

CAMBODIA

A deteriorating situation for Human Rights Defenders

*Amnesty International and
LICADHO submission to the UN
Universal Periodic Review,
January – February 2014*



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INTRODUCTION

This submission by Amnesty International and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) is based on information collected through on-going monitoring and research, and considers the national human rights framework and the situation on the ground for Human Rights Defenders (HRDs) in Cambodia.

In the submission, prepared for the Universal Periodic Review (UPR) of Cambodia in January - February 2014, Amnesty International and LICADHO evaluate the implementation of a number of the recommendations that Cambodia accepted during its first review at the sixth UPR session in December 2009.

We welcome Cambodia's acceptance of all 91 recommendations at the sixth UPR session, but are concerned that little has been done to implement many of these recommendations, particularly those relating to the national human rights framework and the situation on the ground for HRDs – those who, individually or with others, act peacefully to promote or protect human rights.

FOLLOW UP TO THE PREVIOUS REVIEW

HUMAN RIGHTS FRAMEWORK

Four states recommended that Cambodia establish a National Human Rights Institution (NHRI) consistent with the Paris Principles.¹ However, despite an earlier commitment to do so by Cambodia's Prime Minister Hun Sen in September 2006, and Cambodia's acceptance of these recommendations at its first UPR, the Royal Government of Cambodia (RGC) has made no progress in this regard.

One state recommended more consultation on law and policy, in particular with regard to their human rights impact.² But while there has been consultation on some draft laws, this is undertaken on an *ad-hoc* basis and has not been adequate.

We welcome Cambodia's strong record of ratifying international human rights treaties, including its recent ratification of the Convention on the Rights of Persons with Disabilities (CRPD). Cambodia has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CED); the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), even though it committed to do so after the previous UPR;³ the Second Option Protocol to the ICCPR; and the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women and CRPD, as recommended by some states.⁴ Further, Cambodia has still not submitted a number of pending reports to the treaty bodies, including any report to the UN Human Rights Committee on compliance with the ICCPR since its initial report in 1998.

Some states recommended that Cambodia cooperate with the UN to strengthen human rights.⁵ As set out below, we are concerned that during the reporting period the RGC has at times been confrontational towards and uncooperative with the Office of the UN High Commissioner for Human Rights (OHCHR) in Cambodia and the Special Rapporteur on the situation of human rights in Cambodia (SRHRC).

HUMAN RIGHTS SITUATION ON THE GROUND – HUMAN RIGHTS DEFENDERS

Seven states recommended greater respect for freedom of expression,⁶ but respect for freedom of expression has deteriorated since the previous UPR. In addition, a further nine states recommended better protection of HRDs and facilitation of their work;⁷ however, we are particularly concerned that HRDs – including land and housing rights activists from urban, rural and indigenous communities; those in grassroots groups and informal groups; those in associations and NGOs; trade unionists; journalists; and parliamentarians – continue to face threats, harassment, legal action and violence, including killings, simply for promoting and protecting human rights.

Despite Cambodia's acceptance of no less than 13 recommendations to end forced evictions,⁸ land and housing rights activists continue to be targeted in the context of a continuing crisis over land, with forced evictions, land disputes and land grabbing affecting thousands of people.

The RGC continues to control the justice system, and rule of law in the country remains very weak. The justice system is used to persecute HRDs and curtail their work and rights. This is despite Cambodia's support of 11 recommendations on reform to ensure the independence of the judiciary and to strengthen the rule of law.⁹ In addition, Cambodia also supported five recommendations to harness the work of the Extraordinary Chambers in the Courts of Cambodia, including to strengthen the national justice system,¹⁰ but apparent political interference is jeopardizing the tribunal's potential in this regard.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN CAMBODIA

There are many gaps in Cambodia's human rights framework, both in terms of national infrastructure and law, and ratification of international human rights treaties and cooperation with the UN.

NATIONAL INFRASTRUCTURE AND LAW

Cambodia's Constitutional Council is the supreme body through which citizens, including HRDs, should be able to challenge the constitutionality of laws and state decisions affecting their constitutional rights, including their human rights. But the procedures involved in making such challenges either deter or prevent citizens from accessing the Council, which is not independent from the RGC. Someone wishing to make such a challenge must convince either the King, the Prime Minister, the Senate President, the National Assembly President, one tenth of National Assembly members, or one quarter of Senators to make a submission.¹¹

Articles 147-149 of Cambodia's Constitution provide for an annual National Congress, to be chaired by the King, which would allow citizens, including HRDs, to raise concerns to be addressed by the RGC. However, the National Congress has never been convened. In May 2013, a National Assembly member of the ruling Cambodian People's Party (CPP) informed the SRHRC that the RGC intended to remove the National Congress from the Constitution.¹²

Both the National Assembly and the Senate have a Human Rights and Complaints Reception Committee, and the RGC has its own Human Rights Committee. Although these bodies are able to conduct investigations, they have yet to take action to protect and contribute to redress for victims of human rights abuses, including HRDs, or to help bring perpetrators to justice. All three committees are widely regarded as being controlled by the RGC.

Cambodia's courts suffer from corruption and remain under RGC control. The courts are used to persecute HRDs and effectively grant impunity to perpetrators of human rights abuses against HRDs. The Supreme Council of Magistracy, the body constitutionally-mandated to investigate "delinquent judges", is also controlled by the RGC, and generally fails to punish delinquent judges, including those who appear to make decisions based on external influences.¹³

Cambodia ratified the Optional Protocol to the Convention against Torture (OP-CAT) in April 2007, but has yet to establish an independent National Preventative Mechanism as OP-CAT requires. We recognize the RGC's compliance with some of its obligations under OP-CAT, including allowing independent groups to visit and monitor prisons.

The shortcomings and lack of independence of those state institutions in Cambodia that should play a role in protecting and promoting human rights underscore the importance of establishing an independent NHRI. But there appears to be no recent progress in this regard, as referenced above.

With regard to gaps in national law, the SRHRC recommended in his September 2010 report to the UN Human Rights Council that new laws on the status of judges and prosecutors and on the organization and functioning of the courts be put in place to help ensure that the justice system functions independently. New laws should also be introduced to ensure freedom of information, and to protect HRDs' work.¹⁴

A number of laws – including Cambodia's Criminal Code – contain provisions that have been or may be used to restrict HRDs' work by curtailing freedom of expression and related rights (see also below).

We commend the RGC's decision to suspend passing the draft Law on Associations and Non-Governmental Organizations (LANGO), which would have mandated registration of civil society groups and allowed the RGC to control the financing, status and activities of such groups. The draft law is still looming over Cambodia's civil society and HRDs and should be abandoned.

The RGC often fails to consult with civil society, including HRDs, on draft legislation and does not disclose many of its legislative initiatives. For example, there has been no consultation on the project launched in June 2012 by Prime Minister Hun Sen to allocate land titles to people living inside state forests, and on economic and other land concessions.

Further, we are concerned that legislation that has the potential to impact on human rights is often approved without adequate debate in the National Assembly, which is dominated by the ruling party. In an extreme example, a new law criminalizing denial of Khmer Rouge crimes – the Law Against Non-Recognition of the Crimes Committed During the Democratic Kampuchea Period – was passed by the National Assembly with little debate and after all opposition members had been expelled from the National Assembly for joining the newly-merged opposition party, the Cambodian National Rescue Party.¹⁵

INTERNATIONAL HUMAN RIGHTS TREATIES AND COOPERATION WITH THE UN

We welcome OHCHR's presence in Cambodia and the RGC's acceptance of technical support from OHCHR in some areas. But we are concerned by reports that Cambodia's Prime Minister Hun Sen informed the UN Secretary-General in October 2010 that he wanted OHCHR in Cambodia closed and the representative of the UN High Commissioner for Human Rights removed.¹⁶

We also welcome the SRHRC's mandate. However, the RGC has not demonstrated a willingness to implement most of the SRHRC's recommendations. After refusing to meet with the SRHRC during his December 2012 visit, RGC representatives met with him in May 2013. But the Prime Minister did not meet him, and associations affiliated with the ruling party orchestrated protests against his work.¹⁷

Further, we are concerned that the Special Rapporteur on the Independence of Judges and Lawyers has still not been given permission to visit Cambodia, even though a request to visit has been pending since 2006, and Cambodia had expressed support for granting such a request during its last UPR.¹⁸ The Special Rapporteur on Freedom of Assembly and Association and the Special Rapporteur on Human Rights Defenders have also requested to visit Cambodia, but permission has yet to be granted.

At the regional level, in November 2012, Cambodia and the other member states of the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration, despite serious concerns that it falls short of international standards. The ASEAN Intergovernmental Commission on Human Rights continues to fail to investigate or take other action against human rights violations in ASEAN member states, including Cambodia.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND – HUMAN RIGHTS DEFENDERS

The *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (the "Declaration on Human Rights Defenders"), adopted by the UN General Assembly in 1998, provides for the support and protection of HRDs. It does not create new rights but articulates the application of existing rights to HRDs' role and situation. Although not legally binding, the Declaration is based on rights enshrined in other international instruments, including the ICCPR to which Cambodia is a State party.

The rights of HRDs include the right to seek the protection and realization of human rights; to conduct human rights work; to assemble peacefully; to seek and obtain information relating to human rights; and to make complaints about human rights.

The reporting period has seen a deterioration in the situation of HRDs and respect for their rights in Cambodia. Restrictive laws curtail their work and rights and they continue to face harassment and intimidation. Excessive force is used against HRDs when they assemble peacefully, and there have been death threats against and killings of HRDs. Judicial persecution of HRDs has reached new heights, with Cambodia's courts targeting HRDs while effectively granting impunity to those perpetrating human rights abuses against them. Some illustrative examples are provided below.

LAWS RESTRICTING THE WORK OF HRDS AND THEIR RIGHTS

Despite Cambodia's acceptance of recommendations made by some States in the previous UPR to ensure that the Criminal Code complies with the ICCPR,¹⁹ some provisions of the current Criminal Code have been or may be used to criminalize the peaceful exercise of the right to freedom of expression – provided at article 41 of Cambodia's Constitution - and the work of HRDs.

The current Criminal Code came into force in December 2010, and several of its articles contain vague language referring to “defamation”, “insults” and “incitement” which can be and are misused to obstruct and punish the legitimate activities of HRDs. Article 305 on “defamation” prohibits any comment made in bad faith and likely to injure a person or institution. Article 307 prohibits public “insults”; however, this term is not defined. Both the crimes of “defamation” and “insult” carry the potential of substantial fines, and a convicted person may be imprisoned if unable to pay the fine. Article 495 vaguely defines “incitement” as incitement to commit a crime or incitement to “disturb social security”.²⁰ “Incitement” carries a prison sentence of up to two years. Article 502 criminalizes “insults of public officials” – any act directed at a public official that affects the “dignity of a person.” This provision appears to criminalize any act that a public official might interpret as hurting their feelings. Articles 522 and 523 on the publication of comments intended to influence a court or on criticizing a judicial decision could be used to criminalize HRDs’ public advocacy around the justice system and may deter lawyers from speaking about their cases.

There are many examples of provisions in the former and current criminal codes being used to criminalize freedom of expression in the reporting period.

- In June 2009, after an unfair trial, the Phnom Penh Municipal Court sentenced journalist Hang Chakra, editor-in-chief of the opposition-affiliated *Khmer Machas Srok* newspaper, to one-year’s imprisonment and a large fine for “disinformation” under the previous UN Transitional Authority in Cambodia (UNTAC) Criminal Code. His newspaper had published articles that alleged corruption within the office of Deputy Prime Minister Sok An. Amnesty International considered him a prisoner of conscience.²¹
- In August 2009, after an unfair trial, the Phnom Penh Municipal Court convicted opposition Sam Rainsy Party (SRP) parliamentarian Mu Sochua of defamation under the previous (UNTAC) Criminal Code for filing a complaint – also regarding defamation – against the Prime Minister. She had no legal counsel because her lawyer had withdrawn from the case after receiving threats of legal action for speaking about the case. Mu Sochua received a non-custodial sentence.²²
- In May 2010, LICADHO employee Leang Sokchouen was arrested on charges of “disinformation” under the previous (UNTAC) Criminal Code for his alleged involvement in distributing anti-government pamphlets. He had never distributed any leaflets and the warrant used in his arrest was for another person. In August 2010, he was convicted and sentenced to two years in prison. He served his entire sentence.²³
- In August 2011, the Phnom Penh Municipal Court convicted five people of “incitement”, for distributing leaflets criticizing the RGC and land concessions.²⁴

The Law on Peaceful Assembly came into force in 2009 and specifies onerous notification and approval requirements for demonstrations. The authorities often use the law to prohibit peaceful protests likely to be critical of the RGC, on grounds of security, safety or public order. The law requires photographs and identity information from organizers, and threatens criminal sanctions for organizers for vaguely defined transgressions by any of the participants. HRDs’ right to peaceful assembly has repeatedly been violated in the reporting period.²⁵

- In August 2009, police broke up a peaceful march in support of SRP parliamentarian Mu Sochua, who was found guilty of defamation (see above). The RGC said that the protesters had failed to notify the authorities, labelling the march as illegal even though the Law on Peaceful Assembly had not yet been adopted meaning that there were no notification requirements.²⁶

- In August 2011, around 300 mostly Indigenous people from around Prey Lang forest gathered in Phnom Penh to raise awareness about the destruction of their traditional lands by businesses granted economic land concessions affecting the forest. Around 100 of them were briefly detained for distributing leaflets about their plight, which police claimed could “disrupt social order”.²⁷
- In July 2012, the authorities disrupted a training session on land rights organised in Ratanakiri province by the Cambodian Center for Human Rights and the Cambodian Human Rights and Development Association. According to the province’s Deputy Governor, the intervention was justified because the organizers had failed to notify the authorities about the event. However, Article 3 of the Law on Peaceful Assembly explicitly states that all educational activities for social interests are exempted from the notification requirement.²⁸

An Anti-Corruption Law entered into force in August 2011 and several of its provisions threaten freedom of expression. Among others, Article 41 on “Defamation and Disinformation” provides that a whistleblower is subject to imprisonment if the information he provides leads to an undefined “useless inquiry”.²⁹

We are also concerned that a new Law Against Non-Recognition of the Crimes Committed During the Democratic Kampuchea Period may be misused to criminalize criticism of the RGC and legitimate dissent by HRDs.

We are concerned that a number of other draft laws may be designed towards, or have the effect of, restricting the work of HRDs and their human rights.

Although the LANGO was not passed, this draft law remains a threat to the work of HRDs, as outlined above. In August 2011, the Ministry of Interior shut down temporarily the NGO *Sahmakum Teang Thnaut* (STT) without giving a legal reason. However, STT had recently published a report criticising the Asian Development Bank-sponsored compensation packages to families affected by the Phnom Penh railroad rehabilitation project.³⁰ This incident raised fears about how the LANGO would be used to control and limit the activities of civil society organizations.

A fourth version of the draft Law on Trade Unions, presented by the authorities to a limited group of stakeholders in September 2011, includes some worrying provisions on burdensome registration and reporting requirements, and hefty fines for ill-defined “improper conduct”.³¹

We are also concerned that a draft Law on the Management and Use of Agricultural Land, purportedly intended to promote sustainable agricultural development, contains provisions which make it a crime for anyone to contravene the provisions of the law or to hinder any person performing his or her duties under the law.³² Such provisions could be used against HRDs advocating around issues related to agricultural development.

A long-rumoured Cyber Law, a draft of which has not been released, is looming over civil society and HRDs, who increasingly rely on the Internet to disseminate and receive information, communicate, coordinate and promote human rights. Although the RGC claims that such a law is necessary for national security reasons, recent incidents show that it is more likely intended to silence critics. For example, in January 2011, all blogs hosted by the domain Blogspot, including several blogs critical of the RGC, were blocked by most Cambodian Internet providers.³³

HARASSMENT AND INTIMIDATION OF HUMAN RIGHTS DEFENDERS

The Cambodian authorities often resort to threats, harassment and intimidation of HRDs to prevent them from enjoying their rights and undertaking their legitimate work to promote and protect human rights.

- The case of Buddhist monk and Martin Ennals award winner, the Venerable Luon Sovath, illustrates the hurdles HRDs face. In August 2010, during a peaceful gathering outside Siem Reap Provincial Court in support of Chi leaders of the Kreng community, religious authorities, escorted by police officers, harassed Luon Sovath. They accused him of violating Monk Proclamation No. 403/07 which prohibits monks from participating in demonstrations that disturb the public order. The villagers formed a circle around the monk to protect him and prevent his possible arrest. Later, as he left, traffic police intercepted the vehicle he was travelling in, but some villagers again protected him. On another occasion, in May 2011, during a peaceful protest by people from around Prey Lang forest, he had to be escorted away by human rights groups as the authorities threatened to arrest him. Most recently, in May 2012, plain-clothed police and monks abducted him at a peaceful protest by the Boeung Kak Lake community in Phnom Penh. Luon Sovath was detained for a day at Botum pagoda and then given the choice of signing a document agreeing to stop his human rights activism or face defrocking, arrest and criminal prosecution. He was eventually released later that night after he signed an altered document. Anonymous threats against him and harassment by police officers continue to this day, and he has been banned from staying at pagodas throughout the country.³⁴
- In March and November 2012, the authorities disrupted grassroots network associations and local, regional and international NGOs from holding workshops and events around the ASEAN summits on a range of human rights issues. Apparently under instructions from the authorities, guesthouses refused to allow participants to stay, venues cancelled events, and the police monitored workshops and other events.³⁵

EXCESSIVE USE OF FORCE AGAINST PEACEFUL PROTESTORS

The onerous provisions of the Law on Peaceful Assembly requiring prior notifications and approval are repeatedly used to ban peaceful protests. The authorities often employ excessive force to disperse peaceful protests by HRDs and others, sometimes leading to injuries or death. The perpetrators for these abuses are rarely brought to justice.

- In March 2009, security forces shot at unarmed villagers in Chi Kreng district, Siem Reap province, injuring at least four. The villagers were protesting against the loss of disputed farmland. Police arrested at least nine of the villagers, and two were subsequently convicted of robbery for attempting to harvest their rice on the disputed land.³⁶
- In October 2010, during the UN Secretary-General's visit to Cambodia, a group of over 100 police officers violently dispersed a group of 50 protesters, who had gathered to seek the Secretary-General's intervention in the on-going Boeung Kak Lake land dispute. Activist Suong Sophorn was badly beaten by the police and fell unconscious due to a serious head injury; video footage shows him being dragged and beaten even after he lost consciousness.³⁷
- In May 2011, military and police officers violently dispersed around 1,000 garment factory workers in Phnom Penh and members of the Free Trade Union of Workers during a peaceful strike and demonstration over unpaid wages.³⁸

- In January 2012, security guards shot at peaceful land protesters in Snuol District, Kratie province, injuring four people.³⁹
- In February 2012, then town Governor Chhouk Bandith shot and severely injured three garment workers during a demonstration in Bavet town, Svay Rieng province. The workers were asking for increased wages and improved working conditions. Although Chhouk Bandith admitted to firing his weapon during the demonstration, he was charged and convicted only for unintentionally causing injuries, and was sentenced to just 18 months' imprisonment. He failed to attend his trial in June 2013 and has yet to be arrested.⁴⁰

DEATH THREATS AND KILLINGS

Death threats, attempted killings and murders of HRDs have been recorded in the reporting period. However, the perpetrators of these crimes often remain unidentified and are rarely brought to justice.

- In April 2010, two men attempted to shoot land rights activist Sim Mey in Battambang province. Two days later, fellow community representative Pich Sophon was shot dead by three unidentified men. He had been involved in a dispute between his village, the Royal Cambodian Armed Forces and a private company.⁴¹
- In July 2011, an unidentified gunman opened fire on the home of land rights activist Kun Eng in Siem Reap province. Fortunately, neither Kun Eng nor his family members were injured.⁴²
- In April 2012, the village chief entered the home of evicted railway community activist Ros Bopha. He was armed with a gun and shouted threats, but she had already fled the scene. However, the village chief came back a few days later with some of his supporters and threw rocks at her house and shouted at her.⁴³
- In April 2012, Chut Wutty, a well-known environment activist and Director of the Natural Resource Protection Group, a Cambodian NGO that campaigns against the destruction of the country's forests, was shot dead in Koh Kong province. The military officer who reportedly shot him was also killed in the incident. The investigation and subsequent trial were flawed.⁴⁴
- In September 2012, journalist Hang Serei Oudom was found dead in the trunk of his car. He had previously exposed the links between local elites and illegal logging and forest crimes in Ratanakiri province.⁴⁵

JUDICIAL PERSECUTION

The courts are used to persecute HRDs, while those perpetrating human rights abuses against HRDs, enjoy impunity.

The spurious charges levelled against HRDs vary, but often include defamation, incitement, illegal occupation of land, destruction of property, trespassing, or forging documents around land disputes. There are indications that the authorities may now be shifting towards using trumped-up charges against HRDs that are unrelated to their human rights work, such as assault and drug trafficking. In some cases, HRDs are arrested and then released on bail, while others are forced to thumb-print statements promising to cease their activism. Often, charges are brought and not acted on, but never dropped, and remain a lever to coerce HRDs into ceasing their activism. In other cases, HRDs are arrested and detained, tried on spurious charges and sentenced to prison terms. Convictions are rendered despite a lack of evidence, and most of the trials do not meet international standards of fairness and impartiality. Such judicial persecution removes HRDs from their communities, associations, NGOs, trade unions and others groups. It also deters other HRDs from continuing their activism, for fear of being arrested and

imprisoned.

- In August 2009, You Sos Maly, a representative of villagers from Ou Khom village, Sdao commune, Samlot district in Battambang province who were involved in a land dispute with a businessman, was arrested for failure to appear in court and trespassing on private property. He was detained overnight and questioned at the provincial court the following morning. In exchange for his release, he thumb-printed a document agreeing to give the disputed village land to the businessman and cease his activism.⁴⁶
- After her family and others in Bos village, in Oddar Meanchey province, were forcibly evicted in October 2009, Hoy Mai tried to appeal to the authorities, but was arrested and detained for eight months. She was released but despite promises she was not given a new plot of land, leaving her and her children homeless and destitute.⁴⁷
- In June 2011, trade union leader Sous Chantha was convicted for distributing drugs and sentenced to 10 months' imprisonment. Two months of his sentence were suspended and, as he had already spent nine months in pre-trial detention, he was then released. The charges against him were believed to be unfounded and intended to deter him and others from advocating for labour rights.⁴⁸
- In May 2012, 16 families from Phnom Penh's Boeung Kak Lake area, where thousands of families have been forcibly evicted, staged a peaceful protest. The authorities arrested 13 women, including some of the key community representatives. The women were charged, tried, convicted and sentenced in a grossly unfair trial that lasted just three hours. The Phnom Penh Municipal Court denied the women's lawyers' request for the case file, for a delay to allow the preparation of the defence, and to call witnesses to testify. All the women were found guilty of "obstructing public officials" and "illegally occupying state land" and sentenced to two-and-a-half-years in prison, although for some their sentence was partially suspended.⁴⁹ Amnesty International considered them to be prisoners of conscience. After a campaign by the community and local NGOs, and international pressure, the women were released on appeal in June 2012 with their sentences suspended.
- In July 2012, *Beehive* independent radio station owner Mam Sonando was arrested and accused of various charges relating to inciting an insurrection and furthering a so-called secessionist movement in Kratie province's Broma village. The villagers were involved in an on-going land dispute with a company granted an economic land concession. In May 2012, military forces laid siege to the village, shooting and killing a 14-year-old girl. In a public speech, Prime Minister Hun Sen called for Mam Sonando's arrest. Mam Sonando had never been to Broma, but just before the Prime Minister's speech, he had broadcast a report about a complaint submitted at the International Criminal Court accusing RGC officials of crimes against humanity by displacing thousands of people through forced evictions. Despite a wholesale lack of evidence, the Phnom Penh Municipal Court convicted Mam Sonando of instigating an "insurrection", and sentenced him to 20 years' imprisonment. Amnesty International considered him a prisoner of conscience. The Appeals Court released him in March 2013, further to a local campaign and international pressure, changing the charges to clearing forest land and suspending the remainder of a new five-year prison sentence.⁵⁰
- In September 2012, Yorm Bopha, a representative from Phnom Penh's Boeung Kak Lake community, was arrested and detained for allegedly planning an assault. She and her husband were charged with intentional violence with aggravating circumstances, and convicted in an unfair trial on 27 December 2012. During the trial, witness testimonies were inconsistent and there was a lack of credible evidence. Bopha's non-activist husband was given a suspended prison sentence and released, while she was sentenced to three years in prison.⁵¹ The convictions were upheld on appeal in June 2013, while one year of

Bopha's sentence was suspended. Amnesty International considers her a prisoner of conscience.

The courts effectively grant impunity for perpetrators of human rights violations, including against HRDs.

- In December 2012, the Appeal Court upheld the 20-year sentences against Born Samnang and Sok Sam Oeun who were wrongly convicted of the killing of trade union leader and HRD Chea Vichea in 2004 despite the lack of evidence. The real killers of Chea Vichea have never been brought to justice.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International and LICADHO call on the government of Cambodia:

National infrastructure and law

- To implement the framework for judicial reform set out in the September 2010 report by the Special Rapporteur on the situation of human rights in Cambodia, including to pass and implement laws to ensure the justice system functions independently. The RGC must free the law enforcement and justice system from political control and corruption;
- To establish an independent National Preventative Mechanism as required by OPCAT, as recommended in the previous review cycle and accepted by Cambodia;⁵²
- To establish a National Human Rights Institution, in accordance with the Paris Principles, as recommended in the previous cycle and accepted by Cambodia;⁵³
- To consult properly on all legislation, ensuring adequate consultation with affected stakeholders including relevant sections of civil society, and proper scrutiny and debate in the National Assembly as recommended in the previous cycle and accepted by Cambodia.⁵⁴

International human rights treaties and cooperation with the UN

- To ratify the First Optional Protocol to the ICCPR as promised in its previous UPR, to allow individuals, including HRDs, to submit complaints to the UN Human Rights Committee around violations of the rights in the ICCPR.⁵⁵
- To cooperate with the UN treaty bodies and comply with Cambodia's reporting obligations, such as the submission of the second report to the Human Rights Committee, due since 2002, as recommended in the previous review and accepted by Cambodia.⁵⁶
- To improve cooperation with the Special Rapporteur on the situation of human rights in Cambodia and the OHCHR in Cambodia, ensuring regular engagement with the same by senior RGC members.
- To approve the request for a visit by the Special Rapporteur on the Independence of Judges and Lawyers, as recommended in the previous review and accepted by Cambodia.⁵⁷
- To approve the requests for visits by the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Human Rights Defenders.

- To issue invitations to visit Cambodia to the Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur on Adequate Housing.

Situation on the ground – human rights defenders and freedom of expression

- To respect and protect the right of HRDs, including those working on economic, social and cultural rights, to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders, as recommended in the previous cycle and accepted by Cambodia.⁵⁸

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Cambodia*, A/HRC/13/4, recommendation 82.A-7: Expedite operationalization of an independent human rights institution in accordance with the Paris Principles (Pakistan); accelerate the steps currently under way for the establishment of a national human rights institution consistent with the Paris Principles (Egypt); continue its efforts to establish a national human rights institution in accordance with the Paris Principles, which would strengthen the human rights infrastructure within the country (Thailand); advance the process of establishing an independent national human rights institution in a pragmatic manner and in consultation with all relevant actors (Philippines);

² A/HRC/13/4, recommendation 82.6: Widen its consultation process on the development of policy, legislation and regulations to ensure that all legislative instruments are assessed as to their positive and negative impacts on human rights (United Kingdom);

³ A/HRC/13/4, recommendation 82.1 (Brazil) and A-82.2 (Spain).

⁴ A/HRC/13/4, recommendation 82.1: Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD); the two Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR); the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women and CRPD; and Convention No. 169 of the International Labour Organization, and accomplish the human rights goals set by Human Rights Council resolution 9/12 (Brazil). See recommendation 82.2: Sign and ratify CED and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR); ratify OPICCP, OP-CEDAW and CRPD and its Optional Protocol (Spain). See recommendation A-3: Consider ratifying CRPD and ensuring its full implementation in domestic law (New Zealand); 82.4. Consider early ratification of OP-CEDAW, signed in 2001 (Slovakia).

⁵A/HRC/13/4, recommendation 82.90: Continue to cooperate with the United Nations and other international organizations to strengthen human rights in Cambodia (Lao People's Democratic Republic); elaborate an effective mechanism to facilitate cooperation with the relevant institutions of the United Nations (Hungary).

⁶ A/HRC/13/4, recommendation 82.46: (a) Ensure that the freedom of expression and of the press guaranteed in the Constitution are effectively respected (Switzerland); See recommendation 82.48: (a) Commit itself to respecting freedom of expression and opinion for all, in particular for members of the opposition (Canada); (b) re-examine the modalities for lifting parliamentary immunity to ensure that this practice does not contravene the principles of pluralism and respect for freedom of expression (France).

⁷ A/HRC/13/4, recommendation 82.51: Strengthen efforts to protect freedom of expression and the right of all human rights defenders, including those working on land rights issues, to conduct their work without hindrance or intimidation, including by way of safeguarding freedom of assembly and association (Sweden). See recommendation 82.52: Facilitate the work of non-governmental organizations and other relevant civil society groups in the country (Italy). See recommendation 82.53: Develop a policy to protect human rights defenders (Brazil). See recommendation 82.54: (a) In line with a previous recommendation made by the Committee on Economic, Social and Cultural Rights, adopt effective measures to combat the culture of violence and impunity and to better protect human rights defenders, including indigenous leaders and peasant activists (Germany); (b) publicly speak out on reported cases of intimidation and violence – including murder – of trade unionists, the staff of non-governmental organizations and journalists and to ensure effective investigations and accountability for perpetrators (Austria); (c) effectively investigate and prosecute crimes and violations against human rights defenders and punish those responsible (Norway); (d) investigate and prosecute any attacks on – or false allegations in relation to – human rights defenders, in particular those working with communities to protect land, houses and access to natural resources and prevent forced displacement, an issue that has been reported on by the Special Rapporteur and the Committee on Economic, Social and Cultural Rights (Ireland). See recommendation 82.55: Adopt appropriate measures to disseminate widely and

ensure full observance of the Declaration on Human Rights Defenders (Norway). See recommendation 82.58: Take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives (United States).

⁸ A/HRC/13/4, recommendation 82.38: Take further measures to ... address land issues ... (Japan). See recommendation 82.62: Promote a legal framework that provides legal certainty in property matters, in particular land ownership and protection against forced evictions (Mexico). See recommendation 82.64: (a) Fully implement the 2001 land law and institute a moratorium on evictions until safeguards such as full compensation and access to basic services in resettlement areas can be guaranteed (Sweden); (b) adopt a moratorium on eviction until measures are taken to guarantee effective implementation of the 2001 law on land property and to deal with this problem in a more humane and dignified manner (Switzerland); (c) put an end to forced evictions, notably by improving the application of the land law of 2001, ensuring a better verification of land titles and guaranteeing strengthened protection of the population affected by the expropriations, which implies in particular prior consultations, a search for alternative solutions to expropriations, offers of re-housing and appropriate compensation of evicted persons (France). See recommendation 82.65: Continue to prioritize the issue of land evictions and to work with the Special Rapporteur to ensure an end to forced evictions and fulfil its obligations to respect and protect the human rights of all Cambodians, including individuals belonging to indigenous groups (Ireland). See recommendation 82.66: (a) Undertake a transparent and fair process to determine the conditions and procedures of involuntary relocation (Canada); (b) halt relocations of families to uninhabitable sites and consider evictions as a last recourse, as was requested by the Secretary-General (Germany); (c) develop an effective, transparent and fair resettlement policy and process that is based on national consultations and international best practice and suspend all planned resettlements until this framework is in place (United Kingdom); (d) increase efforts to ensure that evictions occur in compliance with the land law and that greater attention is paid to ensuring that communities relocated to resettlement sites have access to appropriate facilities, especially in urban areas (Australia); (e) work to advance the legal and policy framework on evictions, expropriations and resettlements and to ensure that those resettled have access to the necessary facilities and support (New Zealand). See recommendation 82.67: Adopt and implement a strict legislative framework on evictions and resettlement which ensures that evictions and relocations are legal, negotiated and fairly compensated (Austria). See recommendation 82.68: Enter into a dialogue with the civil society concerned with a view to addressing incidents of unlawful land-grabbing and evictions (Netherlands).

⁹ A/HRC/13/4, recommendation 82.5: Continue legal and judicial reforms and harmonization of the laws with international human rights instruments (Morocco). See recommendation 82.34: Continue its efforts to promote and protect human rights and to strengthen good governance and respect for the rule of law (Indonesia); continue to strengthen the rule of law and good governance as a means to help enhance human rights promotion and protection within the country (Thailand). See recommendation 82.38: Take further measures to proceed with its judicial reform ... (Japan). See recommendation 82.40: (a) Ensure the independence and impartiality of the judicial system (Sweden); (b) ensure the independence of the judiciary, without any political intervention (Switzerland); (c) strengthen mechanisms guaranteeing judicial independence, including fully empowering the Government anti-corruption unit to act against corruption within the judiciary (New Zealand); (d) intensify its efforts towards establishment of a fully independent, impartial and neutral judiciary, free from corruption in accordance with international standards, guaranteeing that all perpetrators of human rights violations are held accountable and nobody goes unpunished (Slovakia); (e) look for means to improve the remuneration system for judges to offer better guarantees of independence (Spain); See recommendation 82.41: Complete the process of judicial reform and enact essential legislation such as a new penal code, an anti-corruption law and legislation to guarantee and safeguard the independence and impartiality of the court system, court personnel and judges in accordance with international standards (Norway). See recommendation 82.42: Adopt and enact the Law on the Status of Judges, the Amendment of the Law on the Organization and Functioning of the Supreme Council of Magistracy and the anti-corruption law in accordance with recommendations made by the Special Representative of the Secretary-General for human rights in Cambodia, the United Nations Development Assistance Framework and the

Committee on Economic, Social and Cultural Rights, respectively, and create and adopt a code of conduct for judges, prosecutors and disciplinary councils, including disciplinary provisions (Israel).

¹⁰ A/HRC/13/4, recommendation 82.43: (d) cooperate with the Extraordinary Chambers, the United Nations, international donors and civil society to develop a strategy aimed at ensuring that the national jurisdictions can benefit from the experience of the Extraordinary Chambers (Belgium); (e) take steps to ensure that the work of the Extraordinary Chambers, including the involvement of international judges working alongside Cambodian judges, is harnessed to contribute to the strengthening of the Cambodian judiciary (New Zealand).

¹¹ See article 141 of the Cambodian Constitution, which states that the King, the President of the Senate, the President of the Assembly, the Prime Minister, 1/10 of the Senate members, 1/10 of the Assembly members or the courts, may ask the Constitutional Council to examine the constitutionality of a law after its promulgation, and that the citizens have the right to appeal against the constitutionality of laws following this aforementioned procedure.

¹² As reported by the Cambodia Daily, on May 21st 2013, “*UN Human Rights Envoy to Meet Hun Sen*”: “ Mr. Subedi and Mr. Vun also discussed the constitutional requirement that an annual national congress be held every December, which is to be presided over by the King and is supposed to enable the people to be directly informed on various matters of national interests and to raise issues and requests for the state authority to solve. The congress has never been held, and the government has indicated that it sees no use for it and wants to change the Constitution to remove the requirement.”

¹³ See the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, submitted at the 15th session of the Human Rights Council, on September 16th 2010 (A/HRC/15/46).

¹⁴ See the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, submitted at the 15th session of the Human Rights Council, on September 16th 2010 (A/HRC/15/46).

¹⁵ See joint statement “Cambodia’s Legislature Dismantled on the Eve of the National Elections” by the Cambodian Center for Independent Media (CCIM), Cambodian Food and Service Worker Federation (CFSWF), Cambodia’s Independent Civil-Servants Association (CICA), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Cambodian Worker Center for Development (CWCD), Cambodian Youth Network (CYN), Coalition of Cambodian Farmer Community (CCFC), Community Legal Education Centre (CLEC), Equitable Cambodia (EC), Farmer Development Association (FDA), Independent Democracy of Informal Economy Association (IDEA), Neutral and Impartial Committee for Free and Fair Election in Cambodia (NICFEC), People’s Action for Change (PAC), Sahmakum Teang Tnaut (STT), The Cambodian NGO Committee on CEDAW (NGO-CEDAW) published on June 10th 2013.

¹⁶ See press release by the International Federation for Human Rights (FIDH) “*The international community must stand by human rights in Cambodia*”, November 2nd 2010. “According to the information received, Cambodian Prime Minister Hun Sen asked Mr. Ban Ki-moon, the United Nations Secretary-General, on October 27, to remove Mr. Christophe Peschoux, the representative of the OHCHR in Cambodia, or the OHCHR office will have to be closed.”

¹⁷ As reported by the Cambodia Daily, on May 23rd 2013, “*Subedi Protest Linked to CPP-Aligned Youth Group*”.

¹⁸ A/HRC/13/4, recommendation 82.21: Grant the request made by the Special Rapporteur on the independence of judges and lawyers in 2006, 2008 and 2009 to visit the country (Netherlands); approve the request for a visit by the Special Rapporteur on the independence of judges and lawyers (Norway); See recommendation 82.18: Consider issuing a standing invitation to United Nations human rights special procedures (Brazil); issue and implement a standing invitation to all special procedures (Czech Republic); issue a standing invitation to all Council special procedures (Slovakia); See recommendation 82.19: Consider favourably the request for visits by thematic mandate-holders (Norway).

¹⁹ A/HRC/13/4, recommendation 82.46: ... (b) review its newly adopted penal code with a view to

ensuring its compliance with the permissible limitations to freedom of expression as stated in ICCPR (Czech Republic); ... (e) define the scope of defamation and disinformation charges to ensure that these do not impinge on freedom of expression and give clear guidance to judicial officials so that these provisions do not result in a large number of cases where the charges are disproportionate (United Kingdom).

²⁰ See LICADHO's report "The Delusion of Progress: Cambodia's Legislative Assault on Freedom of Expression", October 2011.

²¹ See Amnesty International's press release "Cambodia: Jailing of newspaper editor setback to free expression" published on June 30th 2009.

²² See Amnesty International's Annual Report on Human Rights in the Kingdom of Cambodia for 2010. See also

²³ See LICADHO's report "Attacks and Threats Against Human Rights Defenders In Cambodia 2010-2012", published in December 2012.

²⁴ *Ibid.*

²⁵ See FIDH's "Analysis of the Law on Demonstrations Adopted by the National Assembly in October 2009", October 29th 2009.

²⁶ See LICADHO's report "Attacks and Threats Against Human Rights Defenders In Cambodia 2008-2009", published in September 2010.

²⁷ *Supra* note 23.

²⁸ *Ibid.*

²⁹ *Supra* note 20.

³⁰ *Supra* note 23.

³¹ Article 66 and 81 of the fourth draft of the Trade Union Law, as of September 2011. Such actions include agitating for purely political purposes at the workplace, illegally blocking an entrance or exit gate, preventing non-striking workers from working and illegal striking.

³² Article 54 of the Draft Law on the Management and Use of Agricultural Land, as of July 2012.

³³ *Supra* note 23.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Supra* note 26.

³⁷ *Supra* note 23.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Supra* note 23.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Supra* note 26.

⁴⁷ See Amnesty International's Annual Report on Human Rights in the Kingdom of Cambodia for 2012.

⁴⁸ *Ibid.*

⁴⁹ *Supra* note 23.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² A/HRC/13/4, recommendation 82.8: Build on progress towards the establishment of an independent national preventive mechanism with the necessary mandate and resources to fulfil its obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Denmark).

⁵³ *Ibid.*, recommendation 82.7: Expedite operationalization of an independent human rights institution in accordance with the Paris Principles (Pakistan); accelerate the steps currently under way for the establishment of a national human rights institution consistent with the Paris Principles (Egypt); continue its efforts to establish a national human rights institution in accordance with the Paris Principles, which would strengthen the human rights infrastructure within the country (Thailand); advance the process of establishing an independent national human rights institution in a pragmatic manner and in consultation with all relevant actors (Philippines).

⁵⁴ *Ibid.*, recommendation 82.6: Widen its consultation process on the development of policy, legislation and regulations to ensure that all legislative instruments are assessed as to their positive and negative impacts on human rights (United Kingdom).

⁵⁵ *Ibid.*, recommendation 82.1: Consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the Convention on the Rights of Persons with Disabilities (CRPD); the two Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR); the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women and CRPD; and Convention No. 169 of the International Labour Organization, and accomplish the human rights goals set by Human Rights Council resolution 9/12 (Brazil).

⁵⁶ *Ibid.* recommendation 82.17: Submit its pending reports to the relevant treaty bodies (Pakistan).

⁵⁷ *Ibid.*, recommendation 82.21: Grant the request made by the Special Rapporteur on the independence of judges and lawyers in 2006, 2008 and 2009 to visit the country (Netherlands); approve the request for a visit by the Special Rapporteur on the independence of judges and lawyers (Norway).

⁵⁸ *Ibid.*, recommendations 82.51: Strengthen efforts to protect freedom of expression and the right of all human rights defenders, including those working on land rights issues, to conduct their work without hindrance or intimidation, including by way of safeguarding freedom of assembly and association (Sweden); 82.52. Facilitate the work of non-governmental organizations and other relevant civil society groups in the country (Italy); 82.53. Develop a policy to protect human rights defenders (Brazil); 82.55. Adopt appropriate measures to disseminate widely and ensure full observance of the Declaration on Human Rights Defenders (Norway); 82.56. Ensure that the draft law on non-governmental organizations does not make their working conditions more difficult and respect their freedom of expression and association (France).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

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Cambodia: Union leaders and activists under threat, September 2010, ASA 23/008/2010: <http://www.amnesty.org/en/library/info/ASA23/008/2010/en>

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<http://www.amnesty.org/en/library/info/ASA23/012/2011/en>

¹ All of these documents are available on Amnesty International's website:
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