



FIDH – International Federation for Human Rights

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Committee Secretariat
Joint Standing Committee of Foreign Affairs, Defence and Trade - Human Rights Sub-committee
Parliament House
Canberra ACT

**Submission for the inquiry into whether Australia should examine the use of targeted sanctions to
address human rights abuses**

The International Federation for Human Rights, known by its French acronym FIDH, is an international human rights NGO representing 192 organizations from 117 countries. Since 1922, FIDH has been defending all civil, political, economic, social, and cultural rights as set out in the Universal Declaration of Human Rights.

FIDH works to fight impunity for serious international crimes (genocide, crimes against humanity, war crimes, torture, and enforced disappearance) and advocates for the adoption of legislation that establishes extra-territorial, including universal, jurisdiction over these crimes, and that promotes and safeguards the rights of victims in criminal proceedings. FIDH assists victims of these crimes before national courts, hybrid tribunals, such as the Extraordinary Chambers of the Courts of Cambodia (ECCC) and international courts, such as the International Criminal Court (ICC).

In October 2014, FIDH facilitated the submission of a communication to the ICC's Office of the Prosecutor (OTP), pursuant to Article 15 of the Rome Statute, on behalf of Cambodian victims to demand the opening of a preliminary examination into allegations of widespread and systematic crimes linked to policies of land grabbing conducted by Cambodia's ruling elites for over a decade. The communication argued that these crimes amounted to crimes against humanity, including murder, forcible transfer of populations, illegal imprisonment, persecution, and other inhumane acts. A follow-up communication documenting the disproportionate impact of land grabbing on women was submitted to the ICC's OTP in July 2015.

FIDH wishes to give a voice to Cambodian civil society in connection with the Committee's inquiry into targeted sanctions, hoping that by doing so the perspective of individuals impacted by human rights abuses can be taken into consideration. FIDH fully supports the adoption of a *Global Magnitsky Human Rights Accountability Act (2016)*-style legislation in Australia. We are of the opinion that such legislation will strengthen human rights protections in Cambodia and safeguard the reputation of the Australian government and the opportunities of Australian businesses in Cambodia by tackling corruption and promoting human rights. Targeted sanctions legislation could also be used to provide protection and support to Cambodian nationals in Australia.

Australia has consistently asserted that a fundamental part of its approach to foreign affairs is the systematic promotion of human rights as “pillars and priorities” of the nation’s engagement with the international community.¹ Despite this, under the existing *Autonomous Sanctions Act (2011)*,² no reference is made to human rights. The law is, therefore, poorly aligned with the Australian government’s stated policy to safeguard human rights.

In addition, the existing legislation has not been used to sanction any Cambodian entity despite the involvement of Cambodians with close connections to the ruling elites in egregious and well documented human rights abuses.³ The erosion of democracy by Cambodia’s ruling elites,⁴ which shuttered critical media, suspended NGOs, and held a widely criticised sham general election in 2018, received little to no substantial response from the Australian government. Contrastingly, the former Ambassador to Cambodia was filmed drinking champagne with Cambodian Prime Minister Hun Sen soon after the election amid international outcry about the electoral process, widespread corruption, and rampant human rights abuses.⁵ Such lack of response in the face of human rights abuses by a regional neighbour was then compounded upon when Prime Minister Hun Sen made verbal threats against Cambodian-born Australian citizens, when he visited Australia in March 2018.⁶ These incidents in the recent past show that Australia’s foreign policy towards Cambodia has ultimately led down a road where even the rights of Australian citizens, including their right to freedom of expression and their right to physical integrity, have been threatened by a leader of another nation. Furthermore, threats to individuals granted refugee status in Australia on the basis of their persecution in Cambodia continue to be made⁷ and are examples of ongoing harassment and intimidation by Cambodia’s ruling elites on Australian soil. Despite this, the Australian government has consistently failed to take punitive measures against any Cambodian entity even when actions have been taken by the European Union, with the partial withdrawal of the Everything But Arms (EBA) trade preferences,⁸ and the United States, through the *Global Magnitsky Human Rights Accountability Act (2016)*.

Targeted sanction legislation that allows for individuals to be sanctioned for their involvement in acts of corruption or serious human rights abuses would uphold Australia’s commitment to a systematic protection of rights without compromising its political commitment to Cambodia’s sovereignty. It would also safeguard Australia’s reputation as a secure, incorruptible, and rights-respecting nation. Failure to protect this reputation risks eroding Australia’s international standing and making the country appealing to corrupt individuals, illegal activities such as money laundering, and investment of profits that are made through the commission of rights abuses. Australian authorities’ well documented failure to take substantial action against corrupt individuals closely associated with Cambodia’s ruling elites in spite of Australian Transaction Reports and Analysis Centre (AUSTRAC) rules, has already cast doubt on policing of white-collar crimes, damaged Australia’s reputation, and made it an even more attractive destination for dubious investment by certain Cambodian nationals.⁹ In addition, members of Cambodia’s ruling elites often send their children to be educated in Australia or invest in Australian businesses and property to secure their wealth and status. We believe that without access to such opportunities in Australia, Cambodia’s ruling elites will be deterred from undermining human rights in the future.

The introduction of individual sanctions could also safeguard Australian business interests and their capacity to operate in Cambodia by protecting Australian companies from liability that might arise from their involvement in operations with individuals or companies known to be corrupt or responsible for human rights abuses. This would bolster due diligence undertakings and provide security for Australian businesses that may otherwise fail to meet relevant international standards, such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. In this regard, we recall that Australia and

New Zealand (ANZ) Bank failed to conduct a proper human rights due diligence assessment on a loan provided to a Cambodian sugar company run by well-known tycoon Ly Yong Phat,¹⁰ which led to widespread rights abuses including land grabbing, physical violence, and murder. ANZ's failure to conduct adequate due diligence with regard to the loan and the ensuing rights abuses resulted in a settlement mediated by the OECD Australian National Contact Point (ANCP).¹¹ The resulting monetary agreement, the first of its kind by a commercial bank, set an important human rights precedent for the banking industry worldwide and should come as a warning for Australian companies that do not undertake appropriate due diligence, and to the Australian government when seeking to safeguard Australian foreign affairs, investment, and trade.

Lastly, adopting *Magnitsky*-style legislation would bring Australia into alignment with other similar jurisdictions, including Canada, the United States, and the United Kingdom. The addition of Australia to jurisdictions focused on human rights protection would improve Cambodian civil society organisations' (CSOs) access to sanctioning mechanisms for corruption and rights abuses. This is vitally important for CSOs in lower income countries, such as Cambodia, characterized by high levels of corruption, violations of fundamental human rights, the lack of an independent judiciary, and the absence of the rule of law.¹²

Recommendations

FIDH supports the recommendations of the Australian Human Rights Council (AHRC), with particular recognition of the AHRC's focus on upholding human rights while implementing legislation providing the legal basis for individual sanctions.

FIDH recommends that, should individual sanction legislation be introduced, all individuals investigated by AUSTRAC automatically fall under this legislation.

¹ Department of Foreign Affairs and Trade - Pillars and Priorities <https://www.dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/pillars-and-priorities/Pages/pillars-and-priorities> (accessed 29 April 2020)

² Autonomous Sanctions Act (2011) <https://www.legislation.gov.au/Details/C2011A00038> (accessed 29 April 2020)

³ Human Rights Watch - Cambodia <https://www.hrw.org/asia/cambodia> (accessed 29 April 2020)

⁴ Global Witness, *Who Profits from the Death of Cambodia's Democracy?*, 20 July 2018, <https://www.globalwitness.org/en/campaigns/cambodia/who-profits-death-cambodias-democracy/> (accessed 29 April 2020)

⁵ ABC News, *Champagne with Dictators*, 30 July 2018, <https://www.abc.net.au/4corners/champagne-with-dictators/10053664> (accessed 29 April 2020)

⁶ ABC News, *Cambodian Prime Minister Hun Sen's visit to Sydney stirs up anger in expat community*, 14 March 2018, <https://www.abc.net.au/news/2018-03-14/cambodian-prime-minister-visit-stirs-anger-in-expat-community/9548304> (accessed 29 April 2020)

⁷ ABC News, *Champagne with Dictators*, 30 July 2018, <https://www.abc.net.au/4corners/champagne-with-dictators/10053664> (accessed 29 April 2020)

⁸ Business & Human Rights Resource Centre, *Cambodia: EU partially withdraws trade preferences over rights concerns*, stakeholders respond <https://www.business-humanrights.org/en/cambodia-eu-partially-withdraws-trade-preferences-over-rights-concerns-stakeholders-respond> (accessed 29 April 2020)

⁹ ABC News, *Cambodian regime figures splash millions on Melbourne properties as death threats escalate*, 25 October 2018, <https://www.abc.net.au/news/2018-10-25/cambodian-pm-henchmen-splash-millions-on-melbourne-property/10355246> (accessed 29 April 2020)

¹⁰ Global Witness, *Who Profits from the Death of Cambodia's Democracy?*, 20 July 2018, <https://www.globalwitness.org/en/campaigns/cambodia/who-profits-death-cambodias-democracy/> (accessed 29 April 2020)

¹¹ Equitable Cambodia, *ANZ Agrees to Landmark Settlement with Cambodian Farmers Displaced by Sugar Company It Financed*, 27 February 2020, <https://equitablecambodia.org/website/article/3-2355.html> (accessed 29 April 2020)

¹² Transparency International ranked Cambodia 162nd out of 180 countries surveyed in its Corruption Perceptions index 2019, giving it a score of 20/100. <https://www.transparency.org/cpi2019>