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Agenda items 2 and 10

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Technical assistance and capacity-building

## Situation of human rights in Cambodia

### Report of the Special Rapporteur on the situation of human rights in Cambodia\*

#### *Summary*

The Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith, provides an update on the human rights situation in Cambodia and analyses the human rights implications of the ongoing coronavirus disease (COVID-19) pandemic. The socioeconomic impact is particularly concerning. Restrictions in relation to democratic and civic space and key issues expressed in previous reports remain unresolved. The Special Rapporteur provides recommendations to address a number of human rights concerns.

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\* The document is submitted late due to a technical oversight in the submission process.



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## I. Introduction

1. Submitted pursuant to Human Rights Council resolution 42/37, the present report contains an update on the situation of human rights in Cambodia. During the period under review (June 2019–June 2020), the Special Rapporteur continued to monitor the human rights situation in Cambodia. Owing to the coronavirus disease (COVID-19) pandemic and other operational reasons related to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur was not able to undertake any field missions after the renewal of her mandate in September 2019. The Government of Cambodia could not accommodate proposed mission dates in the last quarter of 2019. A scheduled visit in April 2020 was postponed, at the request of the Government, owing to the COVID-19 pandemic. On 24 June, the Government noted that a proposed rescheduled mission in July was not viable owing to the ongoing pandemic; videoconferencing alternatives have been scheduled. In addition, all official missions have been prohibited in the current circumstances.

2. The Special Rapporteur collected information pertaining to the human rights situation in Cambodia through information received from and documents published by the Government; reports issued by United Nations agencies in Cambodia; and information received from international non-governmental organizations, civil society and other stakeholders. The Special Rapporteur has endeavoured to gather, corroborate and verify information, noting that field missions were not possible under the exceptional circumstances. Detailed comments on the present report, technical information and statistical updates have been provided by the Government of Cambodia.

3. The Special Rapporteur remains encouraged by the Government's willingness to respond to formal communications issued by the Special Rapporteur and thematic mandate holders and to annual reports, and welcomes these opportunities for increasing dialogue and deepening understanding.

## II. Context

4. During the interactive dialogue in September 2019, many States raised the issue of civic and democratic space in the country. Accordingly, this issue will be addressed first.

5. Civic and democratic space has continued to shrink in Cambodia, with a lack of any significant shift towards political reconciliation and restoration of civil and political rights. Cambodia remains, in effect, a one-party State with the ruling party, the Cambodian People's Party, holding all lower National Assembly seats and virtually all Senate seats. The Cambodian People's Party also holds most of the local-level councillor positions, following the 2017 Supreme Court decision, which dissolved the former opposition party, the Cambodia National Rescue Party. The National Election Committee then redistributed the seats the Cambodia National Rescue Party had won in the June 2017 commune elections in accordance with a recently adopted law.<sup>1</sup>

6. The Special Rapporteur welcomes the release of Kem Sokha, former president of the Cambodia National Rescue Party, from de facto house arrest in November 2019. He was arrested and detained in September 2017 and held until September 2018, when he began living under de facto house arrest, subject to a range of court-imposed restrictions.<sup>2</sup> His trial commenced in January 2020 on charges of treason and conspiracy with foreign States, which carries a custodial sentence of 15 to 30 years if convicted by the court. On 17 January 2020, the Special Rapporteur, together with other special procedure mandate holders, expressed concern over the trial, noting that the entire criminal process had been beset by irregularities.<sup>3</sup> The trial was suspended indefinitely in March as a result of the COVID-19 pandemic.

<sup>1</sup> See A/HRC/39/73/Add.1.

<sup>2</sup> OHCHR, communication AL KHM 3/2019, dated 25 June 2019. Available at <http://spcommreports.ohchr.org>.

<sup>3</sup> [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25472&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25472&LangID=E).

7. Further to her oral report to the Human Rights Council in September 2019, the Special Rapporteur continued receiving information on arrest and detention, harassment, intimidation and curtailment of lawful activities of large numbers of people formerly associated with the Cambodia National Rescue Party.<sup>4</sup> The situation intensified in the lead up to Cambodia Independence Day on 9 November 2019, when Sam Rainsy, former president of the Cambodia National Rescue Party, had announced he would return to Cambodia from his self-imposed exile.

8. On 8 November, the Special Rapporteur expressed grave concern about the heightened political tensions across the country, calling publicly on the Government to respect the rights to freedom of opinion, expression and assembly. With several former Cambodia National Rescue Party supporters prevented from travelling to Cambodia, and amid increasingly inflammatory rhetoric from Mr. Rainsy and Prime Minister Hun Sen, the Special Rapporteur called on the Government and all parties to reduce escalations in tensions and seek dialogue in a peaceful environment that allows for diverging political voices to be expressed, and to avoid any further restrictions on fundamental freedoms that are necessary for the enjoyment of human rights by all.<sup>5</sup> Mr. Rainsy did not return to Cambodia; he remains subject to several convictions and outstanding charges for a number of offences.

9. The Special Rapporteur received credible information concerning new measures taken against political opponents and members of the Cambodia National Rescue Party that involved revoking their travel documents. On 7 November 2019, the Ministry of Foreign Affairs and International Cooperation sent a notice to all diplomatic missions informing them that 12 Cambodian passports were declared null and void, leaving some with no travel documents. The 12 individuals were all senior members of the Cambodia National Rescue Party. On 20 November 2019, additional passports of individuals linked to the Party were revoked.

10. In the lead up to November 2019, around 70 former Cambodia National Rescue Party associates and members, who had been arrested over the previous months and were considered to be supporters of Mr. Rainsy, were released from detention. However, the Special Rapporteur is concerned to be informed that 75 persons currently remain released under judicial supervision – that is, neither detained nor charged. The Special Rapporteur reiterated that such judicial supervision, which can be indefinite, with charges resurrected years after the initial arrest, is inconsistent with the country's human rights obligations.<sup>6</sup>

11. The Special Rapporteur continued to receive subsequent reports of arrests and harassment of, and threats to, former Cambodia National Rescue Party members and supporters. Between 1 June 2019 and 1 June 2020, OHCHR recorded 156 individuals associated with the Party who had been arrested, with 14 remaining in detention. Under the Criminal Code, those 14 individuals face charges including spreading of false information (art. 425), incitement to commit a felony (art. 495) and plotting against the Government (art. 453).

12. In this respect, the Special Rapporteur recalls the Government's acceptance of the recommendation made by Finland during the universal periodic review to cease all kinds of harassment of and arbitrary interference with political opposition,<sup>7</sup> and she encourages urgent progress towards that aim. She further encourages the authorities to adhere to international human rights norms and standards and to release detainees if their charges are not confirmed. She further recommends that the Criminal Code be amended accordingly.

13. The events of 2019 demonstrate the apparent fragile stability in the country. The Special Rapporteur has expressed concern repeatedly over aggressive rhetoric, which does not allow movement beyond the current political situation to enable the creation of a spirit of dialogue and reconciliation.<sup>8</sup> Despite tentative indications of an opening for dialogue

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<sup>4</sup> OHCHR, communications JAL KHM 1/2019, dated 12 April 2019, and JAL KHM 2/2019, dated 4 June 2019. Available at <http://spcommreports.ohchr.org>.

<sup>5</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25260&LangID=E>

<sup>6</sup> A/HRC/42/60, para. 8.

<sup>7</sup> A/HRC/41/17, para. 110.109.

<sup>8</sup> A/HRC/42/60, para. 72.

between political leaders, including the reported meeting of Mr. Sokha with Prime Minister Hun Sen in May 2020, there are few signs of progress.

14. In the plural liberal democracy Cambodia purports to be in terms of the current constitutional framework, respectful opposing views are integral to deepening the understanding of the rights and freedoms in the country. It is imperative that open political dialogue be encouraged in Cambodia in a conciliatory, constructive manner, in order to enable the Government to better address concerns from a broadly representative body of Cambodians.

### **III. Situation of human rights in Cambodia**

#### **A. Civic space and fundamental freedoms**

15. The Special Rapporteur continues to receive reports of restrictions on the activities and lives of civil society actors. In particular, she received reports of restrictions imposed contrary to the guidelines on the implementation of the law on peaceful demonstrations. It should be noted that these concerns are unconnected to the current restrictions on large gatherings, a measure imposed in furtherance of public health, which will be discussed below.

16. The Special Rapporteur reminds the Government that there is a presumption in law in favour of freedom of assembly and association. This reflects the obligations of Cambodia in terms of international human rights law.

17. The Special Rapporteur continues to be concerned at the wide range of Criminal Code and other provisions employed to prosecute those expressing opinions, including online.<sup>9</sup> She welcomes the Government's commitment during the universal periodic review to bring laws, regulations and policies on the freedom of expression, association and public assembly into compliance with the International Covenant on Civil and Political Rights, as recommended by Denmark,<sup>10</sup> and to guarantee freedom of expression for all Cambodians and journalists, including on the Internet, by revising the latest constitutional amendment and the interministerial instruction of May 2018 allowing surveillance of Internet contents, as recommended by France.<sup>11</sup>

18. The Special Rapporteur is also encouraged that the Government supported recommendations by Argentina and Chile during the third cycle of universal periodic review, agreeing to adopt the measures necessary to protect the rights of human rights defenders, trade unionists and journalists<sup>12</sup> and to investigate and punish those responsible for threats and violence against human rights defenders and their families.<sup>13</sup> She looks forward to the implementation of the necessary legal changes that will protect all human rights defenders, trade unionists and journalists and will ensure any threats to and harassment of them and their families are promptly investigated and perpetrators held to account in accordance with the law.

19. However, a number of people who reportedly expressed views on the COVID-19 pandemic have been arrested and detained by authorities. Under the Criminal Code, the charges against them include the spreading of false information (art. 425), incitement to commit a felony (art. 495) and plotting against the Government (art. 453). This practice has led to further self-censorship among journalists, limiting the public's right to access timely and reliable information when needed.

20. Between April and May 2020, the Special Rapporteur was informed that the Government revoked the licences of three media outlets, Facebook-based TVFB and CKVTV, and the Rithysen Radio Station, claiming that the outlets were publishing information that was exaggerated and that contained incitement to violence, provocation to

<sup>9</sup> A/HRC/36/61, paras. 47 and 69 (c).

<sup>10</sup> A/HRC/41/17, para. 110.105.

<sup>11</sup> *Ibid.*, para. 110.81. See also paras. 110.94 and 110.96.

<sup>12</sup> *Ibid.*, para. 110.116.

<sup>13</sup> *Ibid.*, para. 110.115.

commit discrimination and provocation to cause social insecurity and chaos. The comments received from the Government provide further technical and statistical information on media in Cambodia.

21. In July 2019, several special procedures joined an allegation letter concerning the arrests and prosecutions of Kong Raiya and Soung Neakpaon. Both were arrested in connection with activities commemorating the third anniversary of the July 2016 murder of Kem Ley.<sup>14</sup>

22. The alleged offence of Mr. Raiya under the Criminal Code of Cambodia was provocation to commit offence (arts. 494 and 495) occasioned by promoting printed T-shirts featuring writing and an image of Mr. Ley. The Government stated that the activity was aimed at inciting social unrest and hatred.<sup>15</sup> Mr. Raiya was detained from July until November, when he was released on bail, along with a number of other individuals who had been detained over the preceding months. In June 2020, he was convicted and sentenced to two years in prison.

23. Mr. Neakpaon was seeking to commemorate the death of Mr. Ley at the location where he had been fatally shot. According to the Government clarification, Mr. Neakpaon was arrested when he stated that the authorities should look for the killer of Mr. Ley. As an individual had already been convicted in relation to the murder, the Government explained that his statement could mislead the public and erode confidence in the court decision, thereby inciting social unrest.<sup>16</sup>

24. The Government has publicly clarified its understanding of the situation and the circumstances justifying invoking national laws to limit freedom of expression.<sup>17</sup> The Government stated that political discourse and commenting on public affairs with insult, incitement to commit a felony, call for rebellions against a democratically elected government, and the purposeful or unintentional spreading of fake news and disinformation do not equate to freedom of expression and legitimate speech. They can jeopardize the rule of law, human rights and democracy at once and for all.<sup>18</sup> Certainly, as the Government notes, freedom of expression can be limited to preserve public health and order. However, political discourse and commenting on public affairs, even critically, is not in itself sufficient to threaten public health or public order. Criticizing the Government and holding it to account is integral to a democratic society. With no political opposition, the role of civil society and the public to hold the Government to account is ever more crucial. Constructive criticism and the positive joint creation of solutions to identified challenges is important.

25. Great care is required with regard to online content regulation, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has reiterated.<sup>19</sup> The wide range of laws, including criminal laws, which continue to be invoked to limit freedom of expression should be reviewed, in particular when pretrial detention continues to be used extensively, rather than in the exceptional circumstances noted in the Criminal Code. In addition, when arresting people during the current pandemic, the Government should be mindful of the guidance offered by the Working Group on Arbitrary Detention in its Deliberation No. 11, on prevention of arbitrary deprivation of liberty in the context of public health emergencies.<sup>20</sup>

26. The Special Rapporteur is deeply concerned over the recent increase in cases of harassment and criminalization of environmental and land activists. In April 2020, the

<sup>14</sup> OHCHR, communication AL KHM 4/2016, dated 12 July 2016. Available at <http://spcommreports.ohchr.org>.

<sup>15</sup> Government of Cambodia, communication No. 2019/09/328, dated 13 September 2019, in response to OHCHR communication KHM 4/2019. Available at <http://spcommreports.ohchr.org>.

<sup>16</sup> Ibid.

<sup>17</sup> Press release dated 3 June 2020 of the Permanent Mission of Cambodia in Geneva, as reproduced in Fresh News Asia, "Cambodia Mission in Geneva: spread of fake news and disinformation not equivalent to freedom of expression and legitimate speech", 4 June 2020. See also the comments received from the Government, pertaining to paras. 21–23.

<sup>18</sup> Press release dated 3 June 2020 of the Permanent Mission of Cambodia in Geneva, para. 4.

<sup>19</sup> A/HRC/38/35. For a summary, see [www.ohchr.org/Documents/Issues/Expression/Factsheet\\_2.pdf](http://www.ohchr.org/Documents/Issues/Expression/Factsheet_2.pdf).

<sup>20</sup> [www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf](http://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf) (para. 22).

Ministry of Environment warned that it would take legal action against non-governmental organizations that, it said, had used environmental activism as a cover to attack the government.<sup>21</sup> Some examples are the recent cases of Kreung Tola, a forestry activist in Mondulhiri, who had been frequently summoned by the provincial court on charges, including of defamation, public insult and incitement,<sup>22</sup> and the June 2020 arrest and detention of 18 youth activists from the environmental organization Mother Nature.

27. The Special Rapporteur welcomes the decision of the Supreme Court on 18 May 2020, concerning a case of two environmentalists, in which it ordered a retrial, remitting the case to the Court of Appeals on the ground of lack of sufficient evidence to support the criminal charges. Both men had been convicted by the Court of Appeals for violating privacy and attempting to commit a felony under the Criminal Code. They were sentenced to one year of imprisonment and fined 1 million riel (approximately \$243). The Special Rapporteur has previously raised concerns over evidentiary requirements in law and the evidentiary standards used in courts in Cambodia.<sup>23</sup>

28. The Special Rapporteur encourages the Government to work more closely with civil society organizations, irrespective of their views and areas of operation. Working more closely with civil society organizations helps deepen national understanding of human rights issues, enhance accountability of the Government and resolve entrenched differences.

29. Initial efforts undertaken by the Ministry of Interior<sup>24</sup> to discontinue enforcement of its October 2017 directive requiring civil society organizations to give three days' notice prior to planned activities could be developed further under an appropriate legal and policy framework. Such a plan should also ensure the normalization and acceptability of the language of human rights in government and society. As noted in 2019, consultations with civil society must be substantive consultations that inform and influence legislation, policy and practice.<sup>25</sup> It is crucial that these processes are inclusive and that all civil society and non-governmental organizations that wish to participate are able to do so. Only then will Cambodia begin building a more inclusive society with all voices heard in meaningful consultation and participation.<sup>26</sup>

30. The Special Rapporteur recognizes the country's willingness to ensure a free civic space, as evidenced by its support for relevant recommendations during the universal periodic review.<sup>27</sup> Cambodia should continue its positive interactions with civil society organizations. These consultations should be substantive and help build a more inclusive society through meaningful participation. Human rights groups cannot be treated differently on account of their efforts to advise, publicize and inform, holding the government to account for human rights matters.

## **B. Land and housing rights**

31. The Special Rapporteur continues to remain concerned over reported forced evictions and associated land rights issues, which remain unaddressed despite her repeated calls and offers of support. The Special Rapporteur encourages the Government to review the existing legal and procedural mechanisms concerning allocation, sale and use of land and, where appropriate, to introduce laws and policies to address inequality, marginalization and poverty. During the current pandemic, she draws the Government's attention to the statement of the Special Rapporteur on adequate housing in March 2020, which states that at a minimum, to ensure protection of those living in homelessness or grossly inadequate housing, States must cease all evictions. The statement also indicates that by ensuring access to secure housing with adequate sanitation, States will not only protect the lives of those who are

<sup>21</sup> Voun Dara, "Forest activism 'just a cover'", *Phnom Penh Post*, 26 April 2020.

<sup>22</sup> In May 2020 alone, Mr. Tola received four different summons to the provincial Court.

<sup>23</sup> A/HRC/39/73, para. 80.

<sup>24</sup> A/HRC/42/60, para. 51.

<sup>25</sup> *Ibid.*, para. 52.

<sup>26</sup> *Ibid.*

<sup>27</sup> A/HRC/41/17, paras. 110.102 and 110.110.

homeless or living in informal settlements. They will also help to protect the entire world's population by flattening the curve of the COVID-19 pandemic.<sup>28</sup>

32. The Special Rapporteur notes that 30 indigenous communities have now received collective land titles from the Ministry of Land Management, Urban Planning and Construction. A total of 131 have received recognition of their status from the Ministry of Interior, and 151 communities have received recognition of their indigenous identity from the Ministry of Rural Development.

33. Despite these developments, and previous commitments to simplify the communal land titling process for indigenous peoples by accepting relevant 2019 universal periodic review recommendations,<sup>29</sup> the existing land titling process remains cumbersome and slow to secure protection for indigenous peoples, largely undermining procedural safeguards rendered by current national legislation. The Special Rapporteur has received consistent information that many indigenous and local communities living within, or adjacent to, environmentally protected areas have restricted access to their traditional land. Despite provisions in the protected areas law of 2008 allowing access, local environmental authorities often deny them this right, sometimes leading to tensions and criminal action against community leaders or activists.

34. On 6 May 2019, the Ministry of Rural Development issued circular No. 148/19 establishing a technical working group on the preservation and development of indigenous peoples. The working group included representatives from over 20 ministries, local authorities' representatives from 15 provinces, 4 civil society organizations and 2 United Nations agencies. The Special Rapporteur is dismayed to note that the Ministry of Rural Development dissolved the working group on 4 February 2020, without providing any official reason.

### C. Leaving no one behind

35. Over the past five years, the Special Rapporteur has placed an emphasis in her reports on the situation of many individuals and groups in Cambodia who are marginalized, especially vulnerable and at risk of being left behind. She has made a number of recommendations calling for full realization of the rights and freedoms of everyone in Cambodia, many of which are yet to be implemented. In particular, she has raised the possibility of enacting a comprehensive non-discrimination law.<sup>30</sup>

36. In the fourth quarter of 2019, the Committee on the Elimination of Discrimination against Women recommended that the State should ensure that its national legislation includes a definition of discrimination against women, covering direct and indirect discrimination in the public and private spheres, including intersecting forms of discrimination, in line with article 1 of the Convention, as accepted by the State party following its third universal periodic review.<sup>31</sup> Following their constructive dialogue a month later, the Committee on the Elimination of Racial Discrimination recommended that the State party expeditiously adopt a comprehensive law that defines and prohibits direct and indirect racial discrimination on all prohibited grounds, in line with article 1 of the Convention, and develop a national action plan against racial discrimination.<sup>32</sup>

37. The Special Rapporteur welcomes the number of recommendations accepted by the Government during its third universal periodic review to improve the protection and promotion of the rights of the most vulnerable in Cambodia.<sup>33</sup> The Bolivarian Republic of Venezuela, for example, highlighted the need to strengthen social policies in favour of

<sup>28</sup> [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E).

<sup>29</sup> A/HRC/41/17, paras. 110.20–110.23 and 110.130.

<sup>30</sup> A/HRC/42/60, para. 74 (i).

<sup>31</sup> CEDAW/C/KHM/CO/6, para. 9 (a). See also A/HRC/41/17/Add.1, para. 2.

<sup>32</sup> CERD/C/KHM/CO/14-17, para. 12.

<sup>33</sup> See also A/HRC/42/60/Add.1, which addresses those likely to be left behind in the country's development.



people, with special emphasis on the most vulnerable sectors.<sup>34</sup> Cambodia also supported the recommendation of Australia to introduce an anti-discrimination law by 2023, guaranteeing equality and explicitly prohibiting discrimination of all kinds, including on the basis of religion, sexual orientation, gender identity and expression or sex characteristics.<sup>35</sup> She encourages the Government to ensure that the recommendations accepted are fully implemented and the principle of no one left behind is central to its policies and programmes.

## 1. Persons deprived of liberty

38. Following several visits to the Phnom Penh Social Affairs Transit Centre (Prey Speu), the Special Rapporteur made extensive observations, raising concerns over a death in the Centre and calling for the Centre, as currently set up, to be closed.<sup>36</sup> Information received by the Special Rapporteur through OHCHR indicates that a 40-year-old man died at the Centre on 31 January 2020.<sup>37</sup> The Special Rapporteur has not received any information on the independent investigation into the death. Moreover, it appears that the Centre continues to operate without a clear, transparent and accountable governance structure, regulatory framework and procedures, and it still serves to detain so-called “undesirable” people, subjected to round-ups by authorities. These include persons in street situations, drug users and sex workers. The Special Rapporteur remains concerned over arbitrary detention and other possible human rights violations occurring at the Centre, as well as the lack of accountability. Access to adequate health care and treatment inside the Centre remains a challenge, which is of particular concern in the light of the current COVID-19 pandemic.

39. During previous missions, the Special Rapporteur visited and considered the position of drug treatment and rehabilitation centres.<sup>38</sup> In this connection, the Special Rapporteur welcomes the statement issued by the regional representatives of 14 United Nations agencies on compulsory drug detention and rehabilitation centres in Asia and the Pacific in the context of the COVID-19 pandemic.<sup>39</sup> The statement calls, in particular, for the permanent closure of compulsory drug detention and rehabilitation centres and the implementation of voluntary, evidence-informed and rights-based health and social services in the community as an important measure to curb the spread of COVID-19 and to facilitate the recovery and reintegration of all persons into their families and communities.

40. Concerning the drug treatment and rehabilitation centres in Cambodia, the Special Rapporteur received information that as at 1 June 2020, a total of 6,517 persons were in 10 Government-run centres, 932 in private facilities and 100 in facilities operated by non-governmental organizations. The current legal framework on compulsory drug rehabilitation consists of the 2012 law on drug control and Circular No. 03 of 2006 on the Implementation of Measures on Drug Education, Treatment and Rehabilitation for Drug Users. These regulations fail to clearly specify the circumstances under which individuals can be involuntarily detained, and which authorities have the ability to order compulsory detention for the purpose of drug treatment, in particular whether it can only be imposed by a prosecutor. The Special Rapporteur remains concerned that such lack of certainty may result in arbitrary detention, and reiterates her concerns in this regard.<sup>40</sup> Moreover, it is clear that these centres remain overcrowded, as indeed do the prisons, which are heavily populated with persons detained for drug offences.<sup>41</sup>

41. The Special Rapporteur notes with concerns that prisons in Cambodia remain overcrowded, with the average occupancy across the country beyond 300 per cent of capacity. According to the information received from the General Department of Prisons, as

<sup>34</sup> A/HRC/41/17, para. 110.56.

<sup>35</sup> A/HRC/41/17, para. 110.54; see also the recommendation of Uruguay in para. 110.53.

<sup>36</sup> A/HRC/42/60, paras. 48–49.

<sup>37</sup> According to information provided by OHCHR in translation from <http://nokorwatnews.com/archives/484174> (in Khmer), and confirmed by the comments received from the Government in response to the draft report of the Special Rapporteur, along with details of the death and investigation.

<sup>38</sup> A/HRC/42/60, paras. 44–47; A/HRC/39/73, paras. 40–45.

<sup>39</sup> <https://bangkok.ohchr.org/wp-content/uploads/2020/05/UNJointStatement1June2020.pdf>.

<sup>40</sup> A/HRC/42/60, para. 47.

<sup>41</sup> *Ibid.*, para. 45.

of June 2020, there were 39,376 prisoners across the 29 prisons. Only an estimated 27 per cent of the prison population have received final verdicts and while a further 37 per cent have been convicted in first instance but are still awaiting the outcome of their appeals, which leaves 35 per cent of the incarcerated population in pretrial detention. This is not dissimilar to previous years.

42. The Special Rapporteur welcomes the reform initiatives introduced by the new Minister of Justice in May 2020, in particular to reduce the backlog of cases at courts of first instance across the country, and she offers her assistance in pursuing the administration of justice reforms. She is pleased to learn of the Ministry's intention to clear 50 to 70 per cent of the nearly 39,000 cases awaiting review by the country's courts of first instance in six months.<sup>42</sup> This could alleviate prison overcrowding and, assuming all due process is followed, strengthen compliance with the right to a fair trial within a reasonable time and reduce the numbers in pretrial detention.

## 2. Ethnic Vietnamese

43. The Special Rapporteur welcomes the 1 July 2019 instruction issued by the Ministry of Interior allowing children from parents legally registered as permanent residents to obtain birth certificates. The instruction also asks the local authorities to deliver residence books, death certificates and any other certificate clearly stating the nationality. If duly implemented, this can be a step towards ensuring access to naturalized citizenship for ethnic Vietnamese living in Cambodia. The Special Rapporteur also notes progress in issuing birth registration for ethnic Vietnamese children, who had been previously denied access to public schools as they could not produce the mandatory birth certificates. She encourages the authorities to fully implement the instruction.

44. In 2020, the Ministry of Interior announced the creation of a working group to draft a new immigration law to replace the 1994 law. The Special Rapporteur hopes that any new law would address the shortcomings of existing procedures.

45. As noted previously by the Special Rapporteur,<sup>43</sup> the Tonle Sap floating communities in Kampong Chhnang continue to be affected by relocation plans, undertaken to conserve biodiversity and the environment of the Tonle Sap Lake. In Kampong Chhnang Province, following joint advocacy from the OHCHR country office in Cambodia and the Special Rapporteur, the provincial authorities engaged in a process to identify land and delimited plots to relocate around 10,000 people, both Khmer and ethnic Vietnamese, from floating villages. Such initiatives must be commended. However, there continue to be variations in providing equal access of services to floating ethnic Vietnamese communities.

46. Ethnic Vietnamese communities remain in a situation of vulnerability. Many ethnic Vietnamese children drop out of school and are subject to discrimination by their Cambodian peers and their teachers due to their ethnic origin and their lack of proficiency in the Khmer language. Thereafter, their employment opportunities may be limited by not having Cambodian identity documents and/or owing to their lack of Khmer language skills.

## IV. Human rights and the COVID-19 response

47. The COVID-19 pandemic reached Cambodia, and there is evidence of a coordinated government response to the threat. Article 72 of the Constitution guarantees the health of the people, a right also accepted in several ratified international human rights treaties, not least the International Covenant on Economic, Social and Cultural Rights. Extensive guidance on a rights-based approach to leading during the pandemic is available from the special

<sup>42</sup> [www.akp.gov.kh/post/detail/31625](http://www.akp.gov.kh/post/detail/31625); additional information on administration of justice, lengthy pretrial detention and case backlog is contained on p. 4 of the comments received from the Government.

<sup>43</sup> A/HRC/42/60.

procedures,<sup>44</sup> treaty bodies<sup>45</sup> and others.<sup>46</sup> This situation is ongoing so the following analysis is preliminary.

48. As at 29 June 2020, the World Health Organization had recorded 141 confirmed cases of COVID-19 in Cambodia but no deaths.<sup>47</sup> The Pasteur Institute in Cambodia reported that in the period from 22 January to 3 June 2020, it had tested over 13,870 people and 16,506 samples for the coronavirus. Testing was primarily in Phnom Penh. It is unclear to the Special Rapporteur whether marginalized and vulnerable populations living outside Phnom Penh had equal access to testing and to the information related to the public health measures introduced by the Government.

49. On 13 February 2020, the Government permitted a cruise ship – MV Westerdam of Holland America Line – to dock in Sihanoukville in the south of the country after it had been denied entry to several Asian countries due to concerns over COVID-19. It had not been scheduled to visit Cambodia. The country's decision was welcomed by the Director General of the World Health Organization as an example of international solidarity.<sup>48</sup>

50. The Special Rapporteur was encouraged by the measures put in place by the Cambodian authorities concerning case detection, contact tracing and quarantine measures for those who were in contact with persons who tested positive, although she has concerns on data processing and security. The authorities acted swiftly to protect the health of people in Cambodia and sought to follow international quarantine protocols. The Ministry of Health gave briefings and updates regularly. The Special Rapporteur reminds the Cambodian authorities to continue to give full consideration to disease prevention and medical treatment, which is enshrined as a constitutional right, and to fully comply with the international human rights obligations, including the right to the highest attainable standard of health, as protected under article 12 of the International Covenant on Economic, Social and Cultural Rights, without discrimination on any ground.

51. Several of the country's development partners have provided support and expertise in this regard. Such support should help the Government to better prepare for a possible public health crisis and to put relevant disaster planning protocols in place. Protection of human rights for everyone must be central to, and underpin, government responses to any crisis. Although the protection of health is certainly a priority at present, all rights need to be considered holistically and steps taken to ensure that no one is left behind.

## **A. Restrictions to human rights in the context of the COVID-19 pandemic**

52. In mid-March 2020, Cambodia introduced travel restrictions limiting entry to the country in an effort to prevent further transmission of COVID-19. At the end of March, the Ministry of Foreign Affairs and International Cooperation extended that restriction to all foreigners. Simultaneously, nationals returning to Cambodia, including migrant workers, were advised on informal self-quarantine processes.

53. The Ministry of Education, Youth and Sport announced the closure of schools and all other public and private education institutions from 16 March 2020. Contemporaneous work has proceeded to initiate e-learning and to produce distance-learning education materials. As in many other countries, however, parents, guardians and students were not prepared for an overnight move to homeschooling and remote higher education study. According to the United Nations Educational, Scientific and Cultural Organization, approximately 63 per cent (2.07 million) of primary and secondary school students cannot access the new e-learning and distance-learning programmes, as they cannot afford to buy devices or to pay for Internet access. The Special Rapporteur is also concerned that owing to traditional gender norms, girls may benefit less from online learning, especially where they have limited access to

<sup>44</sup> [www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx).

<sup>45</sup> [www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/COVID-19-and-TreatyBodies.aspx).

<sup>46</sup> [www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx).

<sup>47</sup> <https://covid19.who.int>.

<sup>48</sup> [www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-ebola-and-covid-19-outbreaks](http://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-ebola-and-covid-19-outbreaks).

devices. They may also be expected to carry out unpaid care work in place of distance education. The Special Rapporteur takes note of the detailed response of the Government, including details on the planned reopening of school facilities and resumption of in-person instruction.

54. The Government introduced a number of limitations of the freedom of movement, the freedom of assembly and association, and the freedom of religious practice in community with others, in order to reduce community transmission and spread of COVID-19. Khmer New Year celebrations in April were cancelled and travel was restricted for several days. The Ministry of Health proscribed other gatherings, including large religious gatherings. The Special Rapporteur notes that such restrictions on the enjoyment of human rights may be permissible in certain circumstances, in particular if they are proportionate to the risk and only to the extent necessary to achieve the public health objective.

55. In April 2019, the Cambodian Senate passed a law on the management of the nation in a state of emergency, which builds on relevant provisions of the Constitution, in particular article 22. In a statement on 17 April 2020, the Special Rapporteur, joined by several mandate holders, stated that the now enacted law may be used to further restrict the right to freedom of expression, the right to freedom of association and peaceful assembly, and the right to movement, as provided in the International Covenant on Civil and Political Rights.<sup>49</sup> They also expressed concern in relation to the broadly worded language on powers and penalty, including prison terms of up to 10 years for those found in violation of the law.<sup>50</sup> The Government response sought to clarify that the powers would be invoked only in a situation necessitating additional measures with a desperate need for safeguarding and maintaining security and public order to protect people's lives, public health, public interest and the property of Cambodians as a whole.<sup>51</sup> The Special Rapporteur notes that the COVID-19 pandemic has not proven to reach this threshold.

56. Should the Government at any point declare a state of emergency, it must notify any derogations from rights enshrined in ratified treaties in accordance with the relevant international law.<sup>52</sup> Cambodia has intimated no such derogation from rights and freedoms protected. All rights and freedoms remain fully applicable. The law on the management of the nation in a state of emergency remains in abeyance.

57. By late May 2020, Cambodia began easing restrictions on travel to the country. It is implementing a testing system for those arriving in the country and a 14-day quarantine requirement. The Special Rapporteur calls upon the Government to plan carefully, in order to ensure that any quarantine measures do not constitute arbitrary detention and that people's safety and security is guaranteed. It is also necessary to ensure that those in quarantine are provided with basic essentials, including food, water and medicine.

## **B. Right to the highest attainable standard of health**

58. Cambodia has made considerable progress in advancing the right of all Cambodians to the highest attainable standard of physical health. The Ministry of Health has a health strategic plan and a health information system plan, and it has been working towards enhancing the quality and provision of health care in the country, including community services for those with drug dependency issues.<sup>53</sup> However, there remains a need for more progress before all Cambodians can benefit from the right to the highest attainable standard of physical and mental health.

59. There was a coordinated Government response to the perceived public health threat from the coronavirus. However, the Special Rapporteur received information that public health measures were not equally accessible to the most vulnerable populations, including

<sup>49</sup> OHCHR, communication OL KHM 1/2020, dated 9 April 2020. Available at <https://spcommreports.ohchr.org>.

<sup>50</sup> [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25801&LangID](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25801&LangID).

<sup>51</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35228> (para. 8).

<sup>52</sup> See, for example, CCPR/C/128/2.

<sup>53</sup> A/HRC/39/73.

indigenous peoples, ethnic Vietnamese communities and persons with disabilities. Some of these groups do not speak Khmer and do not have access to official information. The limited initiatives to disseminate information to indigenous and ethnic Vietnamese communities were carried out on an ad hoc basis. Most of the official information was not available in formats accessible to persons with disabilities.<sup>54</sup>

### C. Rights of women

60. The Special Rapporteur is concerned that women's engagement in economic activities, especially in informal sectors, are highly affected by the COVID-19 pandemic. As noted above, the closure of factories disproportionately affected women, particularly in the garment sector. Owing to the restrictive measures in place and to the need for social distancing, women working in the massage and entertainment industries, some of whom are the sole family breadwinners, lost their income. According to the rapid socioeconomic assessment in Cambodia by the EmPower Project, all women surveyed reported a decline in their incomes and employment, of which 69 per cent were the primary breadwinners for their families.<sup>55</sup>

61. The Special Rapporteur is further concerned that confinement of women owing to travel restrictions and compulsory quarantine requirements has increased the risk of conflict and violence in households, and the Committee on the Elimination of Discrimination against Women had already expressed concern on violence against women.<sup>56</sup> Women and girls, particularly in pregnancy and childbirth, will be disproportionately impacted by the additional strain of the COVID-19 pandemic on the underprepared local health-care system, and Cambodian women have expressed concerns over the risk of contracting COVID-19 by attending clinics or other health-care facilities. The time spent by women on unpaid care and domestic work has also increased, with almost one third of women surveyed by the EmPower Project indicating that it had doubled. Owing to traditional gender norms, girls may benefit less from online learning, and may instead be expected to carry out unpaid care work.

### D. Administration of justice

62. Prison overcrowding poses a major risk for transmission of COVID-19, and it also poses a challenge for other human rights. The Special Rapporteur encourages the Government to incorporate the guidance offered by the Working Group on Arbitrary Detention in its Deliberation No. 11, on prevention of arbitrary deprivation of liberty in the context of public health emergencies.<sup>57</sup>

63. In March 2020, the Ministry of Interior introduced measures aimed at the prevention of COVID-19 transmission in prisons, including a temporary ban on all prison visits, and a subsequent instruction requiring the 14-day quarantine and isolation of all new detainees. The Special Rapporteur notes that on 16 April, the General Department of Prisons lifted a de facto ban on prisoners and detainees making phone calls. The Ministry of Interior also announced increased cooperation with the Ministry of Health to closely monitor and improve prison health and to respond to any health crisis in prisons.<sup>58</sup>

64. These initiatives are welcome but temporary in nature. The Special Rapporteur encourages the Government to strengthen alternatives to detention, introduce necessary legislative and policy reforms to ease the granting of bail, suspended sentences and judicial supervision, and to ensure their effective implementation as a matter of priority in order to

<sup>54</sup> See documentation from Special Rapporteur on the rights of persons with disabilities, the World Health Organization and other United Nations entities available at [www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx).

<sup>55</sup> "The impact of COVID-19 on rural women and enterprises: a rapid socio-economic assessment in Cambodia by the EmPower Project" (2020). Available at [www.empowerforclimate.org](http://www.empowerforclimate.org).

<sup>56</sup> CEDAW/C/KHM/CO/6, para. 24.

<sup>57</sup> [www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf](http://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf) (para. 22).

<sup>58</sup> Ministry of Interior and Ministry of Health's Inter-Ministerial Proclamation on the Establishment of Prison Health Technical Working Group, dated 16 June 2020.

reduce prison overcrowding. In this context, she takes note of the Ministry of Interior's renewed commitment to work with the Ministry of Justice to address overcrowding in prisons.

## E. Right to work and adequate standard of living

65. The Special Rapporteur notes that Cambodia has a complex labour situation spanning the public and private sectors, as well as formal and growing informal sectors. Many people hold several jobs or use several income-generating options to secure an adequate standard of living. The COVID-19 pandemic response in Cambodia has negatively impacted the right to work and an adequate standard of living for many. Livelihoods are also likely to be affected by the separate decision taken by the European Union to withdraw certain trade preferences.<sup>59</sup> The rights are analysed below, given the conflation of socioeconomic impact. Cognisance should be given to the details of the Government Covid-19 response as outlined in the addendum under paragraph 65.

66. The Special Rapporteur has previously expressed concern over labour rights in Cambodia, including with regard to discrimination and trade unions. She had considered the situation of marginalized people, including women, migrant workers, relocated groups and persons in street situations.<sup>60</sup> On trade unions, the Special Rapporteur welcomed the consultative process to review the law on trade unions,<sup>61</sup> but she regrets that the amendments do not yet ensure the law's compliance with all relevant international human rights and labour standards. The amendments are listed in the comments received by the Government that pertain to paragraphs 66 and 93 (e).

67. While Cambodia had continued exhibiting strong economic growth, the tourism and garment sectors have been adversely affected by the COVID-19 pandemic. The Asian Development Bank has intimated an expected slowing in economic growth for 2020.<sup>62</sup> The World Bank has also warned of turbulent economic times ahead for Cambodia and other countries in the region.<sup>63</sup> This has clear consequences for many Cambodian people, especially those who remain in the "near poor" classification, for whom any economic shock can have devastating consequences for them and their household.

68. The Special Rapporteur received information from the United Nations country team in Cambodia that the country has been facing an economic crisis driven primarily by demand shocks and not by supply disruptions, as there was no major COVID-19 outbreak in the country. The fall in demand in the textile sector ranged between 40 per cent and 60 per cent of output. International tourist arrivals have fallen by approximately 90 per cent. The construction sector, which accounts for 44 per cent of gross domestic product, remains unpredictable, as there is no certainty in demand, although some inputs have fallen by approximately 40 per cent.

69. The Special Rapporteur has frequently received concerns on human rights issues arising from microcredit, microfinance and debt. Cambodia has the highest microloan debt per borrower in the world at around \$3,800.<sup>64</sup> Over 2.6 million Cambodians reportedly hold microfinance loans, collectively worth over \$10 billion.<sup>65</sup> These numbers do not include

<sup>59</sup> A/HRC/42/60, para. 10.

<sup>60</sup> A/HRC/42/60/Add.1.

<sup>61</sup> A/HRC/42/60, para. 53.

<sup>62</sup> [www.adb.org/countries/cambodia/economy](http://www.adb.org/countries/cambodia/economy).

<sup>63</sup> World Bank Group, *East Asia and Pacific in the Time of COVID-19 – East Asia and Pacific Economic Update: April 2020* (Washington, D.C.: World Bank).

<sup>64</sup> Skylar Lindsay, "Cambodian workers owe \$10 billion in microfinance debt as COVID-19 wipes out incomes", *ASEAN Today*, 30 April 2020.

Skylar Lindsay, "Cambodian workers owe \$10 billion in microfinance debt as COVID-19 wipes out incomes", *ASEAN Today*, 30 April 2020. <sup>66</sup> According to a recent report issued by two local non-governmental organizations, microloan growth has outpaced income growth in the country. The penetration rate of microfinance loans in some provinces exceeds 80 per cent of households, and many borrowers take additional formal or informal loans to pay back other debts. (Cambodian League

widespread informal lending.<sup>66</sup> The Cambodia Microfinance Association, which represents more than 100 regulated lenders, indicated that in May 2020, a total of 196,307 customers had applied for restructuring of their loans, with 180,301 of those approved.<sup>67</sup> The sum involved was around \$817 million. The reasons for the restructuring were primarily linked to the impact of the COVID-19 pandemic on the socioeconomic situation of the Cambodian people. It is noted that loan restructuring is also occurring in banks that are under the regulation of the National Bank of Cambodia.

70. The Special Rapporteur is concerned that for many families, loan payments now represent a threat to their future, their savings and even their land. On 28 April 2020, representatives of 141 urban and rural communities submitted petitions to the Government, requesting that it limit the impact of the COVID-19 pandemic on urban and rural poor communities, including by easing or suspending debts to microfinance institutions, banks and private moneylenders. Such microfinance debt may leave Cambodians landless, with lenders using their land as collateral.<sup>68</sup> Land is vital to the livelihoods and identity of the Cambodian population. It is an important source of income and security. As the Committee on the Elimination of Discrimination against Women noted in its concluding observations in 2019, rural Cambodian women face particular challenges with microfinancing.<sup>69</sup>

71. Adding to the challenges to the economy, the European Union indicated its intent to partially withdraw free access for Cambodian goods to the European Union market, owing to the country's serious and systematic violations of human rights.<sup>70</sup> A period of enhanced engagement preceded the European Commission's decision to withdraw some of the trade preferences, allowing for dialogue between the Government and the European Union.

72. As one in a group of least-developed countries, Cambodia enjoys the most preferential trade arrangement with the European Union under the "Everything But Arms" tariff, which offers quota and duty-free access to the European Union's single market for all goods except arms. Cambodia currently exports goods worth more than 5 billion euros per year to the European Union, primarily from its garment sector. Almost a fifth of those sales are scheduled to be affected by the partial withdrawal of preferences, which are planned to take effect in August 2020.<sup>71</sup>

73. The impact on the garment and footwear sectors is yet to be seen given that the intimation of withdrawal of some trade preferences by the European Union was contemporaneous with the global spread of COVID-19. Responses to the pandemic in Cambodian export destination countries, including in Europe, were swift and dramatic. Many overseas businesses sought to withdraw from contractual agreements as textiles could no longer be sold; other businesses withdrew from discussions on future contracts. International trade almost ceased as a result of entry restrictions, and textile manufacturing was replaced

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for the Promotion and Defense of Human Rights (LICADHO), "Collateral damage: land loss and abuses in Cambodia's microfinance sector", August 2019).

<sup>66</sup> According to a recent report issued by two local non-governmental organizations, microloan growth has outpaced income growth in the country. The penetration rate of microfinance loans in some provinces exceeds 80 per cent of households, and many borrowers take additional formal or informal loans to pay back other debts. (Cambodian League for the Promotion and Defense of Human Rights (LICADHO), "Collateral damage: land loss and abuses in Cambodia's microfinance sector", August 2019).

<sup>67</sup> Sorn Sarath, "Microfinance: \$817 million of loans approved for restructure", *Khmer Times*, 8 June 2020.

<sup>68</sup> LICADHO, "Collateral damage: land loss and abuses in Cambodia's microfinance sector", August 2019.

<sup>69</sup> CEDAW/C/KHM/CO/6, para. 40.

<sup>70</sup> [https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc\\_158631.pdf](https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158631.pdf).

<sup>71</sup> European Commission, document C(2020) 673 final of 12 February 2020 amending Annexes II and IV to Regulation (EU) No 978/2012 as regards the temporary withdrawal of the arrangements referred to in Article 1(2) of Regulation (EU) No. 978/2012 in respect of certain products originating in Cambodia. Available at <https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-2020-673-F1-EN-MAIN-PART-1.PDF>. On 18 March 2020, the Council of the European Union indicated no intention to raise an objection (<https://data.consilium.europa.eu/doc/document/ST-6843-2020-REV-3/en/pdf>). The European Parliament has also been supportive of the European Commission process.

in some cases with the manufacture of personal protective equipment, in response to new demand. The Cambodian textile sector relies on imports to manufacture and produce its exports. International trade restrictions and supply chain disruptions represent a risk to the eventual outputs.

74. The Government launched a stimulus package in response to the reduction in exports and tourism. The Ministry of Labour and Vocational Training issued Instruction No. 045/20 on 17 April 2020,<sup>72</sup> in which it addressed the suspension of employment contracts and contribution payments for the National Social Security Fund for those in the garment and tourism sectors who are seriously impacted by the COVID-19 pandemic. In addition, the Government and employers agreed to split the cost of the allowances paid to employees whose contracts had been temporarily suspended. The Ministry of Tourism has also implemented tax breaks for hotels, guest houses and restaurants affected, initially in Siem Reap and then, by its Letter No. 11, to several other cities and towns. The Government is encouraged to ensure that all supported businesses comply with the Guiding Principles on Business and Human Rights.

75. As an early sign of the shift from emergency response to recovery, on 10 June 2020, the Government issued a circular for State institutions to reduce expenses in all sectors in 2021 to assist the economy to recover from the COVID-19 pandemic.<sup>73</sup> This was prompted by the need for prudent utilization of public resources as a result of the pandemic. It represents a 50 per cent drop from the 2020 State budget. While sectors such as agriculture, industry and service will see marginal increases, other sectors, including public administration, social affairs and economics, will be reduced. The potential human rights impacts of such budget cuts should be assessed before being implemented.

76. The Special Rapporteur urges the State to remind all businesses trading with Cambodia of their responsibilities in terms of the Guiding Principles on Business and Human Rights,<sup>74</sup> in particular respecting international labour standards and the rights of employees and contractors. This includes businesses honouring agreed contracts of sale and supply.

## V. Extraordinary Chambers in the Courts of Cambodia

77. The work of the Extraordinary Chambers in Cambodia continues with four active cases: the appeal to the Supreme Court Chamber of the conviction and sentence of Khieu Samphan (case 002/2); and the pretrial proceedings in the cases against Meas Muth (case 003), Yim Tith (case 004) and Ao An (case 004/2).

78. With respect to case 002/2, the appeal of Khieu Samphan is currently before the Supreme Court Chamber.<sup>75</sup> His co-accused, Nuon Chea, died in August 2019 and so proceedings against Mr. Chea were terminated.

79. The three pretrial cases are in a problematic state. In each instance, the two co-investigating judges issued separate and diametrically opposed closing orders: the national co-investigating judge dismissed the charges, while the international co-investigating judge indicted the accused. Appeals against these decisions have been filed in each case.

80. In case of 004/2 against Ao An, the Pre-Trial Chamber held three days of hearings, in June 2019, on the appeals against the two closing orders. On 19 December 2019, the Pre-Trial Chamber delivered its Considerations on Appeal against Closing Orders with all judges agreeing that the issuance of two conflicting closing orders was illegal.<sup>76</sup> The Chamber was then split as to the legal consequence. The three national judges would have dismissed the case, while the two international judges would have sent the case for trial. Neither position

<sup>72</sup> [https://ibccambodia.com/wp-content/uploads/2020/04/Instruction-045-on-Employment-Contract-and-NSSF-Payment-Suspension\\_EN.pdf](https://ibccambodia.com/wp-content/uploads/2020/04/Instruction-045-on-Employment-Contract-and-NSSF-Payment-Suspension_EN.pdf).

<sup>73</sup> [www.phnompenhpost.com/national/govt-implements-austerity-measures-assist-recovery](http://www.phnompenhpost.com/national/govt-implements-austerity-measures-assist-recovery).

<sup>74</sup> [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E).

<sup>75</sup> [www.eccc.gov.kh/en/case/topic/1298](http://www.eccc.gov.kh/en/case/topic/1298).

<sup>76</sup> [https://eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D363\\_3\\_EN.PDF](https://eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D363_3_EN.PDF). See also the comments provided by the Government pertaining to para. 80.



attracted the required “supermajority” across national and international judges.<sup>77</sup> Since then, given the conflicting views as to the status of the case, the case file has not been formally transferred to the Trial Chamber, which has also declined to rule judicially on the status of the case, noting it cannot so do. As a result, the international co-prosecutor is appealing the case to the Supreme Court Chamber, arguing that the case has been effectively terminated in breach of the applicable legal framework.<sup>78</sup>

81. The evolution of case 004/2, and its implications for the other cases still at pretrial stage, are deeply concerning. The legal framework of the Extraordinary Chambers in the Courts of Cambodia is clear that, absent a binding agreement to halt further steps in proceedings, the default presumption is for proceedings to continue. In the present case, however, the practical effect of contrasting views between the national and international judicial and administrative components of the court has been to leave the proceedings functionally suspended, in a state of complete legal uncertainty. Such a situation, should it subsist, is unacceptable from the perspective of the rule of law and the sound administration of justice. It is also challenging for those victims of the Khmer Rouge who, with great courage, have pursued the access to justice promised by the Extraordinary Chambers in the Courts of Cambodia for these gravest of international crimes. The Special Rapporteur will continue to monitor closely the further proceedings in these cases.

## VI. Engagement of Cambodia with the human rights mechanisms

82. The Special Rapporteur welcomes the involvement of Cambodia in a number of international monitoring and review mechanisms related to human rights and the Sustainable Development Goals. The Government voluntarily participated in the high-level political forum on sustainable development, held in New York in July 2019,<sup>79</sup> reporting on localization of the Goals, and on progress made and challenges faced. The Human Rights Council concluded the country’s third cycle of the universal periodic review in July 2019 with the adoption of the its decision 41/114, on the outcome of the review,<sup>80</sup> noting that Cambodia supported 173 of the recommendations received during the review conducted by the Working Group on the Universal Periodic Review in January 2019.<sup>81</sup> Many of these recommendations reiterate recommendations previously made by the special rapporteurs. The Special Rapporteur is pleased to have these formally supported by the Government through the universal periodic review process. While the supported recommendations covered a wide range of human rights and fundamental freedoms, it is notable that 41 per cent<sup>82</sup> of them map on to Goal 16 on peace, justice and strong institutions, a thematic focus of the missions of the Special Rapporteur in 2018–2019.<sup>83</sup>

83. The Special Rapporteur welcomes the dissemination workshop on universal periodic review recommendations organized jointly by the Cambodian Human Rights Committee, OHCHR, the United Nations Resident Coordinator’s Office and UPR Info, an international non-governmental organization, in October 2019. The Government should continue its work towards a universal periodic review implementation plan and engage in an annual, consultative review of progress made in implementation involving line ministries, development partners and civil society.

<sup>77</sup> Affirmative response of four out of the five judges. See article 23 of the law on the establishment of Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea.

<sup>78</sup> [www.eccc.gov.kh/en/articles/press-release-international-co-prosecutor-and-national-co-prosecutor](http://www.eccc.gov.kh/en/articles/press-release-international-co-prosecutor-and-national-co-prosecutor).

<sup>79</sup> Documentation available at <https://sustainabledevelopment.un.org/memberstates/cambodia>.

<sup>80</sup> See also A/HRC/41/17 and Add.1.

<sup>81</sup> A/HRC/41/17/Add.1.

<sup>82</sup> [https://lib.ohchr.org/HRBodies/UPR/Documents/Session32/KH/Infographic\\_Cambodia.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session32/KH/Infographic_Cambodia.pdf).

<sup>83</sup> A/HRC/42/60.

84. During the reporting period, the Government participated in two treaty body reviews: the Committee on the Elimination of Discrimination against Women,<sup>84</sup> in October 2019, and the Committee on the Elimination of Racial Discrimination,<sup>85</sup> in November 2019.

85. On 2 April 2019, Cambodia submitted its third periodic report to the Human Rights Committee<sup>86</sup>. Its fourth to sixth combined periodic report<sup>87</sup> to the Committee on the Rights of the Child is scheduled for review in 2020. The Government also submitted its report to the Committee on Economic, Social and Cultural Rights in June 2020.<sup>88</sup> Dates of treaty body sessions are yet to be confirmed, owing to travel restrictions occasioned by the COVID-19 pandemic. The Special Rapporteur encourages the Government to actively engage in treaty monitoring processes, submit all overdue reports and prepare a plan for timely future submissions.

86. It is unfortunate that despite assurances,<sup>89</sup> the Government has not submitted an updated common core document. The Special Rapporteur repeats her call to update the common core document. The current core document dates to 1997, and Cambodia is now a very different country, having developed considerably since the early period of the modern constitutional era. An accurate common core document will ameliorate the work for the State when preparing its periodic reports.

87. The treaty body review process represents an opportunity for the Government to engage in constructive discussions with independent experts on progress made and challenges encountered in realizing the treaty obligations of Cambodia. Following each review, the concluding observations should be translated into Khmer, publicly disseminated and discussed in the country. This should be accompanied by inclusive and comprehensive discussions across stakeholders who can assist in implementing the recommendations made, as well as contributing towards follow-up<sup>90</sup> and subsequent reports.

88. The first reports of Cambodia to the Committee on the Rights of Persons with Disabilities and to the Committee on Enforced Disappearances, both due in 2015, remain outstanding. In addition, the response to the list of issues for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also been overdue since 2014. The failure to submit the response to the list of issues appears to result from the task being assigned to the National Committee against Torture – the country's national preventative mechanism for torture through the royal decree. An independent mechanism should not be tasked with reporting on behalf of the State. Completing the overdue reports affords the State an opportunity to reflect on progress made and to identify opportunities to better embed all interdependent, interrelated and indivisible rights and freedoms for all Cambodian people in fulfilment of its treaty obligations.

89. With increased engagement across United Nations human rights monitoring mechanisms, it is an ideal time for Cambodia to consider preparing a comprehensive national action plan for human rights, following the example of other countries in the region. This could include a rolling schedule for treaty body and universal periodic review reports, midterm updates, and the implementation of the National Human Rights Recommendations Tracking Database. It should integrate the work to date on achieving the Sustainable Development Goals. Further, it should strengthen the human rights dimension of the Government's Rectangular Strategy Phase IV, with a view to enabling the Government to reflect on the best way to promote and protect all human rights in the country. A national action plan would also provide a framework for constructive engagement with a wide range of stakeholders, including civil society organizations. Such engagement is essential for ensuring the implementation of accepted recommendations and concluding observations.

<sup>84</sup> CEDAW/C/KHM/CO/6.

<sup>85</sup> CERD/C/KHM/CO/14-17.

<sup>86</sup> CCPR/C/KHM/3.

<sup>87</sup> CRC/C/KHM/4-6.

<sup>88</sup> E/C.12/KHM/2.

<sup>89</sup> A/HRC/42/60, para. 11.

<sup>90</sup> See, for example, CEDAW/C/KHM/CO/6, para. 55, requesting follow-up within two years.

## VII. Communications to the Government

90. During the reporting period, the Special Rapporteur, jointly with other mandate holders, issued communications to the Government of Cambodia. These communications were reported to the Human Rights Council.<sup>91</sup> All public communications are also available on the OHCHR special procedures communications website.<sup>92</sup> All responses submitted by the Government are also available. The Special Rapporteur welcomes the fact that the Government has responded to some of the communications; however, she is not yet satisfied that the Government has taken sufficient action to address and, where necessary, rectify the issues raised.

## VIII. Conclusions and recommendations

91. **The Special Rapporteur remains committed to supporting inclusive dialogue and participatory decision-making processes as she continues to monitor and advocate for the full enjoyment of human rights by everyone in Cambodia. As noted in the report, the human rights situation in Cambodia remains dominated by restrictions to fundamental freedoms and political rights, with an increased number of arrests and detentions of members and supporters of the former Cambodia National Rescue Party. Civic space continued to shrink as human rights defenders, civil society organizations and those exercising their right to freedom of expression were subjected to intimidation, harassment and arrests.**

92. **The ongoing COVID-19 pandemic and the resulting economic impact is having a profound effect on a wide range of human rights. The Government's socioeconomic response should therefore address inequalities and grievances and be aimed at advancing human rights for all Cambodians. Recalling the Sendai Framework for Disaster Risk Reduction 2015–2030, by “building back better”,<sup>93</sup> the Government can ensure that no one is left behind. To this end, the Government should also remind businesses trading with Cambodia of their responsibilities in terms of the Guiding Principles on Business and Human Rights, including honouring agreed contracts of sale and supply, and ensure that businesses benefiting from economic stimulus measures also foreground the standards contained in the Principles.**

93. **The Special Rapporteur recommends that the Government of Cambodia:**

- (a) **Promote dialogue with all parties and seek dialogue in a peaceful environment that allows diverging political voices to be expressed, and avoid any further restrictions on fundamental freedoms than are necessary for the enjoyment of human rights by all;**
- (b) **Continue with its positive interactions and consultations with civil society organizations. The consultations should be substantive and help build a more inclusive society through meaningful participation;**
- (c) **Strengthen protection from harassment, threats and intimidation of human rights defenders, journalists and civil society members;**
- (d) **Institutionalize reforms of the criminal justice system and ensure that any effort to alleviate prison overcrowding and to improve detention conditions, including through expediting trials, is in compliance with international human rights obligations. This includes deploying pretrial detention only when strictly necessary, in accordance with the law, and considering drafting new guidance on evidentiary standards and requirements;**
- (e) **Ensure a transparent, consultative process to revise the laws on elections and political parties, the law on trade unions, the law on associations and non-governmental organizations, as well as the draft law on access to information – which has undergone**

<sup>91</sup> See A/HRC/44/59, A/HRC/43/77, A/HRC/42/65 and A/HRC/41/56.

<sup>92</sup> <https://spcommreports.ohchr.org/>.

<sup>93</sup> General Assembly resolution 69/283, annex I.

a more consultative process – in order to guarantee that they comply with the international human rights obligations of Cambodia, and draft a road map for next steps when engaging in legislative drafting and amendments to laws and provide draft language to ensure that all relevant stakeholders can substantively engage in the amendment process;

(f) Consider enacting a comprehensive non-discrimination law covering a wide range of grounds for discrimination, including direct and indirect discrimination, and ensure that the law reflects the reality of intersecting grounds of discrimination. Appropriate guidelines should be drafted and circulated to support the implementation of this law;

(g) Review the legal framework governing drug treatment and rehabilitation centres to develop clear governance and accountability structures, consider amending the law on drug control to prohibit compulsory drug rehabilitation, allowing it only when approved by a judge and where there are no alternatives to detention, and strengthen and promote effective, consensual and voluntary community-based treatment and rehabilitation;

(h) Simplify the procedure for communal land titling, allowing indigenous peoples to gain recognition and claim their land, and protect indigenous peoples from attacks and intimidation by government agents and private companies, as they seek to exercise rights related to their communal lands;

(i) Provide guidance to local authorities on the implementation of the Ministry of Interior's instruction on the issuance of administrative documents and civil certificates to Cambodian spouses and children, and to foreign migrants, ensuring that the Ministry's instruction is fully implemented throughout the country;

(j) Assess its experience during the COVID-19 pandemic and continue working with the World Health Organization and development partners to strengthen the public health system and pandemic preparedness, building on the experiences of 2020;

(k) Review and develop economic stimulus packages that respond to the needs of all whose income was adversely impacted by COVID-19, both in the formal and informal sectors, and carefully assess the potential human rights impacts, particularly on the most vulnerable, of planned austerity measures for 2021;

(l) Ensure full adherence to the legal framework establishing the Extraordinary Chambers in the Courts of Cambodia as an independent and impartial judicial institution, and ensure also that it undertakes full and proper investigations with agreed closing orders, leading to the fullest application of the right to a fair trial, including legal certainty;

(m) Ensure timely preparation and submission of overdue reports to treaty bodies; update the common core document; prepare a rolling schedule for timely submissions and continued consultations; and implement recommendations by special procedures, treaty bodies and the universal periodic review;

(n) Finalize the implementation plan for recommendations emanating from the universal periodic review, progressively incorporate recommendations from other human rights mechanisms, and consider preparing a comprehensive national action plan for human rights and implementing the National Human Rights Recommendations Tracking Database.

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