

UN Human Rights Council must act in response to worsening free expression situation in Cambodia

ARTICLE 19 is deeply concerned at the deteriorating situation for the right to freedom of expression in Cambodia, in particular the continuation of attacks against human rights defenders (HRDs) and journalists and impunity for those crimes, as well as attempts to reduce civic space through the promulgation of new laws and crackdowns on peaceful protests.

The UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, will report to the 36th Session of the HRC on 26 September 2017, including on her [October 2016](#) and [August 2017 country visits](#). Even in the intervening weeks, the deteriorating human rights situation has received widespread condemnation, [including from the UN High Commissioner for Human Rights](#), demonstrating that earlier recommendations of the Special Rapporteur and [UN treaty bodies](#), continue to be flagrantly disregarded by the Royal Government of Cambodia (RGC).

In this context, we note that the 36th Session of the HRC is currently considering a resolution regarding technical assistance to Cambodia, which will extend the mandate of the Special Rapporteur for a period of two years.

ARTICLE 19 calls on HRC Member States, principally Japan, which holds the pen on this initiative, to ensure that the resolution unequivocally and specifically condemns recent attacks on freedom of expression, as detailed in this statement, in addition to extending the Special Rapporteur's mandate. The resolution must set out the specific reforms necessary to safeguard fundamental rights in the country, and ensure close international supervision of their implementation, with regular reporting to the HRC ahead of the 2018 July General Elections.

Cambodia's international obligations and commitments

Cambodia has ratified the International Covenant on Civil and Political Rights (ICCPR), which obliges the government to protect and promote the rights to freedom of opinion and expression, and the rights to freedom of assembly and of association. These rights are protected in Articles 41 and 42 of the Constitution. During its last UN Universal Periodic Review (2013), the RGC accepted recommendations, *inter alia*, to reform the Penal Code, ensure protections for the safety of human rights defenders and journalists, and end arbitrary arrests and detentions.

Crackdown on media and civic space following commune elections

Press freedom and civic space in Cambodia have continued to shrink following the national commune election in June 2017. In the run-up to the commune elections, senior public officials including the Prime Minister, Minister of Defence and Minister of Interior, made threats against opposition politicians and human rights organisations.

At least three prominent local human rights organisations that closely monitored the elections: the Cambodian Human Rights and Development Association (ADHOC), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), and Comfrel, have been called for questioning since early August 2017 by the Ministry of Economy and Finance's Taxation Department. This followed letters from the Ministry of Information on 4 July 2017, sent pursuant to orders of the Prime Minister, to warn NGOs of the consequences of non-compliance with the newly adopted Law on Associations and Non-Governmental Organizations (LANGOs). The letters instructed all NGOs to submit all their bank account statements by the end of September 2017, and demanded them to produce annual and financial reports for 2016 to the Ministry of Interior and Ministry of Economy and Finance.

The Cambodian branches of international NGOs have also been targeted. The US-based National Democratic Institute (NDI), which has worked on election support and capacity building for political parties in Cambodia since 1992, was ordered to shut down and its foreign staff ordered to leave the country within 7 Days, after a letter issued by Ministry of Foreign Affairs and International Cooperation on 23 August 2017, alleging the NDI did not comply with LANGO and Taxation law.

Independent media have also been targeted, and in some instances forced to close:

- Prominent independent newspaper, the Cambodia Daily, was forced to close in September 2017, following demands for it to pay ten years of tax arrears totaling 6.3 million USD. Newspaper Director Krisher-Steels and General Manager Douglas Steels have been banned from leaving the country, facing charges of “tax evasion” and a possible six years’ imprisonment.
- In August 2017, the government revoked the licenses of Mohanokor Radio and its affiliate stations, which relay broadcasts of the station Radio Free Asia (RFA) and Voice of America (VOA), and the closure of local independent radio station, “Voice of Democracy”. In April, the deputy director in Cambodia of RFA left the country after receiving a court summons for charges that he failed to distinguish himself as a journalist when he visited 16 jailed opposition politicians and political activists. A warrant has been issued for his arrest.

Attacks and threats against environmental human rights defenders

Since the July 2016 murder of environmental human rights defender (EHRD) Kem Ley, and attacks or threats in the same year against at least 12 other EHRDs, persons speaking out against environmental degradation, and the illegal activities of logging and extractive companies and associated public officials, remain at risk, with attacks continuing into 2017.

EHRDs’ work in Cambodia puts them up against powerful commercial and political interests, and has uncovered alleged corruption in public officials’ involvement in the depletion of Cambodia’s natural resources. Their vulnerability is exacerbated by various factors, including: the remote nature of their work, often in areas with little or no internet connectivity; restricted access to media outlets, national and international NGOs, and foreign embassies; limited resources and tools to ensure their own safety, such as lack of efficient or up-to-date mobile phones or computers; and language barriers, particularly for indigenous communities.

Self-censorship has become the predominant form of risk mitigation for EHRDs, as the RGC has failed to address the long-standing culture of impunity for attacks and threats against them in Cambodia. The environment for HRDs more generally has also become more restrictive, as the RGC increasingly responds to allegations of wrongdoing by suppressing any criticism or dissent.

Since September 2016, when the Special Rapporteur on Cambodia last reported to the HRC, the following incidents of threats, harassment and attacks against EHRDs have continued:

- On 13 September 2017, two Mother Nature activists, Dem Kundy and Hun Vannak, were arrested and charged with “incitement” and invasion of privacy under the Cambodian Criminal Code, for filming illegal sand dredging off the coast of Koh Kong province. It is unclear what felony they are accused of inciting, nor how they invaded privacy by filming a company’s vessel in open waters. Reporting of Mother Nature earlier the same week alleged irregularities in public trade figures for Silica Sand.
- Venerable But Buntenh, a leader of the Independent Monk Movement, a friend of Kem Ley and also an outspoken EHRD, received a death threat on 20 April 2017 from an unknown person during a campaign meeting to support the Prey Lang forest community group in Stung Treng province. Ven. Buntenh was part of Kem Ley’s funeral committee, and went into hiding shortly after Mr. Ley’s murder on 26 July 2016, following threats from a village chief, who went to withdraw his birth certificate in Siem Reap province as an act of intimidation. In January 2017, Ven. Buntenh requested protection from the competent authorities after six policemen

threatened villagers and monks in Siem Reap not to attend his speech on forestry and environment related issues; no meaningful protection assistance has been provided.

- On 26 April 2017, a peaceful procession to commemorate the five-year anniversary of the murder of EHRD Mr. Chut Wutty was blocked by more than 60 district security guards. Mr. Chut Wutty was killed in 2012 while taking two journalists to witness illegal logging in protected forest in Koh Kong. More than 100 members of Cambodian Youth Network (CYN) and Prey Lang Community Network, wearing t-shirts protesting the continuing impunity for the crime, were blocked from reaching a riverside shrine close to the Royal Palace. While the procession eventually continued, the deputy governor threatened to arrest organisers and warned against future processions. On 26 April 2016, local authorities also attempted to disrupt the Phnom Penh screening of the film “I am Chut Wutty”, which commemorates the murdered EHRD. The Deputy Khan (District) Governor ordered a ban without any clear legal basis, citing that the hosts had not asked permission to screen the film. There is no applicable law in Cambodia for lawfully preventing the screening of a film. The screening of the film eventually went ahead.
- On 31 January 2017, three EHRDs from the environmental group Mother Nature fled Cambodia, one week prior to an Appeal Court hearing that they feared would lead to further arbitrary detention. The three were detained in August 2015 for protesting against sand dredging activities in Koh Kong province, and were only released on 1 July 2016, 10 months later and longer than the period permitted by law for pre-trial detention. On the day of their release, they were sentenced to 18 months in prison with time-served given for 10 of those months and a suspended sentence for the remaining 8 months, and ordered to compensate the sand dredging company \$25,000 and pay a \$500 fine. The conviction was for threatening to destroy property as part of a direct action protest, under Article 424 of the Cambodian Penal Code.
- The most prominent case from 2016 was the 10 July murder of government critic and EHRD Mr. Kem Ley, who was shot and killed inside a gasoline station in Phnom Penh. Oeut Ang was convicted of murdering Mr. Ley and sentenced to life in prison on 23 March 2017, and reportedly committed the crime due to an unpaid debt. However, controversy surrounded the police investigation, with incomplete CCTV provided in support of the prosecution during the trial and later publicly released. Questions remain over whether justice was done, as many believe Mr. Ley was killed for his work; he was outspoken on environmental issues deemed sensitive by the government, and was killed days after speaking on the radio about a large-scale Global Witness investigative report. The report uncovered \$200 million worth of holdings across 20 sectors by 27 members of the Prime Minister’s family. Members of the opposition political party have faced criminal defamation proceedings for raising questions regarding government involvement in the murder, detailed below.

ARTICLE 19 notes that since the Special Rapporteur last reported to the HRC, and two years since the last HRC resolution on Cambodia, there has been an increase in threats, attacks, and legal harassment against human rights defenders more broadly:

- Five human rights defenders, four of whom are ADHOC staff, Mr. Ny Sokha, Mr. Yi Soksan, Mr. Nay Vanda and Ms. Lim Mony, together with a deputy secretary-general of the National Election Committee and former ADHOC staff member, Mr Ny Chakrya, were detained without trial for more than a year, following their arrest on 28 April 2016, and released on bail only on 29 June 2017, pending trial. They are charged with bribing a witness under the Criminal Code, in relation to advice and support given to Ms. Khom Chandaraty (widely known as Srey Mom), who was questioned by counter-terrorism officials in relation to an alleged extra-marital relationship with then-deputy opposition leader of Cambodia National Rescue Party (CNRP), Mr Kem Sokha, notwithstanding the complete absence of a connection between the alleged relationship and “terrorism”. The UN Working Group on Arbitrary Detention has determined the detention was arbitrary, and if convicted they face between 5 and 10 years’ imprisonment.

- An advocacy campaign called “#Freethe5kh” has been mobilized across the country, but has faced resistance and disruption by local authorities. On 2 May 2017, banners at the offices of three prominent NGOs, ADHOC, LICADHO, and Mother Nature, in Koh Kong’s Smach Meanchey commune, stating “Free Human Rights Defenders” alongside portraits of the five detained HRDs, were forcibly removed by district and commune authorities. On 3 May, Sre Ambel district officers tore down three more banners hung at villagers’ homes, claiming the banners “affect peace and security”.
- On 10 October 2016, in a peaceful march of 300 villagers from 99 communities to mark World Habitat Day, guards from Duan Penh district attacked five participants en route to the Ministry of Land Management. This included the Boeung Kak land activist Chan Puthisak and LICADHO human rights monitor Am Sam Ath, who both filed a complaint against Daun Penh district security after the attack. However, in documents dated 20 January 2017, deputy prosecutor Ngin Pich ordered LICADHO technical adviser Sam Sam Ath and Chan Puthisak of the Boeung Kak lake community to appear before the court after two security guards, Mr Teth Chanthu and Sam Sotheara, complained they were injured by the pair.

ARTICLE 19 remains concerned that many outspoken EHRDs attacked or threatened in 2016 have not seen justice in their cases. These include:

- On 19 July 2016, five EHRDs from the Choam Pen community forestry group in Preah Vihear province received death threats from three people conducting illegal logging. The loggers threatened to kill the EHRDs with knives and axes after the five EHRDs engaged in a direct action protest to prevent them from cutting resin trees inside the protected forest. The five EHRDs fled and reported the attack to a local environmental official, but received no response.
- On 15 July 2016, EHRD brothers Chum Huor and Chum Huot fled Cambodia to Thailand, seeking asylum through the UNHCR, out of fear for their safety following Mr. Ley’s murder. In a media interview they had identified persons engaged in surveillance of a meeting they had attended with Mr. Ley shortly before his murder. The brothers returned to resume environmental works one month later. They worked closely with Mr. Ley for the Youth for Social and Environmental Protection Organisation. They are well known for advocating against construction of the Don Sahong Dam, and for their arrests by Laotian police after taking photos near the border of Cambodia’s Stung Treng province.
- On 27 March 2016, EHRD Ms. Phan Sopheak was attacked by a person conducting illegal logging while she was sleeping in Prey Lang forest as part of a community patrol to monitor illegal activities. Ms. Sopheak sustained serious injuries and the perpetrator remains at large, with the police claiming the case is still under investigation.

Abuse of the Criminal Code to target dissent

The abuse of public insult and criminal defamation provisions in Articles 307 and 305 – 306 of the Penal Code, respectively, are of serious concern. We recall that the Special Rapporteur has recommended that both provisions be decriminalised.

The following recent cases should be noted:

- On 3 September 2017, CNRP leader Kem Sokha was arrested on charges of treason, following a long campaign of legal harassment.
- On 30 March 2017, Former CNRP president, Mr. Sam Rainsy, was convicted by Phnom Penh court and sentenced in absentia to 20 months in prison for incitement and defamation via media for alleging that the assassination of Political commentator Kem Ley was state-sponsored. In addition to the prison sentence, he has to pay a 10 million Riel penalty, approximately 2500 USD, and a punitive fine of 100 Riels to Prime Minister Hun Sen.

- On 22 February 2017, political prisoner Kong Raya was released from prison after 18 months in prison for "incitement to commit a felony" under Article 494 and 495 of Cambodia's criminal code. The former President of the Cambodian Student Network was initially arrested in August 2015 on the basis of a Facebook post apparently calling for a "colour revolution." The government commonly uses this term to characterize peaceful movements as acts of violent revolt. His arrest came less than a month after the Prime Minister called on police and armed forces to take action over any group or individual attempting a "colour revolution". He was convicted and sentenced on 15 March 2016 after months of pre-trial detention, a verdict subsequently upheld by the court of Appeal and Supreme Court. His conviction was the first in a spate of crackdowns on online expression.
- On 17 November 2016, Mrs. Thak Lany, opposition Senator, was sentenced by the Phnom Penh Municipal Court in absentia to 18 months and ordered her to pay fine of 8 million riels, about \$2000, and give 100 riels in symbolic compensation to Prime Minister Hun Sen for calling Prime Minister Hun Sen was behind the killing of Mr. Kem Ley. Both Rainsy and Lany's remarks appeared by way of a video uploaded to Facebook.
- On 19 September 2016, Tep Vanny and three other Boeung Kak lake activists were convicted and sentenced to six months in jail for insulting and obstructing public officials in November 2011. This occurred when they were confronted by security guards while continuing a five-year protest in front of City Hall to request the establishment of a committee to address their long-running land dispute. Following the clash, the four were charged in 2011 under articles 502 and 504 of the Criminal Code, but released on bail, only for the case to be picked up again several years later.

Freedom of Peaceful Assembly and Black Monday protests

The rights to freedom of peaceful and assembly remain severely limited in Cambodia, with the law on assemblies frequently abused:

- On 6 December 2016, Prime Minister Hun Sen said that Freedom Park, an area in central Phnom Penh set aside for public demonstrations, would move to the city's northern outskirts, a park along National Road 5 in Russei Keo district's Kilometr Pram Muoy commune. Human rights NGO criticized the proposed move, citing authorities' aim to stifle peaceful dissent.
- Since May 2016, a new campaign for the release of the ADHOC 5 political prisoners known as "Black Monday" has been initiated, but its weekly meetings face regular police disruption and confrontations between police and participants have become more violent. The Ministry of Interior has publicly claimed that the campaign is illegal, and that participation would be considered as "incitement" against public order. On 15 August 2016, four Borei Keila protesters were arrested, and on the same day Boeung Kak activists Ms. Tep Vanny and Ms. Bov Sophea were also arrested on charges of "incitement" under Article 495 of the Cambodia Criminal Code for their affiliation with Black Monday campaign. At trial, these charges were changed to "public insult" under Article 502 of the Cambodia Criminal Code, and the two activists were convicted and sentence to the maximum of six days' imprisonment and a fine of 80,000 Riel (USD 20) each. Bov Sophea was released for time served, but Tep Vanny was kept in pre-trial detention on charges of "intentional violence" under Article 217 of the Cambodia Criminal Code relating to a protest three years earlier. Ms. Marga Bujosa Segado, a Spanish researcher arrested with Vanny and Sophea for joining in "Black Monday", was deported from Cambodia on 16 August. To date, more than 33 cases of arrest have been made in relation to the Black Monday campaign. Many arrests have been under authorities' contested assertion that law requires organisers of peaceful assemblies should seek prior permission.

Surveillance

ARTICLE 19 is also concerned that several cases, include that of “the ADHOC 5”, show the increasing tendency of the government to engage in surveillance. Several legal developments in recent years should be noted in this regard.

In November 2015, the National Assembly adopted a new Telecommunication Law, which was promulgated by the King on 17 December 2015, following a rushed and opaque adoption process that lacked public participation. The law increases the government's control over the industry and seriously threatens the rights to privacy and freedom of expression. The legislation followed the creation in late 2014 of a “Cyber War Team” tasked with monitoring all online activity to protect the government’s reputation.

Article 27 of the Anti-Corruption Law (2010) also empowers the Anti-Corruption Unit to tap phones without approval by an investigating judge if authorities merely suspect corruption is occurring. This contradicts the requirement in the Criminal Code, which requires judicial authorization for such measures. It is suspected this power is abused, against the requirement in Article 83 of the Cambodia Code of Criminal Procedure that investigators maintain professional confidentiality.

The “ADHOC 5 case” initiated from the posting of a leaked recording, presumably obtained pursuant to the above laws, of a private telephone conversation. The public release of private conversations of political opposition party members has become a notable form of harassment in the country, with at least a dozen opposition lawmakers, activists and journalists targeted.

Conclusion and Recommendations

The deteriorating human rights situation in Cambodia, in particular for freedom of expression and civil society space, necessitates a robust response from the HRC, recognising that the RGC must drastically change its direction if the July 2018 elections are to take place free and fair, with close monitoring and assistance to ensure this takes place.

ARTICLE 19 therefore recommends States at the Human Rights Council to:

- Renew the mandate of the UN Special Rapporteur on the human rights situation in Cambodia for a period of two years;
- Adopt a strong resolution condemning the deterioration in the human rights situation in Cambodia in since 2015, and in particular over recent months;
- Make specific recommendations and set concrete and time-bound benchmarks for reforms to ensure protections for the rights to freedom of expression, media freedom, freedom of peaceful assembly, and association, ahead of the 2018 July Elections; and
- Ensure close monitoring at the national level of the RGC’s efforts to implement its international human rights obligations and commitments, with the cooperation of the OHCHR field office and the Special Rapporteur, with reports back to the HRC at its March and June Sessions.

ARTICLE 19 recommends the Royal Government of Cambodia to:

- Publicly condemn at the highest levels the murder, threats and harassment against EHRDs, and publicly commit to holding those responsible to account;
- End impunity for all attacks against EHRDs, ensuring the prompt, thorough and impartial investigation of all cases of murder, attacks and threats, including alleged involvement of public officials, hold perpetrators accountable, and guarantee a right to effective remedies for victims and their families;
- Establish, with the full and effective participation of EHRDs, mechanisms to ensure the protection of persons who at risk for exercising their rights to freedom of expression;
- Quash the convictions and sentences of the three Mother Nature EHRDs, and provide remedies for the violation of their freedom of expression and peaceful assembly rights, including for their unlawful pre-trial detention;

- Cease and prevent the abuse of legal processes to harass EHRDs, HRDs, and political opposition, including through threats of arrest, arbitrary arrest and detention, and prosecutions, and immediately release those currently detained, including HRD Ms. Tep Vanny, and drop charges against or quash the convictions of those targeted for their activism or political opinions;
- Ensure the independence of the media, including by: reversing the *de facto* forced closure of *The Cambodia Daily* by rescinding arbitrary demands for tax payments in arrears, dropping related charges against its Director and General Manager, and reinstating the broadcasting licenses of RFA and VOA;
- Urgently reform the LANGOs to bring it in line with international human rights law on freedom of association, while dropping the harassment of local NGOs ADHOC, LICADHO and Comfrel under the legislation, and reversing the decision to force the closure of NDI's Cambodia office;
- Protect the right to privacy and freedom of expression, by ceasing politically-motivated surveillance against HRDs and political opposition, and by reforming the Telecommunications Law and Anti-Corruption Law;
- Ensure an enabling environment for EHRDs, including by ensuring that all stakeholders have the right and are able to meaningfully participate in decision-making on projects that may affect the environment, and that their voices are listened to; and
- Commit to the UN Guiding Principles on Business and Human Rights and develop a national action plan to ensure all businesses operating in Cambodia respect human rights, through a multi-stakeholder process including EHRDs.