



## **A joint submission by non-governmental organizations on freedom of expression and assembly for the Universal Periodic Review of Cambodia's fulfillment of its human rights obligations and commitments**

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*Hong Kong, April 2009*

### **I. INTRODUCTION AND EXECUTIVE SUMMARY**

1. Pursuant to United Nations (UN) Human Rights Council resolution 5/1, which provides for the participation of civil society in the Universal Periodic Review (UPR) process, we - a coalition of non-governmental organizations (NGOs)<sup>1</sup>, coordinated by the Alliance for Freedom of Expression in Cambodia (AFEC) and assisted by the Asian Legal Resource Centre (ALRC) - make this **joint submission on freedom of expression and assembly in Cambodia** to the Office of the High Commissioner for Human Rights (OHCHR) in Geneva for inclusion in its summary of stakeholder information.
2. Cambodia has a variety of human rights obligations in respect of the rights to freedom of expression and assembly. The Royal Government of Cambodia (the "Government") has engaged with some international human rights mechanisms but not with others, whilst the current national human rights infrastructure is seriously flawed. The last four years have seen **freedom of expression and assembly seriously undermined** with opinion restricted, parliamentarians silenced, the media controlled, access to information blocked, and assembly and public demonstration prevented. The Government has breached its international and constitutional human rights obligations, and has relied on national legislation which itself breaches these obligations. Our recommendations for improving respect for freedom of expression and assembly include ratification of the First Protocol of the International Covenant on Civil and Political Rights;

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<sup>1</sup> The coalition includes: Advocacy and Policy Institution (API); Asian Legal Resource Centre (ALRC); Cambodian Human Rights and Development Association (ADHOC); Cambodian Association for Protection for Journalists (CAPJ); Cambodian Center for Human Rights (CCHR); Cambodian Center for Independent Media (CCIM); Cambodian Center for the Protection of Children's Rights (CCPCR); Cambodian Independent Teachers Association (CITA); Cambodian Independent Civil Servants Association (CICA); Cambodian League for the Protection and Defence of Human Rights (LICADHO); Center for Social Development (CSD); Center for Civil and Political Rights (CCPR); Coalition of Cambodian Apparel W.D.U. (C-CAWDU); Committee for Free and Fair Elections in Cambodia (COMFREL); Community Legal Education Center (CLEC); Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC); Independent Democratic of Informal Economic Association (IDEA); International Federation of Human Rights (FIDH); Khmer Kampuchea Krom Human Rights Association (KKKHRA); Khmer Youth Association (KYA); Legal Aid of Cambodia (LAC); Neutral & Impartial Committee for Free and Fair Election in Cambodia (NECFEC); People Center for Development and Peace (PDP-Center); Project Against Domestic Violence (PADV); Southeast Asian Press Alliance (SEAPA); and Star Kampuchea. See Annex I for the addresses of these NGOs.

the establishment of an independent national human rights body; and a series of legislative reforms. We conclude by underlining the need for capacity building and technical assistance to help the Government implement our recommendations and respect freedom of expression and assembly.

## II. UPR METHODOLOGY AND CONSULTATION PROCESS

3. To prepare this submission we have engaged with urban and rural communities; shared and analyzed data documented through monitoring, research, and investigation; and met regularly to discuss the content. We will form a **UPR Working Group** to encourage understanding of the UPR process; lobby the international community to support our recommendations; engage with the government to advocate for and monitor the implementation of our recommendations; and prepare for the next UPR of Cambodia's human rights record.
4. **The Government has not taken seriously the intended-collaborative spirit of the UPR**, having so far failed to engage with NGOs as part of the UPR process. We recognize that capacity shortcomings are relevant, but urge the Government to engage with civil society to ensure a worthwhile UPR. We have sent copies of this submission to the Government.<sup>2</sup>

## III. BACKGROUND AND FRAMEWORK

5. Cambodia has only recently emerged from a twenty-year civil war that followed the brutal Khmer Rouge regime. **Freedom of expression and assembly are not only important for individual dignity; we need these rights to participate in decision-making, accountability and democracy as we work to rebuild our country.** Cambodians cannot take part in decision-making if they are not able to express their views freely, do not have free access to information, and cannot assemble together to address issues of common concern and attempt to influence the Government.

### A. Scope of international obligations

6. As a UN Member State, Cambodia is obliged under the **UN Charter** to promote universal respect for, and observance of, human rights. The Charter proclaims that the inherent dignity and the equal and inalienable rights of all humans is the foundation of freedom, justice and peace in the world.
7. Article 15 of the 1991 **Agreement on a Comprehensive Political Settlement of the Cambodia Conflict** (the "Paris Peace Accord"), provides that "*All persons in Cambodia ... shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights (UDHR) and other relevant international human rights instruments.*" The UDHR was adopted by the UN General Assembly and provides for human rights standards accepted by all member states. Article 19 proclaims: "*the right to freedom of opinion and*

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<sup>2</sup> We have sent copies to the Human Rights and Complaints Reception Committees of the National Assembly and the Senate, and to the Government's Cambodian Human Rights Committee.

*expression; this rights include freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”* Article 20 protects the right to freedom of assembly. Much of the UDHR is regarded as having acquired legal force as customary international law<sup>3</sup> and it is binding on Cambodia as part of its Constitution (see paragraph 11 below).

8. The “*other international human rights instruments*” to which the Paris Peace Accord refers include the **International Covenant on Civil and Political Rights (ICCPR)**, to which Cambodia acceded in 1992. The ICCPR is legally binding and expands on the UDHR. Article 19 provides: “*Everyone shall have the right to hold opinions without interference ... Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers ...*” It provides for restrictions on these rights however: “*For respect of the rights or reputations of others ... For the protection of national security or of public order, or of public health or morals.*” Article 21 asserts: “*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*”
9. Further guidance on interpreting ICCPR Article 19 can be found in the authoritative statements and declarations made by the **UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**. The Special Rapporteur has sought to clarify the precise nature of the right to freedom of expression. Importantly, the UN Special Rapporteur endorsed in his 1996 report<sup>4</sup> the **Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996)** (the “Johannesburg Principles”) - a set of principles that limit the scope of the restrictions on freedom of expression.
10. **International jurisprudence** in the courts of the three regional human rights instruments (in Europe, Africa and the Americas) has also emphasized the overriding importance of freedom of expression and assembly, resulting in a **narrow interpretation of the scope of restrictions and sanctions**.

## **B. Constitutional and legislative framework**

11. The **Constitution of the Kingdom of Cambodia** (the “Constitution”) provides in Article 31: “*Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights ...*” Article 41 provides: “*Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and*

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<sup>3</sup> ‘Memorandum on the Cambodian Law on the Press’, Article 19, London, October 2004. See Annex II to this submission.

<sup>4</sup> Report of the Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/45, Economic and Social Council, 22 March 1996.

*other national security. The regime of the media shall be determined by law.”* Article 37 provides for the “*right to strike and to non-violent demonstration.*” According to a decision of the Cambodian Constitutional Council dated 10 July 2007, **all human rights instruments to which Cambodia has adhered form part of the Constitution.**

### **C. Institutional and human rights infrastructure**

12. As a state party to the ICCPR, Cambodia must report to the treaty body with oversight of this Covenant – the Human Rights Committee (HRC). Cambodia’s second report has been due since 31 July 2002. We note that Cambodia signed the **First Optional Protocol to the ICCPR** on September 27, 2004; however, Cambodia has not ratified it and it is not therefore legally binding.
13. We are pleased that Cambodia hosts a **country office for the OHCHR**, which plays an important role in monitoring human rights. Cambodia has benefited also from the mandate of the **Special Representative of the Secretary General for human rights in Cambodia**, which has regularly made independent assessments of and recommendations for improving the human rights situation. Unfortunately, this mandate has now been changed to the **weaker Special Rapporteur mandate**.
14. In Cambodia, the **Constitutional Council** is the supreme body through which citizens should be able to challenge the constitutionality of laws, regulations and state decisions that affect their constitutional rights. The procedures involved in making such challenges, however, prevent citizens from accessing the Council. A citizen who wishes to make a complaint has to either get the King, the Prime Minister, the President of the Senate, the President of the National Assembly, one tenth of Cambodia's MPs or one quarter of its Senators to request that the Council adjudicate the case. Further, the Constitutional Council is not independent from the Government.<sup>5</sup>
15. Articles 147 to 149 of the Constitution provides for an annual **National Congress** - an institution of direct democracy whereby Cambodians can meet their rulers “*to be directly informed of various matters of national interest*” and “*to raise issues and make proposals for the state authorities to address.*” Unfortunately the National Congress has never been convened, and on 4 March 2009, Prime Minister Hun Sen said that it should be removed from the Constitution.
16. Three other state institutions have a role in protecting human rights. The National Assembly and the Senate each have a **Human Rights and Complaints Reception Committee**, and the Government has its own **Cambodian Human Rights Committee**. These bodies are able to conduct investigations, but have failed in providing protection and redress to victims or in bringing perpetrators to justice. They are widely regarded as being politically controlled.<sup>6</sup> In September 2006, Prime Minister Hun Sen announced plans to create a new

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<sup>5</sup> ‘CAMBODIA: The authorities must ratify the First Protocol to the ICCPR now’, Asian Human Rights Commission (AHRC), 22 March 2006.

<sup>6</sup> *Ibid.*

**National Human Rights Commission (NHRC)** to be “*based on the Paris Principles.*” The Paris Principles relate to the status and functioning of independent national institutions for the protection and promotion of human rights.<sup>7</sup> Cambodia currently has **no national action plan** or policy for protecting and promoting human rights.

17. It has been widely reported that the **Cambodian courts suffer from incompetence, corruption and political control.**<sup>8</sup> Unfortunately, similar allegations now mar the Extraordinary Chambers in the Courts of Cambodia (ECCC).
18. Cambodia has a **thriving civil society** that is supported by international donors and has attracted wide praise. However, NGOs face continuing harassment from the Government, as reflected in this report. Further, they face new Government attempts to control them through a planned **NGO Law**. The draft **NGO Law** gives the Government control over NGOs’ finances, provides for complex registration rules, and outlaws “political” aims.

#### **IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

19. The Government should be praised for signing and ratifying a variety of international human rights treaties. However, the last four years (and the years preceding this) have been marked by the **Government’s failure to cooperate properly with human rights mechanisms and a restriction of human rights including freedom of expression and assembly.**

##### **A. Cooperation with human rights mechanisms**

20. Cambodia has not provided its second report to the HRC and has also failed to submit certain periodic reports to other treaty bodies. We do note however that the Government is working with the OHCHR to improve this situation. Despite signing the First Optional Protocol to the ICCPR on September 27, 2004, Cambodia has not yet ratified it. Further, whilst Cambodia continues to host a country office for the OHCHR, **the Government’s treatment of the Special Rapporteur of the Secretary General for human rights in Cambodia, Yash Ghai, was alarming.** The Government has also given international NGOs short shrift.
21. Regionally, Article 14 of the ASEAN Charter calls for the creation of an **ASEAN human rights body** that will protect and promote human rights and fundamental freedoms. In this regard, **we welcome Cambodia’s involvement** in related negotiations and engagement with civil society.
22. At a national level, the Government controls the three existing human rights bodies. However, we are **hopeful that Prime Minister Hun Sen’s promises to create a NHRC will be fulfilled in 2009.** Whilst the Government is planning to

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<sup>7</sup> The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris in October 1991.

<sup>8</sup> ‘Human Rights in Cambodia: The Charade of Justice Report, 2007’, LICADHO, Phnom Penh, 2007.

push through a **worrying NGO Law**, we recognize that there has been increasing engagement with NGOs and hope that the space for this continues to grow.

## **B. Implementation of international human rights obligations**

23. **During the last four years freedom of expression and assembly in Cambodia have been consistently restricted, in breach of Cambodia's human rights obligations.** These violations have been supported by certain provisions of national law that breach international standards.

### **1. Opinion restricted**

24. Cambodians do not enjoy the freedom to express opinions that conflict with those of the Government. The **Government has used the full force of the criminal** law on incitement, defamation and disinformation to restrict opinions being expressed on sensitive issues including territorial borders, corruption land grabbing and other sensitive issues.

- From October to December 2005, at the behest of the Government, **eight well-respected human rights advocates were arrested and detained for disinformation, defamation and/or incitement.** Mam Sonando, owner and Director of the independent Beehive Radio station, was arrested and detained for broadcasting an interview with an activist who criticized the Cambodia-Vietnam border treaty. Rong Chhun, President of the Cambodian Independent Teachers Association, was arrested and detained in connection with a press statement that related also to the border treaty. Men Nath, President of the Cambodian Independent Civil Servants Association, and Ear Channa, Deputy Secretary General of the Student Movement for Democracy, also signed the statement and then fled to Thailand. They now live in Europe. Kem Sokha, then President of the Cambodian Center for Human Rights, was arrested and detained in connection with a banner displayed at International Human Rights Day celebrations that included small hand-written comments by villagers; one such comment criticized Prime Minister Hun Sen and referred to land being lost to Vietnam. Yeng Virak, Executive Director of the Community Legal Education Center, and Pa Ngoun Teang, a Deputy Director of the Cambodian Center for Human Rights, were arrested on the same day and for the same reason. After local and international pressure, the men were eventually released on bail.
- In September 2006, Teang Narith, a lecturer at the Sihanouk Raj Buddhist University in Phnom Penh, was **dismissed for writing a book that criticized the Government.** He was then arrested and charged with disinformation, and found guilty and **sentenced to jail for over two years** and fined. He was released and is considered to suffer from mental illness.
- A **report by Global Witness** that alleged involvement of senior officials and their relatives in illegal logging was **banned** in June 2007.

- In 2009, the national judges at the ECCC threatened to take legal action against Nuon Chea’s defence lawyers Michiel Pestman and Andrew Ianuzzi after they had rasked for the national courts to investigate corruption allegations at the ECCC. **Even at the hybrid international criminal court, lawyers were discouraged from expressing opinions unfavourable to the status quo.**
25. The cases above are a few of many examples of the **Government restricting freedom of expression** in breach of UDHR and ICCPR Article 19, and Articles 31 and 41 of the Constitution.
26. Further, the **law used or impliedly threatened in these cases - criminal defamation and disinformation - is itself in breach of international and constitutional human rights obligations.** Article 62 of the UNTAC Law provides for **criminal disinformation**: “*The director or other party responsible for a publication or other means of communication who took the decision to publish, distribute or reproduce by any means information which is false, fabricated, falsified or untruthfully attributed to a third person and did so in bad faith and with malicious intent, provided that the publication, distribution or production has disturbed or is likely to disturb the public peace, shall be liable to a punishment of six months to three years in prison, a fine of up to ten million Riels, or both.*” Article 63 of the UNTAC Law concerns **criminal defamation**: “*Defamation or libel made by one of the means listed in article 59 shall be punished by imprisonment of eight days to one year*”. These laws were created in 1992 for the transitional period under UN administration when there was ongoing civil war in Cambodia. They have since been used to prevent and punish criticism of those in power. They breach international freedom of expression standards and have created a climate of fear. In their joint declarations in 1999, 2000 and again in 2002, the three special international mandates for promoting freedom of expression – the UN Special Rapporteur, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression – called on states to repeal their criminal defamation laws.<sup>9</sup> In its observations on Mexico’s periodic report, the HRC stated that it “*deplores the existence of the offence of ‘defamation of the state’*” and called for its abolition.
27. Further to international and local pressure, on 21 April 2006 **the Government removed the custodial sentence for defamation.** On 13 August 2007, Prime Minister Hun Sen stated that the Government had decided to eliminate defamation charges from the criminal code. This has not yet happened, whilst disinformation remains a criminal offence.

## 2. Parliamentarians silenced

28. Parliamentarians too have found their freedom of expression restricted. The **Government has used the criminal law and amendments to the internal rules of parliament** to render representatives of the people fearful to debate and

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<sup>9</sup> ‘Briefing Note on International and Comparative Defamation Standards, Article 19, London, February 2004.

make laws and **undermine democracy**. Indeed, the number of parliamentarians speaking in parliament has decreased over the last four years.<sup>10</sup>

- On 3 February 2005 Sam Rainsy, the leader of the opposition Sam Rainsy Party (SRP), went into self-imposed exile citing fear of arrest after the National Assembly voted to remove his parliamentary immunity and that of SRP MPs Chea Poch and Cheam Channy. On the same day, Cheam Channy was arrested and detained in the Cambodian Military Prison. **Rainsy faced multiple criminal defamation charges** after accusing the ruling Cambodian People's Party (CPP) of corruption in the formation of the then-coalition government. He had also accused Prime Minister Hun Sen of involvement in the murder of the SRP-affiliated trade union leader Chea Vichea. **Rainsy was tried in absentia, and sentenced to 18 months in prison** and fined. The US Embassy in Cambodia said it was "*deeply concerned*" that the Government was trying to "*silence the opposition*".<sup>11</sup> On 5 February 2006, Rainsy received a Royal Pardon from King Sihamoni at Prime Minister Hun Sen's request.
- In September 2008, when the new parliament was sworn in, the CPP used its overwhelming dominance to force through the adoption of new internal rules for parliament. According to Articles 48 and 55 of these rules, MPs must be seated in groups, each of which is composed of at least ten members with a leader and a deputy-leader. MPs from parties with less than ten seats must join a group with other MPs. An MP cannot speak in parliament unless he or she is a member of a group, makes a request to speak through the group leader, and gets permission from the National Assembly's Chairman. **These rules have prevented the three Human Rights Party (HRP) MPs from speaking in parliament**, as they have not joined a group because they want to retain their independence from other parties.

29. The cases of Sam Rainsy and Cheam Channy again evidence breach of the UDHR and ICCPR Article 19, and of Articles 31 and 41 of the Constitution. As set out above, the criminal defamation law used is itself in breach of international obligations and is unconstitutional. Further, Article 77 of the Constitution provides: "*The deputies in the National Assembly shall represent the entire Cambodian people ...*". **The new internal rules followed in the National Assembly deny MPs the right to freedom of expression and prevent them from representing Cambodians.**

### 3. Media controlled

30. **Journalists, editors and other media persons have been subjected to assault, threats, and lawsuits for criminal defamation and/or disinformation.** Reporting on sensitive subjects is a risky business.

- In November 2007, the Ministry of Interior and Ministry of Information confiscated from newsstands copies of the Free Press Magazine that

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<sup>10</sup> 'Parliamentary Watch Report', CSD, 2007.

<sup>11</sup> 'Cambodia opposition calls on king', BBC News, 4 February 2005.



included articles and cartoons critical of the retired King Norodom Sihanouk and Prime Minister Hun Sen. **The publisher was ordered to close**, and the editor, Lim Piseth, was summoned to the Ministry of Interior. Lim Piseth then received text message and telephone threats from January to April 2008, and AK47 bullets were thrown into his garden. He fled abroad in May 2008.

- In May 2008, the Ministry of Information **shut down Angkor Ratha Radio station and withheld its license after it had sold its airtime to four political parties**. This action reflects the Government's wider efforts to limit the radio frequencies available for use by radio stations sympathetic to opposition parties and human rights NGOs.
- In June 2008, Dam Sith, an editor of the opposition *Monaksekar Khmer* newspaper, was **arrested for criminal disinformation for reporting the opposition leader's remarks** that two government ministers had been affiliated with the Khmer Rouge. The case was closed once Dam Sith apologized for his "mistake".
- Most notoriously, in early July 2008 **journalist Khim Sambo of the Monaksekar Khmer newspaper was shot dead with his son** in Phnom Penh. No arrests have been made.
- On 24 January 2009, the **violent eviction of the Phnom Penh Dey Krahorn** community also saw **law enforcement personnel preventing journalists from reporting on the case**.
- In 2009, we have also seen concerning moves to **limit freedom of expression on the internet**. Reportedly, the Government blocked the Global Witness and Reahu websites.

31. We again highlight UDHR and ICCPR Article 19, and Articles 31 and 41 of the Constitution. The freedom of expression of journalists and others has been severely restricted. These **violations have also breached the Cambodian Press Law 1995**, which contains a positive guarantee of freedom of expression. Article 1 specifies: "*This law shall determine a regime for the Press and assure the freedom of press and freedom of publication in conformity with Articles 31 and 41 of the Constitution...*" However, **the Press Law itself is deeply flawed** as it contains various provisions for control of the press. In its Concluding Observations of 1999, the HRC criticized the Press Law for being incompatible with ICCPR Article 19. We attach to this submission a detailed analysis of the Press Law by the international NGO Article 19.<sup>12</sup> Despite these observations and criticisms, in its recent worrying report the Ministry of Information stated that it plans to strengthen its controls on publishing and broadcasting and extend the Press Law to the internet.<sup>13</sup>

#### **4. Access to information blocked**

32. **Access to information – an important element of freedom of expression – is severely restricted** in Cambodia. The Government's decision-making process is shrouded in secrecy, and private interests violently block investigative reporters.

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<sup>12</sup> Article 19, *op. cit.*

<sup>13</sup> 'Ministry To Tighten Broadcast Control', VOA Khmer, Pich Samnang, Phnom Penh, 20 March 2009.

- On 24 December 2007, **military personnel confiscated a report** made by Voice of Democracy reporter Sou Visal on alleged injuries and killings relating to the destruction of Buddhist statues at Niroth Pagoda. Threatening him, the military personnel took Sou Visal's voice recorder and camera and returned them after deleting the data.
- On 30 January 2008, **two journalists** from *Khmer Mchas Srok* and *Sralagn Khmer* newspapers were **prevented from reporting a land dispute** between three families and the Phanimex Company at Andong Sangkat Prek Pra, Khan Meanchey, Phnom Penh. The armed men hired to guard the land threatened the journalists with a gun and warned them not to take photographs.
- In July 2008, the **Government delayed releasing inflation figures** seemingly to avoid adverse publicity during the general election.
- Whilst the national courts have failed to investigate corruption allegations at the ECCC, the UN has failed to share the results of its investigations into these allegations. **The UN is blocking access to information that could affect the trials' fairness** and in doing so is signaling that corruption can be tolerated, with impunity overriding accountability.

33. The Government and those close to it have restricted access to information in breach of the UDHR and ICCPR Article 19, and of Articles 31 and 41 of the Constitution. It is hoped that the **Freedom of Information Policy Framework**, drafted with US assistance, will help turn this tide of restriction.

### 5. Assembly and public demonstrations prevented

34. According to Adhoc, of 155 non-violent demonstrations and strikes in 2008 - linked mainly to land and labour disputes - at least 108 were suppressed<sup>14</sup>. The **Government has severely restricted assembly and public demonstration**, and this restriction has often been **marked with excessive force**.

- **Events surrounding the murder of trade union leader Chea Vichea** provide a good microcosm of the restrictions on freedom of expression and assembly in Cambodia. It has been alleged that Chea Vichea was killed for his perceived opposition to the Government. As set out above, Sam Rainsy was convicted for his opinions on this case. In September 2006, the **police violently dispersed a peaceful protest** against the conviction of Chea Vichea's alleged killers. Heng Pov, the police official in charge of investigating the murder and who now alleges that it was ordered by the then National Police Commissioner Hok Lundy, is now serving a 76-year prison sentence for a wide range of crimes. Hok Lundy recently died in a helicopter crash.
- A **strike by female workers** at the Fortune Garment Woolen Knitting Company in Kandal on 29 November 2007 was **brutally repressed** by a large group of police armed with electric batons and tear gas. Several of the women were injured.

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<sup>14</sup> 'Human Rights Situation 2008', Adhoc, Phnom Penh, January 2009.

- In December 2007, the **police dispersed with excessive force a peaceful demonstration by Khmer Krom monks** in front of the Embassy of Vietnam. Two monks were seriously injured.
  - On 19 December 2007, **police and military personnel armed with electric batons and water hoses dispersed a peaceful march by 160 indigenous minority protesters** in Labanseak Commune, Banlung district, Ratanakiri. The local authority had not granted ‘permission’ for the march. The police questioned the march organizer and a human rights activist, and also illegally searched the house of another activist.
  - From January to October 2008, the Cambodian Center for Human Rights organized **48 public forums of which nine were disrupted and two banned**. The local authorities banned the two forums (in Takeo and Kampong Chhnang) because they wanted to keep “good order” for the general election period.
35. The cases above are a few of countless examples of the Government restricting freedom of assembly in breach of the UDHR Article 20 and ICCPR Article 21, and of Articles 31, 37 and 41 of the Constitution.
36. In repressing freedom of assembly, the **Government often relies on the 1991 Law on Demonstration** that prohibits demonstrations that affect “*public tranquility, order or security*”. Further, **local authorities misinterpret the law** and rely on a Ministry of Interior declaration that requires demonstration organizers to receive permission to demonstrate. The 1991 Law on Demonstration was unsuccessfully challenged in the Constitutional Council. A new law is now being drafted that in many respects is worse than the 1991 law because it is self-contradictory, expressly requires demonstration organizers to receive permission to demonstrate, and makes organizers responsible for any damage caused by demonstration participants.

## V. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

37. We recognize the Government’s stated intentions to continue to negotiate for the creation of an **ASEAN Human Rights body**, and its **promises to create the NHRC and to decriminalize defamation**. We are also hopeful about a new freedom of information law. We believe that space is opening up for further engagement between the Government and NGOs.
38. However, we are concerned with the **Government’s failure to engage with the international community and the weaknesses of the international community** in demanding improvements in the protection of human rights. There are **no independent mechanisms that act as a check on the Government’s power**, so further violations of freedom of expression and assembly remain almost certain. We are also concerned about the Government’s approach to the internet and its plans to restrict its use.

## VI. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS: OUR RECOMMENDATIONS

39. During the last four years, **Cambodians have suffered from frequent and regular violations of their rights to freedom of expression and assembly.** In order to improve this situation we urge the Government to properly respect these freedoms and to implement the following **recommendations:**

International

- i. Ratify the First Optional Protocol of the ICCPR to enable Cambodians to submit complaints to the HRC relating to violations of their freedom to expression and assembly, and other human rights.
- ii. Work with civil society to cooperate with the UN treaty bodies - in particular the HRC - and to satisfy Cambodia's reporting obligations. Submit the second report to the HRC, due since 2002.
- iii. Invite the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to visit and assess the situation in Cambodia, and to make recommendations for improving freedom of expression.
- iv. Cooperate fully with the new Special Rapporteur for human rights in Cambodia.
- v. Engage properly with the UPR process, by consulting with all stakeholders.

Regional

- vi. Work with other ASEAN member states to create an ASEAN Human Rights body in 2009.

National

- vii. Establish an independent NHRC in 2009, in keeping with the Paris Principles.
- viii. Publicly endorse the Johannesburg Principles and work with NGOs to formulate a freedom of expression and assembly strategy as part of a wider human rights action plan.
- ix. Decriminalize disinformation and defamation in the course of reforming the criminal law.
- x. Invite experts including the international NGO Article 19 and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to assess and recommend amendments to the 1995 Press Law and 1991 Law on Demonstrations. Implement these newly amended laws.

- xi. Draft and implement a new Freedom of Information Law, in accordance with the freedom of information policy framework.
- xii. Ensure that any new NGO Law respects NGOs' freedom of expression and association.
- xiii. Amend parliament's internal rules to remove the grouping requirements and enable MPs to speak freely and represent their constituents.
- xiv. Provide more radio frequencies for use by broadcasters sympathetic to the opposition political parties and civil society.
- xv. Provide training to the judiciary, law enforcement personnel and local authorities on the importance of applying accepted freedom of expression and assembly principles.
- xvi. Reform the judiciary to make it truly independent. Specific recommendations for reform of the judiciary are beyond the scope of this submission, but we reference LICADHO's excellent report on this issue.<sup>15</sup>

## VII. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

40. The need for capacity building and technical assistance is made obvious in the above recommendations and is **required to empower the Government** to work with NGOs to engage further with UN mechanisms, set up an independent NHRC, reform flawed legislation, and provide training. Civil society would also benefit from further capacity building and technical assistance to make us more effective in promoting and protecting freedom of expression, assembly and other human rights.

13 April, 2009

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<sup>15</sup> LICADHO. *Op. cit.*

## ANNEX I: NGO COALITION

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**ANNEX II: ARTICLE 19 MEMORANDUM ON THE CAMBODIAN LAW ON  
THE PRESS**

[Please see attached memorandum in PDF format.]

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