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ការិយាល័យនៃទីស្តីការគណៈរដ្ឋមន្ត្រីស្តីពីសិទ្ធិមនុស្សប្រចាំកម្ពុជា



The International Context of the Right to Peaceful Assembly

Presentation at the national workshop on a draft law on peaceful assembly, Phnom Penh, 9-10 February 2006

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Thank you for inviting us to participate in this workshop which we hope will be one of many public consultations on such an important law.

This workshop is a step on the road to formulating for Cambodia a new national law on peaceful assembly. Cambodia needs good laws and it needs just laws. The existing law of 1991 is now widely regarded as outdated and defective; in particular, it does not conform either with the overriding provisions of the Cambodian Constitution or international standards as set out in the international human rights treaties to which Cambodia is a party.

At the same time, the situation with regard to the exercise of the right to peaceful assembly has given rise to considerable concern. Applications have been routinely rejected on arbitrary grounds. Where demonstrations or gatherings have taken place without permission, excessive force has sometimes been used against otherwise peaceful protestors, and so on. The existing law clearly is not providing the protection required by the Constitution and international treaties and must be replaced.

The starting point for any new law must be these national and international standards, and it is worth reminding ourselves here today of what they say:

Article 41 of the Constitution states:

“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 order and national security. The regime of the media shall be determined by law.”

Furthermore, Article 37 states that “the right to strike and to non-violent demonstration shall be implemented in the framework of a law”.

These constitutional provisions should be read alongside the international standard on peaceful assembly set out in the International Covenant on Civil and Political Rights and other treaties, which are themselves incorporated into the national law of Cambodia. Article 21 of the Covenant states:

“The right to 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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

The right to assemble is enjoyed equally by all members of society, which is why the right is also recognized and protected in article 5 (ix) of the International Convention on the Elimination of All Forms of Racial Discrimination and article 15 of the Convention on the Rights of the Child. It is also implicit in article 8 of the International Covenant on Economic, Social and Cultural Rights which protects the right to organize trade unions.

The Covenant on Civil and Political Rights states quite clearly that people should, in principle, be able to exercise their right to peaceful assembly without undue restriction. Where restrictions are absolutely necessary, they must (i) be imposed in conformity with the law, (ii) serve one of the purposes listed in article 21, and (iii) be necessary in a democratic society for attaining this purpose. In other words, any restriction on peaceful assembly is an exception; it cannot be the rule. Any interference with the right to peaceful assembly must be reasonable and proportional to its purpose.

The task set before us today is how to implement all elements of article 21, and articles 31 and 41 of the Constitution, so as to ensure that all citizens of Cambodia can enjoy their right to peaceful assembly within the rule of law.

Peaceful assembly is a fundamental element of any democratic society; it is an essential corollary to the right to freedom of opinion and expression which is itself recognized in the Constitution and in international law. People who hold strong opinions on any subject, or who disagree with the Government on certain issues, must be permitted to express their ideas or objections openly in public, if they are to enjoy fully their right to free expression. Many demonstrations have nothing to do with party politics. But even when they do, strong, democratically-elected and responsive governments have nothing to fear from the exercise of these constitutionally-protected rights, which perform a necessary democratic function in allowing citizens to express their frustrations and views. Indeed governments have a responsibility to nurture healthy debate and constructive criticism for the betterment of society. Peaceful assembly is an accepted part of the normal democratic process and essential for the effective participation of citizens in the public life of their country.

At the same time, it is important to understand that international law recognizes the right to assemble when it is *peaceful*, which is why the Covenant permits the restrictions for the protection of public order. Demonstrations that degenerate into unrest and violence are as counterproductive to those demonstrating as they are worrisome to the authorities, and therefore those exercising their right to assemble bear a responsibility to do so peaceably and in accordance with the law. Provided they adhere to this responsibility, no further restrictions on the exercise of this right should be necessary.

The Office of the United Nations High Commissioner for Human rights welcomes the opportunity provided by this workshop to engage in a constructive public debate on this draft law, and we very much hope that the discussions over the next two days will lead to improvements in the draft in order to ensure that it conforms to the standards set by the Constitution and international human rights law. The draft law, as it

stands, whilst encouraging in some respects, continues to trouble our Office in a number of important aspects. For example, we consider that a system of notification would be preferable to the proposed system of permits. Furthermore, the information which organizers would be required to provide in order to obtain a permit, including the content of banners and signs, is incompatible with human rights guarantees of freedom of opinion and expression. And we are concerned that the regime of penalties imposed on organizers for breaches of the law is much more severe than under the 1991 law.

We would urge all participants in this workshop and in others to come to ensure that the draft, in all its aspects, conforms to the letter and spirit of the Constitution and international treaties to which Cambodia is party. It is important that this process is not rushed and that there is adequate time for a proper consultative process. In many countries, a law such as this would be subject to a long period of public discussion and a robust process of refinement during the parliamentary process, in order to ensure that it is satisfactory in all aspects and commands public support. Indeed, it would not be surprising to see public demonstrations for and against such a law, which perhaps shows why peaceful assembly is such an important part of any democratic society!

The Office of the High Commissioner in Cambodia and in Geneva stands ready to provide technical assistance to the Government to improve the draft.

This is a precious opportunity to enact a good law for Cambodia, which will send a clear message to the world that Cambodia respects human rights, including the rights to freedom of opinion and expression, and allows its citizens to exercise these rights in open and free association with others.

Thank you.