).; “Internet passes TV as Go-To news source”, The Cambodia Daily, 16 December 2016, available at <https://www.cambodiadaily.com/news/internet-passes-tv-go-news-source-122055/> (last visited 4 July 2018).

ហ្វេសប៊ុករាជកិច្ច<sup>104</sup> ដែលជាបណ្តាញទំនងជាផ្លូវការសម្រាប់ផ្សព្វផ្សាយតាមអ៊ីនធឺណិតនូវ ព្រះរាជក្រឹត្យ អនុក្រឹត្យ សេចក្តីប្រកាស សេចក្តីសម្រេច និងសារាចរណ៍ណែនាំមួយចំនួនពី ខុទ្ទកាល័យមហាក្សត្រ រដ្ឋាភិបាល និងក្រសួងនានា។<sup>105</sup>

២៩. កិច្ចខិតខំប្រឹងប្រែងរបស់រាជរដ្ឋាភិបាលកម្ពុជានៅក្នុងការបង្កើនការយល់ដឹងផ្នែកច្បាប់ របស់ខ្លួននៅតែមានកម្រិត។ ក្រសួងយុត្តិធម៌ដែលទទួលខុសត្រូវ<sup>106</sup> ក្នុងការ “ផ្សព្វផ្សាយ ចំណេះដឹងអំពីច្បាប់ និងនីតិវិធីដល់ប្រជាជន និងផ្តល់ការបណ្តុះបណ្តាលអំពីច្បាប់ដើម្បីលើក កម្ពស់ការយល់ដឹង និងការអនុវត្តសម្រាប់មន្ត្រីអនុវត្តច្បាប់”<sup>107</sup> រហូតមកដល់ពេលនេះបាន ផលិតវីដេអូបណ្តុះបណ្តាលបណ្តោះអាសន្នតែមួយចំនួនតូចនៅលើយូធូបតែប៉ុណ្ណោះ<sup>108</sup>។ ជាងនេះទៅទៀត នៅពេលសន្យា ការបណ្តុះបណ្តាលទាំងនេះសំដៅទៅលើមន្ត្រីប៉ុណ្ណោះ គឺមិនមែនប្រជាពលរដ្ឋទូទៅឡើយ។<sup>109</sup>

៣០. ភាគីទីបីបានខិតខំបំពេញចន្លោះខ្វះខាតព័ត៌មាន។ កិច្ចខិតខំប្រឹងប្រែងទាំងនេះរួមមាន ការព្យាយាមនៅក្នុងការជួយរដ្ឋាភិបាលដើម្បីកសាងប្រព័ន្ធទិន្នន័យច្បាប់មួយដែលមិនត្រូវបាន ជោគជ័យនៅឡើយ គឺវេទិកាព័ត៌មានដែលផ្តួចផ្តើមឡើងដោយអង្គការសង្គមស៊ីវិល (“អង្គការ សង្គមស៊ីវិល”)<sup>110</sup> ការអនុវត្តរបស់អ្នកប្រកបវិជ្ជាជីវៈច្បាប់ និងមន្ត្រីរាជការនៅក្នុងការចែករំលែក

<sup>104</sup> Mech Dara & Shaun Turton, “Royal Gazette to move online”, The Phnom Penh Post, 2 February 2017, available at <https://www.phnompenhpost.com/national/royal-gazette-move-online> (last visited 4 July 2018).

<sup>105</sup> “អគ្គនាយកដ្ឋាន រាជកិច្ចនិងសេវាកុំព្យូទ័រ”, General Department - Official Gazette & Computer Service, Facebook page, available at <https://bit.ly/2sY1JKR> (last visited 4 July 2018).

<sup>106</sup> The National Strategic Plan for 2014-2018 aims to “*Improve institutional capacity and governance at both national and sub-national levels and ensuring effectiveness and efficiency of public services to better serve the people*” by “*achiev[ing] a credible and stable legal and judicial system that promoted human rights and dignity, strengthened the rule-of-law principle of a liberal democracy, ensured social justice*”; see Royal Government of Cambodia, National Strategic Development Plan, 2014-2018, paras. 1.9, 2.11, available at [http://cdc-crdp.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdp.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 4 July 2018).

<sup>107</sup> RGC, National Strategic Development Plan, 2014-2018, para. 2.11, available at [http://cdc-crdp.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdp.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 4 July 2018).

<sup>108</sup> RGC, National Strategic Development Plan, 2014-2018, para. 2.17, available at [http://cdc-crdp.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdp.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 4 July 2018).

The broadcasts are approximately 30 minutes long per video and explain various laws. They are available on YouTube and were uploaded by interested citizens rather than the government. They are easy to find but have not been updated recently. *Example video:* Kimdo Dara, “1/ ការរៀបចំបង្កើតក្រមនីតិវិធីព្រហ្មទណ្ឌ និង នគរបាលយុត្តិធម៌”, YouTube, available at <https://www.youtube.com/watch?v=dLKjqfNtdQE&list=PL48iwV2gkPaf2F5OvliQE65ZiDyZkApda> (last visited 4 July 2018).

<sup>109</sup> “*For developing, strengthening, and training human resources, MOJ focused on improving law and court service delivery by providing 39 trainings on fundamental laws, laws related to protect women and children, and other skills to judges, prosecutors, court clerks, justice officers and officials, in both capital and provinces*”, In RGC, National Strategic Development Plan, 2014-2018, para. 2.19, available at [http://cdc-crdp.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdp.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 4 July 2018).

<sup>110</sup> *Examples* “Sithi.org”, Website, CCHR, available at <http://www.sithi.org/> (last visited 4 July 2018);



ច្បាប់ និងបទប្បញ្ញត្តិថ្មីៗនៅលើទំព័រហ្វេសប៊ុក ការបង្កើតឯកសារច្បាប់<sup>111</sup> និងការបណ្តុះបណ្តាលជាញឹកញាប់ដែលដឹកនាំដោយអង្គការអន្តរជាតិ ឬអង្គការសង្គមស៊ីវិល។ ទោះជាយ៉ាងនេះក្តី កង្វះខាតព័ត៌មានអំពីច្បាប់នៅតែធ្វើឱ្យប្រជាពលរដ្ឋទូទៅទទួលរងគ្រោះយ៉ាងធ្ងន់ធ្ងរ។ ឧទាហរណ៍ ពលរដ្ឋបានរាយការណ៍អំពីផលវិបាកនៅក្នុងការកំណត់ថាតើច្បាប់អ្វីខ្លះដែលពាក់ព័ន្ធនឹងជម្លោះដីធ្លី<sup>112</sup> និងសំណុំរឿងពាក់ព័ន្ធនឹងស្ត្រី<sup>113</sup> និងអ្នកស្រឡាញ់ភេទដូចគ្នា។<sup>114</sup>

៣១. ជំហានទីមួយនៅក្នុងការអនុញ្ញាតឱ្យពលរដ្ឋទទួលបានសិទ្ធិស្របច្បាប់របស់ខ្លួនដោយត្រឹមត្រូវ គឺត្រូវផ្សព្វផ្សាយអំពីចំណេះដឹង និងព័ត៌មានអំពីច្បាប់តាមរយៈប្រព័ន្ធទិន្នន័យច្បាប់គ្រប់ជ្រុងជ្រោយ សាមញ្ញ ឥតគិតថ្លៃ និងងាយស្រួលប្រើប្រាស់ដែលមាននូវច្បាប់<sup>115</sup> និងយុត្តិសាស្ត្រ។ ជាពិសេស ការអនុវត្តនេះនឹងជួយលើកកម្ពស់ការទទួលបានយុត្តិធម៌សម្រាប់សហគមន៍ងាយរងគ្រោះតាមរយៈការកាត់បន្ថយតម្រូវការបង់ប្រាក់ជូនអ្នកជំនាញ ឬបង់ថ្លៃធ្វើដំណើរដែលមិនចាំបាច់ និងគោរពតាមគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.១០ ដែលផ្តោតទៅលើការទទួលបានព័ត៌មាន។<sup>116</sup>

“Chbab.net”, Website, Destination Justice, available at <http://www.chbab.net/> (last visited 4 July 2018); “Open Development Cambodia”, Website, available at <https://opendevelopmentcambodia.net/database/laws-policies-and-agreements> (last visited 4 July 2018).

<sup>111</sup> For example, Hor Peng, Kuong Teilee, Prom Rodolphe, Renoux Thierry-Serge & Taing Ratana, *Annotated Constitution of the Kingdom of Cambodia*, ed. 1, Destination Justice, 2017.

<sup>112</sup> The 2015 NGO Forum on Cambodia study looks at land disputes in selected operation areas, with 382 people surveyed using Simple Random Sample. It reveals that 52.1% of respondents “aware of their right to have a friend, lawyer or NGO/CBO representative assist him/her in the reconciliation process.” In Dr. Hean Sokhom, “A Study on Land Disputes in Four Provinces of Cambodia: Mapping, Impacts, and Possible Solutions”, The NGO Forum on Cambodia, Land Security Project, November 2015, pp. iv-v, available at <http://ngoforum.org.kh/files/5308155d9421e8c8436b13d783eef490-Report--Study-on-Land-Disputes-in-Four-Provinces-of-Cambodia-Eng.pdf> (last visited 4 July 2018).

<sup>113</sup> “In Cambodia today, women are often unaware of their fundamental rights and lack the means to assert them. Families of women survivors and their communities are frequently unresponsive to safeguard those rights. Stakeholders are not sufficiently coordinated to respond adequately to violence while important gaps in implementation of related policies and laws still remain.” In Dr. Dagmar Baer & Mr. Rodrigo Montero Cano, “Access To Justice for Women Programme”, GIZ Cambodia, March 2015, available at <https://phnom-penh.diplo.de/blob/1266218/2d3302aa4313018f4f454a6f2065db47/fs-access-to-justice-data.pdf> (last visited 4 July 2018).

<sup>114</sup> “The Social Exclusion Report asked if LGBT respondents had heard of certain national laws and policies. The laws on child rights were known to 72 percent of respondents, followed by labour laws (known to 62 percent), divorce, anti-human trafficking and the Commune Safety Policy (known to 59, 57 and 47 percent respectively).” In “Being LGBTIQ in Asia: Cambodia Country Report”, UNDP, USAID, 2014, p. 36, available at [http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv\\_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf](http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2014-blia-cambodia-country-report.pdf) (last visited 4 July 2018).

<sup>115</sup> Legislation would include the Constitution, laws (Chbab), Royal decrees (Preah Reach Kret), sub-decrees (Anu-Kret), proclamations (Prakas), decisions (Sech Kdei Samrach), circulars (Sarachor), Bylaw (Deika), and also International Conventions ratified by Cambodia.

<sup>116</sup> “Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with

**អនុសាសន៍**

- xiii. ត្រូវអនុម័ត និងធានាថា ច្បាប់ស្តីពីការទទួលបានព័ត៌មានការពារប្រកបដោយប្រសិទ្ធភាពនូវសិទ្ធិក្នុងការទទួលបានព័ត៌មានអំពីច្បាប់ ដោយគោរពឱ្យបានពេញលេញនូវកាតព្វកិច្ចសិទ្ធិមនុស្សអន្តរជាតិរបស់ប្រទេសកម្ពុជា និងស្របតាមគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.១០.០២។
- xiv. បង្កើតប្រព័ន្ធទិន្នន័យព័ត៌មានអំពីច្បាប់ផ្លូវការឥតគិតថ្លៃអាចទទួលបាន និងជាព័ត៌មានថ្មីៗ ដែលរួមមានដូចជាច្បាប់ អនុក្រឹត្យ ព្រះរាជក្រឹត្យ សារាចរណ៍ណែនាំ និងបទប្បញ្ញត្តិនានានៅក្នុងប្រទេសកម្ពុជានៅត្រឹមឆ្នាំ២០២១។

**៤.២. ការទទួលបានព័ត៌មាន និងសេចក្តីសម្រេចនានានៃប្រព័ន្ធតុលាការត្រូវបានរឹតត្បិតយ៉ាងខ្លាំង**

៣២. ផែនការយុទ្ធសាស្ត្រជាតិរបស់រាជរដ្ឋាភិបាលកម្ពុជាសម្រាប់ឆ្នាំ២០១៤-២០១៨ មានគោលដៅ “ដាក់ឱ្យប្រើប្រាស់នូវទិន្នន័យចុះបញ្ជីតុលាការតាមប្រព័ន្ធព័ត៌មាន” និង “លើកកម្ពស់ការទទួលបានព័ត៌មានអំពីប្រព័ន្ធតុលាការ រួមទាំងសេចក្តីសម្រេច និងដំណើរការក្តីរបស់តុលាការរបាយការណ៍រដ្ឋបាល និងព័ត៌មានរដ្ឋបាលជាទៀងទាត់ពាក់ព័ន្ធនឹងសំណុំរឿងមិនទាន់ដោះស្រាយ ដែលរួមមានព័ត៌មានអំពីស្ថានភាព និងការកំណត់ពេលវេលាជាដើម”។<sup>117</sup> ប៉ុន្តែនៅក្នុងការអនុវត្ត ទោះបីមានកិច្ចខិតខំប្រឹងប្រែងមួយចំនួន ឧទាហរណ៍ដើម្បីផ្តល់ដំណឹងអំពីការកំណត់ពេលវេលាសវនាការជាដើមអាចទទួលបាន តែព័ត៌មានសំខាន់ៗ ជាពិសេស សេចក្តីសម្រេចរបស់តុលាការ នៅតែមានមិនទាន់ទទួលបានទូលំទូលាយនៅឡើយ។

៣៣. ទោះបីក្រុមប្រឹក្សាធម្មនុញ្ញធ្វើការផ្សព្វផ្សាយជាទៀងទាត់អំពីសេចក្តីសម្រេចរបស់ខ្លួនក៏ដោយ<sup>118</sup> តែព័ត៌មានពាក់ព័ន្ធនឹងសេចក្តីសម្រេចមករបស់តុលាការពុំអាចត្រូវបានស្វែងរកបានឡើយ។ កង្វះការទទួលបានព័ត៌មាននេះធ្វើឱ្យការអនុវត្តសេចក្តីសម្រេចតុលាការមិនអាចធ្វើទៅបាន និងរារាំងមេធាវីមិនឱ្យធ្វើកិច្ចការពារផ្លូវច្បាប់ប្រកបដោយប្រសិទ្ធភាព។ យ៉ាងណាក៏សាលាឧទ្ធរណ៍ បានជួបផ្តើមឱ្យមានការពិភាក្សាអំពីការផ្សព្វផ្សាយសេចក្តីសម្រេចជាមួយនឹង

national legislation and international agreements.” In “Two Indicators for the SDG 16.10, Target on Access to Information”, GFMD, 5 June 2015, available at <https://gfmd.info/en/site/news/797/Two-indicators-for-the-SDG-1610-target-on-access-to-information.htm> (last visited 4 July 2018).

<sup>117</sup> RGC, National Strategic Development Plan, 2014-2018, para. 2.16, available at [http://cdc-crdp.gov.kh/cdc/documents/NSDP\\_2014-2018.pdf](http://cdc-crdp.gov.kh/cdc/documents/NSDP_2014-2018.pdf) (last visited 4 July 2018).

<sup>118</sup> “Constitutional Council of Cambodia”, Website, available at <http://www.ccc.gov.kh> (last visited 4 July 2018).

ការិយាល័យឧត្តមស្នងការទទួលបន្ទុកសិទ្ធិមនុស្ស ។<sup>23</sup> តម្លាភាពនៃសេចក្តីសម្រេចកាន់តែខ្ពស់ នឹងនាំឱ្យកាន់តែមានសង្គតិភាព និងភាពច្បាស់លាស់អំពីច្បាប់ ហើយសាធារណជនកាន់តែ មានភាពជឿជាក់លើប្រព័ន្ធយុត្តិធម៌។<sup>119</sup>

៣៤. ដើម្បីដោះស្រាយកង្វះខាតព័ត៌មានអំពីប្រព័ន្ធយុត្តិធម៌ និងសេចក្តីសម្រេចនានានៃប្រព័ន្ធ យុត្តិធម៌ អង្គការសង្គមស៊ីវិល និងអង្គការមិនមែនរដ្ឋាភិបាលបានអនុវត្តការតាមដាន<sup>120</sup> បង្កើត កម្មវិធីអប់រំ ឬបណ្តុះបណ្តាលអំពីច្បាប់<sup>121</sup> និងផ្សព្វផ្សាយសៀវភៅអំពីនីតិសាស្ត្រកម្ពុជា។<sup>122</sup>

**អនុសាសន៍**

- xv. ផ្សព្វផ្សាយរាល់សេចក្តីសម្រេចថ្មីៗរបស់តុលាការកំពូល និងសាលាឧទ្ធរណ៍អំពីសេចក្តី សម្រេចទាំងនោះតាមអនឡាញដែលអាចចូលមើលដោយសេរីនៅត្រឹមឆ្នាំ២០២១។

**៤.៣. ការទទួលបានយុត្តិធម៌នៅតាមតំបន់ជនបទនៅមានកម្រិតទាបខ្លាំង**

៣៥. ទោះបីមានសាលាដំបូងនៅទូទាំងប្រទេសកម្ពុជាក៏ដោយ ប៉ុន្តែមានសាលាឧទ្ធរណ៍ និង តុលាការកំពូលមានតែមួយប៉ុណ្ណោះដែលតុលាការទាំងពីរនេះស្ថិតនៅទីក្រុងភ្នំពេញ។ ជាលទ្ធ ផល “៦៩% នៃសំណុំរឿងសាលាឧទ្ធរណ៍ត្រូវបានបើកសវនាការដោយកំបាំងមុខ”<sup>123</sup> ហើយការ ទទួលបានយុត្តិធម៌នៅមានកម្រិតទាបខ្លាំងសម្រាប់ពលរដ្ឋដែលរស់នៅក្រៅរាជធានីភ្នំពេញ។ យោងតាមច្បាប់ស្តីពីការរៀបចំនៃតុលាការ<sup>124</sup> រាជរដ្ឋាភិបាលកម្ពុជា បានប្តេជ្ញាចិត្តបង្កើត

<sup>119</sup> “Greater transparency in judicial decision-making should lead to greater legal certainty, more consistent decisions on evidence and the application of the law and thereby strengthen public perception in the independence of the judiciary.” In UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, para. 11, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22819&LangID=E> (last visited 4 July 2018).

<sup>120</sup> For instance, OHCHR trial monitoring: “The aims of trial monitoring are to track progress on specific cases of interest and to carry out a broader analysis of the administration of justice, including the actual functioning, qualifications and training of all relevant court and law enforcement officials and personnel. Through trial monitoring, OHCHR observes the level of respect for due process in the administration of justice, and in so doing, it encourages the tribunal under observation to provide a fair trial and apply national and international human rights law in national court proceedings”. In “Trial Monitoring”, OHCHR, Website, available at <http://cambodia.ohchr.org/en/rule-of-law/trial-monitoring-0> (last visited 4 July 2018).

<sup>121</sup> “Our Work”, CCHR, Website, available at [http://www.cchrcambodia.org/index\\_old.php?url=project\\_page/project\\_page.9php&p=project\\_profile.php&id=3&pro=HRE&pro\\_id=101&show=show](http://www.cchrcambodia.org/index_old.php?url=project_page/project_page.9php&p=project_profile.php&id=3&pro=HRE&pro_id=101&show=show) (last visited 4 July 2018).

<sup>122</sup> Hor Peng, Kuong Teilee, Prom Rodolphe, Renoux Thierry-Serge & Taing Ratana, *Annotated Constitution of the Kingdom of Cambodia*, Destination Justice, 2017.

<sup>123</sup> Bridget Di Certo & Phak Seangly, “Regional courts of appeal on horizon”, The Phnom Penh Post, 2 July 2012, available at <https://www.phnompenhpost.com/national/regional-courts-appeal-horizon> (last visited 4 July 2018).

<sup>124</sup> Article 35 of the *Law on the Organization of the Courts*: “The Courts of Appeal include the Phnom Penh Court of Appeals and regional Courts of Appeals”, available at [http://www.pscljr.gov.kh/media/documents/Law%20on%](http://www.pscljr.gov.kh/media/documents/Law%20on%20)

សាលាឧទ្ធរណ៍តាមតំបន់ដើម្បីកាត់បន្ថយការចំណាយក្នុងការឡើងតុលាការ<sup>125</sup> និងផ្តល់ប្រយោជន៍ដល់ពលរដ្ឋក្រីក្រ។<sup>126</sup> ក្រសួងយុត្តិធម៌បានថ្លែងនៅក្នុងឆ្នាំ២០១៥ ថាខ្លួន “ចង់ឱ្យពលរដ្ឋធ្វើដំណើរដោយងាយស្រួល [ទៅសាលាឧទ្ធរណ៍ថ្នាក់តំបន់]”។<sup>127</sup> ទោះបីបច្ចុប្បន្នមានការសាងសង់ចំនួនបីកន្លែង ហើយគោលដៅសំខាន់គឺចង់ឱ្យមានសាលាឧទ្ធរណ៍ចំនួនប្រាំពីរនៅទូទាំងប្រទេសកម្ពុជាក៏ដោយ ក៏រហូតមកដល់បច្ចុប្បន្ននេះនៅមានតែមួយប៉ុណ្ណោះដែលស្ថិតនៅក្នុងទីក្រុងភ្នំពេញ។<sup>128</sup>

៣៦. ផ្ទះយុត្តិធម៌<sup>129</sup> ត្រូវបានបង្កើតឡើងនៅក្រោមកម្មវិធី “ការទទួលបានយុត្តិធម៌ក្នុងប្រទេសកម្ពុជា” របស់កម្មវិធីអភិវឌ្ឍន៍អង្គការសហប្រជាជាតិ (យូអិនឌីភី) ឆ្នាំ២០០៦<sup>130</sup> ដែលផ្តល់នូវជម្រើសលើការដោះស្រាយជម្លោះក្រៅប្រព័ន្ធតុលាការ សម្រាប់ពលរដ្ឋកម្ពុជានៅក្នុងស្ថានភាពដែលភាគច្រើនរួមមាន ការលែងលះ ជម្លោះដីធ្លី និងការធ្វើកិច្ចសន្យា។ កម្មវិធីនេះគួសបញ្ជាក់អំពីតម្រូវការនៃព័ត៌មានច្បាប់អំពីបញ្ហាដែលកើតឡើងជាប្រចាំថ្ងៃទាំងនេះ<sup>131</sup> និងអត្ថប្រយោជន៍នៃការដោះស្រាយជម្លោះក្រៅប្រព័ន្ធតុលាការ<sup>132</sup> លើប្រព័ន្ធយុត្តិធម៌បែបចាស់ ជា

[20the%20organization%20of%20the%20Courts\\_709100950.pdf](#) (last visited 4 July 2018).

<sup>125</sup> Article 14(5) of the ICCPR: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”.

<sup>126</sup> Fact Sheet, “Institutions Series: The Appellate Court of Cambodia”, CCHR, Volume 5 – The Appellate Court of Cambodia, June 2012, available at [https://cchrcambodia.org/admin/media/factsheet/factsheet/english/2012\\_07\\_29\\_CCHR\\_Institutions\\_Fact\\_Sheet\\_The\\_Appellate\\_Court\\_of\\_Cambodia%20\(ENG\).pdf](https://cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_07_29_CCHR_Institutions_Fact_Sheet_The_Appellate_Court_of_Cambodia%20(ENG).pdf) (last visited 4 July 2018).

<sup>127</sup> Chhay Channyda, “Provinces tapped for appeal court project”, The Phnom Penh Post, 29 July 2015, available at <https://www.phnompenhpost.com/national/provinces-tapped-appeal-court-project> (last visited 1 May 2018).

<sup>128</sup> លីហៀង, “ក្រសួងយុត្តិធម៌ បង្កើតតុលាការសាលាឧទ្ធរណ៍ នៅតាមខេត្តចំនួន៣”, Kleykley, 29 June 2018, available at [http://kleykley.sabay.com.kh/article/1063199#utm\\_campaign=fb&utm\\_term=m.facebook.com](http://kleykley.sabay.com.kh/article/1063199#utm_campaign=fb&utm_term=m.facebook.com) (last visited 4 July 2018).

<sup>129</sup> *About the Maison de la Justice*: The Maisons, located on district level and can cover several communes, are tasked with collecting and disseminating legal information, referring cases to provincial courts which cannot be settled on local level. Maison de la Justice’s staff have received training in domestic violence and domestic law with some details of international law. See Claudia Melim-McLeod & Velibor Popovic, “Access to Justice in Cambodia, Project Assessment Report”, UNDP, May 2009, available at [https://info.undp.org/docs/pdc/Documents/KHM/00042256\\_Final%20Evaluation%20Report%202009.pdf](https://info.undp.org/docs/pdc/Documents/KHM/00042256_Final%20Evaluation%20Report%202009.pdf) (last visited 4 July 2018).

<sup>130</sup> Claudia Melim-McLeod & Velibor Popovic, “Access to Justice in Cambodia, Project Assessment Report”, UNDP, May 2009.

<sup>131</sup> Research Paper, “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels”, The Parliamentary Institute of Cambodia, June 2015, p. 13, available at [https://www.pic.org.kh/images/2015Research/20160812%20Dispute%20Resolution%20Outside%20the%20Judicial%20System%20at%20the%20National%20and%20Sub-national\\_EN\\_Final.pdf](https://www.pic.org.kh/images/2015Research/20160812%20Dispute%20Resolution%20Outside%20the%20Judicial%20System%20at%20the%20National%20and%20Sub-national_EN_Final.pdf) (last visited 4 July 2018).

<sup>132</sup> “It is a settlement mechanism that people can use as an alternative to deal with disputes outside of the court centered adjudication system.” In, Steven Austermiller. “Cambodian Alternative Dispute Resolution”, in *The Introduction to Law* (Konrad-Adenauer-Stiftung, 2012), p. 183

ពិសេសនៅតាមតំបន់ជនបទ ឬសហគមន៍ងាយរងគ្រោះ។<sup>133</sup>

៣៧. គួរឱ្យសោកស្តាយ ផ្ទះយុត្តិធម៌ ទាំងអស់ត្រូវបានបិទទៅវិញតាំងពីឆ្នាំ២០១៥<sup>134</sup> ដោយប្រតិបត្តិការរបស់វាត្រូវបានញាំញីដោយ “អវត្តមានក្នុងអត្រាខ្ពស់របស់ប្រធានផ្ទះយុត្តិធម៌សំណុំរឿងដែលបានទទួលមានតិចតួច កង្វះការផ្សព្វផ្សាយព័ត៌មាន [ដោយសារតែ] កង្វះថវិកាសម្រាប់ចំណាយរដ្ឋបាល។”<sup>135</sup> ការអនុវត្តឡើងវិញនូវផ្ទះយុត្តិធម៌ ប្រសិនបើមានហិរញ្ញប្បទានគ្រប់គ្រាន់ នឹង “ជួយពង្រឹង និងពង្រីកសេវា និងការប្រើប្រាស់ការដោះស្រាយជម្លោះក្រៅប្រព័ន្ធតុលាការ”។<sup>136</sup>

**អនុសាសន៍**

- xvi. ត្រូវបង្កើតសាលាឧទ្ធរណ៍តាមតំបន់ ដើម្បីបង្កើនការទទួលបានយុត្តិធម៌នៅតាមបណ្តាខេត្តនៃប្រទេសកម្ពុជាស្របទៅតាមច្បាប់ស្តីពីការរៀបចំនៃតុលាការ និងធានាថា សាលាឧទ្ធរណ៍ទាំងនេះមានដំណើរការល្អនៅត្រឹមដំណាច់ឆ្នាំ២០២៣។
- xvii. ធ្វើប្រតិបត្តិការគំនិតដូចផ្តើមនៃផ្ទះយុត្តិធម៌ ជាមធ្យោបាយនៃការទទួលបានកិច្ចគាំពារផ្នែកច្បាប់ និងព័ត៌មានអំពីច្បាប់នៅទូទាំងប្រទេស នៅត្រឹមដំណាច់ឆ្នាំ២០២២។

**៥. សិទ្ធិទទួលបានការជំនុំជម្រះប្រកបដោយយុត្តិធម៌**

**៥.១. ការយុំខ្លួនបណ្តោះអាសន្ន នៅតែកើតមានជាទម្លាប់<sup>137</sup>**

<sup>133</sup> “The users also expressed their view that the Commune Dispute Resolution Committees (CDRC) play a very important role in increasing the access to justice, and that the services should continue.” In, “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels”, Research Paper, The Parliamentary Institute of Cambodia, June 2015, p. 13. CDRC is another example of an ADR.

<sup>134</sup> “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels”, Research Paper, The Parliamentary Institute of Cambodia, June 2015, p. 23.

<sup>135</sup> “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels”, Research Paper, The Parliamentary Institute of Cambodia, June 2015, p. 15.

<sup>136</sup> “Legal and Judicial Reform in Cambodia - Briefing Note”, The Parliamentary Institute of Cambodia (PIC), February 2016, p.1, available at [https://www.pic.org.kh/images/2016Research/20170505\\_Legal\\_Judicial\\_Reform\\_Eng.pdf](https://www.pic.org.kh/images/2016Research/20170505_Legal_Judicial_Reform_Eng.pdf) (last visited 4 July 2018). The Parliamentary Institute of Cambodia was founded in 2011 at the request of members of the Cambodian Parliament and its General Secretariats. PIC is independently run and funded, adheres to a policy of strict neutrality and is demand-driven so that it can fully align its activities to those of the Parliament. *More information at* <https://www.pic.org.kh/index.php/en/> (last 4 July 2018).

<sup>137</sup> recommendation 118.61: “Take measures to avoid the use of excessive force and ensure that conditions of arrest and pretrial detention meet international standards (Belgium)”; recommendation 119.20: “Take measures to strengthen the independence and functioning of the country’s judiciary, in particular to substantially reduce the time spent by persons in pretrial detention (Austria)”. In *Report of the Working Group on the Universal Periodic Review: Cambodia*, 27 March 2014, UN Doc. A/HRC/26/16, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement> (last visited 4 July 2018).

៣៨. ទោះបីលក្ខណៈលើកលែងនៃការឃុំខ្លួនមុនកាត់ក្តីនៅក្នុងសំណុំរឿងព្រហ្មទណ្ឌត្រូវបានការពារស្របតាមច្បាប់កម្ពុជាក្តី<sup>138</sup> ប៉ុន្តែនៅក្នុងការអនុវត្តជាក់ស្តែង ការឃុំខ្លួនបណ្តោះអាសន្នអាចកើតឡើងជាស្វ័យប្រវត្តិ៖<sup>139</sup> ឧទាហរណ៍ នៅឆ្នាំ២០១៦ មាន៧០.៦% នៃអ្នកជាប់ឃុំត្រូវបានឃុំខ្លួនបណ្តោះអាសន្ន ដែលក្នុងចំណោមនោះមាន ៣៦.៥% កំពុងរង់ចាំសាលក្រមស្ថាពរ។<sup>140</sup> ការឃុំខ្លួនមុនកាត់ក្តីតែងតែមានរយៈពេលវែង ហើយអ្នកជាប់ឃុំភាគច្រើនត្រូវបានឃុំខ្លួនដោយពុំបានកំណត់កាលបរិច្ឆេទសម្រាប់ការកាត់ទោស។<sup>141</sup> ករណីដែលគួរអោយកត់សម្គាល់

In the present submission, the term pre-trial detention is to refer to the imprisonment of Defendants before the date a verdict of guilt is issued in first instance.

<sup>138</sup> Article 2013 of the *Cambodian Code of Criminal Procedure* (“CPC”): “*In principle, an accused shall have freedom. In special cases, the accused person can be temporarily detained under the conditions stated in this Section.*” See also Article 204, which provides that “*Pre-trial detention can be applied only in the case of felony or misdemeanor charges in which the law sets the punishment of imprisonment for 1 (one) year or more*” and Article 205, which reads: “*Pre-trial detention may be imposed when the detention is necessary to:*

1. *stop the offense or prevent the offense from happening again;*
2. *prevent any interferences on witnesses or victims or prevent any collusion between the accused person and the accomplice;*
3. *maintain evidence or material leads;*
4. *ensure the accused is kept for the court to decide according to its procedures;*
5. *protect the security of the accused;*
6. *maintain public order to avoid any chaos caused by the offense.*”

See *Cambodian Code of Criminal Procedure*, 2007, [official translation] available at [http://sithi.org/admin/upload/law/2007\\_Criminal\\_Procedure\\_Code\\_in\\_Eng\\_2007.pdf](http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf) (last visited 4 July 2018); see also Article 38 of the *Constitution of the Kingdom of Cambodia*: “The prosecution, arrest, or detention of any person shall not be done except in accordance with the law.”

<sup>139</sup> UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, referring to the “prevalence” of pre-trial detention; Professor Rhona Smith, UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, available at [http://cambodia.ohchr.org/sites/default/files/Annual-reports/SR%20Report%20\(G1722562\).pdf](http://cambodia.ohchr.org/sites/default/files/Annual-reports/SR%20Report%20(G1722562).pdf) (last visited 4 July 2018), referring to the “extensive” use of pre-trial detention.

<sup>140</sup> See “Highest to Lowest - Pre Trial Detainees/Remand Prisoners”, World Prison Brief, available at [http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All) (last visited 4 July 2018), which also notes that Cambodia currently ranks 9 of 217 countries in terms of pre-trial detainees/prisoners on remand; see also Mech Dara, “Prison numbers jump 20 percent”, The Phnom Penh Post, 23 February 2017, available at <https://www.phnompenhpost.com/national/prison-numbers-jump-20-percent> (last visited 4 July 2018).

During a visit to Correctional Centre 1 in October 2016, the Special Rapporteur on the Situation of Human Rights in Cambodia was informed that 1,512 of the 4,736 detainees were either in provisional detention or were awaiting the outcome of appeal processes. UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20; UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, referring to the “prevalence” of pre-trial detention; UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, referring to the “extensive” use of pre-trial detention; see also “Rights at a Price: Life Inside Cambodia’s Prisons”, Cambodian League for the Promotion and Defense of Human Rights, 25 January 2015, available at <http://www.licadho-cambodia.org/collection/25/life-inside-cambodia-prison> (last visited 4 July 2018); Alice Cuddy & Chhay Channyda, “Pre-Trial Lockup Rules Flouted”, The Phnom Penh Post, 29 May 2015, available at <https://www.phnompenhpost.com/national/pre-trial-lockup-rules-flouted> (last visited 4 July 2018).

<sup>141</sup> In many cases, the length of pre-trial detention is contrary to both international and domestic law. See: Articles 208 - 214 of the *CPC*. In international law, “prompt” justification must be determined on a case-by-case-basis, however the delay between the arrest of an accused and the time before the accused is brought before a judicial

រួមមាន ករណីដែលគេហៅថា “ករណីពិសេស ចំនួន ៥” (ជាប់ឃុំចំនួន ៤២៧ ថ្ងៃ),<sup>142</sup> ករណីលោកកឹម សុខា (ឃុំខ្លួនតាំងពីខែកញ្ញា ឆ្នាំ២០១៧),<sup>143</sup> អតីតអ្នកសារព័ត៌មានវិទ្យុអាស៊ីសេរី អូនឈិន និងយាង សុធារិន (ឃុំខ្លួនតាំងពីខែវិច្ឆិកា ឆ្នាំ២០១៧)<sup>144</sup> និងអ្នកផលិតខ្សែភាពយន្តជនជាតិអូស្ត្រាលី James Ricketson (ឃុំខ្លួនតាំងពីខែមិថុនា ឆ្នាំ២០១៧) ដែលរហូតមកដល់ខែកក្កដា ឆ្នាំ២០១៨ ពុំទាន់បានកំណត់ពេលបើកសវនាការកាត់ក្តីនៅឡើយទេ។<sup>145</sup> “យុទ្ធនាការប្រឆាំងគ្រឿងញៀន” របស់ប្រទេសកម្ពុជាបាននាំឱ្យមានការដាក់ពន្ធនាគារពលរដ្ឋរាប់រយនាក់។<sup>146</sup> ស្ថានភាពអាក្រក់នៅក្នុងពន្ធនាគារ ដែលរួមមានចំនួនអ្នកទោសណែនណាន់

authority “should not exceed a few days.” Human Right Committee, Communication No. 373/1989, *L. Stephens v. Jamaica* (Views adopted on 18 October 1995), In UN Doc. GAOR, A/51/40 (vol. II), p. 9, para. 9.6, available at <http://hrlibrary.umn.edu/undocs/session55/vws37355.htm> (last visited 4 July 2018) (emphasis added). In addition, human rights law requires that if a person is not tried within a reasonable time after his/her arrest or detention, he/she must be released; Art 9(3) of the *ICCPR*.

<sup>142</sup> Four staff members of ADHOC, Ny Sokha, Yi Soksan, Nay Vanda and Lim Mony – and former ADHOC staff member, who was the deputy secretary-general of the National Election Committee at the time, Ny Chakrya, were detained for 427 days without trial between 28 April 2016 and 29 June 2017. See **Annex 1 (entry 1)**.

<sup>143</sup> See **Annex 1 (entry 17)**; see also Niem Chheng & Ananth Baliga, “Kem Sokha’s pre-trial detention extended by six months”, The Phnom Penh Post, 5 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-pre-trial-detention-extended-six-months> (last visited 4 July 2018); Niem Chheng & Ananth Baliga, “Kem Sokha’s Detention Upheld as Guards Scuffle with Ex-Leader’s Supporters Outside Courthouse”, The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018).

<sup>144</sup> Article 445 of the *Cambodian Criminal Code*, for “supplying or making accessible to a foreign state or its agents information, processes, objects, documents, computerised data or files which are liable to prejudice the national defence”, available at [http://www.sithi.org/admin/upload/law/Criminal\\_Code\\_Book\\_with\\_cover\\_Jan\\_2014.pdf](http://www.sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf) (last visited 4 July 2018); **Annex 1 (entry 44)**; see also Mech Dara, “It is revenge: Bail denied again for RFA reporters accused of espionage”, 19 April 2018, The Phnom Penh Post, available at <https://www.phnompenhpost.com/national/it-revenge-bail-denied-again-rfa-reporters-accused-espionage> (last visited 4 July 2018); Niem Chheng, “RFA journalists questioned”, The Phnom Penh Post, 1 June 2018, available at <https://www.phnompenhpost.com/national/rfa-journalists-questioned> (last visited 4 July 2018).

<sup>145</sup> See **Annex 1 (entry 15)**; see also David Boyle and Hul Reaksmeay, “Cambodian Court Postpones Trial of Australian Who Flew Drone at Rally”, Voice of America, 16 June 2018, available at <https://www.voacambodia.com/a/cambodian-court-postpones-trial-of-australian-who-flew-drone-at-rally/4440919.html> (last visited 18 June 2018); Erin Handley & Kim Sarom, “Jailed Australian Filmmaker James Ricketson Makes Plea for Release”, 11 January 2018, available at <https://www.phnompenhpost.com/national/jailed-australian-filmmaker-james-ricketson-makes-plea-release> (last visited 4 July 2018).

<sup>146</sup> Chhorn Phearun & Hannah Hawkins, “Drugs War Leaves Prisons ‘On Point of Collapse’”, The Cambodia Daily, 23 June 2017, available at <https://webcache.googleusercontent.com/search?q=cache:BHxrMxxtWUIJ:https://www.cambodiadaily.com/news/drugs-war-leaves-prisons-on-point-of-collapse-131678/+&cd=1&hl=en&ct=clnk&gl=kh> (last visited 4 July 2018); Niem Chheng & Erin Handley, “Mixed results in Cambodia’s drug war: officials”, The Phnom Penh Post, 6 February 2018, available at <https://www.phnompenhpost.com/national/mixed-results-cambodias-drug-war-officials> (last visited 4 July 2018); Martin de Bourmont & Khouth Sophak Chakrya, “Is Cambodia’s war on drugs working?”, The Phnom Penh Post, 14 June 2017, available at <https://www.phnompenhpost.com/national-post-depth/cambodias-war-drugs-working> (last visited 4 July 2018). In 2016 alone, 40% of those detained were jailed for drug offences, see Mech Dara, “Prison numbers jump 20 percent”, The Phnom Penh Post, 23 February 2017.

តាន់តាប់ និងកង្វះសម្ភារអនាម័យជាមូលដ្ឋាន បានធ្វើឱ្យការឃុំខ្លួនមុនកាត់ទោសកាន់តែមានការលំបាក។<sup>147</sup> ទោះបីអាជ្ញាធរបានទទួលស្គាល់ថាស្ថានភាពក្នុងពន្ធនាគារមានបញ្ហាក៏ដោយ<sup>148</sup> ប៉ុន្តែពុំមានការចាត់វិធានការម៉ត់ចត់ណាមួយឡើយចាប់តាំងពីការត្រួតពិនិត្យឡើងវិញជាសកលតាមកាលកំណត់ លើកចុងក្រោយ។

៣៩. ជាទូទៅចៅក្រមពុំបានធ្វើការវាយតម្លៃស៊ីជម្រៅ ឥតលម្អៀង និងផ្អែកលើភស្តុតាងទៅលើភាពត្រឹមត្រូវនៃការឃុំខ្លួនឡើយ<sup>149</sup> ទោះបីជាមានការណែនាំក្នុងទម្រង់មួយកាលពីឆ្នាំ២០១៤ ដែលតម្រូវឱ្យចៅក្រមផ្តល់ហេតុផលនៅពេលធ្វើសេចក្តីសម្រេចស្តីពីការឃុំខ្លួនក៏ដោយ។<sup>150</sup> ការបញ្ជាក់ហេតុផលនៃការឃុំខ្លួន ភាគច្រើនគឺ ខ្លាចលួចចាកចេញពីប្រទេស និងដោយផ្អែកលើមូលហេតុកំពុងធ្វើការស៊ើបអង្កេត<sup>151</sup> ដោយចៅក្រមពុំបានវាយតម្លៃទៅលើការប្រើប្រាស់

<sup>147</sup> “Cambodia’s Prey Sar Prison Like Being ‘in Hell,’ Former Inmate Says”, Radio Free Asia, 3 March 2017, available at <https://www.rfa.org/english/news/myanmar/cambodia/prison-03032017132739.html> (last visited 4 July 2018); “Rights at a Price: Life Inside Cambodia’s Prisons”, LICADHO, 22 January 2015, available at <https://kh.boell.org/en/2015/01/22/rights-price-life-inside-cambodias-prisons> (last visited 4 July 2018); “Improving prison conditions and prisoners’ treatment”, OHCHR Cambodia, 26 January 2015, available at <http://cambodia.ohchr.org/en/prison-reform/improving-prison-conditions-and-prisoners-treatment> (last visited 4 July 2018); UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, referring to the “extensive” use of pre-trial detention; UN Human Rights Committee, *Concluding observations on the second periodic report of Cambodia*, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 14, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En) (last visited 4 July 2018).

<sup>148</sup> UN Human Rights Committee, *List of issues in relation to the second periodic report of Cambodia, Replies of Cambodia to the list of issues, Addendum*, 4 March 2015, UN Doc. CCPR/C/KHM/Q/2/Add.1, para. 14, available at <http://undocs.org/en/CCPR/C/KHM/Q/2/Add.1> (last visited 4 July 2018).

<sup>149</sup> Art. 203 of the CPC: “to either stop the offense or prevent its recurrence, prevent interference with witnesses or victims, protect evidence, ensure the Accused’s appearance, protect her/his security, or avoiding ‘chaos’ cause by the offense.”

<sup>150</sup> Adopted in 2014 the Ministry of Justice with the assistance of OHCHR, *In “Reforming the Pre-Trial Detention Process to Prevent Arbitrary Detention”*, OHCHR Cambodia, March 2014, available at <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/2-RLU-SS.pdf> (last visited 4 July 2018); *See also* UN Human Rights Council, *Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*, Report of the Secretary-General, OHCHR, 17 August 2017, UN Doc. A/HRC/36/32, para. 31, available at <https://bit.ly/2jJXd1b> (last visited 4 July 2018).

<sup>151</sup> *See e.g.* Kem Sokha, **Annex 1 (entry 17)** who saw his latest bail request denied on the grounds that the investigations were still ongoing and that it would “cause trouble” if he were released. The Court also seemingly believed that he would flee if he were released, *see* Khy Sovuthy, “Kem Sokha again denied bail”, Khmer Times, 6 June 2018, available at <https://www.khmertimeskh.com/50497585/kem-sokha-again-denied-bail/> (last visited 4 July 2018); James Ricketson **Annex 1 (entry 15)** saw his bail request denied on the grounds that the investigation was not finished, *In* Erin Handley, “Updated: Jailed Australian filmmaker James Ricketson denied bail”, The Phnom Penh Post, 30 January 2018, available at <https://www.phnompenhpost.com/national/updated-jailed-australian-filmmaker-james-ricketson-denied-bail> (last visited 4 July 2018); Uon Chhin and Yeang Sothearin, former RFA journalists facing charges of treason, **Annex 1 (entry 44)**: despite the passports and ID cards for both defendants having been submitted to the court and the fact that their families had promised that they would not escape, the judge said he still feared that the defendants would try to leave the country, Mech Dara, “It is revenge: Bail denied again for RFA reporters accused of espionage”, The Phnom Penh Post, 19 April 2018.



មធ្យោបាយ ដែលមានការរឹតត្បិតតិចជាងនេះឡើយ (ដូចជា ធានាឱ្យនៅក្រៅឃុំបណ្តោះ អាសន្ន ឬស្ថិតក្រោមការត្រួតពិនិត្យតាមផ្លូវតុលាការ ជាដើម)។

៤០. ជាទូទៅ ស្ត្រីមានផ្ទៃពោះ និងម្តាយកុមារតូចត្រូវបានឃុំខ្លួននៅមុនការកាត់ទោសដោយពុំ បានពិចារណាទៅលើស្ថានភាព ឬសុខុមាលភាពរបស់ម្តាយ និងកុមារឡើយ។<sup>152</sup>

៤១. ស្រដៀងគ្នានេះដែរ អាជ្ញាធរបានចាត់វិធានការតិចតួចដើម្បីពិចារណាឱ្យបានគ្រប់ជ្រុង ជ្រោយទៅលើជម្រើសផ្សេងក្រៅពីការឃុំខ្លួនអនីតិជន<sup>153</sup> ឬពិចារណាទៅលើអាយុ សមត្ថភាព និងការលូតលាស់របស់អនីតិជនជាប់ឃុំ<sup>154</sup> ទោះបីមានការអនុម័តដែលត្រូវបានទទួល

<sup>152</sup> “Mothers behind bars: the impact of detention on women and their children”, *Licadho*, 26 May 2015, available at [https://www.licadho-cambodia.org/collection/28/mothers\\_behind\\_bars\\_impact](https://www.licadho-cambodia.org/collection/28/mothers_behind_bars_impact) (last visited 4 July 2018). For more details see *NGO-CEDAW/Consortium of Cambodian NGOs thematic submissions on Gender*, pp. 4-5.

<sup>153</sup> As identified in Article 40 of the *Penal Code*, and in the *Law on Juvenile Justice* in Article 28 and Chapter 10 on Diversion. See also; Article 5 of the *Law on Juvenile Justice*. *Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia*, ADHOC, Cambodian Defenders Projects (CDP), (LICADHO, Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), October 2010, para 11 (42), available at [http://tpocambodia.org/wp-content/uploads/2015/08/Joint-Cambodian-NGO-CAT-Report-06-10-10\\_English.pdf](http://tpocambodia.org/wp-content/uploads/2015/08/Joint-Cambodian-NGO-CAT-Report-06-10-10_English.pdf) (last visited 4 July 2018); Article 40, *Law on Juvenile Justice*; International guidelines recognize the significance of seeking alternative methods of restorative justice outside the judicial system for juveniles; Committee on the Rights of the Child, *General comment N. 10, Children’s Rights in Juvenile Justice*, 25 April 2007, UN. Doc. CRC/C/GC/10, paras. 24-25 available at <http://www.refworld.org/docid/4670fca12.html> (last visited 4 July 2018); UN General Assembly, *United Nations Principles and Guidelines on Access to legal aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, paras. 53(f-h), available at [http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN\\_principles\\_on\\_legal\\_aid\\_March\\_2013\\_Eng.pdf](http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN_principles_on_legal_aid_March_2013_Eng.pdf) (last visited 4 July 2018).

<sup>154</sup> On 25 June 2018, the Ministry of Social Affairs, Veterans and Youth Rehabilitation announced the opening of the first youth detention center in the country, to be built in Kandal Province, see Chea Vannak, “First youth detention centre planned”, *Khmer Times*, 27 June 2018, available at <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/> (last visited 4 July 2018); Bona Khoy, “Updated Situation Analysis of Children and Women and in Cambodia”, UNICEF, 2017, Part 5.4. on Juvenile Justice, available at [https://www.unicef.org/cambodia/UNICEF\\_Cambodia\\_SitAn\\_2018.pdf](https://www.unicef.org/cambodia/UNICEF_Cambodia_SitAn_2018.pdf) (last visited 4 July 2018); UN Human Rights Council, *Access to Justice for Children: Report of the United Nations High Commissioner for Human Rights*, 16 December 2013, A/HRC/25/35, 5 para 11. See also for example, Article 39 of the *Law on Juvenile Justice*: ‘The minor less than 14 years of age shall not be placed in pre-trial detention. If a detained minor is found to be less than 14 years old, the Investigating Judge shall issue the non-suit order and order the minor’s immediate release.’ However, CCHR recorded the presence of a child below the age of 14 years who had been held in detention: ‘Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal’, CCHR, June 2018, para. 2.2.7, available at <https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights%20ENG.pdf> (last visited 4 July 2018). See also: Diem Chheng, “Adhoc Examining Minor’s Jailing”, *The Phnom Penh Post*, 4 April 2017, available at <https://www.phnompenhpost.com/national/adhoc-examining-minors-jailing-0> (last visited 4 July 2018). In Article 5 of the *Law on Juvenile Justice*, there is a further obligation on the judiciary to “Consider primarily on actions concerning to the best interest of minors and particular to ensure the minors’ right to life and maximum survival and development”. However, despite the Ministry of Social Affairs promising the erection of a new juvenile rehabilitation centre in 2016, same has still not been erected. Juvenile detainees currently live alongside adult prisoners and are subjected to the same treatment. Erin Handley, “Cambodia to Soon Establish Juvenile Prison: Social Affairs”, *The Phnom Penh Post*, 18 August 2017, available at <https://www.phnompenhpost.com/national/cambodia-soon-establish-juvenile-prison-social-affairs> (last visited 4 July 2018).

ស្វាគមន៍នូវច្បាប់ស្តីពីយុត្តិធម៌អនីតិជនដែលរង់ចាំអស់រយៈពេលជាយូរមកហើយក៏ដោយ។<sup>155</sup>  
ទោះជាយ៉ាងនេះក្តីនៅក្នុងខែមិថុនា ឆ្នាំ២០១៨ អាជ្ញាធរបានប្រកាស អំពីការបង្កើតមណ្ឌលឃុំ  
ខ្លួនយុវជនដំបូងគេនៅក្នុងប្រទេស ដែលគ្រោងនឹងធ្វើឡើងនៅក្នុងឆ្នាំ២០១៩។<sup>156</sup>

**អនុសាសន៍**

- xviii. ត្រូវជំរុញឱ្យមានការប្រើប្រាស់កាន់តែទូលំទូលាយ នូវជម្រើសផ្សេងក្រៅពីឃុំខ្លួនមុន  
កាត់ទោស ដែលរួមមានការស្ថិតក្រោមការត្រួតពិនិត្យតាមផ្លូវតុលាការ ស្របទៅតាម  
គោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ១៦.៣.២។
- xix. ត្រូវធានាថា អាជ្ញាធរតុលាការមានសមត្ថកិច្ច នៅពេលសម្រេចឃុំខ្លួនមុនកាត់ទោស ត្រូវ  
ផ្តល់ការគោរពពេញលេញចំពោះខ្លឹមសារនៃក្រមនីតិវិធីព្រហ្មទណ្ឌ ដែលចែងអំពី  
លក្ខណៈលើកលែងនៃការឃុំខ្លួនមុនកាត់ទោស និងបកស្រាយមូលហេតុនៃការឃុំខ្លួន  
មុនកាត់ទោសយ៉ាងតឹងរឹង និងចង្អៀត។

**៥.២. ការសន្មតជាមុនថាគ្មានទោសមិនត្រូវបានយកចិត្តទុកដាក់ជាទូទៅ<sup>157</sup>**

៤២. ជនជាប់ចោទតែងតែបង្ហាញខ្លួនចំពោះតុលាការក្នុងឯកសណ្ឋានជាទណ្ឌិត<sup>158</sup> ដែលនាំឱ្យ  
គេគិតថាជាជនមានទោស<sup>159</sup> បើទោះជាការផ្លាស់ប្តូរវប្បធម៌ច្រើនត្រូវបានអនុវត្តតាមជាបណ្តើរៗ

<sup>155</sup> *Law on Juvenile Justice*, Ministry of Social Affairs, Veterans and Youth Rehabilitation, 2016, available at <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> (last visited 4 July 2018). For more information on juvenile justice see below, paragraph xx.

<sup>156</sup> Chea Vannak, “First youth detention centre planned”, *Khmer Times*, 27 June 2018, available at <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/> (last visited 1 July 2018)

<sup>157</sup> Article 14(2) of the *ICCPR*.

<sup>158</sup> “Prisoner Uniforms and the Presumption of Innocence”, *Fair Trial Rights Newsletter*, CCHR, June 2017, Issue 2, available at [https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence\\_Eng.pdf](https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf) (last visited 4 July 2018); “Fair Trial Rights in Cambodia: Monitoring at the Court of Appeal”, CCHR, June 2018, pp. 20-21, Figure 11. The right to be considered innocent until proven guilty is enshrined in international law – through Article 11(1) of the *Universal Declaration of Human Rights* and Article 14(2) of the *ICCPR*. These rights are incorporated into Cambodian national law pursuant to Article 31 of the *Cambodian Constitution*, as recognized by Decision No. 092/003/2007 of the Constitutional Council dated 10 July 2007.

<sup>159</sup> For more information on the advocacy of CCHR in connection with Prison Uniforms and Fair Trial Rights, please find the following: “Prisoner Uniforms and the Presumption of Innocence”, *Fair Trial Rights Newsletter*, CCHR, June 2017, Issue 2, available at [https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence\\_Eng.pdf](https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf) (last visited 4 July 2018); “Fair Trial Analysis: Prison Uniforms and Fair Trial Rights”, *Fair Trial Newsletter*, CCHR, April 2011, Issue 3, available at <https://cchrcambodia.org/admin/media/newsletter/newsletter/english/CCHR%20Newsletter%203%20Prison%20Uniforms%20and%20Fair%20Trial%20Rights-%20April%202011%20English.pdf> (last visited 4 July 2018); see also “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, p. 19, para. a.

ក៏ដោយ។<sup>160</sup> ជាងនេះទៅទៀត មានការការពារតិចតួចបំផុតចំពោះការឆ្លើយដាក់បន្ទុកលើខ្លួន  
 ឯង<sup>161</sup> ហើយចៅក្រមកម្រនឹងប្រាប់ដល់ជនជាប់ចោទអំពីសិទ្ធិនេះណាស់។<sup>162</sup> ជាចុងក្រោយ  
 ការសារភាពតែងតែយកធ្វើជាមូលដ្ឋានតែមួយគត់សម្រាប់ការកាត់ទោស ទោះបីជាជនជាប់  
 ចោទជាច្រើនបានអះអាងថា ខ្លួនត្រូវបានបង្ខំ ឬធ្វើទារុណកម្មឱ្យសារភាពអំពីទោសកំហុសក៏  
 ដោយ។<sup>163</sup> ជាញឹកញាប់ ការអះអាងទាំងនេះមិនត្រូវបានចៅក្រមយកចិត្តទុកដាក់ និងស៊ើប  
 អង្កេតឡើយ<sup>164</sup>។ បើតាមសេចក្តីរាយការណ៍ រដ្ឋាភិបាលបានបង្កើតគណៈកម្មការជាតិប្រឆាំង

<sup>160</sup> More and more defendants appear in civilian clothing. See e.g. in 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of first instance was transported to the Court of Appeal for hearing his appeal against the decision in civilian clothes, In “Checklist Details”, CCHR Fair Trial Rights Monitoring Database, available at [http://tmp.sithi.org/tmpapplication/data/advanced\\_search/view/detail.php?id=911](http://tmp.sithi.org/tmpapplication/data/advanced_search/view/detail.php?id=911) (last visited 4 July 2018); CNRP former president, Kem Sokha, also appeared in Court (for the appeal on his request for provisional release), wearing his own clothing on 1 February 2018, See photo in “Kem Sokha’s hearing at the Court of Appeal has already begun”, *Fresh News Asia*, 1 February 2018, available at <http://www.freshnewsasia.com/index.php/en/localnews/77476-2018-02-01-01-38-52.html> (last visited 4 July 2018); for more information on the case of Kem Sokha, see **Annex 1, (entry 17)**.

<sup>161</sup> Article 14(3)(g) of the ICCPR guarantees the right “not to be compelled to testify against himself or to confess guilt”. When a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion; UN Human Rights Committee, *General Comment N°32, Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 41, available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/32&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/32&Lang=en) (last visited 4 July 2018); see also: UN Human Rights Committee, *Deolall v. Guyana, Communication 912/2000*, 2000, UN Doc. CCPR/C/82/D/912/2000 (2004), para. 5.1, available at [http://www.worldcourts.com/hrc/eng/decisions/2004.11.01\\_Deolall\\_v\\_Guyana.htm](http://www.worldcourts.com/hrc/eng/decisions/2004.11.01_Deolall_v_Guyana.htm) (last visited 4 July 2018); UN Human Rights Committee, *Singarasa v. Sri Lanka, Communication 1033/2001*, 2001, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, 2004, Communication 1263/2004 and 1264/2004, UN Doc. CCPR/C/94/D/1263-1264/2004 (2008), para. 8.3, available at [http://www.worldcourts.com/hrc/eng/decisions/2008.10.20\\_Khuseynova\\_v\\_Tajikistan.htm](http://www.worldcourts.com/hrc/eng/decisions/2008.10.20_Khuseynova_v_Tajikistan.htm) (last visited 4 July 2018).

<sup>162</sup> CCHR Fair Trial Monitoring Report describes how the investigating Appeal judges failed to inform the defendant about his right to remain silent in more than three out of five cases (65%); “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.3, figure 10.

<sup>163</sup> For instance, CCHR’s monitoring of the Court of Appeal between 2014 and 2017 showed that cases the defendant alleged that threats were made to coerce him/her into confessing to the alleged crime went from 3% of all cases in 2014-2015 to 4% of the monitored cases in 2016-2017. Allegations that violence or torture was used to coerce the defendant into confessing to the alleged crime went from 4% in 2014-2015 to 7% in 2016-2017, see “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, Cambodian Centre for Human Rights, June 2018, para 3.2.3.

<sup>164</sup> International law obligates that the burden of proof be on the party that took the subject statement to demonstrate that it was not made under duress, yet in Cambodia, In Cambodia, the burden is often on the defense to prove coercion; see UN Human Rights Committee, *Nallaratnam v. Sri Lanka, Communication No. 1033/2001*, 2004, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN Human Rights Committee, *General Comment N°32, Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 41; see also: UN Human Rights Committee, *Kelly v. Jamaica, Communication 253/1987*, 1987, UN Doc. CCPR/C/41/D/253/1987 (1991), para. 5.5, available at <http://hrlibrary.umn.edu/undocs/session41/253-1987.html> (last visited 4 July 2018); UN Human Rights Committee, *Singarasa v. Sri Lanka, Communication 1033/2001*, 2001, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN

ការធ្វើទារុណកម្មកាលពីឆ្នាំ២០១៧<sup>165</sup> ដែលនាំឱ្យអង្គការសហប្រជាជាតិបានដកប្រទេស កម្ពុជាចេញពីបញ្ជីរដ្ឋមិនបានគោរពមាត្រា ១៧ នៃពិធីសារអនុសញ្ញាប្រឆាំងនឹងការធ្វើទារុណ កម្ម។<sup>166</sup> ទោះជាយ៉ាងនេះក្តី ពុំមានសញ្ញាបង្ហាញថា យន្តការថ្មីនេះកំពុងត្រូវបានប្រើប្រាស់ ឡើយ។

**អនុសាសន៍**

- xx. ត្រូវកំណត់ឱ្យចៅក្រមទាំងអស់ជូនដំណឹងដល់ជនជាប់ចោទ អំពីការសន្មតជាមុនថា គ្មានទោស ដែលរួមមានបន្ទុកភ័ស្តុតាង និងការការពារខ្លួនពីការឆ្លើយដាក់បន្ទុកលើខ្លួន ឯង និងអំពីសិទ្ធិរបស់ជនជាប់ចោទក្នុងការទទួលបានជំនួយផ្នែកច្បាប់ផ្តល់ដោយរដ្ឋ។
- xxi. ត្រូវស៊ើបអង្កេតឱ្យបានម៉ត់ចត់ទៅលើការចោទប្រកាន់ថា ការសារភាពមិនត្រូវបានផ្តល់ ដោយសារស្ម័គ្រចិត្ត និងមានការយល់ព្រមត្រឹមត្រូវធានាថា បន្ទុកភ័ស្តុតាងមាននៅក្នុង ការកាត់ទោសដើម្បីបង្ហាញថា ការសារភាពមិនត្រូវបានទទួលដោយការប្រើហិង្សា ការ បង្ខិតបង្ខំ ឬការធ្វើទារុណកម្មឡើយ។
- xxii. ត្រូវអនុញ្ញាតឱ្យជនជាប់ចោទដែលមិនទាន់ទទួលបានសាលក្រមស្ថាពរ បង្ហាញខ្លួនក្នុង តុលាការដោយស្ម័គ្រចិត្តពាក់ស៊ីវិលធម្មតា។
- xxiii. ត្រូវជូនដំណឹងដល់សាធារណៈជនអំពីសិទ្ធិទទួលបានជំនួយផ្នែកច្បាប់ផ្តល់ដោយរដ្ឋ រួម ទាំងតាមរយៈការផ្សព្វផ្សាយនៅតាមការិយាល័យនគរបាល ពន្ធនាគារ និងអគារ តុលាការជាដើម។

**៥.៣. ពុំមានសិទ្ធិទទួលបានកិច្ចការពារប្រកបដោយប្រសិទ្ធភាពនៅឡើយ**

៤៣. ដូចដែលបានលើកឡើងខាងលើ<sup>167</sup> សិទ្ធិទទួលបានមេធាវីពុំត្រូវបានគោរពពេញលេញ ឡើយ ហើយជាទូទៅបុគ្គលមិនអាចទទួលបានកិច្ចការពារប្រកបដោយប្រសិទ្ធភាពឡើយ

Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communication 1263/2004 and 1264/2004, 2008, UN Doc. CCPR/C/94/D/1263-1264/2004 (2008), para. 8.3, available at [http://www.worldcourts.com/hrc/eng/decisions/2008.10\\_20\\_Khuseynova\\_v\\_Tajikistan.htm](http://www.worldcourts.com/hrc/eng/decisions/2008.10_20_Khuseynova_v_Tajikistan.htm) (last visited 4 July 2018).

<sup>165</sup> Mech Dara & Daphne Chen, “Government forms new anti-torture org in bid for UN compliance”, The Phnom Penh Post, 29 November 2017, available at <https://www.phnompenhpost.com/national/government-forms-new-anti-torture-org-bid-un-compliance> (last visited 4 July 2018).

<sup>166</sup> “United Nations removes Kingdom from list of nations that apply torture”, The Phnom Penh Post, 29 June 2018, available at <https://www.phnompenhpost.com/national/united-nations-removes-kingdom-list-nations-apply-torture> (last visited 4 July 2018); and OHCHR, “OPCAT: Noncompliance with Article 17”, available at <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Article17.aspx> (last visited 4 July 2018).

<sup>167</sup> See paragraph 3 on legal aid in Cambodia.

ដោយសារតែប្រព័ន្ធជំនួយផ្នែកច្បាប់ឧបត្ថម្ភដោយរដ្ឋមិនគ្រប់គ្រាន់ និងការកង្វះព័ត៌មានជាទូទៅសម្រាប់សាធារណជនអំពីលទ្ធភាពទទួលបានជំនួយផ្នែកច្បាប់។

៤៤. សិទ្ធិផ្តល់ភស្តុតាង ដេញដោលសាក្សី និងឆ្លើយតបចំពោះរាល់ភស្តុតាងដែលដាក់បន្ទុកមកលើជនជាប់ចោទជារឿយៗកាន់តែតូចចង្អៀត។<sup>168</sup> ជាទូទៅ បន្ទុកភស្តុតាងត្រូវបានដាក់នៅខាងការពារការចោទ ជារឿយៗវាត្រូវបានគេដកចេញពីការបង្ហាញភស្តុតាង រួមទាំងសាក្សីផងដែរ<sup>169</sup> ហើយជាទូទៅ ភស្តុតាងដាក់បន្ទុកពុំស្របតាមបទដ្ឋានចាំបាច់សម្រាប់ការស្វែងរកទោសកំហុសឡើយ។<sup>170</sup>

**អនុសាសន៍**

xxiv. ត្រូវបង្កើតគោលការណ៍ណែនាំច្បាស់លាស់ពាក់ព័ន្ធនឹងការបង្ហាញ និងការវាយតម្លៃភស្តុតាង ដោយផ្អែកទៅលើការងាររបស់អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា (អ.វ.ត.ក)<sup>171</sup> ជាមូលដ្ឋានសម្រាប់ការអភិវឌ្ឍន៍បន្ថែមនិងធានាថា ចៅក្រមទាំងអស់ទទួលបានការបណ្តុះបណ្តាលត្រឹមត្រូវ។<sup>172</sup>

**៥.៤. សាលក្រមពុំមានបញ្ជាក់សំអាងហេតុ**

<sup>168</sup> Art. 14 (3)(e) of the ICCPR; Art.321, 324, 326 of the CPC.  
<sup>169</sup> In the case of Mother Nature activists Hun Vannak and Doem Kundy charged with “incitement to commit a felony” and making unauthorized recordings of a person in “a private place”, the judge relied on evidence from the prosecution that lacked concrete evidence, see **Annex 1 (entry 14)**; see also Phak Seangly, “‘Lack of Proof’ in Mother Nature Activists’ Hearing”, The Phnom Penh Post, 26 January 2018, available at <https://www.phnompenhpost.com/national/lack-proof-mother-nature-activists-hearing> (last visited 4 July 2018).  
<sup>170</sup> The UN SRHRC rightly noted that “it appears that different judges apply different evidentiary standards of proof”, see Professor Rhona Smith, UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, UN Doc. A/HRC/36/61, 27 July 2017, para. 54.  
For instance, during the appeal of Tep Vanny, the accused was ordered to remain silent by the prosecutor and video evidence was denied despite the request of the defense’s counsel, “Tep Vanny Convicted Again as Para-Police Attack Supporters”, LICADHO, February 2017, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=418> (last visited 4 July 2018). For more information on the case of Tep Vanny, see **Annex 1 (entry 39)**; In the case of Kem Sokha, the investigating judge rejected the accused’s request that he interview a US government official in connection with the former oppositions leaders treason, Mech Dara & Andrew Nachemson, “Sokha’s Witness Request Denied”, The Phnom Penh Post, 9 February 2018, available at <https://www.phnompenhpost.com/national/sokhas-witness-request-denied> (last visited 4 July 2018); for more information on the case of Kem Sokha, see **Annex 1 (entry 17)**.  
<sup>171</sup> The practice of the ECCC may prove useful guidance, particularly its internal rules as well as paragraphs 204 to 209 of the case 002/01 Appeal Judgement, See Extraordinary Chambers in the Courts of Cambodia, “Appeal Judgement”, Supreme Court Chamber, 23 November 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC, available at [https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002\\_01%20Appeal%20Judgement.pdf](https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf) (last visited 4 July 2018).  
<sup>172</sup> UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, para. 4.

៤៥. ជាញឹកញាប់ សាលក្រមមិនត្រូវបានចេញនៅក្នុងរយៈពេលសមស្រប ហើយករណីខ្លះ ត្រូវបានពន្យារពេលដោយមិនកំណត់។<sup>173</sup> ជាងនេះទៅទៀត ចៅក្រមមិនត្រឹមតែពុំបានផ្តល់ មូលដ្ឋានផ្លូវច្បាប់ប៉ុណ្ណោះទេ ប៉ុន្តែក៏ពុំបានផ្តល់ភស្តុតាងនៃការចេញសេចក្តីសម្រេចរបស់ខ្លួន ផងដែរ។<sup>174</sup>

៤៦. ទោះបីសាលក្រមកម្រើងត្រូវបដិសេធចោលក៏ដោយ ប៉ុន្តែវត្តមានសាលាឧទ្ធរណ៍អាចឲ្យ យើងតវ៉ាចំពោះសាលក្រមបាន។<sup>175</sup> ខណៈដែលសាលាឧទ្ធរណ៍បច្ចុប្បន្នមានតែមួយសម្រាប់ ប្រទេសទាំងមូល ដែលជាឧបសគ្គរាំងស្ទះដល់សិទ្ធិប្តឹងឧទ្ធរណ៍របស់ចុងចោទអាជ្ញាធរក៏បាន ប្រកាសអំពីការបង្កើតសាលាឧទ្ធរណ៍ចំនួនប្រាំពីរនៅទូទាំងប្រទេសកម្ពុជា។<sup>176</sup>

**អនុសាសន៍**

- xxv. ត្រូវទាញបទពិសោធន៍ពីការអនុវត្តនៅក្នុងអង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា<sup>177</sup> បង្កើតក្របខណ្ឌមួយដែលចៅក្រមមានកាតព្វកិច្ចជូនដំណឹង និងពន្យល់អំពីច្បាប់ និង សំអាងហេតុ សម្រាប់ការចេញសាលដីការរបស់ខ្លួន និងធានាថា សាលក្រមជាលាយ លក្ខណ៍អក្សរមានហេតុផលគ្រប់គ្រាន់ជូនចុងចោទ។

<sup>173</sup> Two years since incident, verdict in the case of Chao Veasna has been further delayed with no expected date given for same to be delivered; see **Annex 1 (entry 4)**, Niem Chheng, “Trial Verdict Delayed for Former CNRP Official Denied Bail”, The Phnom Penh Post, 13 March 2018, available at <https://www.phnompenhpost.com/national/trial-verdict-delayed-former-cnrp-official-denied-bail> (last visited 4 July 2018).

<sup>174</sup> This was the case in nearly all of the 340 cases monitored by CCHR at the Appeal Court, see “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, pp. 26-27. In the case of Kong Raiya **Annex 1 (entry 21)** - who was sentenced to 18 months in prison over alleged incitement pertaining to a Facebook post in 2016 - the judge offered no rationale for the verdict or the sentence, see Niem Chheng, “Student Gets 18 Months for Post”, The Phnom Penh Post, 16 March 2016, available at <https://www.phnompenhpost.com/national/student-gets-18-months-post> (last visited 4 July 2018). Pin Sisovann, “Cambodian Student Imprisoned for 'Revolution' Facebook Post”, VOA, 16 March 2016, available at <https://www.voanews.com/a/cambodian-student-imprisoned-for-revolution-facebook-post/3240282.html> (last visited 4 July 2018). As a result, it is essential that details are provided in the Appeals Judgement, for the Defendant to be able to appeal to the Supreme Court.

<sup>175</sup> “It is the exception and not the rule for decisions of the Courts of First Instances to be overruled by Court of Appeal Judges”. “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.6.

<sup>176</sup> Chhay Channyda, “Provinces Tapped for Appeal Court Project”, The Phnom Penh Post, 29 July 2015, available at <https://www.phnompenhpost.com/national/provinces-tapped-appeal-court-project> (last visited 4 July 2018); Professor Rhona Smith, UN Special Rapporteur on the Situation of Human Rights in Cambodia, “End of mission statement”, 14 March 2018, para. 4.

<sup>177</sup> See esp. Extraordinary Chambers in the Courts of Cambodia, “Appeal Judgement”, Supreme Court Chamber, 23 November 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC.

**៥.៥. ចំនួនស្ត្រីបន្តរងផលប៉ះពាល់ដោយមិនសមាមាត្រ<sup>178</sup>**

៤៧. ចំនួនស្ត្រីនៅក្នុងតុលាការនៅតែមានចំនួនទាបខ្លាំង៖ ១៤% នៃចៅក្រមទាំងអស់ ១២% នៃព្រះរាជអាជ្ញា និង ២០% នៃមេធាវី គឺជាស្ត្រី។<sup>179</sup> វិសមភាពនៅក្នុងការទទួលបានវិជ្ជាជីវៈតុលាការនេះមានផលប៉ះពាល់ទៅលើចុងចោទ ជនរងគ្រោះ និងសាក្សីជាស្ត្រី។ ចំនួនបុរសលើសលុបនៅក្នុងប្រព័ន្ធយុត្តិធម៌ ដែលអាចធ្វើឱ្យមានបរិយាកាសអវិភាពដល់ជនរងគ្រោះដោយសារការរំលោភបំពាន ឬអំពើហិង្សាផ្លូវភេទជាទូទៅត្រូវបានធ្វើឱ្យមានរបួសផ្លូវចិត្តសារជាថ្មី ឬទទួលរងនូវការស្តីបន្ទោស។<sup>180</sup>

៤៨. ជាទូទៅ អំពើហិង្សាក្នុងគ្រួសារមិនត្រូវបានចាត់ទុកជាបទល្មើសព្រហ្មទណ្ឌ<sup>181</sup>ឡើយ ហើយស្ត្រីជាច្រើនបានជ្រើសរើសមិនធ្វើការប្តឹងផ្តល់ ឬទម្លាក់ចោលបណ្តឹងដែលជាការធ្វើឱ្យកើនឡើងនូវនិទណ្ឌភាពសម្រាប់អំពើហិង្សាយេនឌ័រ។ គួរកត់សម្គាល់ថា មានសំណុំរឿងអំពើហិង្សាក្នុងគ្រួសារចំនួនតែ ២០% ប៉ុណ្ណោះ នៅដើមឆ្នាំ២០១៤ និងចុងឆ្នាំ២០១៦ ដែលឈានដល់ដំណើរការក្តីព្រហ្មទណ្ឌ។<sup>182</sup> បញ្ហានិទណ្ឌភាពក៏កើតឡើងជាទូទៅសម្រាប់សំណុំរឿងអំពើហិង្សាយេនឌ័រភាគច្រើនផងដែរ។ ឧទាហរណ៍ មរណៈភាពរបស់ស្ត្រីរកស៊ីផ្លូវភេទ ប៉ែនគន្ធា ឬអ្នកចម្រៀងសាន ស្រីឡែ មិនត្រូវបានធ្វើការដោះស្រាយឡើយ។<sup>183</sup>

៤៩. ទោះបីយ៉ាងណា សេចក្តីព្រាងច្បាប់ដែលនឹងកំណត់បទដ្ឋានអប្បបរមាពាក់ព័ន្ធនឹងអំពើហិង្សាយេនឌ័រ ដែលគ្របដណ្តប់លើប្រធានបទផ្សេងៗដូចជា ជំនួយវេជ្ជសាស្ត្រសង្គ្រោះបន្ទាន់ ដីកាការពារ និងការទទួលបានមធ្យោបាយផ្លូវច្បាប់ ត្រូវបានរាយការណ៍ថា កំពុងរៀបចំដោយក្រសួងកិច្ចការនារី និងដាក់បញ្ចូលនូវកិច្ចពិគ្រោះយោបល់ជាមួយអង្គការក្រៅរដ្ឋាភិបាលដែលពាក់ព័ន្ធផងដែរ។<sup>184</sup>

<sup>178</sup> For more details see *NGO-CEDAW/Consortium of Cambodian NGOs thematic submissions on Gender*, pp. 3-5.

<sup>179</sup> Leonie Kijewski & Yon Sineat, “In Cambodia’s courts, it’s a man’s world – with the effects felt by female employees and victims alike”, *The Phnom Penh Post*, 23 February 2018, available at <https://www.phnompenhpost.com/national-post-depth/cambodias-courts-its-mans-world-effects-felt-female-employees-and-victims-alike> (last visited 4 July 2018).

<sup>180</sup> Leonie Kijewski & Yon Sineat, “In Cambodia’s courts, it’s a man’s world – with the effects felt by female employees and victims alike”, *The Phnom Penh Post*, 23 February 2018; *See also* Report, “No Punishment, No Protection: Cambodia's Response to Domestic Violence”, Licadho, December 2017, available at <http://www.licadho-cambodia.org/reports.php?perm=225> (last visited 4 July 2018).

<sup>181</sup> Report, “No Punishment, No Protection: Cambodia's Response to Domestic Violence”, Licadho, December 2017.

<sup>182</sup> Report, “No Punishment, No Protection: Cambodia's Response to Domestic Violence”, Licadho, December 2017.

<sup>183</sup> See **Annex 1 (entries 28 and 36)**.

<sup>184</sup> ជុំ ជោគជាតា, “សង្គមស៊ីវិលពិភាក្សាលើសេចក្តីព្រាងច្បាប់ជួយទៅដល់ស្ត្រីនិងកុមារីរងគ្រោះដោយអំពើ

**អនុសាសន៍**

- xxvi. ត្រូវទាញបទពិសោធន៍ពីអង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា អនុម័តច្បាប់ការពារសិទ្ធិជនរងគ្រោះពីអំពើហិង្សាយេនឌ័រនៅក្នុងបរិបទនៃដំណើរការផ្លូវច្បាប់ ដោយផ្ដោតទៅលើការគោរពសិទ្ធិឯកជនភាព ព្រមទាំងការគាំទ្រផ្លូវច្បាប់ និងផ្លូវចិត្ត ដោយគោរពតាមគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ៥.២ និង ៥. គ។<sup>185</sup>
- xxvii. បណ្តុះបណ្តាលឱ្យបានគ្រប់គ្រាន់នូវតួអង្គក្នុងប្រព័ន្ធតុលាការស្តីពីបញ្ហាយេនឌ័រជាក់លាក់ ដែលរួមមាននិន្នាការភេទ អត្តសញ្ញាណ និងការបង្ហាញយេនឌ័រ និងលក្ខណៈភេទស្របទៅតាមគោលដៅអភិវឌ្ឍន៍ប្រកបដោយចីរភាព ៥.២ និង ៥. គ. នៅត្រឹមឆ្នាំ ២០២១។

**៥.៦. ខ្វះកិច្ចគាំពារចំពោះអនីតិជន<sup>186</sup>**

៥០. អនីតិជនអាយុចាប់ពី ១៥ ឆ្នាំឡើងទៅ អាចទំនួលខុសត្រូវព្រហ្មទណ្ឌ និងឃុំខ្លួនបាន។<sup>187</sup> នៅក្នុងឆ្នាំ២០១៦ ជនជាប់ឃុំចំនួន ៩០៣ នាក់ ក្នុងចំណោម ២១.៩៨៩ នាក់ គឺជាអនីតិជន។<sup>188</sup> ច្បាប់ស្តីពីយុត្តិធម៌អនីតិជន ដែលជាវិធានការដំបូងនៅក្នុងប្រទេសកម្ពុជា បានអនុម័តកាលពីខែកក្កដា ឆ្នាំ២០១៦ ត្រូវបានចូលជាធរមានកាលពីខែមករាឆ្នាំ២០១៧។<sup>189</sup> ទោះបីយ៉ាងណា រាជរដ្ឋាភិបាលកម្ពុជាពុំបានអនុវត្តវិធានការដែលខ្លួនបានកំណត់ឡើយ ដូចជាការបង្កើតតុលាការអនីតិជនដាច់ដោយឡែក ការបង្កើតវិធានការជាជម្រើសផ្សេងសម្រាប់ការឃុំខ្លួន និងការអនុវត្តវិធានការតឹងរឹងដើម្បីការពារឯកជនភាពរបស់អនីតិជន។ ទោះបីច្បាប់តម្រូវឱ្យមាន

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<sup>185</sup> Extraordinary Chambers in The Courts of Cambodia, Internal Rules, Rule 26 (4), available at [https://www.eccc.gov.kh/sites/default/files/legal-documents/Internal\\_Rules\\_Rev\\_9\\_Eng.pdf](https://www.eccc.gov.kh/sites/default/files/legal-documents/Internal_Rules_Rev_9_Eng.pdf) (last visited 4 July 2018).

<sup>186</sup> recommendation 118.93: Put in place a juvenile justice system adapted to the needs of juvenile delinquents, particularly so that minors are not detained with adults (Djibouti).

<sup>187</sup> See e.g. Arts 96, 143, 212, 213, 214 of the CPC; Arts 7, 8 of the Law on Juvenile Justice; see also, Sami Shearman, “Cambodian Criminal Justice System Ignores Children’s Rights”, The Sithi Blog - CCHR, 27 October 2014, available at <https://blog.sithi.org/2014/10/27/cambodian-criminal-justice-system-ignores-childrens-rights/> (last visited 4 July 2018); “Updated Situation Analysis of Children and Women and in Cambodia”, UNICEF, 2017, Part 5.4. on Juvenile Justice, available at [https://www.unicef.org/cambodia/UNICEF\\_Cambodia\\_SitAn\\_2018.pdf](https://www.unicef.org/cambodia/UNICEF_Cambodia_SitAn_2018.pdf) (last visited 4 July 2018).

<sup>188</sup> Mech Dara, “Prison numbers jump 20 percent”, The Phnom Penh Post, 23 February 2017.

<sup>189</sup> Law on Juvenile Justice, 2016, available at <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> (last visited 4 July 2018).



ដំណើរការក្តីនៅក្នុងសំណុំរឿងពាក់ព័ន្ធនឹងអនីតិជន ដែលប្រព្រឹត្តទៅដោយមិនអនុញ្ញាតឲ្យ មានការចូលរួមពីសាធារណជនក៏ដោយ<sup>190</sup> ក៏វិធានការពារឯកជនភាពរបស់អនីតិជនកម្រនឹង ត្រូវបានអនុវត្តណាស់ ដូចជានៅឆ្នាំ២០១៧ សាលាឧទ្ធរណ៍បានអនុវត្តវិធានការទាំងនេះនៅ ក្នុងសំណុំរឿងតែមួយប៉ុណ្ណោះក្នុងចំណោមសំណុំរឿងចំនួន ៣៥ ករណីដែលតាមដានដោយ មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា។<sup>191</sup>

**អនុសាសន៍**

- xxviii. ត្រូវអនុវត្តវិធានការបន្ទាន់ ដើម្បីធានាការគោរពឯកជនភាពរបស់អនីតិជននៅក្នុង ដំណើរការប្រព័ន្ធតុលាការ ដូចដែលមានចែងនៅក្នុងច្បាប់ស្តីពីយុត្តិធម៌អនីតិជន នៅ ត្រីមាស២០២០។
- xxix. ដាក់កម្រិតទៅលើការឃុំខ្លួនបណ្តោះអាសន្នលើអនីតិជន ឱ្យនៅត្រឹមករណីពិសេស មួយចំនួន នៅពេលពុំមានជម្រើសផ្សេងទៀត និងធានាថានៅក្នុងសំណុំរឿងបែបនេះ រាល់វិធានការចាំបាច់ត្រូវបានអនុវត្ត ដើម្បីគោរពសិទ្ធិរបស់អនីតិជន។

<sup>190</sup> Article 47 of the *Law on Juvenile Justice*. Article 48 of the *Law on Juvenile Justice* further states that during the trial, the court shall use child-friendly procedure. Under special circumstances, the minor’s lawyer, social agent or prosecutor may request the court to place the minor behind the screen or use other alternate means of providing testimony. *See also* CCHR Report that suggests use of other alternatives, e.g. Juvenile victims’ or defendants’ privacy may further be protected *via* placing the minor behind screens or using other alternate means of providing testimony. The use of tools such as video conferencing system, or closed hearing should be considered. “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.7, figure 14(b) available at <https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights%20ENG.pdf> (last visited 4 July 2018). Juveniles are also permitted privacy from publication - *See* CRC General Comment 10, para. 64. “No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offenses allegedly committed by children and limit them to very exceptional cases.” Committee on the Rights of the Child, *General Comment N° 10 (2007): Children’s rights in juvenile justice*, 25 April 2007, UN. Doc. CRC/C/GC/10, para. 64, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (last visited 4 July 2018).

<sup>191</sup> According to CCHR Monitoring Project, all trials were open to the public. There was only one instance where the Court conducted the hearing in closed court as a result of protecting social morality, as the juvenile was charged with rape. “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.7, figure 14(b).