



Human Rights Watch Concerns and Recommendations on Cambodia

Submitted to the UN Human Rights Committee in advance of its Pre- Sessional Review of Cambodia

June 5th, 2014

This memorandum provides an overview of Human Rights Watch's concerns with respect to the current human rights situation in Cambodia, based on the organization's research in the country. It is submitted to the Human Rights Committee in advance of its upcoming pre-sessional review of that country. We hope it will inform the Committee's consideration of the Cambodian government's compliance with the International Covenant on Civil and Political Rights. For additional information, please see Human Rights Watch's country page on Cambodia: <http://www.hrw.org/asia/cambodia>.

Introduction

Cambodia has become engulfed in an intensified human rights crisis after National Assembly elections on July 28, 2013. Final results announced by the National Election Committee (NEC), a body controlled by the ruling Cambodian People's Party (CPP), gave a majority to the CPP. The CPP has been in power since 1979, despite losing United Nations-administered elections in 1993. Independent domestic and international election observers concluded that successive National Assembly elections which the CPP claimed to have won in 1998, 2003, and 2008 lacked credibility. The NEC result for 2013 gave the CPP 68 seats and the opposition Cambodia National Rescue Party (CNRP) 55 seats. The assembly then chose Hun Sen as prime minister, a post he has held since 1985.

Article 25: Right to Vote

Among documented problems with the 2013 electoral process that undermined exercise of the right to vote were: unequal media access for opposition parties; pro-CPP bias within the national and local electoral apparatus; lack of an independent and impartial electoral dispute resolution mechanism; manipulation of voter rolls to allow “ghost” voters and exclude opposition voters; campaigning by senior security forces officers for the CPP, leading to intimidation of voters; and failure of the NEC and Constitutional Council to seriously or independently investigate credible complaints of election irregularities (see: <http://www.hrw.org/news/2013/09/10/cambodia-independent-election-inquiry-needed>).

Credible allegations that the irregularities and CPP control over election bodies affected the final outcome precipitated demonstrations starting in August 2013, calling for investigations, electoral reform, new elections, and for Hun Sen to step down. The CNRP, which began organizing mass and overwhelmingly peaceful demonstrations in September 2013, also decided to boycott attendance of the National Assembly. Starting in September, the government deployed large numbers of armed police, gendarmes and sometimes army troops in the national capital, Phnom Penh, and other towns as part of attempts to deter and suppress demonstrations and other gatherings, such as strikes by workers demanding increased wages and improved working conditions. Security forces have engaged in attacks on protesters, killing several and injuring many.

So far, neither investigations into electoral irregularities nor reforms of the electoral system have been carried out. The National Assembly is operating without the presence of the CNRP.

- Human Rights Watch encourages the Human Rights Committee to ask the government about progress towards establishment of an independent commission with international assistance and in cooperation with Cambodian civil society to investigate and recommend remedies for irregularities in the 2013 elections. We urge the Committee to make recommendations for fundamental reform of Cambodia’s electoral processes and

systems to ensure independence and impartiality so that future elections are free and fair and thus guarantee effective exercise of the right to vote.

Article 19: Freedom of Expression

The government has a virtual monopoly over television programming, while dominating radio broadcasting, largely denying freedom of expression via these media to civil society and opposition voices. The government asserts various unconvincing reasons to refuse broadcasting licenses, such as a purported lack of frequencies. The government has denied a television license to the critical media personality Mam Sonando, who was previously imprisoned on politically motivated charges. While the CPP has de facto control over many television and radio stations, the government has refused licenses to the opposition CNRP.

The government has also regularly abused legislation in force, particularly the 2010 Criminal Code, to restrict the right to freedom of expression. It has relied on vaguely or broadly formulated prohibitions on defamation, insult and incitement (articles 305-308, 311, 502, 495-496) to prosecute and imprison or fine people for the peaceful expression of critical views of government policies and practices. It frequently uses these articles against those accused of leading peaceful protests against alleged land-grabbing by powerful and wealthy interests and non-violent strikes by factory workers demanding increased wages and improved working conditions. The government also even defined public calls for a change in the prime minister as a form of incitement, even if it is done in the context of political party campaigning, thereby threatening prosecution of those calling for Cambodia to have a new political leader (see: <http://www.phnompenhpost.com/national/cnrp-threatened-over-rhetoric>).

A draft Cybercrime law is meanwhile being considered by the government, which has so far refused to make a draft public. A leaked draft reveals that article 28 permits severe restrictions on the rights to freedom of expression and information by providing for imprisonment for vaguely defined prohibited acts, such as generating “insecurity,” “instability,” or “anarchism”; hindering national “sovereignty and integrity”; or defaming

any government agency at any level. Moreover, these and other provisions do not require any specific criminal intent to commit a punishable offense, which could lead to criminalization of unintentional or accidental acts. The leaked text also reveals that a governmental National Anti-Cybercrime Committee, chaired by the prime minister, would have sweeping powers without judicial oversight or other legal safeguards (articles 5-16). This law would likely be used to curtail the rising use of social and other digital media and to target those opposed to the CPP.

- We encourage the Human Rights Committee to call on the government to open up Cambodia's media sector to independent and opposition voices; to ensure the security of media workers from violence, intimidation, and harassment, to reform existing legislation so that it cannot be used to criminalize peaceful expression; and to make public for comment the draft legislation on use of cyberspace, which should be revised to ensure that it is not used to criminalize or to censor critical news and opinions.

Article 21 and Article 22: Freedom of Assembly and Association

A 2009 Law on Peaceful Demonstrations contains provisions that the government has repeatedly used since its promulgation to restrict the right to freedom of assembly (see: <http://www.hrw.org/world-report-2010/cambodia>). This has been achieved, for example, by refusing to allow gatherings that the authorities arbitrarily deem to threaten “security, safety and public order” (article 9). This has been the case particularly if protests were planned to occur outside government-designated “democracy plazas” or “freedom parks,” for which the 2009 act provides and where CNRP centered its demonstrations. Such broad and open-ended limitations on the time, place and manner of demonstrations are in violation of international law.

Since January 4, 2014, the authorities have effectively overridden even this restrictive legislation with a statement arbitrarily banning all demonstrations, whether organized by the CNRP or anyone else (see: <http://www.hrw.org/news/2014/02/09/cambodia-free-activists-revoke-assembly-ban>).

This statement was under an unpublished order by Prime Minister Hun Sen, shown to Human Rights Watch in confidence by a senior government official, to implement the 2009 law. The authorities have enforced the ban by deploying security forces without regard to genuine security concerns, sometimes to break up even the smallest and entirely peaceful gatherings with unnecessary force. The security forces have since occupied Phnom Penh's Democracy Plaza, turning it into an armed camp. While the 2009 demonstration law does not apply to trade union strike and political party campaign activities, the authorities have maintained that the January 4, 2014 ban is applicable to both (see: <http://www.hrw.org/news/2014/02/02/cambodia-garment-factories-thwarting-unions>). Although the government has sometimes opted to allow such activities to go forward, they have continued to insist they are illegal without providing a credible basis (see: <http://www.hrw.org/news/2014/01/08/cambodia-detainees-crackdown-denied-rights>). Security force sources told Human Rights Watch that the authorities hope this will deter strikes and political rallies and is intended to lay a basis for possible future arrests of union and opposition party leaders.

The January 4 ban followed and reinforced a government announcement of a January 2 deadline for garment workers to end strikes and related demonstrations demanding an increase in Cambodia's core wage to US\$160 a month. The government warned that unless the deadline was heeded, it would deploy security forces to suppress worker actions it considered illegal (see: <http://www.cambodiadaily.com/news/govt-unveils-legal-plan-to-break-garment-industry-strike-49763/>).

Human Rights Watch research established that on the morning of January 2, as workers gathered to demonstrate in front of the many garment factories on the outskirts of Phnom Penh, army, police and gendarme units began deploying to break them up. In some cases, they acted immediately to do so; elsewhere they withdrew after initial reconnaissance. The first operation was carried out by troops of army Special Forces Paratrooper Brigade 911 armed with assault rifles, truncheons, and knives. They intervened forcibly to break up a

protest at the Yakjin garment factory. Brigade 911 officers ignored attempts by human rights monitors to defuse the resulting confrontation with workers and others, during which some workers threw rocks. The troops instead arrested some of these monitors among a total of 15 people, 10 of whom were jailed, later brought to trial, and convicted to suspended prison sentences (see section on Article 14). According to medical examinations by independent medical professionals, all 10 were beaten or otherwise roughed up during arrest, some sustaining severe injuries.

Overnight on January 2-3, hundreds of police and gendarmes were deployed to clear workers protesting by blocking roads in the Veng Sreng industrial suburb of Phnom Penh. Violent clashes broke out, with some workers throwing rocks, sticks and petrol bombs and attacking property, while security forces, some of whom were injured, fired tear gas, smoke grenades, and, occasionally, live ammunition (see section on Article 6). They also beat many people, including three young men whom they arrested and who were eventually tried and sentenced to suspended prison terms (see section on Article 14).

On the morning of January 3, the authorities sent a large force of gendarmes to seize control of the area, some of whom fired their assault rifles indiscriminately, killing five people (see section on Article 6) and arresting 10 others. The area was then occupied by troops of army Brigade 70. The 10 arrested were later tried and sentenced to suspended prison terms (see section on Article 14). One of the other victims of the gendarme beatings later died of his injuries.

Since these events, wildcat strikes have continued in Phnom Penh and other parts of Cambodia, but many have been broken up by security forces. Trade union activists and workers involved in industrial actions are regularly arrested on trumped-up charges. This has been accompanied by what appears to be a de facto suspension of procedures for registration of unions and government movement towards promulgation of a new Law on Enterprise Unions (see <http://www.hrw.org/news/2014/04/29/cambodia-stop-stalling-union-registrations>). The government says one of the objectives of the new law is to deal

with unions it says are not “playing fairly with the factories” and thereby the cause of industrial conflicts (see: <http://www.akp.gov.kh/?p=45469>). After examining the most recent draft in late May 2014, the International Labour Organization declared that the government made it less compliant with international standards than the previous draft, including by increasing restrictions on formation of unions and setting forth penalties for union misbehavior so ill-defined and vague “as to allow very arbitrary application” by Cambodia’s courts (see: <http://www.cambodiadaily.com/news/ilo-says-govt-moving-backward-with-draft-union-law-59940>).

Demonstrations calling for the right to freedom of expression to be respected have been broken up, as on January 27, 2014, when security forces broke up a gathering led by Mam Sonando, injuring 10 people (see: <http://www.phnompenhpost.com/national/media-beatings-condemned>). Similarly, government security forces have repeatedly assaulted or threatened Cambodian and foreign journalists covering these forces’ “breaking-up” of other peaceful assemblies or public voicing of dissident views.

Another piece of legislation being formulated by the government is a Law on Associations and Non-Governmental Organizations. The current publicly available draft is of a text that was shelved in 2011 (see: http://www.sithi.org/admin/upload/law/2011-12-12_NGO%20Law%204th%20draft-Eng.pdf) after a domestic and international campaign led to the United States, European Union and other donors to call for it to be revised to meet international standards or be abandoned (see: <http://www.hrw.org/print/news/2011/12/23/cambodia-revise-or-abandon-draft-ngo-law>). The draft contains vague and overly broad provisions to close or deny registration to associations and domestic and international organizations that criticize governmental policies or practices. Other legislation already in force gives the government sufficient powers to exercise legitimate regulation of associations and organizations and preventing them from engaging in any recognizably criminal actions. However, the government has recently stated its intention to have it adopted by the one-party National Assembly without any further consultation with the public.

- We encourage the Human Rights Committee to ask the government what plans it has to lift current arbitrary bans on freedom of peaceful assembly and association; to revise existing legislation on demonstrations so that it is not used to unreasonably restrict freedom of peaceful assembly; to make public for comment and appropriately revise draft legislation on trade unions to ensure that it does not unreasonably restrict trade union activity, including the right to strike; and to consult with civil society about the draft legislation on associations and nongovernmental organizations with a view to reconsidering whether there is a need for such legislation in order to regulate civil society, or whether additional legislation is likely instead to lead to violations of the right to freedom of association.

Article 2: Right to Effective Remedies

Article 6: Right to Life

Impunity for serious human rights violations, including extrajudicial killings, remains an enormous problem in Cambodia.

Impunity has also been the norm since the creation of the Kingdom of Cambodia after UN-administered elections in 1993. No one has been held accountable in a fair trial for hundreds of politically motivated killings, the majority of them by the army, police, and gendarmerie (see the 2012 Human Rights Watch report on impunity at <http://www.hrw.org/reports/2012/11/13/tell-them-i-want-kill-them-o>). This reflects the fact that these security forces are highly politicized and partisan, protecting the ruling CPP and protected by it (see: <http://www.hrw.org/news/2013/07/22/cambodia-army-police-campaign-ruling-party>).

Security force impunity has been repeatedly evident in the context of demonstrations, strikes, and social unrest following the flawed elections of 2013. Security forces used excessive lethal force, including by shooting into crowds using live ammunition, resulting in seven deaths and dozens of injuries, but there have been no investigations into the responsibility of the security forces. In at least some instances, the officers who fired fatal

rounds are known to their fellow officers and superiors, according to an official who spoke to Human Rights Watch confidentially.

Impunity also continues even with regard to grave crimes in violation of international law committed by the Khmer Rouge Communist Party of Kampuchea during its 1975-79 rule. The current United Nations-assisted Extraordinary Chambers in the Courts of Cambodia (ECCC) has a restricted jurisdiction with regard to the approximately two million Cambodians who died as a result of Khmer Rouge policies and practices, and the Cambodian government appears determined to ensure that no more than three among surviving Khmer Rouge leaders go to prison (see: <http://www.hrw.org/news/2013/09/05/cambodia-government-obstructs-khmer-rouge-court>). Hun Sen has publicly stated that other suspects under investigation by international staff at the ECCC will never face trial.

- We encourage the Human Rights Committee to ask the government what steps it is taking to ensure accountability for politically motivated killings, including creating professional and depoliticized law enforcement and security forces and an independent and impartial court system. The Committee should ask the government why it has blocked additional prosecutions for Khmer Rouge crimes going beyond prosecution of three surviving Khmer Rouge leaders, and why it has interfered with judicial decision-making in violation of the independence of the judiciary.

Article 14: Right to Fair Trial

Since 1979, the Cambodian judiciary has been controlled by the CPP. The chief justice of the Supreme Court is a member of the standing committee of the Central Committee of the CPP. Judges and prosecutors are summoned to party meetings to carry out party work. While some judges occasionally act independently of the wishes of powerful CPP figures, this exceptional behavior is negated by the overall political subservience of the judicial system. The courts are regularly used for political purposes to convict and intimidate critics. International fair trial standards have been routinely ignored (see:

<http://www.hrw.org/news/2014/01/07/cambodia-universal-periodic-review-submission-2013>).

Judicial sources who have recently spoken to Human Rights Watch say members of the judiciary seen by the government as resistant to political control have been repeatedly passed over for promotion or otherwise marginalized, sometimes being forced into de facto retirement, while those most loyal to the political and economic agendas of the CPP elite have been promoted. They note that the relative weakness of the CPP's grip on state and security force power in the 1990s and into the early 21st century created some room for maneuver by independent-minded judges and prosecutors, but that small space dwindled over the past decade as CPP dominance over all realms of authority has increased. They specify that, as a group, younger judges and prosecutors coming onto the bench in the past decade tend to be even more deferential to CPP authority than older judicial officers.

This reality has been apparently in several recent trials, such as that of 13 people accused of involvement with the Khmer National Liberation Front movement and sentenced to prison terms on April 12, 2014. They were prosecuted under politically motivated charges of “treacherous plotting” and convicted after a one-day trial at which no evidence was presented of a crime committed by any of the accused. A major purpose of the trial appeared to be falsely link the opposition CNRP to the KNLF in order to accuse the CNRP of association with “insurrectionary rebels” and “terrorists” (see: <http://www.hrw.org/news/2014/04/09/cambodia-drop-treacherous-plotting-case>).

The trial of a young man arrested in connection with a violent crackdown by police and gendarmes on a protest by garment workers on November 12, 2013 was similarly deeply flawed (see: <http://www.hrw.org/news/2014/05/11/cambodia-steung-meanchey-trial-deeply-flawed>). The judge was openly hostile to the accused, defense lawyers, and exculpatory witnesses. He refused to allow a defense lawyer to show exculpatory video at the final hearing. In sentencing the man a suspended prison sentence on May 30, 2014, he

thus disregarded evidence that the accused was misidentified as the perpetrator of acts of intentional violence and damage committed by others.

Fundamental fair trial violations also characterized the trials of 23 people prosecuted in connection with the security force forcible suppression of strikes and social unrest in working class areas of Phnom Penh on January 2-3, 2014. Judges openly favored the prosecution over defense, refusing to allow defense teams to challenge crucial statements by security force officers inculpatating the accused. Instead, they acquiesced when these officers failed to show up at hearings. No evidence was produced in court proving that four human rights defenders among the 23 were guilty of inciting or instigating criminal acts, as they were originally and finally charged, respectively. Except with regard to one defendant, no evidence linking the remaining 19 workers and other accused to criminal acts was produced. The prosecution merely argued that they must have been involved in intentional violence and damage because they were arrested in the general area in which such acts occurred. Nevertheless, on May 30, 2014, all 23 people were sentenced to prison terms. Although all the sentences were suspended, their convictions entail restrictions on their rights, such as to become union leaders.

Another feature of these trials was that the judges generally refused to allow the showing of any evidence revealing the extent of security force violence, apparently as one of main objectives of the trials was to create a public narrative according to which all violence on November 12, 2013 and on January 2-3, 2014 was committed by persons other than security force personnel.

On May 22-23, 2014, the CPP majority in the National Assembly, with the opposition CNRP continuing its boycott of all assembly proceedings, rushed through passage of three important laws on the judiciary, further entrenching the government's control over Cambodia's courts: 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 (see: <http://www.hrw.org/news/2014/05/03/cambodia-withdraw->

[fundamentally-flawed-judiciary-laws](#)). Originally conceived as part of a national action plan to bring Cambodia's domestic laws into line with its international treaty obligations, the three measures were supposed to strengthen the rule of law by reinforcing judicial independence in Cambodia. Instead, the bills, as passed, give the minister of justice sweeping powers over the country's judges and prosecutors, thereby undermining their independence and formalizing the government's control over them. The subordination of the judiciary to the executive branch appears to be deliberate. An earlier draft of the Law on the Statute of Judges and Prosecutors contained a provision stating that the judiciary "shall not be under the direction of the legislative or executive branch or any political party." However, this provision was removed before the National Assembly passed the current bills (see:

http://www.cchrcambodia.org/media/files/press_release/496_csctpotfjrbarcfpce_en.pdf).

The bills, which were kept secret before the assembly vote, are now public. They still have to be sent to the Cambodian senate for review, to be followed by scrutiny by the country's Constitutional Council.

A senior CPP National Assembly member and the party's spokesperson has declared that the passage of the laws means that it will no longer be possible to express the view that the judiciary lacks independence, saying "they will not be able to speak like this any more" (<http://www.cambodiadaily.com/news/journalists-in-cpp-firing-line-over-1-party-tag-59430/>). To enforce this pronouncement, the authorities can apply a provision of the Criminal Code that allows imprisonment of those who publish comments deemed to pressure a court with the view of influencing its decision (article 522) or who criticize a judicial decision or other judicial act (article 523). On May 25, 2014, charges under article 523 were brought against eight union leaders and activists.

- We encourage the Human Rights Committee to ask the government what plans it has for further judicial and other institutional reform to ensure independence of the judicial and the enjoyment of fair trial rights, including whether it is prepared to consider revising the legislative framework to promote this object and thus protect such rights. The

Committee should call for repeal of all provisions that interfere with the independence of the judiciary.

Article 7: Prohibition of Torture

Article 9: Arbitrary Detention

Cambodian authorities arbitrarily detain hundreds of people they deem as “undesirable” in centers where they face torture, sexual violence, and forced labor. Along with drug users, authorities lock up homeless people in the centers, as well as beggars, street children, sex workers, and people with disabilities. These people have people are detained without being convicted in a court of law. The centers are run by the Cambodian military, gendarmerie, police, Social Affairs Ministry, and municipal authorities. People recently confined in the centers have described being thrashed with rubber water hoses and hit with sticks or branches. Some described being punished with exercises intended to cause intense physical pain and humiliation, such as crawling along stony ground or standing in septic water pits. Former female detainees described rape and other sexual abuse by male guards. Many detainees said they were forced to work unpaid in the centers and those who refused were beaten. No one has been held accountable for such torture or other cruel, inhuman, or degrading treatment or punishment (<http://www.hrw.org/node/120957>).

- We encourage the Human Rights Committee to call for the closure of the drug detention centers and to end arbitrary detention of “undesirable” people, while holding accountable those who have abused such detainees.