

# **CAMBODIA**

**Civil Society Report on the Implementation of the ICCPR  
(Replies to the List of Issues CCPR/C/KHM/Q/2)**

**To be submitted for the Review of the Second Periodic Report of  
CAMBODIA (CCPR/C/KHM/2)**

**At the 113<sup>th</sup> session of the Human Rights Committee (Geneva –  
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**Coordinated by the Cambodian Human Rights Action Committee**

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**With the support of :**

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# I. Introduction

## a. Joining organisations

The Cambodian Human Rights Action Committee has prepared and coordinated the following joint report with the following partner organisations:

### *The Advocacy and Policy Institute (API)*

API is a Cambodian non-profit and non-governmental organisation that has a mission to serve the long-term democratic and social development needs of Cambodia through the provision of services in the areas of advocacy and policy development. API has helped institutionalise advocacy skills and strategies into both partner and non-partner organisations by conducting 86 advocacy training courses for 1,078 participants from civil society organisations, community-based organisations, commune councils, international organisations, media, trade unions, government's institutions and the Cambodian Parliament.

### *Cambodian Center for Independent Media (CCIM)*

CCIM is Cambodia's only independent, Khmer-language news network, committed to furthering the rights of free expression and press freedom through media, advocacy and community-level projects. CCIM was established in June 2007 and registered with the Ministry of Interior as a non-governmental organisation. CCIM is the legal entity of VOD Radio, which originally began airing in January 2003 under the supervision of the Cambodian Center for Human Rights (CCHR). CCIM began operating its own radio station, Sarika FM, in October 2008, bringing educational and informative programs to the Cambodian airwaves. At the end of the first quarter of 2009, CCIM began operating another radio station in Siem Reap, and by 2009, Sarika FM had a combined coverage area of 14 out of 24 provinces and municipalities, with a potential listenership of 8.5 million of Cambodia's total 14 million population. CCIM has brought about the cooperation of numerous international NGOs, local NGOs, networks companies, and community based organisations in order to effectively build an independent media network in Cambodia.

### *The Cambodian Center for the Protection of Child Rights (CCPCR)*

CCPCR was one of the first local NGOs to address the issue of child protection by focusing on under 18 years-old girls in sexually exploitive situations in Cambodia. Founded as a not-for-profit NGO in November 1994 by a group of Cambodian professionals highly committed to the welfare of Cambodian children, CCPCR commenced operations in March 1995 and its Statute (Charter) was approved by the Ministry of Interior on Feb 27th 1997. For almost twenty years, CCPCR has been conceptualising and implementing activities focused on the prevention and protection of children from abuse, advocacy of children's rights, recovery and rehabilitation of children and young adults in abusive situations, reintegration and follow-up.

### *Housing Rights Task Force (HRTF)*

HRTF was established in early 2003. HRTF brought together a diverse group of international and national NGOs united in their efforts to defend the housing rights of the urban poor in Phnom Penh. HRTF's mission is to prevent forced evictions and housing rights violations, and to promote the development and full enjoyment of housing rights for all Cambodians.

### *Indigenous Community Support Organisation (ICSO)*

ICSO is a local Cambodian not-for-profit, non-governmental, non-partisan association established in July 2006 to serve the public benefit. ICSO works at supporting, strengthening, and improving the capacity of indigenous community organisations and groups to participate in the protection of the rights and in the management of natural, cultural and traditional resources to empower the indigenous communities/groups on right based approach through community organising and networking in four districts of Ratanakiri.

### *Legal Aid Cambodia (LAC)*

LAC is a non-governmental, independent, Khmer-administered, non-profit and non-political organisation founded in 1995. LAC's mission is to provide free, quality legal services to and advocate for Cambodia's poor in both criminal and civil cases. LAC is one of the few non-governmental legal aid organisations in Cambodia to maintain a significant, permanent presence in rural Cambodia where 80% of the population resides. LAC maintains offices in ten different locations. The head office in Phnom Penh also includes three specialised programs: the Child Justice Program, the Land Law Program, and the Women's Justice Program. LAC is supported by donors from the international community based inside and outside of the country.

### *Legal Support for Children and Women (LSCW)*

Since its formal establishment on 2nd July 2002, LSCW has provided prevention strategies, advocacy, legal advice and support for victims of domestic violence, rape, labour and sexual exploitation. LSCW organise workshops and emphasise to the people most often targeted for human trafficking, what their rights are. Migrants are a large percentage of those targeted, thus they are part of the two main programs LSCW provides; Legal and Safe Migration and Legal Aid. From its main office in Phnom Penh and provincial office in Kampot LSCW strives to combat the void between legislation and implementation against trafficking, domestic violence, rape, labour and sexual exploitation to protect Cambodian women, children and men.

### *The NGO Forum on Cambodia (NGO Forum)*

NGO Forum on Cambodia works to improve life for poor and vulnerable people in Cambodia. It is a membership organisation that builds NGO cooperation and capacity, supporting NGO networks and other civil society organisations to engage in policy dialogue, debate and advocacy. The goal of NGO Forum is that the rights of the poor and vulnerable are recognised and supported by the policies and practices of Cambodia's government and development partners, and the wider community.

### *Transparency International Cambodia (TIC)*

In Cambodia, Transparency International is represented through the national contact that was officially founded on 5 July 2010 and operates under the name Transparency International Cambodia. The team in Phnom Penh consists of Cambodian professionals who have worked for international and local organisations. TIC works together with individuals and institutions at all levels including government, civil society, business, media and the wider public to promote integrity and fight corruption in Cambodia.

### *Youth for Peace and the Peace Institute of Cambodia (YfP)*

YfP is a Cambodian NGO that offers education in peace, leadership, conflict resolution, and reconciliation to Cambodian's youth. YfP was created because real peace, social justice and law enforcement still did not exist in Cambodian society. YfP is a place where youth can learn and share experience with each other, and develop skills for active citizenship. For more than seven years, YfP has prepared young people to take responsibility for their society by giving them the knowledge and skills needed to affirm human values in their lives, families, and communities.

## **b. Methodology**

The NGO response to the List of Issues (LoI) for Cambodia adopted by the Human Rights Committee (CCPR/C/KHM/Q/2) was coordinated and drafted by the Cambodian Human Rights Action Committee (CHRAC) with generous financial support from the Center for Civil and Political Rights (CCPR Centre) and the United Nations Office of the High Commissioner for Human Rights in Cambodia (UNOHCHR).

Following the adoption of the LoI, it was identified early on that without adequate resources and coordination, it would be very difficult for Cambodian civil society to respond to the 28 issues addressed in the LoI in a comprehensive manner. A set of processes was developed between CCPR Centre, UNOHCHR and CHRAC to enable a coordinated effort in responding to the LoI.

With the generous support of Centre for Civil and Political Rights and the OHCHR office in Cambodia, CHRAC conducted a two-day consultation workshop with its NGO partners in November 2014. Following the workshop, the consulting editor of the project, Ms Katherine Lee, conducted a total of nine interviews with these partner organisations. CHRAC also accepted several written submissions from participating NGOs. The data collected was then incorporated into this report.

The Cambodian Center for Independent Media (CCIM) have expressed their wish to only endorse the two submissions they have made to be included as part of this report in order to maintain their independence and neutrality as a news-network.

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### *Acknowledgement*

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Our acknowledgement also extends to Ms Kasumi Nakagawa, who made significant contribution to the gender and LGBT section of this report.

Finally, this project would not have been possible without the generous support from the team at the Centre for Civil and Political Rights, especially Mr Daisuke SHIRANE.

### **c. Abbreviations and Acronyms**

ADHOC**	The Cambodian Human Rights and Development Association
ADB	Asia Development Bank
API**	The Advocacy and Policy Institute
BAKC	Bar Association of the Kingdom of Cambodia
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CCIM**	Cambodian Center for Independent Media
CCHR**	Cambodian Center for Human Rights
CCPC	<i>Code of Criminal Procedure of Cambodia</i>
CCPCR**	Cambodian Center for the Protection of Children's Right
CDHS	Cambodian Demographic Health Survey
CDP**	Cambodian Defenders Project <i>Leading legal aid NGO, as well as leading NGO working on GBV committed during the Khmer Rouge Regime</i>
CDPO**	Cambodian Disabled People's Organisation <i>Coalition NGO on Disabled People's issues</i>
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CHRAC**	Cambodian Human Rights Action Committee
CHRC <sup>¶</sup>	The Cambodian Human Rights Committee
CNRP	Cambodian National Rescue Party <i>Main Opposition Political Party formed in 2012 as a merger of the tw main opposition parties in the National Assembly</i>
CoM	Council of Ministers
COMFREL**	The Committee for Free and Fair Elections in Cambodia Leading election monitoring and reporting coalition NGO
CPP	Cambodian People's Party <i>The ruling party in Cambodia. Created ahead of the 1993 election and have hold office ever since.</i>
DAC <sup>¶</sup>	Disability Action Council
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECPAT**	End Child Prostitution, Abuse and Trafficking in Cambodia <i>Prominent local NGO working on child protection sector</i>
GBV	Gender-Based Violence
HLWG <sup>¶</sup>	High Level Working Group to Lead the Suppression of Human Trafficking Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children
HRTF**	Housing Rights Task Force
HRW	Human Rights Watch
ICC	International Coordinating Committee of National Institutions
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICSO**	Indigenous Community Support Organisation
ILO	International Labour Organisation
LAC**	Legal Aid of Cambodia
LANGO	Draft Law on Associations and NGOs
LGBT	Lesbian, Gay, Bisexual and Transgender
LICADHO**	Cambodian League for the Promotion of Human Rights
LSCW**	Legal Support for Children and Women
MoEYS	Ministry of Education, Youth and Sport
MoFA	Ministry of Foreign Affairs
MoH	Ministry of Health
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoLVT	Ministry of Labour and Vocational Training
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
MoWA	Ministry of Women's Affairs
NAPVAW <sup>¶</sup>	National Action Plan to Prevent Violence Against Women
NGO	Non-Governmental Organisation
NGOF**	The NGO Forum on Cambodia
NHRI	National Human Rights Institution
NPM <sup>¶</sup>	National Preventive Mechanism
NRPG <sup>¶</sup>	National Resources Protection Group
NSDP	National Strategic Development Plan
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
RFA	Radio Free Asia
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
TIC**	Transparency International Cambodia
TPO**	Transcultural Psychosocial Organisation
UN	United Nations
UNTAC	United Nations Transitional Authority in Cambodia
UPR	Universal Periodic Review
VAW	Violence Against Women
WHO	World Health Organisation
YfP**	Youth for Peace

\*\* Cambodian local non-government organisation

<sup>¶</sup> Royal Government of Cambodia sub-ministerial level agency

**d. Contact details**

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## II. Replies of Civil Society to the Issues identified in the LoI

### a. Constitutional and legal framework within which the Covenant is implemented (art. 2)

**Issue 1:** Please provide examples, if any, where provisions of the Covenant have been directly applied or used as an aid to interpret domestic law by the courts. Please provide further information on the human rights training given to, inter alios, judges and law enforcement officials with respect to the provisions of the Covenant (see para. 28 of the State party's report (CCPR/C/KHM/2)).

### Reply / Comments from Civil Society

*The Constitution of Cambodia (the Constitution)* expressly states that 'all the treaties and conventions related to human rights' shall be recognised and respected',<sup>1</sup> indicating that the *ICCPR* should either be directly applied or used as an aid to interpret domestic law. However, as judicial decision-making in Cambodia is not made transparently and judgments are often not published, it is difficult to monitor the progress of *ICCPR* implementation within the court system. The RGC gives no examples of this in their State Report. The only exception to this is the ECCC, which by design is required to apply international standards.<sup>2</sup>

Although it is not clear whether the judiciary is applying the *ICCPR* generally throughout Cambodia, there are tools available to assist lawyers to use the Covenant in interpreting domestic legislation. Most notable is the *Annotated Code of Criminal Procedure (the Annotated Code)* developed by the OHCHR.<sup>3</sup> The *Criminal Code of Cambodia (Criminal Code)* is annotated with jurisprudence from, *inter alia*, ECCC decisions, the UN Human Rights Committee Observations, and other international human rights courts. In doing so, the *Annotated Code* provides "guidance into the way in which Code articles may be interpreted and applied",<sup>4</sup> with specific reference to the *ICCPR*.

When the *Annotated Code* was introduced in 2014, it was anticipated to 'help lawyers craft more sophisticated legal arguments, thereby elevating Cambodia's courtroom dynamics'.<sup>5</sup> Although the dissemination of the *Annotated Code* can indeed contribute to greater application of the *ICCPR* in judicial proceedings, there are a number of limitations. First, the *Annotated Code* is 'not officially recognised' by the RGC or the Cambodian courts,<sup>6</sup> therefore the courts are under no obligation to follow the jurisprudence it contains. In any case, 'jurisprudence is rarely applied'<sup>7</sup> in the Cambodian courts because of limited resources allocated by the RGC and well-documented history of the RGC interfering in judicial decision according to the prevailing political interest.<sup>8</sup> In this environment, judicial decisions are made in accordance with the need of the RGC, and jurisprudence, both domestic and international, is rarely followed. Even if the *Annotated Code* were to be used by lawyers arguing a case in the domestic court, it would have a limited impact on judicial decisions and would be unlikely to substantially assist in the domestic integration of the *ICCPR*. In any case, due to the lack of transparency in measures and decisions adopted by the RGC and courts, it is difficult to measure the

<sup>1</sup> *Constitution of the Kingdom of Cambodia* art 31.

<sup>2</sup> Extraordinary Chambers in the Courts of Cambodia, *Introduction to the ECCC*, <http://bit.ly/11AiX1H>.

<sup>3</sup> United Nations Office of the High Commissioner for Human Rights, *Annotated Cambodian Code of Civil Procedure – Annotations to ECCC and Select International Jurisprudence* (2014) <http://bit.ly/1CoZjSC>.

<sup>4</sup> *Ibid* vii.

<sup>5</sup> The Phnom Penh Post (online) 'Annotated Code to "Promote" Rule of Law', 26 March 2014 <http://bit.ly/17K3VJp>.

<sup>6</sup> The Cambodia Daily (online) 'ECCC Aims for Legacy With New Criminal Procedure Code', 26 March 2014 <http://bit.ly/1CoZE7A>, quoting Ith Rady, Undersecretary of State, Ministry of Justice.

<sup>7</sup> The Phnom Penh Post (online), 'Annotated Code to "Promote" Rule of Law', 26 March 2014 <http://bit.ly/17K3VJp>, quoting Panhavuth Long, program officer, Cambodian Justice Initiative, and Dun Viblo, defense attorney.

<sup>8</sup> Refer to Issue 17 on Judicial independence.

impact and use of the *Annotated Code* or any other materials designed to assist judicial decision-making.

The State Report recognises a number of training workshops on civil and political rights conducted by the OHCHR with cooperation of the RGC's CHRC.<sup>9</sup> These training workshops were provided for government officials for a number of different ministries including the MoJ.<sup>10</sup> However, there is an absence of any evaluation of these workshops and it is unclear what impact they have had, if any, on judicial and law enforcement decisions.

The recommendations from both the 2009 and 2013 UPR reviews called on the RGC to provide more human rights training at all levels of government.<sup>11</sup> Likewise, a number of UN treaty bodies have made the same recommendations with particular emphasis on training for lawyers and judicial officers.<sup>12</sup> The Special Rapporteur on Cambodia has also suggested that the MoJ should call on the international community, including the OHCHR, to assist in providing training for judges and lawyers, particularly in the areas of freedom of expression and peaceful demonstration.<sup>13</sup> For these trainings to be effective and have accountability, a transparent set of maintaining mechanisms must be adopted to evaluate their progress.

### **Recommendations:**

*The State Party should:*

1. Increase levels of transparency surrounding judicial decision-making, by e.g. ensuring that judgments are written down and made publically available.
2. Officially recognise the jurisprudence contained in the *Annotated Code*, and ensure steps are taken to integrate and mainstream the ICCPR into Cambodian domestic jurisprudence.
3. Ensure that joint training workshops between the CHRC and the OHCHR are evaluated and this information is made public. Take further steps to provide training in civil and political rights to all arms of government.
4. Incorporate the application of ICCPR principles into legal and judicial training institutions, including the training centre at the BAKC, and the Royal Academic of Judicial Professionals.

<p><b>Issue 2:</b> Have any measures been adopted to establish an independent national human rights body, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)?</p>
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### **Reply / Comments from Civil Society**

The RGC established the CHRC in 2000<sup>14</sup> following a recommendation by the UN Human Rights Committee in their initial Concluding Observation issued in 1998.<sup>15</sup> The stated aim of the CHRC is to “*protect, develop, and promote human rights in Cambodia in accordance to Constitution of the Kingdom of Cambodia*”.<sup>16</sup> However, it makes no mention of the CHRC being compliant with the Paris Principles as the CHRC was set up by a simple Royal Decree, rather than a ‘Constitutional Institution’ being established through legislation passed by the majority of Parliament.

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<sup>9</sup> CCPR/C/KHM/2, para 28.

<sup>10</sup> Ibid.

<sup>11</sup> A/HRC/13/4, para 82.15; A/HRC/26/16, para 118.42.

<sup>12</sup> E.g. CAT/C/KHM/CO/2, paras. 10-12 and 25; E/C.12/KHM/CO/1, para 12; and report of the Special Rapporteur on Cambodia, A/HRC/15/46, para 84.

<sup>13</sup> A/HRC/18/46, para 88.

<sup>14</sup> *Cambodia Royal Decree of Establishing Cambodian Human Rights Committee*, No NS/RKT/0100/008, signed 18 January 2000, <http://bit.ly/1xrcDHd>.

<sup>15</sup> CCPR/C/79/Add.108, para 10.

<sup>16</sup> *Cambodia Royal Decree of Establishing Cambodian Human Rights Committee*, No NS/RKT/0100/008, signed 18 January 2000, <http://bit.ly/1xrcDHd>.

The CHRC was tasked with two broad mandates, ‘inspection and human rights education’ and ‘administration and complaint’.<sup>17</sup> Despite the strong urging of the UN Human Rights Committee, it appeared that the RGC made no consideration to the Paris Principles when creating the CHRC. This was evident in 2006, when Prime Minister Hun Sen, in his keynote address to the *Conference on the Establishment of a National Human Rights Institution in Cambodia*, six years after the creation of the CHRC, stated the importance of establishing an independent NHRI that is compliant with the Paris Principles and that this should be separate to any ‘existing institutions’.<sup>18</sup> This appears to be a frank admission that the then already existing CHRC was not to be considered a NHRI under the Paris Principles. At the conclusion of the Conference, the RGC made a commitment to the establishment of an independent NHRI that is afforded a Constitutional mandate and one that “*must comply with...the Paris Principles*”.<sup>19</sup>

Eight years on, no such body has been established, and there has been “*no movement toward such a body*”.<sup>20</sup> In the State Report, the RGC stated that the role of the CHRC is to “*assist the RGC to advance human rights and in solving all problems relevant to human rights violations*”.<sup>21</sup> It is worth noting that the CHRC is not accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (“ICC”); therefore the ICC does not review the CHRC on their compliance with the Paris Principles.<sup>22</sup>

The lack of progress in establishing a NHRI that is in compliance with the Paris Principles means the people of Cambodia cannot place their trust in the independence of the CHRC. There is a lack of impartiality and a failing to investigate politically charged human rights allegations by the existing CHRC.<sup>23</sup> Moreover, it is hard to see how CHRC can be independent in their operation from the executive and legislative branch of the RGC.<sup>24</sup> For example, the president of the CHRC, H. E. Om Yentieng, also serves in the RGC as a senior adviser to the Prime Minister, a high-ranking member of the ruling CPP,<sup>25</sup> the head of the RGC’s Anti-Corruption Unit, and head of the Intelligence Service.<sup>26</sup> Even in the unique context of Cambodia, where the same person can be appointed to head different government agencies, the head of the CHRC should not be able to hold other government posts, as CHRC is the institution tasked with holding government accountable for any actions that lead to human rights abuses, and any perceived or real lack of independence to carry out that role would negatively impact on the public trust in the institution.<sup>27</sup>

The UN Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Surya Subedi, also stated that the current mechanism is not functioning, and without an independent institution, any “*new institution will be the same as all the others*”.<sup>28</sup> In the same statement, Professor Subedi echoed the sentiment of civil society and pressed the RGC for the creation of a “*truly independent national*

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<sup>17</sup> For their functions, see *Cambodia Royal Decree of Establishing Cambodian Human Rights Committee*, No NS/RKT/0100/008, signed 18 January 2000, <http://bit.ly/1xrcDhd>.

<sup>18</sup> *Summary of Proceedings: Conference on the Establishment of a National Human Rights Institution in Cambodia* (Prince d’Angkor Hotel, Siem Reap, 25-27 September 2006), [4] <http://bit.ly/13xldrr>.

<sup>19</sup> *Resolution of the Conference on the Establishment of a National Human Rights Institution in Cambodia* (Prince d’Angkor Hotel, Siem Reap, 25-27 September 2006), <http://bit.ly/1sHKP09>.

<sup>20</sup> The Cambodia Daily (online), ‘Groups Want Independent Human Rights Body’, 30 November 2013 <http://bit.ly/1C22dN7>, quoting Mr NY Vanda, Deputy Head of Monitoring, ADHOC.

<sup>21</sup> CCPR/C/KHM/2, 6.

<sup>22</sup> Human Rights Watch, *Cambodia: UN Should Condemn Rights Onslaught* (27 January 2014) <http://bit.ly/1xs2JFk>.

<sup>23</sup> Interview with Preap Kol, Transparency International Cambodia (11 December 2014); FIDH and LICADHO, *Report for the Human Rights Committee’s Task Force for the Adoption of the List of Issues on Cambodia* (2014), 2.

<sup>24</sup> FIDH and LICADHO, *Report for the Human Rights Committee’s Task Force for the Adoption of the List of Issues on Cambodia* (2014), 2.

<sup>25</sup> Radio Free Asia (online), ‘UN Envoy Calls on Cambodia to Set Up Independent Human Rights Body’, 24 June 2014 <http://bit.ly/1DIyQST>; The Phnom Penh Post (online), ‘Controversial Pick for Anticorruption Chief’, 21 May 2010 <http://bit.ly/1DIyQST>.

<sup>26</sup> The Phnom Penh Post (online), ‘Controversial Pick for Anticorruption Chief’, 21 May 2010 <http://bit.ly/1DIyQST>; Interview with Transparency International Cambodia (11 December 2014).

<sup>27</sup> Interview with Transparency International Cambodia (11 December 2014).

<sup>28</sup> Surya Subedi, *Statement by the United Nations Special Rapporteur on the Situation of Human Rights in Cambodia* (24 June 2014) OHCHR <http://bit.ly/1zwGspH>.

*human rights commission in Cambodia...[with] its independence guaranteed both in law and in practice, in full conformity with the Paris Principles”.*<sup>29</sup>

Any influence that the RGC can wield over the CHRC impacts the CHRC’s ability to perform its duties, especially when considering allegations of human rights abuses perpetrated by the RGC. LICADHO notes that human rights abuses often involve state agents or powerful individuals with government connections.<sup>30</sup> Any investigation into those agents by a human rights body controlled by the political arm of the government creates a clear conflict of interest.<sup>31</sup> The lack of independence of state institutions concerned with protecting rights further highlights the need for an independent NHRI.<sup>32</sup>

While RGC states that Cambodia’s human rights interests is adequately protected by the CHRC,<sup>33</sup> there are a number of areas where the CHRC fails to conform to the Paris Principles:<sup>34</sup>

1. The members are not a pluralistic representation of Cambodian society and their appointment is not transparent.
2. The lack of crucial actions of the CHRC, particularly with regard to acknowledging rights violations by the government.
3. The CHRC is not accountable to the Cambodian people.
4. The CHRC is difficult to access for rural population of Cambodia, as there are limited mechanism for people to lodge their complaint, and this mechanism is largely inaccessible to the rural population.

## **Recommendations:**

*The State Party should:*

1. Establish a new NHRI that conforms with the Paris Principles. Such a body must be capable of operating effectively and independently of the government, the members must be selected in a transparent way that pluralistically represents the Cambodian people, and the body must be accountable and accessible to the Cambodian people.
2. Reform the CHRC in order to ensure that it is independent from government control, and autonomous.

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<sup>29</sup> Ibid.

<sup>30</sup> Kek Galabru, *We Need an Independent National Human Rights Commission* (LICADHO May 2004) <http://bit.ly/1zZ8fOt>, 2.

<sup>31</sup> Ibid.

<sup>32</sup> Amnesty International, *Cambodia: A Deteriorating Situation for Human Rights Defenders: Amnesty International and LICADHO Submission to the UN Universal Periodic Review* <http://bit.ly/13eLQR2>.

<sup>33</sup> CCPR/C/KHM/2, para 20.

<sup>34</sup> Kek Galabru, *We Need an Independent National Human Rights Commission* (LICADHO May 2004) <http://bit.ly/1zZ8fOt>, 2.

## b. Non-discrimination and equality (arts. 2, para 1; 3; 26 and 27)

**Issue 3:** With regard to the information provided in paragraphs 56 to 60 of the State party's report, please describe the specific measures adopted to promote the effective implementation of legislation and policies aimed at establishing gender equality and ensuring the participation of women in various areas of public life. Please provide detailed information on the differences in the employment rate of men and women, and the gender wage gap. How does the State party plan to overcome the obstacles to women's full participation and advancement in the workplace? Please specify what measures are in place to promote equal representation of women in decision-making positions, both in public affairs and the private sector. Please also indicate all the measures taken to eliminate gender stereotyping and to strengthen the mainstreaming of gender perspectives in educational curricula and textbooks.

### Reply / Comments from Civil Society

In its State Report, the RGC refers to legislative protections for women as well as non-discrimination action that it has taken to ensure gender equality and participation of women in various areas of public life. While there has been some improvement in women's equality in recent years, discrimination against women in education, the business sector and in politics remains a significant problem.<sup>35</sup>

Women's rights are enshrined in Cambodian law. *The Constitution* expressly states “all forms of discrimination against women shall be abolished. The exploitation of women in employment shall be prohibited”.<sup>36</sup> Cambodia is also a party to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). The RGC has made gender equality a priority in its development agenda and has set targets to achieve.<sup>37</sup> While there have been notable improvements in some areas of gender equality, current research indicates that the RGC is far from reaching most of its targets.

#### *Differences in the employment rate and the gender wage gap*

While the RGC have made several gender-responsive legal and policy initiatives, it is clear when assessing the labour market that, although some gender gaps have been reduced, women still suffer from persistent gender based deficits.<sup>38</sup>

In 2012 women made up 49 per cent of the total labour force in Cambodia.<sup>39</sup> Women's labour force participation rates have increased from 76 per cent to 80 per cent between 2008 and 2012 for the age group 15-64 years.<sup>40</sup> There has also been an increase in the portion of women in wage employment in the non-agriculture sector in Cambodia, which indicates improvements in gender equality in the labour market.<sup>41</sup> While there have been improvements in women's labour force participation rates, they are still not equal to that of men. According to the latest report from the MoWA, there is a difference of 7.5 percentage points between the male and female labour force participation rate.<sup>42</sup> Inferior employment and decent<sup>43</sup> work opportunities, human capital differences, for example literacy

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<sup>35</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014) <http://bitly.com/1aVY0f3>.

<sup>36</sup> *Constitution of the Kingdom of Cambodia* art 31.

<sup>37</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Cambodia Report - The Implementation of the Beijing Declaration and Platform for Action (1995) and the outcomes of the Twenty-third Special Session of the General Assembly (2000)* (2014).

<sup>38</sup> ILO and the Asian Development Bank, *Gender Equality in the Labour Market in Cambodia* (2013) <http://bit.ly/1ub6ajc>.

<sup>39</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Leading the Way - Executive Summary in Leading the Way - Cambodia Gender Assessment - Neary Rattanak IV 2014-2018* (2014) 3.

<sup>40</sup> *Ibid.*

<sup>41</sup> ILO and the Asian Development Bank, *Gender Equality in the Labour Market in Cambodia* (2013) <http://bit.ly/1ub6ajc>.

<sup>42</sup> *Ibid.*, 10

<sup>43</sup> *Ibid.*: ILO and ADB define 'decent work' as having a number of dimensions such as 'rights at work, security of work, working conditions, representation and voice, and patterns of equality'.

and total years of schooling, unpaid domestic labour and care constraints are all factors contributing to this underutilisation of women in paid labour.

While improvements in women's labour force participation rate make it look like gender equality has improved, other measures of gender equality such as the gender wage gap tell a different story.<sup>44</sup> Among all waged workers, on average, the wage of women is about 81% of that of men.<sup>45</sup> While the gender wage gap is vastly different across different industries in Cambodia, research conducted by the ILO and the ADB calculates the unadjusted gender wage gap for the paid labour market as a whole to be 27% in Cambodia.<sup>46</sup> This is based on the average wages of men and women for the period of a month. Much of this disparity can be attributed to the persistence of traditional perceptions of what 'appropriate' jobs for women are; this drives women into unskilled and domestic work and further widens the gender wage gap.

Despite the fact that there has been significant growth in formal employment for women in Cambodia's garment sector, the gender wage gap has actually increased.<sup>47</sup> In Cambodia the garment sector represents the sector with the lowest wage employment, and garment factories are where the majority of women's wage work is. Since women are disproportionately employed in low wage sectors, the increase of women in wage employment has increased the gender wage gap alluding to the fact that women's average wages have not kept up with that of men's. Another contributing factor to the gender wage gap is the inadequate specification in the labour legislation of equal pay for work of equal value, which allows garment factory owners to pay women less for doing the same work as men.

#### *Women in decision-making positions*

Women in Cambodia remain under-represented in decision-making positions in the public sector and the judiciary despite the government's various initiatives to increase and improve these numbers. The RGC seems to consistently be unable to reach the targets they set, including those in the Cambodian Millennium Development Goals (CMDGs) and their five-year strategic plan for gender equality and the empowerment of women in Cambodia, the Neary Rattanak, now in its fourth cycle.<sup>48</sup> CMDGs and the Neary Rattanak III set a target to have 25% female political representation by 2015.<sup>49</sup> This target has not been met at any level of governance and female representation has remained virtually static at every level between 1999 and 2014. This reflects the situation at the local level (18% in 2012),<sup>50</sup> the National Assembly (20.33% in 2013) and the Senate (14.75% in 2013).<sup>51</sup>

Women are similarly under-represented at all levels of the judiciary with less than 15% representation among different judicial and legal posts.<sup>52</sup> Females comprise 13.9% of judges in the judiciary, 10.2% of prosecutors, and only 14.8% of the official posts at the Bar Council. The proportion of female lawyers has also decreased in the past three years, from 18% in 2010 to 17% in 2013.<sup>53</sup>

While quantitative improvement of female representation in politics is important, it must also be ensured that these women are actually participating in the decision-making and their voices are heard and reflected in practice. The reality is that in Cambodia politics is considered a male job, and general

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<sup>44</sup> Ibid.

<sup>45</sup> ILO and National Institute of Statistics, Ministry of Planning, Cambodia, *Cambodia Labour Force Survey 2012 – Labour Force Report* (2013).

<sup>46</sup> ILO and the Asian Development Bank, *Gender Equality in the Labour Market in Cambodia* (2013) <http://bit.ly/1ub6ajc>.

<sup>47</sup> Ibid.

<sup>48</sup> Interview with Youth for Peace (17 December 2014).

<sup>49</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014) <http://bitly.com/1aVY0f3>

<sup>50</sup> CCHR, *Politics in the Kingdom: Increasing Female Representation* (2013) <http://bit.ly/1B1cs4t>.

<sup>51</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Policy Brief 8 - Leaders: Women in Public Decision-Making and Politics*, 3 in *Leading the Way - Cambodia Gender Assessment - Neary Rattanak IV 2014-2018* (2014).

<sup>52</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Leading the Way - Executive Summary in Leading the Way - Cambodia Gender Assessment - Neary Rattanak IV 2014-2018* (2014). Cambodia gender assessment puts female at 13.9% of judges and 10.2% of prosecutors among all judicial officials in Cambodia.

<sup>53</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Leading the Way - Executive Summary in Leading the Way - Cambodia Gender Assessment - Neary Rattanak IV 2014-2018* (2014).

social perceptions of women are that they are weak and less educated than men.<sup>54</sup> These attitudes not only discourage women from participating in politics in the first place, but also impact on their ability to influence change when they are in positions of power. Women's voices are often drowned out by men who do not think that they should be doing the job in the first place.<sup>55</sup>

Women are further deterred from running successfully for office because of the Cambodian political culture that places emphasis on personalities, rather than on substantive policy issues, and party platforms in campaigning and encourages animosity between parties, which in turn hinders network building between female politicians.<sup>56</sup> On top of this, political parties appear to have limited commitment to improving female representation. The fact that much more female candidates are placed on the alternative candidate lists than on titular<sup>57</sup> candidate lists in direct elections, whereby their names are also concentrated at the bottom of the lists, is indicative of the value political parties attribute to women as political leaders.<sup>58</sup>

### *Gender stereotyping*

While gender mainstreaming is recognised as a key priority of the government's political platform they do not allocate sufficient resources to the area. As a result gender stereotyping continues to disadvantage women in all aspects of life.

One of the positive measures the State Party has taken in this regard was revising its school curricula and textbooks with a view of eliminating gender stereotyping<sup>59</sup>. A significant feat of this was that the *Chhab Srey*, the moral code for women stopped being taught in primary schools, however many of the behavioural norms and notions of gender inequality that the text teaches are still entrenched in the Cambodian psyche. The USAID Gender Assessment found that 47% of men and 51% of women believed that women and men have different rights in a range of fields; business, decision-making, social and sexual freedom, and freedom of movement.<sup>60</sup> Traditional gender stereotypes that dictate what 'appropriate' jobs for women are continue to limit women's economic opportunities. The hierarchical and patriarchal system in Cambodia reinforce male domination in decision-making positions at all levels, which has an adverse impact on women's ability to participate in decision-making activities. It is clear that the government needs to do more to address these gender stereotypes and strengthen mainstream gender perspectives because it is evident that their current efforts are inadequate and ineffective. Also, more needs to be done to promote girls' access to higher education and technical and vocational training.<sup>61</sup>

## **Recommendations:**

*The State Party should:*

1. Adopt a comprehensive legislation ensuring gender equality, which should include a definition of discrimination against women that encompasses both direct and indirect discrimination in line with Article 1 of the CEDAW.

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<sup>54</sup> Interview with Kasumi Nakagawa (8 December 2014).

<sup>55</sup> Ibid.

<sup>56</sup> CCHR, *Politics in the Kingdom: Increasing Female Representation* (2013) <http://bit.ly/1B1cs4t>.

<sup>57</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014), 21 <http://bitly.com/1aVY0f3>: Titular candidates are candidates who are listed on election lists, as opposed to reserve or alternative candidates, the latter whom are not listed on lists but kept in reserve in case a titular candidate drops out..

<sup>58</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014) <http://bitly.com/1aVY0f3>.

<sup>59</sup> RGC was commended for this in the concluding observations for CEDAW: United Nations Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Cambodia*, CEDAW/C/KHM/CO/4-5 (29 October 2013).

<sup>60</sup> CCHR, *Politics in the Kingdom: Increasing Female Representation* (2013), 20 <<http://bit.ly/1B1cs4t>>, citing USAID, *Cambodia Gender Assessment* (2010), 15-16.

<sup>61</sup> Ministry of Women's Affairs, Kingdom of Cambodia, *Leading the Way - Executive Summary in Leading the Way - Cambodia Gender Assessment - Neary Rattanak IV 2014-2018* (2014).

2. Increase the engagement of women in relevant technical and vocational education and training programs, linking these to the labour market and ensuring that women have access to training in non-traditional fields. Instituting affirmative initiatives to accelerate this effort.
3. Take the following measures to reduce the gender wage gap:
  - a. Amend the *Labour Law* to enact the concept of ‘equal remuneration for work of equal value’.
  - b. Develop and implement an independent minimum wage setting process that is transparent, applies objective criteria, and includes the involvement of social partners.
  - c. Limit the use of multiple short-term contracts.
4. Take steps to realise gender equality in political participation, including:
  - a. Implementation of gender quotas for electoral lists, increase budget, and resource allocation to promote and increase women participation in political affairs and a comprehensive legislative framework to address gender-based discrimination in government.
  - b. Development of programs aimed at encouraging a positive change in public attitude towards women in politics, gender roles and stereotypes in order to comply with Article 3 of the ICCPR.
5. Develop and sustain an effective campaign to train and appoint more women in the judiciary and encourage more female judges, prosecutors and lawyers to enter the judicial branch.
6. Develop a special strategy under the framework of Neary Rattanak IV, create an effective and comprehensive strategy aimed at modifying or eliminating patriarchal attitudes and stereotypes that discriminate women.
7. Explore the use of information communication technologies, including social media, in the dissemination of information on women’s rights and gender equality.
8. Establish an effective mechanism aimed at monitoring and evaluating progress made in eliminating existing gender stereotypes.

**Issue 4:** Please comment on reports that anti-Vietnamese sentiment exists throughout Cambodia and that there have been instances in which such sentiment has been exploited to gain political support. Is the State party planning to develop a national action plan against racial discrimination?

## **Reply / Comments from Civil Society**

Anti-Vietnamese sentiment is widespread throughout Cambodian society and regularly manifests itself in a range of discriminatory and violent acts perpetrated against Vietnamese citizens and ethnically Vietnamese Cambodians. This anti-Vietnamese sentiment has recently been used by the opposition party to gain political support among the public. While the principles of non-discrimination and equality before the law are enshrined in Cambodian law, racial discrimination continues in Cambodia and the RGC are doing little to combat it.

Article 31 of the Constitution guarantees the rights of minorities, it says that “*Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status*”.<sup>62</sup> There are many Vietnamese residing in Cambodia including the ethnic Vietnamese that live in the Mekong Delta region. Despite many of the Vietnamese in Cambodia not holding ID cards they

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<sup>62</sup> *Constitution of the Kingdom of Cambodia* art 31.

should be entitled to all the rights that come with Cambodian citizenship.<sup>63</sup> Despite this, ethnic minority groups, such as the Cham people, the hill tribe groups and ethnic Vietnamese are frequently subjected to discrimination.

The anti-Vietnamese sentiment that exists in Cambodia is a product of the very long and turbulent history of Cambodia's relations with Vietnam. There is a prevailing view in Cambodia that there is a Vietnamese 'master plan' to take Cambodian land.<sup>64</sup> This has been exploited by various political leaders in Cambodia to incite fear among the voters and rally public support. The Vietnamese have frequently been used as scapegoats popularly blamed for everything that has gone wrong in Cambodia.<sup>65</sup> Sam Rainsy, leader of the opposition CNRP, is the latest to employ these fear tactics in his political campaign seeking to capitalise on long-ruling Prime Minister Hun Sen's association with Vietnam.<sup>66</sup> On International Human Rights Day 2013, Sam Rainsy made a speech at an opposition rally where he was alleged to have made discriminatory remarks against Vietnamese people by saying that they are taking Khmer jobs and land.<sup>67</sup> In his speeches he frequently used the word 'yuon', a derogatory word used to refer to the Vietnamese. During his campaigning and earlier in March 2013 he told his supporters that the current ruling CPP planned to colonise Cambodia with "neighbors from the east",<sup>68</sup> using the fear of Vietnamese immigration to gain support. The deputy leader of the CNRP, Kem Sokha has made similarly derogatory comments accusing Vietnam of sending immigrants to occupy Cambodian land and promising to cancel contracts with Vietnamese companies if the CNRP won the 2013 National Assembly election.<sup>69</sup> In June 2014, he blamed the Vietnamese for the tragic death of 353 people in a stampede on Koh Pich during the 2010 water festival, saying: "We have seen that the yuon have used the CPP and Mr. Hun Sen to eliminate the Khmer race and Khmer tradition, and now you have seen what they have done to the water festival", he went on to say: "they created the scene to kill Khmers at Koh Pich during [the] water festival".<sup>70</sup> This kind of behaviour was not restricted to only CNRP leaders, but also used by other political actors to further their own political gains.<sup>71</sup>

The behaviours are irresponsible and dangerous and have exacerbated racial tensions and discriminatory acts against ethnic Vietnamese living in Cambodia. Many ethnic Vietnamese did not vote in the 2013 election, and many who did were violently attacked when they went to polling stations.<sup>72</sup> One incident involved violent assaults against ethnic Vietnamese at polling stations in Steung Menchaey in Phnom Penh that resulted in two police cars being burnt down by opposition supporters.<sup>73</sup> There were also several racially motivated incidences that occurred in the wake of the general election including attacks and lootings of Vietnamese-run shops along Veng Sreng Street in Phnom Penh's Pur Senchey district on the 3<sup>rd</sup> January 2014, as well as the violent mob killing of a Vietnamese man, Nguyen Vann Chean after a traffic incident on the 15<sup>th</sup> February 2014 in Phnom Penh's Meanchey district.<sup>74</sup> Despite nine witnesses testifying that they saw Bun Chanvutha, who was arrested at the scene on charges of aggravated violence, yelling racist slurs at Nguyen Vann Chean and starting the mob violence, the court announced that they had insufficient evidence of guilt and

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<sup>63</sup> Refer to Issue 27 on Statelessness.

<sup>64</sup> World Bulletin, *Anti-Vietnamese feeling grows in Cambodia* (29 April 2014) <http://bit.ly/1yyp1wm>.

<sup>65</sup> Chanrith Ang, Noemie Weill and Jamie Chan, MIRO, *Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia* (March 2014), <http://bit.ly/1KUO8a5>.

<sup>66</sup> World Bulletin, *Anti-Vietnamese feeling grows in Cambodia* (29 April 2014) <http://bit.ly/1yyp1wm>; Prime Minister Hun Sen's association with Vietnam is documented in Sebastian Strangio, *Hun Sen's Cambodia* (Yale University Press, 2014).

<sup>67</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee - April 2014* (2014), <http://bitly.com/1aVY0f3>.

<sup>68</sup> Reuters (online), 'Investors Wary as Anti-Vietnamese Feeling Grows in Cambodia', 28 April 2014, <http://reut.rs/1G51puo>.

<sup>69</sup> World Bulletin, *Anti-Vietnamese feeling grows in Cambodia* (29 April 2014) <http://bit.ly/1yyp1wm>.

<sup>70</sup> The Cambodia Daily (online), 'CNRP Verbally Attacks CPP at Kampuchea Krom Ceremony', 5 June 2014, <http://bit.ly/1yyvi6>.

<sup>71</sup> Deutsche Welle, 'Cambodia's Opposition Leader Plays Racist Card' 5 March 2014 <http://bit.ly/1CryhcT>.

<sup>72</sup> Chanrith Ang, Noemie Weill and Jamie Chan, MIRO, *Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia* (March 2014), <http://bit.ly/1KUO8a5>.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

acquitted him.<sup>75</sup> While the police say that the investigation is ongoing, it is likely this will be another case of impunity.

The RGC is currently doing very little to prevent these damaging statements by political leaders, nor do they have any programs or initiatives to address the growing anti-Vietnamese sentiment in the country. The government should put an immediate stop to the use of anti-Vietnamese rhetoric in political campaigns and create a national action plan against racial discrimination without delay.

## **Recommendations:**

*The State Party should:*

1. Immediately stop using anti-Vietnamese sentiment in political campaigns and realise the harm that it is doing to the Vietnamese in Cambodia.
2. Ensure that provisions in the *Constitution* prohibiting discrimination on the grounds of race and national origin are upheld by creating and implementing a national action plan against racial discrimination
3. Complete anti-discrimination legislation providing a clear definition of racial discrimination in conformity with Article 1 of the ICERD.
4. Conduct proper investigations into racially motivated acts committed against Vietnamese people and hold the perpetrators accountable for their actions.

**Issue 5:** Please describe the legislative and/or administrative measures, as well as any recent court decisions, on protection against discrimination on the grounds of sexual orientation or gender identity, including discrimination in employment and accessing health care. Please also comment on reports of hate crimes, including sexual violence, and harassment against lesbian, gay, bisexual and transgender (LGBT) persons. Has the State party considered the possibility of recognising same-sex unions?

## **Reply / Comments from Civil Society**

In Cambodia, homosexuality is neither expressly prohibited nor is it recognised and allowed.<sup>76</sup> However, there is a ‘significant degree of stigma and discrimination on Cambodians who may be gay, lesbian or transgendered.’<sup>77</sup> There are currently no specific legal instruments that expressly prohibit discrimination on the grounds of sexual orientation and it is unclear if the laws were drafted with the intention to include and protect people who are transgendered or identified as non-gendered under provisions that prohibit discrimination on gender grounds.

Therefore, there is little legal recourse available to LGBT people suffering from discrimination. On top of the absence of anti-discrimination legislation to protect LGBT people, there is no anti-hate crime legislation, nor policies and strategies on addressing discrimination of LGBT people.<sup>78</sup> This results in LGBT people being discriminated against with impunity in employment, education, housing, healthcare and the provision of other public and private services.<sup>79</sup> In education, 52% of LGBT people have reported discrimination at school and only 6% of transgendered people have attained above

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<sup>75</sup> The Cambodia Daily (online), ‘Man Acquitted Over Racist Mob Killing’, 10 June 2014, <http://bit.ly/15jQ2kl>.

<sup>76</sup> Cambodian Human Rights Action Committee, Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review, 2013, 141.

<sup>77</sup> Vicente Salas and Srun Sorn, Social Protection Coordination Unit – Cambodian Social Protection Research Fund, *An Exploration of Social Exclusion of Lesbians, Gay and Transgender Persons in Families and Communities in Some Areas of Cambodia and Their Ways of Coping* (2013), 2, citing CCHR, *Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia* (2010) and UNESCO, *HIV Prevention Report Card for MSM and Transgender People – Cambodia* (2011).

<sup>78</sup> Cambodian Centre for Human Rights, *Submission to the Human Rights Committee* (2014), 11.

<sup>79</sup> Kaleidoscope Australia, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons - (List of Issues Report)* (2014), 7 [5.5].

secondary level schooling.<sup>80</sup> In employment, 28% have reported discrimination.<sup>81</sup> Despite the lack of open discriminatory practices against LGBT people in the healthcare setting,<sup>82</sup> one argument is that LGBT clients often create a form of ‘self-discrimination’ whereby LGBT people exclude themselves from health services.<sup>83</sup> Furthermore, fear of discrimination prevents LGBT people from seeking medical treatment, or disclosing relevant information when they do.<sup>84</sup>

This discrimination leads to LGBT persons leaving schools, families and hometowns at a young age, which eliminates support from family and relatives.<sup>85</sup> The resulting lack of education and work opportunities limits employment options.<sup>86</sup> Economic pressure and the lack of support from the traditional family unit contribute to LGBT people turning to sex work,<sup>87</sup> with 7% working in the industry.<sup>88</sup> As prostitution is illegal, there is a higher chance that LGBT people are to come into contact with authorities and face abuse by law enforcement agents.<sup>89</sup> This also contributes to creating an LGBT economic ‘underclass’, which is exposed to sexual health related problems such as HIV/AIDS.<sup>90</sup>

The RGC needs to meet its obligations under the ICCPR by devising, enacting and implementing anti-discrimination laws to protect LGBT people from both direct and indirect discrimination. These laws must be used to reduce discrimination in employment, health care and education to redress inequalities between LGBT people and wider Cambodian society. Public campaigns should also be introduced to combat negative stigmatisation of LGBT people.

#### *Hate Crimes and Harassment*

Harassment of LGBT people is commonplace in Cambodia; however individual incidents are not usually documented due to the stigma associated with LGBT identities.<sup>91</sup> Thus, there is a lack of data on harassment and hate crimes perpetrated against LGBT groups.<sup>92</sup> As noted above, there is no anti-hate crime legislation to protect LGBT people from harassment, violence or discrimination. Furthermore, there are no campaigns to address societal homophobia or transphobia or address negative public perceptions.<sup>93</sup>

Of particular concern is that some government policies, such as the Village Commune Safety Policy (VCSP), have been used with the intention of adversely affecting LGBT people and have perpetuated

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<sup>80</sup> Vicente Salas and Srun Sorn, Social Protection Coordination Unit – Cambodian Social Protection Research Fund, *An Exploration of Social Exclusion of Lesbians, Gay and Transgender Persons in Families and Communities in Some Areas of Cambodia and Their Ways of Coping* (2013), 7, 17.

<sup>81</sup> Ibid 17.

<sup>82</sup> Ibid 18, indicating only 6.7% of respondents stated that they felt discriminated while receiving healthcare services.

<sup>83</sup> Ibid 4.

<sup>84</sup> Kaleidoscope Australia, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons - (List of Issues Report)* (2014), 9.

<sup>85</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 141.

<sup>86</sup> Vicente Salas and Srun Sorn, Social Protection Coordination Unit – Cambodian Social Protection Research Fund, *An Exploration of Social Exclusion of Lesbians, Gay and Transgender Persons in Families and Communities in Some Areas of Cambodia and Their Ways of Coping* (2013), 4.

<sup>87</sup> Cambodian Centre for Human Rights, *Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia* (2010), 17.

<sup>88</sup> Vicente Salas and Srun Sorn, Social Protection Coordination Unit – Cambodian Social Protection Research Fund, *An Exploration of Social Exclusion of Lesbians, Gay and Transgender Persons in Families and Communities in Some Areas of Cambodia and Their Ways of Coping* (2013), 7.

<sup>89</sup> Kaleidoscope Australia, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons - (List of Issues Report)* (2014), 9.

<sup>90</sup> Ibid 8.

<sup>91</sup> Cambodian Centre for Human Rights, *Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia* (2010), 7.

<sup>92</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons - (List of Issues Report)* (2014), 6, quoting Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 143.

<sup>93</sup> UNESCO, *HIV Prevention Report Card for MSM and Transgender People – Cambodia* (2011), 3.

and heightened the occurrence of hate crimes, particularly by law enforcement officials.<sup>94</sup> The VCSP empowers local authorities to take measures to eliminate crime in villages and communes, specifically referring to, illegal drugs, prostitution, human trafficking and domestic violence.<sup>95</sup> Concern has been expressed as to the adverse and disproportionate impact of the policy on LGBT people.<sup>96</sup> In effect it allows authorities to scrutinise the lives of Cambodian people in rural areas, which results in LGBT people being placed at a greater risk of discriminatory, aggressive and violent treatment by law enforcement authorities.<sup>97</sup> Negative stereotyping combined with limited options to socialise discreetly leads law enforcement officials to presume that LGBT people are engaging in sex work.<sup>98</sup> Since sex work is illegal this presumption is used as an excuse by authorities to justify harassment and arrests towards LGBT people under the guise of law enforcement. Similarly, other punitive laws are arbitrarily implemented as a form of harassment against LGBT people including drug use and trafficking.<sup>99</sup> Arrests and detention that may follow leave LGBT people particularly vulnerable to further abuse that includes rape, sexual assault and aggravated assault.<sup>100</sup> Convictions for police misconduct, when reported, are ‘rare and virtually non-existent’.<sup>101</sup> Police extortion following arbitrary arrest and detention is also common.<sup>102</sup> These issues need to be combated, and anti-hate crime legislation should be introduced to ensure that LGBT people who have their rights violated have a legal right to redress.

### *Same-Sex Marriage*

The Constitution states that all Cambodian citizens are equal before the law regardless of their personal characteristics, and every citizen is able to participate in the “*political, social and cultural life of the nation*”.<sup>103</sup> Despite this, same-sex marriage is expressly prohibited in Cambodian law. The Constitution sets out the rights of men and women with respect to marriage, and makes no allowance for same-sex marriage.<sup>104</sup> It also states that marriage “*shall be done according to conditions set by law*”.<sup>105</sup> The *Law on the Marriage and Family* (1989) defines marriage as ‘a solemn contract between a man and a woman’ and prohibits marriage between persons of the same sex.<sup>106</sup> The new *Civil Code of Cambodia (Civil Code)* introduced in 2011, which replaced the *Law on Marriage and Family (Marriage Law)* does not expressly prohibit same-sex marriage, and thus arguments have been made as to ambiguity in the law.<sup>107</sup> This is ambiguous at best as the RGC has not officially repealed the *Marriage Law* and it is arguable that the provisions in the *Marriage Law* not directly contradicted by the new *Civil Code* ought to still apply. The State Report of Cambodia appears to clearly indicate the current state of the law prohibits same-sex marriage.<sup>108</sup>

While legal recognition of same-sex marriage appears ‘unlikely to feature in the government agenda any time soon’,<sup>109</sup> there has been some positive words said in support, contradicting the government’s policy. In 2004 the late King Norodom Sihanouk expressed his support for same-sex marriage in

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<sup>94</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons – (List of Issues Report)* (2014), 5.

<sup>95</sup> Ibid 5.

<sup>96</sup> Ibid 5.

<sup>97</sup> Ibid 6.

<sup>98</sup> Ibid 6.

<sup>99</sup> UNESCO, *HIV Prevention Report Card for MSM and Transgender People – Cambodia* (2011), 3.

<sup>100</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons – (List of Issues Report)* (2014), 6.

<sup>101</sup> Ibid 6.

<sup>102</sup> Human Rights Watch, *Off the Streets – Arbitrary Detention and Other Abuses Against Sex Workers in Cambodia* (2010), 9-10.

<sup>103</sup> *Constitution of the Kingdom of Cambodia* art 31, 35.

<sup>104</sup> Ibid art 45.

<sup>105</sup> Ibid.

<sup>106</sup> *Law on the Marriage and Family 1989 (Cambodia)* Art 3, 6.

<sup>107</sup> Interview with Kasumi Nakagawa (8 December 2014); The Phnom Penh Post (online), ‘LGBT Rights Battle Ongoing’, 5 March 2014 <http://bit.ly/1yu5KzT>.

<sup>108</sup> CCPR/C/KHM/2 (11 April 2013), paras. 200-210.

<sup>109</sup> Cambodian Centre for Human Rights, *Coming out in the Kingdom: Lesbian, Gay, Bisexual and Transgender People in Cambodia* (2010), 14.

Cambodia.<sup>110</sup> In 2012, Prime Minister Hun Sen stated that there should be no discrimination against gay and lesbian Cambodians.<sup>111</sup> However, his words are undermined by his prior decision in 2007 to disinherit his lesbian adopted daughter.<sup>112</sup> Regardless, the law continues to discriminate against same-sex couples by preventing them from marrying.

The government has justified the current position of prohibiting same-sex marriage in a number of ways. Firstly they have presented arguments such as ‘protecting the sanctity of marriage’, ‘tradition’ and ‘protection of children’.<sup>113</sup> Secondly, lawmakers perpetuate the view that Cambodia ‘does not have a tradition or custom of acceptance of LGBT individuals’ or that there is only the ‘custom of men marrying women’.<sup>114</sup> Finally, lawmakers have stated that there has been ‘no official request’ made to the government to legalise same-sex marriage.<sup>115</sup>

The consequences of this position means that same-sex couples do not have the same legal protections, next-of-kin rights, employment benefits, as well as taxation, relationship and welfare entitlements.<sup>116</sup> Furthermore, it creates obstacles in proving the relationship status if challenged, and reinforces negative stereotypes about same-sex couples.<sup>117</sup> The RGC should repeal the relevant provisions of the *Law on the Marriage and Family* (1989) prohibiting same-sex marriage, and legally recognise unions between couples of the same sex.

## **Recommendations:**

*The State Party should:*

1. Devise, enact and implement anti-discrimination and anti-hate crime laws to protect LGBT people and ensure that remedies are available when their rights are violated.
2. Devise, enact and implement public campaigns in order to combat negative stereotyping and stigmatisation of LGBT people.
3. Consider recognising same sex marriage and repealing the provisions of the *Law on the Marriage and Family* (1989) that prohibits homosexual marriage. Ensure that same sex couples are entitled to the same benefits as heterosexual couples such as legal protections, employment, taxation and welfare benefits.
4. Engage with and consult the LGBTI community, and their families, groups and NGOs working on issues related to sexual orientation and gender identity and expression with regard to needs, obstacles for their active participation in society and next steps the government can take to overcome these obstacles.
5. Acknowledge the gender based violence perpetrated against LGBT population during the Cambodian conflict and implement coherent policy to address the issue.

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<sup>110</sup> BBC News, ‘Cambodian King Backs Gay Marriage’, 20 February 2014 <http://bbc.in/171zVrs>.

<sup>111</sup> Huffington Post, ‘Hun Sen, Cambodia’s Prime Minister, Speaks Out Against Anti-Gay Bias’, 21 November 2012 <http://huff.to/1D2cpsx>.

<sup>112</sup> Ibid.

<sup>113</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons – (List of Issues Report)* (2014), 12.

<sup>114</sup> The Phnom Penh Post (online), ‘Same Same... But Married’, 22 September 2010 <http://bit.ly/1vHEQtS>, quoting Son Chhay, opposition party lawmaker and Cheam Yeap, government party lawmaker.

<sup>115</sup> Ibid, quoting Son Chhay, opposition party lawmaker.

<sup>116</sup> Kaleidoscope Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding Cambodia’s Protection of the Rights of LGBTI Persons – (List of Issues Report)* (2014), 13.

<sup>117</sup> Ibid 13.

**Issue 6:** Concerning the information contained in paragraph 48 of the State party's report, please indicate whether the State party has put in place awareness-raising programmes to inform persons with disabilities about their rights and how to claim them and, if so, whether there has been any evaluation of the impact of such programmes.

## Reply / Comments from Civil Society

In 2009, the RGC enacted a new law governing the rights of the disabled people in Cambodia.<sup>118</sup> However, despite being called upon to do so in the first UPR review,<sup>119</sup> there appears to be an absence of government programmes designed to disseminate information about the rights of the persons with disabilities enshrined therein, how to claim them, as well as any meaningful evaluation of systems the RGC has in place. In the State Report the RGC makes mention of only one policy, run by the MoEYS, which aims to ensure that the right to education for disabled children is equal to that of other children.<sup>120</sup> However, the policy is only concerned with physical disabilities and thus excludes children with intellectual or psychosocial disabilities.<sup>121</sup> In the State Report, there is also no mention of any mechanism to evaluate this programme, nor are the rights of disabled children beyond education discussed. There is no reference to any programme regarding the rights of disabled adults.

The RGC established the DAC in 2009 as 'national coordination and advisory mechanism on disability issues'.<sup>122</sup> The DAC has a duty to assist with developing, implementing, revising, monitoring and evaluating national policies and strategies with regard to disabled Cambodians.<sup>123</sup> Therefore there is a dedicated government body that should have the capacity to put in place awareness raising programmes and evaluate their success.

Despite the *Law on the Protection and the Promotion of the Rights of Persons with Disabilities (Disability Law)* (2009) setting out the rights of the disabled and the establishment of the DAC, there continues to be a lack of enforcement and implementation of the law. Furthermore, there is a need for more awareness of the *Disability Law*, since the programmes that currently exist are not adequately informing people with disabilities of their rights. This emphasises the need for the government to evaluate the impact of any programmes implemented.

The one program mentioned by the RGC, run by the MoEYS, does not appear to have been evaluated by the DAC or any other arm of the RGC, while one of the most prominent NGO groups working on disability issues, the Cambodian Disabled People's Organisation (CDPO), carried out extensive evaluation of the program. The findings of the CDPO report revealed that the gap between the MoEYS, the policy implementer, and the local school principles and teachers, the beneficiaries is 'larger than MoEYS are possibly aware of' and emphasised the need to implement effective channels of communication between officials and schools that appreciate the needs of the children themselves, as well as more timely and meaningful evaluation of the program.<sup>124</sup> The report concluded that there are 'significant barriers' and the goal of the programme 'might not be achievable within the stipulated time frame'.<sup>125</sup>

In this context, there is a concern that the only one program the RGC has referred to with regard to the rights of disabled people may be unsuccessful due to inadequate or lack of adequate evaluation.

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<sup>118</sup> *Law on the Protection and the Promotion of the Rights of Persons with Disabilities 2009* (Cambodia) ('*Disability Law*').

<sup>119</sup> A/HRC/13/4, para 82.16.

<sup>120</sup> CCPR/C/KHM/2, para 48.

<sup>121</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 85 [24].

<sup>122</sup> *Law on the Protection and the Promotion of the Rights of Persons with Disabilities 2009* (Cambodia) art 5.

<sup>123</sup> *Ibid* art 6.

<sup>124</sup> Cambodian Disabled People's Organisation, *Report on the Current Situation of Education for Children with Disabilities* (2010) 21.

<sup>125</sup> *Ibid* 21.

## Recommendations:

*The State Party should:*

1. Implement a more inclusive and broader range of programs to disseminate information about the rights of the disabled and how to claim them, beyond just physically disabled children and education.
2. Closely evaluate all current and any future programmes in a timely manner in order to determine if the desired impact is achieved.
3. Ensure that the DAC is fulfilling its role in developing, implementing and evaluating new programs and that it makes these evaluations publically available.

### c. Violence against women (arts. 3 and 7)

**Issue 7:** With regard to the different forms of violence against women, please provide information on: (a) the practical implementation of the Law on the Prevention of Domestic Violence and Protection of Victims (CCPR/C/KHM/2, paras. 17 and 209); (b) the achievements of the National Action Plan to Prevent Violence against Women (2009–2012), as well as the steps taken to develop a second national action plan; (c) existing support services for victims of domestic and sexual violence. Please also provide statistical data covering the period under review on the number of complaints filed concerning different forms of violence against women and the number of convictions handed down, including the sentences imposed and the compensation awarded to the victims. What steps are being taken to provide effective redress to victims of gender-based violence, in particular sexual violence against women, committed during the Khmer Rouge regime?

### Reply / Comments from Civil Society

Introduced and enacted in 2005, the *Law on Prevention of Domestic Violence and Protection of Victims (DV Law)* is aimed to protect Cambodians from violence that occurs to any member of a household.<sup>126</sup> The law defines violence as “acts affecting life, acts affecting physical integrity, tortures or cruel acts and sexual aggression”.<sup>127</sup> In March 2010, five years after the introduction of the *DV Law*, studies showed that the law was yet to be widely implemented and enforced to provide adequate protection for women.<sup>128</sup> This was further confirmed by preliminary research conducted in 2013 in two provinces that found a lack of implementation of the *DV Law* meant that women continued to suffer abuse and that more needed to be done to ensure a change in attitude and accountability of perpetrators.<sup>129</sup>

Violence against women and girls in Cambodia takes place in the context of deeply entrenched cultural norms that disadvantage women and girls.<sup>130</sup> It is rooted in social and cultural attitudes as well as norms that privilege men over women, and boys over girls. This can be displayed through the 2010 Cambodia Demographic and Health Survey (CDHS), which showed that the vast majority of

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<sup>126</sup> *Law on Prevention of Domestic Violence and Protection of Victims 2005* (Cambodia) art 2.

<sup>127</sup> *Ibid.*

<sup>128</sup> Human Rights Now, *Report on the Violence Against Women in Cambodia* (2011), 9 <http://bit.ly/1uQfPqe>; Gender and Development for Cambodia, *A Preliminary Analysis Report on Deoum Troung Pram Hath in Modern Cambodia: A Qualitative Exploration of Gender Norms, Masculinity and Domestic Violence* (2010), <http://bit.ly/1z47Aw4>.

<sup>129</sup> Katherine Brickell, Baureaksmeay Prak & Bunnak Poch, *Domestic Violence Law - The Gap Between Legislation and Practice in Cambodia and What Can Be Done About It* (2014) <http://bit.ly/17rxfoM>.

<sup>130</sup> Gender and Development for Cambodia, *A Preliminary Analysis Report on Deoum Troung Pram Hath in Modern Cambodia: A Qualitative Exploration of Gender Norms, Masculinity and Domestic Violence* (2010), 29 <http://bit.ly/1z47Aw4>.

women surveyed did not believe that wives should have the right to express their opinions.<sup>131</sup> Social attitudes in Cambodia favour men in many aspect of life, while negatively impacting women's lives, leading to the prevalence of the traditional norms of masculinity, which state that men should be strong leaders and dominate women.<sup>132</sup> Women's economic dependence is another major source of structural inequity, and the potential for change is being limited by the *DV Law*. The provisions do not provide adequate financial support for women who want to, or try to, claim their rights. Too many women are bound to stay in abusive relationships for this reason.

Although there might have been some achievements made by Cambodia's NAPVAW (2009-2012), many issues still remain. An evaluation of the NAPVAW stated that although more people were aware that violence against women is a crime compared to previous studies, the knowledge of such a plan among NGOs is very limited to non-existent, hence the effects of its implementation are impossible to measure.<sup>133</sup> In the first NAPVAW, MoWA stated that legal and justice sectors must 'hold perpetrators accountable for their behaviour and ensure they do not repeat the crime'.<sup>134</sup> However, there is no monitoring or evaluation mechanism to assess the achievements of the NAPVAW.<sup>135</sup> Despite the fact that the RGC has initiated a data collection process through the General Commissariat of National Police, the data set remains extremely low and unreliable according to NGO research.<sup>136</sup>

The second NAPVAW has recently been signed and launched by the RGC. The second NAPVAW aims to be more results-based and therefore have a more collaborative and participatory approach different stakeholders.<sup>137</sup> It remains to be seen whether that will be the case going forward and whether the NAPVAW and *DV Law* can work more effectively together to hold men accountable for their actions where the *Criminal Code* is not applicable.

Rape, sexual exploitation and sexual harassment are also supported by traditional attitudes, which place the blame squarely on the victim. Women who are victims of these crimes are at greater risks of ending up in the sex industry, as this may seem to be the only option left due to the stigmatisation by society. Alarming, reported incidences of rape and sexual assault appear to be increasing.<sup>138</sup> Firstly, Cambodian laws are lacking in protective measures for victims, who are mainly women and girls. Secondly, the laws are not enforced across the nation and not well understood by the public, including police, lawyers and judges. In addition, victims are often stigmatised by their community and their family and are therefore reluctant to report sexual assaults against them to anyone, including the police.<sup>139</sup> In order to strengthen the enforcement of the law, programs that integrate a component on VAW and focus on women's economic empowerment should be prioritised.

In order to identify the challenges faced by victims of VAW, MoWA conducted a feasibility study to analyse the needs and gaps in the service provision for the survivors in 2010.<sup>140</sup> Based on this study, MoWA started a new initiative for a complete and comprehensive service delivery to victims of GBV to respond to the challenges faced by them, which is called the Multi-Sectorial Coordinated Response system in Cambodia.<sup>141</sup> However, the services are not yet available in all regions and areas of the country.

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<sup>131</sup> Ministry of Women's Affairs, *Attitudes: Gender Relations and Attitudes – Cambodia Gender Assessment* (2014), 14 <http://bit.ly/1KStggN>.

<sup>132</sup> *Ibid* 13.

<sup>133</sup> Katherine Brickell, Baureaksmeay Prak & Bunnak Poch, *Domestic Violence Law - The Gap Between Legislation and Practice in Cambodia and What Can Be Done About It* (2014), 61 <http://bit.ly/17rxfoM>.

<sup>134</sup> *Ibid*

<sup>135</sup> Interview with Kasumi Nakagawa (8th December 2014).

<sup>136</sup> Amnesty International, *Breaking the Silence: Sexual Violence in Cambodia* (2010), 6 <http://bit.ly/1DmS6CB>.

<sup>137</sup> Interview with Kasumi Nakagawa (8th December 2014).

<sup>138</sup> Legal Support of Children and Women, "Gender Sensitivity Report", 2012, <http://bit.ly/1DvvDDJ> p.13.14.

<sup>139</sup> Amnesty International, *Breaking the Silence: Sexual Violence in Cambodia* (2010), 18 <http://bit.ly/1DmS6CB>.

<sup>140</sup> Ministry of Women's Affairs, *Cambodia Report – The Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcomes of the Twenty-Third Special Session of the General Assembly* (2000), 30.

<sup>141</sup> *Ibid*.

It is only recently that GBV during the Khmer Rouge has been considered in public discourse. While the nature and the extent of the human rights violations that occurred during the Khmer Rouge regime are well documented, detailed accounts of GBV during this time (with the exception of the crime of forced marriage) have been missing in the public domain. In 2010, results of a study of 104 respondents from two provinces in Cambodia provided some evidence of GBV during the Khmer Rouge regime.<sup>142</sup> The study showed that almost two-thirds (65.4%) of the respondent were aware that rape occurred during the regime. While 28.8% of the respondent directly witnessed rape, almost one in five (16.3%) respondent reported that they had experienced incidents of sexual abuse and humiliation themselves.<sup>143</sup> Almost one in four (24%) respondents stated that they had heard stories of sexual organ mutilation being used as punishment by Khmer Rouge Cadres. This demonstrates the existence of GBV during the Khmer Rouge regime and also emphasises the necessity of further research on this topic.

In an effort to raise the issue of sexual violence, and begin reconciliation for women who endured such violence under the Khmer Rouge regime, the CDP, under its GBV project, organised a series of *Truth-Telling Forums Where Women Can Speak Out* with the first one held in December 2011.<sup>144</sup> The project aimed to bring sexual violence to the forefront of the Khmer society particularly in the context of the Khmer Rouge regime. Mass rape before execution was one form of GBV that occurred frequently during this time.<sup>145</sup> Other types include forced marriage, sexual mutilation and humiliation.

The outcomes of the CDP GBV project are (1) the development of a core group of victims of GBV during the Khmer Rouge who share their stories and are willing to take actions in their community, (2) a renewed conversation about GBV during the Khmer Rouge that challenges established views that GBV during the Khmer Rouge did not occur in a wide scale manner since the Khmer Rouge's own constitution and criminal law specifically establish the crime 'moral offense', including rape; and (3) the documentation of the existence of GBV during the Khmer Rouge.<sup>146</sup>

GBV has also been addressed through the ECCC – the Khmer Rouge Tribunal. Case 001 against Kaing Guek Eav (alias Duch), head of the Tuol Sleng or S-21 prison, led to a conviction of war crimes and crimes against humanity, including a single charge of rape as a form of torture.<sup>147</sup> However, the Supreme Court Chamber dismissed the co-prosecutor's appeal to include rape as a distinct form of crimes against humanity with a ruling that during the period covered by the jurisdiction of the court, rape had not been established as a crime against humanity under international law.<sup>148</sup> This is despite the fact that in the preceding paragraphs in the same judgment, the Supreme Court Chamber acknowledged that rape had been listed as crime against humanity after World War II prior to the Nuremburg Tribunal.<sup>149</sup> In Case 002, the charges against the accused include forced

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<sup>142</sup> Mychelle Balthazard, *Gender-based Violence During the Khmer Rouge: A Forgotten Issue? – Cambodian Defenders Project: Gender-Based Violence Project, 2010-2012: Evaluation Report* (2013), 9 <http://bit.ly/1Ekc2GK>.

<sup>143</sup> Ibid.

<sup>144</sup> UN Women, *Preventing and Responding to Violence against Women and Girls in Asia and the Pacific* (2013), 22 <http://bit.ly/1KSx2Xt>.

<sup>145</sup> Cambodian Defenders Project, *Gender Based Violence under the Khmer Rouge: Facts and Figures*, Gender Based Violence Under the Khmer Rouge Information Platform <http://bit.ly/1E6RO3n>.

<sup>146</sup> Mychelle Balthazard, *Gender-based Violence During the Khmer Rouge: A Forgotten Issue? – Cambodian Defenders Project: Gender-Based Violence Project, 2010-2012: Evaluation Report* (2013), 39 <http://bit.ly/1Ekc2GK>.

<sup>147</sup> Ibid 10; See 'Judgment, Criminal Case File No. 001/18-07-2007/ECCC/TC', Cambodia: ECCC Trial Chamber, (26 July 2010) and 'Duch Appeal Judgment, Criminal Case File No. 001/18-07-2007/ECCC/SC', Cambodia: ECCC Supreme Court Chamber, (3 February 2012), <http://bit.ly/1FRJ56m>.

<sup>148</sup> Extraordinary Chambers in the Courts of Cambodia, *Duch Appeal Judgment*, Supreme Court Chamber Case File No 001/18-07-207/ECCC/SC (3 February 2012), [177]-[178].

<sup>149</sup> Extraordinary Chambers in the Courts of Cambodia, *Duch Appeal Judgment*, Supreme Court Chamber Case File No 001/18-07-207/ECCC/SC (3 February 2012), [176]. The Supreme Court Chamber acknowledged that under Allied Control Council Law No 10 Article II, 1(c) 'listed rape as a crime against humanity'; however, pointed out that 'none of the defendants in the [Nuremburg] trials... were ever charged with rape' as justification for holding that rape was not a distinct crime against humanity in 1975.

marriage and rape within marriage.<sup>150</sup> As the two remaining cases are still in the investigation stage, it is unclear if or when there will be a trial, and if GBV are being investigated at all.

In conclusion, there are a very limited number of measures taken to address the situation of female victims of GBV during the Khmer Rouge regime. Some efforts have been made to prosecute the senior leaders of the Khmer Rouge regime but only for a very narrow scope of sexually based crimes. Victims of GBV can participate in the proceedings as civil parties but sexual GBV remains only partly addressed in the four cases of the ECCC so far. National governmental initiatives by the RGC do not currently exist and the recently finalised NAPVAW (2013-2017) does not include any measures targeting this unique group, although sexual GBV survivors of the Khmer Rouge are listed as a group with 'specific needs'.<sup>151</sup>

## **Recommendations:**

*The State Party should:*

1. Promote policymaking supported by research and voices of survivors of GBV in order to maximise the responsiveness to the actual needs of Cambodian women.
2. Conduct a countrywide assessment in a qualitative manner to evaluate the implementation of DV law after ten years of its enactment
3. Take a concrete step to set up a systematic method to collect data on VAW, including police record, court record, and cases dealt by commune / village level and make them accessible to the public
4. To immediately set up a monitoring and evaluation framework with result-based management for the implementation of NAPVAW while ensuring civil society's engagement to the process.

## **d. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 2, para. 3; 6 ; 7 and 21)**

**Issue 8:** According to the information before the Committee, at least 12 journalists have been murdered in Cambodia in the last 20 years, with none of the cases ever having gone to court. Please comment on the reports that journalists, human rights defenders, trade union and environmental activists, politicians and other critical civil society actors have suffered harassment and violence during the period under review. Please provide information on the measures taken to address such harassment and violence and to protect persons engaged in such activities.

## **Reply / Comments from Civil Society**

Civil society groups in Cambodia are deeply concerned about the climate of intimidation and violence faced by journalists in Cambodia. Twenty years since the UNTAC intervention, the fact that none of the perpetrators of the killing of 14 journalists have been convicted demonstrates that attacks of this nature continue to go unpunished. While the *Constitution* provides for freedom of expression, press and publication,<sup>152</sup> in practice, media professionals face dangerous consequences from their work and

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<sup>150</sup> For the full charges, see 'Closing Order (Public Redacted Version), Criminal Case File No. 002/19-09-2007-ECCC/OCIJ', Cambodia: ECCC Office of the Co-Investigating Judges (15 September 2010). For information on forced marriage, see [842]-[861], [1442]-[1447].

<sup>151</sup> Cambodian Defenders Project, *NGO Submission on Question No. 11 of the List of Issues and Questions With Regard to the Consideration of Periodic Reports of Cambodia*, (2013), 2 <http://bit.ly/1D2Vt5m>.

<sup>152</sup> *Constitution of the Kingdom of Cambodia* art 41.

have taken to exercising increased self-censorship.<sup>153</sup> With a firm control over Cambodia's media outlets, the ruling CPP only leaves space for a few independent newspapers and radio stations to regularly broadcast information that may not always be favourable to the government.

The space for freedom of expression looked like it may have been expanding between 2004 and 2012, where only one journalist lost his life and independent radio stations and newspapers flourished. However, since September 2012, four journalists have lost their lives and countless others have been prosecuted by the RGC under various criminal provisions ranging from defamation to various incitement charges, accusing the journalists of extortion and even the absurd sounding charge of being complicit in 'illegally clearing forestry land' resulting from a radio station broadcast.<sup>154</sup>

In 2012, RFA reporter Sok Ratha (also known as Ratha Visal) was arrested and charged under the frequently used article 495, incitement to commit a felony, of the new *Criminal Code* while he was reporting on a land dispute in Ratanakiri province.<sup>155</sup> Together with him, two rights workers from ADHOC, Pen Bonnar and Chhay Thy as well as the then President of CCHR, Ou Virak were summoned to be questioned by the court.<sup>156</sup> Although the charges against Ratha were later dropped,<sup>157</sup> this case sets the scene of how the RGC utilise its favourite tactic of using 'lawful means' to prosecute journalists who disseminate information that is not to the RGC's liking. On the 26<sup>th</sup> April 2012, prominent environmental activist Mr. Chut Wutty, founder of the National Resources Protection Group (NRPG) was shot dead in Mondol Seima district, Koh Kong province.<sup>158</sup> No arrest has ever been made and there has been no published record of any authority investigating into the killing.

In July 2012, independent radio station owner Mam Sonando was arrested and charged with 'insurrection' and 'inciting people to take up weapons against state' in the aftermath of the particularly bitter land dispute protest in Kratie province where police opened fire on a crowd of villagers, killing a 14 year old girl. After being denied bail, Mam Sonando was convicted three months later and sentenced to twenty years in prison. In March 2013, Mam Sonando's sentence was suspended and he was released after the Appeal Court reduced his convictions and sentences to less serious crimes.<sup>159</sup> By this time, Mam Sonando had spent more than eight months in prison on convictions that "*appeared baseless*".<sup>160</sup> Mam Sonando's case demonstrates another tactic of the RGC that has been used against several other human rights activists,<sup>161</sup> whereby the RGC arrests and quickly convicts activists on serious charges, sends them to prison for some time and then allows the Appeal Court to 'overturn' or change their conviction to a less serious offence. The prison sentence is then almost always suspended and the activist released. This serves the purpose of satisfying the international support for these activists whilst simultaneously punishing the activists and acting as a deterrent to other potential troublemakers.

On the 21<sup>st</sup> April 2014, there was another violent attack by authorities against journalists covering events at Freedom Park. As opposition lawmaker Mu Sochua attempted to make a speech at Freedom Park, private security guards employed by the Phnom Penh Municipal Council started attacking anyone taking photographs around Freedom Park. This posed a great risk to reporters and photojournalists on the scene. As a result, journalist Kung Raiya of Kampuchea Rikreay suffered

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<sup>153</sup> Reporters Without Borders, 'Murder of Journalists Continues to go Unpunished in Cambodia', 11 September 2013 <http://bit.ly/17KeoVo>.

<sup>154</sup> The case of Mam Sonando, Phnom Penh Court of Appeal, appeal case heard on 14 March 2013 where Mr Mam Sonando was convicted by the court of appeal.

<sup>155</sup> The Phnom Penh Post (online) 'Radio Free Asia reporter to Face Judge', 15 November 2012 <http://bit.ly/1sBqqJN>.

<sup>156</sup> The Phnom Penh Post (online), 'Prominent Activists Face Incitement Charges', 2 October 2012, <http://bit.ly/1KjA5b0>.

<sup>157</sup> The Phnom Penh Post (online), 'Prosecutors Tell Court to drop Charge in Land Dispute Case', 23 January 2013 <http://bit.ly/1BTjeK2>.

<sup>158</sup> Federation for Human Rights, *Cambodia: Extrajudicial Killing of Chut Wutty*, (3 May 2012) <http://bit.ly/1EZ2mCn>.

<sup>159</sup> Radio Free Asia, 'Cambodian Radio Journalist Mam Sonando to be Freed', 14 March 2014 <http://bit.ly/1F54pYw>.

<sup>160</sup> Amnesty International, *Cambodia: Journalist's Release from Prison a Step in the Right Direction* (14 March 2013) <http://bit.ly/1tUNa8r>.

<sup>161</sup> Most notably against urban land activist Yorm Bopha and Tep Vanny.

beatings against his head and body.<sup>162</sup> Despite Mr. Raiya showing his press identification card, the beatings continued and nobody was arrested or prosecuted for this event.

The most recent attack on journalists happened in October 2014, when reporter Taing Try was shot dead in Kratie province while investigating illegal logging activities happening in Monduliri province. One week after the killing, two journalists based in Kratie were arrested for allegedly attempting to extort money from RGC officials in exchange for not reporting suspected illegal logging activities.<sup>163</sup> Both the journalists and their publishers denied the allegation and counter-claimed that they were framed by the local police who were interested in smearing the journalists' reputation and the credibility of their story.<sup>164</sup> The case highlights a particularly disturbing trend of 'ghost newspapers' as alleged by the RGC who makes a living by combing the countryside for news and then accepting bribes to not publish the stories.<sup>165</sup> It is impossible to verify whether these allegations are true or whether it is just another ploy by the RGC to discredit the journalist profession, as no journalists have been convicted in the courts.

**Table of journalists or radio reporters (indicated) killed between 1992-2014. All victims are male and local unless otherwise indicated. The names marked with one asterisk (\*) indicates victims were also threatened, two asterisks (\*\*) indicate victims were tortured prior to death.**

Name of journalists and newspaper	Date of killing and location	Subject covered	Suspected source of fire
<b>Taing Try*</b> <i>Freelance</i>	October 12, 2014, Kratie	(Illegal logging) It is still unconfirmed whether the death was work-related. <sup>166</sup>	Unconfirmed
<b>Dave Walker</b> <i>Freelance</i>	February 14 2014 (body discovered May 1 2014)	Political?	Unknown
<b>Suon Chan</b> <i>Meakea Kampuchea</i>	February 1, 2014, Kampong Chhnang	(Illegal fishing) It is still unconfirmed whether the death was work-related. <sup>167</sup>	Unconfirmed
<b>Hang Serei Odom</b> <i>Virakchun Khmer Daily</i>	September 11, 2012, Ratanakiri	Illegal logging	Criminal group, military officials
<b>Khem Sambo</b> <i>Moneaseka Khmer</i>	July 11, 2008, Phnom Penh	Government corruption	Government officials
<b>Chou Chetharith</b> <i>Ta Prum (Radio station)</i>	October 18, 2003, Phnom Penh	Politics	Government officials
<b>Ou Sareoun</b> <i>Samleng Reas Khmer</i>	October 14, 1997, Phnom Penh	(Extortion) It is still unconfirmed whether the death was work-related.	Security guard but later released with not charges filed against him.

<sup>162</sup> Radio Free Asia, 'Ten injured after Cambodian politician's defiant Freedom Park protest', 21 April 2014 <http://bit.ly/17rXX09>.

<sup>163</sup> Radio Free Asia, 'Two Cambodian Reporters Charged with Extorting Villagers', 21 October 2014 <http://bit.ly/1Aicyrl>.

<sup>164</sup> Ibid.

<sup>165</sup> Aljazeera, 'Cambodia's bribe-seeking press corps', 31 October 2014 <http://bit.ly/10eHJmy>.

<sup>166</sup> Committee to Protect Journalists, *Taing Try* (12 October 2014) <http://bit.ly/1vHWBcl>.

<sup>167</sup> Cambodia Daily, 'Killing of Journalist May Not Be Linked to Illegal Fishing Reports', 14 February 2014 <http://bit.ly/1J7QoMH>.

<b>Michael Senior**</b> <i>Freelancer</i>	July 7, 1997, Phnom Penh	Politics	Military officials
<b>PICH Em</b> <b>TVK</b>	May 4, 1997 Sihanoukville	Politics	Government Militants
<b>Chet Duong Daravuth</b> <i>Neak Prayuth</i>	March 30, 1997, Phnom Penh	Dangerous assignment	Political group
<b>Thun Bun Ly</b> <i>Odom K'tek Khmer</i>	May 18, 1996, Phnom Penh	Politics	Government officials
<b>Chan Dara*</b> <i>Koh Santepheap</i>	December 8, 1994, Kompong Cham	Corruption	Military officials
<b>Nun Chan*</b> <i>Samleng Yuvachun</i> <i>Khmer</i>	September 6, 1994, Phnom Penh	Corruption	Government officials
<b>Tou Chhom Mongkol</b> <i>Antarakum</i>	June 11, 1994, Phnom Penh	Corruption	Government officials
<b>Total: 14</b>			

## Recommendations:

*The State Party should:*

1. Immediately stop the intimidation of and continued violence against journalists and other human rights defenders take positive measures to work towards an end to impunity currently enjoyed by perpetrators of violence against journalists.
2. Install an independent, national mechanism to protect and promote the rights of journalists and human rights defenders as required under international human rights law.
3. Conduct impartial and independent investigations into the killings of the 14 journalists and allow public access to all the relevant information.

## Additional Submission from Cambodian Center for Independent Media (CCIM)

### Article 2: The Right to Life and the Prohibition of Torture

1. *As acknowledged in the List of Issues (para. 8), impunity for those who engage in extrajudicial killings of journalists remains endemic in Cambodia. In fact, 2014 proved the deadliest year for journalists in the country since the political turmoil of 1997. In January, journalist Soun Chan was beaten to death by a gang of fishermen in Kampong Chhnang Province following his investigations into illegal fishing in the area. Just 10 months later, in October, journalist Taing Try was executed by a shot to the head while attempting to cover illegal logging in Kratie Province, raising the toll of murdered journalists to 13 since the country's first democratic elections in 1993. Further adding to the furor over murdered journalists in 2014 was the death of Canadian journalist Dave Walker, whose badly decomposed body was discovered in Siem*

*Reap in May under suspicious circumstances that local police have declined to further investigate.*

2. *Notably, in November 2014, the Kampong Chhnang Provincial court issued Cambodia's first-ever conviction in the case of murdered journalist, sentencing six men to 13 years in prison for the beating death of journalist Soun Chan, who was murdered by a group of fishermen in January after he had reported on illegal fishing. However, five of the six men were convicted in absentia and still remain at large. Moreover, local journalist groups allege that several individuals involved in the murder continue to be protected from prosecution by powerful political connections.*
3. *In the aftermath of the disputed 2013 National Elections and the unrest that followed, security forces regularly and directly targeted journalists with violence. At least 18 journalists have been attacked by security forces since the 2013 elections, with 16 of them being targeted while covering protests, often by plainclothes police or hired security guards such as those employed to guard Phnom Penh's Freedom Park. During an April 21 rally at Freedom Park, Kampuchea Rikreay reporter Kung Raiya was beaten over the head after hearing security guards being commanded to "beat anyone with a camera." On May 2, VOD reporter Lay Samean was brutally beaten by at least six security guards near Freedom Park after he photographed the guards beating a monk as they disbursed a group of peaceful marchers. Samean's injuries were so severe as to necessitate facial reconstruction surgery.*

**Issue 9:** Please comment on reports of excessive use of force during demonstrations and the use of private security guards to respond to protests. What measures has the State party taken to ensure that law enforcement officials act in a manner consistent with articles 6 and 7 of the Covenant? Please also provide information on any investigations and any disciplinary and/or criminal proceedings related to the following cases: (a) The death on 15 September 2013 of Mao Sok Chan during a demonstration in Phnom Penh; (b) The death on 12 November 2013 of a 49-year-old street vendor, Heng Sokhon, a bystander during clashes between security forces and garment workers demonstrating for a wage increase, the reinstatement of meal breaks and the removal of military police hired by the factory as security; (c) The death on 3 January 2014 of four individuals and the alleged enforced disappearance of Khem Sophath, a 16-year-old boy who was seen being shot in the chest during further clashes between security forces and garment workers. According to the information before the Committee, a further 38 individuals were hospitalised, 25 of whom had sustained bullet wounds.

## **Reply / Comments from Civil Society**

Despite a joint commitment by the two biggest political parties, the ruling CPP and opposition CNRP not to use violence or weapons of any kind that could lead to injury or death, the use of force against peaceful protests remains a major issue in Cambodia.<sup>168</sup> Assemblies of people that gather for a variety of reasons such as land evictions, the environment and labour rights are often met with security forces including private security guards, police, military police, and soldiers who are deployed to disband such protests.<sup>169</sup> Between November 2011 and May 2012 alone, there were eight confirmed occasions where authorities opened fire during peaceful protests, strikes or demonstrations. Impunity for the

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<sup>168</sup> ADHOC, *ADHOC Endorses Joint Public Statement – Cambodia's Government and Donors Must Act Now to Prevent Escalation of Violence* (24 September 2013) <http://bit.ly/1EdxTzR>.

<sup>169</sup> LICADHO, *Statement: Five Shooting Incidents at Land Dispute Protests in the Past Two Months Show Alarming Increase in Use of Lethal Force* (26 January 2012) <http://bit.ly/1EdxTzR>; LICADHO, *Attacks & Threats Against Human Rights Defenders in Cambodia 2010-2012* (2012) <http://bit.ly/1Ar5oRS>.

perpetrators after these violent incidents is a common problem in Cambodia and the RGC has yet to challenge the statement that “*a culture of using force against human rights activists persists*”.<sup>170</sup>

On the first day of the opposition party CNRP’s week-long mass demonstration on the 15<sup>th</sup> September 2013, one innocent bystander was shot dead and four others were seriously injured when clashes between protesters and police broke out at Stung Meanchay bridge in the south of Phnom Penh. Mao Sok Chan, a 29-year-old, was shot through the forehead and died at the scene.<sup>171</sup> According to Military Police spokesman Kheng Tito, the clash began when a group of protesters started tearing down barriers on the overpass.<sup>172</sup> The authorities responded with wielding cattle prods and electrified riot shields, firing live ammunition into the crowds of people.<sup>173</sup> Another bystander encapsulated the brutality of police actions saying they were “*shooting people like they were shooting animals*”.<sup>174</sup>

More than one year after, no one has been held accountable for Mao Sok Chan’s death. According to the RGC, the investigation had not been completed by September 2014, and stated that they required more time for the investigation.<sup>175</sup> While the MoI earlier in 2014 pledged that they would investigate the events that led to the death of Mao Sok Chan, no progress of such investigation has been made public, and it has not been possible for the public to access any information relating to the existence of the investigation.<sup>176</sup> On the 3<sup>rd</sup> July 2014, more than six months after the fatal clashes, deputy prosecutor Meas Chanpiseth referred to an unpublished police report relating to the killing of Mao Sok Chan, which found no suspect or killer due to the ‘big crowd and so many people’.<sup>177</sup>

The lack of probing into Mao Sok Chan’s killing in September 2014 is indicative of the rampant impunity for law enforcement officials in Cambodia. This is symptomatic of a broader culture of impunity in Cambodia that pervades all areas of public life, where powerful people are able to escape justice while those without power see their rights violated day after day and nothing is being done by the government to resolve this.

The shooting death of bystander Heng Sokhom follows a similar pattern. Police have denied any responsibility for the death of Heng Sokhom that resulted from clashes with garment factory workers on the 12<sup>th</sup> November 2013, two months after the killing of Mao Sok Chan.<sup>178</sup> While there was some admission from police that they had fired guns, they maintained that the bullets did not go beyond what they referred to as a ‘police operation’ boundary.<sup>179</sup> To this day, no further investigation or criminal proceeding has taken place.

Case (c) represents one of the worst examples of state violence against citizens in over 15 years.<sup>180</sup> The exact number of deaths has not been verified due to conflicting reports, but civil society has identified at least four deaths: Kim Phalin, 29, Yann Rithy, 26, Pheng Kosal, 22 and Sam Ravy, 26.<sup>181</sup> Other sources have reported a total of a fifth death,<sup>182</sup> but this is yet to be officially confirmed. On the 12<sup>th</sup> January 2014, the RGC established two commissions that were tasked to investigate the case.<sup>183</sup> Subsequently, the Phnom Penh Municipal Court called five military officers for ‘questioning’ on the 27<sup>th</sup> January 2014, but stated that ‘none will face charges’, as ‘they were acting in self-defence’.<sup>184</sup>

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<sup>170</sup> CCHR *Cambodia Gagged: Democracy at Risk? Report on Freedom of Expression in Cambodia* (2010), 30 <http://bit.ly/1uZxAJ0>.

<sup>171</sup> The Phnom Penh Post (online), ‘Protest Takes Dark Turn’, 16 September 2013 <http://bit.ly/1qpus5U>.

<sup>172</sup> Ibid.

<sup>173</sup> The Phnom Penh Post (online), ‘Shootings a ‘Throwback’ to Earlier Era’, 17 September 2013 <http://bit.ly/1AEp4jz>.

<sup>174</sup> Ibid.

<sup>175</sup> Radio Free Asia, ‘Rights Group Slam Impunity in Cambodia on Anniversary of Protest Death’, 14 September 2014 <http://bit.ly/1seALFc>.

<sup>176</sup> See API Submission in section III *Additional Information*.

<sup>177</sup> The Phnom Penh Post (online), ‘Six Months On, No Justice for Shootings’, 3 July 2014 <http://bit.ly/1CvTEuU>.

<sup>178</sup> The Cambodia Daily (online), ‘Police Deny Responsibility for Shooting Civilians’, 14 November 2014. <http://bit.ly/1JhydEd>.

<sup>179</sup> Ibid.

<sup>180</sup> Since the grenade attack on demonstrators on 30 March 1997, see CCPR/C/79/Add.108 [11].

<sup>181</sup> LICADHO, *List of the dead and missing men from January 3, 2014 demonstration* <http://bit.ly/19kfWWW>.

<sup>182</sup> The Cambodia Daily (online), ‘Rights Worker Claims Five Dead in Clashes’, 3 March 2014 <http://bit.ly/1uZCCVT>.

<sup>183</sup> The Cambodia Daily (online), ‘No Results in Protest Shooting Investigations’, 4 February 2014 <http://bit.ly/1JhzATE>.

<sup>184</sup> The Phnom Penh Post (online), ‘National Officers Queried Shootings’, 27 January 2014 <http://bit.ly/1i5iKXo>.

Due to a lack of independence and transparency, further results of the alleged investigations have not been released and the public has been denied access to any information relating the investigation.<sup>185</sup> In February 2014, the military police concluded that due to the ‘chaotic situation’ in which the events transpired, the police have been unable to identify or charge any perpetrators.<sup>186</sup>

Furthermore, the whereabouts of Khem Sopath remains unknown and while rights groups have called on authorities for further investigation, the official investigation was declared closed on the 16<sup>th</sup> March 2014.<sup>187</sup> Despite this, family members of Yann Rithy, Kim Phalin and Khem Sopath were questioned at the MoI on the 26<sup>th</sup> March, and during the questioning, the police allegedly attempted to shift the blame onto the families, saying that the reason they were unable to identify and prosecute those responsible in these cases was because the family members failed to file a complaint immediately after the event.<sup>188</sup>

On the 15<sup>th</sup> September 2014, one and a half year after the incidents on Veng Sreng, no real result of any government investigations had been released.<sup>189</sup> According to a statement by National Police spokesman Kirth Chantharith on the 2<sup>nd</sup> July 2014, the RGC investigation report was ‘long carried out’ and had been sent to the Phnom Penh Municipal Court.<sup>190</sup> On the 3<sup>rd</sup> July 2014, military police spokesman Kheng Tito said Cambodian authorities had investigated all relevant parties, including security forces, and that responsibility for further action lay with the court. However, he indicated that they did not intend to release the report to the public.<sup>191</sup> The contents or whereabouts of this report remain unknown. Neither the court spokesman Ly Sophanna, nor the deputy prosecutor, Meas Chanpiseth, had seen it or have any knowledge of the report and therefore could not provide any further information regarding the results of the government’s investigations.

These events give a clear indication of how law enforcement authorities handle demonstrations. Security forces frequently use excessive force, investigation is rare and those responsible for the violence are seldom held to account. There is no incentive for authority to exercise basic restraint when managing situations where people are exercising their fundamental rights to freedom of peaceful assembly.

## **Recommendations:**

*The State Party should:*

1. Give immediate and clear directions to all law enforcement officials to adhere to Cambodia’s commitments to respect and protect human rights and its defenders, and to follow the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.
2. Take action to conduct immediate, thorough and independent investigations to locate the whereabouts of Khem Sopath.
3. Create an independent body to conduct thorough, impartial and transparent investigations to ensure that all cases are speedily, independently and effectively investigated in order to bring perpetrators to justice and combat impunity.
4. Promote transparency by ensuring that the public easily accesses all investigations and their verdicts.

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<sup>185</sup> CCHR, *CCHR Briefing Note - November 2014 – Impunity in Cambodia* (2014) <http://bit.ly/1vEsNwC>; Also see API submission under III. *Additional Information*.

<sup>186</sup> Voice of America, ‘Families Want ‘Justice’ for Slain Workers’, 6 February 2014 <http://bit.ly/1L0q8kT>.

<sup>187</sup> The Cambodia Daily (online), ‘Family of Slain Protesters Questioned Despite Closed Investigation’, 27 March 2014 <http://bit.ly/1vvWRWc>.

<sup>188</sup> Ibid.

<sup>189</sup> CCHR, *Rights Group Slams Impunity in Cambodia on Anniversary of Protest Death* (15 September 2014) <http://bit.ly/178pXVJ>.

<sup>190</sup> The Phnom Penh Post (online), ‘Six Months On, No Justice for Shootings’, 3 July 2014 <http://bit.ly/1CvTEuU>.

<sup>191</sup> Ibid.

**Issue 10:** With regard to the information provided in paragraphs 75 to 84 of the State party's report, please provide information on the measures taken to ensure that the legislative framework for prosecuting perpetrators of torture is in compliance with the relevant international standards. Please comment on reports that there have been instances of torture and ill-treatment of detainees, particularly during police custody. Please indicate the number of complaints of torture and ill-treatment lodged and provide information on the resulting investigations, prosecutions, convictions, sentences and compensation provided. Please also outline the steps taken to establish an independent external monitoring mechanism to investigate allegations of unlawful acts committed by law enforcement officials. What progress has been made with regard to setting up an independent national preventive mechanism for the prevention of torture?

## Reply / Comments from Civil Society

The RGC has ignored repeated calls from national and international bodies to take a stronger stance against torture and other human rights violations.<sup>192</sup> Not only are instances of torture and mistreatment still prevalent for people held in state custody, but also the impunity of perpetrators is widespread and no independent mechanism is in place to investigate or prevent the occurrence of these crimes.

The UN Committee Against Torture in 2011, as well as recommendations at the UPR in 2014 have urged the RGC to improve its legislative framework for prosecuting perpetrators of torture so that it is in compliance with international standards.<sup>193</sup> However, no substantial action has been taken by RGC in this regard.

The RGC ratified CAT in 1992 and its *Optional Protocol* in 2007, and have taken some steps to incorporate CAT into the 2009 *Criminal Code*, including criminalising the act of torture. However, to date, there is still no clear definition of torture in the Criminal Code, which creates confusion among judges and even in the legal profession about what constitutes torture.<sup>194</sup> While there are provisions in Cambodian law that establishes the right of all prisoners to complain,<sup>195</sup> there is no procedural process in the legislative framework that instructs how these cases against torture can be filed. This leaves victims of torture in the prison system without any legal means to bring complaints before the courts. There is also no legislation relating to compensation for torture. However, the biggest concern that remains is having a legislation that criminalises torture and provides redress to victims is still not being enforced by the judiciary and law enforcement agencies.

According to ADHOC's custody monitoring statistics, at least 141 cases related to torture and ill-treatment in police custody have been observed between 2010 and 2013.<sup>196</sup> At the same time, LICADHO reported in 2014 that it had received more than 500 allegations of torture and other cruel, inhuman or degrading treatment or punishment by Cambodian police or prison officials since 2008.<sup>197</sup> Of these allegations received by LICADHO, abuse by police officials in custody accounted for more than 90% of the cases. Nineteen of these complaints were from female inmates, one of whom was four months pregnant.<sup>198</sup> An interview of 6,481 detained individuals or individuals recently released between January 2010 and December 2013 found that more than 6% of those interviewed reported

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<sup>192</sup> ADHOC, *ADHOC Joint statement: Rights to Justice and Rehabilitation of Torture Victims* (26 June 2013) <http://bit.ly/17fg48y>.

<sup>193</sup> CAT/C/KHM/CO/2, para 15; A/HRC/26/16, paras. 118.66, 119.9-119.10, 119.12.

<sup>194</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 45.

<sup>195</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

<sup>196</sup> ADHOC, *Joint Statement: Rights to Justice and Rehabilitation of Torture Victims* (26 June 2013) <http://bit.ly/17fg48y>.

<sup>197</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014), 1 <http://bit.ly/1xdfizu>.

<sup>198</sup> FIDH and LICADHO, *Report for the Human Rights Committee's Task Force for the Adoption of the List of Issues on Cambodia* (2014), 5.

that police or prison officials subjected them to torture or ill treatment.<sup>199</sup> In addition, abuses by other prisoners, ordered or sanctioned by authorities are very common.

The studies from ADHOC and LICADHO detail the methods and extent of torture suffered by prisoners and detainees. The form of torture ranges from severe beatings, sometimes rendering the victims unconscious,<sup>200</sup> to forced kneeling for a prolonged period of time and guards standing and stamping on bodies and faces.<sup>201</sup> These studies also detailed the use of various objects including iron rods, plastic bags, guns and various forms of electro-shock weaponry.<sup>202</sup> The majority of people interviewed said that they were tortured in order to force a confession or to pay bribe money to their abusers to stop the torture.<sup>203</sup>

The testimonies of the cases received by LICADHO between January 2008 and June 2014 reveal that there has been no substantial change in the type, frequency and severity of the abuse reported over the reporting period.<sup>204</sup> This indicates the government's severe deficiency in their commitment to eradicate torture in the state detention system and their unwillingness to address this problem despite significant national and international calls to act.

In the majority of cases of alleged torture or ill-treatment, prompt and impartial investigations rarely take place, the perpetrators of violence go unpunished and the victims are rarely compensated. In fact, there is no case of conviction of law enforcement officials for torture related crimes in recent years as far as the civil society is aware. Even when complaints are filed, at best they are ignored, and at worst prisoners are placed in further risks. LICADHO reported that in one instance, a prisoner was beaten on five separate occasions after he had filed a complaint.<sup>205</sup>

Due to the crucial lack of an independent body tasked with receiving and dealing with complaints against the police and other law enforcement personnel, the fear of reprisal stops victims from lodging any formal complaint, although the right for all prisoners to complain about abuse is guaranteed under the Cambodian law.<sup>206</sup> A number of individuals who have made complaints have reported receiving threats, and in some cases further physical abuse.<sup>207</sup>

Since there is no independent external mechanism to monitor and investigate these unlawful acts committed by law enforcement officials, even if an individual does file a complaint from within the prison system, there is no guarantee that the review will be impartial, and it is unlikely that it will be free from corruption.<sup>208</sup> This acts as a further deterrent for detainees to file complaints.

There is also no comprehensive system of compensation and rehabilitation for victims of torture in Cambodia. Thus, even if complaints are made, they are often resolved in informal arrangements with the perpetrator, so that charges against them will be dropped. The joint NGO report made from Cambodian civil society to the Committee Against Torture in 2010 stated that no case of torture victims claiming for compensation from their perpetrators has been brought forward during the reporting period.<sup>209</sup>

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<sup>199</sup> Ibid.

<sup>200</sup> Interview with Housing Rights Task force (22 December 2014).

<sup>201</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014), 3 <http://bit.ly/1xdfizu>.

<sup>202</sup> LICADHO, *Rights at a Price: Life Inside Cambodia's Prisons* (2015), 16.

<sup>203</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014), 16 <http://bit.ly/1xdfizu>.

<sup>204</sup> Ibid 4.

<sup>205</sup> Ibid 10.

<sup>206</sup> *Law on Prisons* (Cambodia) art 28.

<sup>207</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014), 19 <http://bit.ly/1xdfizu>.

<sup>208</sup> ADHOC, CDP, LICADHO, TPO and CHRAC, *Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia - Presented to the UN Committee Against Torture (CAT) prior to Cambodia's second periodic report at the 45th session of CAT, held in Geneva from 1 to 19 November 2010* (2010) <http://bit.ly/1L2MnXi>.

<sup>209</sup> Ibid 32.

One of the commitments made by the RGC after ratifying the *OPCAT* was to create an independent National Preventative Mechanism (NPM) by April 2008.<sup>210</sup> The primary purpose of the NPM is to monitor and prevent torture and ill-treatment in places of detention. To date, no such body exists in Cambodia. Instead, the government set up an inter-ministerial committee made up of various government officials. This body is neither independent nor capable of performing the functions of an effective NPM. Moreover, since its establishment in 2009, it has done very little in terms of actual monitoring, reporting or investigation of complaints. In a conference held in 2013 on the establishment of the NPM, the said inter-ministerial committee was unable to elaborate on their achievements claiming their lack of resources as the reason.<sup>211</sup> There has been no indication that this body will be replaced by a truly independent and functional NPM in the foreseeable future.<sup>212</sup>

Levels of torture and ill-treatment in Cambodia remain high, while avenues for complaint are limited and those responsible for abuse are rarely punished.<sup>213</sup>

## **Recommendations:**

*The State Party should:*

1. Ensure that the legislative framework for prosecuting perpetrators of torture is in compliance with international standards by:
  - a. Preparing and enacting specific anti-torture legislation which incorporates into domestic law the definition of torture as set out in article 1 of the CAT and disseminate this information to law enforcement officials.
  - b. Enforcing legislation criminalising torture and reaffirming its commitment to end impunity
  - c. Including a provision in domestic legislation prohibiting the invocation of ‘exceptional circumstances’ as a justification for torture
  - d. Making procedural law to enable filing cases before court on the basis of complaints of torture and ill treatment.
2. Make legislation for compensation and rehabilitation of victims, and also for witness protection and provide full rehabilitation to victim of torture through a holistic approach that includes medical, psychological, and social needs, and access to justice and redress.
3. Establish an independent external mechanism to monitor and investigate allegations of unlawful acts committed by law enforcement officials in Cambodia.
4. Establish an independent system to effectively monitor and inspect all places of detention. This includes allowing regular unannounced visits by independent national and international monitors including NGOs.
5. Establish a truly independent NPM made up of appropriately qualified experts which is free from government influence.

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<sup>210</sup> Ibid 43.

<sup>211</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia’s Police Stations and Prisons* (2014), 20 <http://bit.ly/1xdfizu>.

<sup>212</sup> FIDH and LICADHO, *Report for the Human Rights Committee’s Task Force for the Adoption of the List of Issues on Cambodia* (2014), 6.

<sup>213</sup> LICADHO, *Torture & Ill Treatment: Testimony from Inside Cambodia’s Police Stations and Prisons* (2014), 1 <http://bit.ly/1xdfizu>.

**e. Liberty and security of the person and treatment of prisoners (arts. 7, 9 and 10)**

**Issue 11:** Concerning the information contained in paragraph 103 of the State party's report, please describe the measures adopted and progress made in improving prison conditions, including those taken to lower the high levels of occupancy, upgrade health services, oversee the prison food supply chain and distribute personal hygiene items to inmates. Please provide updated information on the number of persons held in pretrial detention and prisoners serving sentence, as well as the occupancy rate of all the detention centres. Please include information on the number of prisoners for whom there are no final and enforceable judgements and on measures taken to facilitate the sharing of final judgements with prisons. In addition, please indicate the measures the State party has taken to guarantee that persons awaiting trial are kept separate from those serving sentence, and that juvenile offenders are held separately from adults, and males from females. What measures are in place to ensure that the rights of children living in prison with a parent are respected?

**Reply / Comments from Civil Society**

In the State Report, the RGC describes a number of developments made with respect to improving the conditions of prisons in Cambodia. The RGC refers to the passing of the *Law on Prisons* (2011), which aims to ensure that prisons are managed in conformity with the basic principles of the United Nations Minimum Standard.<sup>214</sup> They also describe policies with regard to food rations, clothing, provision of health care, prevention of torture, rehabilitation programmes, and separation of men from women and adults from juveniles.<sup>215</sup> However, there are a number of concerning reports that indicate the the gulf between these standards and the practical reality in the Cambodian prison system. A number of issues have arisen, including concern for basic rights such as healthcare, food, and hygiene, as well as corruption, overcrowding (in part as a result of the frequency of pre-trial detention), the treatment of women and juvenile offenders, and children in prison.

The RGC states that there are 22 prisons in Cambodia, with 21 prison-health clinics under the control of the MoH and goes on to say that these clinics have been supplied medicine from hospitals and have trained staff.<sup>216</sup> However, LICADHO and the International Federation for Human Rights (FIDH) reported that these staffs are “often poorly trained or lacking in medical qualifications”; that there is an insufficient supply of medicine and equipment; inmates that suffer from mental health problems are “rarely offered any support or treatment”; and the failure to provide appropriate health care in a timely manner could lead to serious problems being misdiagnosed or mistreated, thus result in delayed transfer to hospital.<sup>217</sup> This has “certainly led to unnecessary inmate deaths in Cambodia”.<sup>218</sup>

LICADHO and TIC both note that corruption plays a big role in the conditions that inmates face in prison.<sup>219</sup> They argue that the individual's circumstances in prison depend on their financial status and their ability to ‘purchase basic commodities and individual rights’ as well as luxuries.<sup>220</sup> This includes paying for prison medical services and health care, purchasing food, sleeping space, extra time out of their cell, individual cells, rehabilitation and training programs, library books, electricity and fans, and in some cases even drugs, alcohol and prostitutes.<sup>221</sup> Even visitors, who are often inmates’ only

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<sup>214</sup> CCPR/C/KHM/2, para 113.

<sup>215</sup> Ibid., paras 102-111.

<sup>216</sup> Ibid., paras. 101-102.

<sup>217</sup> FIDH and LICADHO, *Report for the Human Rights Committee's Task Force for the Adoption of the List of Issues on Cambodia* (2014), 9.

<sup>218</sup> The Phnom Penh Post (online), ‘Inmate Left to Die: Prisoners’, 20 February 2014 <http://bit.ly/1z7T4jw>, quoting Sharon Critoph, Prisons Consultant, LICADHO.

<sup>219</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 4; Interview with Transparency International (11 December 2014).

<sup>220</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 4.

<sup>221</sup> Ibid.

providers of nutritious food, medicine and financial support, are required to pay a fee to the prison.<sup>222</sup> This is particularly concerning in the case of parents visiting incarcerated juveniles, where they are forced to pay bribes to the prison in order to deliver much needed food to their incarcerated child.<sup>223</sup>

This creates an inmate hierarchy within the prison system, where the poorest inmates live in the worst conditions. Food and water is provided in inadequate amounts, and their prices are inflated.<sup>224</sup> This is exemplified by the case at Prey Sar prison, where cutting of the water supply due to construction work led to inmates having to pay an increasing rate to be provided with clean drinking water.<sup>225</sup> In these situations, wealthy and well-connected inmates are either not impacted, or benefit from the situation, while poorer inmates become dependent on, and must work for, the wealthy inmates in order to secure clean water and other necessary supplies.<sup>226</sup>

The overcrowding in Cambodia's prisons does not make it any easier to ensure that basic rights are met like food, water and health care. The number of incarcerated people in Cambodia has been increasing steadily and in late 2014 it was 15,182, or 179% of the official capacity of 8,500.<sup>227</sup> This exacerbates poor conditions as many people are forced to share individual cells.<sup>228</sup> This is in part the result of the preference by the judiciary to deploy custodial sentences as opposed to other alternatives available under the *CCPC* and the *Criminal Code*.<sup>229</sup> The endemic use of pre-trial detention, despite the requirement that it only be ordered in certain circumstances, is also a contributing factor.<sup>230</sup>

This has resulted in thousands of people, including juveniles and pregnant women, being incarcerated for minor offences while awaiting trial.<sup>231</sup> CCHR found that pre-trial detention was ordered in 82% of monitored cases in the Phnom Penh Court, and in 92% of monitored cases involving juveniles.<sup>232</sup> Those incarcerated in pre-trial detention make up a concerning majority of the prison population. As of September 2014, 63% of prisoners were in pre-trial detention, and this number was higher for women (70%) and juveniles (83%).<sup>233</sup>

The overcrowding in prisons results in situations where juveniles, men and women are held altogether, rather than in specialised prisons for each group.<sup>234</sup> The circumstances of juvenile offenders are often not taken into account, and they are likely to be treated according to their financial status like their adult counterparts.<sup>235</sup> This is particularly concerning as children in prison are 'overwhelmingly from poor backgrounds' which makes an already vulnerable group even more so.<sup>236</sup> Furthermore, in some prisons there is no separation between juveniles and adults, and even where separate facilities exist there is little attempt to prevent interaction outside of their cells.<sup>237</sup> The *Law on Children in Conflict with the Law*, which sets out rights of children in prisons with emphasis on areas such as pre-trial detention and separation from adults, has yet to be passed despite a reported ten-year drafting period.

Female juvenile inmates are not separate from adult women, and little attention is given to their particular mental and physical health needs, as well as hygiene and sanitary needs: women inmates are held in the same prisons as male juveniles, and sometimes in the same cellblocks as male inmates;

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<sup>222</sup> Ibid 5.

<sup>223</sup> Ibid.

<sup>224</sup> Interview with Housing Rights Task Force (22 December 2014).

<sup>225</sup> The Phnom Penh Post (online), 'Water a "Luxury" at Prey Sar', 9 December 2014 <http://bit.ly/1z7V1fP>.

<sup>226</sup> Ibid.

<sup>227</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 22, citing 'Reforming the Process of Deciding Pre-Trial Detention', power point presentation delivered by Ith Rady, Undersecretary of State, Ministry of Justice.

<sup>228</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 22.

<sup>229</sup> Ibid 23.

<sup>230</sup> Ibid 24; *Code of Criminal Procedure* (Cambodia) art 203-204.

<sup>231</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 24.

<sup>232</sup> CCHR, *Sixth Bi-annual Report – 'Fair Trial Rights in Cambodia'* (2013), 5-6, 18.

<sup>233</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 24.

<sup>234</sup> Interview with LAC (2 December 2014).

<sup>235</sup> LICADHO, *Rights at a Price – Life Inside Cambodia's Prisons* (2015), 10.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

and pregnant women with newborn babies are sent to prison without consideration of their circumstances.<sup>238</sup>

This has resulted in a group of 35 children, between the ages of one month and three-and-a-half years living in prison with their mothers, half of which were born in prison and have never left.<sup>239</sup> The prison system is incapable of providing for the needs of these children, such as healthcare, education, nutrition and social interaction.<sup>240</sup> The current *Prison Law* (2011) allows children to stay in prison with their mother until the age of three, however there are no guidelines in place for determining when or how to remove the child from its mother when it reaches this age.

## **Recommendations:**

*The State Party should:*

1. Set out thorough criteria for the imposition of pre-trial detention, and require judges to give adequate reasons for such an order. Ensure that judicial officers follow any policy set in place to this end.
2. Take adequate steps to ensure that men and women detainees are separated, and that adult and juvenile detainees are separated.
3. Take steps to establish a juvenile justice system that can meet the particular needs of juveniles. Ensure that such a system only incarcerates juveniles as a last resort, for the shortest possible time and in appropriate conditions.
4. Implement the *Law on Children in Conflict with the Law*.
5. Ensure that the circumstances of pregnant mothers or mothers with newborn children are taken into account during sentencing, ensure that the needs of children in prisons are met and that guidelines are developed for determining how and when they are to be removed from their mother.
6. Undertake reforms to ensure that the RGC is providing for basic rights of incarcerated people and met the UN Minimum Rules for the Treatment of Prisoners. Increase the budget to prisons, aim to reduce cases of pre-trial detention and custodial sentences where another sentence could be better suited, and move to end the culture of bribery and corruption in Cambodian prisons.

**Issue 12:** Please comment on reports that the lack of mental health services often results in persons with psychosocial disabilities being incarcerated in prisons. What measures are in place to resolve that situation? What is the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes?

## **Reply / Comments from Civil Society**

There is a severe lack of mental health services in Cambodia, often creating situations where people with psychological disabilities end up being incarcerated in prisons and detention facilities.

There are multiple provisions in Cambodian law that should ensure that Cambodians with psychological disabilities are provided with adequate access to mental health services and do not end up in incarceration as a result of their psychological disability. Firstly, various international human rights norms that guarantee access to mental health services are incorporated into domestic law under article 31 of the *Constitution*. The *Criminal Code* ensures that sentencing for people with mental health problems takes into account their capacity to reason at the time they committed the offence whereby if it is found that they did not have the capacity to reason they should not be held criminally

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<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Ibid.

responsible and if their capacity was diminished their sentence should reflect this.<sup>241</sup> Unfortunately, despite these legal safeguards there seem to be a disproportionate amount of people in incarceration that suffer from mental health problems.

One of the main reasons for this is the lack of mental health services provided in Cambodia. This is largely due to a lack of resources allocated to mental health, it is estimated that mental health receives 0.02% of the entire Cambodian health budget.<sup>242</sup> Furthermore, mental health services in Cambodia are concentrated in urban centres despite the fact that 85% of Cambodian's live in rural communities.<sup>243</sup> The public health system does not allocate any positions for psychologists. In 2010, just 35 trained psychiatrists and 45 psychiatric nurses were catering for the entire country.<sup>244</sup> Because Cambodia's mental health facilities are decentralised and incorporated within the public health system there are no stand-alone psychiatric units in the country.<sup>245</sup> In-patient mental health facilities are only available in the urban areas of Phnom Penh and Siem Reap. There is limited access to community based rehabilitation centres and other forms of outpatient treatment, according to the MoH, there were 68 outpatient psychiatric departments in 2010, about 2% of the health service facilities in Cambodia.<sup>246</sup> NGOs like TPO have tried to fill this gap in mental health services, however given their limited funding they can only reach a small population of those needing treatment.

As a result, Cambodians have little knowledge of or access to mental health services and their mental health needs remain unaddressed and unmet. Cambodians with mental disabilities are either left to fend for themselves or are cared for by their family and community who have few resources to adequately treat mental health issues. People with mental disabilities are often abandoned because families and communities become overwhelmed and do not know what else to do with them. Some families resort to chaining and caging children with severe mental health problems because they have little understanding of the illness, have no other means to deal with them and do not want the community to see that they have a child with a mental disability because of the likely stigmatisation and discrimination.<sup>247</sup> It is estimated that between 10 to 40% of persons with severe mental health disabilities are chained or locked in cages by their family members.<sup>248</sup> This demonstrates that the extent of the knowledge gap and stigmatisation of mental illness is widespread and needs to urgently be addressed by the RGC.

The RGC is currently doing nothing to disseminate any mental health information and address this problem. A mother interviewed in a report written by the Leitner Centre for International Law and Justice in 2012 said "*only NGOs give people this kind of education. The government doesn't care*".<sup>249</sup> As represented in this statement, the government is not fulfilling its obligations to the Cambodian population with regard to providing mental health services and NGOs are filling the gap in services and footing the burden. Because there is no adequate treatment or support for people with psychological disabilities, detention is often seen as a viable and appealing option both for families and law enforcement officials.

Despite the provisions in the *Criminal Code*, mental health condition of the accused is rarely assessed to ascertain criminal responsibility before sentencing and, consequently, when people with mental disabilities get tangled in the criminal justice system, they often end up in some form of detention. The accused are tried without any provisions for their mental health condition, often without a

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<sup>241</sup> *Cambodian Criminal code 2009* (Cambodia) art 31.

<sup>242</sup> Daniel McLaughlin and Elisabeth Wickeri, 'Special Report: Mental Health and Human Rights in Cambodia' (Special Report, Leitner Centre for International Justice and Law Fordham Law school, 2012) <http://bit.ly/1BjRJca>.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid; IRIN News, 'Analysis: What Ails Cambodia's Mental Health System?', 12 March 2012 <http://bit.ly/1BSPdKe>: 'About 120 trained mental health workers serve 500,000 patients nationwide as of February 2012'.

<sup>245</sup> Daniel McLaughlin and Elisabeth Wickeri, "Special Report: Mental Health and Human Rights in Cambodia" (Special Report, Leitner Centre for International Justice and Law Fordham Law school, 2012) <http://bit.ly/1BjRJca>.

<sup>246</sup> Royal University of Phnom Penh - Department of Psychology, *Cambodian Mental Health Survey* (2012) <http://bit.ly/15Fyiiiv>.

<sup>247</sup> Daniel McLaughlin and Elisabeth Wickeri, 'Special Report: Mental Health and Human Rights in Cambodia' (Special Report, Leitner Centre for International Justice and Law Fordham Law school, 2012) <http://bit.ly/1BjRJca>.

<sup>248</sup> Ibid.

<sup>249</sup> Ibid 25.

lawyer.<sup>250</sup> When they are found guilty of an offence, they are subjected to the same sentencing and treatment as those with no mental illness. Alternative sentencing schemes for convicted persons with mental illness are essentially absent, even for those who are suffering from severe mental disabilities.<sup>251</sup> Those with mental health problems are particularly vulnerable to mistreatment and torture in the early stages of detention because of corrupt practices that facilitate the extraction of forced confessions.<sup>252</sup> Therefore, many people that enter the criminal justice system with mental health problems end up in prison.

Those who are not found criminally responsible for a crime, but are deemed by judges and prosecutors to be a risk to public safety are often sent to state detention centres. These detention centres function as de-facto holding centres for Cambodians with mental disabilities. They are often sent there as these centres are extra-judicial and so require no paperwork or legal proof of culpability for a crime for people to be detained. People can be held there for months to years in horrific and abusive conditions with no access to mental health treatment or recourse to the law. Often people with mental health conditions come out of these centres with their condition worse than when they came in, the same can be said for people in judicial detention facilities.

It is not just judges and prosecutors that send people with psychological disabilities to these centres. There have been reports of family members paying police to lock up people in their family with mental illness in these centres as they cannot handle the burden of caring for someone with mental health problems when there are no mental health services provided by the RGC to assist them.<sup>253</sup> On top of this, the RGC regularly runs ‘sweeps’ of the streets where they pick up people who are considered ‘undesirable’ and put them in these detention centres. Because of the lack of services many people with mental health problems end up homeless and are considered ‘undesirable’ by the RGC, they are therefore picked up in these periodic ‘sweeps’ and taken to the detention centres. In the centres they are not provided with any special care or support, most staff members at these facilities have no training to deal with mental health. Instead, the detainees are subject to inhumane and degrading treatment that only exacerbates their mental health problems.<sup>254</sup> Public mental health facilities have also transferred patients directly to these centres to alleviate over crowding burdens on these facilities.<sup>255</sup>

The lack of mental health care provided by the RGC is creating a situation where the only place for people with mental health problems to go is the places of detention, where instead of being provided with care and mental health services they are subjected to abuse and mistreatment that often exacerbates their illness.

## **Recommendations:**

*The State Party should:*

1. Prioritise mental health across all government sectors in accordance with its significance as a public health and human rights issue.<sup>256</sup>
2. Put more funding into the national mental health budget, this should be in accordance with the WHO recommendations for low-income countries.
3. Increase nationwide services in the provinces: install governmental positions for psychiatrists and psychologists e.g. in hospitals and health care centres. Make such positions more attractive by increasing staff salaries.

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<sup>250</sup> LICADHO, *Rights at a Price: Life Inside Cambodia's Prisons* (2015) <http://bit.ly/1z0HmJD>.

<sup>251</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 156.

<sup>252</sup> Refer to Issue 18 on forced confessions.

<sup>253</sup> Daniel McLaughlin and Elisabeth Wickeri, *Special Report: Mental Health and Human Rights in Cambodia* (Special Report, Leitner Centre for International Justice and Law Fordham Law school, 2012) <http://bit.ly/1BjRJca>.

<sup>254</sup> Refer to Issue 13 on extrajudicial detention centers

<sup>255</sup> Daniel McLaughlin and Elisabeth Wickeri, ‘Special Report: Mental Health and Human Rights in Cambodia’ (Special Report, Leitner Centre for International Justice and Law Fordham Law school, 2012) <http://bit.ly/1BjRJca>.

<sup>256</sup> *Ibid*, 31.

4. Create education campaigns and de-stigmatisation programs about mental health so that families better know how to cope and where to look for treatment and also to avoid abandonment of people with mental disabilities.
5. Establish community-based mental health care and support, especially for rural areas.

**Issue 13:** Please provide information on the number of persons deprived of their liberty in social affairs, youth rehabilitation and drug-rehabilitation centres. Please comment on reports that the homeless, beggars, people who use drugs, street children and sex workers are regularly rounded up by law enforcement officials and arbitrarily detained in such centres. Please also comment on allegations of torture, ill-treatment and other abuses committed by law enforcement officers and staff at social affairs, youth rehabilitation and drug-rehabilitation centres. Include information on the outcome of the investigations and any disciplinary and/or criminal proceedings related to such allegations.

### **Reply / Comments from Civil Society**

There are currently eight detention facilities for drug and ‘social’ rehabilitation operating outside the criminal justice system that collectively hold around 1,000 people per year across Cambodia.<sup>257</sup> The majority of detainees are 18-25 year old men, while at least 10% of the total prison population are children.<sup>258</sup> Detainees are usually held for three to six months, although some are confined for up to 18 months.<sup>259</sup>

While these centres are run under the guise of rehabilitation, their sole purpose is to lock up members of the public that authorities have deemed ‘undesirable’ without affording them the due process of the law.<sup>260</sup> The centres are used by the RGC as a way to lock up drug users and those suspected of using drugs without having the hassle of prosecuting people in the justice system and affording them due process of the law.<sup>261</sup> Since the centres lack any form of due process protection they also serve as a convenient place for Cambodian authorities to send those they consider ‘undesirable’ such as homeless people, beggars, street children, sex workers, and people with actual or perceived mental or developmental disabilities.

People are arbitrarily brought to these centres against their will by law enforcement officials and are confined for months where they are subject to torture, ill-treatment and other forms of abuse. The RGC show little sign of closing the centres despite repeated calls from civil society and treaty bodies to do so. As recently as November 2014, authorities conducted ‘sweeps’ to clear homeless people and others considered ‘undesirable’ off the streets ahead of Cambodia’s traditional Water Festival.<sup>262</sup> As a result of these ‘sweeps’ a man named Phea was collected and moved to Prey Speu’s Po Senchey Vocational Training Centre, after weeks in detention he died on the 26<sup>th</sup> November after being refused medical treatment for infected wounds on his leg.<sup>263</sup> There has been no proper investigation conducted by police into his death.<sup>264</sup> Unfortunately, cases like this are not uncommon.

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<sup>257</sup> HRW, ‘*They Treat Us Like Animals*’ - *Mistreatment of Drug Users and ‘Undesirables’ in Cambodia’s Drug Detention Centres* (2013), 2 <http://bit.ly/1AWjEPm>.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> LICADHO, *Report for the Human Rights Committee’s Task Force for the adoption of the list of issues on Cambodia* (2014) <http://bit.ly/1vc1ynS>.

<sup>261</sup> HRW, ‘*They Treat Us Like Animals*’ - *Mistreatment of Drug Users and ‘Undesirables’ in Cambodia’s Drug Detention Centres* (2013), 2 <http://bit.ly/1AWjEPm>.

<sup>262</sup> LICADHO and HRW, *Death in Prey Speu Highlights Detention Center Abuses* (7 December 2014) <http://bit.ly/1D4wpJB>.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

Local authorities routinely conduct round ups, often ahead of high-profile international meetings or visits by foreign dignitaries where they take to the streets with caged trucks gathering truckloads of beggars, sellers and anyone else they deem ‘undesirable’. They force them into these trucks without telling them what there are doing or where they are going. The ‘undesirables’ are taken to the local police station or the Municipal Social Affairs Office, before being transferred to one of the centres where they are usually held for a period of 3-6 months.<sup>265</sup> In one raid in June 2014, City Hall spokesman Long Dimanche said that the intention of rounding up the street people was to help them by sending them to partner NGOs Mith Samlanh and Pour un Sourire d’Enfant for vocational training programs.<sup>266</sup> However, two days after the sweep, representatives from these partner NGOs reported to the Cambodia Daily that they had received far less people than anticipated. The statistics from the government compared to that of these NGOs as well as the information gathered from LICADHO who had been monitoring the roundup were vastly inconsistent.<sup>267</sup>

These centres are not only used to get ‘undesirable’ people off the streets and out of the public eye, but it seems that they have a secondary motive to punish these people for their perceived moral failures; for being drug addicts, homeless, beggars or sex workers. There have been consistent reports of torture, ill treatment and abuse used both as punishment and as a regular part of the ‘program’. Detainees have described being thrashed with rubber water hoses and hit with sticks or branches. In interviews conducted by HRW with people who had been held in drug detention between 2006 and 2008 some described being punished with exercises intended to cause intense physical pain and humiliation, such as crawling along stony ground or standing in septic water pits.<sup>268</sup> In the same interviews former female detainees described rape and other sexual abuse by male guards. It was also reported that many detainees were forced to work unpaid in the centres and those who refused were beaten.<sup>269</sup>

The children, who make up 10% of the population in these centres, are subject to the same abuses as adults while confined: they share rooms with adults, are forced to perform exhausting physical exercise, and are also subject to abuse, including cruel, inhuman and degrading treatment and even.<sup>270</sup>

There have been no proper investigations into these allegations of torture and ill-treatment and hence no criminal proceedings or disciplinary action. Of the 33 individuals interviewed by HRW, none saw a lawyer or a judge, or were brought to court at any time after their apprehension or during their detention in the centre. The perpetrators of these crimes remain unpunished and Cambodia’s most vulnerable people continue to be systematically abused.

In response to criticism about the conditions inside drug-rehabilitation centres the MoH in November 2014 expressed its intention to offer a nationwide alternative community-based approach to drug-rehabilitation at health centres by 2015.<sup>271</sup> While the development of an alternative to putting people in compulsory detention is a step in the right direction closing the existing centres should be a priority. However, the Ministry expressed no intention of shutting down the existing drug-rehabilitation centres.<sup>272</sup>

## **Recommendations:**

*The State Party should:*

1. Immediately close all drug and youth rehabilitation centres and end arbitrary detention and the abuse of ‘undesirable’ people.

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<sup>265</sup> HRW, ‘*They Treat Us Like Animals*’ - *Mistreatment of Drug Users and ‘Undesirables’ in Cambodia’s Drug Detention Centres* (2013), 2 <http://bit.ly/1AWjEPm>.

<sup>266</sup> The Cambodia Daily (online), ‘Roundup of Vagrants Begins; Numbers Kept Secret’, 11 June 2014 <http://bit.ly/1yYxtK2>.

<sup>267</sup> The Cambodia Daily (online), ‘NGOs Say Vagrant Sweep “One Big Mess”’, 12 June 2014 <http://bit.ly/16CXtTr>.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> The Phnom Penh Post (online), ‘“Alternative” approach for drug addicts: gov’t’, 28 November 2014 <http://bit.ly/17gvtFu>.

<sup>272</sup> Ibid.

2. Ensure prompt and independent investigations into the allegations of ill-treatment and torture in rehabilitation centres and hold those responsible accountable for their crimes.
3. Expand access to voluntary, community- based drug dependency treatment which includes honouring their commitment to implementing a nationwide alternative community-based approach to drug-rehabilitation at health centres by 2015.
4. Ensure that children in any form of arbitrary detention, social rehabilitation or any other Government-run centres are released without delay.
5. Adopt the recommendations made in under question 10 regarding torture.

**f. Prohibition of slavery and forced labour (art. 8)**

**Issue 14:** Please provide updated information, disaggregated by age, sex and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of human trafficking since the consideration of the State party's initial report. Please provide information on the measures taken to ensure effective implementation of the Law on the Suppression of Human Trafficking and Sexual Exploitation, in particular to strengthen and effectively enforce appropriate mechanisms aimed at prevention, early identification, referral, assistance and support for victims of trafficking. Please describe the results of the 2011–2013 National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation. Has the State party evaluated the effectiveness of measures taken to raise awareness of trafficking in persons?

**Reply / Comments from Civil Society**

While it is known fact that trafficking is a widespread problem in Cambodia and extensive research has been conducted on areas such as sex trafficking, much of the available information about victims of trafficking is limited or conflicting.<sup>273</sup>

There are a large number of RGC working committees and ministries actively working on the project of combating trafficking, however there is no single, authoritative voice that can provide reliable statistics on the number or demographics of victims of trafficking. This is largely because these bodies work autonomously with little or no coordination between each agency. Several ministries provide statistics on trafficking cases and convictions, but the information is inaccurate and incomplete.<sup>274</sup> The lack of coordination between these multiple government bodies working on trafficking issue means that no current database represents a complete and unbiased picture. In 2012, the MoJ reported 102 prosecutions resulting in 62 convictions, under *the Law on Suppression of Human Trafficking and Sexual Exploitation (Human Trafficking Law)*, the *Criminal Code* and *Law on Aggravated Circumstances of Crimes*.<sup>275</sup> This represented a significant increase in the number of convictions from the previous year, including a high profile conviction of Lin Yu Shin, a Taiwanese woman who trafficked an estimated 700 Cambodians working in slavery like conditions abroad fishing vessels around the world.<sup>276</sup> However, investigations by police authorities into trafficking cases remain rare, leading to extremely low numbers of prosecution and convictions. This reflects the deficiencies of the existing mechanisms with uncoordinated state agencies, lack of reliable statistics and an inefficient allocation of resources.

<sup>273</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 5 <http://bit.ly/1DErzBl>.

<sup>274</sup> US Department of State, *Country Narratives: Countries A Through F – Trafficking in Persons Report 2012* (2012) <http://1.usa.gov/1z9efjZ>.

<sup>275</sup> Ibid.

<sup>276</sup> The Phnom Penh Post (online), 'Fishermen Trafficker Charged', 13 May 2013 <http://bit.ly/18MydM7>.

The efforts made by the RGC to combat trafficking are evident in the array of government bodies devoted to the cause, from entities within the RGC, institutions and other key stakeholders. These bodies included the Office of Anti-Human Trafficking and Juvenile Protection, established in 1996;<sup>277</sup> the National Royal Gendarmerie<sup>278</sup> established the Section on Anti-Human Trafficking in 2002;<sup>279</sup> The MoI lead the High Level Working Group to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children (HLWG); and the MoSVY established the Department of Anti-Human Trafficking and Reintegration in 2011.

The attempt by RGC to coordinate these different bodies was indicated by the creation of the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children (NC/STSLS) in 2009, a taskforce ‘designed to coordinate the government’s efforts’.<sup>280</sup> The NC/STSLS, led by the Deputy Prime Minister and MoI and supported by six technical working groups working at the national and sub-national level,<sup>281</sup> is tasked with the mandate of overseeing and coordinating all RGC efforts from prevention to reintegration and rehabilitation of human trafficking crimes.<sup>282</sup> At regional level, the Coordinated Mekong Ministerial Initiative Against Trafficking Task Force (COMMIT initiative) was set up in 2004 by the six governments around the greater Mekong region as intergovernmental bodies with support from the UN Inter-Agency Project on Human Trafficking.<sup>283</sup> However, despite the creation of these bodies and initiatives, the different agencies ‘proceed mostly autonomously from one another’ and did not make significant contribution to a coordinated response at the national level.<sup>284</sup> The COMMIT initiative all but stopped functioning in 2010 after the publication of their third Sub-Regional Plan of Action.<sup>285</sup>

The extent of the effectiveness of actions taken by the RGC is still unknown due to the lack of an independent evaluation mechanism.<sup>286</sup> At present, there are at least five ministries involved in counter-trafficking efforts, including large amounts of committees and sub-committees. However, these initiatives function mostly independently from one another, bringing varying resources to different activities without an overall coordinated approach, rendering the NC/STSLS’s effort to facilitate a more coordinated approach largely ineffective.

Some of the more positive actions taken by the RGC to combat human trafficking include the development of lawful labour recruitment channels to Thailand, Malaysia and Korea to ensure the protection of migrant workers abroad, child safe tourism campaigns to prevent trafficking in the tourism industry and the implementation of community mobilisation and poverty alleviation campaigns in five border provinces.<sup>287</sup> In order to provide post-harm assistance to trafficked victims, various social services have been made available, including identification, repatriation and vocational education assistance.<sup>288</sup>

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<sup>277</sup> The office was later replaced by the Department of Anti-Human Trafficking and Juvenile Protection in 2002.

<sup>278</sup> A branch of the Royal Cambodian Armed Forces responsible for maintaining public order and international security.

<sup>279</sup> The section was later upgraded to the Office of Anti-Human Trafficking in 2009.

<sup>280</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 6 <http://bit.ly/1DErzBl>.

<sup>281</sup> United Nations Inter-Agency Project on Human Trafficking, *Report for the Consultation Workshop on Strategic Visioning for Post-2013 Coordinated Efforts in Anti-trafficking in Cambodia* (2013), 5.

<sup>282</sup> UNIAP, *Final Report Phase III - 2007-2014* (2014), 6 <http://bit.ly/1L7BCDe>. The mandate includes prevention, protection, rehabilitation, reintegration & repatriation, law enforcement, justice, international cooperation, child affairs, migration, monitoring and evaluation.

<sup>283</sup> United Nations Inter-Agency Project on Human Trafficking, *COMMIT: The Coordinated Mekong Ministerial Initiative Against Trafficking* [bit.ly/1ALIm6O](http://bit.ly/1ALIm6O).

<sup>284</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 6 <http://bit.ly/1DErzBl>.

<sup>285</sup> United Nations Inter-Agency Project on Human Trafficking, *COMMIT: The Coordinated Mekong Ministerial Initiative Against Trafficking* [bit.ly/1ALIm6O](http://bit.ly/1ALIm6O).

<sup>286</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 9 <http://bit.ly/1DErzBl>.

<sup>287</sup> UNIAP, *Counter-Trafficking Action Being Taken in Cambodia* <http://bit.ly/1E185cn>.

<sup>288</sup> Ibid.

Malaysia is one of the biggest recipients of Cambodian migrant workers working in the domestic sector as live-in maids. In 2011, Prime Minister Hun Sen signed a moratorium to stop domestic workers going to Malaysia in an attempt to prevent more domestic workers from being trafficked through debt bondage by recruitment agencies or falling into abusive labour conditions.<sup>289</sup> In March 2014, the RGC confirmed a final draft of a Memorandum of Understanding with Malaysia to ensure protection mechanisms for Cambodian domestic workers in Malaysia before the lifting of the moratorium, but failed to settle on a timeframe for signing the agreement.<sup>290</sup>

Thailand is another key destination country for victims of human trafficking from Cambodia.<sup>291</sup> It has been estimated that at least 20,000 Cambodian men, women and children are trafficked annually to Thailand and within Thailand for the purpose of labour exploitation.<sup>292</sup> Many victims remain unidentified and when caught by Thai authorities, are simply deported back to Cambodia without access to support services or any means to take legal action against their exploiters. According to the UN Inter-Agency Project on Human Trafficking (UNIAP) report, over 8,000 people were deceived into the worst labour conditions with no freedom of movement and no pay in 2009. There were a higher proportion of men in the worst situations of exploitation and trafficking.<sup>293</sup> Of the officially repatriated cases from Thailand and Vietnam, almost all victims were children identified as being trafficked into begging or street selling and were from local areas of key border provinces in Cambodia.<sup>294</sup> Men are only now being acknowledged as victims of trafficking in Thailand with the passing of the new anti-human trafficking legislation in Thailand and with counter-trafficking NGOs reporting increasing numbers of men who were trafficked to Thailand to work in the fishing industry.<sup>295</sup> Statistics obtained by civil society in 2013 indicate that more than two-thirds of Cambodian men trafficked to Thailand worked in the fishing industry.<sup>296</sup>

According to national policy in Cambodia, it is required that all recruitment agencies register with the MoLVT in order to prevent the recruitment of any person under the age of 18.<sup>297</sup> Victims of reported cases are predominantly women trafficked for commercial sexual exploitation and mail order brides, as well as children and women for domestic work.<sup>298</sup>

Despite the positive developments mentioned above, the RGC continue to direct predominately donor funded resources toward policy initiatives and national bodies that are generating ideas and policy platforms, but taking little action actually implement these ideas.

### *The Human Trafficking Law*

The *Human Trafficking Law* came in force in 2008 and explicitly prohibits child prostitution and trafficking including the “*act of selling, buying or exchanging of a person*”.<sup>299</sup> The Cambodian National Council for Children, with its four sub-committees, is the specific national department that is directly responsible for issues involving trafficking of children.<sup>300</sup> While there is a decision from the Constitutional Council, Cambodia’s highest legal authority,<sup>301</sup> that the courts must consider the *Convention on the Rights of the Child* when interpreting Cambodian law and deciding cases, the

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<sup>289</sup> CLEC, LICADHO, LSCW and Human Rights Watch, *Universal Periodic Review, Cambodia - Joint Submission on Human Trafficking for Labour Exploitation*, 3 <http://bit.ly/1CYvTgf>.

<sup>290</sup> The Cambodia Daily (online), ‘Cambodia to Meet Malaysia Over Maids MoU’, 6 March 2014 <http://bit.ly/1LO86DF>.

<sup>291</sup> UNIAP, *Human Trafficking Sentinel Surveillance: Poipet, Cambodia - 2009-2010*, xviii <http://bit.ly/1LO7VbJ>.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

<sup>294</sup> UNIAP, *Who Is Being Trafficked In Cambodia?* <http://bit.ly/1uZQ4E0>.

<sup>295</sup> Ibid.

<sup>296</sup> Ninety-five out of the 140 men repatriated from Thailand indicated they worked in the fishing industry: Interview with LSCW (27 November 2014).

<sup>297</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 9 <http://bit.ly/1DErzBl>.

<sup>298</sup> ADHOC, *Overview of Cambodian Women Being Trafficked to China* (2014), 5.

<sup>299</sup> *Law on Suppression of Human Trafficking and Sexual Exploitation 2008* (Cambodia) art 13.

<sup>300</sup> UNODC, *Victim Identification Procedures in Cambodia – A Brief Study of Human Trafficking Victim Identification in the Cambodian Context* (2013), 9 <http://bit.ly/1DErzBl>.

<sup>301</sup> The Constitutional Council, Kingdom of Cambodia, *Decision No 090/003/2007 CC/D* (10 July 2007) <http://bit.ly/1rmdbej>.

provisions of the *Convention* and *Human Trafficking Law* remain rarely invoked or directly enforced by tribunals, courts and administrative authorities.<sup>302</sup> While authorities encouraged victims to participate in case proceedings, lengthy legal processes, credible fears of retaliation and the lack of witness protection and access to resources continues to hinder victim's willingness to cooperate in cases and impedes their access to legal redress.<sup>303</sup> Consequently, the number of prosecutions and convictions of traffickers remain significantly low.<sup>304</sup>

Another factor hindering the full and effective implementation of the *Human Trafficking Law* is the lack of a clear legal distinction between sex workers, those who voluntarily enter the sex industry for economic gain, and human trafficking victims. Since both groups are currently and practically categorised into the same field in Cambodian legal framework, where the act of soliciting sexual services is criminalised,<sup>305</sup> sex workers are put in an extremely vulnerable situation where any activity 'assisting or protecting the prostitution of others' is criminalised.<sup>306</sup> The broad scope of this provision risks criminalising the exercise of fundamental rights, such as advocacy on the part of sex workers or distributing condoms.<sup>307</sup> In 2008, HIV/AIDS activists, health workers and sex worker groups voiced concerns about increased abuse by authorities, and difficulty in assisting sex workers. Raids and brothel closures meant many sex workers moved from working in brothels to be working on the streets or in entertainment venues such as bars, karaoke or massage parlours.<sup>308</sup>

In 2011, ECPAT, documented 71 cases of sexual trafficking with 88 victims and 76 offenders or recruiters.<sup>309</sup> All victims were female, most of them Cambodian (four were Vietnamese). Around 75% of the victims were under the age of 18 and the overwhelming majority (92%) were under 25 years old.<sup>310</sup> In the same year, 26 cases of sexual exploitation were reported by ECPAT, which involved eleven offenders or recruiters.<sup>311</sup> All victims were female, 19 were Cambodian, seven Vietnamese and the vast majority were between ages 18-25.<sup>312</sup>

In December 2011, a National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation for 2011-2013 was adopted designating responsibility among involved ministries, providing a basis for allocation of resources and identifying time-bound goals and objectives.<sup>313</sup> However, the results of the National Action Plan are to date unclear due to the lack of an unbiased monitoring mechanism that can provide reliable information and evaluation.

## **Recommendations:**

*The State Party should:*

1. Mobilise victims of trafficking to form community based organisations and/or unions to seek justice, represent their needs and promote possibilities.
2. Improve the effectiveness of the anti-trafficking bodies by increasing communication between them and invest in resources at the local level.
3. Minimise the gap between the legislative framework and its implementation, and build the capacity of practitioners that are enforcing those laws.

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<sup>302</sup> CRC/C/KHM/CO/2-3 [8]

<sup>303</sup> United States Department of State, *2012 Trafficking in Persons Report – Cambodia* (19 June 2012) Refworld <http://bit.ly/1vRSMS3>.

<sup>304</sup> CRC/C/KHM/CO/2-3 [73]

<sup>305</sup> *The Law on Suppression of Human Trafficking and Sexual Exploitation 2008* (Cambodia) art 25.

<sup>306</sup> *Ibid.*

<sup>307</sup> Human Rights Watch, *Off the Streets – III Sex Work in Cambodia* (20 July 2010), 5 <http://bit.ly/17dtZfv>.

<sup>308</sup> *Ibid.*

<sup>309</sup> ECPAT Cambodia, *NGO Joint Statistics - Database Report on Rape, Sexual Trafficking and Sexual Exploitation in Cambodia* (2011), 25 <http://bit.ly/1yQuOBg>.

<sup>310</sup> *Ibid.*

<sup>311</sup> *Ibid.* 45.

<sup>312</sup> *Ibid.*

<sup>313</sup> CLEC, LICADHO, LSCW and Human Rights Watch, *Universal Periodic Review, Cambodia - Joint Submission on Human Trafficking for Labour Exploitation*, 3 <http://bit.ly/1CYvTgf>.

**g. Right to a fair trial, equality before the law, remedies and administration of justice (arts. 7, 14 and 26)**

**Issue 15:** Further to the information provided in paragraph 74 of the State party's periodic report, please comment on reports of the Government's alleged obstruction, non-cooperation and interference in the Extraordinary Chambers in the Courts of Cambodia.

**Reply / Comments from Civil Society**

The ECCC have been plagued with controversy over perceived political interference and concerns over the impartiality of the judicial members of the court. In particular, Cases 003 and 004 have been hindered by continuous disputes between the national and international co-investigating judges over investigative proceedings and whether the cases should proceed to trial or not.

*Political Interference*

Contrary to the requirement of the ICCPR, the Cambodian Prime Minister Hun Sen and other senior ministers have, from the beginning, made public statements stating that Cases beyond 002 should not proceed.<sup>314</sup> International NGOs monitoring the ECCC made similar observations, HRW reported that "*Prime Minister Hun Sen has never been committed to prosecute more than a few Khmer Rouge leaders, apparently to protect members of his party and government who were also in the Khmer Rouge*".<sup>315</sup> This has led David Scheffer, UN Special Expert to Advise on the United Nations Assistance to the Khmer Rouge Trials, to express his frustration and state that this kind government interference could result in "*crippling the investigation of four or five additional suspects*".<sup>316</sup>

In the ECCC, this instability has led to a series of conflicts between national and international sides. The then International Co-Investigating Judge Siegfried Blunk, along with his national counterpart Judge You Bunleng issued a statement in September 2011 stating that the Office of Co-Investigative Judges (OCIJ) had 'concluded' the investigation of case 003.<sup>317</sup> This decision was heavily criticised by international and local observers for their "*failure to conduct genuine, impartial and effective investigations into ECCC cases 003 and 004*".<sup>318</sup> Amid such criticism, Judge Blunk resigned his post and the subsequent appointment of International Co-Investigating Judge Kasper-Ansermet was not even recognised by the Cambodian Supreme Council of Magistracy as he attempted to resume investigation into Case 003 and continue investigation into Case 004. UN Secretary General Ban Ki-Moon expressed his serious concerns as this amounted to a breach of the agreement between the UN and the RGC on the establishment of the ECCC.<sup>319</sup> This was then followed by a six month long disagreement, at times publicly acrimonious, between Judge Kasper-Ansermet and Judge You Bunleng,<sup>320</sup> ultimately leading to Judge Kasper-Ansermet's resignation in May 2012.

Upon being appointed as the current International Co-Investigating Judge, Judge Mark Harmon continued to build on Kasper-Ansermet's investigating work. Although Judge Harmon's investigation

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<sup>314</sup> New York Times (online) 'Cambodia's Troubled Tribunal', 28 July 2010 <http://nyti.ms/1gOE6pe>; The Phnom Penh Post (online) 'Judges Should Focus on Current KR Suspects: Govt', 12 March 2009 <http://bit.ly/1i58wYU>.

<sup>315</sup> Human Rights Watch, *Cambodia: Government Obstructs Khmer Rouge Court* (5 September 2013) <http://bit.ly/RHHNrn>.

<sup>316</sup> The Phnom Penh Post (online), "'Differing Views" on Judges', 25 January 2012 <http://bit.ly/1jB3uRz>.

<sup>317</sup> ECCC, *Notice of Conclusion of Judicial Investigation (Case Files No 003/07-09-2009-ECCC-OCIJ, Document No D13)* (29 April 2011) <http://bit.ly/1hhpiTG>.

<sup>318</sup> Human Rights Watch, *Cambodia: Judges Investigating Khmer Rouge Crimes Should Resign* (3 October 2011) <http://bit.ly/1ibN4MM>.

<sup>319</sup> United Nations Secretary-General Ban Ki-moon, *Statement Attributable to the Spokesperson for the Secretary-General on Cambodia* (20 January 2012) <http://bit.ly/1f4Spe4>.

<sup>320</sup> ECCC, *Note of the International Reserve Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the Proper Conduct of Investigations in Cases 003 and 004, (Case Files No 003/07-09-2009-ECCC-OCIJ and 004/07-09-2009-ECCC-OCIJ, Document No: D38.)* (21 March 2012) <http://bit.ly/1FRMfa9>; ECCC, *Press Statement by National Co-Investigating Judge* (26 March 2012) <http://bit.ly/1twIP9d>.

into Cases 003 and 004 has been unimpeded by his national counterpart and the RGC,<sup>321</sup> it appears clear to observers that Judge Harmon does not receive any material support by the National Co-Investigating Judge You Bunleng. Instead, Judge You Bunleng continues to assert the validity of the ‘concluded investigation’ statement he issued with Judge Blunk on 29 April 2011, and is unlikely to accept the new investigation conducted by Judge Harmon.<sup>322</sup>

## **Recommendations:**

*The State Party should:*

1. Ensure that the investigation currently being carried out by the Office of the International Co-Investigating Judge receives full cooperation from the office of the National Co-Investigating Judge and that the two offices produce a Closing Order that is impartial and independent of any political interference.
2. Guarantee that investigation activities carried out by Judge Harmon are not unduly interfered with or impeded.
3. The RGC should uphold their obligation under the UN-Cambodia Agreement to ensure adequate funding is provided to support the Cambodian side of the ECCC throughout current and future trials.

**Issue 16:** In the light of the information provided in paragraphs 123 to 136 of the State party’s report, please indicate whether, and to what extent, the State party envisages ensuring that all persons held in detention are afforded fundamental legal safeguards, including the right to have access to a lawyer – including, where necessary, a public defence counsel – from the very outset of their deprivation of liberty.

## **Reply / Comments from Civil Society**

There are a number of provisions in Cambodian law and policy that aim to ensure that persons held in detention are afforded the fundamental legal safeguards set out in the ICCPR. Despite these laws and expressed intention by the RGC to ensure these rights to its citizens the situation in Cambodia remains one where right to fair trial and equality before the law are not respected. Many of the abuses of these rights occur from the very outset of a person’s deprivation of liberty. The issues of pre-trial detention and access to legal aid are among the most prolific and profound.

### *Pre-trial Detention*

An accused’s right to liberty and to be tried without undue delay is enshrined in the CCPC that says that the charged person shall remain at liberty and should only be detained in exceptional circumstances.<sup>323</sup> The CCPC provides specific reasons to justify detention of those accused awaiting trial,<sup>324</sup> and the time limit for such detention.<sup>325</sup>

Despite these express protections under international and national legal framework, pre-trial detention and/or detention in police custody occurs in many, if not most, criminal cases. One NGO monitoring the trial process reported recently that in 2012, 71% of defendants in the trials they observed were detained prior to their trial hearings.<sup>326</sup> According to another NGO report, up to 60% of the

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<sup>321</sup> Open Society Justice Initiative, *Recent Developments at the Extraordinary Chambers in the Courts of Cambodia* (March 2013) <http://osf.to/1gOI1SZ>.

<sup>322</sup> The Cambodia Daily (online), ‘As ECCC Resumes, Cases 003 and 004 remain inconclusive’, 18 July 2012 <http://bit.ly/1eZa1Z2>.

<sup>323</sup> *Cambodian Code of Criminal Procedure 2009 (Cambodia)* art 203.

<sup>324</sup> *Ibid* art 205.

<sup>325</sup> *Ibid* art 208, 209.

<sup>326</sup> CCHR, *Sixth Bi-Annual Report, Fair Trial Rights in Cambodia* (December 2013), 18 <http://bit.ly/QHbXKu>.

Cambodian prison population is made up of prisoners currently awaiting trial.<sup>327</sup> Access to legal aid for these prisoners also represents a major challenge to ensuring that their right to a fair trial in all aspects is upheld. As the OHCHR highlights, to have prompt access to a lawyer at an early stage of police investigations can be essential in order to avoid lasting prejudice with regard to the rights of the defence and could also prevent ill-treatment in police stations, reduce prison overcrowding and reduce wrongful convictions.<sup>328</sup> However, under the CCPC, a detainee under police detention may only request to speak to legal counsel after 24 hours of being in police custody.<sup>329</sup> This create situations in which suspects, who are often people who do not understand the law can be coerced into incriminating themselves or implicating themselves in other crimes.<sup>330</sup> This is a deeply troubling provision and one that does not need to exist. The provision should be amended to afford the arrested suspect legal representation as soon as practicable.

In a recent report by CCHR, 16 cases were identified between January and June 2012 where the accused was subjected to excessive pre-trial detention that could not be explained by the need to gather evidence for further investigation as most of these accused persons had confessed to committing the alleged crimes. Some accused were detained in excess of seven months past the maximum lawful period of pre-trial detention based on the category of their charge.<sup>331</sup> This is a particular problem in the rural areas where investigating judges often work on a rotation basis and are not able to clear the backlog of cases in each of the provinces he/she is rotating through.<sup>332</sup>

#### *Access to Legal Aid*

There are also a range of provisions that protect citizens' right to legal representation. Firstly, the right to legal representation is constitutionally guaranteed in Cambodia.<sup>333</sup> The CCPC further stipulates that in cases where the detainee is a minor or the accused has been charged with a felony, the assistance of a lawyer is mandatory.<sup>334</sup> Providing legal aid was also listed as a priority in the RGC's NSDP to be implemented in 2009-2013.<sup>335</sup> The RGC have renewed their commitment to provide 'legal assistance to the poor in the legal system' by cooperating with the BAKC.

Currently, the legal aid to detainees is mainly provided by NGOs funded by international donors. Although the Legal Aid Department (LAD) of the BAKC (funded by the RGC) have programs that provide legal aid to the poor, the budget that the Government provides (USD 50,000 per year) to the BAKC for this purpose is woefully insufficient to meet the needs of the poor. Further, despite its prioritisation in the NSDP the government has made no changes in legal aid policy that enable the right to counsel to be realised.<sup>336</sup>

The small and decreasing number of legal aid lawyers is also one major challenge. An ongoing monitoring process by NGO groups and the OHCHR Cambodia office has shown that in seven of the

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<sup>327</sup> LICADHO, *Human Rights 2013: The Year in Review* (2014), 20 <http://bit.ly/1nqI3Yx>; United Nations Office of the High Commissioner for Human Rights, *Conference on Pre-Trial Detention and Alternatives to Detention Held in Phnom Penh* (2014) <http://bit.ly/1nqIout>.

<sup>328</sup> United Nations Office of the High Commissioner for Human Rights, *Legal Aid in Cambodia* (2013) <http://bit.ly/1i8ciRb>; CHRAC, *Legal Aid Services in Cambodia: Report of Survey Among Legal Aid Providers* (November 2010) <http://bit.ly/PsF4QL>.

<sup>329</sup> *Cambodian Code of Criminal Procedure 2009* (Cambodia) art 98.

<sup>330</sup> Refer to Issue 17 on Judicial Independence.

<sup>331</sup> CCHR, *Sixth Bi-Annual Report – 'Fair Trial Rights in Cambodia'* (December 2013), 21 <http://bit.ly/QHbXKu>.

<sup>332</sup> United Nations Office of the High Commissioner for Human Rights, *Legal Aid in Cambodia* (2013) <http://bit.ly/1i8ciRb>; CHRAC, *Legal Aid Services in Cambodia: Report of Survey Among Legal Aid Providers* (November 2010) <http://bit.ly/PsF4QL>.

<sup>333</sup> *Constitution of the Kingdom of Cambodia* art 38.

<sup>334</sup> Royal Cambodian Government, *National Strategic Development Plan 2014-2018* (2014), 104-199 <http://bit.ly/1Cz5t3u>; *Cambodian Code of Criminal Procedure 2009* (Cambodia) art 301.

<sup>335</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013.

<sup>336</sup> BUN Honn, President of the Bar Association of the Kingdom of Cambodia, 'Legal Aid Services' (Speech delivered at the National Conference on Legal Aid, Cambodiana Hotel, Phnom Penh, 29 November 2013).

24 provinces surveyed in 2013, not a single legal aid lawyer was working.<sup>337</sup> Research conducted by CHRAC found that of the 857 lawyers in Cambodia, 60% work in private firms and government institutions and are not required to work on legal aid cases.<sup>338</sup> Due to lack of donor funding and RGC support, most rural and remote provinces of Cambodia have only a few lawyers providing legal aid services or none at all. In their 2013 survey conducted mainly over the telephone, the OHCHR office recorded that seven (out of 24) provinces had no legal aid providers and a further eight provinces only had one legal aid provider.<sup>339</sup>

Generally, if a detainee has not obtained legal representation by the time they arrived in court for a hearing, the court will assign a lawyer to them. However, an accused's awareness of their right to representation seems to vary depending on geographical and educational factors. While most accused appearing in urban municipal courts, such as Phnom Penh, are aware that they have a right to the assistance of a lawyer, those who live in rural areas or who have not had the opportunity to pursue education do not know of this right. Further, even where an accused is aware of their right to legal representation, they may be unaware of the availability of legal aid and opt to represent themselves unless the court appoints a lawyer on its own initiative, as they believe legal services will be too expensive.<sup>340</sup>

### **Recommendations:**

*The State Party should:*

1. Repeal or amend article 98 of the CCPC, to ensure that arrested suspects are informed of their right to access legal support as soon as practicable in accordance with article 14 of the ICCPR.
2. Create a concrete policy plan to encourage more practicing lawyers in Cambodia to take on legal aid cases. Provide incentives for lawyers to work in rural provinces where there is currently no legal practitioner outside the court system.
3. Continue capacity building program in conjunction with international group such as the Judicial training program with OHCHR Cambodia and the Human Rights curriculum run by the Royal Academic of Judicial Professionals with Raoul Wallenberg Institute to ensure law enforcement and judicial officials uphold their responsibility to inform detainees upon being taken into custody of their right to legal representation? Additionally, ensure that detainees are informed of the availability of legal aid services should they be unable to afford a private lawyer.
4. Establish a national legal aid system that is in line with the UN Principles and guidelines on Access to Legal Aid. Take steps to provide adequate resource to allow the legal aid mechanism to function properly and reach those most in need.

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<sup>337</sup> United Nations Office of the High Commissioner for Human Rights, *Number and Location of Legal Aid Lawyers* (2013) <http://bit.ly/1mCQUX0>.

<sup>338</sup> Cambodian Human Rights Action Committee, *Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review*, 2013, 27.

<sup>339</sup> United Nations Office of the High Commissioner for Human Rights, *Number and Location of Legal Aid Lawyers* (2013) <http://bit.ly/1mCQUX0>.

<sup>340</sup> *Ibid* 28.

**Issue 17:** Please provide information on the legislative and practical measures taken to guarantee the independence and impartiality of the judiciary. Please indicate the content of the following draft legislation: the Law on the Organisation and Functioning of the Courts; the Law on the Supreme Council of Magistracy; and the Law on the Status of Judges and Prosecutors. Information before the Committee alleges shortcomings in judicial institutions in the State party, due in particular to lack of personnel and financial resources. What measures are in place to resolve that situation?

## Reply / Comments from Civil Society

In Cambodia the judiciary continues to be heavily influenced by the executive and as a result the courts are not independent or impartial. The way the judiciary operates in practice is far from the guarantees of separation of power and independence in *the Constitution*. The lack of independence of the judiciary allows the courts to be used as a political tool to punish and silence opposition and dissent.

Legal safeguards to guarantee the independence of the judiciary can be found throughout Cambodian law. *The Constitution* enshrines the independence and impartiality of the judiciary, as well as guaranteeing the separation of powers between the executive, legislative and judicial branches of the RGC.<sup>341</sup> The three laws, indicated by the Committee, were recently enacted with the express intention to build on this legal framework to strengthen the independence and impartiality of the judiciary; however, in practice, the situation is far from the intended outcome.<sup>342</sup>

The judiciary has been identified as the weakest among the state institutions in a study of the TIC.<sup>343</sup> The Cambodian judiciary has been controlled by the ruling CPP since 1979.<sup>344</sup> The Chief Justice of the Supreme Court is also a member of the Standing Committee of the Central Committee of the CPP, signifying a clear overlap in the executive and judicial powers. This close link permits the use of the courts by the CPP for political purposes to convict and intimidate its critics. Likewise, it has been reported that members of the judiciary, who are seen to be resistant to political control, have been repeatedly passed over for promotion, marginalised or even pushed into de-facto retirement, while ‘co-operative’ judges are advanced.<sup>345</sup> This lack of separation of powers has led to a ‘culture of impunity’ whereby state agents responsible for the most heinous crimes often receive lenient, if any, punishment. While on the other hand, victims outside the political and judicial spectrum are often met with inactivity on behalf of the courts when appealing for justice or redress.

The RGC demonstrated some commitment to legal and judicial reforms in 2002, when they established the Council for Legal and Judicial Reform, and in 2003, when they adopted a legal and judicial reform strategy. However, over a decade has now passed without any concrete action on the part of the RGC in these reforms.<sup>346</sup> In May 2014, following the second cycle of Cambodia’s UPR, where the RGC made a commitment to pass the three above mentioned judicial laws, they rushed these new laws through Parliament, while the National Assembly was boycotted by the opposition CNRP. Instead of strengthening the independence of the judiciary, these three laws now allow the

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<sup>341</sup> *Constitution of the Kingdom of Cambodia* art 51, 130.

<sup>342</sup> Three laws were passed by the Cambodian National Assembly and assented by the King were: *The Law on the Organisation and Functioning of the Supreme Council of the Magistracy*, *The Law on the Statute of Judges and Prosecutors*, and *The Law on the Organisation of Courts*.

<sup>343</sup> Transparency International Cambodia, *Corruption and Cambodia’s Governance System: The Need for Reform* (2014), 51 <http://bit.ly/1v3GMw8>. TIC evaluated 13 of the RGC governance ‘pillars’ and scored the Judiciary pillar 16 out of a possible 100.

<sup>344</sup> Human Rights Watch, *Human Rights Watch Concerns and Recommendations on Cambodia* (2014) <http://bit.ly/1uW2XyN>.

<sup>345</sup> *Ibid.*

<sup>346</sup> Cambodian Center for Human Rights, *Cambodian Centre for Human Rights Submissions to the Human Rights Committee April 2014* (2014) <http://bit.ly/1fLtaIU>.

MoJ sweeping powers over the country's judges and prosecutors, including the subordination of the judiciary to the executive branch.<sup>347</sup>

The three laws were kept secret during the drafting phase until they were eventually passed in the National Assembly, despite multiple calls from civil society for public scrutiny and consultation prior to their adoption. Article 523 of the Criminal Code allows for the imprisonment of anyone who criticises a judicial decision or other judicial act. This allows the government to completely control the content of the laws and then stifle any criticism by prosecuting those who disagree. During the drafting process, CPP members made it clear that they did not think that NGOs or citizens had a right to be consulted on the laws. In a speech in April 2014, Prime Minister Hun Sen responded to civil society's call for consultation saying "*don't demand things beyond what's within your rights. You should be ashamed of yourselves, and just enjoy the rights that are given to you as NGOs.*"<sup>348</sup> The lack of political will for transparency and the elimination of any space for civil society to engage in the drafting process is further indication of the government's intention to use these laws to increase their power over the judiciary.

The three laws were kept secret during the drafting phase until they were eventually passed in the National Assembly, despite multiple calls from civil society for public scrutiny and consultation with civil society organisations prior to their adoption. Article 523 of the *Criminal Code* allows for the imprisonment of anyone who criticises a judicial decision or other judicial act. This allows the government to completely control the content of the laws and then stifle any criticism by prosecuting those who disagree. During the drafting process, CPP members made it clear that they did not think that NGOs or citizens had a right to be consulted on the laws. In a speech in April 2014, Prime Minister Hun Sen responded to civil societies' calls for consultation saying 'don't demand things beyond what's within your rights. You should be ashamed of yourselves, and just enjoy the rights that are given to you as NGOs.'<sup>349</sup> The lack of political will for transparency and the elimination of any space for civil society to engage in the drafting process is further indication of the government's intention to use these laws to increase their power over the judiciary.

Many of the shortcomings of the judicial system can be also attributed to a lack of personnel and financial resources allocated to the judiciary, in 2013 the MoJ received just 0.42% of the national budget, the courts budget is allocated from this.<sup>350</sup> Low salaries, insufficient resources and poor training plague the judiciary by facilitating an environment where corruption is rampant, and the court system unable to function efficiently without the bribe money to 'grease the wheels'. Some government reforms have included measures to increase salaries of judges and court officials, however this alone has not been enough to address the pervasive culture of corruption that exists in the judiciary where people's promotions are often based on bribery rather than merit.<sup>351</sup> The government itself have also recognised that resources are lacking in the areas of "*human resources, office space, supply and equipment, resources for disseminating laws among vulnerable groups, and the means to train judges and prosecutors, court clerks and law enforcement officials.*"<sup>352</sup> Despite their attempts to address the problem of capacity building and staff training in the Rectangular Strategy for Growth, it is still significantly impeding the ability of the judiciary to operate effectively. The legal aid system is almost entirely funded by international donors and frequently results in defendants being tried without legal representation and being denied of their right to a fair trial. Enforcement of judgements is also limited often because of a lack of intra-institutional support from the judicial police and other law enforcement agencies. This perpetuates the cycle of impunity and highlights the lack of capacity and authority held by the judicial branch.

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<sup>347</sup> Ibid.

<sup>348</sup> Radio Free Asia, 'Hun Sen Warns NGO's not to Interfere With Judicial Reform Legislation', 28 April 2014 <http://bit.ly/1KgckSP>.

<sup>349</sup> Radio Free Asia, 'Hun Sen Warns NGO's not to Interfere With Judicial Reform Legislation', 28 April 2014 <http://bit.ly/1KgckSP>.

<sup>350</sup> *Budget Law 2012* (Cambodia) art 2.

<sup>351</sup> Transparency International Cambodia, *Corruption and Cambodia's Governance System: The Need for Reform* (2014), 51 <http://bit.ly/1v3GMw8>.

<sup>352</sup> Royal Government of Cambodia, *Mid-Term Review 2011 on National Strategic Development Plan* (2011), 21 <http://bit.ly/1MpMfTw>.

## Recommendations:

*The State Party should:*

1. Amend the *Law on the Organisation and Functioning of the Courts*; the *Law on the Supreme Council of Magistracy*; and the *Law on the Status of Judges and Prosecutors*, to ensure the independence of the judiciary in accordance with the international standards. This process must involve genuine and open consultation with civil society organisations and the general public. Some of the amendments are as follows:
  - a. Members of the SCM, members of the disciplinary council of the SCM, and members of the Commission of Promotion in Rank and Grade should be elected by judges and prosecutors. Candidates for elections should not be affiliated with the legislature and executive and should include non-judges;
  - b. The MoJ should not have managerial power over the General Department of Judicial Administration, it should be the power of the SCM;
2. Ensure the MoJ does not manage the finance of trial courts and prosecution offices; and transfer such to the SCM.
3. Improve legal training and resources to produce skilled and knowledgeable lawyers who are experts in their field and fully competent members of the judiciary.
4. Immediately and unconditionally commit to not misuse the courts as political tools to silence dissent and stifle debate.
5. Create and enforce procedural and legal safeguards in order to combat the ‘culture of impunity’.
6. Provide adequate and sufficient resources for the judiciary including adequate salaries for judges, prosecutors, and court staff according to role and position, and ensure that the management of the resources for the judiciary is independent from the political influence by the executive.
7. Publish and implement a clear and transparent mechanism for the recruitment and appointment of judicial officials. Appointment criteria should be clear and well publicised, allowing candidates and selectors to have a clear understanding of where the bar for recruitment lies.
8. Ensure judges are appointed through an independent and transparent process with objective criteria.

<p><b>Issue 18:</b> Please comment on reports of continuing use of forced confessions as elements of evidence in court proceedings, despite the illegality of such practices.</p>
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## Reply / Comments from Civil Society

In the Cambodian legal framework, there are explicit provisions that prevent the use of forced confessions as admissible evidence in court proceedings. Article 38 of the *Constitution* states, “*the confession of guilt obtained by using physical and mental violence cannot be used as valid proof of guilt*”.<sup>353</sup> The RGC in its report pointed out that no individual may be forced to provide evidence by confessing guilt which can be used as grounds to sentence him/her.<sup>354</sup> Despite these provisions, forced confessions are routinely obtained and used as evidence in court to convict the accused, and the CCPC operates in a way that facilitates this process.

Article 98 of CCPC states, “*after a period of 24 hours from the beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person*”. As a result, suspects

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<sup>353</sup> *Constitution of the Kingdom of Cambodia* art 38.

<sup>354</sup> CCPR/C/KHM/2, paras. 129-130.

are often kept in incommunicado for at least 24 hours after their arrest.<sup>355</sup> Incommunicado detention leads to conditions that often facilitate torture and other form of abuse by authority to elicit confession.<sup>356</sup> In Cambodia, this 24-hour period has become a vacuum in which the suspect's rights to a fair trial and to freedom from cruel and inhumane and degrading treatment are temporarily suspended. In this 24-hour period, suspects are usually questioned in the absence of a legal representative without being informed of their right to counsel or their right to not answer police questions.<sup>357</sup> The police use this time as an opportunity to obtain (forced) confessions and interfere with proceedings before the suspect has any knowledge of their rights or autonomy in the matter.<sup>358</sup> It is unclear what this provision was supposed to achieve, but the operation of the law provides an opportunity for law enforcement officials to extract a confession, which often happens under duress.<sup>359</sup>

LICADHO interviewed a total of 6,481 detained individuals or those recently released, where more than 6% of those interviewed reported that police or prison officials subjected them to torture or ill-treatment.<sup>360</sup> The majority of these people said that they were beaten and forced to confess or pay money to their abusers. The interviews also found that those who could not read Khmer were often forced to thumb print confessions on documents they did not understand. CCHR found similar results in their trial monitoring report where they monitored 204 cases between the 1<sup>st</sup> March 2013 and 31<sup>st</sup> January 2014. They recorded seven cases where it was suggested that threats were made to coerce the defendant into confessing to the alleged crime and 11 cases where violence or torture was used to coerce the defendant into confession to the alleged crime.<sup>361</sup> Without an effective complaints mechanism or sufficient legal aid, these methods of forced confession often go unchallenged during trial and the perpetrators unpunished.

There are many reasons for the prevalence of extracting forced confessions from detainees. One is that, in most police units, there is a severe lack of the necessary training, resources and professional incentive to conduct impartial fact-based investigations.<sup>362</sup> The widespread corruption within the police service further exacerbates the problem. Police officers are promoted and police stations are given special incentives for convictions amounting to a rewards system, police officers often benefit financially from informal arrangements or extrajudicial settlements.<sup>363</sup> With these factors increasing incentives for the law enforcement officers to obtain forced confessions, it is easy to understand how the police may overlook the illegality of such practices.

The young and those with mental health problems are the most vulnerable to the forced confession. Police recognise that these groups are the most likely to confess under pressure to a crime, or crimes they did not commit, and they are often targeted by police for forced confessions. In some cases, confessing to other unsolved crimes.<sup>364</sup>

Forced confessions are often used as evidence in court despite this being illegal. In the case of torture, confessions can be revoked at any stage in the proceedings, however, if the accused has access to legal council, a revocation on a forced confession has to be made at interrogation before the

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<sup>355</sup> LICADHO, *Torture and Ill-treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

<sup>356</sup> Amnesty International, *Torture in 2014: 30 Years of Broken Promises* (2014), 12 <http://bit.ly/1Ar0L46>.

<sup>357</sup> LICADHO, *Torture and Ill-treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

<sup>358</sup> Interview with Legal Aid Cambodia (2 December 2014).

<sup>359</sup> LICADHO, *Torture and Ill-treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

<sup>360</sup> Ibid.

<sup>361</sup> CCHR, *Fair Trial Right in Cambodia Monitoring at the Court of Appeal* (2014), 22 <http://bit.ly/1C9xQpK>.

<sup>362</sup> LICADHO, *Torture and Ill-treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

<sup>363</sup> ADHOC, CDP, LICADHO, TPO and CHRAC, *Joint Cambodia NGO Report on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia* (2010) <http://bit.ly/1IM8jVE>.

<sup>364</sup> LICADHO, *Torture and Ill-treatment: Testimony from Inside Cambodia's Police Stations and Prisons* (2014) <http://bit.ly/1xdfizu>.

investigating judge, before the trial.<sup>365</sup> When these revocations are made, judges tend to pressure the accused into confirming their confession, or blame them for making a (forced) confession in police custody in the first place. All of the clients represented by the CDP who revoked their confessions were subsequently convicted of the crimes they were charged with and there were no further investigations into their claims of torture.<sup>366</sup>

Forced confessions are rarely called into question during court proceedings and are often used as the sole basis for convictions. LAC has explained that this is because the police are the sole investigators of crimes and the court depends on them for information necessary to conduct a trial and make a judgment.<sup>367</sup> Judges cannot often afford to deny evidence given to them by the police, as they risk having no evidence to conduct a trial, which will unduly delay trials and compromise their relationship with the police impacting their ability to conduct future trials.<sup>368</sup> On the other hand, because the courts readily accept confessions as the primary and sometimes the only basis for a conviction, once police officers have obtained a confession, they have little incentive to look for other supporting evidence.<sup>369</sup> When there is evidence that contradicts the confessions, the courts often ignore it and still use the confession as the basis for the conviction.<sup>370</sup>

If detainees have been tortured, the burden of the proof is put on the victim.<sup>371</sup> As a result, many suspects deny that their confession was forced because they fear the consequences and also do not think the court will believe them anyway.<sup>372</sup> All of these factors combined have created a system, where obtaining a forced confession and using it in court is the most desirable outcome for the police and judges.

Many of these issues were flagged in the UN Committee Against Torture's concluding observations to Cambodia as the result of the review of its second periodic report in 2010. The situation has not improved since then. This abusive environment, where forced confessions are obtained and used as evidence in court, endures because of an interaction of all of the factors mentioned above including corruption, dependence on police for collecting evidence, the lack of an effective complaints mechanisms and refusal of the government to allow NGOs to monitor places of police detention as well as an inadequate legal aid system.

## **Recommendations:**

*The State Party should:*

1. Prevent the use of confessions as admissible and/or only evidence in court, unless the confessions were made in the presence of and under consultation with a defense lawyer.
2. Repeal or amend article 98 of the CCPC to ensure that arrested suspect are informed of their right to access legal support as soon as practicable in accordance with article 14 of the ICCPR. Refer to recommendations in question 16 on fair trial rights.
3. Implement systemic reforms to police practices, including increasing transparency and accountability of police practices, which oftentimes prosecutors may be aware of, but choose to turn a blind eye to.<sup>373</sup>
4. Ensure adequate salaries are provided to police and court officials and take measures to increase their incentive not to be corrupt and be less susceptible to bribes

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<sup>365</sup> ADHOC, CDP, LICADHO, TPO and CHRAC, *Joint Cambodia NGO Report on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia* (2010) <http://bit.ly/1IM8jVE>.

<sup>366</sup> Ibid.

<sup>367</sup> Interview with Legal Aid Cambodia (2 December 2014).

<sup>368</sup> Ibid.

<sup>369</sup> ADHOC, CDP, LICADHO, TPO and CHRAC, *Joint Cambodia NGO Report on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia* (2010) <http://bit.ly/1IM8jVE>.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Interview with Legal Aid Cambodia (2 December 2014).

<sup>373</sup> Interview with Legal Aid Cambodia (2 December 2014).

5. Investigate credible allegations of torture or to cruel, inhuman or degrading treatment or punishment used to obtain confessions and ensure that perpetrators are held accountable.
6. Permit legal and human rights NGOs to routinely visit police stations to monitor detention conditions and interview detainees.
7. Call for the establishment, without delay, of a truly independent National Preventative Mechanism as required under the *Optional Protocol to the Convention Against Torture*.

**h. Freedoms of expression and association and right to peaceful assembly (arts. 19, 21 and 22)**

**Issue 19:** Please comment on how freedom of expression is guaranteed in Cambodia, in particular since the entry into force of the new Criminal Code. Please give details of the changes introduced by the new Criminal Code in respect of defamation, disinformation and incitement. Please also comment on allegations that human rights activists and journalists continue to be subjected to intimidation and harassment, including politically motivated accusations. Please indicate the number of criminal proceedings brought during the period under review against human rights defenders, journalists and other civil society actors for defamation, malicious denunciation and incitement.

**Reply / Comments from Civil Society**

The *Constitution* guarantees freedom of expression, press, publication and assembly for all Khmer citizens.<sup>374</sup> This works in conjunction with all citizens' right to participate actively in the political, economic, social and cultural life of the nation and the right to strike and participate in non-violent demonstration.<sup>375</sup> However, *The Constitution* also provides that “no one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security”.<sup>376</sup> While freedom of expression cannot be without some limitations, several new pieces of restrictive legislation now exist in Cambodia that act to unnecessarily limit freedom of expression, peaceful assembly and association. There are four laws particularly contributing to this and a number of provisions within the recently revised *Criminal Code*.<sup>377</sup>

The *Criminal Code* came into effect in early December 2010, while it appears to place Cambodia's international treaty obligation above the provision of the domestic code where there is a conflict,<sup>378</sup> the new *Criminal Code* contains vague language to describe conduct resulting in charges of defamation, insult and incitement. Despite the assurances by Prime Minister Hun Sen in 2006 of the government's intent to decriminalise the offence of defamation, it remains a criminal act in the new *Criminal Code*.<sup>379</sup> The operation of these provisions directly obstructs freedom of expression rights, the vague wording is used allow for unwarranted prosecutions and the law has since been employed by the RGC to intimidate and harass human rights defenders.

Many human rights defenders, civil society representatives and journalists in Cambodia have continued to encounter harassment, intimidation, threat of a defamation or incitement lawsuit – and actual prosecution for these offences. In 2009 alone, at least ten complaints were filed against

<sup>374</sup> *Constitution of the Kingdom of Cambodia* art 41.

<sup>375</sup> *Ibid* art 37.

<sup>376</sup> *Ibid* art 41.

<sup>377</sup> *Law on Anti-Corruption 2010* (Cambodia); *Law on Assembly 2009* (Cambodia); *Law on Associations and Non-Governmental Organisations* (LANGO) (Draft) (Cambodia).

<sup>378</sup> *Criminal Code of Cambodia*, art 8.

<sup>379</sup> The Cambodia Daily (online), ‘Hun Sen: Defamation Should Be Decriminalised’, 15 February 2006, <http://bit.ly/17mxWOL>.

journalists for defamation, disinformation and related offences.<sup>380</sup> Since then, there have been numerous other cases.

The new code also extends the methods of communication that can amount to defamation, insult and other related criminal offences to include spoken and written words, pictures, and audio-visual communication that are ‘exposed to the sight of the public’,<sup>381</sup> implying that an individual could face prosecution for private comments that were later exposed to the public without their knowledge or consent. It also makes defamation of ‘institutions’,<sup>382</sup> not just individuals, an offence. However the *Criminal Code* leaves the word ‘institution’ undefined, thus it could conceivably encompass any State-related entity including the government, the King, the ruling CPP or even private companies. Any persons convicted under these provisions are subject to a prison sentence of at least five years.<sup>383</sup> This illustrates how severe the offence of defamation is regarded in the *Criminal Code* and alludes to the core issue that the legislations seek to criminalise freedom of expression in order to shield the government, ruling party and other powerful officials from criticism and any independent expression.

In January 2011, after speaking about a land conflict during a radio interview, human rights worker Sam Chankea was found guilty of defamation and was sentenced to pay a fine.<sup>384</sup> Similarly, on the 4<sup>th</sup> February 2014, Duong Solida became the first Cambodian to be sentenced for defamation resulting from online activities where he expressed a critical opinion about a business competitor on social networking site Facebook.<sup>385</sup>

The crime of ‘disinformation’ under article 62 of the *UNTAC Criminal Code* from 1992 continues to apply and be abused by the judiciary as a tool to stifle freedom of expression, as it has not been repealed in the new code.<sup>386</sup> According to the *UNTAC Criminal Code*, disinformation is defined as “the publication, distribution or reproduction” of information that is “false, fabricated, falsified or untruthfully attributed to a third person and done so in bad faith and with malicious intent, provided that the publication, distribution or reproduction had disturbed or is likely to disturb the public peace”.<sup>387</sup>

On the 23<sup>rd</sup> September 2010, political opposition leader Sam Rainsy was charged with disinformation for disseminating a map that supposedly showed evidence of Vietnamese border incursions by the RGC.<sup>388</sup> As a result, the Phnom Penh Court ruled that Sam Rainsy was guilty of ‘seriously affecting’ the reputation of the RGC.<sup>389</sup> In combination with additional charges of forging public documents, Rainsy was sentenced to a total of 10 years in prison with an additional 5 million Riels in fines and 60 million Riels in compensation to the State.<sup>390</sup> Sam Rainsy was tried in absentia and stayed in exile for the next three years. Sam Rainsy returned to Cambodia after a royal pardon granted by the King upon the request of Prime Minister Hun Sen.<sup>391</sup> The motivation behind the request was never publicised, but what is clear is that the initial charge and conviction was entirely politically motivated and had no defensible legal basis.

The provisions regarding incitement in the new *Criminal Code* are similar to those regarding defamation where methods of communication are specified and any document ‘exposed to the public

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<sup>380</sup> Human Rights Watch, *World Report 2010 Cambodia*, 2010 <http://bit.ly/1E2Lw7h>.

<sup>381</sup> *Criminal Code*, articles 305, 307, 495, 496

<sup>382</sup> *Criminal Code*, article 305

<sup>383</sup> *Criminal Code*, articles 2, 46

<sup>384</sup> CCIM, *Submission to the UN Review of Cambodia under the International Convention on Civil and Political Rights*, <http://bit.ly/1MuBqQ0>

<sup>385</sup> CCIM, *Submission to the UN Review of Cambodia under the International Convention on Civil and Political Rights*, <http://bit.ly/1MuBqQ0>

<sup>386</sup> Article 19, *Cambodia: Joint Submission to the UN Universal Periodic Review*, 24 June 2013, <http://bit.ly/1zLLs5i>.

<sup>387</sup> World Intellectual Property Organisations, *Criminal Law & Procedure of 1992 of UNTAC (United Nations Transitional Authority for Cambodia)*, adopted by The Supreme National Council of Cambodia in September 10, 1992, <http://bit.ly/1zluM5C>.

<sup>388</sup> Article 19, *Cambodia: Joint Submission to the UN Universal Periodic Review*, 24 June 2013, <http://bit.ly/1zLLs5i>

<sup>389</sup> CCHR, *Analysis of the Legal Grounds for Conviction and the Fairness of the judicial Proceedings in the Criminal Cases Against Sam Rainsy*, February 2011, <http://bit.ly/1E2KEiV> p.6.

<sup>390</sup> The Phnom Penh (online), ‘Sam Rainsy Gets Ten Years, 23 September 2010, <http://bit.ly/1A3fQN7>.

<sup>391</sup> The Cambodia Daily (online), ‘Sam Rainsy Granted Royal Pardon by King’, 13 July 2013 [bit.ly/1zGCTbN](http://bit.ly/1zGCTbN).

view' with or without consent can be used for prosecution. Other changes are that the new code requires only incitement of 'turmoil in society' for prosecution,<sup>392</sup> another ambiguously worded phrase allowing broad interpretation that can be used to limit freedom of expression. The widening of the scope and application of this article can be illustrated by the case against World Food Programme employee Seng Kunakar. Within 48 hours of his arrest, the Phnom Penh court convicted the Seng Kunakar for criminal incitement according to the new *Criminal Code* on the 17<sup>th</sup> December 2010.<sup>393</sup> Kunakar had shared an article from the popular news blog KI-Media with his colleagues, referring to Prime Minister Hun Sen and several other senior politicians as 'traitors'. The UN employee was sentenced to six-months in prison and a fine of 1 million Riels (250 dollars).<sup>394</sup> His arrest came only days after the Prime Minister accused the World Food Programme of wrongly claiming that Cambodia faced the possibility of a food shortage. Kunakar was released on the 20<sup>th</sup> June 2011, after serving the full prison term.<sup>395</sup>

Another notorious case is the one of Mam Sonando, the owner and director of Phnom Penh's Beehive Radio, a radio station that can be described as "*one of Cambodia's few, independent news outlets*".<sup>396</sup> On the 25<sup>th</sup> June 2012, the Beehive station aired a report accusing Cambodian officials of forced evictions and displacements. The following day, the Prime Minister publicly called for Mam Sonando's arrest during a broadcast speech on national television, accusing him of heading a secessionist plot.<sup>397</sup> On the 15<sup>th</sup> July 2012, Sonando was arrested and the following day charged for 'insurrection' and 'inciting people to take up weapons against the state'. While international and Cambodian NGOs have stated the charges are more likely linked to Beehive Radio's long history of independent and critical reporting, the then 71-year-old Sonando was sentenced to 20 years in prison and fined 10 million Riel (\$2,500).<sup>398</sup> After major domestic and international criticism, Mam Sonando was released in March 2013.<sup>399</sup> However, at the prosecutor's request, the strongest charges against Sonando were replaced with a lesser, forestry-related crime with a reduced sentence of five years, with four years and four months of that sentence suspended.<sup>400</sup>

On August 9th 2012, Chan Soveth, a senior investigator at the human rights organisation ADHOC, was summoned by Phnom Penh municipal court for allegedly 'providing assistance to the perpetrator' of a crime whilst working with land rights activists in Kratie province. In October 2012, Ratanakiri's Provincial Court summoned RFA reporter Sok Ratha for questioning on charges of incitement to commit a crime. The allegations related to incitement of members of an ethnic minority to engage in violent protests against D.M. Group Corporation in 2009.<sup>401</sup>

NGOs have no access to any public information concerning criminal proceedings therefore the exact number of criminal proceedings brought during the period under review against human rights defenders, journalists and other civil society actors for defamation, disinformation and incitement is unknown.<sup>402</sup>

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<sup>392</sup> LICADHO Press Release: *New Penal Code a Setback for Freedom of Expression Issues* 9 December 2010, <http://bit.ly/1vCE9fB>.

<sup>393</sup> The Phnom Penh (online), 'UN Employee Walks Free', 21 June 2011, <http://bit.ly/1JnOc3P>.

<sup>394</sup> The Phnom Penh (online), 'UN Employee Walks Free', 21 June 2011, <http://bit.ly/1JnOc3P>.

<sup>395</sup> The Phnom Penh (online), 'UN Employee Walks Free', 21 June 2011, <http://bit.ly/1JnOc3P>.

<sup>396</sup> Committee to Protect Journalists, *Cambodian Court Sentences Journalist to 20 years*, 1 October 2012, <http://bit.ly/1CEQoNN>

<sup>397</sup> LICADHO, *Mam Sonando Case Explained*, August 2012, <http://bit.ly/1L98r2s>.

<sup>398</sup> The Phnom Penh (online), 'Sonando Gets 20 Years for Insurrection', 2 October 2012, <http://bit.ly/1DCkLpt>.

<sup>399</sup> The Phnom Penh (online), 'Mam Sonando's Release Imminent', 15 March 2013 <http://bit.ly/1zlskvN>.

<sup>400</sup> The Phnom Penh (online), 'Mam Sonando's Release Imminent', 15 March 2013 <http://bit.ly/1zlskvN>.

<sup>401</sup> Cambodian Center for Independent Media, *UN Human Rights Council Universal Periodic Review 18th Session*, 19 September 2013 <http://bit.ly/17eKmbG>.

<sup>402</sup> For more information, see API submission in *III Additional Information*.

## **Recommendations:**<sup>403</sup>

*The State Party should:*

1. Adopt more concrete definitions of crimes such as defamation, insult, disinformation and incitement and ensure that these provisions are not used to harass and silence human rights defenders, civil society, and political opposition members engaged in lawful activities
2. Immediately cease the intimidation and harassment of journalists and human rights activists and put in place legislation and programs to guarantee their safety
3. Immediately enact an Access to Information law in line with the recommendations from the National Workshop on Access to Information<sup>404</sup> to ensure information concerning criminal proceedings is made publically available.

## **Additional Submission from Cambodian Center for Independent Media (CCIM)**

### **Article 19: Freedom of expression**

1. *Although the crime of Defamation (Cambodian Penal Code, Article 305) is no longer punishable by incarceration, it remains a criminal offense. In addition, a number of other commonly used articles that criminalise free expression still have the potential to put journalists and citizens behind bars, including: Article 502 (insult to a public official), Article 495 (incitement to commit a felony), Article 523 (discrediting of judicial decisions), and Article 311 (slandorous denunciation). Selective enforcement of these articles against journalists and human rights defenders effectively criminalises criticism of the Royal Government of Cambodia (RGC) or individuals with powerful political connections. These provisions fail to comply with Article 19 of the Covenant or with Cambodia's own constitutional guarantee of freedom of expression.*
2. *Although the Penal Code (Articles 306, 308 and 49) dictates that media professionals who commit the crimes of defamation, public insult and incitement must be prosecuted under the Press Law, journalists continue to be threatened with prosecution under the harsher Penal Code, which carries the potential for harsh prison sentences for crimes that would otherwise be subject only to monetary fines under the Press Law.*
3. *In addition, the RGC is currently drafting a Cybercrime Law that could regulate free expression on the Internet. Though the law has been in the drafting process since at least 2012, the RGC has made no effort to consult with the public or civil society regarding its contents. However, a leaked copy of the draft law presents numerous concerns regarding potential Article 19 violations. This is particularly true of the draft law's Article 28, which criminalises content that is deemed to: "Hinder the sovereignty and integrity of the Kingdom of Cambodia," "Incite or instigate the general population," "Generate insecurity, instability and political cohesiveness," "Undermine the integrity of any governmental agencies (or) ministries," or "Damage moral and cultural values." CCIM, along with other members of Cambodian civil society, fear that Article 28 of the draft Cybercrime Law is far too vague and much too wide in scope to be passed in its current state, because it could become yet another tool — like the Penal Code — to be used selectively by a politically connected judiciary to silent political dissent.*

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<sup>403</sup> These recommendations have been informed by LICADHO's recommendations to the HRC in their submission before the LOI . FIDH and LICADHO, 'Report for the Human Rights Committee's Task Force for the adoption of the list of issues on Cambodia' <http://bit.ly/1vc1ynS>

<sup>404</sup> See API Submission in Section III, Additional Information.

4. *Though the Council of Ministers recently announced that passage of the law is no longer considered a priority for the RGC, other recent government initiatives indicate a continued motivation to control free expression on the Internet. Among these initiatives is a “Cyber War Team” announced by the Council of Ministers in October, which will be tasked with monitoring online speech and social media to protect the RGC’s image online. Also worrisome is the Ministry of Interior’s recently announced plans to install surveillance equipment at Internet Service Providers and Telecom companies throughout the Kingdom. The implementation of such measures without a preexisting legal framework that protects free expression activities online could result in a chilling effect for Cambodia’s currently thriving community of online political activists and journalists.*

**Issue 20:** With reference to the information provided in paragraphs 175 to 199 of the State party’s report, please provide further information on legislative and/or administrative restrictions to the right of peaceful assembly, including the criteria for prohibiting an assembly, as well as any cases recorded during the reporting period where the holding of an assembly was prohibited, and the reasons given. Concerning the information contained in paragraph 167 of the State party’s report, please provide further information on the regulations governing the use of “freedom parks”. Please also comment on reports that indicate that roadblocks had been set up to prevent access to the Freedom Park in Phnom Penh. Please clarify the legal status of municipal security guards and their role in policing demonstrations. Please also comment on reports that indicate that there is a practice of detaining peaceful demonstrators until they sign or thumbprint a document agreeing to refrain from participating in future demonstrations.

### **Reply / Comments from Civil Society**

The Cambodian *Law on Peaceful Assembly (Law on Assembly)* was enacted in 2009 to principally ensure the right to peaceful assembly in Cambodia, but it can only be enjoyed upon approved request.<sup>405</sup> The law provides that territorial authorities shall approve requests for demonstrations unless the peaceful assembly is used to “abusively affecting the rights, freedoms and honours of others...public order and national security”,<sup>406</sup> however, these exceptions are not clearly defined. Furthermore, assemblies during elections, for labour rights or other gatherings for the purpose of serving “religion, art, culture, national customs and tradition and educational dissemination activities for social interests” are not allowed.<sup>407</sup> Finally, any group wishing to apply for a permit to hold peaceful assembly must supply identity information of three leaders of the group<sup>408</sup>, which discourages activists from organising protest activities.

One of the most ambiguous provisions of the *Law on Assembly* is the creation of ‘Freedom Parks’ within each capital and province by the 26<sup>th</sup> June 2010.<sup>409</sup> The stated aim of the Freedom Parks is to provide an area set aside for public gathering in order to ensure the right to assemble peacefully ‘for all Khmer citizens’.<sup>410</sup> This appears to be a mere symbolic recognition by the RGC of its citizens’ freedom of peaceful assembly rights, as the *Law on Assembly* does not derogate the obligation by protestors to go through the administrative approval process for the staging any event in Freedom Park. as the parks as mandated by law does not derogate the obligation by protestors to go through the approval process as stated in other part of the Law on Demonstration.

These undefined provisions and the cumbersome permit application processes have resulted in further restrictions on the rights to peaceful assembly. Shortly after the *Law on Assembly* came into effect in

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<sup>405</sup> *Law on Assembly* (Cambodia) art 2.

<sup>406</sup> Ibid.

<sup>407</sup> Ibid art 3(1)-(3).

<sup>408</sup> Ibid art 6.

<sup>409</sup> Ibid art 14, 28.

<sup>410</sup> Ibid art 28.

2010, the Phnom Penh Municipality banned a large garment workers' forum where thousands of workers wished to gather to demand an increase to their minimum wage. According to the MoI, there were concerns regarding 'public order and security'.<sup>411</sup> On 2<sup>nd</sup> January 2014 riot broke out in and around Freedom Park where thousands of anti-government protestors were set upon by heavily armed police along with plain clothed men wielding steel pipes and other weapons, the riot resulted in five deaths.<sup>412</sup> The MoI issued a press release stating that there was to be an indefinite ban on further demonstrations, assemblies or marches until 'public order and security are restored'.<sup>413</sup> Although the ban was lifted in February 2014, the Prime Minister issued a statement saying "any opposition demonstrations" would be "met by rival rallies by supporters of [his] ruling CPP",<sup>414</sup> implying that more violence would follow if any demonstration was to take place at Freedom Park even after lifting the ban. Finally, on the 30<sup>th</sup> April 2014, ahead of the planned annual Labour Day gathering at Freedom Park organised by unions and civil society organisations, the city authority surrounded the park with razor-wire fences and barricades again and placed a citywide ban on assembly. This was not officially lifted until July 2014.<sup>415</sup>

On the 10<sup>th</sup> December 2014, activists and monks who were marching to Phnom Penh from across the country to mark Human Rights Day were met with roadblocks and armed police in the outskirts of the city.<sup>416</sup> Negotiating their way through the blockages, they found that pagodas where they intended to spend the night were locked up. A second group of marchers that included members of the seven different ethnic minority communities from the northeast of Cambodia were also refused entry. On the morning of the 21<sup>st</sup> April 2014, private security guards beat at least 10 CNRP supporters as Ms. Mu Sochua, elected CNRP Member of Parliament, was chased away while staging a protest at Freedom Park. Many of the people injured were there to photograph and videotape the events. Ms. Mu Sochua has previously been denied access to Freedom Park by private security guards at least five times.<sup>417</sup> Since then, those who have tried to enter the Park to hold demonstrations have been violently chased away.<sup>418</sup>

The usage of roadblocks to prevent entry to Freedom Park has occurred on several other occasions, such as when CNRP supporters protested the ban on demonstrations early in January 2014.<sup>419</sup> In a separate incident, CNRP supporters marched to discuss the political deadlock over the results of the election in 2010, but were denied entry to Freedom Park though roadblocks and armed forces, which ultimately ended in a violent clash.<sup>420</sup>

In recent cases, more and more different legal means were applied in order to detain activists. For example, land activists from the Boeung Kak lake community where the largest body of water in Phnom Penh was filled causing widespread flash flooding issues for the resident living around the former lake were arrested for 'traffic obstructions' while protesting in November 2014 during the morning rush hour traffic.<sup>421</sup> The authorities decided to charge the protestors under the provisions of

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<sup>411</sup> The Cambodia Daily (online), 'Garment Workers Get Blocked from Rally in Phnom Penh', 26 July 2010 <http://bit.ly/1L3DhcT>.

<sup>412</sup> Al Jazeera (online), 'Cambodia Cracks Down on Protests with Ban on Assembly', 5 January 2014 <http://alj.am/1DwYJ7J>.

<sup>413</sup> IFEX (online), 'Cambodian group calls for immediate lift of ban on assemblies, halt to wave of detentions of rights activists', 22 January 2014 <http://bit.ly/1FRyLLB>; LICADHO, *Attacks and Threats Against Human Rights Defenders in Cambodia 2010-2012* (2012), 28.

<sup>414</sup> The Cambodia Daily (online), 'Hun Sen Lifts Protest Ban, Warns of Pro-CPP Rallies', 26 February 2014 <http://bit.ly/1vy5fVc>.

<sup>415</sup> The Phnom Penh Post (online), 'Capital Bans Marches for Labour Day and Beyond', 1 May 2014 <http://bit.ly/19n5vBX>.

<sup>416</sup> The Cambodia Daily (online), 'Human Rights Day Activists Face Obstacles Entering Capital', 10 December 2014 <http://bit.ly/1DfVrao>.

<sup>417</sup> IFEX (online), 'Cambodian Park Remains Off Limits as Political Party Supporters Beaten by Security Guards', 21 April 2014 <http://bit.ly/1Cz1gg8>.

<sup>418</sup> Ibid.

<sup>419</sup> Radio Free Asia (online), 'Ten Wounded in Fresh Protest, Clash in Cambodian Capital', 26 January 2014 <http://bit.ly/1eXZ7ix>.

<sup>420</sup> LICADHO, *CNRP Lead Impromptu March Through Phnom Penh* (30 March 2014) <http://bit.ly/1vOLKgQ>.

<sup>421</sup> Housing Rights Task Force, *Boeung Kak Lake Protest in Front of City Hall, 10 November 2014*. The observation report detailed protesters dragging their beds onto Monivong Blvd, one of the busiest thoroughfare streets in Phnom Penh. At

the *Traffic law* instead of the *Law on Assembly* or the *Criminal Code*.<sup>422</sup> The protestors were convicted two days later and sentenced to the maximum allowed sentence of one year each in prison.<sup>423</sup> During the court proceeding the next day, three additional activists were arrested while protesting outside the Phnom Penh Municipal Court House and convicted to similar offence and sentence. This was a disproportionately heavy-handed sentence that appeared to have been influenced by the executive and aimed at punishing the activists.

The municipal security guards, often dressed in navy blue and wearing motorcycle helmets, are known for carrying out violent crackdowns of demonstrations under the instruction of the municipal authority.<sup>424</sup> Little is known about them, but they are often present during demonstrations and confront protestors. The security guards of Daun Penh, a central district of Phnom Penh, emerged after the election of 2013 as the front-line enforcers of the clashes between authorities and protestors, and were particularly violent. While some government officials have maintained that these security guards are employed through private companies, the City Hall has said that they are recruited by the MoI, which also governs the police force in Cambodia, a hierarchical structure that is confirmed by a sub-decree passed on the 31<sup>st</sup> March 2014. The document outlines the make-up of ‘mixed security forces’ including private security guards and police officials that are equipped with batons and sometimes shields.<sup>425</sup> While the City Hall spokesman Long Dimanche has claimed they are given vocational training to “*ease the traffic jams during protests... to protect the protestors and avoid violations*”, violent crackdowns by the guards have multiplied since they dismantled a CNRP protest camp in Freedom Park on the 4<sup>th</sup> January 2014.<sup>426</sup> In addition, MoI officials held a meeting with private security companies early in December 2013, under the order of Minister Sar Kheng, in order to consider forming a ‘joint-operation’ with two private firms to provide “*public order training to the mixed security forces, which includes the district guards*”.<sup>427</sup> As access to information in Cambodia remains poor, civil society is unable to comment on the security guards’ de facto legal status as no supporting official documents are available.

## **Recommendations:**

*The State Party should:*

1. Immediately stop obstructing freedom of assembly through bans, blockades and forcing peaceful demonstrators to sign documents that require them to refrain from participating in future demonstrations.
2. Enact and implement a clear and transparent administrative process where permits issued for gathering at Freedom Park is determined solely upon administrative reasons. The reason for each permit application that is denied should be clearly stated and widely publicised. An appeal mechanism should also be present for any applicants wish to have the decision reviewed.
3. Amend the undefined and vague provisions in the *Law on Assembly* and reduced the requirement on the over cumbersome identity requirement. Identity of the applicants should only need to contain enough information for the authority to contact the applicants. Organisations and registered business should be able to act as applicant, providing safeguard to the individuals.
4. Control the security guards and ensure that they are not exaggerating violence towards protestors.

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around 9am on Monday morning, the police moved in on the protestors and arrested them at around 10.30am. By Wednesday afternoon the protestors were convicted of the offence and sentenced.

<sup>422</sup> Radio Free Asia (online), ‘Cambodia’s Hun Sen Says No Political Motive Behind Recent Arrests’, 20 November 2014 <http://bit.ly/1L3HJZ7>.

<sup>423</sup> The Phnom Penh Post (online), ‘At the Speed of “Justice”’, 12 November 2014 <http://bit.ly/17rBzDV>.

<sup>424</sup> CCHR, *On World Press Freedom Day, CCHR calls on the RGC to Respect Freedom of the Press and Ensure Journalists’ Safety* (3 May 2014) <http://bit.ly/17Fs0BD>.

<sup>425</sup> The Phnom Penh Post (online), ‘Cracking down 101’, 1 August 2014 <http://bit.ly/1obCRY9>.

<sup>426</sup> Ibid.

<sup>427</sup> Ibid.

**Issue 21:** Please provide information on the suspension of the NGO Sahmakum Teang Tnaut (STT), ordered by the Ministry of Interior in August 2011 for a period of five months. Please also supply information on the alleged refusal of the Minister of Labour to register branches of the Free Trade Union in February 2014. Please indicate the status of the following draft legislation: (a) the draft law on associations and non-governmental organisations (CCPR/C/KHM/2, para. 198); and (b) the draft law on trade unions.

## Reply / Comments from Civil Society

### *Sahmakum Teang Tnaut*

Local NGO Sahmakum Teang Tnaut (STT) is one of several organisations involved with monitoring the resettlement of residents displaced by the Cambodian multi-billion dollar railway rehabilitation project funded by ADB and the then Australia Agency for International Development. On the 4<sup>th</sup> July 2011, STT released a critical report that found the then Inter-Ministerial Resettlement Committee, a RGC agency overseeing the compensation of residents being evicted from their home as a result of the project, had underestimated the compensation for which affected households were eligible.<sup>428</sup> STT stated that “*the compensation [as calculated by Inter-Ministerial Resettlement Committee] is too low and unlikely to allow households to maintain their current living standards post resettlement*”.<sup>429</sup> Less than one month later, on the 2<sup>nd</sup> August 2011, the MoI issued a letter of suspension to STT, banning its activities until the 31<sup>st</sup> December 2011. The reason for this particular duration has not been clarified. Initially claiming the suspension was due to ‘inconsistencies in the group’s paperwork’,<sup>430</sup> the MoI later stated that STT was “*failing to modify its leadership structure and making a revision to its statutes “according to the instruction of a specialised department”*”.<sup>431</sup>

Although no Cambodian law was cited to provide any basis for the suspension, a ministry statement on the 14<sup>th</sup> August claimed that STT “*...operated and incited people to oppose national development by the government in order to make the development partners suspend or stop the project*”.<sup>432</sup> On the 21<sup>st</sup> September 2011, it was reported that the ban was the result of a written recommendation from Deputy Prime Minister Keat Chhon from the MoI to Prime Minister Hun Sen, which was issued one month before the suspension came into force.<sup>433</sup> This letter dated almost two weeks prior to the release of the STT report on 17<sup>th</sup> June 2011, was leaked to news outlets in September 2011 and allegedly consisted of Deputy Prime Minister Keat Chhon urging the Prime Minister to shutdown any NGOs critical of the railway rehabilitation project.<sup>434</sup> Further, the letter urged the RGC to ban all foreign NGOs from doing advocacy work in Cambodia as well as foreign nationals involved in Cambodian NGOs doing advocacy work.<sup>435</sup> Finally, the letter included a recommendation that the Council of Ministers (CoM) speed up its review and implementation of the draft *Law on Associations and NGOs* (LANGO).<sup>436</sup> While government authorities repeatedly denied the knowledge or existence of the letter, Prime Minister Hun Sen accepted the recommendations on 19<sup>th</sup> June 2011 by apparently signing the letter,<sup>437</sup> leading to STT’s subsequent ban from further operation in August 2011. On the 1<sup>st</sup> January

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<sup>428</sup> Sahmakum Teang Tnaut, *Rehabilitation of Cambodia’s Railways: Comparison of Field Data* (July 2011) <http://bit.ly/1DfLVnD>.

<sup>429</sup> Phnom Penh Post (online), ‘“Downgrade” of Railway Homes’, 5 July 2011 <http://bit.ly/1Ecs4qt>.

<sup>430</sup> Asia Times, ‘Cambodian NGOs under the gun’, 20 September 2011 <http://bit.ly/1CuTUci>.

<sup>431</sup> Human Rights Watch, *We Are All STT* (August 2011) <http://bit.ly/1zsTwh0>.

<sup>432</sup> Asia Times, ‘Cambodian NGOs under the gun’, 20 September 2011 <http://bit.ly/1CuTUci>.

<sup>433</sup> Phnom Penh Post (online), ‘NGO ban questioned’, 21 September 2011 <http://bit.ly/1sVgqvf>.

<sup>434</sup> Ibid; Phnom Penh Post (online), ‘ADB Still Puzzled by Controversial Letter’, 23 September 2011 <http://bit.ly/1xrGo64>.

<sup>435</sup> Phnom Penh Post (online), ‘Government Yet to Deny Authenticity of Railway Letter’, 30 September 2011 <http://bit.ly/1CuVkDM>.

<sup>436</sup> Phnom Penh Post (online), ‘NGO ban questioned’, 21 September 2011 <http://bit.ly/1sVgqvf>.

<sup>437</sup> Phnom Penh Post (online), ‘Government Yet to Deny Authenticity of Railway Letter’, 30 September 2011 <http://bit.ly/1CuVkDM>.

2012, the suspension of STT expired, the NGO was back in business and the program coordinator of STT Ee Sarom publically committed the group to continue all their projects into 2012 and beyond.<sup>438</sup>

The suspension raised many concerns with the civil society as it was completely arbitrary and appeared to be in clear violation of the constitutional right to freedom of expression and association.<sup>439</sup> It was clear from the reasons given by the RGC that this suspension was more of a punishment for the investigative report critical of the railway project, rather than for any legitimate reasons. The inability for STT to appeal or review the decision judicially is yet another example of how the RGC can govern and punish civil society through completely arbitrary decisions. The period of the suspension was enough to disrupt the core work of the affected NGO, yet not long enough to attract sustained international scrutiny. This RGC tactic has since been applied to individuals who speak out and criticise the RGC, like the cases of Mr Mam Sonando and Ms Yorm Bopha, who were both imprisoned for a few months before being set free with criminal convictions recorded against them. In all these cases, once the punishment was lifted, international pressure on the issue immediately faded away and the RGC continue with its corrupt behaviours with impunity.

### *The draft of the Trade Union Law*

Under the current draft of the *Trade Union Law*, the MoLVT will only approve union registration if it sufficiently meets all the requirements stipulated in the *Trade Union Law* and any relevant future Prakas issued by the MoI.<sup>440</sup> The law allows the MoLVT to arbitrarily decide whether to accept a union registration request. Consequently, the MoLVT will have complete control over new union application procedures, should the current draft of *Trade Union Law* pass.<sup>441</sup> The latest draft of the law requires registration for pre-existing unions; meaning that existing unions will not remain valid if they do not register within 6 months after the law enters into force.<sup>442</sup>

Upon submitting a proposal with the registration department at the MoLVT to register 10 local unions in factories and enterprises, the president of NGO Free Trade Union, Mr. Chea Mony, received information that minister Ith Sam Heng had “temporarily banned issuing [licenses for unions]”.<sup>443</sup> Heng Sour, spokesman for the MoLVT, has confirmed the statement of the MoLVT that Prime Minister Hun Sen’s CPP-led government would not be issuing licenses to new unions until the forthcoming *Trade Union Law* is adopted and implemented.<sup>444</sup> However, this statement was retracted the following day, where it was instead claimed that the ministry had not stopped registering unions.<sup>445</sup> Mr. Sour declined to say whether he had spoken accurately or inaccurately when he initially confirmed the suspension of union registration.<sup>446</sup>

From December 2010 through December 2011, the RGC issued four versions of the LANGO. Due to a sustained advocacy campaign led by Cambodian organisations, the Prime Minister announced in December 2011 that more time for consultation on the law would be provided. Two years later, with no official consultation taken place with civil society organisations, the MoI said in December 2013 that it was planning to have the law ready for the CoM in early 2014 and voted on by July 2014.<sup>447</sup> In January 2014, RGC officials announced the LANGO had been approved by the CoM and the law would be adopted within the first half of 2014.<sup>448</sup> However, deputy director-general of the General Department of Local Administration at the MoI, Meas Sarim, stated the drafting would continue

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<sup>438</sup> Phnom Penh Post (online), ‘Suspended NGO is Back’, 2 January 2012 <http://bit.ly/1xOyhiW>.

<sup>439</sup> LICADHO, *Civil Society and Private Sector Groups Condemn Government’s Arbitrary Suspension of Local NGO – We Are All STT* (August 2011) <http://bit.ly/1zGVQuU>.

<sup>440</sup> LICADHO, *Cambodia’s draft law on Trade Unions of Enterprises* (2014), 2 <http://bit.ly/1AHHZu1>; *Cambodian Trade Union Law* (Draft) (Cambodia) art 12.

<sup>441</sup> *Cambodian Trade Union Law* (Draft) art 15.

<sup>442</sup> *Ibid* art 87.

<sup>443</sup> The Cambodia Daily (online), ‘Gov’t Suspends Freedom of Association for Unions’, 27 February 2014 <http://bit.ly/1MpGSUa>.

<sup>444</sup> *Ibid*.

<sup>445</sup> The Cambodia Daily (online), ‘Labor Ministry Denies It Has Stopped Recognising Unions’, 28 February 2014 <http://bit.ly/1zYyR3x>.

<sup>446</sup> *Ibid*.

<sup>447</sup> The Cambodia Daily (online), ‘Government Pushes Ahead with NGO Law’, 2 December 2014 <http://bit.ly/1FRvIzh>.

<sup>448</sup> The International Center for Not-for-Profit Law, *Cambodia – NGO Law Monitor* (2014) <http://bit.ly/1890Q4H>.

without the consultation of civil society groups.<sup>449</sup> Meas Sarim accused the civil society of inciting civil unrest after the general elections in July 2013 because of civil society organisations' 'association with the political opposition'.<sup>450</sup> Civil society is therefore unable to engage in the drafting process of the two laws, which further limits governmental transparency and accountability in Cambodia. Meas Sarim could not confirm whether the law would be adopted in 2014.<sup>451</sup> One year on, the LANGO is still not adopted by the RGC.

## **Recommendations:**

*The State Party should:*

1. Stop using the tactic of punitive closure of organisations or detention of individuals that are critical of the government. Decisions issued by the government should be clear, well reasoned and decisions should provide clear steps and processes for affected organisations and individuals to appeal that decision through the courts.
2. Create and empower an independent judicial body that has the power to adjudicate administrative decisions made by the RGC.
3. RGC should provide a forum where civil society can meaningfully engage and be consulted on the two draft laws. The law should not operate to allow the RGC another avenue to restrict the already diminishing freedom of express / assembly space that currently exists in Cambodia.

### **i. Right to marriage and equality of the spouses (art. 23)**

**Issue 22:** According to the information before the Committee, article 950 of the Civil Code provides that a woman shall not remarry until 120 days have elapsed from the day of the dissolution or annulment of her previous marriage. Please comment on the content of that provision in the light of article 23, paragraph 4, of the Covenant. Please also provide information on the legal basis for restricting the right to marriage between foreign men and Cambodian women on the basis of the men's age and income.

## **Reply / Comments from Civil Society**

*Remarry – 120 day rule*

Article 950 of the *Civil Code* is modelled on article 733 of the *Civil Code of Japan*,<sup>452</sup> which stipulates that women can only remarry after a time of six months has lapsed from a divorce. The Japanese law has come under criticism including arguments made in two unsuccessful constitutional challenge in 1995 and 2012 where the Japanese Courts held that the provision did not offend the Japanese Constitution on the grounds that the discriminatory effect of the law had a rational basis, in this case to minimise confusion over the paternity of children born shortly after the divorce.<sup>453</sup>

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<sup>449</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014) <http://bitly.com/1aVY0f3>.

<sup>450</sup> The International Center for Not-for-Profit Law, *Cambodia – NGO Law Monitor* (2014) <http://bit.ly/1890Q4H>.

<sup>451</sup> CCHR, *Cambodian Centre for Human Rights Submission to the Human Rights Committee April 2014* (2014) <http://bitly.com/1aVY0f3>.

<sup>452</sup> The *Civil Code of Cambodia* was largely drafted with significant technical support provided by the Japanese Government through the Japan International Cooperation Agency (JICA) and the provisions are modelled largely on the Japanese civil code.

<sup>453</sup> For discussion on the 1995 Supreme Court decision, see Colin Jones, 'Legitimacy-Based Discrimination and the Development of the Judicial Power in Japan as Seen Through Two Supreme Court Cases' (2014) 9 *University of Pennsylvania East Asia Law Review* 100, 105, citing Supreme Court of Japan (3<sup>rd</sup> Petty Bench) 5 December 1995, vol 177 pg 243. For the 2012 decision by a lower, district court, see Japan Today (online) 'Judge Dismiss Lawsuit Against Remarriage Legislation', 19 October 2012 [bit.ly/1EoJHPA](http://bit.ly/1EoJHPA).

In the State Report, the RGC did not comment on the potential impact of this provision; however, in its response to the CEDAW committee, the RGC stated that the purpose of article 950 is “*aimed at women only to avoid competition for the assumed paternity of the child*” and that it does not “*restrict the marriage right of women*”.<sup>454</sup> The RGC went on to assert that the 120 day rule can be waived if a medical certificate is produced proving that the woman is not currently pregnant. NGO groups in Cambodia, in their joint submission to the CEDAW Committee, argued that this provision operates to deprive women of the same rights and opportunities as men. In its Concluding Observation, the CEDAW Committee expressed concern that this provision is “*discriminatory and unduly restrict on the right of women to remarry, given that paternity can easily be established by other, less restrictive means*.”<sup>455</sup>

Both the Japanese Supreme Court and the RGC have defended the provision as ‘legitimacy-based discrimination’, as DNA based paternity test, being the only reliable ‘medical means’ to test paternity, would not qualify as a process that is easily accessible, as the process is still not widely accessible in Cambodia and is too expensive for the vast majority of the population.<sup>456</sup> The provision is also intrinsically linked with the legal presumption of paternity as stated by article 988 of the *Civil Code*, and cannot be repealed without necessary changes to other part of the Code.

Nevertheless, this provision is discriminatory to Cambodian women, and does not serve a ‘legitimate purpose’ as the government contends. Even though an average pregnancy lasts around 280 days, both the Cambodian and Japanese *Civil Code* stipulate an arbitrary period for women to observe after their marriage dissolves. Further, this legal presumption is based on the highly patriarchal premise that a woman would / could never conceive a child with a man that is not her husband, and ignores a woman’s right to choose her own sexual partner.

The mother should be given the right to determine who should have paternity rights to the child in cases where a pregnancy occurs in between marriages as she is normally in the best position to determine who the father might be, and what is in the best interest of the child. If a dispute should arise from any party claiming paternity rights to the child, then the court would be in the best position to determine paternity rights according to law.<sup>457</sup> In this case, the RGC should have a mechanism in place to prevent the filing of malicious, frivolous suit that would place unnecessary financial burden on the woman.

#### *Marriage between Foreign men and Cambodian women*

The MoFA’s Directive placing restrictions on marriage between foreign men and Cambodian women was introduced on 7<sup>th</sup> March 2011. The new law mandates that any foreign man wishing to marry a Cambodian woman will have to be less than 50 years of age and earn more than USD2,500 per month. The RGC defended the Directive as a way to protect Cambodian women from the increasing number of foreign nationals marrying and subsequently abusing their new Cambodian wives.<sup>458</sup>

Various Cambodian civil society organisations, including CCHR and LICADHO have expressed their concern over the MoFA directive as discriminatory against women. Ou Virak, former president of CCHR stated that the law reflects a “*basic mentality that women need to be protected and women are victims*”.<sup>459</sup> Pung Chhiev Kek, president of LICADHO called the directive discriminatory and explained that it violates the provisions of CEDAW.<sup>460</sup> The ‘official’ rationale for the directive expressed by Koy Kuong, a spokesman for the MoFA was that “*marriage between old men and young women are inappropriate*”,<sup>461</sup> a statement that was made without any legal backing in

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<sup>454</sup> CEDAW/C/KHM/Q/4-5/Add.1, para 22.

<sup>455</sup> CEDAW/C/KHM/CO/4-5, para 47.

<sup>456</sup> Dorine van der Keur, ‘Legal and Gender Issues of Marriage and Divorce in Cambodia’ (2014) 2 *Cambodia Law and Policy Journal* 1, 3 <http://bit.ly/1AHJxE4>.

<sup>457</sup> *Civil Code of Cambodia* art 989-990.

<sup>458</sup> BBC News (online) ‘Cambodia sets marriage age limit for foreign husbands’, 21 March 2011 <http://bit.ly/17aihCe>.

<sup>459</sup> Asia Time Online (online), ‘Cambodia, No Country for Old Men’, 2 April 2011 <http://bit.ly/1uSevZf>.

<sup>460</sup> Ibid.

<sup>461</sup> Australian Broadcasting Corporation, ‘Cambodia sets age limit for foreign husbands’, 16 March 2011 <http://ab.co/1AyrwrR>.

Cambodian law. The fact that some factions of the government find the idea of younger Cambodian women marrying older foreign men ‘unsightly’ is not a good enough reason to implement such restrictive and discriminatory regulations.

The Directive also only applies to weddings held in Cambodia, and has no extraterritorial force. The RGC has further asked the Chinese Government to restrict the number of visas it issues to single Cambodian women to prevent the brokering of marriage to Chinese men.<sup>462</sup>

There are currently a large number of ‘Cambodian brides’ living in China and South Korea, with an estimate of more than 23,000 Cambodian women marrying South Korean men since 2000 and there are many cases of these brides being abused or even sold for prostitution by their foreign husband after they leave Cambodia. So far in 2014, rights group ADHOC has investigated and intervened in 29 of these cases alone.<sup>463</sup> Other recent cases where law enforcement agencies have intervened include a Cambodian couple arrested over allegations that they facilitated the sale of more than 30 Cambodian women for marriages in South Korea and China; a Cambodian bride suffering severe physical and sexual abuse after marrying a Chinese man;<sup>464</sup> and a sensational case in 2014 of the alleged murder in South Korea of a Cambodian bride in an attempt to commit insurance fraud.<sup>465</sup> Other attempts by the RGC to restrict ‘brokered’ marriage between Cambodian women and foreign men included a short-lived ban on marriage between Cambodian women and South Korean men, as well as the subsequent MoI Sub-Decree that prohibited marriages “*prepared by marriage agencies, brokers or business companies*”.<sup>466</sup>

The RGC’s directive does not effectively combat the serious and actual issue of human trafficking, instead it creates a framework that is overly restrictive and discriminatory to Cambodian women and creates the following concerns:

1. The directive does not apply equally between men and women in Cambodia. Foreign women of **any** age can still marry Cambodian men of **any** age, while a Cambodian women at any age (even if they are over 50 years old) will not be able to marry any foreign men over the age of 50 or **any** foreign men not meeting the income threshold.
2. The income threshold does nothing to address the trafficking problem faced by vulnerable Cambodian women, but instead creates the contrary situation where:
  - i. Foreign men earning more than USD2,500 (2.5 times the GDP per capita in Cambodia)<sup>467</sup> would have the financial resources to easily remove vulnerable Cambodian women away from Cambodia to another country, as the directive has no force extraterritorially. In this regard, the directive would only serve to re-enforce the existing stereotype that all marriages between Cambodian women and foreign men are for economic reasons rather than a union of two people who are in love with each other.
  - ii. Although the directive can potentially make it harder for Cambodian women to be trafficked abroad, it also serves to restrict their freedom to travel abroad. Foreign embassies may be more wary of granting travel documents to single Cambodian women due to the perception that they are travelling for the purpose of marrying foreign men abroad. However, the serious issue of trafficking and vulnerable Cambodian women thereto need a broader strategic approach that includes government, donors and CSO stakeholders, rather than relying on a simple directive issued by a government ministry.

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<sup>462</sup> Voice of America (online), ‘Cambodia urges China Visa Restrictions’, 4 August 2014 <http://bit.ly/1MkHUkh>.

<sup>463</sup> The Phnom Penh Post (online), ‘The “Hell” of Abuse in China’, 31 July 2014 [bit.ly/1D6SIVS](http://bit.ly/1D6SIVS).

<sup>464</sup> The Phnom Penh Post (online), ‘Women sold as wives abroad, court learns’, 20 December 2013 <http://bit.ly/1vsBDsi>.

<sup>465</sup> The Phnom Penh Post (online), ‘The “Hell” of Abuse in China’, 31 July 2014 [bit.ly/1D6SIVS](http://bit.ly/1D6SIVS).

<sup>466</sup> *Sub-Decree 183 on Regulating Formalities and Procedures for Marriage Between Cambodian Citizens and Foreigners 2008* (Cambodia).

<sup>467</sup> The World Bank, *GDP Per Capita* (2014) <http://bit.ly/1zC4Y4a>, indicating Cambodia’s GDP per Capita is USD1,006.80

## Recommendations:

*The State Party should:*

1. Repeal article 950 of the Cambodian *Civil Code*.
2. Amend article 988 of the Cambodian *Civil Code* to reflect women's right to determine the paternity of the child.
3. Establish procedures in which disputed paternity can be impartially resolved in the court of law without overly burden on either party.
4. Rescind the MoFA Directive that places severe restriction on Cambodian women from marrying foreign men.
5. Tackle the problem of human trafficking more holistically by engaging a broad spectrum of stakeholders including local & international NGOs, donor organisations and regional and international governmental allies. In this regard the implementation of the *National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation 2011-2013* (National Action Plan) should be urgently reviewed by the RGC. The review should especially clarify why marriage related trafficking was not addressed in the National Action Plan given the fact that the RGC identified this as a serious issue as early as 2007. The RGC should also be urged to incorporate this serious issue in future action plans or strategies formulated to combat human trafficking.

### j. Rights of the child (arts. 7 and 24)

<b>Issue 23:</b> Please indicate what steps the State party has taken to establish a juvenile justice system in accordance with international standards.
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### Reply / Comments from Civil Society

Cambodia ratified the *Convention on the Rights of the Child* (CRC) in 1992 and the provisions are incorporated it into domestic law by the *Constitution*.<sup>468</sup> Provisions within the *Criminal Code* (2009) and the CCPC provide the remaining legal framework protecting the rights of juvenile offenders.<sup>469</sup> The draft *Law on Juvenile Justice* has been in discussion for over ten years now, while the inclusion of civil society in the consultation process is welcomed, there is so far no indication that this draft law will be passed by the RGC any time soon.

Lack of specific provisions in the various legal instruments make it difficult to fully implement the specific recommendations made by the Committee on the Rights of the Child.<sup>470</sup> Currently, the various legislative instruments provide just vague references to the rehabilitation and protection of minors in conflict with the law without providing specific, implementable processes to protect these children.

Cambodian law sets the legal age of criminal responsibility at eighteen years old;<sup>471</sup> however, criminal conviction can be made against a minor over fourteen years of age “if the circumstances of the offence or the personality of the minor justify in doing so”.<sup>472</sup> There is no definition to set out what type of circumstances or personality would justify criminal conviction and it is rarely explained when a

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<sup>468</sup> *Constitution of the Kingdom of Cambodia*, art 31.

<sup>469</sup> In this report, juvenile offenders refer to offenders under the age of 18.

<sup>470</sup> United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention - Concluding Observations: Cambodia*, 57th sess, CRC/C/KHM/CO/2 (20 June 2011), [77].

<sup>471</sup> *Criminal Code of Cambodia* (2009) art 38.

<sup>472</sup> *Ibid* art 39.

person under 18 years of age is convicted. *The Criminal Code* further provides for ways in which juvenile offenders can be assisted through non-judicial measures.<sup>473</sup>

Despite the provision in the *Criminal Code*, judges rarely apply non-custodial measures and imprisonment remains the most common solution.<sup>474</sup> Currently, high numbers of juvenile offenders who are charged with felony crimes are treated as adults and are housed in the same pre-trial detention centres as adult offenders. These custodial measures do not promote the rehabilitation of the minor, or reintegration to the society once they are released. In the contrary, imprisonment of juvenile offenders among the adult population harms the development of minors in detrimental ways.

Despite the 23 centres dedicated to the care and rehabilitation of children in Cambodia,<sup>475</sup> there is a lack of resources and supervision required to provide meaningful rehabilitation programs such as community services or supervised vocational development. Judges are faced with no alternatives but to impose custodial sentences to juvenile offenders.<sup>476</sup>

Moreover Cambodia does not operate a separate court system for juvenile offenders. Although State representatives have made statements agreeing to the establishment of a dedicated judicial chamber for juvenile offenders, the new draft *Law on Juvenile Justice* does not include any provision for the establishment of such a court.<sup>477</sup>

International standards strongly discourage the use of pre-trial detention of juvenile offenders<sup>478</sup> and further stipulate that detention of children should be avoided whenever possible, only used as last resort, and for the shortest appropriate periods.<sup>479</sup> In general, it is in the child's best interest not to be separated from their parents. Under Cambodian law, pre-trial detention is banned completely for those under the age of fourteen.<sup>480</sup> However, trials monitored at some of Cambodia's first instance courts show that the level of detention remains significantly high. In 87% of the cases involving juvenile offenders monitored by the CCHR's Trial Monitoring Project, minors were put under pre-trial detention.<sup>481</sup> In two of those cases, the minors were under 14 years old, which is illegal under Cambodian law.<sup>482</sup>

In addition, both Cambodian and international law specifically provides that, in the exceptional cases in which juveniles are detained in pre-trial detention, they should be separated from adults.<sup>483</sup> Despite the legal provisions found in Cambodian criminal and procedural law, separation between minors and adults in custody is often not practiced. The judicial system relies on prisons as the default solution for dealing with crimes, which leads to chronic overcrowding in prisons. Minors in those

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<sup>473</sup> Ibid art 40-41.

<sup>474</sup> CCHR's Trial Monitoring Project has monitored 2,558 trials at the Courts of First Instances of Banteay Meanchey, Kandal, Phnom Penh and Rattanakiri, from 2009 to 2012. Its monitoring checklist includes a section specific for juvenile justice. The project is currently monitoring trials at the Phnom Penh's Court of Appeal. See the database at <http://tmp.sithi.org/>.

<sup>475</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Convention - Second Periodic Reports of States Parties Due in July 2002 - Cambodia*, GE.13-42575, CCPR/C/KHM/2 (11 April 2013).

<sup>476</sup> Cambodia Center for Human Rights, 'Children in Cambodian Criminal Justice System' (October 2014) <http://bit.ly/1uhHobB>.

<sup>477</sup> The NGOs Legal Aid Cambodia and Children Rights International have been working with the Ministry of Justice to establish a Child Friendly Chamber on three Cambodian provinces; Battambang, Phnom Penh and Siam Reap.

<sup>478</sup> *Convention of the Rights of the Child (CRC)*, art 9.

<sup>479</sup> Ibid art 37(b); *Code of Criminal Procedure 2008* (Cambodia) art 96, 212.

<sup>480</sup> *Code of Criminal Procedure 2008* (Cambodia) art 212-213. Detention of children between 14 and 18 can only be done when it is justified by the judicial officials.

<sup>481</sup> Cambodian Center for Human Rights, *Sixth Bi-Annual Report: "Fair Trial Rights in Cambodia"* (December 2013) [bit.ly/1Epr7GZ](http://bit.ly/1Epr7GZ). In the most recent monitoring period of the CCHR's trial monitoring project in 2012, almost 92 per cent of the juvenile offenders were held in pre-trial detention compared to 71 per cent of the adults. In the whole trial-monitoring project the percentage of minors held in pre-trial detention is 87%.

<sup>482</sup> *Code of Criminal Procedure 2009* (Cambodia), art 212.

<sup>483</sup> *CRC*, art 37(c); *Code of Criminal Procedure 2008* (Cambodia) art 213, 214: 'A minor charge with a felony may be detained for no longer than 4 months if between the ages of 14-16 and 6 months for 16-18 year olds. In the case of a misdemeanor juvenile suspects between the ages of 14-16 may be held for no longer than 2 months or 4 months for those aged between 16-18.'

overcrowded prisons are often under threat of psychological and physical abuses, including sexual abuse. A recent report from LICADHO indicates that, even given the attempts in many prisons to fully separate adults and children, there is still no separation in some of prisons; and, in some of them, the separation depends on prison occupancy rates at any given time.<sup>484</sup> If the number of minors is small, the prison authority might decide to place juvenile with adult population to better manage the prison population. This can also happen if prison cells become overcrowded.<sup>485</sup> The RGC has recently announced a plan to construct a prison with a separate section that may be dedicated to house up to 500 convicted juvenile prisoners.<sup>486</sup> Concerns have been expressed by civil society with the plan that, if realised, would see juvenile offenders transferred to a centralised correctional facility that may be far away from their family homes.

While the Cambodian legal framework has provisions protecting the privacy of juvenile offenders during court proceedings, this is often ignored during the trial process. Names of the offenders can often be found on public notice boards and courtrooms are open when juvenile offenders are in trial. CCHR's trial monitoring report indicates that measures taken by the court to protect minor offender's right to privacy were only respected in three of the 219 cases monitored.<sup>487</sup>

As mentioned before, the RGC has been drafting the *Law on Juvenile Justice* since 2000 and have still not passed this law. The RGC has called for patience from the public highlighting the importance the inclusion of a comprehensive consultation process during the drafting phase of the law. While the step to include civil society voices in the drafting of the law is positive,<sup>488</sup> ten years is an unreasonably long time in the drafting of any new law. Consultation with civil society actors has been sporadic at best, and there is no official information regarding the status of the draft law that is publicly accessible.

Irrespective of the progress being made on the draft law, the main concern expressed by civil society remains whether any new law would be effectively implemented. The lack of resources and political will raise fears over the subsequent implementation once the law is passed. The legislation might be good from a legal point of view but if is not appropriately implemented; the juvenile justice system will remain unchanged and inadequate.

## **Recommendations:**

*The State Party should:*

1. Enact a law protecting children in conflict with the laws that complies with international standards, including provisions that ensure the availability of rehabilitation and supervision over custodial measures; and specific safeguards protecting the minor's right of privacy and legal representation among others.
2. Take appropriate measures to implement existing and new laws.
3. Focus on measures that promote supervision and rehabilitation programs for minors in conflict and encourage judges to uses to use those alternatives before imprisonment of minors.
4. Provide information and adequate training for officials working in the administration of justice including judges, police officers, prosecutors, state lawyers, and other stakeholders who are dealing with minors in conflict with the law. The training for prosecutors and judges should make a special effort to discourage the use of pre-trial detention for juveniles.
5. Reform existing correctional facilities or build new ones to effectively separate minors from adults, and minors in pre-trial detention from minors convicted in the correctional centres.

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<sup>484</sup> LICADHO, *Rights at a Price: Life inside Cambodia's Prisons* (2015) <http://bit.ly/1Dh11dE>.

<sup>485</sup> Ibid.

<sup>486</sup> LICADHO, *Briefing paper: Beyond Capacity: Cambodia's Exploding Prison Population & Correctional Center 4* (2010) <http://bit.ly/1AFB7Ja>.

<sup>487</sup> Cambodian Center for Human Rights, *Sixth Bi-Annual Report: Fair Trial Rights in Cambodia* (2013) [bit.ly/1Epr7GZ](http://bit.ly/1Epr7GZ).

<sup>488</sup> UNICEF, Legal Aid Cambodia and other NGOs are included in the drafting process of the Law on Juvenile Justice.

**Issue 24:** With reference to the information provided in paragraphs 85 to 88 and 220 of the State party's report, please provide information on the practical measures adopted to eradicate child labour and to combat child abuse, including corporal punishment in all contexts, in the home, alternative care settings and day care?

## Reply / Comments from Civil Society

The State Report spells out various laws in the Cambodian legal framework that aim to protect children from child labour and abuse, as well as citing examples of the RGC's cooperation with other non-governmental bodies that have made progress toward eradicating child labour. Children's rights to life, education, and protection from economic and sexual exploitation, as well as protection from acts that are injurious to their education opportunities, health and welfare are enshrined in the *Constitution* under article 48.<sup>489</sup> Despite this and many other legal safeguards and government initiatives children still suffer cruel, inhumane and degrading treatment through child labour, child abuse and corporal punishment, all of which are prevalent in Cambodia.

### *Child Labour*

The *Labour Law* offers a mechanism of legal protection against child labour by setting the minimum age for wage labour at 15 years.<sup>490</sup> The *Labour Law* also states that children aged 12-15 may engage in light work as long as it does not interfere with their schooling or vocational training nor does it interfere with their health, physiological or physical development.<sup>491</sup> The MoLVT and the Department of Child Labour (DoCL) have so far issued eleven *Prakas on Working Conditions for Children* (Ministerial Orders) in a range of industries.<sup>492</sup> These *Prakas* aim to tighten provisions on the different types of work that are hazardous and prohibited to children, the special conditions for apprenticeship, special dispensations for work of children and what would be defined as allowable light work.<sup>493</sup> The RGC have also integrated a plan to eliminate child labour into many national policy frameworks including the NSDP 2009-2013, which had a target to enhance occupational safety for children aged 15 to 18 and eliminate the most severe forms of child labour by 2016. This is further indicated in the most recent NSDP (2014-2018), where the RGC reasserted their commitment to “*promote implementation of the National Plan on the elimination of child labor*”;<sup>494</sup> however, no other specific information was given in the draft NSDP released by the RGC regarding the ‘National Plan on the elimination of child labour’, which has still not been released by the RGC.

Despite these legal protections and government initiatives, child labour remains a major problem in Cambodia today. Reports from the RGC's own sources indicate that roughly 10% of Cambodian children aged 5 to 17 work as labourers. According to the research of the ILO, 5% of these are engaged in ‘hazardous labour’.<sup>495</sup> A report released by the Cambodian Development Research Institute and World Vision International revealed 85% of child domestic workers in Phnom Penh are injured in the course of their employment.<sup>496</sup> Furthermore, the ILO has found that 48 per cent of children who work drop out of school<sup>497</sup> despite the provision in the *Labour Law* that mandates children continue to go to school when they engage in light employment.<sup>498</sup>

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<sup>489</sup> *Constitution of the Kingdom of Cambodia* art 48.

<sup>490</sup> *Law on Labour* 1997 (Cambodia) art 177.

<sup>491</sup> *Ibid* art 171.

<sup>492</sup> Cambodian Federation of Employers and Business Associations, *CAMFEBA Plan of Action on the Elimination of Child Labour in Cambodia* (2012-2016), 7-8 <http://bit.ly/1CRRODJ>.

<sup>493</sup> Interview with Youth for Peace (17 December 2014).

<sup>494</sup> Royal Government of Cambodia, *National Strategic Development Plan 2014-2018* (2014), 196, [4.185].

<sup>495</sup> The Cambodia Daily (online), ‘Report Says more than 10 Percent of Children are “Laborers”’, 13 November 2013 <http://bit.ly/1C9G8wL>, citing, International Labor Organisation, *Labour Force Report; Cambodia Labour Force and Child Labour Survey 2012* (November 2013) <http://bit.ly/1EfmD60>.

<sup>496</sup> The Phnom Penh Post (Online), ‘Child Labourer Injuries Rife’, 1st October 2014 <http://bit.ly/1uvTl3e>.

<sup>497</sup> The Cambodia Daily (online), ‘Report Says more than 10 Percent of Children are “Laborers”’, 13 November 2013 <http://bit.ly/1C9G8wL>, citing, International Labor Organisation, *Labour Force Report; Cambodia Labour Force and Child Labour Survey 2012* (November 2013) <http://bit.ly/1EfmD60>.

<sup>498</sup> *Law on Labour* 1997 (Cambodia) art 177.

One of the driving factors behind the prevalence of child labour is the lack of education amongst parents, law enforcement officials and factory owners about the law as well as the problem and consequences of child labour.<sup>499</sup> Child labour happens because families living in poverty are desperate for an income. Often families have no other option but to get their children to work. For example, if one of the parents gets sick they send the child to work, so that the medical bills will get paid. Often families either do not understand that sending the child to work and taking them out of school can have negative consequences for the child and the family in the long term, or they simply have no other option.<sup>500</sup> While the government regularly states its intention to run workshops disseminating information on laws and on child labour, the implementation has been poor.<sup>501</sup> NGOs are almost always footing this burden, however NGO programs are run by multiple organisations in only selected provinces due to limitations in funding. A nationally cohesive plan run by the government could greatly help the plight of the project to eradicate child labour.

As mentioned in the State Report, the MoLVT in conjunction with the ILO, perform regular checks to ensure that factories are complying with the *Labour Law*. In the garment industry, families often collaborate with local authorities to forge identification documents to increase a child's age so that they can work.<sup>502</sup> Employers also demand the family to do so, so that they can avoid trouble with the law when their factory comes under inspection. The MoLVT attests that it has no mechanism to verify identity documents and birth certificates.<sup>503</sup> They also seem to have no plan or intention to create one. Without a proper procedure for verifying the age of people working in the factories, it is impossible to eradicate child labour.

The practical enforcement of the *Labour Law* in the formal sector is continually constrained by a lack of government resources and capacity. In 2010 the RGC reported that not a single employer was prosecuted for violations of laws related to child labour. The *Labour Law* also only focuses on paid employment in formal enterprises and does not address informal workplaces where most child labour occurs, nor does it apply to domestic or household services in which many children are engaged and are particularly vulnerable to labour exploitation. While the *Labour Law* requires inspectors from the MoLVT to oversee the compliance with the law, the number of inspectors is limited and inspections are not carried out in informal or unregistered places of employment, where child labour exploitation is most acute.<sup>504</sup>

#### *Child Abuse*<sup>505</sup>

There are various provisions preventing violence against children in Cambodian law including multiple treaties and international conventions enshrined in the *Constitution*.<sup>506</sup> The RGC is implementing a number of initiatives to prevent violence against children such as raising public awareness, training relevant authorities and supporting prevention actions.<sup>507</sup> The RGC have also taken positive steps to address the problem of child sex abuse and exploitation by introducing sex education in some government schools. However, education about sexual abuse remains limited to individual instructors taking the initiative, and awareness remains low.<sup>508</sup> While preventative laws are in place, cultural and societal norms coupled with a lack of education are the main root causes of the significant problem of child abuse in Cambodia.

A study on violence against children coordinated by UNICEF and carried out by the RGC found that more than half of all Cambodian children experienced some form of physical violence prior to age 18

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<sup>499</sup> Interview with Cambodian Center for the Protection of Children's (28 November 2014).

<sup>500</sup> Ibid.

<sup>501</sup> Ibid.

<sup>502</sup> Interview with Youth for Peace (17 December 2014).

<sup>503</sup> The Phnom Penh Post (online), 'Tally of goods linked to child labour grows', 3 December 2014 <http://bit.ly/1zy55mZ>.

<sup>504</sup> Cambodian Human Rights Action Committee, Compilation of the Reports Submitted by Civil Society Organisations to the United Nations Human Rights Council During the 18th Session of Universal Periodic Review, 2013, 57.

<sup>505</sup> Child abuse refers to both sexual abuse and domestic physical abuse.

<sup>506</sup> *Constitution of the Kingdom of Cambodia* art 31.

<sup>507</sup> UNICEF, *Findings From Cambodia's Violence Against Children Survey* 2013 (2014), <http://uni.cf/1un6CWa>.

<sup>508</sup> IRIN (Online), 'Raising Awareness of Child Sex Abuse in Cambodia' 22 January 2015 <http://bit.ly/1ARLzgH>.

by an intimate partner, parent or adult relative, or community member.<sup>509</sup> It found that around a quarter of Cambodian children are emotionally abused while growing up. The prevalence of childhood sexual abuse is also significant with about one fifth of 18 to 24 year olds experiencing some form of sexual abuse prior to age 18<sup>510</sup> and even more 13 to 17 year olds reporting at least one experience of childhood sexual abuse.<sup>511</sup>

### *Corporal Punishment*

The MoEYS has declared that only the disciplinary councils have the right to punish children and physical/corporal punishment is prohibited.<sup>512</sup> However, corporal punishment is still a common occurrence in Cambodia. Whilst there are laws to protect children from corporal punishment in schools and in the penal system, current laws do not protect children from corporal punishment at home, alternative care settings or in day care.<sup>513</sup> The *Civil Code* allows a person who has ‘parental authority’ to discipline their child by themselves within ‘necessary scope’.<sup>514</sup> Parents disciplining their children at home are also not considered ‘domestic violence’ under current law.<sup>515</sup> These provisions could be used as a legal defence for corporal punishment. There have also been a multitude of studies conducted in the period of review, which have shown that corporal punishment remains highly prevalent in Cambodia. One survey of over one thousand 12-15 year olds found that almost half (43.2%) of the children had direct experience of physical punishment by a parent and 29.2% had direct experience of physical punishment by a teacher.<sup>516</sup>

## **Recommendations:**

### *The State Party should:*

1. Reinforce institutional capacity to create and implement a new national plan for the elimination of the worst forms of child labour. Review previous plan (2006-2012) and critically examine its successes and challenges in order to formulate a strategic plan that can be meaningfully implemented.
2. Increase the number of labour inspections and impose fines and criminal sanctions to persons making use of illegal child labour as well as prosecuting officials who commit corruption (especially regarding forging a child’s age).
3. Increase resources in education and information dissemination to the public about laws on and consequences of child labour and child abuse. Information needs to flow from the top-down as well as from the bottom-up. It is important that this information reaches people in rural communities. This needs to be followed up with effective monitoring and evaluation.
4. Adopt national regulations that promote and protect the rights of children as soon as possible. Regulations should address children working in the informal sector and include provisions covering domestic work. The RGC should immediately increase monitoring inspections of informal and regular places of work, prosecute all employers who violate the *Labour Law*, and impose the maximum available penalties
5. Ratify and implement ILO *Convention number 189 on Decent Work for Domestic Workers*.

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<sup>509</sup> UNICEF, *Findings From Cambodia’s Violence Against Children Survey 2013* (2014), <http://uni.cf/1un6CWa>.

<sup>510</sup> Ibid, 4.4% of females and 5.6% of males.

<sup>511</sup> Ibid, more than 6% of females and 5% of males.

<sup>512</sup> CCPR/C/KHM/2, para 218.

<sup>513</sup> Global Initiative to End All Corporal Punishment of Children, *Prohibiting Corporal Punishment of children in Central Asia, South East Asia and the Pacific*, last updated October 2014 <http://bit.ly/1zy6NVu>.

<sup>514</sup> *Criminal Code 2009* (Cambodia) art 1045.

<sup>515</sup> *Law on Prevention of Domestic Violence and Protection of Victims 2005* (Cambodia) art 8.

<sup>516</sup> Miles Glenn and Thomas Nigel, “Don’t grind an egg against a stone” – Children’s rights and violence in Cambodian history and culture’ (2007) 16(6) *Child Abuse Review* 383, cited in UNICEF East Asia and Pacific Regional Office, *Child Maltreatment: Prevalence, Incidence and Consequences: A Systematic Review of Research* (2012) <http://uni.cf/1DwDC5f>. Note that under Cambodian law, teachers are not allowed to physically punish their students in all schools.

6. Develop and implement a behaviour and social change strategy to address the social and cultural norms that legitimise and promote violence against children, including child sexual abuse.
7. Strengthen enforcement of the implementation of existing legislation and policies that protect children from violence and abuse and ensure perpetrators are punished for their crimes in accordance with the law.
8. Ensure the draft *Law on Child Protection* includes explicit protection of corporal punishment together with the repeal of the Criminal Code provision authorising discipline “within the necessary scope”.

**Issue 25:** Please indicate what measures have been taken to ensure that all children are properly registered at birth, including in particular at the commune level and in remote areas.

### Reply / Comments from Civil Society

The *Sub-Decree on Civil Registry No 103* (2000) requires either parent to report and register the birth of their child within 30 days of the child’s birth in the commune of the permanent residence of the parents.<sup>517</sup> The State Report claims that the MoI and local authorities always inform the people ‘to have civil registry’ such as birth, death and marriage,<sup>518</sup> and that when a birth is registered a birth certificate is issued.<sup>519</sup> In both 2009 and 2014 UPR, the RGC accepted the recommendations to ensure registration for all children at birth.<sup>520</sup>

The 2010 Demographic Health Survey found that 62% of children under the age of five were registered; these numbers are similar to when the survey was last conducted in 2005.<sup>521</sup> The levels of registration varied wildly based on region and economic wealth. In Phnom Penh, for example, 81.6% of children were registered, with 80.6% holding a birth certificate.<sup>522</sup> However, these figures are dramatically lower in rural / remote areas. Ratanakiri and Mondulakiri provinces had the lowest level, with only 38.8% of children registered, and only 26.7% holding a birth certificate.<sup>523</sup> Of children belonging to the lowest wealth quintile, regardless of geographic location, 48.1% were registered, and only 38% held a birth certificate.<sup>524</sup> Finally, infants born with disability are often not registered by parents due to the shame and stigma such infant might bring to the family.

Despite the claims made by the RGC in their State Report, a number of factors continue to contribute to the disparity in registration of birth. Critically, information to parents is limited. Local officials often do not appreciate the importance of passing on birth register information and simply do not comply with the requirement to do so.<sup>525</sup> Furthermore, information is often kept at a national administrative level, and not passed down to the communes.<sup>526</sup> This lack of information creates problems later, as a birth certificate is required for a child to attend school. By the time the parents find this out they must pay to have one issued retrospectively.<sup>527</sup> The RGC claims to not have the budget allocation to fulfil its obligations to disseminate information and increase training of local officials about birth registration, a claim that cannot be verified by NGO groups due to the lack of transparency and lack of access to government information. In the mean time, civil society

<sup>517</sup> *Sub-Decree 103 on Civil Status 2000* (Cambodia), art 17.

<sup>518</sup> CCPR/C/KHM/2, para 139.

<sup>519</sup> Ibid. para 140; National Institute of Statistics and Directorate General for Health, *Cambodia – Demographic and Health Survey* (2010), p 22.

<sup>520</sup> A/HRC/13/4, para 82.84; A/HRC/26/16, para 118.59.

<sup>521</sup> National Institute of Statistics and Directorate General for Health, *Cambodia – Demographic and Health Survey* (2010), p 22.

<sup>522</sup> Ibid 23.

<sup>523</sup> Ibid.

<sup>524</sup> Ibid.

<sup>525</sup> Interview with Advocacy Policy Institute (4 December 2014).

<sup>526</sup> Ibid.

<sup>527</sup> Interview with Advocacy Policy Institute (4 December 2014).

organisations continue to step in to fill this gap by running workshops to provide relevant information about birth registration, increase local knowledge on the right to access information, and inform local authorities of their obligation to provide information.<sup>528</sup>

Even when the parents are made aware of the process and attempts to register a new birth within the specified time frame, there may still be costs incurred. While this process is supposed to be free, local authorities often extort new parents for bribes in order to issue a new birth certificate.<sup>529</sup> This creates a disincentive and a barrier for parents to register their children.

It is clear from the Demographic Health Survey that levels of birth registration are still low, particularly amongst the most marginalised groups and those living in rural areas. It is unlikely that number of registrations will improve unless barriers such as information dissemination, cost, and corruption are overcome.

### **Recommendations:**

*The State Party should:*

1. Ensure that information on the importance of birth registration and birth certificates is disseminated throughout rural communities, and barriers such as corruption are investigated.
2. Provide mechanisms through local authorities and community based organisations to effectively disseminate the importance and process of birth registration at grassroots level to rural Cambodians.
3. Ensure greater transparency of government spending to safeguard against the extortion from public officials to parents on registration of the birth of their child.

### **k. Participation in public affairs (art. 25)**

**Issue 26:** With reference to the information provided in paragraphs 227 to 240 of the State party's report, please provide detailed information on the mechanisms that exist in the State party to ensure that elections are transparent and fair. According to the Special Rapporteur on the situation of human rights in Cambodia, most of his recommendations with regard to electoral reform have not been acted upon. Please comment. Please also indicate whether there have been any investigations or prosecutions in connection with allegations of numerous irregularities, including bias in the election machinery, during the 2013 national elections.

### **Reply / Comments from Civil Society**

The *Constitution* provides that “*all Khmer citizens of both sexes have the right to participate actively in the political...life of the nation*”.<sup>530</sup> To this end, Cambodians over the age of 18 have the right to vote, except where excluded by the *Electoral Law*.<sup>531</sup> The State Report does not address the issue of electoral reform as recommended at the UPR both in 2009 and 2013.<sup>532</sup>

The need for electoral reform is emphasised by the absence of mechanisms to ensure that elections are transparent and fair. Elections in Cambodia, including the most recent 2013 election, have “*fallen*

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<sup>528</sup> Interview with Advocacy Policy Institute (4 December 2014).

<sup>529</sup> Interview with Cambodian Center for the Protection of Children's Rights (28 November 2014).

<sup>530</sup> Constitution of the Kingdom of Cambodia art 35.

<sup>531</sup> Ibid art 34; In the State Report, the RGC pointed out that exceptions extend to people who are mentally disabled and prisoners: CCPR/C/KHM/2, para 230.

<sup>532</sup> A/HRC/13/4, para 82.48-49; A/HRC/26/16, paras 118.118-118.123.

*short of international election standards*".<sup>533</sup> TIC has also stated that they "cannot express with confidence that the outcome of the [2013 National Assembly] election reflects the will of the Cambodian people".<sup>534</sup> The result of the last election was "remarkably narrow given the evidence of fraud, vote rigging and other election irregularities",<sup>535</sup> the result led to nearly one year of protests from opposing CNRP who during that time refused to take up their seats in the National Assembly.<sup>536</sup>

Despite these allegations and multiple areas of concern, no investigation into the 2013 election has been carried out.<sup>537</sup> Independent investigation would be an important step to ensuring that the results of the election are transparent, and would either bring confidence to the result or expose any wrongdoings. The State Report does not discuss any possible investigation.

A number of critical issues have been raised in the context of the 2013 general election and the 2012 commune election that highlight the need for electoral reform. These include the safety of political activists and candidates, the unequal campaigning capacity between political parties, voting irregularities, voter ineligibility, disenfranchisement and the lack of independence of the National Election Committee (NEC).<sup>538</sup>

COMFREL has raised a number of concerns with regard to the safety of politically engaged people during the 2012 commune election. This included two deaths in the period leading up to the election, shootings by security forces during demonstrations, detention of protesters, lifting of parliamentary immunity for opposition members of the Parliament and arrests of opposition party members.<sup>539</sup> Furthermore, cases of politically motivated threats to villagers, activists and candidates were noted in the 2013 election campaign.<sup>540</sup> These acts can create fear of assembly and expression during elections and negatively impact the passage of a fair electoral process.

The imbalance in access to resources that existed during the election campaign also hinders the process of a free and fair election. This imbalance was created through misuse of state personnel and material as well as unbalanced media access. During the 2012 commune election, there were multiple cases of state officials and civil servants campaigning for the CPP, as well as the use of state vehicles.<sup>541</sup> Similarly, the Electoral Reform Alliance describes "systematic violations of provisions regulating the use of state resources" in the 2013 national election.<sup>542</sup> This includes the use of public buildings, and political activity in favour of the CPP from civil servants, military police and judges.<sup>543</sup>

Broadcast media in Cambodia heavily favours the CPP.<sup>544</sup> All nine television stations are "aligned with or owned by family or close affiliates of ruling party leaders".<sup>545</sup> COMFREL observed that mass media did not follow NEC regulations, instead strongly supporting the CPP and condemning

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<sup>533</sup> Electoral Reform Alliance, Joint-Report on the Conduct of the 2013 Cambodian Elections (2013), 4 <http://bit.ly/1vwKVnT>.

<sup>534</sup> Transparency International Cambodia, Final Election Observation Report on Cambodia's 2013 National Election (2013), 2, 25.

<sup>535</sup> FIDH and LICADHO, Report for the Human Rights Committee's Task Force for the Adoption of the List of Issues on Cambodia (2014), 15.

<sup>536</sup> The Phnom Penh Post (online) 'One Year in the Making', 23 July 2014 <http://bit.ly/1Cg3LGy>.

<sup>537</sup> CCHR, Cambodian Centre for Human Rights Submissions to the Human Rights Committee (2014), 5.

<sup>538</sup> COMFREL, Summary Findings – Commune Council Election 2012 (2012); Human Rights Watch, Human Rights Watch Concerns and Recommendation on Cambodia – Submitted to the UN Human Rights Committee in Advance of its Pre-Sessional Review of Cambodia (2014); CCHR, Cambodian Centre for Human Rights Submissions to the Human Rights Committee (2014).

<sup>539</sup> COMFREL, Final Assessment and Report on 2012 Commune Council Elections (2012), 1. COMFREL's Report pointed to the death of environmental activist Mr CHHUT Wutty and the shooting of 14-year-old girl HENG Chantha during villager demonstration at Kratie.

<sup>540</sup> FIDH and LICADHO, Report for the Human Rights Committee's Task Force for the Adoption of the List of Issues on Cambodia (2014), 15-16.

<sup>541</sup> COMFREL, Final Assessment and Report on 2012 Commune Council Elections (2012), 9.

<sup>542</sup> Electoral Reform Alliance, Joint-Report on the Conduct of the 2013 Cambodian Elections (2013), 15 <http://bit.ly/1vwKVnT>.

<sup>543</sup> Ibid.

<sup>544</sup> Ibid 11.

<sup>545</sup> Ibid.

opposition parties.<sup>546</sup> This pattern was also noted in both the 2012 commune election and the 2013 general election, and outside the campaign season as well.<sup>547</sup>

Discrepancies with voter registration were noted in the 2013 election. These include voter roll irregularities, ghost voter names and missing names.<sup>548</sup> FIDH and LICADHO asserted that the NEC's figures of 250,000 exact duplicate names and 290,000 absent names are an underestimation when compared to independent reports.<sup>549</sup> Indeed, the Electoral Reform Alliance (ERA) found that 8.8% of eligible voters who believed they were registered were excluded from the role.<sup>550</sup> Additionally, the ERA found that 19.3% of names on the electoral role were invalid; of which 7.4% had moved to another location and 0.5% were deceased.<sup>551</sup> This left 10.4% of the names on the registry unknown to members of the community.<sup>552</sup>

Even more concerning electoral irregularities were noted in the 2012 commune election. This includes the failure of some polling stations to follow legal protocol (e.g. refusal of eligible voters to cast their votes and the presence of armed military personnels), and irregularities in ballot counting (e.g. unauthorised persons in polling stations and presence of political agents during counting).<sup>553</sup>

Disenfranchisement is also a critical issue. TIC found that during the 2013 National Assembly election, there were voters who were turned away for not being able to find their name on the voter list at 60% of the polling stations.<sup>554</sup> Numerous failures of the NEC in properly carrying out its tasks were also found, including the failure to take steps to inform citizens of their registration status, the removal of the online voter list prior to the election day, and the declaration that it was illegal for NGOs to carry a copy of the list to assist voters.<sup>555</sup>

Similar problems were observed in the 2012 Commune Council election as well. COMFREL interviewed eligible voters who did not vote on the election day and found 49% of the respondents had reached the polling station but could not vote due to various electoral roll irregularities.<sup>556</sup> The reasons included: not being able to find their name on the voting list; lack of voter information cards; or discrepancies between the roll and their identification documents.<sup>557</sup> Similar numbers were also reported for eligible female and youth voters who could not vote.<sup>558</sup> Of particular concern was the number of eligible youth voters who did not register their name to vote due to lack of documentation, moving away from home or simply lacking confidence in the Cambodian electoral process.<sup>559</sup>

Concerns have also been raised as to the independence of the NEC. The NEC is the body responsible for managing the elections and maintaining the electoral role. Major concerns focus on the composition, lack of transparency and the dispute resolution mechanisms.<sup>560</sup> Selection of members is, in practice, controlled by the CPP, and there is "*no public oversight or consultation with other ...*

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<sup>546</sup> COMFREL, Final Assessment and Report on 2012 Commune Council Elections (2012), 36, 38.

<sup>547</sup> Ibid; Electoral Reform Alliance, Joint-Report on the Conduct of the 2013 Cambodian Elections (2013), 11-12 <http://bit.ly/1vwKVnT>.

<sup>548</sup> FIDH and LICADHO, Report for the Human Rights Committee's Task Force for the Adoption of the List of Issues on Cambodia (2014), 16.

<sup>549</sup> Ibid.

<sup>550</sup> Electoral Reform Alliance, Joint-Report on the Conduct of the 2013 Cambodian Elections (2013), 25 <http://bit.ly/1vwKVnT>.

<sup>551</sup> Ibid 26.

<sup>552</sup> Ibid.

<sup>553</sup> COMFREL, Final Assessment and Report on 2012 Commune Council Elections (2012), 34-35, 41-42 <http://bit.ly/1vwKVnT>.

<sup>554</sup> Transparency International Cambodia, Final Election Observation Report on Cambodia's 2013 National Election (2013), 12.

<sup>555</sup> Ibid.

<sup>556</sup> COMFREL, Final Assessment and Report on 2012 Commune Council Elections (2012), 44-45. COMFREL interviewed 2,536 eligible voters who did not vote on the day of the election.

<sup>557</sup> Ibid 45.

<sup>558</sup> Ibid 48-49.

<sup>559</sup> Ibid 50.

<sup>560</sup> Electoral Reform Alliance, Joint-Report on the Conduct of the 2013 Cambodian Elections (2013), 6-8 <http://bit.ly/1vwKVnT>.

stakeholders”.<sup>561</sup> Issues of transparency arise, as the NEC does not make essential data publicly available, including voter lists.<sup>562</sup> Finally, the NEC has very limited legal power in the event of an election related dispute and does not have the capacity to provide effective remedies for electoral abuses.<sup>563</sup>

These issues combined highlight the importance of electoral reform in Cambodia. There is a marked absence of mechanisms to ensure fair elections, and those that do exist appear to be incapable of working effectively. While legal regulation exists for some issues, such as media broadcasting or voter registration, the laws are not being followed. This emphasises a need for legal and policy reform, as both current and future laws need to be implemented and enforced for meaningful change to occur.

The Special Rapporteur on the Situation of Human Rights in Cambodia has made recommendations with regard to the electoral system in Cambodia in order to address these concerns, however these were not introduced prior to the 2013 election.<sup>564</sup>

## **Recommendations:**

*The State Party should:*

1. Establish a thorough, transparent and independent investigation into the 2013 election, addressing all allegation of election irregularity that occurred prior and during the election process.
2. Reform, or replace the NEC and institution a new independent institution with adequate authority, budget and be instilled with the mandate to ensure elections can be administer to be independent, inclusive, and transparent.
3. Ensure the recommendations of the Special Rapporteur are properly and promptly implemented, particularly those relating to the issues encountered in the 2013 election such as voter registration, safety of politically engaged people and the misuse of state resources.

## **I. Statelessness (arts. 2, 24 and 26)**

**Issue 27:** With regard to the information provided in paragraphs 46 to 47 of the State party’s report, please clarify how the State party grants citizenship to Khmer Krom—ethnic Khmer from the Mekong Delta region in Vietnam—and ethnic Vietnamese who migrated to, and have been residing in, Cambodia for generations and their descendants, who have reportedly been left stateless as a result of the lack of identification documentation.

## **Reply / Comments from Civil Society**

There are multiple provisions in Cambodian law to ensure that every Cambodian is provided citizenship. Under the Cambodian citizenship laws, most of the Khmer Krom currently living in Southern Vietnam and the ethnic Vietnamese population who have resided in Cambodia for several generations should be entitled to Cambodian citizenship. However, poor law enforcement, lack of knowledge of officials and lack of procedural guidelines have made it significantly difficult for these minorities to have ID cards issued and as a result they have been left stateless and deprived of rights.

Article 33 of the *Constitution* prohibits the deprivation of Khmer citizens “of their nationality”.<sup>565</sup> This is further defined in the *Law on Nationality*, which stipulates that a child either born to

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<sup>561</sup> Ibid 6.

<sup>562</sup> Ibid 7.

<sup>563</sup> Ibid 8.

<sup>564</sup> A/HRC/27/70, paras 44-45; A/HRC/21/6.

Cambodian parents or in Cambodian to a foreign parent living in Cambodia legally and permanently is entitled to Khmer nationality, therefore citizenship.<sup>566</sup>

### *Khmer Krom*

The RGC have repeatedly declared their acceptance of individuals of Khmer Krom origin as Cambodian citizens; a letter from the RGC to the UN High Commission for Refugees in 2005 said that “*relating to Khmer Krom issues, the RGC considers that Khmer Krom are Khmer citizens*”.<sup>567</sup> As recently as 2010 the MoI’s spokesman, Khieu Sopheak declared that ‘we love [the Khmer Krom] as citizens’.<sup>568</sup> Both the law and multiple public statements from the RGC make it clear that the RGC consider the Khmer Krom to be citizens of Cambodia. Unfortunately, the Khmer Krom are systemically denied the rights that come with Cambodian citizenship because of the difficulties they face applying for citizenship identity cards (ID cards) when they cross the border into Cambodia.

Although Khmer Krom have been repeatedly affirmed as Cambodian citizens, this is certainly not reflected in the processes of issuing ID cards. Estimates of Khmer Krom living in Cambodia ranges from 85,000 to 250,000 depending on sources and majority of them do not have ID cards. One of the barriers the Khmer Krom face in obtaining an ID cards is the administrative criteria set out in legislative instruments. Khmer Krom are often unable to provide proof of a permanent address in Cambodia as they often arrive in Cambodia with little money and no ability to rent a property. Even when all the administrative criteria are satisfied, sangkat or commune officials still refuse to issue ID cards because they fundamentally consider the Khmer Krom to be Vietnamese and therefore not eligible for obtaining ID cards. As a result, the only way for Khmer Krom people to obtain an ID card is to bribe corrupt officials. The Khmer Krom then are forced to change their family name to a Cambodian name and their registered place of birth to a location in Cambodia on their identification documents effectively changing their birth category from Khmer Krom to Cambodian-born Khmer allowing authorities to issue the cards as they would do for a Cambodian-born Khmer.<sup>569</sup> This practice not only deprives Khmer Krom individuals of their identity, it is also illegal. Changing the birth category reveals a lack of understanding on the part of the card issuing authorities, from the commune level to the national level, as to the status of the Khmer Krom in Cambodia. This can be attributed to the RGC’s failure to create and implement proper procedure on processing Khmer Krom ID applications as well as the complete lack of information dissemination and training of local issuing authorities on how to handle this kind of application. As a result, the Khmer Kroms find themselves stateless with no rights afforded to them by Cambodia or Vietnam and they are consequently deprived of employment, education, property and land rights. It is evident that there is a complete disconnection between the RGC’s public confirmation that the Khmer Krom are Cambodian citizens and the practical difficulties faced by the Khmer Krom when trying to access the benefits of their citizenship by applying for ID cards.

Not only are the Khmer Krom unable to access the rights ensued by Cambodian citizenship, but their ability to claim refugee status has also been significantly impeded. Since the RGC consider Khmer Krom to be Cambodian citizens, Khmer Krom are unable to seek asylum in Cambodia. This has created a calamitous situation for Khmer Krom people; they suffer from discrimination and have no access to rights in both Cambodia and Vietnam, yet they are technically considered to have citizenship of both countries. This means that to qualify as a refugee they have to prove a well-founded fear of persecution from both Vietnam and Cambodia, which makes their application for refugee status even more complicated and difficult to satisfy. Furthermore, without documentation that proves that they are Khmer citizens or refugees, there is nothing to stop the RGC deporting them

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<sup>565</sup> *Law on Nationality 1996* (Cambodia) art 2.

<sup>566</sup> *Ibid* art 4(2). This point is further clarified in *Sub-Decree 103 on Civil Status 2000* (Cambodia) art 27.

<sup>567</sup> Cambodian Center for Human Rights, *False Promises: Exploring the Citizenship Rights of the Khmer Krom in Cambodia* (2011), <http://bit.ly/1CgOrta>.

<sup>568</sup> The Phnom Penh Post (Online) ‘Vietnam faces call to respect Khmer Krom’, 9 August 2010 <http://bit.ly/1Df4kB3>.

<sup>569</sup> Cambodian Center for Human Rights, *False Promises: Exploring the Citizenship Rights of the Khmer Krom in Cambodia* (2011), <http://bit.ly/1CgOrta>.

back to Kampuchea Krom at any time.<sup>570</sup> As a result, they are forced to live as stateless people, unable to claim refugee status forced to live a life of uncertainty deprived of human rights.

### *Ethnic Vietnamese*

The ethnic Vietnamese people living in Cambodia face similar difficulties obtaining ID cards. Ninety percents of ethnic Vietnamese do not possess any form of identification documents such as birth certificates, family books or ID cards. Some reports suggest the number of ethnic Vietnamese living in Cambodia reaching almost 1 million.<sup>571</sup> The government's own figure places the ethnic Vietnamese population living in Cambodia at less than 10% of that figure at only 72,775 individuals whose 'mother tongue' is Vietnamese.<sup>572</sup> It is impossible to assess the official figure as presented to the Committee on the Elimination of Racial Discrimination, as official census data are not released to the public in Cambodia.<sup>573</sup> The only proof they have to show that their residence in Cambodia is legal is their immigration cards and resident papers.<sup>574</sup>

Unlike the Khmer Krom, the ethnic Vietnamese are not considered Cambodian citizens by the Cambodian government, rather they are considered legal immigrants despite the fact that most of them were born in Cambodia and have been living in Cambodia their whole lives. Many ethnic Vietnamese who have asked local authorities to issue ID cards have been turned away by officials who claim that there are no procedures to process applications for people who are ethnic-Vietnamese. This is despite the provision in the *Law on Nationality* that clearly entitles ethnic Vietnamese born in Cambodia to citizenship. Discrimination, and a lack of knowledge of the law makes obtaining ID cards virtually impossible meaning that the ethnic Vietnamese, are also effectively left stateless as they cannot claim citizenship of either Cambodia or Vietnam. As a result, many ethnic Vietnamese are forced to live in deplorable conditions in floating houses along the Mekong or Tonle Sap, because they do not have ID cards which afford them the right to possess land. The few ethnic Vietnamese who do have ID cards acquire them through bribing officials, which practically means that the rights afforded through citizenship that should be available to all Cambodians according to the *Constitution* are exclusive to the rich.<sup>575</sup>

This practice of accepting bribes to issue ID cards is illegal and in breach of the *Law on Nationality and Immigration*. However, rather than the officials who issue the false documentation being imprisoned for 5-10 years as Article 22 of the *Law on Nationality* stipulates, it is the Khmer Krom and ethnic Vietnamese who end up punished for these crimes, whereby they are fined or even deported. As the ID cards need to be renewed every ten years, those who obtained their ID cards through bribes have to bribe again for their ID card to be renewed. Any services or property obtained through the use of these ID card may also be void by the authority after the expiration of the ID card.

The lack of government commitment to training and information dissemination of laws affecting access to citizenship of these groups has left Khmer Krom and ethnic Vietnamese stateless and isolated from access to a human rights framework. As a consequence their children cannot attend public school, they have no access to public healthcare, no ability to borrow from the bank, no right to vote, no ability to stand as a party in court, cannot find jobs in the government or factories nor can

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<sup>570</sup> Khmers Kampuchea-Krom Federation, *Briefing paper concerning the Eighth to Thirteenth Periodic Reports of Cambodia* (CERD/C/KHM/8-13) under the Convention on the Elimination of All Forms of Racial Discrimination (2010), <http://bit.ly/1Hgy03a>.

<sup>571</sup> Lyma Nguyen and Christoph Sperfeldt, Jesuit Refugee Service, *A Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia Under Domestic and International Laws Governing Nationality and Statelessness* (2012), 20.

<sup>572</sup> CERD/C/KHM/Q/8-13 Annex 1, Table A3.

<sup>573</sup> Lyma Nguyen and Christoph Sperfeldt, Jesuit Refugee Service, *A Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia Under Domestic and International Laws Governing Nationality and Statelessness* (2012), 20.

<sup>574</sup> Chanrith Ang, Noémie Weill and Jamie Chan, *The Situation of Stateless Ethnic Vietnamese in Cambodia - Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia* (Investigative Research Report No 2, Minority Rights Organisation 2014).

<sup>575</sup> For more information on the ethnic Vietnamese living in Cambodia, see Lyma Nguyen and Christoph Sperfeldt, Jesuit Refugee Service, *A Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia Under Domestic and International Laws Governing Nationality and Statelessness* (2012)

they open their own business. ID cards are the key to these people living legally and having an adequate quality of life.<sup>576</sup>

## **Recommendations:**

*The State Party should:*

1. Create and implement procedures that guarantee Khmer Krom and ethnic Vietnamese have the same access to ID cards as other Cambodian-born people, while being able to retain their identity.
2. Provide a legal stay for people in the Khmer Krom that allows them to receive an ID card without needing the proof of residence- there should be a document that recognises that they are displaced but that allows them to get ID cards.
3. Run information dissemination programs directed at card issuing authorities on the laws of the status of Khmer-Krom and ethnic Vietnamese and the processes required to issue ID cards to these groups.
4. Ensure that the Khmer Krom and ethnic Vietnamese are aware of relevant domestic and international laws that guarantee their right to citizenship and educate them on the procedures of how to apply for these legal documents.
5. Implement recommendations from issue 4 concerning anti-Vietnamese sentiment in order to eliminate discriminatory procedures relating to the issuance of ID cards.

## **m. Rights of persons belonging to minorities (art. 27)**

**Issue 28:** With reference to the information provided in paragraphs 271 to 274 of the State party's periodic report, please provide information on the measures taken to ensure effective consultation with indigenous peoples in decision-making areas having an impact on their rights, including measures taken to develop the technical capacity of indigenous people to ensure their effective participation in decision-making processes. In particular, please provide information on the measures taken to improve indigenous participation in decision-making relating to traditional sites and objects, including management of their communal lands and the allocation of land for extractive industries and agribusiness.

## **Reply / Comments from Civil Society**

The State party report affirms the RGC's commitment to the dignity, development and protection of indigenous communities and the intention to always negotiate and seek agreement with communities in advance of legal land occupation.

In Cambodia, the allocation and management of land is one of the most profound issues affecting indigenous communities despite multiple provisions in Cambodian law<sup>577</sup> that allow indigenous communities to gain collective title to their land and maintain user rights to traditionally owned forest resources.

One of the laws that attempts to guarantee indigenous peoples' decision making power over their land is the Sub-decree that allows indigenous people to register for collective land titles.<sup>578</sup> This is supposed to provide indigenous communities with collective land tenure rights, and to preserve the

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<sup>576</sup> Interview with Youth for Peace (17 December 2014).

<sup>577</sup> *Land Law 2001 (Cambodia); Forestry Law 2002 (Cambodia); Constitution of the Kingdom of Cambodia.*

<sup>578</sup> *Sub Decree on Procedures of Registration of Land of Indigenous Communities 2009 (Cambodia).*

identity, culture, customs and traditions of each indigenous community.<sup>579</sup> However, the registration process has been so slow that only eight collective titles had been officially issued for indigenous communities between 2009 and August 2013.<sup>580</sup> There is also a provision in the *Land Law* that guarantees the protection of indigenous peoples' land in the period before they receive communal land registration.<sup>581</sup> However, land grabbing by the government and private companies is still rife, and the impunity of perpetrators allows it to continue.<sup>582</sup> It is for this reason that strong interim protection measures need to be set in place to protect alienation of indigenous peoples from their land while the slow process of communal land title registration proceeds.<sup>583</sup>

Consultation with indigenous communities with regard to the allocation and management of land is also directly referred to in Cambodian law. *The Sub Decree on Economic Land Concessions (ELC)* stipulates public consultation with local residents as a necessary condition for an *ELC* to be granted.<sup>584</sup> However, the majority of 'consultation' with indigenous people happens after the *ELC* has already been granted. The 'consultation' then becomes more of an information briefing than an inclusion in the decision-making process. Four case studies conducted by NGO forum showed that indigenous peoples only received information and were invited to participate in a 'consultation' once companies had already arrived to develop the land.<sup>585</sup> In many cases local authorities did not even know about the process until tractors and bulldozers arrived at the area<sup>586</sup>. These decisions often lead to forced evictions, involuntary resettlement or relocation demonstrating little respect for due process of law or for indigenous peoples' fundamental human rights. There are currently no established mechanism and process in place to give indigenous peoples prior knowledge of development activities or to give their free, prior and informed consent to these projects.<sup>587</sup> It is important to note that, although the RGC supported the adoption of the UN's *Declaration on the Rights of Indigenous Peoples*, it has still not ratified ILO's *Convention 169 on the rights of Indigenous and Tribal People*.

While laws are in place to ensure that indigenous peoples can engage in decision-making processes impacting their rights, it is clear that they are not being implemented. Therefore it is not the law that needs reform, but the system of impunity and the non-implementation of laws that needs to be changed. Effective monitoring and enforcement mechanisms to ensure that these laws are upheld are another requisite.

While it is important that the current laws are implemented to ensure that consultation takes place, it is also important to ensure the consultation is effective. The consultations that have taken place have been inconsistent with the measures set out by the RGC in paragraph 274 of the State Report. The consultation process almost always takes place in Khmer, even though many indigenous communities have their own language.<sup>588</sup> This prevents indigenous peoples from effective participation and meaningful engagement in the consultation process. On top of this, none of the current laws and existing methods of consultation take into account the unique, and traditional decision-making process of indigenous communities.<sup>589</sup>

The other important aspect of the realisation of effective consultation is the technical capacity building of indigenous peoples to be able to engage in the process. NGOs have been working with the government to increase engagement between indigenous peoples, government and private businesses. In the Quarterly Land Working Group meeting facilitated by NGO Forum on Cambodia that included NGOs and MLMUPC, a number of positive responses were given to NGO concerns by the government including its intentions to facilitate greater consultation with indigenous peoples and the

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<sup>579</sup> Ibid art 2.

<sup>580</sup> The NGO forum on Cambodia, *Indigenous People Rights Project* (2013) <http://bit.ly/1yGno8p>.

<sup>581</sup> *Sub-decree on Economic Land Concessions* 2001 (Cambodia) art 4.

<sup>582</sup> Interview with NGO Forum (12 December 2014).

<sup>583</sup> Ibid.

<sup>584</sup> *Sub-Decree on Economic Land Concessions* 2001 (Cambodia) art 4.

<sup>585</sup> Interview with NGO Forum (12 December 2014).

<sup>586</sup> Ibid.

<sup>587</sup> Ibid.

<sup>588</sup> Ibid.

<sup>589</sup> Ibid.

promise to have a working group with NGOs to discuss ways to get better outcomes from land titling.<sup>590</sup> However, the government is currently doing little in terms of information dissemination and rights training, while NGOs take up the task and provide these services for indigenous peoples.<sup>591</sup> The majority of the Cambodian population and the RGC often treat indigenous peoples with contempt. Indigenous peoples are often perceived to be uneducated and lack the ability to engage in economic development process.<sup>592</sup> There seems to be a complete disregard for the value of indigenous peoples in Cambodian society and their autonomy to make their own decisions. Many indigenous peoples want to live sustainably in their traditional sites, but not near factories or have big construction sites imposing on their traditional land.<sup>593</sup>

Currently in Cambodia, laws ensuring indigenous peoples' participation in decision making are not being implemented, consultations are not integrative or respectful of indigenous peoples' cultural practices or language, and most consultations, when they do occur, happen after decisions affecting indigenous peoples' rights have already been made. The government is on some level cooperating with NGOs, however, where the technical capacity of indigenous peoples is being built, it is NGOs that are footing the burden.

### **Recommendations:<sup>594</sup>**

*The State Party should:*

1. Take immediate action to ensure that current laws are effectively implemented.
2. Take further steps in accelerating indigenous collective land titling processes at least but not limited to those whose legal status is recognised in order to secure access to land and natural resources. Acceleration should be made through provision of sufficient resources at both government and community level, both human and financial, for implementation.
3. Continue to undertake a thorough and robust review of all ELC contracts and ensure that it is carried out in a transparent, independent and meaningful manner. Revoke contracts of those companies who have failed to comply with the provisions of their lease agreement and / or the law. Ensure that indigenous territory unlawfully occupied by concessionaires is returned to indigenous communities and ensure that those communities are compensated according to international standards for their damages.
4. Work with NGOs to provide legal assistance and capacity building to the affected communities as well as take preventive approaches to indigenous communities in Cambodia, aiming at the implementation of self-determined developments.
5. Adopt methodologies to ensure an effective and meaningful participation and consultation with indigenous people occurs prior to any decision-making regarding decisions that impact their right, this includes using their language and traditional decision-making methods throughout the process.
6. Develop a national consultation and engagement platform to enable effective dialogue with indigenous peoples on any issue affecting their lives.

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<sup>590</sup> NGO Forum, *Quarterly Land Working Group Meeting with MLMUPC* (8 July 2014) <http://bit.ly/1uraGKB>.

<sup>591</sup> Interview with NGO Forum (12 December 2014).

<sup>592</sup> Ibid.

<sup>593</sup> Interview with Youth for Peace (17 December 2014).

<sup>594</sup> For more information, see Appendix 1, ICSO Recommendations.

### III. Additional Information

#### **n. Access to Information – Additional Submission by the Advocacy and Policy Institute**

*Cambodia has still not developed a predominant culture of public information disclosure. Many authorities are still either reluctant or unable to disclose information adequately, although their legal roles and responsibilities require them to do so. This occurs for a number of reasons including lack of resources, inadequate capacity of government institutions, lack of effective information disclosure mechanisms and uncertainty among governmental institutions about what constitutes classified information. Immediate enactment of an Access to Information Law is, therefore, a must.*

*Encouragingly, on 8 November 2013, after the general elections, Prime Minister Hun Sen assigned the Ministry of Information to work with relevant partners towards developing a draft law on Access to Information. With appreciation of the RGC's commitment to pass the law, civil society organisations strongly suggested the Government to take their comments for the draft law to ensure that it really benefits the Cambodian public. At the same time, the Prime Minister reminded national Government and relevant public institutions to exercise Inter-minister Prakas on the establishment of information officers and spokesmen, signed by HE Sar Kheng, Deputy Prime Minister and Minister of Ministry of Interior, and HE Khieu Kanharith, Minister of Information, issued on 26 July 2012.*

*In April 2014, the Ministry of Information signed an MoU with UNESCO for the Access to Information Law development project under funding support from SIDA. As a follow-up step, the Ministry of Information reportedly set up an internal committee that consists of nine members and three sub-committees of which the Minister is the chairman. The MoI has held a number of meetings with different stakeholders and the media to give an update on the progress of the project. The MoI's Legal Department has also reportedly started to work on legal data review from different sources. Taking an inclusive approach, the Government's Ministry of Information has formed a Technical Inter-Ministerial Committee for the Drafting of the Access to Information (A2I) Law to which a few NGOs have been invited.*

*We understand that a law that is of good quality, and which would benefit and protect people in general requires serious, careful and substantial study, research, analysis and consultation. Accordingly, civil society, over the years has been doing a great deal of work on this issue, including legal analysis of all the laws and legal instruments pertaining to different sectors and areas with a view of contributing to the acceleration of the enactment of the Law. As participants in this workshop, we would like to present the following recommendations to the government and to policy-makers:*

#### **Recommendations:**

*The State Party should:*

- 1. To save time and to be responsive to the urgent needs, we would like to recommend that the Royal Government, and particularly the Ministry of Information, who is taking the lead in the drafting of the Access to Information Law, utilise to its utmost all the existing data and resources, including those collected and compiled by civil society for the legislation*
- 2. To ensure that the Access to Information Law complies fully with the spirit of the Constitution and international legal principles, especially Article 19 of United Nations' Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."*
- 3. Pending the enactment of the Access to Information Law, all institutions including the Senate, the National Assembly, the Judiciary, Government agencies and offices, private firms, educational institutions, media, civil society and communities shall uphold the enforcement of*

*the existing relevant legal instruments pertaining to all sectors and areas. Also, information related to all legislation and policy drafting, such as those of cyber crime, and Non-Government Organisations and Associations, must also be made available to the public.*

4. *The Access to Information Law must consider prescribing mechanisms and/or approaches through which people of different backgrounds and status, especially the most vulnerable groups such as women, children, disabled, ethnic minorities can access the information*
5. *The Access to Information Law must apply to all public institutions, sectors and areas such as environment, agriculture, fisheries, forestry, land, natural resources, budgets, commerce, economy and finance, and social and cultural sectors*
6. *The Ministry of Information should develop a clear action plan for the Access to Information Law drafting process with clear milestones and benchmarks, so that civil society and the public can meaningfully contribute their comments and/or inputs*
7. *Institutional capacity building for public institutions and development of necessary mechanisms to ensure that the Cambodian people can access all public information.*
8. *Capacity building for public officials in producing and disseminating information*
9. *Protection of all citizens who release or disclose truthful information or information that serves the public interest. (Whistleblower protection).*
10. *Promotion of public awareness of Access to Information and encouragement of citizens accessing public information relevant to their livelihoods.*
11. *Creation of a more favorable environment for citizen participation in the process of decentralisation reforms and Cambodian national development.*
12. *In the meantime, we, the civil society organisations, and especially the Access to Information Working Group and the Workshop Organising committee, are prepared to offer full collaboration with and support to the Ministry of Information, relevant government bodies, National Assembly Commissions as well as individual member of parliament on any project and /or activity in the course of promoting public access to information and the enactment of an A2I Law.*

# Appendix 1

## **Recommendation from Indigenous Community Support Organisation Regarding Human Rights Situation of Indigenous Peoples in Cambodia**

1. The Government should *review existing land policies, and implement regulations* concerning indigenous communal land titling in order to ensure the respect of traditional belief systems and traditional farming methods, such as shifting cultivation, in practice and in legislation.
2. The Government should *take further steps in accelerating indigenous collective land titling* processes at least but not limited to those whose legal status is recognised in order to secure access to land and natural resources. The achievement made so far by MRD and MoI is appreciated. Acceleration should be made through provision of sufficient resources, both human and financial, for implementation.
3. *The Government should review all ELC contracts* which have already been implemented at indigenous territories to ensure that the IP's traditional land and occupation are protected prior to any further clearing activities. A dialogue concerning ELCs for cassava, rubber plantation, sugar, mining, and hydropower dam should be launched with those affected, either in order to withdraw the ELCs when still possible, or to compensate affected ICs whose lives have suffered from development projects of the Cambodian Government.
4. Government should *provide fair and just compensation* to ICs whose land, natural resources, cultures, traditions, and livelihoods have been affected by the Sesan 2 dam project..
5. Indigenous communities in Cambodia should take further step to document their identities, identify traditional land boundaries, and other administrative procedures in order to benefit from legislation, policies, and other instruments related to the protection of indigenous peoples' human rights.
6. Development partners (who?) should consider further legal assistance and capacity building to the affected communities as well as preventive approaches to indigenous communities in Cambodia, aiming at the implementation of self-determined developments.
7. In any case of relocations, the Government should *apply FPIC and the provisions of the UNDRIP* to ensure the respect for indigenous peoples' human rights.
8. The Government should *take effective action to halt any ELC on* indigenous communal land and land sale transactions with indigenous members, to ensure respect and provide opportunities for self-determined development and to secure livelihoods and existence of the indigenous communities.
9. *The Government should adopt methodologies to ensure an effective and meaningful participation and consultation* with indigenous peoples as a way towards sustainable and inclusive development. Official segregated data of both indigenous peoples and communities should be made available. This should be made an urgent matter.
10. Local and provincial governments should have the obligation to instaurate a dialogue between ELCs and ICs when a conflict arises, and they should answer to ICs protests according to the law. Without any response, a delay should be instaurated for ICs to directly address the Government.
11. *A platform for national consultation and engagement* should be developed by the Government in order to enable effective dialogues with indigenous peoples on any issue affecting their lives,

12. The Government should issue a national legislation expliciting the interdiction of forced evictions, and stating clearly the steps for companies to take in order to obtain a free, prior and informed consent from ICs.
13. Indigenous peoples should have the opportunity to access to local and national governance complying with specific criteria, such as using their own language instead of the Khmer national language.
14. The Government should instaure a quota in both local and national governance organs as to increase IP women's presence in decision-making.
15. The UN agencies should *expand technical assistance* not only to a regional level but also to a national level in order to provide opportunities for effective and smooth engagement, in particular to ensure the implementation of indigenous peoples human rights in Cambodia, in line with international standards. The expansion should be made through the establishment of a Social Fund for Indigenous Community Development in the framework of the UNDRIP.
16. The Implementation of Directive No.01 should *include collective land titles* for all indigenous communities that are affected by ELCs.
17. Government, UN agencies, and indigenous organisations should *hold an annual forum* to strengthen the implementation of the UNDRIP and to promote a self-determined development of ICs in Cambodia.