

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the independence of judges and lawyers

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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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 42/37, 41/12, 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the Law on preventive measures against the spread of COVID-19 and other Severe and Dangerous Contagious Diseases.**

According to the information received:

On 28 February 2021, the Government of Cambodia introduced a draft Law on preventive measures against the spread of COVID-19 and other Severe and Dangerous contagious diseases. The National Assembly adopted the draft Law on 5 March 2021. Neither consultations with stakeholders including civil society nor human rights assessments were undertaken prior to the adoption of the law by the National Assembly. The Senate adopted the Law on 11 March 2021 and it was promulgated by the acting Head of State on the same day.

The Law provides the Government with the power to restrict or prohibit travel, meetings and gatherings, prohibit or restrict certain business operations or professional activities, as well as the authority to block or restrict certain areas or places. The Law also contains some provisions that provide for severe and disproportionate punishment for individuals, who do not comply with the health, administrative and other measures set out in the Law. These include administrative and penal provisions such as suspension or removal of licenses and closing of business; transactional fines, monetary fines and prison sentences ranging from six months up to 20 years.

Article 4 of the Law grants power to the Royal Government of Cambodia to ban or restrict any gatherings or demonstrations which may cause the spread of COVID-19. It also allows for restrictions or bans on movement of people from one place to another or for blocking access to any place on COVID-19 grounds.

Article 7 of the Law provides that "an act of avoiding quarantine or escaping from a quarantine venue during a quarantine period as defined by the Ministry of Health or competent authorities... where such act leads to the infection of COVID-19 to other people" shall be punishable between six months and three years' imprisonment and fines between 2 million riels (approximately USD 500) and 10 million riels (approximately USD 2,500).

Article 8 stipulates, “An act of avoiding a mandatory treatment or escaping from a treatment venue as determined by the Ministry of Health or an attempt to commit this act shall be punishable by imprisonment from one year to five years and a monetary fine from 5 million riels (approximately USD 1,250) to 20 million riels (approximately USD 5,000). It shall be punishable by imprisonment from five to ten years, where such act leads to the infection of COVID-19 to other people.”

Article 9 provides that “an act of intentional transmission of COVID-19 to other people by any means shall be punishable by imprisonment from five years to ten years. It shall be punishable by imprisonment from 10 years to 20 years where such an act is committed by an organized group of people or an organized entity”.

Article 10 states that “without taking into account other criminal offenses, an act of intentional infringement of an administrative measure imposed in accordance with this law... shall be punishable by imprisonment from six months to three years and a monetary fine from 2 million riels (approximately USD 500) to 10 million riels (approximately USD 2,500). It further provides for imprisonment from two to five years and fines from 5 million riels (approximately USD 1,250) to 20 million riels (approximately USD 5,000) where such act leads to serious impact on public health.

Article 11 states that “an act of intentional obstruction or deterrence of the enforcement of a measure imposed in accordance with this law shall be punishable by imprisonment from six months to three years and monetary fine from 2 million riels (approximately USD 500) to 10 million riels (approximately USD 2,500). It shall be punishable by imprisonment from two years to five years and a monetary fine from between 5 million riels (approximately USD 1,250) to 20 million riels (approximately USD 5,000), where such act leads to the infection of COVID-19 to other people or serious impact on public health.”

Article 15 of provides that “all measures as well as penalty provisions of this law applicable for COVID-19 shall apply *mutatis mutandis* to other severe and, dangerous contagious diseases to be determined by the Ministry of Health under the scope of this law.”

While we do not wish to prejudge the accuracy of the information received, we wish to express our concern at the above information, which could be in contravention to provisions of the various international human rights instruments, notably the International Covenant on Civil in Political Rights (ICCPR) and the International on Covenant on Economic, Social and Cultural Rights (ICESCR), to which Cambodia is a State party. The Law appears to be in contravention to the various freedoms and rights protected including under the two Covenants, particularly the right to freedom of peaceful assemblies and association (ICCPR article 21, 22), freedom of movement (ICCPR article 12), the right to health (ICESCR article 12) and the right to work (ICESCR article 6). In addition, these provision may also be in breach of articles 36 and 37 of the Cambodian Constitution, which protects the right to freedom of peaceful assemblies and the right to choose an occupation.

Freedom of movement is fundamental in everyone's life. It allows people to travel to take up jobs, visit health centers, go to school, seek, and obtain essential services, which are important for individual's daily lives. It also ensures free movement of capital, goods and services. Although article 12(3) of the ICCPR allows for some restrictions on freedom of movement under public health grounds, the restrictions must not only be provided by law, but must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant.¹ The UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association has reemphasised that it is imperative the COVID-19 crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly in particular.² Furthermore all restrictions of the rights to freedom of peaceful assembly must be proportionate and necessary to be in conformity with international human rights standards. The very harsh punishments, especially the prolonged prison sentences that are possible for violations of the Law do not seem to fulfil these proportionality and necessity standards. Furthermore, efforts should be made to ensure equitable access to remote education, local healthcare and access to services through other mechanisms.

We are concerned that article 4 of the Law empowers the Cambodian Government to “prohibit or restrict employment or occupational activities and trading commodities or products” out of the concerns of COVID-19 or other designated pandemics. Article 4 appears to be in contravention of Article 6 of the ICESCR, which guarantees “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. The right to work is an individual right and every individual is entitled to it. It encompasses all forms of work, whether independent work or dependent wage-paid work. It includes the right of every human being to decide freely to accept or choose work. This implies not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment.³

Further, we are concerned that while the Law focuses on addressing COVID-19, it could be applied beyond COVID-19 to other “severe and dangerous and contagious” diseases by determination of the Ministry of Health. These terms are not defined and there are no limitations on the length of time a disease may be the subject of restrictive measures or a provision requiring a regular review of the necessity of the measures. The imposition of public health and other measures during a health emergency should be aimed at the overall protection of public health, as opposed to simply limiting spread. A narrower aim risks ignoring the direct and indirect health impacts of restrictive measures, particularly as they relate to marginalised and vulnerable groups.

We are equally concerned that the administrative and penal measures provided in the law appear to be grossly disproportionate. Excessive prison sentences and fines are proposed for merely breaching health and administrative measures. International human rights law prohibits any forms of direct and indirect disproportionate punishment and requires authorities to exercise its coercive power in a way that is proportionate to the offender's wrongdoing. For example, the Human Rights

¹ General Comment No. 27 of the United Nations Human Rights Committee on Article 12 of the ICCPR, para. 18.

² UN expert on the rights to freedoms of peaceful assembly and of association: “States responses to Covid 19 threat should not halt freedoms of assembly and association” (2020): <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

³ General Comment No. 18 of the United Nations Human Rights Committee on Article 6 of the ICESCR, para 6.

Committee expressed concern that mandatory minimum sentencing can lead to the imposition of punishments that are disproportionate to the seriousness of the crimes committed, raising issues of compliance with various articles of the ICCPR.⁴ Fines envisaged in the Law also appear to be excessive for average Cambodians. According to the Asian Development Bank, 12.9 per cent of the total population of about 15 million Cambodians lived below the national poverty line (data from 2018), while 8.3% of employed population had less than USD 1.90 Purchasing Power Parity a day.⁵ Imposing fines of up to USD 5,000 for breaking health or administrative measures under the Law are vastly disproportionate to the earnings of average Cambodians.

The Law contains an offence for the act of intentionally spreading COVID-19. We are concerned at how intentionality would be interpreted and determined in courts, especially given the high proportion of asymptomatic infections and limited on-demand testing. Such provisions may increase stigma and discrimination, and may not be effective in reducing transmission, as they discourage people from seeking care.

We urge your Excellency's Government to revisit the Law, make it in line with international human rights standards that protect the rights and freedoms of Cambodians.

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 explain how is the Law in compliance with international human rights standards and how will it protect the rights to freedom of assemblies and the right to work as enshrined in ICCPR and ICESCR?
3. Please explain if consultations with ministries and other state institutions, civil society activists, academia and other stakeholders including the United Nations were held during the drafting of the law.
4. Please explain how are excessive fines and harsh penalties proportionate and how will they assist in the prevention of the Pandemic.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the

⁴ Concluding observations of the Human Rights Committee: Australia. 24/07/2000. A/55/40, paras.498-528. (Concluding Observations/Comments).

⁵ Asian Development Bank's data in April 2020: <https://www.adb.org/countries/cambodia/poverty>

accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Rhona Smith

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