

Submission to the Universal Periodic Review of Cambodia July 2018

Summary

During the two previous cycles of the Universal Periodic Review (UPR), Cambodia accepted 301 recommendations out of 343, but has largely failed to implement the accepted recommendations. Since Cambodia's previous UPR in 2014, the government has intensified its onslaught on Cambodia's political opposition, civil society, and independent media, with the aim of dismantling, silencing, and exiling them in the lead-up to the general election on July 29, 2018.

Apparently responding to significant drop in electoral support for the ruling Cambodian Peoples' Party (CPP) during the 2013 general election and the 2017 commune election, Prime Minister Hun Sen systematically attacked the main opposition party, the Cambodia National Rescue Party (CNRP). The government has arbitrarily arrested or exiled most of the senior leaders of the CNRP on fabricated charges, and in November 2017 brought a case before the politically compliant Supreme Court that resulted in the CNRP's dissolution and banning of 118 CNRP members from political activity for five years.

The government has cracked down on civil society groups using threats, violence, and repressive laws against any independent voices challenging the ruling party's prerogatives. Cambodia's judiciary, which is not independent of the ruling party, unjustly prosecutes those targeted by the government for exercising their basic rights to freedom of expression, association and peaceful assembly. A rising number of opposition political party leaders and supporters, civil society activists, and journalists have fled the country in fear of arbitrary arrest.

The authorities have harassed independent media outlets, and either shut them down or forced them to change ownership to people close to the ruling party.

Human Rights Defenders and Protesters

Contrary to accepted 2014 UPR recommendation to "revise the Penal Code as well as other laws" to comply with "international freedom of expression standards and prevent the harassment of human rights defenders [...] and NGOs," the Cambodian government adopted new [repressive](#) laws or amended existing statutes without public consultations that further restricted the rights to free expression, assembly and association. This includes among others the repressive Law on Associations and Non-Governmental Organizations (LANGO), a *lese majeste* (insulting the monarchy) clause in the Penal Code, and amendments to the Constitution.

On April 28, 2016, five former and current senior staff members of the Cambodian Human Rights and Development Association (ADHOC), were arbitrarily [detained](#) based on the fabricated allegation that they had committed "bribery." The charge focused on their human rights and legal protection work.

On June 13, 2016, a Phnom Penh court convicted three CNRP activists for "insurrection," joining 11 other CNRP activists found guilty on the same trumped-up charge in July 2015, now serving seven to 20-year prison terms for their involvement in a 2014 demonstration in Phnom Penh during which security forces assaulted peaceful protesters.

On January 4, 2018, labor rights advocate Moeun Tola, executive director of NGO CENTRAL; Pa Ngoun Teang, free media advocate and executive director of NGO CCIM; and social activist Venerable But Buntenh, were [charged](#), based on bogus embezzlement allegations for having been members of the Kem Ley Funeral Committee.

Recommendations:

- Immediately drop the charges against Moeun Tola, Pa Ngoun Teang and But Buntenh, and the “ADHOC Five,” and quash the convictions of the 14 CNRP activists and ensure their immediate and unconditional release;
- Cease harassment, arbitrary arrests, and physical assaults on human rights defenders and protesters; and investigate and prosecute the perpetrators of such attacks;
- Repeal the LANGO, amendments to articles 34, 42, 49, 53 and 118 of the Constitution, and article 437*bis* of the Penal Code introducing the crime of *lese majeste*;
- Repeal articles 305, 307, 502 and 523 of the Penal Code regarding defamation, public insult, or discrediting of judicial decision that violate freedom of expression;
- Protect the right of individuals and organizations to defend and promote human rights, and bring laws, regulations and policies on freedom of expression, association and public assembly into accordance with the International Covenant on Civil and Political Rights.

Right to Freedom of Assembly and Association and Labor Rights

Cambodia failed to implement the 2014 UPR recommendation to ensure “peaceful demonstrations can occur safely and without fear of intimidation or excessive use of force.”

In January 2014, security forces used excessive [force](#) to suppress garment and textile worker protests, resulting in at least five deaths. The government then imposed a ban on public demonstrations and arbitrarily prosecuted labor leaders and workers on fabricated charges. On May 30 2014, a court convicted and later suspended the sentences of 23 garment workers and unionists arrested during the protest for committing acts of violence and causing damage with aggravating circumstances, including Vorn Pov, president of the Independent Democracy of Informal Economic Association, and Theng Savuen, coordinator of the Coalition of Cambodian Farmer Community. The government failed to conduct an inquiry into the deaths in January.

In April 2016, the government adopted the Trade Union Law, which has severely curtailed the ability of unions to register, collectively bargain, and represent workers. The Trade Union Law has undercut the work of the Arbitration Council, a dispute resolution body that both employers and unions viewed as working credibly and effectively, by restricting workers’ ability to raise collective disputes.

Recommendations

- Amend the Law on Trade Unions in consultation with workers, labor advocates and other stakeholders, to bring it into full compliance with International Labour Organization Conventions 87 (Freedom of Association) and 98 (Right to Organize and Collectively Bargain), both ratified by Cambodia;
- Cease the harassment, arbitrary arrests, and physical attacks on trade unionists and workers, and investigate and appropriately prosecute the perpetrators of such attacks;
- Restore the work of the Arbitration Council to hear all collective disputes of workers, irrespective of whether they are represented by a union.

Attacks on and Control of the Media

Cambodia failed to implement the 2014 UPR recommendation it accepted to “ensure independence of the media from political influence.” The government has since drastically [curtailed](#) Cambodia’s media freedom, online and offline.

In August 2017, Cambodian authorities [ordered](#) the closure of 32 FM radio frequencies, primarily targeting stations relaying Khmer-language news of Radio Free Asia (RFA) and Voice of America. The local Voice of Democracy radio was also forced to go off the air. In September 2017, *The Cambodia Daily*, one of the country’s few remaining independent newspapers, was [forced to close](#) after being handed a dubious unpaid tax bill of US\$6.3 million. In September 2017, RFA closed its operations in Cambodia, citing systematic harassment by the government. In May 2018, the government coerced the sale of the last independent local

newspaper, the *Phnom Penh Post*, to a Malaysian businessman with reported ties to the Cambodian government by hitting the newspaper with a questionable unpaid tax bill of US\$3.9 million.

On November 14, 2017, authorities arbitrarily detained two former RFA journalists, Yeang Sothearin and Uon Chhin, on fabricated espionage charges for having [allegedly](#) continued to report for RFA after the closure of RFA's Cambodia office.

Social media networks have come under attack from increased government surveillance and interventions. On May 28, 2018, the government [issued](#) a national decree (*prakas*), which allows the Ministries of Interior, Information, and Posts and Telecommunications to take down content on social media outlets and websites that the government deems to be "incitement, breaking solidarity, discrimination and willfully creating turmoil leading to undermining national security, public interest and social order." This overly broad regulation, which restricts the rights to freedom of expression, press and publication, as protected under international law and Cambodia's Constitution, empowers the government to police social media networks to uncover and silence online dissent in Cambodia.

Recommendations:

- Cease the government's arbitrary interference and surveillance of the online and offline media and use of repressive laws to censor and control the media;
- Cease intimidation, surveillance and harassment of journalists;
- Repeal the Law on Telecommunications and No. 170 Br.K/Inter-Ministerial Prakas on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia.

Electoral reforms

Cambodia failed to implement accepted 2014 UPR recommendation to "undertake key electoral reforms to: improve the integrity of the voter registration system and voter list; ensure that all candidates have equal access to the media; and ensure that the National Election Committee retains full independence."

Cambodia adopted a set of amendments to Cambodia's election laws in mid-2015, including the Law on the Election of Members of the National Assembly (LEMNA) and the Law on the National Election Committee, both of which [further](#) limited the role of NGOs in election monitoring. A second round of amendments to the LEMNA in October 2017 allowed for the [redistribution](#) of parliamentary seats to other political parties. After the CNRP was dissolved in November 2017 on politically motivated accusations alleging involvement in a so-called "color revolution" to topple the government, its seats were redistributed to a number of minor parties that had failed to win seats in the 2013 election. New voting registration procedures made no [provisions](#) to register large numbers of Cambodian citizens living and working overseas as migrant workers.

Cambodia also failed to fulfill its pledge at the UPR to "take the necessary steps to strengthen the legal framework surrounding elections so as to ensure that future elections are free and fair." In 2017, the government rushed through the National Assembly two rounds of repressive amendments to the Law on Political Parties, empowering authorities to dissolve political parties and ban party leaders from political activity without holding hearings or providing for an appeal process.

Despite accepting 2014 UPR recommendation to "protect opposition party members," on September 3, 2017, the government [arrested](#) CNRP's leader, Kem Sokha, on bogus treason charges. Kem Sokha, who had assumed leadership of the party after Sam Rainsy's forced exile and resignation, had already faced *de facto* house arrest in 2016 in another politically motivated case.

Recommendations to the Cambodian Government

- Drop all charges against and immediately and unconditionally release Kem Sokha. Quash the political motivated Supreme Court judgment to dissolve the CNRP and lift the ban on the 118 CNRP members;
- Cease the government's campaign of harassment, arbitrary arrests, and physical attacks on political opposition members and supporters;
- Repeal the amendments to the Law on Political Parties that permit the arbitrary dissolution of political parties, and ban party leaders from political activity without due process;

- Repeal amendments to the LEMNA that criminalize actions by NGOs to voice criticism during the election campaigning period and allow for an arbitrary redistribution of parliamentary seats;
- Establish a genuinely independent National Election Committee, capable of preventing election fraud and prepared to hold all political parties accountable for malfeasance and misdeeds;
- Provide equal access to state-controlled media for all political parties and seek to provide a level playing field for all parties during election campaigning.

Politically Controlled Judiciary

While Cambodia accepted 2014 UPR recommendation to “take all necessary measures to guarantee the independence of justice without control or political interference” and to “establish a judicial reform which provides, inter alia, mechanisms to guarantee an independent justice,” the Cambodian government further [tightened](#) its control over the judiciary. Cambodia accomplished this through three laws promulgated on July 13, 2014: the Laws on the Organization of the Courts, the Statute of Judges and Prosecutors, and the Organization and Functioning of the Supreme Council of the Magistracy. As a result, the government now fully controls administrative and budgetary matters of the judiciary, and has removed safeguards for judicial independence in selection, removal, promotion and disciplinary procedures for judges.

Contrary to accepted 2014 UPR pledge to “strengthen independent and impartial investigations into human rights abuses,” the investigation following the fatal shooting of prominent political commentator Kem Ley on July 10, 2016 – who shortly before his murder had spoken in a radio interview on the vast wealth of Hun Sen’s family – was deeply flawed. The trial of suspect Oeuth Ang on March 23, 2017, [neglected](#) to establish the truth or investigate complicity of other persons, resulted in his conviction on murder and illegal possession of a weapon charges and a life sentence. The court ignored serious inconsistencies in Oeuth Ang’s confession and shortcomings in the investigation, including the role of other collaborators who allegedly provided the murder weapon.

In May 2016, a court convicted three officers of Hun Sen’s Personal Bodyguard [Headquarters](#) of “aggravated intentional violence” and “aggravated intentional damage” for having brutally assaulted two opposition National Assembly members in October 2015. The court sentenced each to four years in prison but suspended their sentences after they had served one year. The court neglected to consider evidence indicating involvement of other, much higher-ranking officials, in preparing the attacks. Upon release, all three men were reinstated to their units and received [promotions](#).

On November 16, 2017, the Supreme Court, chaired by a judge who also serves on the central committee of the ruling CPP, dissolved the CNRP and banned 118 CNRP members of parliament and party officials from political activity for five years.

Recommendations to the Cambodian Government

- Promptly, impartially, and credibly investigate all apparent politically motivated attacks and appropriately prosecute those responsible, regardless of title or rank;
- Establish a new, wholly professional and independent judiciary and prosecution service. Judges and prosecutors should be appointed by an independent judicial commission, which also has the power to investigate complaints and discipline judges and prosecutors who violate a professional code of conduct.
- Terminate prosecutors with a track record of politically motivated prosecutions.
- Significantly amend the Laws on the Organization of the Courts, the Statute of Judges and Prosecutors, and the Organization and Functioning of the Supreme Council of the Magistracy, to ensure those revised laws actually protect and guarantee judicial independence.
- Establish a genuinely independent National Human Rights Commission in accordance with the Paris Principles. Reformulate the Supreme Council of Magistracy as an impartial body, independent of the Ministry of Justice and political parties, so that it can implement its constitutional mandate to ensure judicial independence.

Land Grabbing

Cambodia accepted 2014 UPR recommendation to “ensure that the granting of land concessions or the withdrawal of land titles or the legal rights to land use does not lead to violations of human rights.” However, illegal land acquisitions by politically powerful individuals who are high-ranking CPP officials and financiers of the party, or have affiliations with top leaders of the party, as well as senior members of the national armed forces and police, continue to spark land conflicts. The government has repeatedly failed to impartially and transparently resolve protracted land disputes or end unlawful land takings and to issue land titles. The land titling procedure in place continues to exclude many land grabbing victims.

Victims of land grabbing who engage in protests frequently face arbitrary detention and trumped-up charges leading to long prison sentences. Land rights activist Tep <https://www.hrw.org/news/2017/07/14/cambodia-drop-charges-against-land-rights-defenders> Vanny remains imprisoned since being arrested in August 2016, when she led a peaceful protest calling for the release of five human rights defenders. She is currently serving a 30-month prison sentence, with another 6-month prison sentence pending enforcement by the prosecutor, on the basis of bogus charges that stem from 2011 and 2013. As the leader of the Boeung Kak Lake community in Phnom Penh, she represented over 4,000 families stripped off their land to make way for a private development project operated by a CPP senator with very close links to Hun Sen.

Recommendations:

- Immediately quash the charges against Tep Vanny and unconditionally release her;
- Cease the harassment, arbitrary arrests, and physical assaults on land rights activists and communities, and investigate and appropriately prosecute the perpetrators of such attacks;
- Provide fair compensation to victims of land grabbing and introduce an effective and fair system of land titling.

Cooperation with UN Human Rights Mechanisms

The government and Hun Sen in particular have responded to reports by UN special procedure mandate holders with personal attacks, public insults, refusals to meet, and neglectful silence towards requests to undertake missions to Cambodia.

After threats of non-renewal of the Memorandum of Understanding (MoU) with the Office of the UN High Commissioner for Human Rights (OHCHR) by the government in 2016, the MoU was finally renewed for a two-year period – a long battle that has now sparked fears for the Office’s future after December 2018.

The OHCHR has repeatedly been unable to conduct its activities due to arbitrary restrictions imposed by authorities, such as refusal of access to sites of rights violations and to prisons. Authorization procedures for such visits have also become unreasonably lengthy.

Recommendations:

- Issue standing invitations to the UN special procedures, and engage constructively with the special rapporteur for human rights in Cambodia, the OHCHR, and all UN special procedures;
- Renew the MoU between the OHCHR for a five-year period after its lapse in December 2018;
- Cease harassment of OHCHR officials and allow the Office to freely fulfill its mandate without hinderance from authorities.