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SUBMISSION TO THE HUMAN RIGHTS COMMITTEE OF THE UNITED NATIONS FOR ADOPTION OF THE “LIST OF ISSUES” (LOI) TO GUIDE CONSIDERATION OF THE THIRD PERIODIC REPORT BY THE GOVERNMENT OF CAMBODIA ON COMPLIANCE UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Presented to the Human Rights Committee by A Working Group of Cambodian Human Rights and Civic Organizations in North America, Australia and Europe.

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I. Summary

This submission on the adoption by the United Nations’ Human Rights Committee of the List of Issues to guide consideration of the Committee’s official review of the government of Cambodia’s Third Annual Compliance Report under the ICCPR is based on a review of recent policies and practices of the Hun Sen government that seriously threaten the ability of Cambodia to meet its obligations under the Civil and Political Rights Covenant and many other international human rights treaties and requirements. It also is based on the government of Cambodia’s Third Periodic Report under the ICCPR, submitted on 2 April 2019, on the listing of concluding observations and recommendations that the Human Rights Committee adopted as part of its previous review of the government of Cambodia’s compliance under the ICCPR, and on the Universal Periodic Review of Cambodia conducted by the UN Human Rights Council’s UPR Working Group in September, 2019.

Of particular concern, and requiring special attention, are three current and recent developments that put into serious question whether the Hun

Sen government is willing and able to comply with the core provisions of the ICCPR that they obligated themselves to observe when they ratified the ICCPR on May 26, 1992. These are particularly urgent matters involving present and developing threats and abuses that must be addressed and given the highest priority. They include:

1. The proposed adoption of an Emergency Powers Act that, under the guise of protecting the country from the coronavirus health crisis, would empower Prime Minister Hun Sen and his government to override, without any checks or limitations, a number of fundamental human rights standards and protections embodied in the ICCPR and many other international treaties to which the government of Cambodia is a party. The threat to human rights protections posed by the proposed law takes on added significance given the related major abuses of core human rights standards that are reflected in the government's abolition of the leading opposition political party in the lead-up to the national elections in 2018, their harsh repression of civil society groups and the free and independent media, and their stifling of dissent and criticism of any kind by imprisoning and threatening with criminal prosecution leaders of political opposition groups and civil society organizations. Given this demonstrated policy of harshly repressing criticism and dissent, the adoption of a law that would allow for the imposition of what Human Rights Watch termed as "sweeping, undefined, and unchecked" emergency powers, along with lengthy prison sentences and massive civil fines for violations, presents a particularly serious threat to the principles embodied in the ICCPR. The arrest and jailing of reporter Sovann Rithy, and the summary revocation of the broadcasting license of his publishing group TVFB on 8 April, for posting direct quotes of Prime Minister Hun Sen on his policies for handling the COVID-19 crisis, are examples of the dangers that the Emergency Powers Act pose;
2. The convening of a criminal trial for treason that is now taking place against Kem Sokha, the leader of the political opposition party, based on totally unfounded allegations of "conspiring with

the government of the United States and a number of other entities” to seek the violent overthrow of the Hun Sen government . This trial is the leading symbol of the government’s recent and increasing efforts to repress a wide range of free speech and free association rights on a widespread basis, as a means for guaranteeing continued and ongoing autocratic control; and,

3. A series of highly repressive policies and practices that suppressed and eliminated any form of meaningful and effective political opposition during the national elections of 2018, so as to assure the continuance in power of the thirty-five year reign of Prime Minister Hun Sen’s government. The opposition political party was outlawed; the leaders of the opposition were arrested and/or threatened with criminal prosecution; thousands of national and local elected office holders from the political opposition lost their jobs and were forced into exile when their political party was outlawed; members of civil society who criticized government policies and practices were harshly repressed; and independent media outlets were either closed or taken over by the government, or severely restricted in their news gathering and broadcasting activities.

We urge the Human Rights Committee in its adoption of its “List Of Issues” for Cambodia, to give prominent attention to these very immediate and increasingly disturbing trends in how the government of Cambodia is suppressing internationally recognized human rights standards set out in the ICCPR.

In addition, set out below are a number of specific issues and areas of concern relating to individual provisions and requirements of the ICCPR that deserve priority attention in the “List of Issues” for Cambodia. We urge the Human Rights Committee to give special attention to these concerns as it adopts its List of Issues for Cambodia, and then plans its official session to review the government’s compliance under the ICCPR scheduled for the beginning of 2021.

A . The Proposed Emergency Powers Act, and Its Impact on the Constitutional and Legal Framework Within Which the Covenant is Implemented (Article 2, and limits on derogation of rights as set out in Article 4).

As Human Rights Watch, Amnesty International and many other independent human rights monitoring agencies have powerfully and urgently indicated, the Emergency Powers Act represents a broad-based threat to the fundamental framework of protections of the ICCPR, by giving the government the power to limit and control the exercise of a wide range of protected human rights activities on an unfettered basis.

1. How can the government assure that the imposition of the Emergency Powers provided for in the Act will not be used to restrict the exercise of human rights protections set out in the ICCPR in ways that go beyond, or are unrelated to, promoting health needs connected to the coronavirus?
2. What limitations, controls, and guarantees will be applied to accomplish this purpose and prevent undue violations of the provisions of the ICCPR under the guise of protecting public health?

B. Treason Trial of Kem Sokha, Leader of the Political Opposition Party, Indicative of Widespread Restrictions on Civil Society Activities, Free Association, Free Speech and Free Press Rights (Articles 7, 14 and 26 – Fair Trial; and Articles 19, 21 and 22— Freedoms of expression, association and assembly).

Political opposition leader Kem Sokha currently is being subjected to a criminal trial on charges of committing treason against the state, essentially for engaging in peaceful and legitimate political activities challenging the government and seeking democratic regime change through the electoral process. Indicative of the spurious nature of the charges against him, the criminal complaint alleges that the United States and European governments, and many other entities, including media outlet such as the Voice of America and Radio Free Asia “conspired with Kem Sokha to seek the violent overthrow of the government of Cambodia.”

This politically motivated “show trial” is indicative of a wide ranging series of harshly repressive policies and actions that the Hun Sen government has been engaging in to prevent any meaningful and legitimate form of criticism or opposition to the actions of the government. Civil society groups have been banned, or their activities severely restricted. Critics of the government have been arrested, physically assaulted, and threatened with criminal prosecutions similar to the one that Kem Sokha has been subjected to. Opposition members of the National Assembly have been brutally beaten by members of the Prime Minister’s own Personal Bodyguard Unit. Legitimate media outlets such as the Cambodia Daily, the Voice of America, Radio Free Asia, and the Phnom Penh Post have been either closed down, or subjected to controls and restrictions by the government.

3. On what grounds does the government claim that the exercise of peaceful and legitimate forms of protest and dissent, and other forms of normal civil society and political opposition activities recognized and protected under the ICCPR, and under the provisions of the Paris Peace Accords that established modern Cambodia, can be treated as “threats to the security and stability of the state,” treated as forms of “treason,” and prohibited, restricted and subjected to criminal prosecution, on that basis?
4. Are judicial and law enforcement authorities in Cambodia acting on a fair and independent basis under the rule of law, and subject to the requirements and standards of the ICCPR, or are they operating as instruments of the political will and purposes of the Hun Sen government, aimed at repressing criticism, and the exercise of rights protected under the ICCPR?

C. Elimination of Political Opposition and Key Elements of the Democratic Process (Article 25, and freedom of association protections in Article 22).

One of the key elements of the framework for the establishment of the current state of Cambodia that was approved by the international community, the United Nations, and the government of Cambodia itself under the terms of the Paris Peace Accords of 1991, was that the principles

of democracy and free and fair elections would form the basis for governance and the political process in Cambodia. These principles also are endorsed and protected under Article 25 of the ICCPR. But by outlawing and closing down the major political opposition party, and by subjecting its leaders and members to harsh physical assaults and threats of arrest, imprisonment and criminal prosecutions similar to the one now taking place in the treason trial of Kem Sokha, the Hun Sen government has rejected these principles of democratic governance in favor of a one-party system of authoritarian and dictatorial control. As one example of these repressive tactics, two opposition members of the National Assembly, Nhay Chamroeun and Kong Saphea, were brutally beaten outside of the Assembly building on October 27, 2015, and members of Hun Sen's personal bodyguard unit, under the command authority of his son Hun Manet, were implicated in the attacks. The attackers were given minor sentences, and later were promoted on their return to duty. Similar attacks, arbitrary arrests, threatened criminal trials, and even executions (as in the cases of Kem Ley, Chea Vichea, and ChhuthVuthy) have become an increasing part of the policies and practices of the Hun Sen government, aimed at keeping them in power indefinitely and without meaningful limits and legal restraints.

5. When will restrictions on the legitimate activities of the leading political opposition party in Cambodia, including criminal prosecutions and other forms of repression against leaders of the opposition, and restrictions on democratic political activities and operations by civil society organizations, end?
6. Will the government allow independent, effective and transparent investigations take place of the murders of Kem Ley and Chea Vichea, the brutal beatings of leaders of the political opposition, and the misuse of the judicial and law enforcement processes to punish and intimidate critics of government policies?

D. The Elimination and Control of Free Media Operations (Article 19)

Freedom of the press is an essential element of a free and democratic society, as recognized and protected under the free speech and free dissemination of information protections of Article 19 of the ICCPR. Without the active and independent monitoring and criticism of government actions that the operation of a free press provides, there is nothing to prevent a government from resorting to autocratic and harshly repressive practices to maintain its power and control, as is currently the case with the Hun Sen regime, entering its 36th year of governance, with Hun Sen as one of the world's longest serving heads of state.

7. Does the government recognize that allowing media outlets such as the Cambodia Daily, the Phnom Penh Post, Voice of America and Radio Free Asia to operate freely, and with threats and restrictions from the government, is guaranteed under Article 19 of the ICCPR?
8. What steps will the government be taking to remove the restrictions and threats of criminal prosecution that have been imposed on legitimate media outlets?

E. Arbitrary Long-Term Detention, Physical Assaults, and Other Harshly and Punitive Forms of Repression That Constitute Torture (Article 2, Para. 3; and Articles 6, 7 and 21).

It is widely recognized in international law that many forms of harsh repression, such as arbitrary long-term imprisonment, physical assaults, and arbitrary executions, constitute torture under the provisions of the ICCPR and the Convention Against Torture. Since these types of punishments have become a key element of the policies and practices of the Cambodian government, as reflected in the treatment of critics and political opponents of the Hun Sen regime, this means that the government has embraced the use of torture in violation of the standards set out in the ICCPR and in the Convention Against Torture. As examples, the brutal physical attacks against members of the National Assembly Nhay Chamroeun and Kong Saphea by members of Hun Sen's Personal Bodyguard Unit; the assassination of Kem Ley; the long-term detention of Meach Sovanarra, the Press Officer for the political opposition, detained in

the notoriously harsh conditions of Prey Sar Prison for three years of a twenty year sentence, essentially for being present and making a speech at an opposition political rally that turned violent; and the subjection of Kem Sokha, the leader of the political opposition, to long-term house arrest, periodic arbitrary detention, and prosecution for treason, all must be considered violations of the anti-torture provisions of the ICCPR.

9. Does the government understand that subjecting leaders and members of the political opposition party to arbitrary and unfounded criminal prosecutions, physical assaults, and threats that force them into involuntary exile on a wide-spread and indiscriminate basis, as part of a strategy of disbanding and outlawing legitimate political opposition, violates numerous provisions and standards of the ICCPR, including the anti-torture requirements?
10. What steps will the government of Cambodia take to end the policy of using criminal prosecutions and arbitrary arrests and imprisonment of members of the political opposition and other critics of government policies and actions?

The Working Group of Cambodian Human Rights and Civic Organizations in North America, Australia and Europe includes the following organizations:

(1) Alliance Cambodia Canada (ACC); (2) Cambodian Americans for Human Rights and Democracy (CAHRAD); (3) Cambodian Alliance for the Paris Peace Agreements on Cambodia (CAPPAC); (4) Cambodian Australian Federation (CAF) (5) Cambodia Borders Committee (CFC-CBC); (6) Cambodia Border Institute (CBI); (7) Foundation of Khmer Samaki (FKS); (8) International Khmer Assembly (IKARE); (9) Khmer Alliance Foundation (KAF); (10) Khmer Association of Hampton Road Virginia (KAHRV); (11) Khmer People Network for Cambodia (KPNC); (12) Khmer Veterans Freedom Fighters Association (KVFFA); (13) MeBoun Foundation (MF); (14) Overseas Khmer Summit (OKS); (15) Our Mutual National Interests International (OMNI); (16) Pro Démocratie pour le Cambodge du Canada (PDCC); and, (17) Friends of Mount Carmel (FOMC).

