

PUBLIC STATEMENT

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Cambodia: Respect freedom of expression as elections approach

As Cambodia prepares to hold elections for its National Assembly on 28 July 2013, and following the return to the country of opposition leader Sam Rainsy on 19 July, four international human rights organizations – **Amnesty International, Civil Rights Defenders, Freedom House** and the **International Federation for Human Rights (FIDH)** – call on Cambodia's government to respect and protect the rights to freedom of expression, peaceful assembly and association.

We call on leaders of all political parties to protect the space for everyone in Cambodia to peacefully express their opinions, whether majority or dissenting; and to signal clearly that committing, inciting, encouraging or condoning violence or other human rights abuses will not be tolerated in the run-up to, during and after the elections.

We also call on the international community, including Cambodia's donors, to stand up for human rights and encourage respect for freedom of expression during and following the elections.

CONTEXT

The above-named organizations are concerned at the disturbing situation of freedom of expression and related rights that has preceded the elections – the fourth since those organized by the United Nations (UN) in May 1993.

Under international law, as well as the country's Constitution, Cambodia's government is obliged to respect, protect and promote the rights to freedom of expression, peaceful assembly and association at all times, including around elections.¹

Many of Cambodia's donor countries have also committed to promote and encourage respect for these and other human rights, as signatories to the 1991 Paris Agreements.²

But the Cambodian authorities are continuing to use restrictive laws to curtail freedom of expression and related rights, including unconstitutional provisions in the Criminal Code³ for example, and the Law on Peaceful Assembly which is frequently misused.⁴

Human rights defenders – including land and housing rights activists, those in grassroots groups and other civil society organizations, trade unionists, journalists and parliamentarians – continue to face harassment, intimidation, death threats and even killings, for their peaceful work promoting and protecting human rights.⁵

¹ An overview of Cambodia's human rights commitments and the Paris Agreements is included as an appendix to this statement.

² Ibid.

³ E.g. See the case of trade union leader Rong Chhun, accused of incitement and defamation in 2012: p.28, 'Defending the Defenders: Security for Cambodian Human Rights Defenders', Cambodian Center for Human Rights and Article 19, June 2013.

⁴ E.g. See the case of authorities in Ratanakiri province disrupting a land rights training session organised by two human rights organizations in July 2012, because they had failed to notify the authorities about the event: p.58, 'Attacks and Threats Against Human Rights Defenders in Cambodia 2010-12', Cambodian League for the Promotion and Defense of Human Rights (LICADHO), December 2012.

⁵ E.g. See the case of environment activist Chut Wutty, shot dead in Koh Kong province in April 2012: 'Killing of Cambodian environment activist must be investigated', Amnesty International, 26 April 2012.

Excessive force has been used against the growing number of people exercising their right to peaceful assembly throughout the country, particularly in the context of land⁶ and labour⁷ disputes.

And prosecution of human rights defenders and others peacefully challenging government policies and actions has reached new heights, with Cambodia's courts being used to target them. The recent high profile case of housing rights activist Yorm Bopha is one example of this disturbing trend.

Yorm Bopha⁸ is a representative from Phnom Penh's Boeung Kak Lake community, where thousands of families have been forcibly evicted since 2007 when the land was leased to a company for development. The Phnom Penh Municipal Court convicted her in December 2012 for "intentional violence with aggravating circumstances" after an unfair trial, and sentenced her to three years' imprisonment. Despite the lack of evidence against her, the conviction was upheld on appeal in June 2013, although a year of her sentence was suspended.

The above-named organizations consider that Yorm Bopha has been imprisoned for her housing rights activism, exercising her right to freedom of expression, and playing a leading role in the successful campaign for the release of 13 fellow community representatives imprisoned in 2012 after a peaceful protest.

In contrast, the perpetrators of human rights violations and abuses – including against human rights defenders and others peacefully exercising their right to freedom of expression and related rights – are effectively granted impunity.

Born Samnang and Sok Sam Oeun⁹ have been imprisoned again, serving 20-year sentences for the killing in 2004 of trade union leader Chea Vichea, an outspoken advocate and campaigner for workers' rights. The two men were wrongfully convicted in 2005 after a flawed criminal investigation and a grossly unfair trial, at which no credible evidence was presented to prove their guilt. After a campaign by human rights groups, Cambodia's Supreme Court released the two men on bail in December 2008 and ordered a new investigation and retrial. But in December 2012, four years after their provisional release and following a brief hearing at which no new evidence was presented, the Appeals Court upheld their convictions and sent them back to prison. The real killers of Chea Vichea have never been brought to justice.

The above-named organizations call for the immediate and unconditional release of Yorm Bopha, Born Samnang and Sok Sam Oeun, before the elections on 28 July 2013, and for investigations into the killing of Chea Vichea to be reopened.

This would signal a timely commitment by the government to respect and protect the right to freedom of expression and related rights, and to end impunity for those who use violence to try to silence others.

ELECTION PERIOD

As the elections approach, the above-named organizations welcome the reduction in violence against and killings of those affiliated with opposition parties, which during previous polls had a chilling effect on freedom of expression. So far, there have been no reports of such politically motivated killings in the run-up to this year's elections.

⁶ E.g. See the case of peaceful protestors at Phnom Penh's Boeung Kak Lake violently dispersed by police: 'Cambodia: Stop the use of excessive force against peaceful land activists', Amnesty International, 2 February 2012.

⁷ E.g. See the case in February 2012 of the governor of Bavet town in Svay Reang province shooting three women during a protest over working conditions: '2013 Annual Report: Cambodia', Amnesty International, May 2013.

⁸ See 'Urgent Action: Women face jail for housing rights activism', Amnesty International, 17 December 2012.

⁹ See 'Cambodia: Release scapegoats for killing of trade union leader', Amnesty International, 1 May 2013.

We welcome the royal pardon on 12 July 2013 of Sam Rainsy, the leader of the Cambodia National Rescue Party (CNRP). He was convicted in absentia on a number of charges that appeared politically motivated, after he fled Cambodia in late 2009.

We echo the call of the UN Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, for the government to “take the necessary action in order to allow Sam Rainsy to play a full part in the national politics of Cambodia.”¹⁰ Sam Rainsy should be able to participate fully and freely in the upcoming elections.

We are concerned that last month, on 5 June 2013, the National Assembly’s permanent committee made up only of parliamentarians from the ruling Cambodian People’s Party (CPP), stripped all opposition lawmakers of their parliamentary status. Their parliamentary immunity was thereby lifted, making them more vulnerable to prosecution for the peaceful exercise of their right to freedom of expression in the course of their duties as the people’s elected representatives. This move also turned the legislature into a one-party body, without the minimum number of parliamentarians required under Cambodia’s Constitution.¹¹

Two days later, on 7 June, the National Assembly passed a new law that appears to criminalize the denial, diminishment or refusal to acknowledge crimes committed during the Khmer Rouge period. The law was proposed after the government released audio recordings of Kem Sokha, the deputy leader of the CNRP, apparently claiming that Viet Nam fabricated evidence of torture of Cambodians at a Khmer Rouge prison.¹² This context does not bode well – the above-named organizations are concerned that this broad new law may be used to criminalize peaceful criticism of the government.¹³

The above-named organizations welcome that activists from the main political parties have apparently so far been able to enjoy their rights to freedom of expression and peaceful assembly, and promote their parties and policies during mostly peaceful and public campaigning in Phnom Penh and throughout much of the country. Hundreds-of-thousands of people in Phnom Penh welcomed the return of Sam Rainsy on 19 July 2013, with the authorities respecting the rights to freedom of expression and assembly.

We are however concerned about reports of activists from the ruling CPP disrupting earlier CNRP rallies.¹⁴ Further, we are concerned at reports that local authorities in Ratanakiri province banned officials and residents from attending meetings held by non-governmental organizations, to ensure that they have been available to focus on the elections – there is some confusion as to whether the ban is still in place. The ban appears to have been supported by the National Election Committee (NEC) and runs contrary to ensuring that civil society actors and others can freely engage in meetings and discussions around the elections.¹⁵

The above-named organizations are concerned also at reports that the government is seeking the arrest of individuals who have allegedly distributed interpretations of poll data that favours the

¹⁰ ‘Cambodia’s royal pardon for opposition leader a step towards reconciliation – UN expert’, UN News Centre, 15 July 2013.

¹¹ ‘Cambodia’s Legislature Dismantled on the Eve of the National Elections’, LICADHO and others, 10 June 2013.

¹² E.g. ‘Officials Drop Genocide To Refer to KR Crimes’, Zsombor Peter and Phorn Bopha, The Cambodia Daily, 6 June 2013.

¹³ See ‘Open Letter: Freedom of expression and the proposed law to criminalize denial of crimes committed by the Khmer Rouge’, Amnesty International, 7 June 2013.

¹⁴ E.g. ‘Cambodia Opposition Party’s Campaign Rallies Disrupted’, Radio Free Asia, 11 June 2013.

¹⁵ ‘Ratanakiri Governor Bans Attending NGO Meetings’, Kuch Naren, The Cambodia Daily, 26 June 2013.

CNRP.¹⁶ Nobody should face arrest for the peaceful exercise of his or her right to freedom of expression.

We welcome the important role that unrestricted online social media has apparently played in encouraging young adults in Phnom Penh and provincial centres to participate in the elections, discussing their ideas online and taking to the streets to peacefully exercise their right to freedom of expression and peaceful assembly in support of their favoured politicians and parties.

However, the reported NEC request for social media users to “not provide wrong information about the election”¹⁷ may have a chilling effect on users and has caused some concern, particularly in the context of concerns about a planned Cyber Law.¹⁸

The above-named organizations are concerned also at the limited freedom of traditional media, including newspapers, radio and, in particular, television. During elections, the media plays an important role in disseminating, reporting and scrutinizing parties’ policies and messages. This allows voters to access information about the parties and the elections, and to make informed decisions. But most media in Cambodia are either controlled by the government or exercise self-censorship,¹⁹ generally providing only limited or unfavourable coverage about opposition parties. This makes access to more independent, foreign media essential.

On 27 June 2013, the government announced a ban on radio broadcasts from foreign media during the election campaign. The ban dealt a direct blow to the very few independent or alternative radio stations that rebroadcast Khmer language news from foreign news organizations. We welcome the government’s quick decision on 29 June 2013 to reverse the ban,²⁰ and encourage more balanced media coverage of the elections by the media

Other organizations have highlighted very serious concerns around voter registration and additional election-related irregularities,²¹ but these are beyond the scope of this statement.

LOOKING AHEAD

The above-named organizations reiterate our call for the immediate and unconditional release of Yorm Bopha, Born Samnang and Sok Sam Oeun.

We call on the next government to respect, protect and promote the rights to freedom of expression, peaceful assembly and association, addressing some of the serious concerns outlined herein, including the implementation of long-needed reforms to the justice system.

Awareness of human rights and expectations around the authorities’ obligations in this regard are growing ever stronger, as evidenced for example by the increase in protests over recent years and by the campaigning around this year’s elections. We call on the next government to ensure that all persons in Cambodia are able to peacefully enjoy and exercise their human rights and contribute to the development of their country.

¹⁶ ‘Government Calls for Arrests Over CNRP Poll Data Document’, Khy Sovuthy and Zsombor Peter, The Cambodia Daily, 18 July 2013.

¹⁷ ‘NEC Says Statement on Bloggers Not Attack on Free Speech’, Chhorn Chansy and Simon Lewis, The Cambodia Daily, 27 May 2013.

¹⁸ ‘Cambodian Government is drafting the first ever Cyber Law’, Cambodian Center for Human Rights, 24 May 2012.

¹⁹ ‘Challenges for Independent Media’, Cambodian Center for Independent Media, March 2013.

²⁰ ‘Ban on Radio Broadcasts lifted amid U.S. Pressure’, Hul Reaksmeay and Zsombor Peter, The Cambodia Daily, 1 July 2013.

²¹ See ‘Final Report on Voter List, Voter Registration, And Audit of the Voter List Plus Verification of the Deletion Forms for the 2013 National Election’, The Committee for Free and Fair Elections in Cambodia (COMFREL), 2 April 2013; ‘Report on the Voter Registry Audit (VRA) in Cambodia’, National Democratic Institute, 2013.

And we call on the international community, including the signatories to the Paris Agreements, to be vigilant in speaking out against human rights violations and abuses in Cambodia, demanding that perpetrators are held accountable, and supporting publicly those individuals and communities who are calling for greater respect for their human rights.

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APPENDIX: LEGAL OBLIGATIONS

The rights to freedom of expression, peaceful assembly and association are protected in articles 19, 21 and 22 respectively of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a State party; and in articles 41, 37 and 42 respectively of Cambodia's Constitution.

These rights are important in the context of elections. In its authoritative General Comment on Article 25 of the ICCPR – which protects the right of every citizen to “take part in the conduct of public affairs, directly or through freely chosen representatives”, and to “vote and to be elected at genuine periodic elections ...” – the Human Rights Committee, the UN expert body that oversees the implementation of the ICCPR, has noted:

“... [F]ull enjoyment of rights protected by article 25 ... requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.”²²

The importance of these and other human rights in the context of elections is also recognized in Cambodian law. Article 73 of the Law on Election of Members of the National Assembly provides:

“During the election campaign period and on the polling day, all political parties and all candidates, all members and all supporters of political parties ... shall respect the principles of human rights and democracy described in the Constitution of the Kingdom of Cambodia.”²³

There should be no restrictions on the right of freedom of expression unless they are provided by law, for the purpose of protecting certain public interests (national security, public order, public health or morals) or the rights of others; and, in each case, are demonstrably necessary and proportionate for the achievement of that purpose (Article 19(3) ICCPR). Similar restrictions are permitted with respect to freedom of peaceful assembly and association, in articles 21 and 22 respectively of the ICCPR. In no circumstances should the restrictions be applied or invoked in a manner that would impair the essence of the right itself.

Additionally, Cambodia and many of its current international donors committed in 1991 to promote and encourage respect for human rights in Cambodia as Signatories to the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (the Paris Agreements) after years of civil war in the country. The international signatories include all permanent members of the UN Security Council; all current members of the Association of Southeast Asian Nations (ASEAN) except Myanmar; as well as Australia, Canada, India and Japan.²⁴

Expressly providing that “[a]ll persons in Cambodia ... shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments”, the Paris Agreements provided that Cambodia will “ensure respect for and observance of human rights and fundamental freedoms in Cambodia”, and that “the other Signatories to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia ...”²⁵

²² General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 07/12/1996.

²³ Law on Election of Members of the National Assembly (LEMNA) and Amendments of Law on Election and Members of National Assembly, page 26.

²⁴ Agreements on a Comprehensive Political Settlement of the Cambodia Conflict, 23 October 1991, Paris.

²⁵ Ibid, Article 15, Part III.