

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 42/37, 42/22, 42/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the plan to adopt **the Draft Law on the Management of the Nation during State of Emergency**.

We understand that the law is to be enacted to enable the strongest protection of the right to health during the 2020 Covid-19 pandemic. Nevertheless, we are concerned that, if adopted as is, the law may restrict the right to freedom of expression, right to freedom of association and peaceful assembly, and right to movement as provided in the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992. Further concern is in relation to the broadly-worded language concerning power and penalty, including prison terms of up to ten years for those found in violation of the law.

According to the information received:

On 31 March 2020, the Draft Law on the Management of the Nation during State Emergency was approved during a cabinet meeting chaired by the Prime Minister H.E. Samdech Hun Sen. The draft law was reportedly reviewed by the Council of Ministers and was submitted to the National Assembly on 3 April, who began reviewing the draft law on 7 April. The President of the Senate was requested by the Prime Minister on 3 April to convene an extraordinary session to consider the Draft Law as soon as it is passed by the National Assembly. Thereafter, it will be sent to the King for promulgation. According to the Draft Law, as it stands, emergencies can be declared for three months, which can be extended for additional three-month periods. Regular reviews of the necessity of emergency laws are required by international law.

While the Government's justifications to adopt the law were centred on the response to the Coronavirus/Covid-19 pandemic, the draft law does not appear to

be sufficiently focused on measures necessary to address legitimate public health needs. We are concerned that the law's language on the protection of national security, public order, and the lives and health of its citizens as well as property and the environment have been worded too broadly and threaten to violate Cambodia's international human rights obligations.

The draft law provides for a wide range of overly repressive measures which do not appear in compliance with the ICCPR. Derogations from these rights require that the conditions for a state of emergency are present in accordance to article 4 (1) of the ICCPR and that the derogations do not go beyond what is "strictly required by the exigencies of the situation". In its General Comment No. 29 on state of emergency, the Human Rights Committee highlighted that governments need to "provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation."¹ Moreover, the duration and geographical coverage must be tailored to a particular situation. Measures derogating from obligations under the ICCPR are designed to be "strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent", in this case the threat to the existence of Cambodia as a nation.² Please also recall the notification requirements in Article 4(3) ICCPR for any exercise of the right of derogation.

We are of the view that the provisions raise multiple concerns vis-à-vis international human rights law and standards. Under article 5 of the draft law, after the national state of emergency is imposed, the Government is empowered to restrict the right to freedom of movement, freedom of association, and could impose other measures including mobilisation and relocation of people and closure of public and private places. The said article also allows the Government to place measures on the mobilisation, revocation, and management of possessions and services, in which compensation to these actions shall be determined later by the Government.

Of particular concern with regard to the ramifications to the right to freedom of expression are the broadly conditioned governmental powers stipulated under draft article 5 (10) to monitor, observe and gather information from all telecommunication mediums through all means necessary and under draft article 5 (11) to prohibit or restrict the distribution or dissemination of information that may cause fear to the public or unrest, or harm to the national security, or cause confusion about the state of emergency. Draft article 5 (12), which is vaguely written, allows the Government to put in place other additional measures that are deemed appropriate and necessary in response to the State of Emergency.

¹ Human Rights Committee, General Comment No. 29: State of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001)

² The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, Annex, Principles 15-18

Furthermore, under draft article 7, individuals who obstruct the execution of the measures listed in draft article 5 could be subjected to one to five years imprisonment and a fine of one million to five million Riels (approximately US\$244 to 1,220). If such obstruction causes civil unrest or affects national security, the individuals could be subjected to five to ten years imprisonment. In addition, article 8 articulates that individuals who disobey measures taken under article 5 shall be convicted with one month to one year imprisonment and a fine of 100,000 to one million Riels (approximately US\$24 to US\$244). If such action causes civil unrest, the punishment could be increased to one year to five years imprisonment and a fine of one million to five million Riels (approximately US\$244 to US\$1,220) will be imposed.

Draft article 9 outlines the criminal responsibility of legal entities, which raises concerns with regard to the effect this may have on civil society and human rights organisations. Entities that violate draft article 7 of the law could be fined for one hundred million to one billion Riels (approximately US\$24,400 to US\$244,000). Entities that violate draft article 8 could be fined with fifty million to one hundred million Riels (approximately US\$12,213 to US\$24,427). The draft law also outlines that individuals associated with those entities could further be criminalised under article 186 of the Criminal Code where they could be subjected to forfeiture of certain rights permanently or for a period of five years, prohibition from practicing a profession in connection with the offense permanently or for a period of five years, local exclusion for the period of no more than ten years, prohibition for nationals from leaving the Kingdom for a period not exceeding five years, prohibition for non-Cambodians from entering the Kingdom permanently or for a period of no more than five years, and confiscation of any instruments and materials used in committing the offense. Draft article 10 outlines that competent officials who violate the purpose of the law shall be held accountable in accordance with Cambodian law but does not stipulate any specific provision or penalty.

While we do not wish to prejudge the accuracy of the information received, we express our deep concern with the far-reaching scope of the draft law and its impact on the enjoyment of civil and political rights. Particular concern is in relation to the vaguely worded clauses including the generality of its application and its lack of compatibility with the principles of necessity and proportionality. We are further concerned about the vaguely worded offences under draft articles 7, 8 and 9 which could be subjected to misinterpretation or misapplication. We are also concerned with the lack of an adequate oversight mechanism to prevent, safeguard, and provide remedy in case there is an abuse of authority, as the Government is only obliged to report about the measures taken to the National Assembly and Senate. We encourage review and reconsideration of the scope of protected rights to be restricted by any emergency declaration, and clearly stated oversight of the authorities designed to exercise such restrictions. In particular, we encourage explicitly mandated judicial oversight for any restriction on fundamental rights during a state of emergency.

We would like to bring to your Excellency's attention the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/HRC/37/52 on the use of emergency powers. In this report,

the Special Rapporteur pays particular attention to the precision requirements of international law in defining what kind of threat can give rise to the invocation of emergency powers (para. 3). Moreover, she notes the value of seeking to use the ordinary law first when faced with exigency or crisis (para. 6), not least to avoid the range of human rights compliance challenges that follow from the resort to emergency powers.

While we understand your Excellency Government's plan to adopt this law, we urge that the appropriate legal measure shall strike the right balance with the respect for human rights, including civil and political rights, as they are fundamental to the success of public health response.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure the compliance of the draft law with Cambodia's obligations under international human rights law and standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) next week. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia

Leigh Toomey
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Dainius Puras
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