



**United Nations Human Rights Council
32nd Session of the Working Group on Universal Periodic Review
January/February 2019**

ADVOCACY NOTE

**ICJ RECOMMENDATIONS: UNIVERSAL PERIODIC REVIEW OF CAMBODIA, 3rd Cycle
15 November 2018**

In the lead-up to, during, and after the July 2018 general elections the Royal Government of Cambodia (RGC), under the stated pretext of upholding 'rule of law', deliberately misused laws to attack, harass and silence members of the political opposition, critical media, civil society organizations, human rights defenders and individual citizens.

The lack of an independent and impartial judiciary in the country, guaranteeing a system of checks and balances on the executive and legislature, has further compounded the situation. There has also been continuing failure to conduct independent, impartial and effective investigations in politically-motivated cases, namely the 2016 killing of Kem Ley.

Misuse of the law

In 2015, the Law on Associations and Non-Governmental Organizations (**LANGO**) came into force, imposing on associations and NGOs onerous registration requirements and obligations to report to the RGC on their activities and finances. In May 2018, an **inter-ministerial directive** came into force allowing the RGC to surveil and censor web content and social media.

In 2017, amendments to the **Law on Political Parties** (LPP) provided the RGC and Supreme Court with powers to ban, suspend and dissolve political parties. In November 2017, the Supreme Court dissolved the main opposition party, Cambodia National Rescue Party (CNRP), and banned 118 CNRP politicians from political activity for five years pursuant to the LPP. **Four election law amendments** in October 2017 allowed the RGC to redistribute CNRP seats at Senate, National Assembly, commune and district levels.

In 2018, a ***lèse-majesté*** provision was introduced under article 437 *bis* of the Criminal Code. In the aftermath of the entry into force of this provision, two individuals were charged with *lèse-majesté* offences – one subsequently convicted. In addition, former CNRP leader Sam Rainsy was summoned to court for alleged remarks deemed insulting to the King.

In 2018, **constitutional amendments** to articles 34, 42, 49 and 53 of the Constitution further widened the scope of the RGC powers to limit and penalize legitimate exercise of freedoms of association, assembly and expression, by imposing vague obligations on individuals and political parties to "primarily uphold national interest".

Recommendations:

- Repeal or amend domestic laws to bring them in line with the Cambodia's international human rights obligations, including, but not limited to: the Law on Political Parties; the Law on Associations and Non-governmental Organizations; the Cambodian Criminal Code, particularly article 437 bis; the Cambodian Constitution, including as a matter of priority articles 34, 42, 49 and 53;
- Abolish government-issued regulations or directives that contravene freedoms of association, assembly and expression protected under and guaranteed by international human rights law, including, as matters of priority, the inter-ministerial order regulating content on social media.

Legal harassment

The authorities have resorted to other forms of legal harassment against perceived dissent. Former CNRP leader **Kem Sokha** remains under house arrest, with treason charges hanging over him. **Taxation laws** have been misused to silence and shut down critical media outlets. Journalists, **Uon Chhin** and **Yeang Sothearin**, continue to face politically-motivated charges of espionage and pornography production. National Election Committee official **Ny Chakrya** faces a potential re-trial on alleged defamation and 'coercion of judicial authorities' charges for commenting in 2015 on the detention of land rights activists. Following politically-motivated trials, land activist **Tep Vanny** was handed a six-month suspended sentence for allegedly 'threatening' an individual and civil society members, **Ny Chakrya and four senior ADHOC members**, were convicted of alleged 'bribery of a witness' and handed five-year suspended sentences.

Recommendations:

- Release all prisoners currently imprisoned or detained on politically-motivated charges, including Kem Sokha;
- Drop all politically-motivated charges and quash convictions and sentences handed in politically-motivated criminal trials against political opposition members, journalists, members of civil society and ordinary individuals.

Lack of an independent and impartial judiciary

In 2017, an ICJ Baseline study of Cambodia's justice system revealed endemic political interference in high-profile cases and equally entrenched systemic corruption in others. The CNRP's dissolution by the Supreme Court is an example of the lack of an impartial judiciary – the President of the Supreme Court is reportedly a high-ranking member of the CPP sitting on its Standing and Permanent Committees who should have, at a minimum, recused himself from the trial that resulted in the party's dissolution.

In 2014, three **judicial reform laws**, including the Law on the Organization of the Courts, the Law on the Statute of Judges and Prosecutors and the Law on the Organization and Functioning of the Supreme Council of the Magistracy entered into force allowing for undue control by the Executive of the judiciary's financial and administrative matters and in the selection, promotion, removal and disciplining of judges, and undue limitations on the free expression of judges and prosecutors.

Recommendations:

- Repeal or amend domestic laws – including the Law on the Organization of the Courts; the Law on the Statute of Judges and Prosecutors; and the Law on the Organization and Functioning of the Supreme Council of the Magistracy – to ensure the independence of the judiciary.
- Remove excessive powers granted to members of the Executive branch, particularly the Cambodian Minister of Justice, to control and influence the professional functions and operations of judges and prosecutors.

Lack of an independent and impartial inquiry into killing of Kem Ley

Since the 2016 killing of political commentator and human rights defender, **Kem Ley**, the RGC has failed to establish an independent and impartial **Commission of Inquiry** in line with international standards to conduct a prompt, independent, impartial, effective and transparent investigation into the killing. The 2017 trial of Oeuth Ang, Kem Ley's alleged killer, revealed that the authorities and the court had failed to adequately investigate key aspects of the case.

Recommendation:

- Establish an independent and impartial Commission of Inquiry in line with international standards to conduct an independent, impartial, effective and transparent investigation into the killing of Kem Ley.