



Cambodia's Fourth Cycle Universal Periodic Review

Free and Fair Elections in Cambodia

October 2023

1. Introduction

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2. Methodology

2.1 This report provides an in-depth understanding of the development, regulations, and challenges facing electoral reform, which upholds and safeguards the principle of multi-party democracy in Cambodia.

- 2.2 The methodology used for this report consists of desktop research, academic publications, digital documents, and the recommendations resulting from the 3rd cycle of the Universal Periodic Review (UPR). A consultation workshop was held on September 14, 2023 at COMFREL's office with the following CSOs: the Cambodia Human Rights and Development Association (ADHOC), the People Center for Development and Peace (PDP-Center), the Youth Resource Development Program (YRDP), Coalition for Integrity and Social Accountability (CISA), The Committee for Free and Fair Elections in Cambodia (COMFREL), Cambodian Human Rights Action Coalition (CHRAC), Neutral and Impartial Committee for Free and Fair Election in Cambodia (NICFEC), Cambodian Institute for Democracy (CID) and Center for Alliance of Labor and Human Rights (CENTRAL). The participants discussed implementation levels of the 3rd cycle recommendations and developments in the area of elections, and subsequently developed SMART recommendations for the upcoming review.
- 2.3 COMFREL coordinated with independent CSOs to train and deploy 2,000 observers during the 2022 commune election and 4,900 observers in the 2023 elections.

3. Introduction to the National UPR Context

- 3.1 During the 3rd cycle of the Universal Periodic Review (UPR) in 2019, the Royal Government of Cambodia received a total of fifteen election-related recommendations through its representative to the United Nations Human Rights Council. Eight of the recommendations were accepted, and seven were noted by government representatives.
- 3.2 These recommendations aimed to safeguard free and fair elections in Cambodia based on multi-party democracy principles to ensure inclusiveness, transparency, and accessibility of all political parties and citizens of Cambodia.

The recommendations have been partly implemented, but the core principle remains unimplemented. The political environment, political rights and the right to stand for elections, the will of the voters and the right to vote, the composition of the National Election Committee (NEC), independent and neutral armed forces and courts, and the role of civil society and the independent media are key areas that need to be improved and reformed.

4. Update on Implementation Level of Recommendations Made During 3rd Cycle of UPR

4.1 Political Environment:

In the last UPR cycle, Cambodia received 3 recommendations on issues surrounding the political environment. The recommendations were made by Norway¹, the Republic of Korea² and Ireland.³

Freedom of expression, peaceful assembly, association, the press, and political rights have not improved in Cambodia since the 2018 election. There has been no political reconciliation dialogue to reduce tensions between the Government and political actors, including newly formed or reformed political parties. The government has not yet passed or implemented any laws or policies to ensure freedom from fear which, if implemented, would allow Cambodians to freely exercise their fundamental rights before, during, and after elections.⁴

¹ 110.88. Restore democratic and political space, ensuring participation for political parties, civil society, and independent media

² 110.90. Continue to exert existing efforts to make democratic space more inclusive

³ 110.91. Create conditions conducive to free political debate and competition with a view to rebuilding a democracy in which the media and civil society, including human rights defenders, can freely carry out their work without interference or hindrance, as recommended by Ireland in the previous cycle, and in particular to ensure that their work is not hindered by restrictions on the freedoms of assembly or expression, either online or offline

⁴ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

4.2 Political Rights and the Right to Stand for Elections

In the last UPR cycle, Cambodia received 5 recommendations on issues surrounding political rights and the right to stand for elections. The three recommendations were made by the United States of America⁵, Canada⁶, New Zealand⁷, Greece⁸ and Chile.⁹

The shrinking political space, including a ban on the main opposition party in the 2023 election, prevents politicians from actively participating in political life and standing for elections. There were no free and drop politically motivated charges against political and civil society figures, and political rights to all opposition politicians without discrimination has yet to be granted.¹⁰

4.3 Will of the Voters and the Right to Vote

In the last UPR cycle, Cambodia received 4 recommendations on issues surrounding the will of voters and the right to vote. The recommendations were made by Germany¹¹, Australia¹², Austria¹³ and Brazil.¹⁴

Amendments to both the law on political parties and amendments to the elections law passed in 2017 remain active. These amendments eliminate the political will of the people given to their elected representatives through elections because they stipulate the suspension, termination or dissolution and removal of political party seats. There is no protection of the will of the electorate given to the elected representatives, and those representatives have not yet exercised their power in accordance with the constitution and the law.¹⁵

4.4 Composition of the National Election Committee

In the last UPR cycle, Cambodia received 1 recommendation from Ireland regarding the composition of the National Election Committee (NEC).¹⁶

In accordance with chapter 15 of the constitution and the Law on the Organization and Functioning of the NEC, the NEC is comprised of four commissioners selected by the ruling party, four chosen by

⁵ 110.78. Immediately and unconditionally reinstate the rights of members of the political opposition and release all persons who have been arbitrarily detained, including Kem Sokha;

⁶ 110.104. Re-establish the opposition party, namely the Cambodian National Rescue Party and to reinstate its members;

⁷ 110.111. Release immediately and unconditionally all remaining political prisoners and opponents, and drop all charges against them, including the full release of opposition leader Kem Sokha;

⁸ 110.137. Create the conditions for genuine, multi-party democracy in the country and for free and fair elections to take place;

⁹ 110.139. Continue to work to hold pluralistic electoral processes;

¹⁰ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

¹¹ 110.25. In consultation with affected stakeholders and civil society, amend the Law on Political Parties and the Law on Associations and Non-Governmental Organizations, to bring them into line with international human rights obligations;

¹² 110.30. Repeal the two sets of amendments to the Law on Political Parties passed in 2017, review the Law on Associations and Non-Governmental Organisations and review the Trade Union Law to ensure all three laws are consistent with Cambodia's obligations under the International Covenant on Civil and Political Rights;

¹³ 110.31. Revise or repeal recent legal acts potentially subjected to restrictive and arbitrary interpretation in order to bring them in conformity with international human rights law and standards, including among others: The Law on Political Parties and the Election Laws, the Law on Associations and Non-governmental Organisations and the Inter-Ministerial Proclamation of May 2018 on social media;

¹⁴ 110.100. Consider repealing legislation that permits the dissolution of political parties and the ban of political leaders without due process;

¹⁵ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

¹⁶ 110.123. Adhere to international standards on the independence of institutions, notably the judiciary and the National Election Commission to ensure that electoral processes are free, fair and transparent;

the opposition party having seats in the National Assembly, and one commissioner accepted by both parties. The main opposition party needs to be allowed to review and select four commissioners.¹⁷

4.5 Role of Civil Society and the Independent Media

In the last UPR cycle, Cambodia received 1 recommendation from Canada on issues surrounding the role of civil society and the independent media.¹⁸

Independent media outlets and civil society organizations are not able to freely exercise their rights and roles in Cambodia. CSOs frequently experience harassment, particularly when attempting to gather and join in coalition with one another to organize collective action, monitoring, reporting/presenting election findings, and expressing opinions on enforcement or decisions of the Royal Government. The limited space for journalists and human rights defenders to do their legitimate work has continuously shrunk while harassment and government intimidation has simultaneously risen.¹⁹

4.6 Electoral Reform

In the last UPR cycle, Cambodia received 1 recommendation from Bhutan on issues regarding electoral reform.²⁰

The use of technology to prepare candidate lists for elections and to summarize and share election results has become increasingly relevant in Cambodia. However, overall electoral reform has not improved, especially in areas including the political environment, political rights and the right to stand for elections, will of the voters and the right to vote, the composition of the NEC, independent and neutral armed forces and courts and role of civil society and the independent media.²¹

5. Free and Fair Elections in Cambodia (the current situation)

5.1 Assessment/Finding on the 2023 National Assembly Election

Cambodia is ranked 29th out of 100 on Freedom House's Election Vulnerability Index, with 100 representing the least vulnerability in terms of election integrity. This score reflects a highly restricted political and media landscape where free expression and assembly are severely suppressed both on and offline, and independent media and civil society are often targeted for their critiques of those in power.²²

UN experts said the shrinking civic and political space – including a ban on the main opposition party, media restrictions and blockages, and the harassment of perceived opponents of the ruling elite – had distorted the electoral architecture and process. "As a result, the national elections were very unbalanced and raised major concerns for the international community."²³

¹⁷ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

¹⁸ 110.102. Strengthen the democratic participation by guaranteeing the independence of the media by establishing a safe and enabling environment for civil society and trade unions and by fostering the full participation of opposition parties in the next communal, senatorial and legislative elections;

¹⁹ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

²⁰ 110.138. Continue its efforts in the area of electoral reform;

²¹ Minimum Conditions for A Free and Fair Elections in Cambodia by 64 Cambodian civil society organisations.

²² Election Vulnerability Index of Freedom House for July 23, 2023 General Election; available at

<https://freedomhouse.org/report/election-watch-digital-age#cambodia-2023>

²³ Cambodia's shrinking democratic space affected credibility of national elections: UN experts, released on 02 August 2023; available at <https://www.ohchr.org/en/press-releases/2023/08/cambodias-shrinking-democratic-space-affected-credibility-national-elections>

The 2023 national election significantly challenged a deterioration in the political climate, the right to stand for the election, and the right to vote with free will. A credible opposition party, the Candlelight Party (CLP), lost its right to contest due to politically motivated disqualification. The NEC's composition has raised questions about its independence and impartiality, with a significant representation of pro-Cambodian People's Party (CPP) figures. The NEC's rejection of the Candlelight Party's application and the subsequent confirmation by the constitutional council highlights how official institutions seem to serve the ruling party's interests, rejecting opposition participation. Amendments to the election law during the election aimed to penalize politicians and opposition voters for not casting a ballot. Additionally, 5.4% of the voter turnout was ambiguously marked invalid or spoiled, igniting voter frustration. The government and authorities blamed voters for the high rate of invalid ballots, publically warning voters that the movement to spoil the ballot was a crime. Meanwhile, at least three Candlelight activists were arrested.²⁴

UN High Commissioner for Human Rights Volker Türk has expressed regret that the Cambodian general elections held on July 23 were conducted in a severely restricted space, negatively impacting the rights of Cambodians to participate fully and equally in all aspects of the electoral process. Restrictive laws and policies hampered the registration and participation of opposition political parties and candidates, and trade unions while NGOs and media outlets were targeted through criminal and other legal processes, threats, intimidation, and, on occasion, physical attacks.²⁵

5.2 Pre 2023 National Assembly Election Assessment

The administration of elections, overseen by the NEC, plays a vital role in ensuring free, accurate, and fair electoral processes. However, concerns regarding the independence and neutrality of the NEC persist. Evidence suggests a clear bias towards the ruling CPP, which undermines the integrity of the electoral process. Inclusivity within the electoral administration framework and an independent appointment process must be implemented to strengthen the integrity and credibility of future elections. A deteriorating political landscape in Cambodia exemplified through the Candlelight Party's exclusion from the election serves as a stark reminder of the highly restricted political space and the severe limitations imposed on opposition parties. The disqualification of the party further exacerbates the imbalanced and unfair political environment, as it leaves little room for opposition voices to fairly and equally compete. There are growing concerns about the diminishing scope of civil society and the deliberate targeting of human rights defenders and activists. It is essential to counteract the constriction of civic space so that civil society can actively participate in the electoral process without fear of reprisal. Independent media continuing to face restrictions, journalists experiencing harassment, and state-controlled media dominating the information landscape are prime examples of the limitations on media freedom and access to information. Promoting media pluralism, protecting journalists' rights, and ensuring equitable access to information for all political actors and citizens are essential to ensure a free and fair electoral process.²⁶

5.3 Change of Legal Framework

The election law amendment enacted during the 2023 National Assembly Election deprives politicians of their right to contest elections if they do not cast a ballot, while citizens and politicians may not be able to perform their voting duties. The amendment will negatively impact the right to

²⁴ COMFREL's Statement (/Or Briefing Report) on the General Elections in Cambodia, Held on July 23, 2023

²⁵ Cambodia: UN Human Rights Chief regrets elections held in restrictive environment, released on 26 July 2023; available at <https://www.ohchr.org/en/press-releases/2023/07/cambodia-un-human-rights-chief-regrets-elections-held-restrictive>

²⁶ ANFREL Pre-Election Assessment Mission Report: 2023 Cambodian General Election, published by July 2023: page 4 &5; available at https://anfrel.org/wp-content/uploads/2023/07/ANFREL-Cambodia-PEAM-2023_5-July-2023.pdf

vote with free will and to stand for Election, rights protected by the Cambodia Constitution and International Human Rights Law. Moreover, the amendments also impose penalties on any person or party that actively discourages people from voting. These penalties – ranging from 5 to 20 million riels (US\$1,200 to US\$4,800) for individuals as well as a ban from participating in elections for five years for political parties – may be used to suppress political dissent and manipulate electoral outcomes. Such measures have the potential to stifle and restrict free expression.²⁷

The amendment of the Law on Political Parties, which was proposed by Prime Minister Hun Sen and adopted by parliamentarians from the ruling party, has given the Government the legitimate and unchallenged authority to suspend and dissolve political parties, effectively removing their leadership from politics. It is considered to be politically motivated and aims to prevent competition from the activities of opposition political parties in elections. It violates the commitments and standards of the International Convention on Civil and Political Rights, to which Cambodia is a state party.²⁸

5.4 The Situation and Political Environment

Cambodia's democracy has been on a consistent and ongoing decline due to a government crackdown on the opposition, NGOs, and independent media, resulting in the closure of civic space and erasing the country's system of checks and balances. The Candlelight Party has taken on the mantle of the former opposition Cambodia National Rescue Party (CNRP) as the primary or sole challenger to the ruling CPP. The ruling party's response has been to treat the newly formed opposition party as a serious threat. The Candlelight Party was able to advance candidacies in 90 percent of the communes in the country. It has drawn on the strength of the former CNRP organizational structure, membership, and legitimacy, despite the two former leaders of the CNRP being barred from politics. The nation-wide commune council elections took place on June 5, 2022. As a result, only 2 of 17 contesting political parties won most of the council seats contested in 1,652 commune offices nationwide. The CPP received 74.3 percent of the vote, followed by the opposition Candlelight Party at 22.3 percent. The commune election restarts a hope to obtain a fraction of democracy in Cambodia at the local level where government accountability manifests, where citizens are more likely to get involved, and where citizens are able to see tangible change based on election results.²⁹

In 2022, three separate mass trials took place, resulting in the conviction and sentencing of multiple opposition party members and activists. The trials were criticized for lacking independence. Another mass trial was initiated in September 2022, with 37 former opposition party members facing criminal charges for "plotting." In December 2022, 36 senior officials of the banned CNRP were sentenced to imprisonment for supporting a vice president's attempt to return to Cambodia. Most convicted officials had already fled the country and were living in exile. These trials have been criticized for lacking due process and being politically motivated. The current political system has increasingly normalized rule by law and, for several years, has progressively institutionalized laws and practices that counter liberal democratic pluralism and political rights.³⁰

²⁷ COMFREL's Statement (Or Briefing Report) on the General Elections in Cambodia, Held on July 23, 2023

²⁸ Office of the United Nations High Commissioner for Human Rights in Cambodia, "A HUMAN RIGHTS ANALYSIS OF THE AMENDED LAW ON POLITICAL PARTIES," March 28, 2017: p. 10; available at <https://cambodia.ohchr.org/sites/default/files/Analysis%20on%20the%20Amended%20Law%20on%20Political%20Parties%2028%2003%202017%20FINAL%20no%20TC.pdf>

²⁹ Democracy Report 2022 prepared by COMFREL, published by April 2023; available at <https://comfrel.org/english/democracy-elections-and-reform-in-cambodia-2022/>

³⁰ Democracy Report 2022 prepared by COMFREL, published by April 2023

Since the Commune and Sangkat Council elections last year, the opposition has faced an escalating number of violent attacks against its members, accompanied by judicial harassment and arrest targeting their leaders and members. Prime Minister Hun Sen in particular has been openly issuing explicit threats of physical violence against political opponents. During a speech in January, he sternly warned the opposition not to criticize the ruling CPP in the lead-up to the upcoming elections. The judicial harassment against Candlelight Party leaders further highlights the challenging and inequitable environment. In January, Thach Setha, a vice president of the Candlelight Party, was arrested on charges of allegedly issuing five fraudulent checks in 2019 and failing to appear for court questioning in 2021. He was subsequently denied bail and faced an additional charge of "incitement to provoke social chaos" due to statements made during a speech while in Japan last year. Another instance of harassment targeted Kong Korm, an adviser to the Candlelight Party who had previously served as a CPP deputy minister. The government filed a US\$ 1 million lawsuits in January against Kong Korm, accusing him of unlawfully possessing land belonging to the Foreign Ministry, and demanded the surrender of his house and land, valued at US\$ 10 million, within a month. Kong Korm complied and returned the property, resulting in the lawsuit's withdrawal. The ruling CPP also filed a second lawsuit against Kong Korm for his critical remarks. Kong Korm resigned from the party, and the lawsuit was again dropped. In February, the Supreme Court upheld the conviction of Son Chhay, vice president of the Candlelight Party, on a defamation charge. He was ordered to pay US\$ 1 million in damages to both the CPP and NEC for comments he made last year, in which he criticized the irregularities observed during the Commune and Sangkat Council elections.³¹

5.5 Harassment to Civil Society and the Independent Media

Parliamentarians from Southeast Asia condemn in the strongest terms the shutting down of the last independent media outlet operating in Cambodia, Voice of Democracy (VOD), regarded as the voice of millions of Cambodians, by the regime of Prime Minister Hun Sen and call on the Cambodian Government to respect and uphold freedom of the press, especially at this moment, with the upcoming general elections scheduled for July 2023.³²

The media environment has faced setbacks, leading to the silencing of critical voices through legal hurdles, intimidation, and shutdowns. While the Law on Press guarantees freedom of expression, certain articles employ vague language, occasionally used alongside other instruments, such as the Criminal Code, to suppress dissenting voices. Furthermore, the regulation on Website and Social Media Control – enacted in May 2018 by the Ministry of Information, Ministry of Interior, and Ministry of Posts and Telecommunication – permits unchecked systematic mass surveillance of online activities, resulting in an impermissible restriction on the right to freedom of expression. Journalists encounter additional challenges, experiencing intimidation, arrests, and cyberbullying campaigns that impede their ability to engage in independent reporting. Civil society's space in Cambodia has been significantly diminished since 2017. Alongside the restrictive Legal Association and Non-Governmental Organization Law (LANGO), civil society organizations now confront escalated intimidation, including physical surveillance and targeting in political speeches and government-affiliated media. These actions hinder their freedom to operate, particularly in critical areas such as elections, democracy, and anti-corruption. Furthermore, civil society has become a target of co-optation or substitution, as a substantial number of local observers accredited to monitor the electoral process are affiliated with government-organized non-governmental organizations (GONGOs), seeking to manipulate the narrative surrounding the elections and bestow undue legitimacy upon the process. Most international observers' credibility, independence, and

³¹ COMFREL's Statement (/Or Briefing Report) on the General Elections in Cambodia, Held on July 23, 2023

³² Statement of ASEAN Parliamentarians for Human Rights (APHR), released on 14 February 2023; available at

<https://aseanmp.org/2023/02/14/southeast-asian-mps-condemn-shutting-down-of-independent-media-outlet-in-cambodia-ahead-of-general-elections/>

methodology following the process have been questioned, raising doubts about their capacity to assess electoral processes accurately.³³

The shrinking space available for civil society and the deliberate targeting of human rights defenders and activists raise serious alarm. The constriction of civic space undermines the active participation of civil society in the electoral process without fear of reprisal. Additionally, media freedom faces constraints, with independent media and other election stakeholders experiencing harassment both online and offline, while state-controlled media dominate the information landscape.³⁴

6. Recommendations

- 6.1 Hold a political reconciliation dialogue before 2027 to reduce tensions and encourage more open, public debate between the Royal Government and all political actors, including all newly formed or reformed political parties.
- 6.2 Implement the constitution of the country and abide by the country's international obligations to ensure freedom from fear, allowing people to freely exercise their fundamental rights before, during, and after elections by the Royal Government.
- 6.3 Grant political rights to all opposition politicians without discrimination by 2026, thus freeing and dropping politically motivated charges against political and civil society figures.
- 6.4 Grant all political parties the right to participate in the political process freely in accordance with the constitution of the country and the country's international obligations by the Royal Government, in particular the Ministry of Interior and the National Election Committee, by 2024.
- 6.5 Amend the law on political parties and laws elections to ensure that elected representatives win and hold their seats and cannot be removed from their position solely because of their political party's dissolution by 2027.
- 6.6 Amend articles of the law on political parties and laws elections, which were unilaterally changed by the ruling party, to reflect the state of the Law before 2017 to ensure bi-partisan decision-making practices with respect to rules for elections by 2026.
- 6.7 Allow the main opposition party to review and select four commissioners of the National Election Committee before 2027.
- 6.8 Strengthen enforcement of the Law on Political Parties, the Law on the General Status of Military Personnel of the Royal Cambodian Armed Forces, and the Law on Elections to ensure that the military, police, and courts are not politically partisan.
- 6.9 From 2024, members of the military, police, or courts shall not hold any appointed office in any political party, including holding any responsible position or delegating tasks in any political party's structure.
- 6.10 Before the 2027 general elections, civil society organizations can gather and join in coalition with one another without legal constraints, organize collective action, monitor and report/present their findings of the elections, and express their opinion on enforcement or decisions of the Royal Government without any forms of harassment or legal consequences.
- 6.11 From 2024, ensure space for journalists to do their legitimate work related to elections without harassment and intimidation by the Government and/or authorities.
- 6.12 From 2024, all independent media outlets will be able to apply for and receive licenses to open their offices and studios in Cambodia to cover news and report on election issues.

³³ COMFREL's Statement (/Or Briefing Report) on the General Elections in Cambodia, Held on July 23, 2023

³⁴ Joint Statement on the Legitimacy of 2023 Cambodian General Election, released on 22 July 2023; available at <https://aseanmp.org/2023/07/22/joint-statement-on-the-legitimacy-of-2023-cambodian-general-election/>

7. Advanced Questions

- 7.1 Will the new Royal Government of Cambodia hold a political reconciliation dialogue to reduce tensions with all political actors, including the main opposition political parties?
- 7.2 When were the articles of the Law on political parties and laws on elections unilaterally changed by the ruling party since 2017 amended to reflect the state of the Law before 2017?
- 7.3 Will the National Election Committee commissioners be replaced and will the main opposition party be able to review and select commissioners?
- 7.4 Will the Royal Government of Cambodia commit to restoring and safeguarding genuine elections with the participation of the main opposition party?
- 7.5 When will the Royal Government of Cambodia allow all independent media outlets to receive licenses to operate in Cambodia?

-End-