

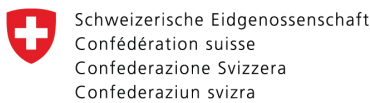
CAMBODIA

DOWN, BUT NOT OUT -

Repression of human rights defenders in Cambodia



July 2020



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Cover photo: Women's rights defenders facing police forces in Phnom Penh on International Women's Rights Day (March 8, 2019). ©Klahaan

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EXECUTIVE SUMMARY

Since March 2020, the novel coronavirus (COVID-19) pandemic provided the government with a set of additional arguments and tools to further crack down on dissent in Cambodia. The new Law on the State of Emergency, promulgated on April 29 after being approved by the National Assembly and the Senate in the previous weeks, will lead to further curtailment of civil rights and freedoms, such as freedoms of movement, expression, association, and peaceful assembly – as well as the freedom to inform and be informed.

The fight against COVID-19 is just the latest episode in a series of attempts by the Cambodian authorities to close civic space. Over the past years, human rights defenders have been linked by the Cambodian government to a fictitious “colour revolution”, allegedly led by the former political opposition. Civil society space has further closed since the government initiated its political crackdown ahead of the July 2018 general election, and since then human rights defenders have operated in a repressive environment that is unprecedented in Cambodia’s recent history. The main obstacles for the exercise of defenders’ work are the harassment of dissenting voices - including NGOs, media outlets, journalists, and environmental activists; an increasingly oppressive security presence; and restrictive legal amendments that curtail fundamental freedoms guaranteed under Cambodian and international law.

In response to alerts from civil society, from June 10 to June 20, 2019, the Observatory for the Protection of Human Rights Defenders, a partnership of FIDH and the World Organisation Against Torture (OMCT), carried out a fact-finding mission to the country, visiting Phnom Penh, Kampong Chhnang, Battambang, Banteay Meanchey, and Siem Reap provinces. The mission met with a wide range of human rights defenders, including land and environmental rights defenders, women’s rights defenders, media activists, as well as civil and political rights defenders.

The objective of the mission was to analyse to what extent civil society space had shrunk in the lead-up to, during, and after the 2018 general election, assess the main obstacles affecting civil society activities in the country, and identify causes and specific events attesting the shrinking of civic space.

The mission found that human rights defenders including cyber activists, land and environmental rights defenders, and labour leaders, as well as journalists, had come under attack by state actors. Human rights-related events including peaceful demonstrations and training workshops had been monitored and interfered with by government authorities. This Observatory report features many such cases and shows how the National Assembly, dominated by ruling party lawmakers, adopted legislation that harasses and effectively silences human rights defenders. Such laws include: the 2015 Law on Associations and Non-Governmental Organisations (LANGO); the 2016 Law on Trade Unions (LTU); the 2015 Law on Telecommunications; and, most recently, the Law on the State of Emergency.

This report lays out recommendations to a wide variety of actors, including the government of Cambodia, the European Union, the United Nations Special Procedures, donor countries, and other stakeholders, to address the situation of human rights defenders in the country.

INTRODUCTION

The erosion of civic space in Cambodia is the result of a prolonged crackdown on all forms of dissent and opposition by the government of Cambodia in order to maintain its hold on power.

For many years, the ruling Cambodian People's Party (CPP) has maintained power through the use of politically motivated prosecutions and repressive laws. Prime Minister Hun Sen, in power since 1985, oversees a one-party rule in the National Assembly, after the Cambodian judiciary, which lacks independence from the government, ordered the dissolution of the main opposition Cambodia National Rescue Party (CNRP) in November 2017. A wave of arbitrary arrests and detentions of members of the opposition, including its leader Kem Sokha on trumped-up charges of "treason", and the ban on 118 opposition members from politics marred the lead-up to the general election that took place on July 29, 2018.

The CPP, which controls the country's security services and judiciary, led the crackdown that began in 2016 and continued in the run-up to the 2018 elections: arbitrary arrests and other abuses intensified in June and July 2018. In addition, the opposition CNRP – which had made electoral gains during the 2013 general election and the 2017 commune elections – was dissolved in November 2017, leaving no viable opposition party left to contest the CPP in the 2018 general election.

At the legislative level, hasty amendments to the Constitution in February 2018 introduced broad and vague provisions with the potential to impose extensive limits on fundamental freedoms. In addition, the Law on Associations and Non-Governmental Organisations (LANGO) has been used to ban, close, or suspend associations. This law imposes a range of restrictions on both domestic and foreign NGOs, requires them to register with the government, and allows the authorities to shut them down for supposedly undermining "national security," "national unity," "peace, stability and public order". Forty-eight percent of the NGOs and trade union leaders surveyed by the Fundamental Freedoms Monitoring Project (FFMP) in late 2018 said they felt their activities had been monitored¹. The right to peaceful assembly has also been systematically violated, with assemblies often arbitrarily prohibited or disrupted.

In addition, the manipulation of the judiciary by the executive authorities to silence human rights defenders and critical voices has become commonplace, while the security forces have continued to monitor and harass civil society representatives.

In both urban and rural areas environmental rights defenders put their lives at risk in the struggle against illegal logging and deforestation, as well as the endemic corruption surrounding Economic Land Concessions (ELCs). Journalists who criticise the government face serious charges, lengthy trials, imprisonment, and violence. Under the 2010 Criminal Code, those who peacefully express views about political parties, government institutions, or businesses risk criminal prosecution for defamation and spreading false information.

In light of these systematic violations, in July 2018 the European Commission (EC) conducted a fact-finding mission to assess compliance with human rights obligations under the 'Everything But Arms' (EBA) agreement, a full duty free and quota free access scheme granting full access for all Cambodian products (except arms and armaments) to the European Union (EU) market². Following the mission, the EC concluded that there was "*evidence of serious and systematic violations of core human rights and labour rights in Cambodia, in particular*

1 See FFMP, a joint initiative of the Cambodian Center for Human Rights (CCHR), Cambodian Human Rights and Development Association (ADHOC), and the American Center for International Labor Solidarity (ACILS), with technical assistance provided by the International Center for Not-For-Profit Law (ICNL), 'Third Annual Report', available at: <https://www.icnl.org/post/assessment-and-monitoring/cambodia-fundamental-freedoms-monitoring-project>.

2 See European Commission, *What is EBA?*, available at: <https://trade.ec.europa.eu/tradehelp/everything-arms>

.....
of the rights to political participation as well as of the freedoms of assembly, expression and association. These findings added to the longstanding EU concerns about the lack of workers' rights and disputes linked to economic land concessions in the country." On February 11, 2019, the EC launched a temporary withdrawal procedure, in view of a decision within a year³. On February 12, 2020, the EU withdrew part of the tariff preferences granted to Cambodia under the EBA trade scheme. High Representative for Foreign Affairs and Security Policy/Vice-President of the EC, Josep Borrell, said the decision was justified by the "*duration, scale and impact of Cambodia's violations of the rights to political participation and to the freedoms of expression and association.*"⁴ The withdrawal of tariff preferences – and their replacement with the EU's standard tariffs – will affect selected garment and footwear products, as well as sugar. The withdrawal will affect around 20% - or €1 billion - of Cambodia's yearly exports to the EU. Unless the European Parliament and the Council object, these tariffs will take effect on August 12, 2020⁵.

The present Observatory fact-finding mission report aims to: outline the way in which national laws and regulations are tailored and/or selectively invoked in Cambodia to harass and silence human rights defenders; illustrate this context with specific cases of human rights defenders subject to harassment; propose recommendations to national authorities, United Nations (UN) human rights monitoring mechanism, and the European Union on the measures to be taken to bring law and practice in line with international standards related to human rights defenders' protection.

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³ See European Commission, *Cambodia: EU launches procedure to temporarily suspend trade preferences*, February 11, 2019, http://europa.eu/rapid/press-release_IP-19-882_en.htm.

⁴ See European Commission, *Trade/Human Rights: Commission decides to partially withdraw Cambodia's preferential access to the EU market*, February 12, 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229.

⁵ See European Commission, *Commission decides to partially withdraw Cambodia's preferential access to the EU market*, February 12, 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229.

I - SEVERE OBSTACLES TO FREEDOM OF ASSOCIATION AFFECT NGOS AND TRADE-UNIONS' CAPACITY TO ACT

Since 2014, the government has enacted a number of harmful laws and amended existing legislation in order to curtail and punish the exercise of fundamental freedoms by significantly reducing the space for NGOs and trade-unions and delegitimising the work of human rights defenders. As a result, defenders have faced increased legal harassment and detention.

Law on Associations and Non-Governmental Organisations (LANGO)

The 2015 Law on Associations and Non-Governmental Organisations (LANGO) requires all groups and associations to register before conducting any activities, determines a mandatory registration process, and gives the Ministry of Interior a wide range of powers to curtail freedoms of association and peaceful assembly.⁶

Ahead of its adoption, local rights groups had warned that the law would have negative effects on NGOs and grassroots community organisations. An analysis conducted by the United Nations Office of the High Commissioner for Human Rights (UN OHCHR) urged the government to undertake a "thorough, substantive and consultative revision to the law."⁷ No such revision occurred prior to its passage.

Multiple aspects of the law contravene the Cambodian Constitution, which guarantees citizens the right to participate in political activity (Article 35 of the Constitution), to express personal opinions and assemble (Article 41), and to create associations and political parties (Article 42). The law also threatens the rights of Cambodians guaranteed under the International Covenant on Civil and Political Rights (ICCPR), specifically Articles 14, 19, and 22.⁸

LANGO imposes mandatory registration for all domestic and international associations and NGOs. The vague definition of "associations" can encompass all citizens' groups and can have a particularly severe impact on the freedom of association of grassroots groups.

The Ministry of the Interior has total discretion over the registration process. Approval or disapproval of registration applications can therefore be subject to political considerations.

LANGO bans any activity by unregistered associations and NGOs. Unregistered domestic associations and NGOs face fines from five to 10 million riel (US\$1,220 - 2,440) for violations of the law. Such fines can be prohibitive for grassroots groups.

Staff of unregistered domestic associations and NGOs that continue to operate without complying with the registration process can be subject to criminal prosecution.

⁶ See FIDH, *Cambodia: The dangers of LANGO*, July 8, 2015. See also CCHR's Analysis and Key Recommendations on LANGO, July 22, 2015.

⁷ See UN OHCHR report, *A HUMAN RIGHTS ANALYSIS OF THE LAW ON ASSOCIATIONS AND NON-GOVERNMENTAL ORGANIZATIONS*, August 4, 2015 <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Final%20OHCHR%20analysis%20of%20the%20LANGO%2C%20En%2C%20August%202015.pdf>

⁸ See ADHOC and LICADHO Press Release, *ADHOC and LICADHO Urge Cambodian Constitutional Council to Reject Unconstitutional LANGO*, July 30, 2015. See also CCHR's Analysis and Key Recommendations on LANGO, July 22, 2015.

There is no administrative remedy against the Ministry of Interior's rejection of a registration application. The Ministry's decision can only be appealed to the courts. Foreign associations and NGOs do not have the right to appeal registration decisions of the Ministry of Foreign Affairs and International Cooperation.

Once registered, all domestic and international NGOs, as well as international associations (but not domestic associations), are required to operate under a vaguely defined obligation to maintain "political neutrality". The government has the power use this clause to de-register these types of associations and organisations for legitimate criticism of the government or the political parties.

The law bans leaders of de-registered associations and NGOs from ever establishing new associations or organisations.

LANGO grants powers for the government to terminate Memoranda of Understanding (MoU) with international NGOs and associations, and to deport staff conducting activities in Cambodia without a valid registration or an MoU. An MoU with international NGOs or associations can be terminated on vaguely-worded grounds of "activities which jeopardise peace, stability and public order or harm the national security, national unity, culture and traditions of the Cambodian national society".

More generally, several human rights groups have highlighted in the past years that the provisions contained in LANGO are unnecessary, as other pieces of legislation are sufficient to regulate the activities of NGOs and other associations, and to allow for the prosecution of criminal acts when, and if, committed.

Since its passage, and on several occasions, the government has used LANGO to repress human rights activities.



In September 2017, the Ministry of Interior used the LANGO to suspend one of the largest local land rights NGOs, Equitable Cambodia.⁹ The Ministry alleged that Equitable Cambodia had violated the reporting requirements stipulated in the LANGO.¹⁰ Equitable Cambodia was only able to resume operations in February 2018, after it had been left in limbo for months, awaiting confirmation that it could resume its activities.¹¹ Staff from Equitable Cambodia had previously been subjected to spurious

charges. Equitable Cambodia Executive Director Mr. **Eang Vuthy**, as well as two other Equitable Cambodia staff were convicted of defamation by the Phnom Penh Municipal Court in August 2016, despite the prosecutor's admission that there was insufficient evidence to back the accusations.¹² The conviction was later overturned by the Court of Appeals in January 2018.¹³

⁹ *Equitable Cambodia* works with land activists representing hundreds of villagers who are locked in conflict with sugar plantations belonging to Ly Yong Phat, a CPP senator and business tycoon who manages several land concessions across the country.

¹⁰ See Phnom Penh Post, *Land Rights NGO Suspended*, September 29, 2017

¹¹ See Phnom Penh Post, *Equitable Cambodia allowed to reopen*, February 26, 2018

¹² See Phnom Penh Post, *'No evidence'? No problem: NGO staffers found guilty*, August 23, 2016

¹³ See Phnom Penh Post, *Equitable Cambodia defamation convictions overturned*, January 12, 2018

Authorities have also used LANGO to harass grassroots groups, such as the **Prey Lang Community Network** (PLCN). In late February 2020, hundreds of activists from the PLCN were on their way into the Prey Lang protected area to hold an annual tree-blessing ceremony. Armed authorities prevented them from entering the forest, and the Ministry of Environment later specifically referenced LANGO as a reason for this restriction, providing yet another example of the harmful effects of LANGO.¹⁴ This came less than a month after more than 100 local communities and NGOs called on the government to repeal LANGO.¹⁵

Law on Trade Unions (LTU)

The 2016 Law on Trade Unions (LTU) established a bureaucratic and burdensome process to register unions, in an apparent attempt to obstruct activities related to labour rights. Registration is required for any unions to operate, otherwise their existence is deemed illegal under the LTU. A registration form requires extensive information, including family information of a union's leaders, their biographies, and documents such as social security IDs and labour book registrations, which are typically held by factory management and thus difficult to access. Local unions have reported to the mission delegation that government authorities regularly deny their registrations for arbitrary reasons, such as minor spelling errors.

The LTU underwent amendments approved by the Senate on December 9, 2019, but these amendments were made without a proper consultative process and fell well short of bringing the law into agreement with international standards. Independent unions were not invited to consultation sessions with the government, and the amendments failed to address 10 issues identified previously by the International Labour Organisation's Committees of Experts on the Application of Conventions and Recommendations and on Freedom of Association. In December 2019, a group of local and international rights groups wrote a letter to Prime Minister Hun Sen urging him to open a new round of dialogue around the LTU, which the government has so far failed to do.¹⁶

In parallel with this repressive law, authorities have levelled trumped-up charges against independent union leaders in an attempt to silence them.



In December 2018, six union leaders - Messrs. **Ath Thorn**, President of the Cambodian Apparel Workers' Democratic Union, **Chea Mony**, **Mam Nhim**, **Pav Sina**, **Rong Chhun**, and Ms. **Yang Sophorn**, President of the Cambodian Alliance of Trade Unions (CATU) - were convicted, handed suspended prison sentences, and ordered to pay fines of 35 million riel (US\$8,700) each for their alleged role in protests calling for higher minimum wage for informal workers in late 2013 and early 2014 in Phnom Penh.¹⁷ According to civil society organisations, no evidence was provided at the trial to implicate any of the union leaders in the offences for which they were tried.¹⁸

14 See Joint Statement, *Authorities' Obstruction of Grassroots Activism Hurts Prey Lang Conservation*, February 25, 2020.

15 See Joint Statement, *With No Will to Amend, LANGO Must Be Repealed*, February 15, 2020.

16 See FIDH, *Open Letter - Law on Trade Unions and cases against union leaders*, December 18, 2019.

17 See Phnom Penh Post, *PM: Three protest union leaders 'innocent'*, December 13, 2018

18 See Phnom Penh Post, *Ninety-five NGOs condemn convictions of union leaders*, December 25, 2018



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On September 20, 2019, Ms. **Chhim Sithar**, the President of the Khmer Employees' Labour Rights Support Union of NagaWorld, Cambodia's largest hotel and casino, was dismissed from her employment as reprisal for representing approximately 4,000 NagaWorld workers to demand better working conditions and reasonable wage increases. Ms. Chhim Sithar is a union activist and local union leader who has actively worked for the promotion and respect for labour rights and human rights with trade union federations, associations, and civil society organisations in Cambodia. Based on previous experience, NagaWorld has a history of union discrimination for which complaints were filed with the International Labour Organisation (ILO) for violations of core conventions. The ILO later issued recommendations to the government of Cambodia.

Termination of Ms. Chhim Sithar's contract caused hundreds of workers to protest and demand the reinstatement of their leader, but the company initially refused to do so. On January 11, 2020, Ms. Chhim Sithar was reinstated after a two-day strike by thousands of NagaWorld workers.

Besides, the perpetrators of the killings of three Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) leaders - Messrs. **Chea Vichea** (2004), **Ros Sovannareth** (2004) and **Hy Vuthy** (2007), have yet to be brought to justice, and police investigations are at an apparent standstill.

II - CONSTANT MONITORING OF, AND OBSTACLES TO, ASSEMBLIES AND GATHERINGS

The government and its security forces have continued to monitor human rights-related events and peaceful demonstrations. This has occurred even in cases where the events have been private, and, in some cases, without the backing of any legal provisions that allow such monitoring.

Notice No. 175 and interference in human rights events

In October 2017, the Ministry of Interior issued Notice No. 175, a regulation requiring any group, including NGOs, to inform local authorities three days before any gathering or event. This regulation was widely used to curtail and intimidate NGOs in the lead-up to the 2018 general election. Its strict implementation served as a deterrent for groups to organise or hold events. Civil society members who monitor and investigate human rights abuses in the country were regularly questioned about their activities by government authorities citing the regulation.

Notice No. 175 was repealed by Interior Minister Sar Kheng on November 27, 2018, but, since then, little has changed on the ground. Many human rights defenders and other groups have continued to be monitored, questioned, and/or deterred by local authorities any time they have held, or have intended to hold, human rights trainings or workshops. Local authorities' interference in such gatherings has included their arbitrary ban, the review of lists of participants and agendas, as well as authorities' physical presence during the events without any legal basis.

The Cambodian Youth Network (CYN)¹⁹ reported that even after the repeal of Notice No. 175, police still approached CYN staff to ask for information about participants and event topics. For instance, on May 25 and 26, 2019, during a training organised by CYN on content and video production using smartphones with 15 community and youth activists in Steung Treng Province, three police officers visited the training venue and asked the organisers about the topic of the training. However, CYN refused to give them the participant list and photos, and refused to allow them to go inside the meeting room. The police officers insisted that they had to follow their superior's order to include a photo of participants in their reporting. Although CYN staff opposed as per their guidelines on privacy and security of participants, the police officers insisted, which resulted in an interruption of the training. Eventually, the participants allowed them to take a picture from long shot using their smartphone, and the police officers left the room.

On March 8, 2019, International Women's Day marches were organised in several cities of Cambodia. One of them was planned in Salabun in Chungkum I Village, Memot District, Tbong Khmum Province. Ahead of the march, on March 4, 2019, six community representatives, Mr. **Ear Chhan**, Mr. **Sie Tai**, Mr. **Tha Pov**, Mr. **Yem Kong**, Mr. **Kich Met**, and Mr. **Ram San**, notified the administration of Tbong Khmum Provincial Hall, Memot District office, and Ton Long Commune. The chief of the Ton Long Commune eventually requested the organisers to "secure a Ministry of Interior approval before taking any action at the local community level", without any legal basis justifying the request. Yet the

¹⁹ Cambodian Youth Network (CYN) is a local NGO that works closely with the youth and community members on land and environmental advocacy.

organisers announced that the march would take place as it had already been notified to the provincial, district and, commune administration. However, the authorities attempted to interrupt the march, and the village chief told the villagers that the event was cancelled, which resulted in a reduced participation of 250 persons, compared to the 300 planned.

On September 17, 2019, police in Svay Rieng shut down a training workshop held by the Coalition of Cambodian Farmer Community (CCFC), an organisation working to improve farmers' livelihoods and advocate for their interests, claiming that it had not been approved by local authorities. The workshop was intended to raise the awareness of 30 families in Romeas Hek District over ecological chicken-raising. Local authorities shut down about a dozen gatherings organised by the CCFC throughout 2019, including training workshops, a community development forum and an International Women's Day celebration, claiming that the group had failed to obtain permission.



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On April 28, 2020, authorities in Phnom Penh harassed more than 30 community representatives from across Cambodia who had gathered in the capital to try to submit a petition to the Council of Ministers to ask for additional government assistance to poor and vulnerable communities during the COVID-19 pandemic.²⁰ Nine representatives were detained at the Daun Penh District office, interrogated for more than seven hours, physically separated from each other, and ordered to hand over and unlock

their phones. They were repeatedly asked what organisations were "behind" the petition, who authored the petition, and were questioned about whether they really faced the problems listed. Many questions focused on the community members' microfinance debt, and some representatives were asked about their personal financial situation and were required to provide proof of debts to micro-finance institutions (MFIs) to district authorities. They were never provided legal justification for their detention. At the end of the interrogation, the community representatives were coerced into thumbprinting documents that required them to pledge they would stop advocating on behalf of their communities prior to being allowed to leave the district office. At least two community representatives were additionally summonsed and harassed by local authorities after they returned home to their communities.²¹

Deployment of militarised security forces

In an attempt to intimidate civil society, the government has increasingly deployed armed tactical police on the occasion of large public assemblies that marked human rights events, such as International Human Rights Day, International Labour Day, and International Women's Day.

²⁰ The petition was signed by 141 communities across the country and sought to address the health and economic impacts of COVID-19. It also included a call for an immediate halt on all evictions during the COVID-19 crisis in order to protect community members and authorities from the virus.

²¹ See Joint Statement, *Stop Harassment of Community Representatives over COVID-19 Petition*, May 4, 2020.

For instance, despite the event being approved by municipal authorities, a large security presence was deployed during International Human Rights Day on December 10, 2018, when a group of defenders and NGOs participated in a peaceful assembly at Phnom Penh's 'Freedom Park'.²² After the Phnom Penh Municipality threatened legal action against the event's organisers, citing vague concerns about "security and public order", hundreds of security forces - many of them wearing tactical gear and crash helmets - surrounded 'Freedom Park'.²³ The security forces outnumbered participants, a show of force clearly intended to intimidate protesters.



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A similarly large security presence was deployed during a march organised for International Women's Day on March 8, 2019. About 500 demonstrators, mostly representatives from local unions and NGOs, gathered in Phnom Penh's Olympic Stadium, where mixed security forces, including police officers equipped with military-style tactical gear, physically blocked them inside the stadium and prevented them from leaving or joining other demonstrators outside.²⁴ When Executive Director of the Cambodian

Center for Human Rights (CCHR), Ms. **Chak Sopheap**, who was trapped in between the stadium's gate and a group of security guards, asked for their release, a guard told her the participants "must stay inside", adding that he had "orders from a higher level not to allow [her] to celebrate outside". Security forces also pushed back and forth the women human rights defenders.²⁵ After an hour, the gate was eventually opened.²⁶ The Phnom Penh municipal authorities had denied the women permission to hold the march because they claimed it would affect public order and cause traffic jams.²⁷ A number of women human rights defenders who were interviewed during the mission said tactics, such as deploying large numbers of security forces to block protesters, were designed to create fear, and that there was no room for dialogue between civil society actors and local authorities.



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The Co-founder and Executive Director of Klahaan, a feminist and women's rights organisation, Ms. **Bunn Rachana**, reported difficulties in organising a peaceful assembly and marching to deliver a petition on women's rights to concerned authorities at the Office of the Council of Ministers in Phnom Penh on March 8, 2019. Ms. Bunn Rachana said that two days prior to March 8, authorities from the office of the Phnom Penh Municipality summoned the event organisers for a meeting which was presided over by the Deputy Governor, where they were met by more than 20 officials, most of whom were uniformed. Ms. Bunn Rachana said that while five CSO representatives tried to explain and inform the Deputy Governor about the group's right to assemble

²² 'Freedom Park' is an area several kilometres from the Phnom Penh centre and designated by the authorities for such assemblies. See Khmer Times, *Rights activists demand more freedom*, December 11, 2018.

²³ See LICADHO, *Cambodia Civil Society Restrictions Still in Place on Human Rights Day*, December 10, 2018.

²⁴ See LICADHO, *International Women Day 2019*, March 8, 2019.

²⁵ See <https://twitter.com/sopheapfocus/status/1236093677799268353>

²⁶ See Khmer Times, *Women detained in stadium on Int'l Women's Day*, March 8, 2019.

²⁷ See Phnom Penh Post, *Groups to hold march despite lack of approval*, March 8, 2019.

for the march, the officials said they would not allow such events because they were not sure about their intentions. On March 8, several hundred people, including Ms. Bunn Rachana and representatives from 107 CSOs, unions, and human rights associations gathered at Phnom Penh's Olympic Stadium and intended to march to the Council of Ministers to deliver their seven-point petition on violence against women. However, they were blocked inside the stadium and barred from marching, cited the concerns of disruption to the traffic movement and public order. After an intense negotiation between the authorities and event organizers, two Deputy Governors of the Phnom Penh Municipality came to accept their petition inside the stadium and pledged to deliver it to the concerned authorities on their behalf afterwards.

Likewise, for International Labour Day on May 1, 2019, around 500 mixed security forces were deployed while workers and civil society members gathered in Phnom Penh, at both the Government's Council for the Development of Cambodia, as well as at 'Freedom Park'. On that day, municipal authorities stopped workers from marching to the National Assembly, and instead allowed for a limited march around the Wat Phnom temple in the presence of security officials.²⁸

In 2020, an International Women's Day event held in Phnom Penh again faced arbitrary restrictions from the authorities. The event, jointly held by a number of CSOs and trade unions at 'Freedom Park', was authorised by the City Hall. Despite this authorisation, authorities interfered and limited the number of participants to 200 and ordered that only small-sized tents could be erected (4 x 6 meter tents, rather than 20 x 20 meter). This arbitrary restriction meant that some of the 400 participants who arrived for the event were forced to leave or sit or stand in the direct sun on an extremely hot day. Communities in Pursat and Kampong Speu Provinces also reported being threatened by local authorities prior to their International Women's Day celebrations.

Judicial harassment in connection with the organisation of, and participation in, gatherings

Other human rights defenders have also been facing judicial harassment in connection with the organisation of peaceful assemblies, in an attempt by the authorities to punish them for their human right activities.



President of Independent Democracy of Informal Economy Association (IDEA),²⁹ Mr. **Vorn Pov** still has an appeal pending for charges resulting from organising and leading workers' protests in January 2014 on Veng Sreng Boulevard in Phnom Penh, calling for higher minimum wage for informal workers.³⁰ Mr. Vorn Pov was charged along with Mr. **Theng Savoeun** (Coordinator of Coalition of Cambodian Farmer Community - CCFC), Mr. **Chan Puthisak** (community leader from Boeung Kak Lake), and Mr. **Sokun Sambath Piseth** (staff member at the Center for Labour Rights of Cambodia). On January 26, 2016, the appeal trial for Mr. Vorn Pov and the three other

²⁸ See LICADHO, *International Labour Day 2019*, May 1, 2019.

²⁹ IDEA is a labour group that unites around 4,900 workers in Cambodia. The organisation is located in Phnom Penh and works in protecting the rights of informal workers, such as street vendors, domestic workers, and tuk tuk drivers.

³⁰ See VOA, *Unionist Summoned as Witness in Former Opposition Leader's Trial*, September 4, 2018.

men, which was due to take place at the Court of Appeals, was postponed to an unknown date.³¹ The Phnom Penh Municipal Court of First Instance had sentenced Mr. Vorn Pov and the three other men on May 30, 2014, to suspended prison sentences ranging from four to four and a half years³² on charges of instigating acts of "intentional violence with aggravating circumstances" under Article 218 of the Criminal Code,³³ and fines of eight million riel (around US\$1,950) each. These pending charges form part of the intimidation methods used to silence human rights defenders.³⁴



On July 10, 2019, another youth activist, Mr. **Soung Neakpaon**, had been arrested during a peaceful gathering at the Phnom Penh café where Mr. Kem Ley was murdered exactly three years earlier. Shortly before his arrest, Mr. Soung Neakpaon had been seen holding a placard stating "end extrajudicial killings". He was held at Phnom Penh's CC1 prison on charges of "incitement to commit a felony", and eventually released on bail on December 13, 2019. As of early 2020, charges against him were still pending.

During the Observatory mission, NGOs reported they undertook fewer public gatherings compared to previous years, due to an atmosphere of fear and violence created by state actors. Even small peaceful assemblies were hindered and/or met with heavy police presence.

³¹ On January 26, 2016, four other striking workers were also due to appear alongside Messrs. Vorn Pov, Theng Savoeun, Chan Puthisak, and Sokun Sambath Piseth. A total of 10 individuals had been sentenced in first instance by the Phnom Penh Municipal Court in this case, but only eight of them had decided to appeal their convictions and prison sentences.

³² Messrs. Vorn Pov, Chan Puthisak, and Sokun Sambath Piseth were sentenced to four and a half years and Mr. Theng Savoeun to four years. Six other men were sentenced to suspended prison sentences ranging from two and a half to four and a half years on charges of "Intentional Violence with Aggravating Circumstances" and "Intentional Damage with Aggravating Circumstances" under Articles 218 and 411 of the Criminal Code: https://cchrcambodia.org/admin/media/analysis/analysis/english/2016_02_08_CCHR_Amicus_Brief_Yak_Jing_Vorn_Poa_and_7%20others_ENG.pdf

³³ The charges against the four men were changed at the last minute. They were initially charged with "intentional damage with aggravating circumstances" under Article 414 of the Criminal Code.

³⁴ See LICADHO, *FreeThe23 and Stung Meanchey verdicts: all convicted with sentences suspended*, May 30, 2014.

III - SILENCING OF INDEPENDENT JOURNALISTS, MEDIA OUTLETS, AND CYBER ACTIVISTS

Since 2017, the government's campaign to silence independent voices online has accelerated sharply. An interlinked network of regulations, laws, and task forces has been established to monitor and police the online space, an indication that the government's campaign against independent voices in the online space has intensified.

Specifically, the number of 'fake news' accusations and arrests has increased.³⁵ According to local groups, between the beginning of the COVID-19 pandemic in Cambodia and May 13, 2020, over 40 arrests have been reported for Facebook posts in relation to the COVID-19.³⁶



For instance, on March 30, 2020, during a press conference at the National Assembly, Prime Minister Hun Sen threatened Mr. **Am Sam Ath**, Deputy Director of LICADHO, saying: "Am Sam Ath of LICADHO, you must be careful with what you say. [Your statement] was not freedom of expression". Mr. Hun Sen added that "[...] I can have you arrested because you are complicit to illegal acts in Cambodia," referring to the people arrested for allegedly spreading 'fake news'. On March 29, Mr. Sam Ath had told *Radio Free Asia* that over 24 people had been arrested by the authorities for expressing their opinions about COVID-19 on Facebook, and added that this crackdown had made people fearful of reporting or making comments on social media.

Law on Telecommunications and internet surveillance

The 2015 Law on Telecommunications gives the government broad and unchecked powers to monitor and police public and private communications online and offline. Specifically, it allows the government to engage in secret surveillance with approval from an unspecified "legitimate authority" (Article 97), in direct violation of the constitutional right to privacy in telecommunications (Article 40). It gives authorities the right to demand customer information from internet service providers (ISPs) without a judicial warrant (Article 6). The law criminalises any use of telecommunications equipment that "leads to national insecurity" (Article 80) or "may affect public order or national security" (Article 66). It establishes a new class of "telecommunications inspection officials", who are tasked with "monitoring, studying, checking and strengthening the enforcement of this law" and hold full judicial police powers, which could give them the authority to engage in unchecked surveillance and unconstitutional invasions of privacy.³⁷

35 See CCHR infographics, available at: <https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2-Snapshot%20EN%20.pdf>

36 See Joint Statement, *Civil Society Organizations call for the Royal Government of Cambodia to Amend the State of Emergency Law to Protect Human Rights*, May 13, 2020, available at: <https://www.business-humanrights.org/sites/default/files/documents/CSOs%20joint%20statement.pdf>

37 See LICADHO, *Cambodia's Law on Telecommunications, A Legal Analysis*, March 2016

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The 2015 Law on Telecommunications could soon be coupled with a Cybercrime Law, the drafting process of which Prime Minister Hun Sen ordered be sped up in March 2019³⁸, and which in previous versions contained a vague provision criminalising "slanderous" comments made online against the government or its officials.³⁹ As of June 2020, the draft law was still pending. In March 2019, Prime Minister Hun Sen also asked ministries to consider creating an Anti-Fake News Law, which was still under discussion as of June 2020.⁴⁰

On May 2, 2018, the government ordered all ISPs to have their customers' traffic pass through a state-owned data management centre at Telecom Cambodia.⁴¹ Later that month, the government issued the Inter-Ministerial *Prakas* [ministerial regulation] on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia.⁴² The *Prakas* required the Ministry of Posts and Telecommunications to ensure that all ISPs install surveillance software to "filter and block" illegal online content, including social media accounts,⁴³ and to cooperate with the Ministry of Information and other relevant ministries and institutions to "block or close" websites and/or social media pages containing illegal content that is considered to be "incitement, breaking solidarity, discrimination, and wilfully creating turmoil that undermines national security, public interests, and social order."⁴⁴

Just two days prior to the July 2018 general election, the government ordered ISPs to block 17 sites including *Voice of Democracy (VoD)*, *Radio Free Asia (RFA)*, and *Voice of America (VoA)*⁴⁵. In such environment, several defenders and outlets have increasingly resorted to self-censorship due to a fear of reprisals⁴⁶.

Criminalisation of social media activism

Over the past several years, the government has sought to curtail the use of the internet as a platform for free expression, through the enforcement of new laws,⁴⁷ such as the above-mentioned 2015 Law on Telecommunications and the *lèse-majesté* (insulting the King)

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38 See Khmer Times, *PM pushes for anti-fake news law*, March 5, 2019

39 Article 28(4) of the draft Cybercrime Law, https://www.article19.org/data/files/medialibrary/37516/Draft-Law-On-CyberCrime_Englishv1.pdf. The drafting process was ongoing as of late July/June 2019/2020 <https://www.phnompenhpost.com/national/ministries-review-content-draft-law-cybercrime>

40 See Khmer Times, *PM pushes for anti-fake news law*, March 5, 2019

41 See Phnom Penh Post, *Ministry's plan for net sparks fears*, May 21, 2018

42 Proclamation; ministerial or inter-ministerial decision signed by the relevant minister(s).

43 Kingdom of Cambodia; Ministry of Information, Ministry of Interior, Ministry of Posts and Telecommunication, *Inter-Ministerial Prakas On Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, No. 170 Br.K/Inter-ministerial*, May 28, 2018, Clause 7(b)

44 Kingdom of Cambodia; Ministry of Information, Ministry of Interior, Ministry of Posts and Telecommunication, *Inter-Ministerial Prakas On Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, No. 170 Br.K/Inter-ministerial*, May 28, 2018, Clause 7(c)

45 Mr. Phos Sovann, chief of the Information Ministry's General Department of Information and Broadcasting, confirmed the government ordered internet service providers to block between 15 and 17 news websites of independent outlets invoking Cambodia's electoral law which prevents the parties from campaigning 24 hours prior to Election Day (Article 72 of the Law on the election of members of the National Assembly, <https://www.neclect.org.kh/english/content/law-election-members-national-assembly>). However, the pro-CPP media were not shut down during this period of time (see <https://www.voacambodia.com/a/government-confirm-blocking-fifteen-independent-news-sites-over-poll-disruption/4503739.html>)

46 See Freedom House, *Media, Diversity, and Content Manipulation*, <https://freedomhouse.org/report/freedom-net/2018/cambodia>, Section on "Violations of users rights > Legal environment", as well as ICNL, CCHR, SC/ACILS and ADHOC, *Cambodia Fundamental Freedoms Monitor, Second annual report*, September 2018, https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=128&id=5

47 Ibid.

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provision added to the Criminal Code in February 2018,⁴⁸ and the reliance on a subservient judiciary to issue convictions in politically motivated cases. The authorities have repeatedly pursued criminal cases against human rights defenders, invoking "incitement to commit a felony" and/or "incitement to discriminate against a person or group" under Articles 495 and 496 of the Criminal Code respectively, as a legal basis to punish individuals for any online criticism of the government or its officials. The breadth and vagueness of those provisions has left Cambodia's online space severely curtailed, with many social media users in the country fearful of posting any messages that could be interpreted as expressing political or critical opinions.

Tax-related accusations against, and take-over of, independent media outlets

Cambodia's harshest political crackdown in decades has been accompanied by the government's dismembering of the country's independent media. These attacks targeted outlets that had previously enjoyed more media freedom than smaller or politically affiliated media outlets. The government wielded administrative measures, including arbitrary application of various tax and media licensing legislation, to systematically eliminate critical voices as well as harass individual journalists.

On August 11, 2017, the Ministry of Economy and Finance issued a letter stating that *Radio Free Asia (RFA)* and *Voice of America (VoA)* were unlicensed and had not paid taxes. The two stations were, along with *Voice of Democracy (VoD)*, the only outlets that broadcast independent news over the radio in Khmer to rural audiences, providing the only source of news that was not government-aligned or owned. Ten days after that letter, the Ministry of Information revoked station licenses from any broadcasters who were hosting or relaying *RFA* and *VoA*. Two days later, radio stations broadcasting *VoD* cut their transmissions as well. The move led *RFA* to end its operations in Cambodia, which had broadcasted Khmer-language news since September 1997.

Two English-language daily newspapers that had long enjoyed freedom to publish independent news were also targeted in the crackdown. The first target was the *Cambodia Daily*, a paper with record of publishing investigations into government wrongdoing. In August 2017, the General Department of Taxation (GDT) imposed a US\$6.3 million tax bill on the newspaper - an arbitrary amount that was designed to drive the paper out of business. The paper requested a formal tax audit, which the GDT did not conduct, and the paper later closed on September 4, 2017. In parallel, the GDT sent charges to Phnom Penh Municipal Court, and requested that the Immigration Department block all travels of Mr. **Douglas Steele**, *Cambodia Daily* General Manager & General Counsel, pending court action. The travel ban was implemented as of September 4, 2017, and quietly lifted on February 27, 2018⁴⁹. However, Mr. Steele's bank accounts are still frozen to date, making it impossible for him to have a functioning account in Cambodia. As of June 2020, the charges against him were still pending.

.....
⁴⁸ The law adds a new Article 437-bis to the Criminal Code, which 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." The law also allows for legal entities to be convicted under the same charge, with a fine of 10 million to 50 million riel and additional penalties, including dissolution and seizure of property. Royal defamation laws have been criticised by the UN Human Rights Committee, which said that "laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned."

⁴⁹ The ban has never been officially lifted, but Mr. Steele was informed that he could travel again.

The *Phnom Penh Post* was targeted next, and was also hit with an exorbitant tax bill of US\$3.9 million. The Australian owner announced the sale of the newspaper, on May 5, 2018. The buyer was a Malaysian public relations firm that had previously worked for Prime Minister Hun Sen's government. The paper initially published a story about the sale and included information regarding the buyer. Representatives of the new owners demanded the story be removed, leading to the resignation of 13 editors and reporters in the first 48 hours, including all foreign news staff. The editor in chief, Kay Kimsong, was fired. The new director was a CPP-linked lawyer who had previously led a committee under the authority of Hun Sen's cabinet. Many journalists who previously worked at the newspaper continued to resign in the following months. The story regarding the sale was removed from the *Phnom Penh Post* website.

Even as outlets like *VoD* and *VoA* have continued to operate in curtailed form, the government has continued its harassment of the independent outlets' journalists. On November 9, 2019, as journalists covered the planned return of opposition leader Sam Rainsy, two *VoD* journalists were detained for three hours at Poipet Military Police headquarters in Banteay Meanchey Province. Several months later, Prime Minister Hun Sen accused a *VoA* journalist of receiving instructions from Washington in a heated exchange during a live press conference, after the journalist asked pointed questions about the government's response to the COVID-19 pandemic⁵⁰.

Judicial harassment against independent journalists and defenders

With the government's claim of a "colour revolution" supposedly organised from abroad, the courts were given the pretext to harass human rights defenders with spurious charges alleging cooperation with foreign powers.



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Messrs. **Uon Chhin** and **Yeang Sothearin**, two former *RFA* journalists, were arrested on November 14, 2017. The arrests came two months after *RFA* shuttered its Cambodia operations due to government harassment and the inability to maintain security for its staff. The former reporters were charged under Article 445 of the Criminal Code, with prosecutors alleging that they had provided "information to foreign interests detrimental to national security." There has been no evidence to substantiate these charges, which carry up to 15

years in prison. In March 2018, the prosecutor added another trumped-up accusation of "production of pornography for distribution, sale or public display" under Article 39 of the Law on Suppression of Human Trafficking and Sexual Exploitation, which carries a maximum term of one year in prison and a fine of two million riel (around US\$490). The pair were held in pre-trial detention for nine months before being released on bail on

⁵⁰ See Voice of America Press Release, *Reporter's Notebook: 'No Hun Sen. I Do Not Work for Washington. I Am an Independent Journalist'*, May 3, 2020.

August 21, 2018. However, the charges against the two were not dropped, a common tactic used by the Cambodian government to pressure human rights defenders into silence by leaving pending charges against them stand indefinitely. On October 3, 2019, the Phnom Penh Municipal Court announced its decision to reopen its investigation, despite the lack of credible evidence against them required to hold them criminally liable as per the burden of proof standards enshrined in Article 38 of the Constitution. On December 30, 2019, the Phnom Penh Court of Appeals rejected the appeal of the two journalists to close the investigation. On January 21, 2020, the same court rejected a similar appeal by the defendants. On May 27, 2020, Cambodia's Supreme Court partially upheld the decision of the Court of Appeals regarding returning Messrs. Uon Chhin's and Yeang Sothearin's seized items, in particular their identification documents. The Supreme Court ruled to keep the pair's passports, claiming they are required for further procedures at the Court. However, the court returned the Cambodian ID card of Mr. Uon Chhin. As of June 2020, the case was ongoing.

On August 28, 2017, after conducting interviews with villagers regarding the commune council elections in Pate Commune, O'Yadav District, Ratanakiri Province, Mr. **Aun Pheap**, and Mr. **Peter Zsombor**, then-*Cambodia Daily* journalists, were charged with "incitement to commit a felony" under Articles 494 and 495 of the Criminal Code, and summoned to appear at a trial hearing on December 25, 2019. On that day, the Ratanakiri Provincial Court decided to postpone the trial indefinitely. The interviews were conducted by the two in their capacity as journalists for the *Cambodia Daily*, which has since been forced to close due to a tax requirement (see above). These prosecutions serve to further threaten and intimidate other independent journalists.⁵¹



In another example, on January 4, 2018, Deputy Prosecutor of Phnom Penh Municipal Court Kuch Kimlong charged Executive Director of the Center for Alliance of Labour and Human Rights (CENTRAL) Mr. **Moeun Tola**, independent media advocate Mr. **Pa Nguon Teang**, Director of the Cambodian Center for Independent Media (CCIM), and social activist Mr. **But Buntenh**, a

Buddhist monk, with "breach of trust" under Articles 391 and 392 of the Criminal Code, for allegedly misappropriating donations for the funeral of political analyst Mr. **Kem Ley**, who was murdered in July 2016. On July 9, 2018, the Phnom Penh Municipal Court dropped all charges against Mr. Moeun Tola.⁵² The Court's statement declared that there was insufficient evidence to prosecute him. Messrs. Pa Nguon Teang and But Buntenh fled abroad and the charges against them still remain.⁵³

Since early 2020, the COVID-19 pandemic has given the government another excuse to crack down on journalists.

51 See Joint Statement, *Civil society organizations call for all baseless charges against journalists to be dropped*, December 22, 2019.

52 See Khmer Times, *Court drops charges against labour activist*, July 12, 2018.

53 See Phnom Penh Post, *Capital court drops charges against Tola*, July 12, 2018.



On April 7, 2020, Mr. **Sovann Rithy**, the Director of *TVFB*, an online news outlet, was arrested in Phnom Penh's Sen Sok District for a Facebook post about the economic effects of COVID-19 on motorbike-taxi drivers in Cambodia. The post directly quoted a speech Prime Minister Hun Sen gave during a press conference, in which he said: "*If motorbike-taxi drivers go bankrupt, sell your motorbikes for spending money. The government does not have the ability to help.*" Mr. Sovann Rithy was

arrested on trumped-up charges of "incitement to commit felonies" under Article 495 of the Criminal Code. He could face six months to two years in prison as well as a fine of between one and four million riel (US\$250 to US\$1,000). Within 24 hours following his arrest, on April 8, 2020, Information Minister Khieu Kanharith issued a letter to terminate *TVFB's* media license and shut down its website. A ministry spokesman reported that Mr. Sovann Rithy's Facebook post violated the terms of his news license by "selectively quoting a Hun Sen joke." The arrest of Rithy is particularly concerning because he was arrested for quoting the Prime Minister – a task that all journalists in Cambodia do on a regular basis, setting the legal precedent for the arrest of any journalists for doing their job. As of June 2020, Mr. Rithy remained in pre-trial detention, having missed the recent birth of his child.⁵⁴

On May 13, 2020, *Rithysen* radio station owner Mr. **Sok Oudom** was arrested and detained in Kampong Chhnang for reporting on a local land dispute. Mr. Sok Oudom reported on a clash between a local village and military officials, and was arrested on accusations of "incitement". On the same day, the Ministry of Interior revoked the media license of *Rithysen* radio station and website on the grounds of "exaggerated news reporting". On May 15, 2020, the Kampong Chhnang Provincial Court charged Mr. Sok Oudom with "incitement to cause chaos" under Article 495 of the Criminal Code. Mr. Sok Oudom could face up to two years in prison, as well as a fine of up to four million riel (US\$1,000).⁵⁵

Crackdown on social media activists

Over the past couple of years, social media users raising awareness or expressing criticism over human rights violations on Facebook have been pressured and criminalised.

On February 8, 2018, Mr. **San Rotha**, a Facebook user, was arrested on charges of "public insult of the leader" and "public defamation" after he published a Facebook post calling the government "authoritarian".⁵⁶ He was interrogated by a prosecutor on February 10 and 11, and by a judge on February 11, for alleged public insult, but also for incitement. He was eventually sentenced later in February 2018 to one year in prison for "incitement to discriminate" under Article 496 of the Criminal Code. He was released in February 2019.

⁵⁴ See Joint Statement, *Release Imprisoned Journalists and End Media Crackdown*, May 18, 2020.

⁵⁵ *Ibid.*

⁵⁶ See Phnom Penh Post, *Man held after calling government 'authoritarian' on Facebook*, February 13, 2018; Phnom Penh Post, *Man arrested on wedding day for criticising government on Facebook*, February 12, 2018.



In another example of the social media crackdown, in May 2019, Siem Reap police officers visited the home of university student, Mr. **Chhun Dymey** (aka Dymey-Cambo), after a rap song he had written went viral online on May 13, 2019. Mr. Chhun Dymey had posted the rap video '*Sangkum Nis*' ('This Society'), which commented on social issues and criticised wealth inequality and the use of state violence against land protesters, on YouTube and Facebook. Mr. Chhun Dymey deleted the video after the visit from the authorities.⁵⁷



On July 9, 2019, Mr. **Kong Raiya** was arrested at his home along with his six-month-old child, his wife, and two siblings, after he had advertised the sale of commemorative t-shirts bearing the image of slain political analyst Kem Ley on Facebook. His family members were released the next day after signing written promises to "respect the law". Mr. Kong Raiya was held at Phnom Penh's CC1 prison on charges of "incitement to commit a felony", and eventually released on bail on

November 29, 2019. On June 19, 2020, he was sentenced in absentia to two years in prison for "incitement to commit a felony and committing a misdemeanor" under Articles 494, 495 and 88 of the Criminal Code.⁵⁸ Mr. Kong Raiya had previously served an 18-month prison sentence for "incitement to commit a felony" in relation to a Facebook post he had made as a university student back in 2015.

⁵⁷ See Phnom Penh Post, *Rapper deletes song critical of Cambodian social issues*, May 20, 2019; RFA, *Cambodian Who Rapped Against Social Injustice Under Surveillance, Fears for Safety*, May 24, 2019.

⁵⁸ See Khmer Times, *Kong Raiya Sentenced to Two Years*, June 22, 2020.

IV - HARASSMENT OF LAND AND ENVIRONMENTAL RIGHTS DEFENDERS

In Cambodia, more than 500,000 people have been affected by land grabbing and forced evictions in the last two decades, leaving countless communities impoverished, landless, and locked in disputes that are rarely resolved. At least 32,000 people were newly affected by such disputes in 2018 alone. Many of these communities are led by women land activists, who are at high risk of being victims of state violence and harassment.⁵⁹ They often work to defend their land against powerful businessmen, who have deep political connections and often use law enforcement and military forces to pursue their interests.

Many of these conflicts stem from the use of Economic Land Concessions (ELCs), a process by which the Cambodian government leases large plots of land to private companies for decades at a time. More than two million hectares of land have been leased for ELCs as of 2019. State authorities have routinely used violence to suppress land protesters, many of whom have refused to stay silent despite the increasing level of repression and surveillance by state actors.



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Ms. **Tep Vanny** was arrested on 15 August 2016 during a peaceful demonstration calling for the release of five imprisoned human rights defenders. She was the leader of a community movement to prevent the forced eviction of more than 4,000 families from the Boeung Kak Lake neighbourhood in Phnom Penh. The

government leased the land to a private company, destroying the lives of thousands of households. Ms. Vanny became a highly visible and prominent voice, and her symbolic power as a brave and fearless woman advocate made her a target for government authorities. Following her August 2016 arrest, Ms. Vanny was charged with long-dormant accusations stemming from a land rights protest in 2013. She was charged with inciting violence and sentenced to 30 months in prison, the third time she had been sentenced to prison. Ms. Vanny received a royal pardon after more than two years in prison in August 2018, but she was never compensated for her arbitrary detention. Tep Vanny's case mirrors the dangers that all land rights activists, and particularly women activists, face in Cambodia.

The use of state violence in land conflicts is also a worrying trend. Private companies engaging in land grabs or locked in land disputes with local communities regularly use armed military and security forces to evict people. In many cases, this has resulted in the use of lethal force by security forces.

⁵⁹ See LICADHO report, *“Good Wives”: Women Land Campaigners and the Impact of Human Rights Activism*, November 2014.

In March 2018, security forces including soldiers fired at a crowd of land activists and farmers who were protesting their eviction and the removal of their homes in Kratie Province. Three community members were shot, including one woman who had to be sent to Phnom Penh after receiving a serious bullet wound in the buttocks. The victims were part of hundreds of families who were locked in a dispute with Memot Rubber Plantation Co. Ltd., a firm granted an ELC consisting of nearly 10,000 hectares of land that included the land on which the villagers' homes were.

In January 2019, soldiers shot into a crowd of villagers who were involved in a land dispute with a well-connected Cambodian tycoon in Preah Sihanouk Province. The military were mobilised alongside security forces to enforce a Supreme Court order to evict villagers who claimed ownership of the disputed plots of land. One man was shot in the spine and was left permanently disabled.



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Also in January 2019, army soldiers embarked on a campaign of harassment of a community facing eviction in Preah Vihear Province. The villagers were locked in a land conflict with a Cambodian rubber company that was granted a land concession of more than 8,500 hectares. The farmers were arrested and physically assaulted by soldiers, who had been hired by the company as security guards. One of the community's representatives, Mr. **Sum Meun**, was beaten and, following his arrest, disappeared for two months, later reappearing in a state of shock and still suffering from injuries related to his beating.

In tandem with the increased use of violence, Cambodian authorities have continued to use legal harassment and the politicised judicial system to target land and environmental activists.



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Two environmental activists from the local group Mother Nature, Messrs. **Dim Kundy** and **Hun Vannak**, were arrested in September 2017 on charges related to incitement and violation of privacy. The pair were taking photographs of sand dredging off the coast of Koh Kong Province, allegedly being undertaken by a firm closely linked to the CPP. They were convicted on January 26, 2018, and sentenced to a partially suspended one-year prison term and a 1 million riel (US\$250) fine. The duo was released on February 13, 2018. However, the suspended sentence means that authorities can arrest them and send them back to prison if they return

to activism. Mr. Hun Vannak was again detained at the Battambang provincial police for several hours along with other members of youth group Khmer Thavrak on May 9, 2020, after the group protested widespread indebtedness in the microfinance sector. Monks filming the activists were also threatened with expulsion from their pagodas by the authorities. On June 1, 2020, Mr. Vannak was again detained and questioned while independently observing a protest in Poipet.⁶⁰ On July 13, 2018, convictions against three more Mother Nature environmental activists – Messrs. **Sun Mala**, **Try Sovikea**, and **Sim Samnang** - were upheld



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by the Supreme Court. The arrests occurred in August 2015 over the trio's activities in documenting sand dredging occurring in Koh Kong Province, and they were charged under Article 424 of the Criminal Code. Prosecutors alleged the three had threatened to destroy property or cause damage to property. The judge later increased the charge to label them as masterminds of the crime, a decision both the Court of Appeals and the Supreme Court

upheld. The decision means that the 18-month partially suspended sentence was upheld, allowing the government to re-arrest and imprison the activists at any time. They were also ordered to pay 100 million riel (US\$25,000) in compensation and a 2 million riel (US\$500) fine, which could also lead to imprisonment if the activists fail to pay it.



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On March 13, 2020, four environmental activists, Mr. **Ouch Leng**, Executive Director of the Cambodia Human Rights Task Force (CHRTF) and winner of the Goldman Environmental Prize, Mr. **Khem Soky**, Mr. **Srey Thei**, both from the Prey Lang Community Network (PLCN), and Mr. **Men Mat**, were beaten by private security guards from the company Think Biotech Co. The day before, they had travelled to monitor and investigate illegal logging in Prey Lang forest, Kratie Province.

The four were held inside the company compound before being sent to the police inspectorate at Sambor District, Kratie Province.⁶¹ They were detained and interrogated by local authorities for two days over their patrolling of the protected Prey Lang forest. Following pressure and demonstrations outside the police station, they were released, but the investigation against them is still ongoing. PLCN had faced harassment and intimidation the month before when its members were prevented from holding their annual tree blessing ceremony in the forest by Environment Ministry rangers.⁶²

60 See VOA, *Rights Activist Hun Vannak Detained While Documenting Poipet Protest*, June 1, 2020.

61 See *Joint Statement on the Detention of Mr. Ouch Leng, Head of Cambodian Human Rights Task Force, and Three Other Environmental Activists*, March 14, 2020.

62 See above, page 9.

On June 3, 2020, a group of 18 youth environmental activists were banned from cycling from Koh Kong to Phnom Penh by Koh Kong District authorities. The activists were taking part in a campaign to "Save Koh Kong Krao Island", attempting to cycle to the capital to submit a petition to Prime Minister Hun Sen. Their petition requested the government classify Koh Kong Krao Island as a protected national sea park to enable it to preserve its natural resources. When authorities interfered with the procession, each activist was required to undergo a temperature check, seemingly because of the COVID-19 pandemic. Activists refused the authorities' request to present their identity cards, but agreed to write and submit a list of their names. The authorities also wanted to review their petition and asked them to thumbprint a letter declaring that they would not submit the petition to the local authority - but the activists refused both requests. Koh Kong District police confiscated 10 of the bicycles and subsequently invited all the activists to have a discussion over the confiscation of their bicycles, requesting to meet with one activist at a time. In response, the activists refused the police's request because they had already informed the authorities of the purpose of their campaign.⁶³

In parallel, impunity also persists over the killing of Mr. **Chut Wutty**, Founder of the National Resources Protection Group (NRPG) in Mondol Seima District, Koh Kong Province, who was found dead in 2012. On April 26, 2012, while accompanying two journalists to investigate alleged illegal logging and land grabs in Koh Kong Province, Mr. Chut Wutty was fatally shot in the leg and stomach as he tried to start his car, following a heated stand-off with military police and representatives of logging company Timber Green. The alleged shooter, Mr. In Rattana, a military police officer, was also found shot dead at the scene. On October 4, 2012, Koh Kong Provincial Court declared the case closed after concluding that Mr. Chut Wutty was killed by Mr. In Rattana, who was in turn fatally shot by a logging company's security guard.

⁶³ See CCHR Alert, *Koh Kong authorities ban an environmental cycling group from their cycling campaign to save Koh Kong Krao Island*, June 3, 2020.

V - THE LAW ON THE STATE OF EMERGENCY: ANOTHER MAJOR THREAT TO CIVIC SPACE?

Since March 2020, the COVID-19 pandemic has provided the government with another excuse to crackdown on dissent. The new Law on the Management of the Nation in State of Emergency (Law on the State of Emergency) was promulgated on April 29, 2020, after its adoption by the National Assembly and Senate earlier in April. This law grants to government extensive powers to further curtail civil rights and freedoms, such as freedoms of movement, expression, association, and peaceful assembly - as well as the freedom to inform and be informed - if a state of emergency is declared. According to Prime Minister Hun Sen, the law was justified by the COVID-19 pandemic.

Based on Article 22 of the Constitution, the law will require the King to declare a State of Emergency, after reaching consensus with the Prime Minister and Presidents of the Senate and National Assembly. The declaration of a State of Emergency will be done through Royal Decree for a period of three months, but with the possibility to extend it indefinitely.

Vague and overly broad provisions of Articles 3 and 4 of the text allow for a declaration of a State of Emergency whenever Cambodia faces "danger" and a "great risk" – ill-defined terms that could give the government the power to declare a State of Emergency in almost any scenario it deems "dangerous."

Once a State of Emergency has been imposed, Article 5 empowers the government to adopt a number of measures curbing fundamental human rights, including: banning or restricting the right to freedom of movement; banning or restricting the right to freedom of association and peaceful assembly; banning or restricting work activities and occupations; and monitoring, observing, and gathering information from all telecommunications, using any means necessary.

These measures would subject fundamental freedoms, such as expression, association, and assembly, to undue limitations.

The text also fails to provide any strict and independent oversight for the exercise of executive powers. Article 6 only stipulates that the government must "inform on a regular basis" the National Assembly and the Senate, which can "request for more necessary information."

Articles 7 and 8 outline harsh and disproportionate criminal penalties for a range of vague offenses, such as "wilfully blocking, obstructing, or disrespecting" measures taken by the government. "Disrespecting" can be interpreted as anything from deliberate physical disobedience to sharing critical opinions in private. A maximum 10-year imprisonment can be imposed against anyone whose actions are alleged to have caused "civil unrest" or affected "national security" – ill-defined terms also open to arbitrary interpretation.

Lastly, Article 9 extends criminal responsibility to legal entities and imposes hefty fines of up to one billion riel (approximately US\$245,000), as well as one or several of the additional penalties stipulated in Article 168 of the Criminal Code. These provisions pose a serious risk for organizations and associations, which could be dissolved, placed under judicial supervision or subjected to other severe penalties if even one member is found guilty of violating government measures under the State of Emergency⁶⁴.

64 See Joint Statement, *Civil Society Organizations call for the Royal Government of Cambodia to Amend the State of Emergency Law to Protect Human Rights*, May 13, 2020, as well as FIDH, *Proposed State of Emergency paves the way for human rights violations*, 7 April 2020.

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On April 17, 2020, the UN Special Rapporteur on the Situation of Human Rights in Cambodia published a statement warning that the Law on the State of Emergency "risks violating the right to privacy, silencing free speech and criminalising peaceful assembly", and that the law's penalties and criminal responsibilities extended to legal entities "could also include civil society and human rights organisations that already operate within a highly restrictive environment"⁶⁵.

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⁶⁵ See OHCHR, *Cambodia's state of emergency law endangers human rights, warns UN expert*, April 17, 2020.

CONCLUSION

Human rights defenders in Cambodia continue to suffer from violence, intimidation, detention, and crippling criminal proceedings. NGOs generally believe that the optimism of the 1990s has disappeared and that the space in which they are currently operating is progressively shrinking.

Amid the crisis, Cambodia is going through a period of rapid commercial development often fuelling abuses of people's rights, and the country is increasingly integrated in the international trade and multilateral system. The nefarious nexus between economic growth as practised in Cambodia and attacks on human rights defenders is a close one. Activists trying to stand up and defend the land rights of their communities are arrested and/or threatened with criminal prosecution for "defamation", "incitement" or "property damage". In other cases, they are harassed, intimidated or pressured to accept minimal compensation for "selling" their land.

Economic development is not accompanied by parallel social or democratic development, and in fact appears to be linked to deteriorating social and political rights. The government and local authorities are ready to disparage claims by economically vulnerable groups, such as small farmers and residents of poor neighbourhoods that are going to be "developed", and ordinary workers. These same officials do not accept criticism and try to silence dissenting voices, particularly if they target high-ranking officials or interests that benefit the ruling party. This is illustrated by the use of criminal "defamation" and "incitement" charges against human rights defenders, notably journalists, who already appear to apply a degree of self-censorship.

The independent trade union movement, which has the potential to be an important membership-based organisation in Cambodian civil society, lost a prominent leader Mr. Chea Vichea, in 2004. The harassment and intimidation of dozens of other labour leaders through the misuse of the judiciary and direct threats and violence from the authorities or company owners have considerably weakened any attempt to build a stronger trade union movement in Cambodia.

In recent years, the international donor community has called on the Cambodian government to implement legal reforms in a number of areas. The government has carried out legislative reforms in certain areas, but such reforms have often made the environment more restrictive.

The closing of the political sphere as well as civic space has prompted the EC to launch an EBA review process in February 2019, and to partially suspend the agreement in February 2020. This move does not seem to have reversed the trend since then. On the contrary, the passage of the Law on the State of Emergency under the guise of the fight against the COVID-19 pandemic may well constitute a further threat to civic space, by giving the Cambodian government disproportionate and indefinite powers to restrict the fundamental freedoms of its citizens.

RECOMMENDATIONS

To the government of Cambodia

- To guarantee in all circumstances the physical integrity and psychological well-being of all human rights defenders in Cambodia.
- To put an end to all acts of harassment, including at the judicial level, against all human rights defenders in Cambodia, and ensure that they are able to carry out their activities without hindrance and fear of reprisals in all circumstances.
- To guarantee, at all times, the right to freedom of opinion and expression, the right to freedom of peaceful assembly, and the right to freedom of association.
- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, especially: Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”; Article 11, which reads that “everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession”; and Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.
- To comply with the international human rights instruments ratified by Cambodia, notably the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- To ratify the Optional Protocol to the ICCPR and the ICESCR to allow individuals, including human rights defenders, to submit complaints to the UN Human Rights Committee (CCPR) and the UN Committee on Economic, Social and Cultural Rights (CESCR) regarding violations of rights enumerated in the ICCPR and ICESCR.
- To fully comply with recommendations made by the CCPR and the CESCR, as well as those made by UN Member states during the Universal Periodic Review of Cambodia.
- To issue a standing invitation to all relevant UN Special Procedures, including the Special Rapporteur on the Situation of Human Rights Defenders.

On impunity:

- To carry out swift, thorough, transparent, and impartial investigations into acts of violence and intimidation against human rights defenders, in order to identify all those responsible, bring them before an independent tribunal, and punish them as provided by the law.
- To renew police and judicial investigations into all murders of human rights defenders in Cambodia since 1993, including: political analyst Kem Ley; trade union leaders Messrs. Chea Vichea, Ros Sovannareth, and Hy Vuthy; and environmental activist Chutt Wutty.

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On land rights and land disputes:

- To ensure that parties in land and natural resources disputes are not charged with property violations while the ownership of the land or resources in question remain unresolved.

On the rights to freedom of expression and association:

- To abolish the crime of defamation in Cambodian criminal law and only use the Press Law to prosecute defamatory or false information to ensure the government meets its obligations under the ICCPR.
- To amend LANGO to ensure it is in full compliance with international standards on the right to freedom of association.

On trade unions:

- To contribute to the creation of an environment in which trade unions can act free of fear, intimidation, and violence.
- To amend the Trade Union Law to ensure it is in full compliance with the relevant ILO Conventions ratified by Cambodia. Social partners should be consulted on the text at all stages of the review and amendment process.

To diplomatic missions:

- To step up the monitoring of cases of violations of the rights to freedoms of expression, peaceful assembly, and association, and all acts of harassment against human rights defenders.
- To increase coordination and common positions on such cases.
- To ensure that a favourable and fast-tracked visa-granting policy is applied to persons who face the risk of arbitrary arrest for exercising their legitimate right to freedom of expression.

To the European Union and its member states that have adopted specific guidelines on human rights defenders:

- To grant particular attention to the situation of human rights defenders in Cambodia, in accordance with their respective Guidelines on Human Rights Defenders.
- To raise the concerns set out in this report with the Cambodian authorities on the basis of their respective Guidelines on Human Rights Defenders, in particular through public statements on individual cases.
- To fully implement their Guidelines on Human Rights Defenders, including when people at risk are not prominent NGO activists, but, among others, community leaders from grassroots and rural areas.
- To continue meaningful engagement on human rights with the Cambodian authorities after the suspension of EBA trade preferences, including through the development of a roadmap of reforms linked to clear timeline (taking particular account of the 2022 and 2023 elections) in partnership with local and international civil society.
- To adopt an annual resolution on Cambodia at the UN Human Rights Council.

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To the UN Special Procedures, including the UN Special Rapporteurs on: the Situation of Human Rights Defenders; the Situation of Human Rights in Cambodia; the Rights to Freedom of Peaceful Assembly and of Association; and the Right to Freedom of Opinion and Expression:

- To grant particular attention to the situation of human rights defenders in Cambodia, raise individual cases with the Cambodian government, and monitor the implementation of the recommendations addressed to Cambodia.
- If not already granted, to request for an invitation to carry out a visit to Cambodia.

To donor countries:

- To mainstream human rights principles and standards, in particular those related to the right to freedoms of association, expression, and peaceful assembly, into all areas of official development assistance, including bilateral discussions and agreements with Cambodia, and monitor and evaluate regularly the human rights impact of aid programmes.
- To strengthen the social component of official development assistance to ensure participation of vulnerable and marginalised communities, in particular community leaders, in public decision-making that affects their livelihood.
- To strengthen support to civil society, especially human rights defenders and independent trade unionists, and communicate clearly to the Cambodian authorities that intimidation, harassment, and detention of human rights defenders will not be tolerated.

To the other member states of the Association of Southeast Asian Nations (ASEAN):

- To raise the concerns set out in this report with the Cambodian authorities in the framework of bilateral discussions and all ASEAN processes, including the ASEAN Ministerial Meetings and annual Summits.
- To use the platform of the ASEAN Intergovernmental Commission on Human Rights to work with the Cambodian authorities to ensure the protection of human rights defenders in Cambodia.

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Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.

FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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Activities of the observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- International missions of investigation and solidarity;
- A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org

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