

## **JOINT STATEMENT - Phnom Penh, 21 February 2018**

### **CSOs call for outright rejection of draft amendments to the Constitution and Criminal Code, amid legislative assault on Cambodian peoples' rights and freedoms**

We, the undersigned organizations and communities, express our grave concern regarding the Royal Government of Cambodia ("RGC")'s proposed amendments to the Constitution of the Kingdom of Cambodia (the "Constitution"), as well as the proposed introduction of a *lèse-majesté* offense to Cambodia's Criminal Code. These proposed amendments constitute a severe threat to human rights and fundamental freedoms, and are clearly designed to further criminalize any individual or entity that dares to express legitimate dissent. We are deeply concerned by this cynical attempt to deny the Cambodian people the fundamental freedoms to which they are entitled, and call for the outright rejection of these proposed amendments.

On 14 February 2018, the National Assembly approved draft amendments to five articles<sup>1</sup> of the Constitution, which would have grave implications for Cambodian citizens if passed into law. They would establish ill-defined bans that threaten to curtail the exercise of rights and fundamental freedoms. The amendments to Article 49 prohibit Cambodian citizens from "any activity" that directly or indirectly "affect[s] the interests" of Cambodia or its citizens. This provision is unacceptably broad and lacks definition, meaning legitimate activities and the exercise of fundamental freedoms could be banned if deemed to be "affecting interests". A similar ban applies to the activities of political parties, stifling genuine and functioning democracy.

The amended Article 34 would enable the outright stripping of the right to participate in elections; the amended Article 42 would limit the right to freedom of association, by requiring political parties to "put the interests of the nation first"; the amended Article 49 creates a similarly vague national interest obligation for all Cambodian citizens, while the amended Article 53 would oppose any foreign interference in Cambodia's internal affairs in "any form". The amended Article 118 removes secretaries of states from the Council of Ministers.<sup>2</sup> The vague nature of the amendments means they could be misused to justify the introduction of wide-ranging sanctions punishing the legitimate exercise of fundamental freedoms, including engaging in any discussion of Cambodia's rapidly deteriorating human rights situation.

The amendments follow a rushed and secretive internal consultation process that failed to seek the views of civil society and the Cambodian public at large. Prior to being sent to the Council of Ministers, the draft amendments were not published by the RGC, in disregard of the principle of participatory democracy. The Constitution is the supreme law of Cambodia, and any proposed revisions should ensure the voices of the people are fully heard. This rushed and secretive process is in flagrant disregard of the democratic principles which underpin the 1993 Constitution, as well as the 1991 Paris Peace Accords.

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<sup>1</sup> Art. 34; Art. 42; Art. 49; Art.53; and Art. 118.

<sup>2</sup> Andrew Nachemson and Mech Dara, 'Updated: Lèse majesté law among changes to Cambodia's Constitution and Penal Code', *The Phnom Penh Post*, (02 February 2018, last updated 05 February 2018) <http://bit.ly/2nUPBs3>.

Also on 14 February, the National Assembly approved a draft amendment to Cambodia's Criminal Code, in order to add a new offense, Article 437 *bis*, entitled 'Insulting the King' (also known as *lèse-majesté*). 'Insulting' is defined as "any speeches, gestures, writings, paintings or items that are affecting the dignity of individual person(s)". Individuals convicted under the draft amendment will face one to five years imprisonment and between US\$500 to US\$2,500 in fines. A legal entity<sup>3</sup> may also be convicted and fined from US\$2,500 to US\$12,500. In addition, legal entities may be dissolved, placed under legal supervision, and prohibited from carrying out certain activities if found guilty under this new offense.

Such an amendment would be wholly inconsistent with Cambodia's constitutional and international human rights obligations. Article 19(3) of the International Covenant on Civil and Political Rights provides that any restrictions to the right to freedom of expression (such as a *lèse-majesté* law) must be necessary, and strictly proportionate to a legitimate aim (in this case, the rights or reputations of others).<sup>4</sup> In this case, the text of the draft amendment is firstly unnecessary, as existing defamation and insult laws already protect the King. The severe punishments are also wildly disproportionate to the aim of the law. Finally, the vague wording of the law is deeply problematic and open to abuse. As seen in certain other countries, loosely worded *lèse-majesté* laws can easily be abused to target individuals who express legitimate criticism. According to the United Nations Special Rapporteur on Freedom of Opinion and Expression, David Kaye, "[p]ublic figures, including those exercising the highest political authority, may be subject to criticism, and the fact that some forms of expression are considered to be insulting to a public figure is not sufficient to justify restrictions or penalties."

These proposed amendments come in the context of a wide-ranging assault on the Cambodian people's ability to exercise their rights and freedoms. This systematic crackdown on independent voices – encompassing the shutdown of independent newspapers, radio stations, CSOs and political parties, and the arrest and harassment of human rights defenders – leaves little doubt as to the intentions behind these proposed legal developments. These amendments would provide yet more legal weaponry to a government that appears determined to eliminate all forms of peaceful dissent, pluralism, and open political debate. We call upon the Cambodian authorities to abide by their obligations under the Cambodian Constitution and international human rights law, by rejecting these proposed amendments outright.

This statement is endorsed by:

1. ALTSEAN-Burma
2. ASEAN Parliamentarians for Human Rights (APHR)
3. Asian Forum for Human Rights and Development (FORUM-ASIA)
4. Asian Network for Free Elections (ANFREL)
5. Boeung Bram community
6. Boeung Kak Community

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<sup>3</sup> Including CSOs, trade unions, political parties and companies.

<sup>4</sup> The UN Human Rights Committee has held that, in the context of political discourse, the value placed upon uninhibited freedom of expression is "particularly high." Moreover, laws that restrict the freedom of expression must be formulated with sufficient precision as to enable an individual to regulate his or her conduct accordingly. United Nations Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011). Paragraphs 38 and 25. <http://bit.ly/1xmySgV>

7. Boeung Trabek Community
8. CamASEAN Youth's Future (CamASEAN)
9. Cambodia Indigenous People Organization (CIPO)
10. Cambodian Center for Human Rights (CCHR)
11. Cambodian Food And Service Workers Federation (CFSWF)
12. Cambodian Human Rights and Development Association (ADHOC)
13. Cambodian Independent Teacher Association (CITA)
14. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
15. Center for Human Rights and Development (CHRD) (Mongolia)
16. Center for Peace Education-Miriam College (Philippines)
17. Chroy Changva Community
18. Coalition for Integrity and Social Accountability (CISA)
19. Coalition of Cambodian Farmers Community (CCFC)
20. Committee for Free and Fair Election in Cambodia (COMFREL)
21. Community 92
22. Community Resource Centre (CRC) (Thailand)
23. Cooperation Committee for Cambodia (CCC)
24. Covenants Watch (CW) (Taiwan)
25. FIDH - International Federation for Human Rights
26. Free and Fair Election Foundation of Afghanistan (FEFA)
27. Gender and Development for Cambodia (GADC)
28. GZO Peace Institute (Philippines)
29. Human Rights Watch (HRW)
30. IFEX
31. IM Center for Peace and Dialogue (Indonesia)
32. Independent Democracy of Informal Economy Association (IDEA)
33. Indigenous Youth at Prome Community
34. Indonesia Legal Aid Foundation (YLBHI)
35. Indradevi Association
36. Institut Titian Perdamaian (Indonesia)
37. Institute for Political and Electoral Reform (IPER)
38. Judicial System Monitoring Program (JSMP)
39. Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA)
40. Kuoy Ethnic Community, Prome Village, Preah Vihea province
41. Land Community, I Village, Preah Sihanouk province
42. Land Community, Prek Chik Village, Koh Kong province
43. Land Conflict Community, Skun Village, Siem Reap province
44. LICADHO Canada
45. Minority Rights Organization (MIRO)
46. Mother Nature
47. National Citizens' Movement for Free Elections (Namfrel)
48. Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC)
49. Odhikar (Bangladesh)
50. People Center for Development and Peace (PDP-Center)
51. People's Empowerment Foundation (PEF) (Thailand)
52. People's Action for Free and Fair Elections (PAFFREL)
53. Phnom Bat Community

54. Ponlok Khmer (PKH)
55. Progressive Voice
56. Railway Station, Tuol Sangkae A Community
57. Regional Coordinator for the Southeast Asian Conflict Studies Network (SEACSN)
58. SILAKA
59. Strey Klaingsang Community
60. Taiwan Association for Human Rights (TAHR)
61. The Alliance for Conflict Transformation Organization (ACT)
62. Think Centre (Singapore)
63. Transparent Election Foundation of Afghanistan (TEFA)
64. World Organisation Against Torture (OMCT)