

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE
HUMAN RIGHTS COMMITTEE IN ADVANCE OF THE EXAMINATION OF
CAMBODIA'S THIRD PERIODIC REPORT UNDER ARTICLE 40 OF THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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I. Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the UN Human Rights Committee's ('the Committee') review of the implementation of the International Covenant on Civil and Political Rights (ICCPR) by Cambodia.
2. In the present submission, the ICJ wishes to draw the Committee's attention to the situation of the right to freedom of opinion, expression and information in the digital sphere in Cambodia, protected under **article 19** of the ICCPR. In particular, the ICJ underscores how:
 - a. Cambodia's legal framework on freedom of online expression and information is non-compliant with its obligations under article 19; and
 - b. The Cambodian authorities have continued their systemic crackdown on online expression and information, particularly by invoking these laws to target and sanction a range of social media users, including human rights defenders, journalists and women; and
 - c. Arbitrary restrictions on free expression and information online have intensified dramatically during the COVID-19 pandemic, purportedly to control the spread of "false information" under the overbroad banner of protecting public health.
3. While the focus of this submission is article 19, the ICJ would note that aspects of these restrictions engage other ICCPR rights. In particular they have been undertaken in violation of the fair trial (article 14) rights to privacy (article 17), peaceful assembly (article 21), and non-discrimination (article 2 and article 26), protected under the ICCPR.¹
4. The ICJ has previously analyzed in greater detail the undue restrictions on the right to online freedom of expression in Cambodia in its reports: (i) *Dictating the Internet: Curtailing Free Expression and Information Online in Cambodia*, published in December 2021;² and (ii) *Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*, published in December 2019.³ For further details and background on the laws and case studies identified below, reference should be made back to these reports.

II. Legal framework on freedom of online expression and information

5. Cambodia's legal framework on freedom of expression and information online is generally not compliant with its obligations under the ICCPR. The deficiencies in this respect were exacerbated during the COVID-19 pandemic, as the Cambodian authorities passed and drafted new laws that are not human rights compliant.
6. The Cambodian authorities have relied on new and existing deficient laws to arbitrarily restrict expression and information online. These laws contain vague and overbroad provisions in contravention of the principle of legality, wrongly criminalize free

¹ These are discussed in greater detail in the ICJ's previous reports on online freedom of expression in Cambodia: see, International Commission of Jurists, 'Cambodia: New ICJ report highlights intensified human rights violations and abuses online', 23 December 2021 ('ICJ, Dictating the Internet Report on Cambodia'), available at: <https://www.icj.org/cambodia-new-icj-report-highlights-intensified-human-rights-violations-and-abuses-online/>; International Commission of Jurists, 'Southeast Asia: ICJ launches report on increasing restrictions on online speech', 11 December 2019 ('ICJ, Dictating the Internet Report on Southeast Asia'), available at: <https://www.icj.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/>.

² ICJ, Dictating the Internet Report on Cambodia.

³ ICJ, Dictating the Internet Report on Southeast Asia.

expression and/or prescribe disproportionately harsh penalties, and are applied without independent oversight mechanisms.

a. Existing laws that are not human rights compliant

7. Prior to the COVID-19 pandemic, Cambodia already had a range of laws that are incompatible with the right to freedom of expression and information online. These laws include, *inter alia*, articles 437 *bis*, 494 and 495 of the Criminal Code, and the Inter-Ministerial *Prakas*.⁴

i. Article 437 bis: Lèse-majesté

8. Article 437 *bis* criminalizes “insults to the King” with one to five years’ imprisonment or a fine of two million (approx. USD 500) to ten million riels (approx. USD 2,500), or both.⁵ Legal entities found in violation of the law, including non-governmental and media organizations, can be subject to a ban on their activities, fines between ten million to 50 million riels (approx. USD 2,500 to USD 12,500) and/or dissolution.⁶ Article 437 *bis* has been used to charge perceived political opponents⁷ and human rights defenders.⁸
9. Article 437 *bis* is not in line with article 19 of the ICCPR. Irrespective of whether article 437 *bis* is compatible with article 73 of the Constitution of the Kingdom of Cambodia as asserted by the Cambodian government,⁹ it remains incompatible with international law. The Committee has emphasized in General Comment No. 34 that “all public figures, including those exercising the highest political authority such as heads of State and government, are legitimately subject to criticism and political opposition.” The Committee has specifically expressed concern about *lèse-majesté* laws falling afoul of this principle. In addition, the Committee underscored that “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned”.¹⁰

ii. Article 494 and 495: Incitement to commit a felony or disturb social security

10. The Cambodian authorities have used articles 494 and 495 extensively to arrest, prosecute and convict journalists, human rights defenders and the government’s political opponents for their online expression. Articles 494 and 495 criminalizes “direct incitement to commit a felony or to disturb social security” with “imprisonment from six months to two years and a fine from one million to four million riels” (approx. USD

⁴ For the purpose of this submission, the ICJ has included below articles 425, 437 *bis*, 494 and 495 of the Criminal Code, as well as the Inter-Ministerial *Prakas*, in part because they have been raised in the Human Rights Committee’s list of issues in relation to the third periodic report of Cambodia: see, Human Rights Committee, *List of issues in relation to the third periodic report of Cambodia*, UN Doc. CCPR/C/KHM/Q/3, 28 August 2020, para. 20. For further analysis of other existing laws that are not compliant with the right to freedom of expression and information online, including articles 425 and 453 of the Criminal Code and the Law on Telecommunications, please refer to ICJ, *Dictating the Internet Report on Cambodia*, pp. 32 – 39.

⁵ ICJ, *Dictating the Internet Report on Cambodia*, pp. 34 – 35.

⁶ *Ibid.*

⁷ ICJ, *Dictating the Internet Report on Cambodia*, pp. 68 – 71; Cambodianess, ‘Phnom Penh Court Indicts Rainsy for Insulting King Norodom Sihamoni’, 28 December 2020, available at: <https://cambodianess.com/article/phnom-penh-court-indicts-rainsy-for-insulting-king-norodom-sihamoni>.

⁸ ICJ, *Dictating the Internet Report on Cambodia*, p. 47; Human Rights Watch, ‘Cambodia: Free Environmental Activists’, 22 June 2021, available at: <https://www.hrw.org/news/2021/06/23/cambodia-free-environmental-activists>.

⁹ Human Rights Committee, *Replies of Cambodia to the list of issues in relation to its third periodic report*, UN Doc. CCPR/C/KHM/RQ/3, 16 April 2021, para. 62.

¹⁰ UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34, 12 September 2011 (‘UN Doc. CCPR/C/GC/34’), para. 38.

250 to USD 1,000). There is no explicit requirement under articles 494 and 495 that there be a reasonable risk or likelihood that the incited action would result from the action of any expression.¹¹

11. The formulation of articles 494 and 495 is so imprecise and overbroad that it can cover a wide range of outcomes beyond the closed list of permissible restrictions contemplated by articles 19(3) and 20(2) of the ICCPR. The vagueness of articles 494 and 495 is also incompatible with the principle of legality.¹²
12. Further, articles 494 and 495 appear to be inconsistent with the principles of necessity and proportionality. The former UN Special Rapporteur on freedom of expression has made clear that the use of criminal law to restrict expression is only warranted in the most egregious and exceptional cases, including: "(a) child pornography; (b) direct and public incitement to commit genocide; (c) advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and (d) incitement to terrorism".¹³ While articles 494 and 495 may be used to target the above-mentioned forms of incitement that warrant criminal sanctions, the articles' broad formulation of incitement means that other categories of expression, such as incitement to "disrupt social security", will also be unnecessarily and disproportionately criminalized.

iii. Inter-Ministerial Prakas

13. Clauses 6, 7 and 8 of the Inter-Ministerial *Prakas*¹⁴ allow the Ministries of Information, Interior and Post and Telecommunications to monitor, block and shut down websites and social media pages with content "considered as incitement, breaking solidarity, discrimination, create turmoil by will, leading to undermine national security, and public interests and social order".¹⁵
14. The Cambodian government has used the legal provisions in the Inter-Ministerial *Prakas* to surveil and restrict disfavoured online content.¹⁶ The Inter-Ministerial *Prakas* permits the government to directly restrict disfavoured content without going through the courts,¹⁷ in spite of its obligation under international human rights law to only restrict content "pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy".¹⁸

¹¹ ICJ, Dictating the Internet Report on Cambodia, pp. 36 – 37.

¹² UN Doc. CCPR/C/GC/34, para. 25.

¹³ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/66/290, 10 August 2011, paras. 81, 83; Human Rights Council, *Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan*, UN Doc. A/HRC/47/25, 13 April 2021, para. 89.

¹⁴ "Prakas" means official proclamation. It is a ministerial or inter-ministerial decision signed by the relevant Ministry.

¹⁵ ICJ, Dictating the Internet Report on Cambodia, pp. 38 – 39; Clauses 6, 7 and 8, Inter-Ministerial Prakas on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, 28 May 2018, available at: <https://cyrilla.org/es/entity/7damc09w824?page=1> (unofficial English translation); Human Rights Watch, 'Cambodia: Internet Censorship, Control Expanded', 18 February 2021, available at: <https://www.hrw.org/news/2021/02/18/cambodia-internet-censorship-control-expanded>.

¹⁶ Asia Centre, *Internet Freedoms in Cambodia: A Gateway to Control*, 2021, p. 13, available at: <https://asiacentre.org/wp-content/uploads/Internet-Freedoms-in-Cambodia-A-Gateway-to-Control.pdf>.

¹⁷ *Ibid.* As noted by Asia Centre, a governmental social media task force set up pursuant to the Inter-Ministerial *Prakas* can notify publishers of "inappropriate content" to remove the post, or face legal action.

¹⁸ UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/38/35, 6 April 2018 ('A/HRC/38/35'), para. 66.

15. The Inter-Ministerial *Prakas* also lacks a provision expressly permitting appeals for those affected by government orders to restrict content, which is inconsistent with the rule of law and the right to an effective remedy under article 2(3) of the ICCPR and the requirement that there should be appeal procedures provided “by a competent judicial authority”.¹⁹ This, in effect, renders the executive branch, rather than judicial authorities, as the “arbiters of lawful expression”.²⁰ These concerns run contrary to the Cambodian government’s claim that “nothing [in the Inter-Ministerial *Prakas*] is incompatible with the provisions of this Covenant”.²¹

b. Drafting or enacting new laws that are not human rights compliant

16. During the COVID-19 pandemic, the Cambodian authorities have drafted and enacted new laws that are patently incompatible with its obligations to respect and ensure the right to online freedom of expression under article 19 of the ICCPR, instead of repealing or amending existing fatally flawed laws.²² This has been pursued under an overly expansive justification of curbing “false information” in order to protect public health.

i. *Law on the Management of the Nation in Emergencies*

17. On 29 April 2020, the Law on the Management of the Nation in Emergencies (‘State of Emergency Law’) was adopted by Cambodia’s National Assembly and the Senate. The law provides for the use of expanded powers of the government during a state of emergency, which can be declared in accordance with article 22 of the Cambodian Constitution.²³

18. Article 5 of the State of Emergency Law provides for government powers to impose “appropriate and necessary” restrictions on the right to freedom of expression, information and privacy during a state of emergency, including:

- a. “bans or limits on distributing or broadcasting information that can cause public panic or turmoil, damage to national security or confusion about the situation under the State of Emergency”; and
- b. “surveillance measures by any means for digital information in response to the State of Emergency”.²⁴

19. While the ICJ recognizes that responding to the COVID-19 pandemic may require extraordinary measures in order to protect public health, such responses must still

¹⁹ ICCPR, article 2(3); UN Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Addendum, Communications to and from Governments*, UN Doc. A/HRC/17/27, 16 May 2011, para. 47, available at: <https://www.refworld.org/docid/50f3db632.html>.

²⁰ UN Doc. A/HRC/38/35, para. 68.

²¹ Human Rights Committee, *Replies of Cambodia to the list of issues in relation to its third periodic report*, UN Doc. CCPR/C/KHM/RQ/3, 16 April 2021, para. 63.

²² The ICJ has included in this submission analysis of the Law on the Management of the Nation in Emergencies; Sub-Decree on the Establishment of the National Internet Gateway; and Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases. It is also worth noting the Draft Law on Public Order and Draft Cybercrime Law: for more, see, ICJ, *Dictating the Internet Report on Cambodia*, pp. 29 – 31.

²³ ICJ, *Dictating the Internet Report on Cambodia*, pp. 21 – 25; Article 22 of the Cambodian Constitution states: “When the nation faces danger, the King shall make a public proclamation placing the country in a state of emergency, after unanimous agreement from the Prime Minister, the President of the National Assembly and the President of the Senate.” See, *The Constitution of the Kingdom of Cambodia*, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf#page=10>. This is echoed in articles 2 and 3 of the State of Emergency Law; see, *Law on the Management of the Nation in Emergencies*, 10 April 2020 (‘State of Emergency Law’), available at: <https://akp.gov.kh/post/detail/29564>.

²⁴ Article 5, State of Emergency Law.

conform to international human rights law, including article 19 of the ICCPR. However, the State of Emergency Law contains provisions that are inconsistent with the principles of legitimate purpose, legality, necessity and proportionality.

20. The vague terms “public panic”, “turmoil”, “damage to national security” and “confusion” are not at all defined in the State of Emergency Law. This allows for potential State overreach through overly broad interpretations of these concepts, beyond the strictly exhaustive list of legitimate purposes enumerated under article 19(3) of the ICCPR.
21. Even if the adoption of measures were aimed at a legitimate purpose under article 19(3) (e.g., public health), the overbroad and vague language of the State of Emergency Law is inconsistent with the principle of legality, which requires laws to be “formulated with sufficient precision” and “may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.²⁵
22. The power granted to the State to use “any means” and to impose severe penalties for non-compliance appears to be inconsistent with the principles of necessity and proportionality. Under article 8 of the State of Emergency Law, any intentional failure to “respect measures” imposed under article 5 can result in prison sentences from one month to one year and a fine of 100,000 (approx. USD 25) to two million riels (approx. USD 500). If this failure causes “public turmoil”, it is punishable with imprisonment from one to five years and a fine from one million (approx. USD 250) to ten million riels (approx. USD 2,500).²⁶
23. The law does not provide for effective judicial or administrative oversight or control of measures imposed under the State of Emergency Law, including measures to restrict disfavoured information or expression. Article 6 of the State of Emergency Law requires the government to “continuously report measures decreed in a State of Emergency to the National Assembly and the Senate”, and the National Assembly and the Senate “may ask for additional necessary information from the Royal Government within the framework of controlling and evaluating the measures put in place for the nation when it is jeopardized in accordance with the Constitution of the Kingdom of Cambodia”.²⁷ However, the State of Emergency Law fails to further clarify any clear, independent oversight procedure for accountability, in contravention of international human rights law and standards.²⁸

ii. Sub-Decree on the Establishment of the National Internet Gateway

24. On 16 February, the Cambodian government promulgated the Sub-Decree on the Establishment of the National Internet Gateway (‘NIG Sub-Decree’), which “requires all internet traffic to be routed through a regulatory body charged with monitoring online activity before it reaches users”.²⁹

²⁵ UN Doc. CCPR/C/GC/34, para. 25.

²⁶ Article 8, State of Emergency Law.

²⁷ Article 6, State of Emergency Law.

²⁸ Principle 3 of the Tshwane Principles requires that in the event of restrictions on the right to information, the law “provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restrictions by an independent oversight authority and full review by the courts”; see, *The Global Principles on National Security and the Right to Information (Tshwane Principles)*, 12 June 2013, available at: <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf>; and UN General Assembly, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/71/373, 6 September 2016, paras. 19, 57.

²⁹ ICJ, *Dictating the Internet Report on Cambodia*, pp. 25 – 27; Human Rights Watch, ‘Cambodia: Internet Censorship, Control Expanded’, 18 February 2021, available at: <https://www.hrw.org/news/2021/02/18/cambodia-internet-censorship-control-expanded>; Agence

25. Article 6 of the NIG Sub-Decree empowers NIG operators to block and disconnect all network connections or content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs”, in collaboration with the Ministry of Post and Telecommunications (MPTC), Telecommunication Regulator of Cambodia (TRC) and other relevant authorities.³⁰

26. It must be noted that “national revenue” is not a legitimate purpose for which freedom of expression and information may be restricted under article 19(3) of the ICCPR. None of the other justifications under article 6 are defined in the NIG Sub-Decree, resulting in a high risk that undue restrictions will be imposed justified by overly broad readings of these justifications. The complete blocking of network connections or content also appears to be an unnecessary and disproportionate measure to address the aforementioned objectives.³¹

iii. Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases

27. The Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases (‘COVID-19 Preventive Law’) was promulgated by Cambodia’s National Assembly on 5 March 2021 and approved by the Senate on 11 March 2021 in order to “combat and prevent the spread of COVID-19” and other severely contagious diseases.³²

28. Article 11 provides that “an act of intentional obstruction or deterrence of the enforcement of a measure imposed in accordance with this law” shall be punishable with imprisonment from six months to three years and monetary fines from two million riels (approx. USD 500) to ten million riels (approx. USD 2,500). It further provides for imprisonment from two to five years and fines from five million riels (approx. USD 1,250) to 20 million riels (approx. USD 5,000) where such act leads to the infection of COVID-19 to other people or serious impact on public health.³³ These harsh criminal sanctions appear to be inconsistent with the principles of necessity and proportionality under human rights law.

29. The Cambodian authorities have used the vague and overbroad language of article 11 to arrest and charge those criticizing the government’s COVID-19 vaccination campaign online, including social media users³⁴ and a journalist.³⁵ As a group of UN

Kampuchea Presse, ‘National Internet Gateway Established’, 18 February 2021, available at: <https://akp.gov.kh/post/detail/227175>.

³⁰ Cambodian Center for Human Rights, ‘Joint statement – CSOs call on the Royal Government of Cambodia to repeal the sub-decree on the establishment of the National Internet Gateway’, 19 February 2021, available at: https://cchrcambodia.org/index_old.php?title=CSOs-call-on-the-Royal-Government-of-Cambodia-to-repeal-the-sub-decree-on-the-establishment-of-the-National-Internet-Gateway&url=media/media.php&p=press_detail.php&prid=801&id=5&lang=eng.

³¹ Several independent UN Human Rights Council experts have also expressed concern on the NIG Sub-Decree: see, *Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right to privacy*, Reference: AL KHM 3/2021, 7 April 2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=26263>.

³² Office of the Council of Ministers, ‘ROYAL KRAM: Law on Preventive Measures against the Spread of COVID19 and Other Severe and Dangerous Contagious Diseases’, 13 March 2021, available at: <https://pressocm.gov.kh/en/archives/70015>.

³³ *Ibid.*

³⁴ CamboJA News, ‘TikTok users arrested and charged with spreading fake news about COVID-19 vaccines’, 14 April 2021, available at: <https://cambojanews.com/tiktok-users-arrested-and-charged-with-spreading-fake-news-about-covid-19-vaccines/>.

³⁵ Reporters Without Borders, ‘Cambodian reporter facing five years in prison for comment about vaccines’, 21 July 2021, available at: <https://rsf.org/en/news/cambodian-reporter-facing-five-years-prison-comment-about-vaccines>.

Human Rights Council experts has emphasized, restrictions “taken to respond to the virus must be motivated by legitimate public health goals and should not be used simply to quash dissent”.³⁶

III. State restrictions on online expression and information

30. The Cambodian authorities have continued the systematic application of laws that are incompatible with Cambodia’s human rights obligations to curtail the right to freedom of expression and information online and other fundamental freedoms. They have targeted human rights defenders, social media users, journalists, and media platforms. Women have also been targeted in a discriminatory manner for their online expression by the authorities based on sex- and gender-based stereotyping.

a. Prosecuting and convicting human rights defenders and social media users for “incitement” under articles 494 and 495

31. The Cambodian authorities have arbitrarily arrested, detained, prosecuted and convicted human rights defenders and social media users for disfavoured expression and content online pursuant to articles 494 and 495 of the Criminal Code. The disfavoured online expression and content have included expression on the Cambodian-Vietnamese border, environmental rights issues, and more generally, criticisms of the government.

32. For instance, on 18 August 2021, the Phnom Penh Municipal Court sentenced Rong Chhun, the President of the Cambodian Federation of Unions and a member of the Cambodia Watchdog Council (CWC), an umbrella non-governmental organization of unions representing teachers, workers, farmers, and students to two years in prison and fined him two million riel (approx. USD 500) for incitement to cause serious disorder to social security.³⁷ Rong Chhun had posted on his personal Facebook page that several Cambodians farmers had lost their land because of the irregular demarcations of border posts in Tbong Khmum Province.³⁸

³⁶ These include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while combating terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to education, the Special Rapporteur on the right to privacy, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to development, the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights to safe drinking water and sanitation, the Independent Expert on human rights and international solidarity, the Independent Expert on the promotion of a democratic and equitable international order, the Special Rapporteur on the Independence of Judges and Lawyers, members of the Working Group on Arbitrary Detention and members of the Working Group on Enforced or Involuntary Disappearances: OHCHR, ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts’, 16 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>.

³⁷ The Phnom Penh Post, ‘Chhun sentenced to two years’, 18 August 2021, available at: <https://www.phnompenhpost.com/national/chhun-sentenced-two-years>. He was reportedly released in November 2021 after an appeals court upheld parts of his convictions while releasing him for time served for other charges: Radio Free Asia, ‘Cambodian authorities release labor union leader in surprise move’, 12 November 2021, available at: <https://www.rfa.org/english/news/cambodia/rong-chhun-11122021154127.html>.

³⁸ *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders*, Reference AL KHM 6/2020, 18 August 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25497>; Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations at Geneva, *Responses from the Ministry of Interior and the Ministry of Justice of the Kingdom*

33. The arrest and detention of Rong Chhun led to peaceful protests to demand his release, and several protestors were arrested, detained and charged in relation to their involvement or planned engagement in these peaceful assemblies.³⁹ In particular, Mean Prommony, Vice-President of the Khmer Student Intelligence League Association, was arrested on 6 September 2020 “for his expressed intent online to lead the demonstration in Freedom Park the next day” and charged under articles 494 and 495 by the Phnom Penh Municipal Court,⁴⁰ in apparent contravention of his right to peaceful assembly and expression online.

34. In another noteworthy case, in May 2021 Phuon Keoreaksmey, Long Kunthea and Thun Ratha, activists from the Mother Nature Cambodia group, were found guilty of incitement under articles 494 and 495 by the Phnom Penh Municipal Court.⁴¹ The environmental activists were protesting the filling of Boeung Tamok Lake in Phnom Penh, and were arrested shortly after announcing on Facebook the group’s plan for Long Kunthea to conduct a one-person demonstration, which they had intended to livestream online.⁴² There were also credible allegations concerning breaches of the right to privacy of the activists, which led to their arrests and subsequent convictions.⁴³

b. Crackdown on journalists and media platforms

35. The Cambodian authorities have continued targeting journalists and media platforms solely for carrying out their professional duties of investigating and imparting information to the public in the digital space. In Cambodia, independent journalists have long been harassed by the authorities, especially when reporting critically about the government.⁴⁴ As affirmed by the Committee, it is inconsistent with article 19(3)

of Cambodia As to the Alleged Arbitrary Arrest and Detention of Mr. Rong Chhun, No: 2020/10/947, 30 October 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?qId=35659>.

³⁹ ICJ, ‘Cambodia: authorities must end increasing crackdown on human rights defenders’, 11 September 2020, available at: <https://www.icj.org/cambodia-authorities-must-end-increasing-crackdown-on-human-rights-defenders/>; Radio Free Asia, ‘Cambodian Police Violently Disperse Protest For Jailed Union Leader Rong Chhun, Arrest Six’, 13 August 2021, available at: <https://www.rfa.org/english/news/cambodia/protest-08132020183055.html>.

⁴⁰ *Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Working Group on discrimination against women and girls*, Reference AL KHM 8/2020, 10 November 2020 (‘AL KHM 8/2020’), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25670>. He

has been in pre-trial detention in Phnom Penh Correctional Center 1, and his bail application was denied on 18 May 2021; Front Line Defenders, ‘Bail Denied to Seven Human Rights Defenders’, 21 May 2021, available at: <https://www.frontlinedefenders.org/en/case/bail-denied-seven-human-rights-defenders-1>.

⁴¹ Thun Ratha was sentenced to 20 months in prison and fined four million riels (approx. USD 1,000), while Phuon Keoreaksmey and Long Kunthea were sentenced to 18 months in jail and fined four million riels (approx. USD 1,000). VOD, ‘Mother Nature Environmentalists Found Guilty of Incitement’, 5 May 2021, available at: <https://vodenglish.news/mother-nature-environmentalists-found-guilty-of-incitement/>;

Amnesty International, ‘Cambodia: “Outrageous” conviction of five environmental activists must be overturned’, 6 May 2021, available at: <https://www.amnesty.org/en/latest/news/2021/05/cambodia-outrageous-conviction-of-five-environmental-activists-must-be-overturned/>; The Diplomat, ‘Trio of Cambodian Youth Imprisoned for Environmental Activism’, 6 May 2021, available at: <https://thediplomat.com/2021/05/trio-of-cambodian-youth-imprisoned-for-environmental-activism/>.

⁴² *Ibid.*

⁴³ AL KHM 8/2020, p. 6.

⁴⁴ ICJ, *Submission of the International Commission of Jurists to the Office of the United Nations High Commissioner for Human Rights Pursuant to Human Rights Council Resolution 45/18*, 16 April 2021 (‘ICJ OHCHR Submission on Journalists’), available at: <https://www.icj.org/wp-content/uploads/2021/04/SoutheastAsia-ICJ-OHCHR-Submission-Journalists-Safety-2021-ENG.pdf>; ICJ, ‘Cambodia: ICJ and 56 organizations call on authorities to release journalists and cease harassment of

of the ICCPR to penalize or “prohibit a site or an information dissemination system from publishing from publishing material solely on the basis that it may be critical of the government”.⁴⁵

36. Journalists have been prosecuted and convicted for their work. In 2020, the Cambodian Journalists Alliance Association documented 15 cases involving 31 journalists being imprisoned, of which 11 cases involved charges of incitement to commit a felony under articles 494 and 495 and extortion under article 232 of the Criminal Code.⁴⁶ For instance, Sok Oudom, owner of Rithysen radio station and website, was convicted on 22 December 2020 to 20 months in prison with a fine of 20 million riels (approx. USD 5,000) under articles 494 and 495.⁴⁷ The charges stem from Sok Oudom reporting on Facebook Live on an ongoing land dispute between residents of Kampong Chhnang and the military.⁴⁸
37. The Ministry of Information has also revoked the licenses of independent media outlets. This process of revoking licenses is not transparent, with no clear appeal process.⁴⁹ This is at odds with the Committee’s affirmation that State parties should “establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses”, based on criteria that are “reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the [ICCPR].”⁵⁰ For instance, in May 2020, the Ministry of Information revoked the media license of Rithysen for allegedly “publishing information which is exaggerated information, contains incitement to violence, provocation to commit discrimination and provocation to cause social insecurity and chaos”, days before Sok Oudom, its owner, was charged under articles 494 and 495.⁵¹ In April 2020, CKV TV Online, an online news outlet, had its license revoked by the Ministry of Information for alleged “severe violation of journalism that affects public order”.⁵²

c. Gender-biased targeting of women on social media platforms

38. The Cambodian authorities have arbitrarily interfered with the online freedom of expression of women, particularly for their clothing choices, in a discriminatory manner, under an overly broad invocation of protecting Cambodian traditions and values.
39. For instance, in April 2020, Ven Rachanawas convicted to six months in prison under articles 38 and 39 of the Law on the Suppression of Human Trafficking and Sexual

independent media’, 2 November 2020, available at: <https://www.icj.org/cambodia-icj-and-56-organizations-call-on-authorities-to-release-journalists-and-cease-harassment-of-independent-media/>.

⁴⁵ UN Doc. CCPR/C/GC/34, paras. 42 – 43.

⁴⁶ Cambodian Journalists Alliance Association, *Cambodian Journalism Situation Report 2020*, 29 March 2020 (‘Cambodian Journalism Situation Report 2020’), p. 15, available at: <https://www.camboja.net/wp-content/uploads/2021/03/Cambodian-Journalism-Situation-Report-2020.pdf>.

⁴⁷ *Ibid.*, p. 16.

⁴⁸ *Ibid.* Many other journalists who went to cover the same land dispute on the same day were not charged. Authorities said Sok Oudom violated the law because he live-streamed his on-the-ground reporting.

⁴⁹ Freedom House, ‘Freedom on the Net 2020: Cambodia’, section B3, available at: <https://freedomhouse.org/country/cambodia/freedom-net/2020>.

⁵⁰ UN Doc. CCPR/C/GC/34, para. 39.

⁵¹ VOA Cambodia, ‘Kampong Chhnang Radio Owner Charged for “Incitement”’, 15 May 2020, available at: <https://www.voacambodia.com/a/kampong-chhnang-radio-owner-charged-for-incitement/5421115.html>; Committee to Protect Journalists, ‘Cambodian journalist Sok Oudom detained on incitement charges’, 19 May 2020, available at: <https://cpj.org/2020/05/cambodian-journalist-sok-oudom-detained-on-incitem/>.

⁵² VOA, ‘Amid Backsliding on Press Freedoms, Phnom Penh Calls for ‘Professional’ Reporting’, 2 May 2020, available at: <https://www.voanews.com/press-freedom/amid-backsliding-press-freedoms-phnom-penh-calls-professional-reporting>; VOD, ‘Journalist Jailed, Media License Revoked Over ‘Exaggerated’ Coverage’, 15 May 2020, available at: <https://vodenglish.news/journalist-jailed-media-license-revoked-over-exaggerated-coverage/>.

Exploitation and under article 249 of the Criminal Code.⁵³ Her sentence was reportedly reduced to a two month and 15-day prison term, and she was allegedly convicted without access to legal counsel.⁵⁴ Ven Rachana was convicted in relation to her videos and photographs on Facebook selling clothing, which was deemed by the authorities to be “too sexy” and in violation of norms of Cambodian culture.⁵⁵

40. As pointed out by a group of UN Human Rights Council experts, the “reported targeting and singling out women who use social media platforms represents an apparent misuse of the criminal legislation on pornography and sexual exploitation in a gender-biased way that would result in discrimination and violence against women”.⁵⁶ The experts further pointed out that the authorities’ linking of sexual violence and human trafficking to women’s choice of clothes is in direct contradiction with its obligation under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to eliminate harmful stereotypes and prevent discrimination and violence against women.⁵⁷

IV. State responses to COVID-19 and “false information”

41. The Cambodian authorities have invoked the public health imperative as a reason to curb the spread of “false information” about COVID-19 online and thus restrict freedom of expression and access to information. The authorities have sanctioned or threatened to sanction social media users, journalists and media platforms and individuals affiliated with opposition political parties, without due regard for provisions of non-discrimination, legality, necessity and proportionality.

42. These arbitrary restrictions have been mainly carried out pursuant to several legal provisions under the Criminal Code, including articles 307 (public insult), 425 (false information), 437 *bis* (*lèse-majesté*), 453 (plotting) and 494 and 495 (incitement to commit a felony or disturb social security); and article 11 of the new COVID-19 Preventive Law. Notably, in February 2021, a spokesperson from the Ministry of Justice announced that the spreading of “false news” on COVID-19 would be classified as “incitement” under articles 494 and 495 of the Criminal Code.⁵⁸

43. The Cambodian authorities have arrested, detained and prosecuted social media users on charges of incitement under articles 494 and 495 for criticizing the government’s response to the COVID-19 pandemic.⁵⁹ They have also regularly pressured individuals

⁵³ VOA, ‘Online Seller Convicted for “Producing Pornography”, Given a Suspended Sentence’, 1 May 2020, available at: <https://www.voacambodia.com/a/online-seller-convicted-for-producing-pornography-given-a-suspended-sentence-/5400505.html>; *Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on discrimination against women and girls*, Reference: AL KHM 2/2020, 1 May 2020 (‘AL KHM 2/2020’), p. 2 – 3, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25225>.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, p. 4.

⁵⁷ *Ibid.*

⁵⁸ ICJ OHCHR Submission on Journalists, para. 11a; Khmer Times, ‘Spreading fake news on C-19 vaccines considered “incitement”’, 23 February 2021, available at: <https://www.khmertimeskh.com/50816839/spreading-fake-news-on-c-19-vaccines-considered-incitement/>.

⁵⁹ ICJ, Dictating the Internet Report on Cambodia, pp. 60 – 63; Radio Free Asia, ‘Cambodia’s Hun Sen Isolates Phnom Penh and Takhmao After Citizens Ignore Lockdown Order’, 16 April 2021, available at: <https://www.rfa.org/english/news/cambodia/lockdown-04162021182510.html>. This number likely includes Thun Ratha and Chhun Vean, who were arrested for “incitement” in relation to their comments

into signing pledges not to post disfavoured content on social media.⁶⁰ These pledges amount to threats of legal sanctions and undue interferences with freedom of expression, as non-compliance would likely result in criminal penalties which are inconsistent with the principles of necessity and proportionality.

44. Journalists and media platforms have also been targeted and sanctioned for their reporting on the COVID-19 pandemic, which stands to arbitrarily undermine the crucial role of the media in monitoring the operation of and facilitating accountability in health systems.⁶¹ On 5 October 2020, Sovann Rithy, director of online news outlet TVFB, was sentenced to 18 months in prison under articles 494 and 495 for reporting on advice from Prime Minister Hun Sen that motorbike-taxi drivers sell their motorbikes if they are facing financial difficulties.⁶² On 13 November 2020, Ros Sokhet, publisher of the Cheat Khmer newspaper, was sentenced to 18 months in prison under articles 494 and 495 for his Facebook posts criticizing the government's response to the pandemic.⁶³ On 14 July 2021, Kouy Piseth, Siem Reap Tannhektar news websites' correspondent, was charged with "incitement" under articles 494 and 495, as well as "obstructing an enforcement measure" under article 11 of the COVID-19 Preventive Law, allegedly in relation to his Facebook post on 27 June criticizing the government's decision to use Sinopharm and Sinovac vaccines.⁶⁴ Additionally, at least five media outlets have had their media licenses revoked for their reporting on the COVID-19 pandemic.⁶⁵
45. The Cambodian authorities have intensified their repression of perceived political opponents during the COVID-19 pandemic, with the authorities regularly arrested, detained and charged political opponents under articles 425 (false information), 437 *bis* (lèse-majesté), 453 (plotting) and 494 and 495 (incitement to commit a felony or disturb social security) of the Criminal Code for their online expression.⁶⁶ Notably, Sam Rainsy, the former leader of the Cambodia National Rescue Party, was charged under articles 437 *bis* for his Facebook posts criticizing the government's COVID-19 vaccine plan and expressing his opinion that the King is a "puppet who does exactly what Hun Sen tells him".⁶⁷

V. Recommendations

46. In light of the above concerns, the ICJ would call on the Committee to make the follow recommendations to the government of Cambodia:

- a. Ensure that the Parliament of Cambodia:

about the COVID-19 vaccine; see, VOD, 'Two Deaths Ruled Unrelated to Vaccine, Covid; Two Arrested Over Posts', available at: <https://vodenglish.news/two-deaths-ruled-unrelated-to-vaccine-covid-two-arrested-over-posts/>.

⁶⁰ ICJ, Dictating the Internet Report on Cambodia, pp. 62 – 63.

⁶¹ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/63/263, 11 August 2008, para. 11.

⁶² ICJ OHCHR Submission on Journalists, para. 9a; CamboJA News, 'Journalist handed 18-month sentence for incitement', 5 October 2020, available at: <https://cambojanews.com/journalist-handed-18-month-sentence-for-incitement/>.

⁶³ ICJ OHCHR Submission on Journalists, para. 9a; ICJ Joint Statement on Critical Commentary on COVID-19; CPJ, 'Cambodia jails journalist Ros Sokhet for criticizing Prime Minister Hun Sen', 13 November 2020, available at: <https://cpj.org/2020/11/cambodia-jails-journalist-ros-sokhet-for-criticizing-prime-minister-hun-sen/>.

⁶⁴ Reporters Without Borders, 'Cambodian reporter facing five years in prison for comment about vaccines', 21 July 2021, available at: <https://rsf.org/en/news/cambodian-reporter-facing-five-years-prison-comment-about-vaccines>.

⁶⁵ ICJ, Dictating the Internet Report on Cambodia, pp. 63 – 66.

⁶⁶ ICJ, Dictating the Internet Report on Cambodia, pp. 66 – 71.

⁶⁷ ICJ, Dictating the Internet Report, pp. 68 – 71; Cambodianess, 'Phnom Penh Court Indicts Rainsy for Insulting King Norodom Sihamoni', 28 December 2020, available at: <https://cambodianess.com/article/phnom-penh-court-indicts-rainsy-for-insulting-king-norodom-sihamoni>.

- Repeals or substantially amends legal provisions that serve to criminalize or unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline, including the State of Emergency Law; COVID-19 Preventive Law; articles 425, 437 *bis*, 453, 494 and 495 of the Criminal Code; and the Law on Telecommunications;
 - Discards or substantially amends drafted laws that serve to criminalize or unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline;
- b. Ensure that the Cambodian executive, including the Ministry of Information:
- Repeals or substantially amends executive orders/regulations that serve to unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline, including the NIG Sub-Decree and the Inter-Ministerial *Prakas* on Website;
 - Refrains from restricting or blocking online content unless the decision to block has been undertaken following a full analysis that applies international law and standards of legality, legitimate purpose, necessity, proportionality and non-discrimination and has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal;
 - Ceases harassment or persecution of all individuals solely for exercising their rights to free expression, information and peaceful assembly online, through the abuse of laws and administrative regulations, such as the COVID-19 Preventive Law and articles 425, 437 *bis*, 453, 494 and 495 of the Criminal Code; and
 - Ensures and facilitates equal access to adequate, effective and prompt remedy and reparation for all individuals who have had their rights impaired by harassment or persecution for the exercise of human rights online.
- c. Ensures that prosecutors and justice sector actors:
- Drop all charges, issue non-prosecution orders, and refrain from further charges, particularly at the very inception of any such lawsuit, against any individual, including those named in this report, facing prosecution for alleged violation of laws that are non-human rights compliant on their face or which have been applied in a manner not compliant with the ICCPR. This includes the COVID-19 Preventive Law and articles 425, 437 *bis*, 453, 494 and 495 of the Criminal Code. With respect to the cases of convicted individuals for the aforementioned offences, quash their convictions, and with respect to individuals in pre-trial detention, cease investigation of their cases. All persons held in pre-trial detention or imprisoned on conviction in such cases should be released.