

Cambodia: State of Emergency bill violates the rule of law

8 April 2020

Bangkok, Thailand -- The ICJ today warned that Cambodia's draft Law on National Administration in the State of Emergency ("State of Emergency bill") violates basic rule of law principles and human rights, and called on the Cambodian government to urgently withdraw or amend the bill in accordance with international human rights law and standards.

Last Friday, government spokesperson Phay Siphon [explained](#) that the government needed to bring a State of Emergency law in force to combat the COVID-19 outbreak as "Cambodia is a rule of law country". The bill is now before the National Assembly and, if passed by the Assembly, will likely be considered in an extraordinary session convened by the Senate. The law will come into force once it has been signed by the King – or in his absence, the acting Head of State, Senate President Say Chhum.

"The Cambodian government has long abused the term "rule of law" to justify bringing into force laws or regulations that are then used to suppress free expression and target critics. This bill is no different," said Frederick Rawski, ICJ's Director for Asia and the Pacific.

"Any effective response to the COVID-19 outbreak must not only protect the rights to health and life, but be implemented in accordance with Cambodia's human rights obligations and basic principles of the rule of law."

Several serious shortcomings are evident in the State of Emergency bill, including:

- No delineation of a timeline for the imposition of a state of emergency, or criterial process for its termination. The bill provides vaguely that such declaration "*may or may not be assigned a time limit. In the event that a state of emergency is declared without a clear time limit, such a state of emergency shall be terminated when the situation allows it*" (article 3);
- Expansion of government powers to "*ban or restrict*" individuals' "*freedom of movement, association or of meetings of people*" without any qualification to respect the rights to association and assembly in enforcing such measures (article 5);
- Expansion of government powers to "*ban or restrict distribution of information that could scare the public, (cause) unrest, or that can negatively impact national security*" and impose "*measures to monitor, observe and gather information from all telecommunication mediums, using any means necessary*" without any qualification to respect the rights to privacy, freedom of expression and information in enforcing such measures (article 5);
- Overbroad powers for the government to "*put in place other measures that are deemed appropriate and necessary in response to the state of emergency*" which can allow for significant State overreach (article 5);

- Severe penalties amounting to up to 10 years' imprisonment of individuals and fines of up to 1 billion Riel (approx. USD 250,000) on legal entities for the vaguely defined offence of "*obstructing (State) measures related to the state of emergency*" where such obstruction "*causes civil unrest or affects national security*" (articles 7 to 9)
- No specific indication of which governmental authorities are empowered to take measures under the bill, raising concerns that measures could be taken by authorities or officials in an ad-hoc or arbitrary manner in violation of the principle of legality;
- No indication of sufficient judicial or administrative oversight of measures taken by State officials under the bill – The bill states that the government "*must inform on a regular basis the National Assembly and the Senate on the measures it has taken during the state of emergency*" and that the National Assembly and the Senate "*can request for more necessary information*" from the government (article 6) but does not clarify clear oversight procedures for accountability.

"The State of Emergency bill is a cynical ploy to further expand the nearly unconstrained powers of the Hun Sen government, and will no doubt be used to target critical comment on the government's measures to tackle COVID-19," said Rawski.

"If passed in its current form, this bill will reinforce the prevailing lack of accountability which defines the government in Cambodia. The government's time would be better spent developing genuine public health policy responses to the crisis."

Contact

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Relevant background

The ICJ has [recalled](#) in the context of the COVID-19 outbreak the principle that the exercise of state of emergency powers must be lawful and consistent with a State's human rights obligations. This means that:

- Any limitations on the exercise of internationally guaranteed rights must be limited in duration, strictly necessary and proportionate towards a legitimate aim of combating a clearly defined "threat to the life of the nation";
- Measures limiting human rights – including the rights to freedom of association, assembly, expression and information – cannot suspend entirely the applicability of any right, but only limit the scope of rights to the extent strictly necessary to meet such a specific threat;
- The necessity of a limiting measure must be continually re-assessed so limitations only apply for the shortest time possible;
- Certain human rights, including the right to life, freedom from torture or ill-treatment, the essential elements of protection from arbitrary deprivation of liberty and the rights to a fair trial and effective remedy can never be restricted even in a state of emergency;

- The law must clearly provide which officials have responsibility for implementing the provisions of the emergency law and what their powers and responsibilities are;
- All officials responsible for implementing the law should be explicitly stated to be under the authority of the ordinary law of Cambodia, with no immunity for any criminal acts carried out in the exercise of their responsibilities;
- Actions of officials exercising powers under the emergency law should be subject to independent review by the courts.

On 16 March, the UN High Commissioner for Human Rights [urged](#) States to refrain from overreach of security measures in their response to the COVID-19 outbreak. She warned that emergency declarations “should not function as a cover for repressive action under the guise of protecting health nor ... used to silence the work of human rights defenders”, and that “restrictions taken to respond to the virus must be motivated by legitimate public health goals and not be used simply to quash dissent.”

The ICJ has consistently [warned](#) of a human rights and rule of law crisis in Cambodia – facilitated by the Cambodian government’s [abuse](#) of legal frameworks and [misuse](#) of the language of the “rule of law” in a protracted [crackdown](#) on political opposition, civil society, independent media and human rights defenders in the lead-up to the 2018 general elections. Following the elections, the Cambodian government has [continued](#) to systematically harass and persecute perceived critics of the regime through abuse of legal and judicial processes.

Last week, the ICJ [called](#) on States in Southeast Asia to respect and protect human rights online and offline, in accordance with their obligations under international law, as they take steps to prevent the spread of misinformation online on COVID-19. The ICJ urged that measures taken by States be implemented in accordance with rule of law principles, and their enforcement protect the rights to health and life just as much as the rights to free expression, opinion, information and privacy.

See also

ICJ report, '[Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia](#)', December 2019

ICJ report, '[Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study](#)', October 2017

ICJ, '[Cambodia: continued misuse of laws to unduly restrict human rights \(UN statement\)](#)', 26 September 2018

ICJ, '[Misuse of law will do long-term damage to Cambodia](#)', 26 July 2018

ICJ, '[Cambodia: deteriorating situation for human rights and rule of law \(UN statement\)](#)', 27 June 2018

ICJ, '[Cambodia human rights crisis: the ICJ sends letter to UN Secretary General](#)', 23 October 2017