



## **FIDH – International Federation for Human Rights**

### **UN Human Rights Committee (CCPR)**

**134<sup>th</sup> Session**

### **Shadow report for the review of Cambodia's third periodic report**

**31 January 2022**

#### **Executive summary**

1. The Cambodian government has accelerated its attacks against political opponents, civil society, and its own citizens since the submission of its latest periodic report in 2019, and it has also increased violations of fundamental rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR). Amendments to Cambodia's Constitution and the Law on Political Parties unreasonably infringe on the right to vote, to take part in public life, and have effectively eliminated any meaningful political opposition ahead of the 2022 commune elections and the 2023 general election. The judiciary is not independent from the executive branch and has been regularly used to persecute opposition leaders and supporters in trials in which many defendants have been detained for long periods or tried *in absentia*.
2. The arbitrary arrest and detention of human rights defenders, land and environmental rights defenders, political activists, labor organizers, and journalists has escalated throughout the COVID-19 pandemic. As of 31 January 2022, more than 60 people were imprisoned for their peaceful activism or for reporting or expressing political or dissenting opinions. The government has continued to routinely use pre-trial detention against peaceful critics and opponents despite extreme overcrowding, lengthy trial delays, and the risks presented by COVID-19. Child prisoners have been routinely denied legal representation at the time of arrest, detained with adults and convicted prisoners, and the government has made no significant progress on adopting implementing non-custodial measures aimed at relieving prison overcrowding.
3. The government has codified unnecessary and unlawful restrictions on the rights to freedom of expression, freedom of association, and freedom of peaceful assembly through laws passed under the guise of preventing the spread of COVID-19. Pending draft laws, such as the 2020 draft Law on Religion, threaten sweeping limitations on freedom of thought, conscience, and religion, and establish discriminatory and invasive regulation of minority religions. In addition, online surveillance of government opponents and arbitrary restrictions on digital civic space have been expanding through the implementation of a National Internet Gateway in February 2022.
4. Land concessions to private parties have continued and unnecessary and disproportionate force have continued to be used against land protesters. A private debt crisis driven by predatory lending by microfinance institutions has dispossessed the most vulnerable Cambodians of their land, including indigenous peoples.

## Political opposition and participation restricted (Articles 1, 2, 12, 14, and 25)

5. Since the government's report to the CCPR in 2019, the government has employed even more repressive tactics to deny citizens the right to freely determine their political status and increased violations of fundamental rights on the basis of political or other opinions. Former members and supporters of the main opposition party—the Cambodia National Rescue Party (CNRP), which was dissolved by the Supreme Court in November 2017—have been targeted through intimidation, violent attacks, arbitrary arrest and detention, and judicial harassment. Between August and November 2019, the Cambodian government arrested and indicted over 100 CNRP members and supporters on numerous trumped-up criminal charges.<sup>1</sup> In November and December 2020, four mass trials were launched against many of those arrested and others—a total of over 150 persons.<sup>2</sup> To date, 92 former CNRP members are still banned from participating in politics, and the CNRP remains dissolved, thus rendering the upcoming 2022 commune elections and the 2023 general election non-competitive, non-participatory, and non-inclusive.

### Violence and intimidation

6. Between 2019 and 2021, there were at least 30 documented cases of violence against CNRP supporters and their relatives.<sup>3</sup> The majority of attacks followed a similar pattern. In many cases, CNRP supporters were beaten with a stick or metal rod or had bricks or stones thrown at them by multiple unknown assailants who were usually wearing helmets and riding motorcycles. In the List of Issues (LoI),<sup>4</sup> the CCPR expressed concern over reports of intimidation and violence against political opponents, but in its reply to the LoI, the government dismissed any attacks as “difference[s] of opinion between individuals” and “verbal clashes.”<sup>5</sup> However, such simplistic explanation is contradicted by the fact that in all the above-referenced cases there were no other obvious motives for the attacks other than the victims' political affiliation.
7. In some cases, violence against political opponents resulted in violations of the right to life. For instance, in April 2019, Tith Rorn, the son of a former CNRP commune councilor, was arrested and imprisoned following a nine-year-old misdemeanor conviction for which the statute of limitations had expired. Rorn was found dead within 72 hours of his arrest, with visible bruises on his body suggesting he had been beaten.<sup>6</sup> In November 2021, CNRP activist Sin Khon was brutally attacked and killed in the streets of Phnom Penh. A suspect was quickly arrested and “confessed,” yet the UN Office of the High Commissioner for Human Rights (OHCHR) expressed concern over the inconsistencies in the authorities' official version of the events leading to Sin

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<sup>1</sup> Human Rights Watch, *World Report 2020: Cambodia*, 2020; <https://www.hrw.org/world-report/2020/country-chapters/cambodia#> (reporting on events in 2019).

<sup>2</sup> VOD, *CNRP mass trials: the cases and the controversy*, 28 January 2021; <https://vodenglish.news/cnrp-mass-trials-the-cases-and-the-controversy/>

<sup>3</sup> RFA, *Cambodian opposition figures injured in attacks live in fear, saying no attackers have been caught*, 12 July 2021; <https://www.rfa.org/english/news/cambodia/attacks-07122021185719.html>; RFA, *Senior Cambodian opposition member assaulted, remains unconscious in hospital*, 19 October 2020; <https://www.rfa.org/english/news/cambodia/assault-10192020172314.html>

<sup>4</sup> List of Issues, para. 24.

<sup>5</sup> Cambodia's Replies to List of Issues, para. 84.

<sup>6</sup> Phnom Penh Post, *CSOs express concern over 'harassment' of CNRP*, 3 June 2019;

<https://www.phnompenhpost.com/national-politics/csos-express-concern-over-harassment-cnrp>

Khon's death.<sup>7</sup> Sin Khon had been attacked by unknown assailants six months earlier and had received threatening phone calls.

### Politically motivated criminal prosecutions

8. In the Lol, the CPPR noted the reported persecution of political opponents by Cambodia's ruling CPP and requested additional information on criminal charges levied against CNRP members and supporters.<sup>8</sup> In its reply, the government simply asserted that it prosecuted anyone who committed a criminal offence.<sup>9</sup> This answer completely ignores how the CPP has used the judiciary and manipulated vague provisions of the Criminal Code such as "incitement to commit a felony"<sup>10</sup> and "plotting"<sup>11</sup> to criminalize dissenting political opinions and activity.<sup>12</sup> Through these repressive tactics, the CPP has created a narrative wherein any pro-democracy statements or criticism of the government amount to treason and are evidence of conspiracy for a "color revolution."
9. The trial of former CNRP leader Kem Sokha, which commenced in January 2020 and was suspended for nearly two years (allegedly due to the COVID-19 situation) before resuming in January 2022, illustrates this trend. Kem Sokha was charged with "conspiracy with a foreign power," a felony punishable by 15 to 30 years in prison.<sup>13</sup> These charges are largely based on a 2013 speech in which Sokha stated that he learned about democratic systems for change in the United States.<sup>14</sup> In August 2020, the CCPR requested information on the criminal charges against Sokha.<sup>15</sup> In its reply to the Lol, the government asserted that there was evidence he "accepted foreign models and strategies to change leaders in Cambodia...[and thus] committed criminal acts involving conspiracy with foreigners."<sup>16</sup>
10. The government's assault against its political opponents continued in November 2020<sup>17</sup> and January 2021, when it launched four mass trials against over 150 former CNRP politicians and supporters on charges ranging from "incitement to commit a felony" to attempted "attack against the state"<sup>18</sup> (a felony punishable by 15 to 30 years in prison). Evidence in the cases includes video and statements from just a few defendants gathering support for former opposition leader Sam Rainsy's attempted return to Cambodia in November 2019, as well as private messages and phone calls criticizing the government. The only common denominator between the many defendants is their real or perceived support for the CNRP.<sup>19</sup> The mass trials are intended to completely eliminate the main political opposition and send a chilling message

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<sup>7</sup> OHCHR, *Comment by UN Human Rights Office spokesperson Rupert Colville on killing of Cambodian activist and refoulements from Thailand*, 3 December 2021;

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27906&LangID=E>

<sup>8</sup> List of Issues, para. 24.

<sup>9</sup> Cambodia's Replies to List of Issues, para. 81.

<sup>10</sup> Criminal Code of the Kingdom of Cambodia art. 494–95 (2009).

<sup>11</sup> Criminal Code of the Kingdom of Cambodia art. 453 (2009).

<sup>12</sup> LICADHO et al., *Joint Statement: CSOs express serious concern and call for a stop to the ongoing judicial harassment of former Cambodia National Rescue Party members*, 1 June 2019; <https://www.licadho-cambodia.org/pressrelease.php?perm=439>

<sup>13</sup> Criminal Code of the Kingdom of Cambodia art. 443 (2009).

<sup>14</sup> Al Jazeera, *Fair trial doubts as Kem Sokha treason case resumes in Cambodia*, 19 January 2022;

<https://www.aljazeera.com/news/2022/1/19/fair-trial-doubts-as-cambodias-kem-sokha-treason-trial-resumes>

<sup>15</sup> List of Issues, para. 24.

<sup>16</sup> Cambodia's Replies to List of Issues, para. 82.

<sup>17</sup> OHCHR, *Cambodia: UN expert alarmed by reports of mass trial of activists*, 25 November 2020;

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26544&LangID=E>

<sup>18</sup> Criminal Code of the Kingdom of Cambodia art. 27 (Attempt), 451 (Attack) (2009).

<sup>19</sup> VOD, *CNRP mass trials: the cases and the controversy*, 28 January 2021; <https://vodenglish.news/cnrp-mass-trials-the-cases-and-the-controversy/>

to other potential government critics and opponents, thus ensuring there will be no meaningful opposition in the 2022 commune elections and the 2023 general election.<sup>20</sup>

11. The government failed to reply to the CCPR's request for information on the criminal charges against Kong Mas, former head of the CNRP's branch in Svay Rieng Province. Kong Mas was arrested in January 2019 and convicted on 18 October 2019 of "public insult"<sup>21</sup> and "incitement to commit a felony" for criticizing Prime Minister Hun Sen on Facebook.<sup>22</sup> He served 18 months in prison (including time spent in pre-trial detention) and was released in July 2020,<sup>23</sup> only to be rearrested on 31 December 2020 on charges of "plotting"—a felony that carries a maximum 10-year prison sentence and that has been commonly used against former members of the CNRP. Kong Mas is currently detained in the Correctional Center 1 (CC1) prison in Phnom Penh.

#### Violations of fair trial rights (Article 14)

12. The above-referenced political mass trials illustrate the degree to which the government has exerted its control over the courts, in derogation of its obligation to ensure fair trials by independent and impartial tribunals. The concern over Cambodia's three laws on the judiciary, all adopted in 2014 and still in effect,<sup>24</sup> essentially codify the influence of the executive branch over the courts and enable the government to use the courts as a political tool.<sup>25</sup> Cambodia's courts are repeatedly ranked high for their levels of perceived corruption and low for their independence by reputable international independent surveys.<sup>26</sup>
13. The lack of independence in Cambodia's courts have resulted in routine violations of fair trial rights. Many former CNRP leaders who fled the country following the crackdowns in 2017–2019 have been living in exile and have been tried *in absentia* on multiple criminal charges. Some of those leaders have been denied the right to return to their country, which is in violation of the right to freedom of movement, even to stand trial, because the government has voided their Cambodian passports and refused to issue other travel documents. Several exiled former leaders have attempted to return, only to be denied boarding by the airlines as their Cambodian passports had been canceled and the Cambodian government had refused to issue visas in their foreign passports.<sup>27</sup> The criminal trials against them have proceeded despite their absence and in violation of their right to be present at their trial. In March 2021, nine former CNRP leaders were convicted *in absentia* on charges of "attempt to commit a felony" and "attack against the state."<sup>28</sup> The former leaders were stripped of their right to vote, stand in an election, or be a

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<sup>20</sup> *Ibid.*

<sup>21</sup> Criminal Code of the Kingdom of Cambodia, Article 307 (2009).

<sup>22</sup> Human Rights Watch, *Political Prisoners Cambodia: Kong Mas*, 18 October 2021; <https://www.hrw.org/video-photos/interactive/2021/10/18/political-prisoners-cambodia>

<sup>23</sup> *Ibid.*

<sup>24</sup> Law on the Organization and Functioning of the Courts, NS/RKM/0714/015 (2014); Law on the Organization and Functioning of the Supreme Council of the Magistracy, NS/RKM/0714/017 (2014); Law on the Status of Judges and Prosecutors, NS/RKM/0714/016 (2014).

<sup>25</sup> FIDH, *Submission for the adoption of the List of Issues*, 5 May 2020.

<sup>26</sup> Transparency International, *Corruption Perceptions Index 2020*, 2021;

[images.transparencycdn.org/images/CPI2020\\_Report\\_EN\\_0802-WEB-1\\_2021-02-08-103053.pdf](https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf) (Cambodia ranked 160 out of 180 countries); World Justice Project, *Rule of Law Index*, 2021; [worldjusticeproject.org/rule-of-law-index/pdfs/2021-Cambodia.pdf](https://worldjusticeproject.org/rule-of-law-index/pdfs/2021-Cambodia.pdf) (Cambodia ranked 138 out of 139 countries); Freedom House, *Freedom in the World 2021*, 2021; <https://freedomhouse.org/country/cambodia/freedom-world/2021> (Cambodia scored 0 out of 4 points regarding judicial independence).

<sup>27</sup> CamboJA News, *CNRP's Sochua says economic sanctions likely after being blocked entry*, 19 January 2021;

<https://cambojanews.com/cnrps-sochua-says-economic-sanctions-likely-after-being-blocked-entry/>

<sup>28</sup> Criminal Code of the Kingdom of Cambodia, Articles 27, 451 (2009).

public official and sentenced to prison terms ranging from 20 to 25 years.<sup>29</sup> Absurdly, the basis for the charges on which those nine leaders were tried and convicted *in absentia* was in part their support for former opposition leader Sam Rainsy’s right to return to Cambodia.

14. As of 16 November 2021, there were at least 60 political prisoners in Cambodia.<sup>30</sup> Many of them have faced undue trial delays. Some of the former CNRP activists in the mass trials have been detained for over a year—several for as long as 19 to 22 months. Kem Sokha was detained for over one year in a decision declared as “arbitrary” by the UN Working Group on Arbitrary Detention.<sup>31</sup> While temporarily released in September 2018, Kem Sokha has been prosecuted under a treason charge since 2017. Sokha was arrested in a midnight raid on his home on 3 September 2017, but his trial did not commence until January 2020. After just two months, his trial was delayed for almost two more years. The government cited the COVID-19 pandemic as the reason for the delays, despite other trials being conducted throughout 2020 and 2021. While two of the mass CNRP trials did not resume until December 2021, Kem Sokha’s trial did not resume until January 2022 and a third mass CNRP trial with 78 defendants has yet to be scheduled.<sup>32</sup>

#### Laws restricting political participation

15. In the last several years, the CPP has built an arsenal of laws to entrench its monopolization of power and further restrict rights of political participation. This strategy is clearly exposed in the government’s reply to the Lol. In response to the CCPR’s question about how the dissolution of the CNRP and reallocation of National Assembly seats to the CPP were compatible with the ICCPR, the government simply stated that it was permissible because it was done according to the Law on Political Parties.<sup>33</sup> Amendments to the Law on Political Parties, however, were unilaterally adopted by the government and the CPP in 2017 and 2018 with the aim of providing a legal basis to dissolve the CNRP and ensure no meaningful political opposition ahead of the 2018 general election.
16. Additional amendments passed in 2018 ensured the CPP’s continued authority to arbitrarily restrict political participation. The constitutional amendments passed in 2018 require political parties to “put the interests of the nation first”<sup>34</sup> and similarly prohibit any citizen from engaging in “any activity” that directly or indirectly “affect[s] the interests” of Cambodia or its citizens.<sup>35</sup> The amended Article 34 of the Constitution permits the outright stripping of rights of political participation.<sup>36</sup> These vague and broad provisions can be arbitrarily applied to prohibit any democratic activities and unreasonably restrict the political participation of anyone perceived as dissenting from the ruling CPP.<sup>37</sup> In November 2021, the Constitution was again amended to exclude eligibility to several leadership positions, including Prime Minister, to

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<sup>29</sup> OHCHR, *Cambodia: Long prison terms for former opposition leaders appalling say UN experts*, 5 March 2021; <https://www.ohchr.org/FR/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26848&LangID=F>

<sup>30</sup> Human Rights Watch, *Cambodia: political prisoner releases just a start*, 16 November 2021; <https://www.hrw.org/news/2021/11/16/cambodia-political-prisoner-releases-just-start>

<sup>31</sup> FIDH, *UN body declares detention of opposition leaders Kem Sokha ‘arbitrary’, calls for this immediate release*, 9 May 2018; <https://www.fidh.org/en/region/asia/cambodia/un-body-declares-detention-of-opposition-leader-kem-sokha-arbitrary>

<sup>32</sup> The fourth mass CNRP trial is the ‘Attack’ trial in which a judgement was issued in March 2021.

<sup>33</sup> Cambodia’s Replies to List of Issues, para. 74–75.

<sup>34</sup> Constitution of the Kingdom of Cambodia, Article 42 *bis* (amended 2018).

<sup>35</sup> Constitution of the Kingdom of Cambodia, Article 49 *bis* (amended 2018).

<sup>36</sup> Human Rights Watch, *Cambodia reject draft amendments to the Constitution and Criminal Code*, 21 February 2018; <https://www.hrw.org/news/2018/02/21/cambodia-reject-draft-amendments-constitution-and-criminal-code>

<sup>37</sup> FIDH, *CSOs call for rejection of draft amendments to Constitution and criminal code*, 21 February 2018; <https://www.fidh.org/en/region/asia/cambodia/csos-call-for-outright-rejection-of-draft-amendments-to-the>

Cambodians with dual nationality.<sup>38</sup> The tactic, long sought by Prime Minister Hun Sen, immediately disqualified many senior opposition party leaders who have dual nationality.

17. In its reply to the Lol, the government falsely claimed that the 2017 and 2018 amendments to the Law on Political Parties did not allow the government to dissolve parties or strip citizens of their political rights.<sup>39</sup> The amended Articles 38 and 45 of the Constitution grant the broad authority to do just that.<sup>40</sup> Under Article 38, the Ministry of Interior (“Mol”) has the authority to, in its own discretion, suspend any activities of a political party as well as file a complaint to the Supreme Court recommending the dissolution of a party that has allegedly breached any vague legal provision, such as the 2018 constitutional obligation to “put the interests of the nation first.”<sup>41</sup> The lack of independence of Cambodia’s judiciary means there is no impartial review of a request to dissolve a party nor a meaningful check on the Mol’s power. Once a political party is dissolved, the executive branch can continue to use the court as a political tool to strip opponents of their rights of political participation for a period of time.<sup>42</sup> Amended Article 45 grants the Mol and the Prime Minister sole discretion to arbitrarily decide whether to restore the political rights of “blacklisted” individuals. In addition, amended Articles 19 and 20 of the Constitution further vest the Mol with the sole authority to register political parties and thus restrict political participation. The Mol has refused to register at least one party, the Cambodia National Heart Party (CNHP), with potential ties to former CNRP members.<sup>43</sup>

#### Recommendations:

- *Urge the government to reinstate the CNRP and immediately and fully restore the rights to participate in public affairs of all political opponents to ensure competitive elections in 2022 and 2023.*
- *Call on the government to drop all politically motivated criminal charges and unconditionally release all political activists from prison.*
- *Urge the government to allow political opponents living abroad to return to Cambodia without hindrance and reprisals.*
- *Call on the government to repeal repressive legislation that undermines the right to participation in public affairs, including the 2017 and 2018 amendments to the Law on Political Parties and the 2018 and 2021 constitutional amendments.*
- *Urge the government to amend the Law on the Organization and Functioning of the Courts, the Law on the Organization and Functioning of the Supreme Council of the Magistracy, and the Law on the Status of Judges and Prosecutors to bring them into conformity with international standards for a truly independent and impartial judiciary.*

#### **State of Emergency enables human rights violations (Article 4)**

18. The State of Emergency Law, enacted in April 2020 in response to the COVID-19 pandemic, grants the government discretionary and excessively broad powers to take undefined actions to restrict the rights to freedom of movement and freedom of assembly and the right to work during a “state of emergency.” The law also authorizes the government to delegate that

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<sup>38</sup> Constitution of the Kingdom of Cambodia, Articles 19, 82, 106(1), 119, and 137 *bis* (amended 2021).

<sup>39</sup> Cambodia’s Replies to List of Issues, para. 78.

<sup>40</sup> Constitution of the Kingdom of Cambodia, Article 34 *bis* (amended 2018).

<sup>41</sup> Law on Political Parties, Article 38 *bis* (amended 2017).

<sup>42</sup> Law on Political Parties, Article 45 *bis* (amended 2018).

<sup>43</sup> Phnom Penh Post, *Two summonsed for questioning over National Heart Party registration*, 13 December 2021;

<https://www.phnompenhpost.com/national-politics/two-summonsed-questioning-over-national-heart-party-registration>

authority to newly created government entities.<sup>44</sup> The required conditions to declare a “state of emergency” are numerous and ambiguously defined, and there are no temporal limits on extensions to the state of emergency. The government is also empowered to dissolve registered associations if one member is found guilty of violating the State of Emergency Law.<sup>45</sup> The government has not yet declared a state of emergency but the lack of clarity regarding the threshold definition for such a declaration and the constantly evolving COVID-19 pandemic make the enforcement of the law an ever-present threat. In its reply to the Lol regarding the 2020 Law for the Management of the Nation in a State of Emergency, the government simply recited the text of specific articles and claimed that the law was not incompatible with the ICCPR.<sup>46</sup> The government’s reply failed to address questions and concerns about the law’s blanket granting of broad powers, lack of meaningful checks, and potential to extend a state of emergency indefinitely.

Recommendation:

- *Urge the government to repeal the State of Emergency Law.*

**Deprivation of liberty and cruel, inhuman, and degrading treatment (Articles 6, 7, 9, 10, and 14)**

19. Cambodia’s prisons are notoriously overcrowded, subjecting prisoners to cruel, inhuman, and degrading treatment. Additionally, prisons are run on a culture of corruption where virtually everything must be paid for, including adequate food, access to clean water, hygiene materials, time outside of the cell, and a place to sleep and sit.<sup>47</sup> In 2020, the CCPR expressed concerns about the severe overcrowding and poor conditions in Cambodia’s prisons.<sup>48</sup> In its reply to the Lol, the government claimed that overcrowding had been addressed and the number of detainees had been reduced as judges were encouraged to use judicial supervision as an alternative to detention.<sup>49</sup> No official figures were provided.<sup>50</sup> Publicly reported information from May 2021 revealed that no significant decongestion had occurred and that some prisons remained, on average, three times over capacity.<sup>51</sup> For example, Phnom Penh’s Correctional Centre 2 (CC2) prison, which houses female prisoners including pregnant women and young children in prison with their mothers, had no noticeable improvement in access to food, clean water, and adequate medical care in 2020.<sup>52</sup>
20. At the onset of the COVID-19 pandemic, the Department of Prisons admitted that prison overcrowding was a “ticking time bomb” for a major outbreak.<sup>53</sup> As of May 2021, hundreds of inmates in overcrowded prisons across the country tested positive for COVID-19, though

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<sup>44</sup> Law on the Management of the Nation in a State of Emergency, Article 4, Royal Kram NS/RKM/0420/018 (2020) (unofficial English translation).

<sup>45</sup> LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018–20*, 2020; <https://www.licadho-cambodia.org/reports.php?perm=233>

<sup>46</sup> Cambodia’s Replies to List of Issues, paras. 12–24.

<sup>47</sup> This Life Cambodia, *No place for a child: Alternatives to imprisoning children in Cambodia*, 2021; [https://issuu.com/this-life-ngo/docs/booklet\\_eng-issuu?fr=sODExNjJ5MDgxNDI](https://issuu.com/this-life-ngo/docs/booklet_eng-issuu?fr=sODExNjJ5MDgxNDI)

<sup>48</sup> List of Issues, para. 11.

<sup>49</sup> Cambodia’s Replies to List of Issues, paras. 40, 42.

<sup>50</sup> The Cambodian government does state how many cases were sent for trial, but there is no information about final dispositions, or the numbers of detainees otherwise released or granted bail. *Id.* at para. 42.

<sup>51</sup> Amnesty International & Human Rights Watch, *Joint Statement, Cambodia: urgently address COVID-19 outbreak in prisons*, 23 May 2021, <https://www.hrw.org/news/2021/05/23/cambodia-urgently-address-covid-19-outbreak-prisons>

<sup>52</sup> LICADHO, *Voices from Inside: Women and Girls in Cambodian Prisons*, 8 March 2021; <https://www.licadho-cambodia.org/articles/20210308/170/index.html#inhumane>

<sup>53</sup> Amnesty Int’l, Human Rights Watch, et al., *Joint Statement: Cambodia: urgently protect prisoners from COVID-19*, 9 December 2020; <https://www.amnesty.org/en/documents/asa23/3442/2020/en/>

officials consistently failed to provide complete information or statistical data.<sup>54</sup> The pandemic elevated the cruel, inhuman, and degrading treatment caused by severe overcrowding to violations of the right to life, as at least seven inmates died of COVID-19-related causes while in prison.<sup>55</sup> In its reply to the Lol, the government stated that it strengthened health check-ups for prisoners and cleaning of detention facilities and that it undertook various measures such as quarantine or isolation for new inmates, wearing masks, and hand washing.<sup>56</sup> The government also began vaccinating prisoners.<sup>57</sup> However, the effectiveness of these measures was limited, because of extreme overcrowding.

21. Despite the CCPR's questions regarding the high rates of pre-trial detention in Cambodia<sup>58</sup> and repeated calls from international organizations and civil society organizations to reduce overcrowding during the COVID-19 pandemic, the levels of pre-trial detention remained high, even among vulnerable segments of society. As of May 2021, pre-trial detainees accounted for 35% of the total prison population.<sup>59</sup> Many pretrial detainees are detained for long periods, in violation of their fundamental rights to liberty and to the presumption of innocence. For example, many political prisoners have been detained for well over a year in CC1 prison, which, as of May 2021, was 363% over its official capacity.<sup>60</sup>
22. Between 5 and 12 November 2021, 26 activists were released from prison on bail or probation with a suspended sentence.<sup>61</sup> However, their conditional release is a late and inadequate form of redress for their prolonged and arbitrary detention. In addition, many of the released activists continue to face politically motivated criminal charges or remain under judicial supervision with onerous conditions, such as being unable to return to their activism or, in some cases, even associate with their friends and colleagues.

### Children in prison

23. Children in conflict with the law, pregnant women, and young children incarcerated with their mothers<sup>62</sup> are uniquely vulnerable groups that are subject to the same cruel, inhuman, degrading treatment as adults and without the special protections to which they are entitled by reason of their status as minors. In early 2021, there were 106 young children with their mothers in the prisons monitored by a local human rights watchdog.<sup>63</sup> The government only provides prisons an additional US\$0.43 per child per day and provides no pre- or post-natal support for pregnant women, leaving families and NGOs to support children and their mothers in detention.<sup>64</sup> Guidelines and training for police regarding the detention of children in police custody with their parents are also inadequate and unclear. In November 2021, a four-year-old

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<sup>54</sup> Amnesty International & Human Rights Watch, *Joint Statement, Cambodia: urgently address COVID-19 outbreak in prisons*, 23 May 2021, <https://www.hrw.org/news/2021/05/23/cambodia-urgently-address-covid-19-outbreak-prisons>

<sup>55</sup> Cambodianess, *Inmates continue to die as COVID-19 spreads through Cambodia's prisons*, 11 June 2021;

<https://cambodianess.com/article/inmates-continue-to-die-as-covid-19-spreads-through-cambodias-prisons>

<sup>56</sup> Cambodia's Replies to List of Issues, para. 41.

<sup>57</sup> Amnesty International & Human Rights Watch, *Joint Statement, Cambodia: urgently address COVID-19 outbreak in prisons*, 23 May 2021, <https://www.hrw.org/news/2021/05/23/cambodia-urgently-address-covid-19-outbreak-prisons>

<sup>58</sup> List of Issues, para. 13.

<sup>59</sup> Amnesty International & Human Rights Watch, *Joint Statement, Cambodia: urgently address COVID-19 outbreak in prisons*, 23 May 2021, <https://www.hrw.org/news/2021/05/23/cambodia-urgently-address-covid-19-outbreak-prisons>

<sup>60</sup> *Ibid.*

<sup>61</sup> Human Rights Watch, *Cambodia: political prisoner releases just a start*, 16 November 2021;

<https://www.hrw.org/news/2021/11/16/cambodia-political-prisoner-releases-just-start>

<sup>62</sup> Law on Prisons, Article 41, NS/rkm/1211/021 (2011) (children who are younger than three years old are legally permitted to stay in prison with their mothers).

<sup>63</sup> LICADHO, *Voices from Inside: Women and Girls in Cambodian Prisons*, 8 March 2021; <https://www.licadho-cambodia.org/articles/20210308/170/index.html#inhumane>

<sup>64</sup> *Ibid.*



child spent four nights in a police station with her mother who was being detained in relation to a land dispute.<sup>65</sup>

24. Children are routinely denied access to lawyers at the time of their arrest and held in pre-trial detention and imprisoned upon conviction,<sup>66</sup> despite the fact that Cambodian law provides alternatives in consideration of the special status of minors, including diversion and community service.<sup>67</sup> In February 2021, an international NGO reported that 30% of the estimated 1,800 child prisoners were held in pre-trial detention.<sup>68</sup> Contrary to its response to the Lol, the government failed to implement alternatives to detention and provided no clear evidence of progress on diversion despite it being a priority of the 2016 Juvenile Justice Law. This law's strategic and operational plan concluded in 2020 with no meaningful progress.
25. In its reply to the Lol, the government claimed that pre-trial detention of minors was a "necessary case," as the authorities had not been able to "secure the appearance of charged minors before the courts."<sup>69</sup> This claim is belied by the government's arbitrary use of pre-trial detention against children in the case of the 16-year-old son of a jailed political opponent. In June 2021, local authorities arrested the 16-year-old child in relation to charges of "incitement to commit a felony" and "insult of public officials" over comments he had made on Facebook and Telegram.<sup>70</sup> The child was denied bail despite his age and the fact that he suffers from autism. He was held until the legal limit of the pre-trial detention period<sup>71</sup>, convicted and sentenced to eight months in prison, and finally released after four months and 15 days in prison with the remainder of his sentence suspended.<sup>72</sup>
26. In its reply to the Lol, the government also claimed that minors had not been detained with adult prisoners.<sup>73</sup> This claimed has been contradicted by public reports, which state that child are detained in adult prisons across the country and at times in the same cells as adults.<sup>74</sup> In December 2021, the government inaugurated the first dedicated juvenile detention center in Kandal Province with 50 prisoner transfers.<sup>75</sup> Child prisoners from around the country will be relocated to this new facility, thus making it excessively difficult for their families to visit them.

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<sup>65</sup> VOD, *Journalists, Protesters Arrested Amid Claims of 4-Year-Old's Detention*, 9 November 2021;

[vodenglish.news/journalists-protesters-arrested-amid-claims-of-4-year-olds-detention/](https://vodenglish.news/journalists-protesters-arrested-amid-claims-of-4-year-olds-detention/)

<sup>66</sup> Children aged 14 years and older are subject to detention in Cambodia, according to the Code of Criminal Procedure art. 212 (2007); Criminal Code, Article 39 (2009); Juvenile Justice Law, Article 7 (2016).

<sup>67</sup> Juvenile Justice Law, Article 5, 60–71 (2016).

<sup>68</sup> Khmer Times, *NGO calls on government to provide juvenile prison facilities*, 19 February 2021;

<https://www.khmertimeskh.com/50815758/ngo-calls-on-government-to-provide-juvenile-prison-facilities/>

<sup>69</sup> Cambodia's Replies to List of Issues, para. 89.

<sup>70</sup> OHCHR, *Cambodia: UN experts deeply disturbed by detention of boy with autism for on-line criticism*, 2 September 2021,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27423&LangID=E>

<sup>71</sup> Article 214 of the Criminal Code limits to four months the pre-trial detention of children 16 to under 18 years of age accused of misdemeanours.

<sup>72</sup> OHCHR, *Cambodia: stop using courts to persecute people who stand up for human rights—UN experts*, 2 November

2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27745&LangID=E>

<sup>73</sup> Cambodia's Replies to List of Issues, para. 88.

<sup>74</sup> This Life Cambodia, *No place for a child: Alternatives to imprisoning children in Cambodia*, 2021; [https://issuu.com/this-life-ngo/docs/booklet\\_eng-issuu?fr=sODExNjI5MDgxNDI](https://issuu.com/this-life-ngo/docs/booklet_eng-issuu?fr=sODExNjI5MDgxNDI)

<sup>75</sup> Phnom Penh Post, *Ministry, NGO join hands to divert children away from jails*, 24 November 2021;

[phnompenhpost.com/national/ministry-ngo-join-hands-divert-children-away-jails](https://www.phnompenhpost.com/national/ministry-ngo-join-hands-divert-children-away-jails); Phnom Penh Post, *Juvenile detention*

*centre doing 50 inmate test run*, 28 December 2021; [https://www.phnompenhpost.com/national/juvenile-detention-centre-doing-50-inmate-test-](https://www.phnompenhpost.com/national/juvenile-detention-centre-doing-50-inmate-test-run#:~:text=Minister%20of%20Interior%20Sar%20Kheng,Kandal%20province's%20Kandal%20Stung%20district)

[run#:~:text=Minister%20of%20Interior%20Sar%20Kheng,Kandal%20province's%20Kandal%20Stung%20district](https://www.phnompenhpost.com/national/juvenile-detention-centre-doing-50-inmate-test-run#:~:text=Minister%20of%20Interior%20Sar%20Kheng,Kandal%20province's%20Kandal%20Stung%20district)

### Recommendations:

- *Urge the government to immediately reassess current pre-trial detainees for release on judicial supervision, with a priority on releasing child prisoners, pregnant women, and children incarcerated with their mothers, and to substantially increase the use of non-custodial measures to reduce prison overcrowding.*
- *Urge the government to implement the 2016 Juvenile Justice Law’s alternatives to detention, including diversion programming in consultation and cooperation with appropriate civil society organizations.*
- *Call on the government to establish juvenile detention centers in each province.*
- *Urge the government to undertake major prison reforms to ensure that prison conditions fully comply with international standards, particularly the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.*

### **Violations of the right to privacy (Article 17)**

27. In addition to unlawful restrictions on the right to freedom of expression [See below *paras.* 28–37], the implementation of the National Internet Gateway builds upon the existing legal framework from the 2015 Law on Telecommunications<sup>76</sup> and the 2018 Inter-Ministerial Prakas [Announcement] No. 170<sup>77</sup> to allow the government to conduct wide-ranging surveillance that violates the right to privacy. The government has broad powers to conduct online surveillance, including by requesting users’ data from Internet Service Providers (ISPs), and intercepting communications with the approval of undefined “legitimate authorities.”<sup>78</sup> The sub-decree on the National Internet Gateway requires all ISPs to install surveillance software to monitor online activities and store users’ data and browser records.<sup>79</sup> In addition, the latest version of the draft Law on Cybercrime, leaked in August 2020, does not address the CCPR’s concerns from prior drafts and, if passed, would grant the government significant power to monitor and punish certain types of speech while also recording private data without a user’s knowledge.<sup>80</sup> The government has previously bragged of its ability to tap the phones of its opponents,<sup>81</sup> and content from private conversations conducted through messaging platforms such as Facebook and Telegram have been routinely used as evidence in court proceedings.<sup>82</sup> For example, six youth environmental activists—Long Kunthea, Phun Keoraksmeay, Thun Ratha, Sun Ratha, Yim Leanghy, and Ly Chandaravuth—have been charged with “plotting,”<sup>83</sup> a felony that carries a potential prison sentence of up to 10 years, and Spanish national and human rights defender Alejandro Gonzalez-Davidson, was named as a defendant as well.<sup>84</sup> Sun Ratha and Yim Leanghy have also been charged under the *lèse-majesté* clause added to the Criminal Code in 2018, which carries penalties of up to five years in prison and substantial fines. The charges are in

<sup>76</sup> Law on Telecommunications, NS/RSD/1215/017 (2015) (unofficial English translation).

<sup>77</sup> Inter-Ministerial Prakas No. 170 on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, 28 May 2018, (unofficial English translation); <https://cyrilla.org/pt/entity/7damc09w824?searchTerm=e%20commerce%20ksa&page=1>

<sup>78</sup> Inter-Ministerial Prakas no. 170, Clause 7.

<sup>79</sup> Inter-Ministerial Prakas no. 170, Clause 7.

<sup>80</sup> Human Rights Watch, *Cambodia: internet censorship, control expanded*, 18 February 2021; <https://www.hrw.org/news/2021/02/18/cambodia-internet-censorship-control-expanded>

<sup>81</sup> VOA, *Experts Question Possible Privacy Violations in Leaked Recordings*, 10 Mar. 2017; <https://www.voacambodia.com/a/experts-question-possible-privacy-violations-in-leaked-recordings/3760137.html>

<sup>82</sup> LICADHO, *Status Update: Harassment on Social Media in Cambodia*, 2021; <https://www.licadho-cambodia.org/reports.php?perm=235>

<sup>83</sup> Criminal Code of the Kingdom of Cambodia, Article 453 (2009).

<sup>84</sup> Criminal Code of the Kingdom of Cambodia, Article 437 *bis* (2009).

relation to comments allegedly made during a private Zoom meeting, which was most likely illegally recorded and then leaked through a government-aligned media outlet.<sup>85</sup>

### Violations of the right to freedom of expression (Article 19)

28. The CCPR has previously found the government's responses on freedoms of expression to be unsatisfactory, noting the continued prosecutions and detentions of journalists, human rights defenders, and other civil society actors for criticizing the government and participating in protests.<sup>86</sup> In the last five years, the government has escalated its systemic crackdown on peaceful opponents and critics, environmental and labor rights activists, human rights defenders, and journalists. It has also used the COVID-19 pandemic as a pretext to codify broad powers to arbitrarily infringe on the rights to freedom of expression.
29. The government has continued to use overly broad and vague provisions of the Criminal Code such as "incitement to commit a felony," "public insult," and "plotting" to arrest and prosecute opponents and critics for exercising their rights to freedom of expression. In December 2020, two young rappers, Kea Sokun and Long Putheara, were convicted on charges of "incitement to commit a felony" for writing and producing songs addressing corruption, land loss, and inequality in Cambodia.<sup>87</sup> Kea Sokun was sentenced to 18 months in prison and Long Putheara was sentenced to five months in prison, and portions of both their sentences were suspended. Also in December 2020, Sok Oudom, a journalist who often reported on land grabbing and whose case was specifically raised by the CCPR in the Lol, was convicted on charges of "incitement to commit a felony" after reporting on a land dispute, sentenced to 20 months in prison, and ordered to pay punitive damages of 20 million riels (approximately US\$5,000).<sup>88</sup> The media license for his radio station and website were also revoked.<sup>89</sup> In May 2021, three Mother Nature environmental activists, Long Kunthea, Phuon Keoraksmeay, and Thun Ratha, were convicted on charges of "incitement to commit a felony" for planning a peaceful one-woman march in September 2020 to highlight the filling-in of Boeung Tamok, Phnom Penh's last remaining natural lake. The three were sentenced to between 18 and 20 months in prison. In November 2021, the Phnom Penh Appeal Court upheld their convictions but suspended up to six months of their sentences.<sup>90</sup> In November 2021, all three activists were released,<sup>91</sup> but remain on probation and now face up to 10 years in prison on additional "plotting" charges [See above, *para.* 27].
30. In August 2021, union leader Rong Chhun was convicted of "incitement to commit a felony" in relation to a statement he published in July 2020 regarding allegations of land loss near the

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<sup>85</sup> LICADHO, *Status Update: Harassment on Social Media in Cambodia*, 2021; <https://www.licadho-cambodia.org/reports.php?perm=235>

<sup>86</sup> CCPR, Report on follow-up to concluding observations of the Human Rights Committee, 01 August 2018; UN Doc. CCPR/C/123/2

<sup>87</sup> Diplomat, *Two Rappers Convicted of Incitement in Cambodia*, 23 December 2020; <https://thediplomat.com/2020/12/two-rappers-convicted-of-incitement-in-cambodia/>

<sup>88</sup> VOA Cambodia, *Court convicts Kampong Chhnang journalist for reporting on land dispute*, 23 December 2020; <https://www.voacambodia.com/a/court-convicts-kampong-chhnang-journalist-for-reporting-on-land-dispute-/5710186.html>

<sup>89</sup> LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018–20*, 2020; <https://www.licadho-cambodia.org/reports.php?perm=233>

<sup>90</sup> FIDH, *Cambodia: Ongoing arbitrary detention of three Mother Nature Cambodia activists*, 9 November 2021; <https://www.fidh.org/en/issues/human-rights-defenders/cambodia-ongoing-arbitrary-detention-of-three-mother-nature-cambodia>

<sup>91</sup> Human Rights Watch, *Cambodia: political prisoner releases just a start*, 16 November 2021; <https://www.hrw.org/news/2021/11/16/cambodia-political-prisoner-releases-just-start>

Cambodia-Vietnam border.<sup>92</sup> He was accused of inciting social disorder and undermining the authority of the Cambodian Border Affairs Committee. Chhun testified that his statement simply asked the Prime Minister to look into the issue after he heard about the matter in a *Radio Free Asia* broadcast and then personally visited the border communities. Two other activists, Sar Kanika and Ton Nimol, were also charged, tried, and convicted of “incitement to commit a felony” alongside Chhun, despite not being involved in the visits or the statement. Both Sar Kanika and Ton Nimol had demonstrated in support of Chhun’s release following his arrest. In August 2021, Rong Chhun was convicted and sentenced to 24 months in prison. Sar Kanika and Ton Nimol were each sentenced to serve 20 months in prison. The three human rights defenders were also ordered to pay fines individually and to jointly pay the exceptionally high amount of 400 million riel (US\$100,000) in damages. In November 2021, all three convictions were upheld but portions of each activist’s sentence were suspended.<sup>93</sup> In November 2021, all three were released on probation.

31. In the last five years, the government has frequently used online surveillance and criminal prosecutions to repress freedom of expression online.<sup>94</sup> Vague provisions of the Criminal Code such as “incitement to commit a felony” and “public insult,” which have long been arbitrarily used against opponents and critics, have increasingly been used to silence online criticism and harass activists on social media.<sup>95</sup> In response to the CCPR’s questions about reports of blocked dissenting content, intimidation of activists, and criminal charges related to online content, the government made the blanket assertion that “there is no violation of freedom of expression on the Internet.”<sup>96</sup> Numerous well-publicized cases of arrests, detentions, and prosecutions of individuals on the basis of their online activities starkly contradict this statement and demonstrate the arbitrary nature of these arrests and detentions, as the government labels any dissent as “fake news.”
32. A local human rights organization has documented the arrests of 158 Cambodians in 2020 alone on the basis of their online expression.<sup>97</sup> Kong Raiya, a former CNRP activist, was arrested in July 2019 along with three of his family members after he advertised in a Facebook post that he was selling t-shirts featuring the image of murdered political commentator Kem Ley, as well as the number of a taxi that could bring people to Phnom Penh to participate in a three-year anniversary memorial of Kem Ley.<sup>98</sup> In June 2020, Kong Raiya was convicted *in absentia* of “incitement to commit a felony” and given a two-year suspended prison sentence.<sup>99</sup>
33. Throughout the COVID-19 pandemic, the Cambodian government has continued to arbitrarily arrest and prosecute those critical of its actions, declaring that “crooks have taken this

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<sup>92</sup> OHCHR, *Cambodia: UN experts condemn conviction of trade union leader, systematic crackdown on human rights defenders*, 24 August 2021; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27401&LangID=E>

<sup>93</sup> RFA, *Cambodian authorities release labor union leader in surprise move*, 12 November 2021; <https://www.rfa.org/english/news/cambodia/rong-chhun-11122021154127.html>

<sup>94</sup> LICADHO, *Status Update: Harassment on Social Media in Cambodia*, 2021; <https://www.licadho-cambodia.org/reports.php?perm=235>

<sup>95</sup> *Ibid.*

<sup>96</sup> Cambodia’s Replies to List of Issues, para. 89.

<sup>97</sup> LICADHO, *Status Update: Harassment on Social Media in Cambodia*, 2021; <https://www.licadho-cambodia.org/reports.php?perm=235>

<sup>98</sup> ABA, *Trial Observation Report: Cambodia v. Kong Raiya*, 20 November 2020; [https://www.americanbar.org/groups/human\\_rights/reports/fair\\_trial\\_report\\_cambodia\\_kong\\_raiya/#:~:text=On%20July%202011%2C%202019%2C%20Mr,one%20to%20four%20million%20riels](https://www.americanbar.org/groups/human_rights/reports/fair_trial_report_cambodia_kong_raiya/#:~:text=On%20July%202011%2C%202019%2C%20Mr,one%20to%20four%20million%20riels). Soung Neakpaon, a former member of Kem Ley’s youth group, was also arrested for the in-person rather than online exercise of his right to freedom of expression.

<sup>99</sup> ABA, *Trial Observation Report: Cambodia v. Kong Raiya*, 20 November 2020; [https://www.americanbar.org/groups/human\\_rights/reports/fair\\_trial\\_report\\_cambodia\\_kong\\_raiya/#:~:text=On%20July%202011%2C%202019%2C%20Mr,one%20to%20four%20million%20riels](https://www.americanbar.org/groups/human_rights/reports/fair_trial_report_cambodia_kong_raiya/#:~:text=On%20July%202011%2C%202019%2C%20Mr,one%20to%20four%20million%20riels)

opportunity to fabricate information [...] with the intention of causing insecurity.”<sup>100</sup> The extreme arbitrariness of the arrests and detentions of government critics are exemplified by the case of news outlet *TVFB* journalist Sovann Rithy, who was arrested in April 2020 after he posted on his Facebook page Prime Minister Hun Sen’s own words from a speech.<sup>101</sup> The government stated that because Sovann Rithy used an excerpt from the speech, he “misled the public over the government’s measures and created chaos on social security.”<sup>102</sup> *TVFB* was stripped of its broadcasting license, and in October 2020 Rithy was tried and convicted on charges of “incitement to commit a felony.” He was given a five-year suspended prison sentence. *TVFB*’s license has not been restored. In December 2020, Ny Nak, a chicken farmer, was arrested for allegedly mocking Prime Minister Hun Sen after the farmer joked on Facebook that he would put masks on his chickens if they had the flu. In August 2021, Ny Nak was convicted on charges of “public insult” and “incitement to commit a felony” for his jest and sentenced to 18 months in prison.<sup>103</sup>

34. On many occasions, the government reached beyond Cambodia’s borders to punish those who expressed dissenting opinions online. On 9 November 2021, Thai authorities arrested and deported two Cambodians, Voeurn Veasna and Voeung Samnang, who had been granted refugee status by the UN High Commissioner for Refugees on the basis of their well-founded fears of persecution in Cambodia, in a widely reported and condemned violation of the international norm on *non-refoulement*.<sup>104</sup> The arrests and deportations were the latest incidents in a series of forcible repatriations suggesting mutual cooperation between the Thai and Cambodian governments in pursuing dissidents. Both men were charged with “incitement to commit a felony” in Cambodia. Both Voeurn Veasna and Voeung Samnang had used Facebook accounts to frequently criticize the Cambodian government and Prime Minister Hun Sen, and Hun Sen publicly called for Voeurn Veasna’s arrest after he posted a critical poem on the Prime Minister’s Facebook page in October 2021.<sup>105</sup>
35. The government has also used social media to discredit its critics and, in some cases, lay the foundations for criminal charges against them. In June 2020, videos leaked through fake Facebook profiles falsely alleged that Venerable Loun Sovath, a prominent land rights activist Buddhist monk, had broken his vow of celibacy.<sup>106</sup> Loun Sovath was defrocked, fled the country, and was later charged with rape. An investigation by the *New York Times* uncovered evidence that the Cambodian government’s propaganda arm, the Press and Quick Reaction Unit under the Council of Ministers, was linked to the creation and posting of the videos.<sup>107</sup>
36. New and pending legislation, including the authorization of a National Internet Gateway set to take effect 16 February 2022, is likely to increase the government’s control over digital civic space and grant it broad, unrestricted powers to conduct surveillance of users and control access to information ahead of the 2022 commune elections and the 2023 general election. On

<sup>100</sup> Cambodia’s Replies to List of Issues, para. 58.

<sup>101</sup> LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018–20*, 2020; <https://www.licadho-cambodia.org/reports.php?perm=233>

<sup>102</sup> Cambodia’s Replies to List of Issues, para. 59.

<sup>103</sup> VOD, *19-month jail sentence for ‘chicken’ commentary mimicking Hun Sen*, 19 August 2021; <https://vodenglish.news/18-month-jail-sentence-for-chicken-commentary-mimicking-hun-sen/>

<sup>104</sup> Human Rights Watch, *Thailand: Cambodian refugees forcibly returned*, 12 November 2021; <https://www.hrw.org/news/2021/11/12/thailand-cambodian-refugees-forcibly-returned>

<sup>105</sup> RFA, *Thai authorities arrest, deport two Cambodian opposition activists*, 10 November 2021; <https://www.rfa.org/english/news/cambodia/cnpr-activists-deported-11102021171509.html>

<sup>106</sup> LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018–20*, 2020; <https://www.licadho-cambodia.org/reports.php?perm=233>

<sup>107</sup> New York Times, *Threatened by Facebook disinformation, a monk flees Cambodia*, 23 August 2020; <https://www.nytimes.com/2020/08/23/world/asia/cambodia-facebook-disinformation.html>

16 February 2021, the government issued a sub-decree that authorized the establishment of a National Internet Gateway. Pursuant to the sub-decree, the National Internet Gateway requires all internet traffic to pass through a state-owned data management center by 16 February 2022 and requires the Gateway operator to block or disconnect all network connections that affect “safety, national revenue, social order, dignity, culture, traditions and customs.”<sup>108</sup> None of the key terms for blocking or disconnecting connections are defined. The list of grounds for blocking or disconnecting connections is broad, overly vague, and inconsistent with the permissible restrictions on the right to freedom of expression under the ICCPR. Such provisions of the sub-decree raise concerns that the government could arbitrarily use its powers of censorship to block websites and social media it deems dissenting, critical, or otherwise a threat to the ruling party.<sup>109</sup>

37. The government’s expanding control over the Internet is a devastating development for the right to freedom of expression. Social media provides Cambodians with vital digital civic space to access information and express their opinions, as traditional media in Cambodia is highly restricted or under the outright control of the government.<sup>110</sup>

Recommendations:

- *Urge the government to repeal the sub-decree on the National Internet Gateway and dismantle any gateway infrastructure.*
- *Urge the government to halt unlawful surveillance of online associations and rescind orders requiring ISPs to track, store, or share users’ online activity.*
- *Call on the government to repeal vague and overbroad provisions and unlawful restrictions in the 2015 Law on Telecommunications, the 2018 Inter-Ministerial Prakas No. 170, and any other implementing legal authority.*
- *Call on the government to dissolve the Press and Quick Reaction Unit and promptly establish an independent complaint mechanism to conduct prompt, thorough, transparent, and effective investigations into all allegations of false information created and/or posted by the Unit.*

**Unlawful restrictions on freedom of peaceful assembly (Article 21)**

38. Since the previous review of Cambodia by the CCPR, violations of the right to the right to freedom of peaceful assembly have continued. The sweeping infringements of the right to freedom of peaceful assembly during this period do not comply with any of the restrictions that are permissible under Article 21 of the Covenant. For example, Rong Chhun’s arrest in July 2020 [See above, *para.* 30] set off a wave of peaceful demonstrations calling for his release, which the government counteracted with unnecessary and disproportionate force, further arrests, and criminal charges. More than 12 people were arrested in the period of a few weeks for exercising their rights to freedom of expression and peaceful assembly, including Choeun Daravy who was dragged by her hair into a van.<sup>111</sup> In October 2021, 14 social, political, and youth activists who participated in peaceful assemblies were convicted on charges of

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<sup>108</sup> Sub-decree no. 23 on Establishment of National Internet Gateway, Article 6, 16 February 2021 (unofficial English translation); [https://digitalreach.asia/wp-content/uploads/2021/06/Cambodia\\_NIG\\_English.pdf](https://digitalreach.asia/wp-content/uploads/2021/06/Cambodia_NIG_English.pdf)

<sup>109</sup> LICADHO, et al., *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; <https://equitablecambodia.org/website/article/3-2416.html>

<sup>110</sup> LICADHO, *Status Update: Harassment on Social Media in Cambodia*, 2021; <https://www.licadho-cambodia.org/reports.php?perm=235>

<sup>111</sup> LICADHO et al., *Joint Statement, The Cambodian government must stop beating and arresting peaceful protesters*, 18 August 2020; <https://www.licadho-cambodia.org/pressrelease.php?perm=461>

“incitement to commit a felony” or “instigating incitement”<sup>112</sup> and sentenced to prison terms of 20 months, with portions of their sentences suspended.<sup>113</sup>

39. Labor strikes have also been disrupted and excessive force has been used in arresting workers. On 18 December 2021, the Labor Rights Supported Union of Khmer Employees of Naga World (LRSU) commenced a peaceful strike in order to demand Naga World reinstate 365 union leaders and members who had been fired earlier in the year.<sup>114</sup> On the morning of 18 December, the Phnom Penh Municipal Court issued a provisional ruling that the strike was illegal and workers were prohibited from proceeding with the strike. The strike continued and in the following weeks, 29 workers and unionists, including a pregnant woman, were arrested, some by excessive force. In January 2022, nine LRSU leaders, including union president Chhim Sithar were charged with “incitement to commit a felony” and, as of 31 January 2021, were awaiting trial.<sup>115</sup> Eight of the charged unionists were in pre-trial detention.
40. Unnecessary and disproportionate force has often been used by the authorities to shut down protests. In its replies to the Lol, the government stated that security forces’ use of live ammunition against land protesters in Sihanouk Province in 2019 was in self-defense.<sup>116</sup> In fact, the repeated shooting of live ammunition at protesters armed with sticks and rocks, resulting in the critical wounding of one individual, was an extreme, disproportionate, and unnecessary act with no regard for human life<sup>117</sup> or international standards on the use of force and firearms.<sup>118</sup> In June 2021, Royal Cambodian Armed Forces soldiers fired live ammunition into a crowd of land protesters in Kandal Province. One man was shot in the shoulder and hospitalized.<sup>119</sup> In September 2021, police in Kandal Stoeng District, Kandal Province, used water cannon, smoke grenades, and fired their guns into the air to disperse villagers throwing rocks during a protest over the taking of local land for construction of a new international airport.<sup>120</sup>

#### New repressive laws grant authorities unchecked powers

41. In its reply to the Lol, the government stated that it had no intention to revise ambiguous provisions of the Criminal Code, such as those related to the offenses of defamation, public insult, incitement to commit a felony, and insult,<sup>121</sup> which have been routinely and arbitrarily used to punish those who freely expressed or demonstrated criticism against the government. In addition, the government has continued to draft and adopt broad and vague legislation that grants the authorities unchecked powers to infringe on fundamental rights.

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<sup>112</sup> Criminal Code of the Kingdom of Cambodia art. 28, 494–95 (2009).

<sup>113</sup> OHCHR, *Cambodia: Stop using courts to persecute people who stand up for human rights—UN experts*, 2 November 2021; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27745&LangID=E>. Four other individuals were convicted *in absentia* on charges of “incitement to commit a felony” or “instigating incitement” and sentenced to two years in prison with no suspended sentence.

<sup>114</sup> CENTRAL et al., *Joint Statement on Strike Action by NagaWorld Employees*, 20 December 2021; <https://www.central-cambodia.org/archives/5585>

<sup>115</sup> CCHR et al., *Joint Statement, Government must release NagaWorld unionists and respect labour rights*, 4 January 2022; [https://cchrcambodia.org/index\\_old.php?title=Government-Must-Release-NagaWorld-Unionists-and-Respect-Labour-Right&url=media/media.php&p=press\\_detail.php&prid=870&id=5](https://cchrcambodia.org/index_old.php?title=Government-Must-Release-NagaWorld-Unionists-and-Respect-Labour-Right&url=media/media.php&p=press_detail.php&prid=870&id=5)

<sup>116</sup> Cambodia’s Replies to List of Issues, para. 66.

<sup>117</sup> Reuters, *Cambodia orders rare investigation of shooting in land protest*, 31 January 2019, <https://www.reuters.com/article/us-cambodia-landrights-crime-idUSKCN1PP1IW>

<sup>118</sup> OHCHR, *Guidance on Less-Lethal Weapons in Law Enforcement* (2020), at para. 2.8–2.10, 6.3.1, 6.3.4.

<sup>119</sup> CamboJA News, *Soldiers shoot one man in land dispute in Kandal province*, 3 June 2021, <https://cambojanews.com/soldiers-shoot-one-man-in-land-dispute-in-kandal-province/>

<sup>120</sup> VOD, *Violence, around 30 arrests at new Phnom Penh airport development*, 12 September 2021; <https://vodenglish.news/violence-around-30-arrests-at-new-phnom-penh-airport-development/>

<sup>121</sup> Cambodia’s Replies to List of Issues, para. 61; Criminal Code of the Kingdom of Cambodia, Article 305 (defamation), Article 307 (public insult), Articles 494–495 (incitement to commit a felony), Article 502 (insult).

42. In March 2021, the government hurriedly passed the Law on Preventive Measures against the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases (March 2021 COVID Law).<sup>122</sup> Similar to the State of Emergency Law [See above, *para. 18*], the March 2021 COVID Law grants the government largely unchecked powers to restrict or prohibit travel and access to places, meetings, and gatherings.<sup>123</sup> The March 2021 COVID Law presents an even more wide-reaching threat than the State of Emergency Law, as its delegated authority is not restricted to a declared state of emergency but can be exercised pursuant to a determination by the Ministry of Health regarding any threat from “severe and dangerous and contagious” diseases.<sup>124</sup> The critical terms “severe” and “dangerous” diseases are not defined in the law, there are no time limits on restrictive measures, and the law does not require periodic review on the necessity of any enacted measures.<sup>125</sup> In addition, the law imposes draconian penalties for violators, ranging from fines to imprisonment from six months to 20 years for “intentional” transmission of COVID-19 or other severe diseases “by an organized group of people.”<sup>126</sup> The ambiguity in the definition for this offense presents a risk of abuse by authorities seeking to punish or deter opponents and critics for exercising their rights to freedom of assembly or freedom of association.
43. Between March and October 2021, more than 700 people were arbitrarily arrested under the March 2021 COVID Law.<sup>127</sup> There were also reports of the law being abused to order communities involved in land disputes into “isolation” under the guise of seeking to prevent the spread of COVID-19. In August 2021, two land community representatives in Svay Rieng Province were charged with “disobeying administrative measures” and “obstruction” under the March 2021 COVID Law after their community protested against pressure from local authorities to accept inadequate compensation for the acquisition of their land for the construction of a canal.<sup>128</sup>
44. New and draft laws also target activist monks and other religious figures, placing unlawful and unnecessary restrictions on their rights to freedom of expression, freedom of association, and freedom of peaceful assembly, as well as the right to freedom of thought, conscience and religion. Cambodian Buddhist monks have a long history of involvement in environmental and social activism.<sup>129</sup> In December 2021, a new *prakas* was issued to ban monks from participating in demonstrations and labor strikes “affecting security and public order” under threat of being defrocked.<sup>130</sup> In addition, a new draft Law on Religions contains similarly broad and repressive provisions. Article 35 of the draft law prohibits “religious priests” from joining in demonstrations and labor strikes “against the public authorities and the Royal Government”

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<sup>122</sup> Law on Preventive Measures against the Spread of COVID19 and Other Severe and Dangerous Contagious Diseases, Royal Kram NS/RKM/0321/004 (2021) (unofficial English translation) [hereinafter March 2021 COVID law].

<sup>123</sup> March 2021 COVID Law, Article 4.

<sup>124</sup> OHCHR, *Communication to the Royal Government of Cambodia from the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the independence of judges and lawyers*, OL KHM 4/2021, 31 Mar. 2021; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26266>

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

<sup>126</sup> March 2021 COVID Law, Articles 5, 9–11.

<sup>127</sup> Al Jazeera, *Cambodia ‘bleeding’ as space for civil society shrinks*, 3 November 2021;

<https://www.aljazeera.com/news/2021/11/3/cambodia-bleeding-as-space-for-civil-society-shrinks>

<sup>128</sup> LICADHO, “Two community reps arrested, charged over COVID law,” 28 Aug. 2021, <https://www.licadho-cambodia.org/flashnews.php?perm=290>

<sup>129</sup> VOD, *Legacy of resistance being erased with new law, say activist monks*, 11 January 2022;

<https://vodenglish.news/legacy-of-resistance-being-erased-with-new-law-say-activist-monks/>

<sup>130</sup> Phnom Penh Post, *Congress issues prakas banning monks from protest participation*, 22 December 2021; <https://phnompenhpost.com/national/congress-issues-prakas-banning-monks-protest-participation>



and carries a sentence of up to five years in prison.<sup>131</sup> Article 39 dictates broad authority to punish “[a]ny religious leadership or priest” who “acts against decisions of the authorities at all levels” with fines and a prison sentence of up to five years. Article 19 specifically bans “religious priests” from engaging in or “serving” political activities.

#### Recommendations:

- *Call on the government to revise the Criminal Code, in particular Articles 305–308, 453, 437-bis, and 494–95, to remove overly broad and vague provisions that are subject to abuse and to bring the Code into conformity with international standards.*
- *Urge the government to amend overly broad and vague provisions of the March 2021 COVID Law and bring it into conformity with international standards.*
- *Call on the government to immediately stop the police and military from using force on peaceful demonstrators, and to guarantee prompt, independent, impartial, and transparent investigations into all incidents involving the use of unnecessary and disproportionate force against protesters.*
- *Urge the government to adopt guidance on the use of force and firearms that complies with international standards and ensure thorough training in the policing of assemblies by qualified experts for all security forces.*
- *Call on the government to rescind the December 2021 announcements banning monks from participating in demonstrations and strikes.*
- *Call on the government to amend the draft Law on Religions to remove restrictions on exercising the rights to freedom of expression, peaceful assembly, and association.*

#### **Unlawful restrictions on freedom of association (Article 22)**

45. The government’s vague and broad legal restrictions on the right to freedom of association have generally exceeded those permitted by Article 22 of the ICCPR.<sup>132</sup> The government has attempted to justify restrictions by labelling any activism as “threats to national security” or “public order” with no consideration of proportionality or whether the action is necessary to a democratic society.
46. For example, the Law on Associations and Non-governmental Organizations (LANGO), promulgated in August 2015, remains unchanged and continues to restrict the right to freedom of association.<sup>133</sup> The widely criticized law, which requires mandatory registration of associations (broadly defined) with the Ministry of Interior, continues to impose invasive and burdensome reporting requirements on registered organizations.<sup>134</sup> In its reply to the Lol, the government submitted that LANGO was not incompatible with the ICCPR, without providing any explanation for this claim.<sup>135</sup> The government also stated that it had met several times with civil society organizations to discuss amending the law but an agreement had not yet been

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<sup>131</sup> Draft Law on Religions art. 35 (Dec. 2021 ver.) (unofficial English translation).

<sup>132</sup> ICCPR, Article 22(2); Human Rights Comm., Communication No. 1993/2010, *Mikhailovskaya and Volchek v. Belarus*, ¶ 7.3, CCPR/C/111/D/1993/2010 (adopted July 2014).

<sup>133</sup> LICADHO, *The Fight for Freedom: Attacks on Human Rights Defenders 2018–2020*, December 2020; <https://www.licadho-cambodia.org/reports.php?perm=233>; OHCHR, *A Human Rights Analysis of the Law on Associations and Non-governmental Organizations*, 4 August 2015 (expressing concerns that the Article 9 prohibition on activities by unregistered organisations violates the right to freedom of association and would impair rights to “seek, receive and use funding and other resources”).

<sup>134</sup> Law on Associations and Non-governmental Organizations (LANGO), Royal Kram No. 0415/010 (13 July 2015) (unofficial English translation).

<sup>135</sup> Cambodia’s Replies to List of Issues, para. 69.

reached.<sup>136</sup> The government’s statements elide the fact that the drawn out discussions and lack of progress show simply that the government has no will to amend LANGO. Moreover, the law has served as a tool for the government to brand unregistered organizations as “illegal” in an attempt to delegitimize and stigmatize their activities. For example, Mother Nature Cambodia, which de-registered itself under pressure in 2017, and the unregistered youth group Khmer Thavrak, are both deemed “illegal,” providing the pretext for the government to interfere with their activities and arrest activists.<sup>137</sup> For example, in September 2020, the Ministry of Interior issued a press release asserting that Mother Nature Cambodia and Khmer Thavrak had been carrying out “illegal activities” because they were not registered as required under LANGO, and warning other citizens not to take part in their activities.<sup>138</sup> The government has also used LANGO as a pretext to regularly deny the environmental conservation network Prey Lang Community Network (PLCN) access to forests and wildlife sanctuary areas as it is not a registered association, thus impeding the PLCN’s critical monitoring of illegal logging and corruption.<sup>139</sup>

#### Recommendations:

- *Call on the government to amend LANGO and bring it into conformity with relevant international standards.*

#### **Land dispossession of indigenous peoples (Articles 26 and 27).**

47. In its reply to the Lol, the government stated that indigenous communities were “relocated” only when it was “necessary for national interest or urgent national needs.”<sup>140</sup> The government further cited its legal framework for land registration and land use rights for indigenous peoples to guarantee their rights to own and occupy traditional lands.<sup>141</sup> The government’s response to the CCPR overlooks several critical and systemic problems that have been dispossessing indigenous peoples of their land and thus infringed upon their rights to enjoy their own culture, profess, and practice their own religion and use their own language.
48. Research published by local nongovernmental organizations has revealed systemic flaws in an insufficiently regulated and oversaturated microloan market that has fueled predatory lending and abusive collection practices by microfinance credit officers.<sup>142</sup> Microfinance credit officers pressure borrowers—many of whom are illiterate or struggle to read Khmer as it is not their mother tongue—to take out-sized loans secured with land titles. Struggling under the enormous debt burden, borrowers have been pressured into selling their land and, as a result, have suffered forced migration, eating less food, and child labor.<sup>143</sup> When borrowers fall behind on their repayments, microfinance credit officers have regularly pressured them into foregoing the legal process for loan default and coerced them into selling their land through private sale. While the formal legal process for default moves slowly through the courts, it would

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<sup>136</sup> Cambodia’s Replies to List of Issues, para. 70.

<sup>137</sup> Amnesty International, *Report 2020/21: The State of the World’s Human Rights*, 7 April 2021; <https://www.amnesty.org/en/countries/asia-and-the-pacific/cambodia/report-cambodia/>

<sup>138</sup> Phnom Penh Post, *Ministry: no unlawful protests*, 8 September 2020; <https://www.phnompenhpost.com/national/ministry-no-unlawful-protests>

<sup>139</sup> Amnesty International, *Report 2020/21: The State of the World’s Human Rights*, 7 April 2021; <https://www.amnesty.org/en/countries/asia-and-the-pacific/cambodia/report-cambodia/>

<sup>140</sup> Cambodia’s Replies to List of Issues, para. 90.

<sup>141</sup> Cambodia’s Replies to List of Issues, para. 91.

<sup>142</sup> LICADHO, *Collateral Damage: Land Loss and Abuses in Cambodia’s Microfinance Sector*, 2019; <https://www.mficambodia.com/reports/Report-CollateralDamage-2019-en.pdf>

<sup>143</sup> LICADHO, *Equitable Cambodia, Right to Relief*, June 2021); <https://www.mficambodia.com/reports/Report-RightToRelief-2021-en.pdf>

nonetheless afford the borrowers an opportunity to challenge the legal validity of the underlying loan contract and, at minimum, ensure a fair price for their land.

49. Collective land titles are granted to indigenous communities precisely to ensure the community retains control over the traditional lands and resources that are critically tied to their culture, spiritualism, and livelihoods. Collective land titles cannot be sold or used as collateral. However, the informal but legally recognized process, known as “soft titling” in Cambodia, can undercut these protections. In “soft titling” local authorities grant individual land titles that are not registered at the national level. In indigenous communities, soft titles can thus be granted to overlap with communal land.<sup>144</sup> When an indigenous borrower falls behind in repaying microloan that is secured with a soft title, the microfinance credit officers force a private sale of the land under soft title, which is in fact protected, indigenous communal land. The indigenous community is thus surreptitiously dispossessed of its land and culture.
50. The dispossession and degradation of indigenous peoples’ lands has had significant, negative impacts on their financial situations, education, and health.<sup>145</sup> Land tenure security is already under threat in Cambodia. The land rights of indigenous peoples have been “constantly violated” and indigenous land has been frequently granted to private interests for infrastructure and investment projects.<sup>146</sup> Civil society organizations have expressed concern that the forced displacement of indigenous peoples from their lands is “extinguishing them as distinct groups.”<sup>147</sup>
51. The practice of requiring indigenous peoples’ land as collateral chips away at traditional communities a case at a time but also drives larger divisions that threaten their cultures. Some indigenous peoples are incentivized to leave their communal land titles and seek individual land titles in order to secure loans.<sup>148</sup> The increasing financialization of land thus erodes the historic communal land tenure networks that have supported indigenous communities’ traditions through the years and presents an existential threat to their survival.<sup>149</sup> The government has repeatedly failed to investigate and address abuses in the microfinance sector, thus enabling the predatory lending practices and dispossession of indigenous peoples of their land to continue unabated.

#### Recommendations:

- *Call on the government to require the return of all land titles in indigenous communities that are currently held as collateral for microloans, and to require stricter enforcement of prohibitions against accepting indigenous land titles as collateral.*

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<sup>144</sup> Mongabay, *Cambodia puts its arduous titling process for indigenous land up for review*, 15 April 2021;

<https://news.mongabay.com/2021/04/cambodia-puts-its-arduous-titling-process-for-indigenous-land-up-for-review/>

<sup>145</sup> Cambodia Indigenous Peoples Alliance (CIPA) & Asia Indigenous Peoples Pact (AIPP), et al., *Submission for the 3<sup>rd</sup> Cycle of Universal Periodic Review of Cambodia on the situation of Indigenous Peoples in Cambodia*, December 2018;

[https://www.upr-info.org/sites/default/files/document/cambodia/session\\_32\\_-\\_january\\_2019/js1\\_upr32\\_khm\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/js1_upr32_khm_e_main.pdf)

<sup>146</sup> International Work Group for Indigenous Affairs (IWGIA) & AIPP, *Joint Submission to the UN Human Rights Council on the human rights situation of Indigenous Peoples in Cambodia*, 13 September 2020; <https://www.iwgia.org/en/global-governance-cat/3844-hrc45-cambodia.html>

<sup>147</sup> *Ibid.*

<sup>148</sup> Southeast Asia Globe, *Indigenous Cambodians choose between credit and communal land*, 11 November 2021; <https://southeastasiaglobe.com/cambodians-credit-communal-land-titles/>

<sup>149</sup> ILO Convention No. 169 on Indigenous and Tribal Peoples at Preamble (1989) (“noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded”).

- *Call on the government to authorize an independent investigation into violations of fundamental rights of indigenous peoples caused by microloans.*
- *Urge the government to establish bailout funds to provide support to overburdened microloan borrowers, with a priority to indigenous peoples.*