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Key human rights issues of concern

- 1....Introduction
- 2....Towards a one-party state: Dissolving the CNRP
- 3....Constitutional amendments further restrict rights
- 5....Shrinking space for civil society
- 7....Silencing of free media and government critics
- 7....Sugar land concessions and flawed resolution process
- 7....Recommendations

Introduction

Over the past year, the Cambodian government has intensified its sweeping crackdown on the opposition, free media, and civil society ahead of a general election which it feared losing. The arrest of the main opposition leader in September 2017 and the dissolution of his party, the Cambodia National Rescue Party (CNRP), created a *de facto* one-party state and cemented the more than 30-year rule of Prime Minister Hun Sen. The dissolution of the CNRP has rendered the upcoming July 2018 general election meaningless and its preparations irrelevant.

The crackdown on the political opposition has been accompanied by unprecedented attacks on the media and civil society aimed at eliminating dissenting voices. Numerous civil society groups and individuals have been falsely accused of being accomplices in a 'color revolution' plot to overthrow the government. Key civil society leaders, labor activists, and journalists have been subjected to legal harassment and threats. Ordinary citizens have also been targeted in a string of arrests over online expression, mainly as a result of Facebook posts criticizing Prime Minister Hun Sen.

As of 1 March 2018, 25 government critics, human rights defenders, journalists, and members of the political opposition remain incarcerated on politically motivated charges. Many others have fled the country to avoid prosecution and imprisonment.

After months of increased repression, the once loud voices of human rights defenders and civil society groups have been almost completely silenced due to fear of reprisals. Public debate has been stifled by the near complete suppression of independent mainstream media, growing surveillance, and the rising number of political prisoners.¹

Towards a one-party state: Dissolving the CNRP

Attacks against the opposition CNRP intensified ahead of the 4 June 2017 commune elections and the upcoming general election, which is scheduled to be held on 29 July 2018. The CNRP had made significant electoral gains and was expected to pose a credible challenge to the ruling Cambodian People's Party (CPP) in the general election, which can no longer be considered legitimate.

In February 2017, the government targeted the CNRP and its leadership through the passing of repressive amendments to the Law on Political Parties, ahead of the 4 June 2017 commune elections. The amendments allow authorities to suspend and dissolve political parties if their leaders hold criminal convictions. The law also prohibits political parties from carrying out activities that affect the "security of the state" or that would incite the "breakup of the national unity." In an apparent move aimed at targeting then-CNRP leader Sam Rainsy, further amendments to the Law on Political Parties in July 2017 prescribe the dissolution of political parties that use the voice, image, written documents, or activities of a convicted criminal.

On 3 September 2017, in an early morning raid on his home, CNRP leader Kem Sokha was arrested on the spurious charge of treason for "conspiracy with a foreign power." He remains detained in a remote prison – surrounded by a military cordon – 190 km from his Phnom Penh-based legal team and faces 15 to 30 years behind bars. He has repeatedly been denied bail and has limited visitation rights.

The arrest of Kem Sokha was followed by the passage in October 2017 of further amendments to Cambodia's four election laws (the Law on the Election of Members of the National Assembly, the Law on the Election of Senate Members, the Law on the Election of Commune Councils, and the Law on the Election of the Capital/Provincial and Municipality/District/Khan Councils). These amendments paved the way for the National Assembly and commune council seats of any dissolved party to be redistributed.

On 16 November 2017, the Supreme Court rubber-stamped a government request to dissolve the CNRP, claiming it had attempted to overthrow the government with the assistance of civil society and foreign states. The court – led by a judge who is a CPP central committee member – also banned 118 senior CNRP members from politics for five years. The CNRP's 55 National Assembly seats were redistributed to unelected lawmakers from small government-aligned parties, including 11 seats that were redistributed to the ruling CPP. The CNRP's more than 5,000 commune council seats (won in the 4 June 2017

¹ Apart from CNRP leader Kem Sokha, there are currently more than 20 high-profile political prisoners including two other opposition political party leaders (from the KNP and KPP) who have been arrested since the June 2017 commune election, an opposition senator, a member of the National Assembly, and 14 opposition supporters and officials, imprisoned for the last two years.

commune elections) were redistributed to six political parties, with 4,548 seats going to the CPP. The move disenfranchised more than three million voters, is contrary to Article 76 of Cambodia's Constitution, and renders the current composition of the National Assembly illegitimate.² The government has since prevented any protests from taking place through large-scale deployments of security forces and threats of lethal force and imprisonment. In February 2018, the CPP took all 58 seats that were up for election in the Senate with a 96% vote share as a result of its newly established domination of communes, which indirectly elect the chamber.

As a result of the intensified crackdown – including a series of orchestrated threats against opposition members following the arrest of Kem Sokha – about half of the CNRP's Members of Parliament (MPs), including most of the CNRP's leadership, have fled Cambodia. Former CNRP President Sam Rainsy, who has had a slew of politically motivated charges filed against him, has remained in self-imposed exile since October 2015, after the Phnom Penh Municipal Court issued an arrest warrant against him in connection with a revived defamation case filed by then-Foreign Minister Hor Namhong in 2008.

Constitutional amendments further restrict rights

In February 2018, the government introduced constitutional amendments designed to criminalize activities deemed contrary to the national interest as well as a draconian *lèse-majesté* amendment to the Criminal Code.³ The amendments to the Constitution and the Criminal Code, which were approved by the National Assembly and Senate (both dominated by the ruling CPP) in the same month, could have severe impacts on the enjoyment of rights and freedoms. It is highly likely that the amendments to the Constitution will provide the legal basis for new repressive laws and/or harmful amendments to existing legislation. These amendments are also an unprecedented venture into repressive constitutional change. A two-thirds majority is required to amend the Constitution, a ratio the government could not have secured prior to the dissolution of the CNRP.⁴ However, following the dissolution of the CNRP and the redistribution of its 55 National Assembly seats to the CPP and a number of politically-compromised and CPP-aligned minor parties,⁵ the ruling party now holds 79 of the 123 National Assembly seats and maintains control over the remaining 44 – a level of dominance at the National Assembly which made constitutional change possible.⁶

The official content of the amendments has yet to be made public, even after the vote. There was no public scrutiny of these significant constitutional changes prior to the National Assembly vote.⁷

² Article 76 of Cambodia's Constitution stipulates that "Members of the National Assembly shall be elected by a universal, free, equal, direct suffrage and secret ballot."

³ Articles 34, 42, 49, 53, 118

⁴ Article 151, Cambodian Constitution

⁵ Early indications suggest opposition commune councilors voted against their own parties in favor of the ruling CPP in the 25 February 2018 Senate election.

⁶ The CPP awarded itself 11 of the CNRP seats under urgent amendments to Articles 7, 8, 9, and 10 of the Law on the Election of Members of the National Assembly.

⁷ This analysis is based on leaked Khmer language copies of the amendments, cross-referenced with unofficial English translations. No official copy of the amendments has been released. Where this analysis refers to "Amended Article #" this is a reference to the law post-amendment; reference to "New Article #" indicates an entirely new article added to

Amended Article 49(2)

Amended Article 49(2) poses a serious threat to rights and fundamental freedoms through its breadth and vague terms.⁸ A newly added paragraph bans “any activities” which directly or indirectly “affect” the “interests” of the Kingdom of Cambodia and Cambodian citizens. It appears that legitimate and lawful activities, including the exercise of fundamental freedoms such as expression, association, and peaceful assembly – all guaranteed by the Constitution – could now be considered violations of the Constitution itself, if determined as affecting the undefined “interests.” In the current climate, it is also highly likely that lawful activities, such as lobbying and international engagement, could be considered violations of the national interest because they challenge the government.

Amended Article 42(2)

A new paragraph in amended Article 42 has the potential to restrict the rights to freedom of expression and association and the right to participate in political life through the disproportionate and unnecessary requirement that a party must primarily uphold the undefined “national interest.”⁹ This amendment also places a constitutional ban on the activities of political parties affecting the interests of the state and/or its citizens. This prohibition is a severe and unlawful restriction on the autonomy and activities of political parties in Cambodia.

Amended Article 34(5)

The amended Article 34 alters the language of the existing article to broaden the legal basis for stripping the right to vote and prohibiting individuals from standing as candidates in elections.¹⁰ Previously, Article 34 stated that disenfranchisement and the right to stand as electoral candidates were determined by “electoral law.” This expansion of the legal foundation for stripping the right to vote or barring certain candidates, to *any* laws, suggests that this provision could be used to punitively disenfranchise individuals and blacklist candidates through the extension to laws such as the Criminal Code.¹¹ This is a significant development in the build up to the July 2018 general election, particularly if there is any effort to form a new opposition party in the aftermath of the CNRP’s dissolution.

Amended Article 53(3)

Cambodian law through the amended legislation; all other references to articles refer to the current status quo prior to amendment.

⁸ Amended Article 49(2) of the Constitution states: “Every Khmer citizen shall primarily uphold the national interest and shall not conduct any activities which either directly or indirectly affect the interests of the Kingdom of Cambodia and of Khmer citizens.”

⁹ Amended Article 42(2) of the Constitution states: “Political parties shall primarily uphold the national interest and shall not conduct any activities which either directly or indirectly affect the interests of the Kingdom of Cambodia and of Khmer citizens.”

¹⁰ Amended Article 34(5) of the Constitution states: “Provisions disenfranchising the right to vote and the right to stand as candidates of the elections shall be set by Law.”

¹¹ The Criminal Code already permits the stripping of the right to vote and the right to stand as a candidate, but in limited circumstances as an additional criminal punishment that lacked a constitutional mandate prior to these amendments. These amendments open the door to the expansion of disenfranchisement.

A new paragraph was added to amended Article 53 of the Constitution.¹² The clause that “Cambodia absolutely opposes any interference from abroad conducted through any forms into its own internal affairs” could have a significant impact on the everyday activities of local civil society, international NGOs, development partners, and possibly even the international media. In the current climate, it is likely that international lobbying, engagement regarding targeted sanctions, calls for withdrawal of aid and technical support, and any general criticism of the Cambodian government could be considered “foreign interference” under this amendment.

This sovereignty-based amendment has been rushed through amid a long-running and disingenuous narrative that Cambodia is on the brink of civil war as a consequence of a ‘color revolution’ plot masterminded by foreign powers including the United States (US) and the European Union (EU). This alleged ‘color revolution’ is the reason given for the dissolution of the CNRP, the arrest of Kem Sokha on treason charges, and the repeated threats to shut down civil society organizations and prosecute individuals allegedly involved.

Article 437-bis of the Criminal Code

The amendment to the Criminal Code adds a new article (437-bis), which establishes the criminal offense of *lèse-majesté* (insulting the monarchy).¹³ This offense carries jail terms ranging from one to five years and large fines for violators. This new offense criminalizes the exercise of the right to freedom of expression in a manner that is incompatible with international human rights instruments to which Cambodia is a state party. The Constitution already provides for the protection of the King’s reputation in its current form. In addition to the severe personal penalties an individual can face, the establishment of criminal responsibility for legal entities under the *lèse-majesté* provision poses a threat to civil society organizations, such as NGOs, trade unions, media outlets, and companies.

In addition, the government could interpret this law retroactively, specifically with regard to existing online content considered to be critical of the King, which may be considered an ongoing offense. While the inclusion of criminal responsibility for “legal entities” is aimed primarily at civil society, it is possible that this provision could be used against internet service providers (ISPs) that resist government influence. Such ISPs could be accused of being accomplices to *lèse-majesté* and subsequently punished and shut down.

Shrinking space for civil society

Civil society groups have faced increasing administrative and legislative attacks over the past year. In 2017, the repressive Law on Associations and Non-Governmental Organizations (LANGO) was invoked to threaten, harass, and shut down domestic and foreign NGOs.

¹² Amended Article 53(3) of the Constitution states: “The Kingdom of Cambodia absolutely opposes any interference from abroad conducted through any forms into its own internal affairs.”

¹³ The new Article 437-bis of the Criminal Code states: “Insulting is any speeches, gestures, writings, paintings or items that are affecting the dignity of individual person(s). An insult addressed to the King shall be punishable by imprisonment from 1 (one) year to 5 (five) years and a fine from 2,000,000 (two million) to 10,000,000 (ten million) Riels. Legal entities may be found criminally responsible under Article 42 (criminal responsibility of legal entities) of this Code for insulting the King [insult of the King]. Legal entities shall be punishable by a fine from 10,000,000 (ten million) to 50,000,000 (fifty million) Riels and...by additional penalties: [including dissolution, banning orders on operations, and seizure of property.”

In July 2017, the government used the LANGO to ban the informal election monitoring platform *Situation Room*, comprised of 40 local NGOs. In August 2017, the US-funded *National Democratic Institute (NDI)* was forced to close and its foreign staff expelled. In September 2017, the environmental watchdog *Mother Nature* was forced to disband as a result of the government's ongoing campaign of harassment. In the same month, land rights group *Equitable Cambodia* was suspended for 30 working days for allegedly violating the LANGO and has not been officially allowed to re-open thus far. The letter of suspension referred to the group's legitimate assistance to evicted communities affected by sugar-producing Economic Land Concessions granted to a company owned by CPP Senator Ly Yong Phat. In November 2017, Prime Minister Hun Sen called for investigations into activities conducted by the *Cambodian Center for Human Rights (CCHR)* and its closure. While the *CCHR* has so far been able to continue its work, the move highlights the repressive environment under which civil society organizations are now forced to operate.

Outspoken activists and human rights defenders have also been increasingly hit with trumped up charges. In January 2018, activist monk But Buntenh, *Cambodian Center for Independent Media (CCIM)* Executive Director Pa Nguon Teang, and *Center for Alliance of Labor and Human Rights (CENTRAL)* Director Moeun Tola were charged with "breach of trust" over fundraising they had done for the funeral of assassinated political analyst Kem Ley in 2016. Kem Ley's family has publicly rejected the charges as unfounded.

Prominent land and human rights defender Tep Vanny is currently serving a two-and-a-half-year prison sentence on groundless charges for her involvement in land rights protests. As of 1 March 2018, she had spent more than 18 months in prison. On 7 February 2018, the Supreme Court rejected an appeal against her conviction on charges of "intentional violence with aggravating circumstances" (Article 218 of the Criminal Code). As a result, Tep Vanny will have to serve the remainder of her sentence, which will end in February 2019. Tep Vanny also faces a second, as yet, unenforced six-month prison sentence.

On 26 January 2018, *Mother Nature* activists Hun Vannak and Doem Kundy were sentenced to one year in prison for their public documentation and advocacy that challenged suspected illegal sand smuggling by a company owned by ruling CPP Senator Ly Yong Phat. They were released on 13 February due to a partially suspended sentence, after spending five months in pre-trial detention.

Labor rights advocate Chea Mony – the brother of assassinated trade unionist Chea Vichea – has been forced to flee abroad, as a result of spurious prosecution over his support for sanctions against the Cambodian government. He is the most recent labor advocate to appear on a growing government blacklist.

Independent labor movements have faced an existential crisis since the enactment of the Trade Union Law in 2016. National unions and their local affiliates continue to face administrative obstacles when trying to comply with the law's already-repressive mandatory registration requirements or engage in collective bargaining.

Union registration applications are regularly rejected for arbitrary reasons, including minor spelling mistakes, and many unions are forced to operate “underground.” Even unions that successfully register are harassed with invasive requirements to submit financial and activity reports. In January 2018, the government issued a notice to independent unions threatening deregistration if they did not submit such reports. The law’s restrictive provisions on eligibility for “Most Representative Status” have curtailed collective bargaining, depriving workers of a voice from certain industrial sectors nationwide. This suppression of independent unions restricts workers’ chances of getting justice in disputes handled by the Arbitration Council, which has seen a marked drop in cases – from 181 in 2016 to 49 in 2017. This situation is likely to worsen with the passage of new draft laws on the minimum wage and a labor dispute resolution that could limit the rights to freedom of expression and freedom of peaceful assembly and increase government control over the settlement of disputes.

Silencing of free media and government critics

On 18 November 2017, two former *Radio Free Asia (RFA)* reporters – Yeang Sothearin and Uon Chhin – were detained on groundless charges of “espionage.” They face seven to 15 years’ imprisonment. Their detention came two months after the US-funded network closed its country office citing government repression and the silencing of its FM broadcasts along with dozens of other independent news programs. *The Cambodia Daily*, a leading investigative newspaper, was also forced to close in September 2017, after the government claimed they had an outstanding tax bill amounting to US\$6.3 million.

The Cambodian government has also continued to target critics of Prime Minister Hun Sen. In one case, in January 2018, CNRP supporter Sam Sokha was sentenced to two years in prison *in absentia* for posting a video on Facebook of herself throwing a sandal at a CPP poster in April 2017. Cambodian police arrested Sam Sokha on 8 February 2018 after she was deported from Thailand, where she had been granted refugee status by the United Nations High Commissioner for Refugees (UNHCR).

Sugar land concessions and flawed resolution process

In September 2017, the government pre-empted plans for an independent EU-assisted audit into land grabbing and human rights violations linked to sugar Economic Land Concessions and the Everything But Arms (EBA) trade scheme. It is increasingly clear that the new politically compromised process cannot provide effective remedies to victims.

The process has lacked transparency and been marred by corruption, intimidation, and the arbitrary exclusion of entire communities since its inception in September 2017. Civil society organizations working on this issue were not informed of the process until the registration of claimants was virtually completed, amid widespread reports of intimidation and institutionalized corruption. Reports of large-scale corruption emerged following the registration process in Kampong Speu Province, where claims were only accepted upon payment of bribes. In addition, hundreds of forcibly evicted families in Oddar Meanchey Province have been arbitrarily excluded from the process in what appears to be a deliberate

move. The government has claimed this process has the backing of both the EU and civil society and has issued threats to any organization that criticizes the process.

Recommendations

We call on the European Union and its member states to:

- Continue to withhold all financial and technical support for the July 2018 general election.
- Call on the Cambodian government to adhere to its international obligations and restore a democratic environment by firstly re-instating the main opposition party and releasing its leader Kem Sokha, as well as all other political prisoners.
- Immediately suspend financial and technical support to governance and administration, until a democratic environment is restored.
- Introduce targeted sanctions, including travel bans, asset freezes, and restrictions on business activities, against key individuals.
- Review and enforce conditions related to human rights in aid and trade agreements with the Cambodian government, including a sugar sector-specific EU investigation into EBA trade preferences, and suspend all consideration/negotiation of all forms of cooperation, including trade agreements and debt relief support, until repressive legislation and amendments are repealed and rule of law and democracy are restored and guaranteed in line with international standards.
- Request visits to imprisoned human rights defenders and political prisoners, observe key trials, and conduct fact-finding missions and official visits to Cambodia, and continue to support human rights defenders at risk and their families.