

Dictating the Internet:

Curtailing Free Expression and Information Online in Cambodia



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Introduction and Summary

In December 2019, the International Commission of Jurists released its [report](#) entitled "*Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*", which mapped out a pattern of abuse of the law by governments across Southeast Asia to restrict freedom of expression, opinion, and information of individuals online. In a regional analysis of laws and case studies, the report traced decades-long trends of States crafting and implementing non-human rights compliant laws to control and moderate content online in violation of human rights.

In this report, the ICJ focuses its analysis on **Cambodia**. The updated information and analysis show how State authorities have passed and drafted new laws that are inconsistent with Cambodia's human rights obligations. The authorities have invoked these new laws and intensified their abuse of existing non-human rights compliant laws to unduly restrict human rights in the digital sphere, especially in response to the COVID-19 pandemic. As part of these restrictions, social media users, human rights defenders, journalists, media platforms, women and perceived political opponents have been targeted and sanctioned.

This paper monitors and analyzes cases which have continued to emerge in Cambodia since December 2019, highlighting cases which reflect how infringement of the rights to freedom of expression, opinion and information online is often accompanied by violations of other rights, including the rights to privacy, peaceful assembly, health, fair trial and non-discrimination.

Additionally, two emerging trends merit closer attention and remediation:

1. Amidst the COVID-19 pandemic, the Cambodian authorities have passed and drafted new laws and abused existing laws that are not compliant with human rights law and standards to further restrict freedom of

expression and access to information online. This has been pursued under an overly expansive justification of curbing “false information” in order to protect public health. While extraordinary and effective measures are required to combat an unprecedented health crisis and protect the right to health, it is apparent that the government has imposed limitations on online expression and information that are unnecessary and disproportionate, in contravention of international human rights law and standards.

2. There are concerns over the extent to which social media platforms, in particular Facebook, have been complicit in enabling the Cambodian authorities’ online censorship on their platforms. There is inadequate transparency on the extent to which the Cambodian government has demanded Facebook to restrict access to content on its platforms, and the manner in which it has responded to these demands. Social media companies, particularly Facebook, have a responsibility to respect human rights on their platforms, which entails undertaking measures of due diligence when regulating online content.

Key Recommendations

Detailed recommendations designed to address the human rights violations and abuses listed above appear at the end of this report. Among those, the ICJ highlights the following for urgent implementation:

To the Parliament of Cambodia:

- Repeal or substantially amend legal provisions that serve to criminalize or unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline;

To the executive branch of the **Cambodian government**, including the Ministry of Information:

- Officials should cease harassment or persecution of all individuals solely for exercising their rights to free expression, information and peaceful assembly online, through the abuse of laws and administrative regulations;

To **justice sector actors**:

- Drop all charges, issue non-prosecution orders, and refrain from further charges, particularly at the very inception of any such lawsuit, against any individual, including those named in this report, facing prosecution for alleged violation of laws that are non-human rights compliant on their face or which have been applied in a non-human rights compliant manner.

To **tech companies in the communications sector**:

- Take all necessary and lawful measures to ensure their platforms do not cause, contribute to or become complicit in human rights abuses, including by ensuring that corporate partnership arrangements respect human rights and seek to mitigate any adverse rights impacts.

The information in this report is accurate as of 31 October 2021.

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Dictating the Internet: Curtailling Free Expression and Information Online in Cambodia

I. Background

Cambodian authorities, like their peers in several other Southeast Asian countries, have abused a range of laws that do not comply with international human rights law and standards to unduly restrict freedom of expression and other human rights in the digital sphere. Vague and overbroad provisions enable laws to arbitrarily interfere with fundamental freedoms, resulting in severe penalties for non-compliance, often in the name of “national security” and “public order”.¹

In the face of the COVID-19 pandemic, Cambodian authorities have intensified their restrictions on expression and information in the online space, in a concerted attempt to curtail the effective use of social media, which has grown of increasing importance in the country. Social media, particularly Facebook, has become a pivotal source of independent news for the Cambodian population and a crucial space for human rights defenders and organizations to carry out their work.² By providing a “significant channel of political participation” especially for Cambodia’s young population, social media has precipitated what has been termed by one commentator as the “democratisation of information” in Cambodia.³

1 ICJ, *Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*, December 2019 (‘ICJ Dictating the Internet Report, 2019’), available at: <https://www.icj.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/>.

2 BSR, *Human Rights Impact Assessment: Facebook in Cambodia*, December 2019, available at: https://about.fb.com/wp-content/uploads/2020/05/BSR-Facebook-Cambodia-HRIA_Executive-Summary2.pdf.

3 Mun Vong, ‘How to think of social media activism in Cambodia’, *The Asia Dialogue*, 13 February 2020, available at: <https://theasiadialogue.com/2020/02/13/how-to-think-of-social-media-activism-in-cambodia/>.

The Cambodian government, led by Prime Minister Hun Sen who has been in power since 1985, has been increasingly intolerant of political expression, and in particular of critical dissent.⁴ Cambodia's main opposition party, the Cambodia National Rescue Party (CNRP), was dissolved in November 2017 by the Supreme Court with 118 of its senior members banned from political participation for five years ahead of the 2018 elections.⁵ Civil society actors and human rights defenders are frequently intimidated and harassed for their advocacy and work, including through the abuse of legal processes.⁶ Cambodia has been ranked 144th out of 180 countries in the 2021 World Press Freedom Index,⁷ amidst concerns expressed over the "continued deterioration of the media environment in Cambodia", which has eroded the gains in "democratisation" of information indicated above.⁸

The COVID-19 pandemic poses new challenges and obstacles for the exercise of freedom of expression and information in Cambodia. While the country was spared from high numbers of severe COVID-19 cases in 2020, there has been a spike in cases since February 2021.⁹ The Cambodian government's COVID-19 strategy has encompassed a sustained campaign against freedom of expression and information in the digital sphere, under the banner of controlling the spread of alleged "false information" to protect public health and on the spurious grounds of provoking "turmoil in society".

4 BBC News, 'Hun Sen: Cambodia's strongman prime minister', 27 July 2018, available at: <https://www.bbc.com/news/world-asia-23257699>.

5 Reuters, 'Cambodia's main opposition party dissolved by Supreme Court', 16 November 2017, available at: <https://www.reuters.com/article/us-cambodia-politics-idUSKBN1DG1BO>. See also: Special Rapporteur on the situation of human rights in Cambodia, *Situation of human rights in Cambodia*, UN Doc. A/HRC/42/60, 27 August 2019, para 7 and 74.

6 Amnesty International, 'Cambodia 2020', available at: <https://www.amnesty.org/en/countries/asia-and-the-pacific/cambodia/report-cambodia/>.

7 Reporters Without Borders, '2021 World Press Freedom Index', available at: <https://rsf.org/en/ranking>.

8 Radio Free Asia, 'Dozens of NGOs Urge Cambodian Government to Protect Reporters on World Press Freedom Day', 3 May 2021, available at: <https://www.rfa.org/english/news/cambodia/press-05032021192528.html>.

9 ICJ, 'Cambodia: Stop silencing critical commentary on COVID-19', 25 May 2021 ('ICJ Joint Statement on Critical Commentary on COVID-19'), available at: <https://www.icj.org/cambodia-stop-silencing-critical-commentary-on-covid-19/>.

II. International law and standards

International human rights law and standards anchor the analysis in this report of the conduct of the Cambodian authorities in their efforts to monitor, delimit and censor online content to the detriment of human rights both online and offline. This section sets out Cambodia's international legal obligations and key international legal standards governing the rights to freedom of expression, opinion, information, privacy, health, association and political participation to provide the starting point for analysis.¹⁰

i. Rights to freedom of expression, opinion and information

Article 19 of International Covenant on Civil and Political Rights (ICCPR) – to which Cambodia is a State party – guarantees the right of each individual to freedom of expression and opinion. This includes the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.¹¹

The UN Human Rights Committee, the body tasked with interpreting and supervising the implementation by States Parties to the ICCPR, has set out the nature and scope of the obligations of States to respect and ensure the right to freedom of expression in a General Comment.¹² The Committee clarified that the rights to freedom of expression and opinion form the “foundation” of a free society in ensuring the “transparency and accountability” crucial to the

¹⁰ See also ICJ *Dictating the Internet* Report, 2019, section II.

¹¹ Article 19 of the ICCPR provides:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”

¹² UN Human Rights Committee, *General Comment No. 34*, UN Doc. CCPR/C/GC/34, 12 September 2011 (‘UN Doc. CCPR/C/GC/34’), paras. 2, 3.

promotion and protection of many other rights.¹³ States have obligations to protect and promote the freedom to engage in “political discourse, commentary on public affairs, discussion of human rights, journalism and religious discourse”, including through non-verbal means and “electronic and internet-based modes of expression”.¹⁴ With the proliferation in modern times of “internet and mobile based electronic information dissemination systems”, States are required to take steps to protect the important function of independent media online and offline to ensure “free communication of information and ideas... between citizens, candidates and elected representatives” and to “inform public opinion”.¹⁵

Both treaty and non-treaty-based standards have affirmed that international law and standards apply online. In July 2018, the UN Human Rights Council adopted by consensus a Resolution affirming that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice”.¹⁶

Legal bases for restricting or limiting the right to freedom of expression and information

As a general matter, the right to freedom of expression is only subject to restriction under the strict and narrow conditions set out in article 19(3) of the ICCPR, which applies to online and offline expression. Article 19(3) provides that that any restrictions must meet the tests of legality, legitimate purpose, necessity, proportionality and non-discrimination.

¹³ *Ibid.*, paras. 2, 3.

¹⁴ *Ibid.*, para. 11.

¹⁵ *Ibid.*, paras. 13, 15, 16.

¹⁶ UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/38/L.10/Rev.1, 4 July 2018, p. 3. This was similarly affirmed in a Joint Declaration on Freedom of Expression and the Internet issued by four independent experts from the UN and regional systems covering questions of freedom of expression in June 2011: United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and the Internet*, 1 June 2011, para. 1a. available at: <https://www.osce.org/fom/78309?download=true>.

Article 19(3) specifically provides that rights protected under article 19 may only be “subject to certain restrictions” as provided by law and necessary for the purpose of ensuring respect of the rights or reputations of others; or protecting national security, public order or public health or morals. These are exhaustive of the legitimate purposes for which expression may be restricted.

That a restriction be “provided by law” carries with it the requirement that it comply with the principle of legality. That principle dictates that laws imposing restrictions on the rights to free expression and opinion must be formulated with enough precision to: (i) enable individuals to ascertain and adjust their conduct; (ii) provide guidance to those charged with implementing the laws to ensure they can clearly identify which types of expression fall under restrictions and not exercise “unfettered discretion” in restricting freedom of expression; and (iii) not contravene other international human rights law or standards.¹⁷

Any restriction must be applied without discrimination based on any protected status.¹⁸ Additionally, any restriction must, in the express terms of article 19(3), meet the principles of necessity and proportionality, even where the restriction is pursued for a legitimate purpose. The UN Human Rights Committee has clarified that the test of necessity entails that limitations must not be imposed where protection can be provided through less restrictive measures, while the test of proportionality ensures that limitations are proportionate to their function, not overbroad and are the “least intrusive instrument amongst others to achieve their protective function”.¹⁹

The State’s obligation to respect, protect and fulfil the rights to free expression, opinion and information online and offline must be upheld by all branches of the State – executive, legislative and

17 UN Doc. CCPR/C/GC/34, paras. 25, 26.

18 *Ibid.*, para. 26; UN Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <https://www.refworld.org/docid/453883fa8.html>.

19 UN Doc. CCPR/C/GC/34, paras. 33 to 35.

judicial – and other public or governmental bodies.²⁰ This obligation further entails that these rights are protected under domestic law, including provision for remedies when the rights are violated.²¹ In this respect, “harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment” solely for the exercise of free expression rights amounts to a violation and “any form of effort to coerce the holding or not holding of any opinion” is prohibited under the ICCPR.²²

Obligations to restrict expression, including for speech inciting discrimination, hostility or violence

Article 20 of the ICCPR not only permits, but expressly requires States to impose certain restrictions on freedom of expression. Article 20 provides that any “propaganda for war” and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” shall be prohibited by law.²³

The UN Human Rights Committee has made clear that articles 19 and 20 of the ICCPR are “compatible with and complement each other” and limitations provided for under article 20 must comply with and be justified “in strict conformity” with article 19.²⁴ The former UN Special Rapporteur on freedom of expression has emphasized that domestic laws to combat hate speech or incitement to violence online and offline must adhere to the “requirements of legality, necessity and proportionality, and legitimacy” and ensure “robust public participation”, taking guidance from articles 19 and 20 of the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Rabat Plan of Action on

20 UN Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 29 March 2004 (‘UN Doc. CCPR/C/21/Rev.1/Add.13’), para. 4, available at: <https://www.refworld.org/docid/478b26ae2.html>.

21 UN Doc. CCPR/C/GC/34, para. 8.

22 UN Doc. CCPR/C/GC/34, paras. 9, 10.

23 Article 20 provides: “1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

24 UN Doc. CCPR/C/GC/34, paras. 50, 52.

the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²⁵

ii. Right to privacy

Article 17 of the ICCPR protects the right of every individual against arbitrary or unlawful interference with his or her privacy.²⁶ The UN General Assembly has affirmed that this and the free and independent exercise of the rights to expression and opinion are interdependent.²⁷ In its 2013 Resolution on Human Rights in the digital age, the UN General Assembly also stressed that technological advancement had expanded the capacity of States and non-State actors, including business enterprises, to collate, surveil and intercept data in ways that violated the right to privacy, and affirmed that States were obliged under international human rights law to prevent these violations in the context of digital communications.²⁸

As the UN Human Rights Council and the UN Office of the High Commissioner of Human Rights have affirmed, the principles of legality, legitimacy, necessity and proportionality apply to the right to privacy in the same manner as they do to freedom of expression and other fundamental freedoms.²⁹ These principles are relevant and enforceable both offline and online according to the

25 *Report of the Special Rapporteur on the promotion and protection of the freedom of opinion and expression*, UN Doc. A/74/486, 9 October 2019 ('UN Doc. A/74/486'), para. 57(b); Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights: Addendum*, UN Doc. A/HRC/22/17/Add.4 ('Rabat Plan of Action'), 11 January 2013, available at: https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

26 Article 17 of the ICCPR provides: "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks".

27 UN General Assembly, *The right to privacy in the digital age*, UN Doc. A/RES/68/167, 18 December 2013, available at: <https://undocs.org/A/RES/68/167>.

28 *Ibid.*

29 *Report of the High Commissioner on Human Rights on the Right to Privacy in the Digital Age*, UN Doc. A/HRC/39/29, 3 August 2018, para 10; Human Rights Council, *The right to privacy in the digital age*, UN Doc. A/HRC/RES/34/7, 7 April 2017, para. 2.

principles of necessity and proportionality, particularly with regard to communications surveillance technologies and techniques.³⁰

iii. Rights to freedom of association, peaceful assembly and political participation

The rights to freedom of association, peaceful assembly, and political participation are protected respectively under articles 21, 22 and 25 of the ICCPR.³¹ These rights are also often exercised online. Their respective provisions under the ICCPR provide in the same terms as article 19, that restrictions to be placed on these rights must also comply with the principles of legality, legitimacy, necessity and proportionality. The principle of non-discrimination also applies to these rights.

The rights to free expression, opinion, information, and privacy often concurrently engage the rights to peaceful assembly, freedom of association and political participation within the context of communications online. The UN Human Rights Committee has acknowledged that restricting communication technologies can

30 *Necessary and Proportionate International Principles on the Application of Human Rights to Communications Surveillance*, May 2014, available at: <https://necessaryandproportionate.org/principles>. The ICJ is also a signatory to these Principles. In his 2014 report following on from resolution 68/167, the UN Office of the High Commissioner for Human Rights referred to the Necessary and Proportionate Principles, reiterating that the “overarching principles of legality, necessity and proportionality” apply to limitations on the right to privacy online. See *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/ HRC/27/37, 30 June 2014, para. 23.

31 Article 21 of the ICCPR provides: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 provides: “1. Everyone shall have the right to freedom of association with others, including the right to form trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” Article 25 provides: “Every citizen shall have the right and the opportunity, without ... unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives”.

impede the right to assembly as they “offer the opportunity to assemble either wholly or partly online and often play an integral role in organizing, participating in and monitoring physical gatherings”.³² Thus, States must not “block or hinder Internet connectivity in relation to peaceful assemblies” or adopt “geotargeted or technology-specific interference” to restrict connectivity or access to content.³³ States should also ensure that “the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants”.³⁴ The Committee also noted that although surveillance technologies “can be used to detect threats of violence and thus to protect the public”, they may also “infringe on the right to privacy and other rights of participants and bystanders and have a chilling effect”.³⁵

Human rights defenders

The UN Declaration on Human Rights Defenders provides for particular protections for human rights defenders. The Declaration emphasizes the “prime responsibility” of States to “protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.³⁶

It further affirms that States must put in place legislative, administrative and other measures to ensure protection of their rights to association, assembly and political participation, along with their expression and privacy rights, both offline and online.³⁷

32 UN Human Rights Committee, *General Comment No. 37 on Article 21: the right to peaceful assembly*, UN Doc. CCPR/C/GC/37, 17 September 2020 (“CCPR/C/GC/37”), para. 10, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

33 UN Doc. CCPR/C/GC/37, para. 34.

34 *Ibid.*

35 *Ibid.*, para. 10.

36 *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc. A/RES/53/144, December 1998, (“UN Declaration on Human Rights Defenders”), article 2, available at: <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

37 *Ibid.*

iv. Right to health

Expression and information online are not only connected with the exercise of other civil and political rights, but also with the promotion and protection of economic, social and cultural rights. This includes, in particular, the right to health. To this end, Cambodia has the obligation to respect, protect and fulfill the right to the “enjoyment of the highest attainable standard of physical and mental health” as a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁸

Within the context of the COVID-19 pandemic, articles 12(1) and 12(2)(c) to (d) of the ICESCR require Cambodia to take steps to achieve the “prevention, treatment and control of epidemic, endemic, occupational and other diseases”, as well as the “creation of condition which would assure to all medical service and medical attention in the event of sickness”.³⁹

The UN Committee on Economic, Social and Cultural Rights (CESCR), the supervisory body for the ICESCR, has made clear that the right to health includes the obligation to ensure accessibility of health facilities, goods and services to all individuals without discrimination, including access to information as an “integral component of the right to health”.⁴⁰ This includes “the right to seek, receive and impart information and ideas concerning health issues”, without infringing upon the right to maintain privacy and confidentiality of health-related data.⁴¹

Respecting and protecting the right to health obliges Cambodia as a State party to ensure non-discriminatory and universal access

38 Article 12(1), ICESCR.

39 Article 12(2) provides: “The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

40 UN Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. No. E/C.12/2000/4, 11 August 2000 (‘UN Doc. E/C.12/2000/4’), paras. 3, 11, 21 – 23, 34 – 37, 44.

41 *Ibid.*, para. 12(b).

to health-related information; allow people to seek, receive and share ideas concerning health issues; abstain from “censoring, withholding or intentionally misrepresenting” health-related information; and refrain from obstructing people’s participation in health-related matters.⁴²

These obligations carry certain specificities in the midst of a public health emergency. The CESCR has indicated that COVID-19-related information must be provided by State authorities on a “regular basis, in an accessible format and in all local and indigenous languages” as a measure to combat false information on the virus and to “reduce the risk of transmission of the virus.”⁴³ The State is also obliged to ensure affordable internet services, necessary technology for effective information dissemination and refrain from shutting down or otherwise limiting access to the internet.⁴⁴

The former UN Special Rapporteur on freedom of expression highlighted that, in the context of COVID-19, the State must: (i) ensure access to information held by authorities relating to the crisis, including an obligation to “provide information that is as accurate as possible” and “clear and honest guidance” to enable not only the State to understand the concerns of the public but also individuals to ascertain how to manage their fears; (ii) maintain access to the internet for all; (iii) promote and protect independent media so that the public can adequately exercise their right to information to “take appropriate steps to protect themselves and their communities”; (iv) control the spread of false information on the virus online, without infringing on rights protected under article 19 of the ICCPR; and (v) ensure health surveillance to manage the crisis protects the right to privacy.⁴⁴

42 *Ibid.*, paras. 3, 12(b), 34, 35, 44, 50. See also ICJ, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, September 2020 (‘ICJ Global COVID-19 report 2020’), pp. 24 to 25, available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

43 UN Committee on Economic, Social and Cultural Rights, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc. No. E/C.12/2020/1, 17 April 2020, para. 18, available at: <https://undocs.org/E/C.12/2020/1>. See also ICJ Global COVID-19 report 2020, pp. 104 to 105.

44 *Ibid.*

v. Business and Human Rights

The obligation to protect human rights, such as freedom of expression and information and the other rights highlighted above, includes the obligation by the State to protect from the conduct of private entities, including businesses that would impair the enjoyment of human rights.⁴⁶ This necessarily entails the obligation to undertake a certain degree of regulation of companies such as telecommunication and internet services providing social media platforms. However, such regulation must be taken with a view to protecting, and not curtailing human rights.

This obligation is reflected in the jurisprudence of UN treaty bodies, as well as the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council. The UNGPs restate details of these protective obligations of the State. In addition, they provide for the direct and concurrent responsibility for business enterprises themselves to respect human rights in the context of business operations.⁴⁷

The UNGPs contain a framework for business and human rights which rests on three pillars: (i) the State's duty to protect against human rights violations; (ii) the corporate responsibility to respect human rights; and (iii) greater access to effective remedy – judicial and non-judicial – by victims of abuses.⁴⁸

45 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Disease pandemics and the freedom of opinion and expression*, UN Doc. No. A/HRC/44/49, 23 April 2020, available at: <https://undocs.org/A/HRC/44/49>.

46 UN Doc. CCPR/C/21/Rev.1/Add.13, para. 8; UN Doc. CCPR/C/GC/34, para. 7; UN Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc. CRC/C/GC/16, 17 April 2013, para. 28; UN Committee on Economic, Social and Cultural Rights, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, UN Doc. E/C.12/GC/24, paras. 14 – 22.

47 The Guiding Principles were endorsed by the UN Human Rights Council in 2011 in Resolution 17/4: UN Human Rights Council, Resolution adopted by the Human Rights Council 17/4: *Human rights and transnational corporations and other business enterprises*, UN Doc. A/HRC/RES/17/4, 6 July 2011.

48 OHCHR, *UN Guiding Principles on Business and Human Rights*, HR/PUB/11/04, 2011 ('UNGPs'), available at: https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

States retain a primary duty to bring into effect appropriate and effective laws, policies and regulations to ensure protection against human rights violations and abuses online, even with respect to the exercise of rights on platforms regulated entirely by private tech companies.⁴⁹ This duty extends to taking necessary and appropriate measures to ensure that where violations and abuses occur, victims have access to effective and adequate remedy through judicial mechanisms or other administrative, legislative or regulatory means.⁵⁰ While tech companies have the responsibility to respect human rights in the course of their business operations and provide effective and adequate remedy for any violations, States are obliged to exercise an overarching oversight and regulatory role to ensure that companies comply with these obligations.⁵¹

With respect to the duties of business enterprises, the UNGPs provide that all companies, including tech companies, have a responsibility to “respect human rights”, which “exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations”.⁵² This includes the responsibility to “avoid infringing on human rights”, including the rights to freedom of expression and information, association and privacy online; to “avoid causing or contributing to adverse human rights impacts through their own activities”; and to “take adequate measures” to “prevent, mitigate or remediate” such impacts, including putting in place “policies and due diligence processes” to ensure rights are respected.⁵³

49 *Ibid.*, pp. 3 – 10.

50 *Ibid.*, pp. 27 – 35.

51 *Ibid.*, pp. 4 – 6.

52 *Ibid.*, pp. 13 – 18.

53 *Ibid.*

III. Enacting and drafting new laws at odds with human rights

The Cambodian authorities have enacted new laws during and in response to the COVID-19 pandemic, including: (i) the Law on the Management of the Nation in Emergencies; (ii) Sub-Decree on the Establishment of the National Internet Gateway; and (iii) the Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases. The authorities are also in the process of drafting new laws, including the Law on Public Order and Cybercrime Law, which seek to further regulate expression and information in the digital sphere.

These laws that have been enacted or are being drafted contain provisions that are non-compliant with human rights law and standards. This renders them vulnerable to being abused to unduly restrict the right to freedom of expression, information and other rights. The deficiencies in these laws include: (i) vague and overbroad language; (ii) unnecessary and disproportionate sanctions; and (iii) lack of independent oversight mechanisms.

i. Law on the Management of the Nation in Emergencies⁵⁴

On 29 April 2020, the Law on the Management of the Nation in Emergencies ('State of Emergency Law') was adopted by Cambodia's National Assembly and the Senate. The law provides for the use of expanded powers of the government during a state

⁵⁴ The ICJ has previously analyzed this law in its previous publications: ICJ, 'Journalists and media platforms at increased risk in Cambodia, Thailand and Vietnam during the COVID-19 pandemic', 21 April 2021, pp. 1 – 3, available at: <https://www.icj.org/journalists-and-media-platforms-at-increased-risk-in-cambodia-thailand-and-vietnam-during-the-covid-19-pandemic/>; ICJ, 'Cambodia: State of Emergency bill violates the rule of law', 8 April 2020, available at: <https://www.icj.org/cambodia-state-of-emergency-bill-violates-the-rule-of-law/>.

of emergency, which can be declared in accordance with article 22 of the Cambodian Constitution.⁵⁵

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

- “bans or limits on distributing or broadcasting information that can cause public panic or turmoil, damage to national security or confusion about the situation under the State of Emergency”; and
- “surveillance measures by any means for digital information in response to the State of Emergency”.⁵⁶

Under article 8 of the State of Emergency Law, any intentional failure to “respect measures” imposed under article 5 can result in prison sentences from one month to one year and a fine of 100,000 (approx. USD 25) to two million riels (approx. USD 500). If this failure causes “public turmoil”, it is punishable with imprisonment from one to five years and a fine from one million (approx. USD 250) to ten million riels (approx. USD 2,500).⁵⁷

The vague terms “public panic”, “turmoil”, “damage to national security” and “confusion” are not at all defined in the State of Emergency Law. This allows for potential State overreach through overly broad interpretations of these concepts, beyond the strictly exhaustive list of legitimate purposes enumerated under article 19(3) of the ICCPR.

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

56 Article 5, State of Emergency Law.

57 Article 8, State of Emergency Law.

Even if the adoption of measures were aimed at a legitimate purpose under article 19(3) (e.g., public health), the overbroad and vague language of the State of Emergency Law is inconsistent with the principle of legality, which requires laws to be “formulated with sufficient precision” and “may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”.⁵⁸

The power granted to the State to use “any means” and to impose severe penalties for non-compliance appears to be inconsistent with the principles of necessity and proportionality. As pointed out in relation to the State of Emergency Law by the Special Rapporteur on the situation of human rights in Cambodia, “[p]enalties and fines should be commensurate to the seriousness of the offence committed, with consideration given to the individual’s economic situation”.⁵⁹

The law does not provide for effective judicial or administrative oversight or control of measures imposed under the State of Emergency Law, including measures to restrict disfavoured information or expression. Article 6 of the State of Emergency Law requires the government to “continuously report measures decreed in a State of Emergency to the National Assembly and the Senate”, and the National Assembly and the Senate “may ask for additional necessary information from the Royal Government within the framework of controlling and evaluating the measures put in place for the nation when it is jeopardized in accordance with the Constitution of the Kingdom of Cambodia”.⁶⁰ However, the State of Emergency Law fails to further clarify any clear, independent oversight procedure

58 UN Doc. CCPR/C/GC/34, para. 25.

59 OHCHR, ‘Cambodia’s state of emergency law endangers human rights, warns UN expert’, 17 April 2020, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25801&LangID=E>.

60 Article 6, State of Emergency Law.

for accountability, in contravention of international human rights law and standards.⁶¹

A group of UN Human Rights Council experts, including the Special Rapporteur on the situation of human rights in Cambodia, the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have criticized an earlier draft of the State of Emergency Law due to the “vaguely worded clauses including the generality of its application and its lack of compatibility with the principles of necessity and proportionality”, which could be “subjected to misinterpretation or misapplication”, and the “lack of an adequate oversight mechanism to prevent, safeguard and provide remedy in case there is an abuse of authority”.⁶² The same language appeared in the adopted law.

In response, the Cambodian Permanent Mission to the United Nations in Geneva underscored that the law is implemented based on the “principles of accountability, proportionality and necessity”⁶³ and will be invoked when there is a “desperate need for safeguarding and maintaining security and public order to protect the people’s lives, public health, public interest and property of citizens as a

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

62 *Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*; Reference OL KHM 1/2020, 9 April 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25186>.

63 *Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva*, Ref: 2020/04/328, 16 April 2020, para. 7, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35228>.

whole”.⁶⁴ The response, however, did not explain further how exactly the State of Emergency Law complies with the principles of legality, necessity and proportionality, beyond just asserting that it is “explicitly permissible by national and international human rights instruments”⁶⁵ and repeating the existing non-human rights compliant provisions in the law.⁶⁶

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

On 16 February, the Cambodian government promulgated the Sub-Decree on the Establishment of the National Internet Gateway (‘NIG Sub-Decree’), which “requires all internet traffic to be routed through a regulatory body charged with monitoring online activity before it reaches users”.⁶⁷

Article 6 of the NIG Sub-Decree empowers NIG operators to block and disconnect all network connections or content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs”, in collaboration with the Ministry of Post and Telecommunications (MPTC), Telecommunication Regulator of Cambodia (TRC) and other relevant authorities.⁶⁸

64 *Ibid.*, para. 8.

65 *Ibid.*, para. 5.

66 *Ibid.*, para. 7. For instance, the response repeats that there is a “monitoring mechanism by the two-chamber parliament of Cambodia” under Articles 86 and 102 of the Constitution, without addressing the concern of a lack of explicitly mandated judicial oversight for any human rights restrictions passed under the State of Emergency Law. The response also states that “any law enforcement officers engaging in arbitrary conducts and abuse of the law shall be punishable before the court of law”, but ignores the fact that the law, in and of itself, is problematic because it is vague and overbroad.

67 Human Rights Watch, ‘Cambodia: Internet Censorship, Control Expanded’, 18 February 2021, available at: <https://www.hrw.org/news/2021/02/18/cambodia-internet-censorship-control-expanded>; Agence Kampuchea Presse, “National Internet Gateway Established”, 18 February 2021, available at: <https://akp.gov.kh/post/detail/227175>.

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

It must be noted that “national revenue” is not a legitimate purpose for which freedom of expression and information may be restricted under article 19(3) of the ICCPR. In respect of “dignity, cultural, traditions and customs”, some aspects of these could go towards “respect for the rights and freedoms of others”, but this phrasing is too far-reaching and overbroad to coincide with human rights protections. The objective of “safety” may include “national security” or “public order”, but again is broader than those purposes. In any event, none of these terms are at all defined in the NIG Sub-Decree, and so there is a high risk of the imposition of undue restrictions justified by overly broad readings of these justifications. As pointed out by the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the right to privacy, “these overly-broad and ambiguous terminology and undefined grounds for action may enable the authorities to carry out arbitrary mass surveillance of private communications and widespread censorship of online content”.⁶⁹

The UN Human Rights Council experts also expressed concern about article 15 of the NIG Sub-Decree, which provides for complaint mechanisms against any penalty measures taken by the Telecommunication Regulator of Cambodia, an entity tasked with regulating Cambodia’s telecommunication sector and vested with the power to impose penalty measures against Internet Service Providers, Telecommunication Operators and related individuals who violate the Sub-Decree. The experts expressed fears about the “independent, fair and transparent process of decision-making in such a process”, which when coupled with the absence of “independent oversight, due process, or procedural safeguards”, may result in affected persons or entities being denied “the right to appeal

69 *Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right to privacy*, Reference: AL KHM 3/2021, 7 April 2021 (‘AL KHM 3/2021’), p. 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26263>.

decisions made by the government before an independent body”.⁷⁰

In response, the Cambodian government questioned the credibility of the information presented by the UN Human Rights Council experts, claiming that the “distribution of such misinformation by the author [of the information received by the Special Rapporteurs] to be highly irresponsible”.⁷¹ The government further asserted that article 6 of the NIG Sub-Decree is compliant with article 19(3) of the ICCPR, as it “allows the government to restrict communications necessary for, among many legitimate aims, the protection of morals, culture, national security, and public order”.⁷²

The Cambodian government’s characterization of valid concerns as “misinformation” is consistent with its general approach of conflating facts and opinions when cracking down on dissent or other disfavoured expression. Additionally, article 19(3) of the ICCPR is a closed list and does not include all of the other “many legitimate aims” claimed by the Cambodian government, such as the protection of “national revenue”. The response further failed to address how these ostensibly legitimate aims are defined amidst concerns of its vagueness, and also failed to address the concerns raised on the absence of independent oversight, due process, or procedural safeguards. The response also does not address how the complete blocking of communications could be necessary or proportionate measures to address these objectives.

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

The Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases (‘COVID-19

⁷⁰ AL KHM 3/2021, pp. 2 – 3.

⁷¹ *Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva*, No. 2021/05/365, 24 May 2021, pp. 3 – 4, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36294>.

⁷² *Ibid.*

Preventive Law') was promulgated by Cambodia's National Assembly on 5 March 2021 and approved by the Senate on 11 March 2021 in order to "combat and prevent the spread of COVID-19" and other severely contagious diseases.⁷³

Article 11 provides that "an act of intentional obstruction or deterrence of the enforcement of a measure imposed in accordance with this law" shall be punishable with imprisonment from six months to three years and monetary fines from two million riels (approx. USD 500) to ten million riels (approx. USD 2,500). It further provides for imprisonment from two to five years and fines from five million riels (approx. USD 1,250) to 20 million riels (approx. USD 5,000) where such act leads to the infection of COVID-19 to other people or serious impact on public health.⁷⁴

The Cambodian authorities have used the broad language of article 11 to arrest and charge those criticizing the government's COVID-19 vaccination campaign online, including social media users⁷⁵ and a journalist.⁷⁶ As a group of UN Human Rights Council experts has emphasized, restrictions "taken to respond to the virus must be motivated by legitimate public health goals and should not be used simply to quash dissent".⁷⁷

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

74 *Ibid.*

75 CamboJA News, 'TikTok users arrested and charged with spreading fake news about COVID-19 vaccines', 14 April 2021, available at: <https://cambojanews.com/tiktok-users-arrested-and-charged-with-spreading-fake-news-about-covid-19-vaccines/>. This will be discussed in greater detail in Section VI.

76 Reporters Without Borders, 'Cambodian reporter facing five years in prison for comment about vaccines', 21 July 2021, available at: <https://rsf.org/en/news/cambodian-reporter-facing-five-years-prison-comment-about-vaccines>. This will be discussed in greater detail in Section VI.

77 These include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while combating terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to education, the Special Rapporteur on the right to privacy, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to development, the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights to safe drinking water and sanitation, the Independent Expert on human rights and international solidarity, the Independent Expert on the promotion of a democratic and equitable international order, the Special Rapporteur

The UN Special Rapporteur on the situation of human rights in Cambodia, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the right to privacy, and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health have expressed “serious concern” over this “harsh” new law, and highlighted how the “excessive prison sentences and fines ... appear to be disproportionate and unwarranted”.⁷⁸

iv. Draft Law on Public Order

The draft Law on Public Order, released by the Interior Ministry in July 2020, contains several overbroad and vague provisions that could be used to arbitrarily restrict the right to freedom of expression in online spaces, especially those of women. The Draft has yet to be considered by Cambodia’s National Assembly and the Senate. However, given the total lack of political opposition in the Assembly, the bill is almost certainly guaranteed to pass in its current form.

Article 37 would prohibit a range of expression where it affects “national tradition and dignity”, including, inter alia, “exhibiting or disseminating writing or picture or using cursing words on social media”, “showing arrogant behavior” and “disseminating or posting writing, signs or pictures that represent any threat”.⁷⁹

on the Independence of Judges and Lawyers, members of the Working Group on Arbitrary Detention and members of the Working Group on Enforced or Involuntary Disappearances: OHCHR, “COVID-19: States should not abuse emergency measures to suppress human rights – UN experts”, 16 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>.

- 78 OHCHR, “UN experts urge Cambodia to review approach to COVID-19”, 12 April 2021, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26985&LangID=E>. These are similarly echoed in a communication from several UN Special Rapporteurs to the Cambodian government; see, *Mandates of 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 March 2021, pp. 2 – 4, available at: <https://cambodia.ohchr.org/sites/default/files/othersource/UN%20human%20rights%20experts%20joint%20letter%20on%20preventive%20measure%20again%20spread%20of%20COVID-19.pdf>.
- 79 *Joint Statement: Civil Society Organizations Call for the Draft Law on Public Order to be Immediately Discarded*, 13 August 2020 (“ICJ Joint Statement on Draft Law on Public Order”), available at: <https://www.icj.org/wp-content/uploads/2020/08/Cambodia-Draft-Law-on-Public-Order-Joint-Statement-2020-ENG.pdf>.

There is no elaboration or explanation of the standards of “dignity” to which the public will be held accountable.⁸⁰ Many of these forms of expression are protected under international law. As the UN Human Rights Committee has made clear in respect of expression protected under article 19, it “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others” and “embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20”.⁸¹

Article 36 prohibits men from being shirtless in public and women from wearing clothes that are considered “too short” or “too see-through” that “affect the national tradition and dignity”.⁸² This vaguely worded prohibition violates freedom of expression, undermines personal autonomy and fails to define innately subjective standards of dignity, which may exacerbate discrimination against women.⁸³

Failure to comply with the prohibitions in the draft law may be subject to penalties ranging from “warnings” and “administrative penalties”, to imprisonment from one to six days and fines between 100,000 to 500,000 riels (approx. USD 25 to USD 125).⁸⁴ As previously noted, the draft law “fails to regulate the application of these penalties, enabling authorities to make discretionary determinations on the appropriate penalty for each prohibited activity, which risks misapplication, lack of uniformity in application, and lack of predictability in complying with and enforcing the law”.⁸⁵ Further, the grounds upon which imprisonment can be imposed are vague, inconsistent with the principle of legality, and imprisonment is highly unlikely to be a necessary or proportionate response to many breaches of this draft law.⁸⁶

⁸⁰ *Ibid.*

⁸¹ UN Doc. CCPR/C/GC/34, para. 11.

⁸² ICJ Joint Statement on Draft Law on Public Order.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

v. Draft Cybercrime Law⁸⁷

A third draft of the Cybercrime Law, dated 4 August 2020, contains several provisions incompatible with the right to freedom of expression online and other fundamental freedoms.⁸⁸

Article 45 provides for criminal liability of a person who knowingly and intentionally makes “a false statement or disinformation through information technology” knowing that such statement or information is likely to have an adverse effect on national security; public health, public safety, or public finances; relations with other countries; the results of a national election; that incite hostility, hatred, racial discrimination or ill-will between groups of people; or cause a loss of public confidence in the government or state institutions. The sanction is imprisonment for a period between one month to three years and a fine from two million (approx. USD 500) to ten million riels (approx. USD 2,500).⁸⁹

Article 40 prohibits acts that constitute “interrupting, frightening, threatening, violating, persecuting or verbally abusing others by means of computer”.⁹⁰ Violators can be imprisoned for a period between one to six months and a fine from two million (approx. USD 500) to five million riels (approx. USD 1,250). The draft law does not define any of these terms, including “national security”, “public safety” or “loss of confidence”.⁹¹

The third draft of the Cybercrime Law follows from previous drafts of the law in April 2014 and October 2015.⁹² The ICJ has expressed concern about the second draft of the Cybercrime Law, highlighting in particular the overbroad provisions and the absence of independent and impartial oversight or procedural safeguards to the powers conferred on law enforcement by the draft law.⁹³

⁸⁷ See ICJ Dictating the Internet Report, 2019, pp. 136 – 138 for more details.

⁸⁸ Draft Cybercrime Law, on file. See also, Human Rights Watch, ‘Cambodia: Scrap Draft Cybercrime Law’, 13 November 2020, available at: <https://www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law>.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² ICJ Dictating the Internet Report, 2019, pp. 136 – 138.

⁹³ *Ibid.*

IV. Existing laws that are not compliant with human rights law and standards

Cambodia has continued enforcing laws that have existed prior to the pandemic to arbitrarily restrict freedom of expression and information. The majority of these laws are contained in the Criminal Code. They are not human rights compliant on a number of grounds. They are vague, overbroad, and provide for the imposition of measures that are not necessary or proportionate to a legitimate purpose. Such measures include the prescription of overly harsh penalties.

Several of these laws, including the *lèse-majesté* provision and Inter-Ministerial *Prakas* (Proclamation) on Website and Social Media Control ('Inter-Ministerial *Prakas*'), have been documented and analyzed by the ICJ in the ICJ's report on the ASEAN region in December 2019. These laws are reproduced summarily here as they remain highly relevant to emerging cases in Cambodia in 2020 and 2021. For further details and background, reference should be made back to the 2019 regional report.⁹⁴

i. Article 425 of the Criminal Code: False information

Article 425 of the Criminal Code provides for criminal liability for the "communication or disclosure of any false information with a view to inducing a belief that a destruction, defacement or damage dangerous to other persons will be carried out" with potential imprisonment from one to two years and a fine from two million (approx. USD 500) to four million riels (approx. USD 1,000).⁹⁵

As explained above, article 19(3) of the ICCPR provides for the possibility of narrow restrictions on the exercise of the right to

⁹⁴ ICJ Dictating the Internet Report, 2019.

⁹⁵ Article 425, Kingdom of Cambodia Criminal Code ('Criminal Code'), available at: <https://www.ajne.org/sites/default/files/resource/laws/7195/criminal-code-cambodia-en-kh.pdf>.

expression and information necessary for such purposes as “respect of the rights or reputations of others” and protection of national security, public order, public health or public morals. Any such restrictions must meet the tests of legality, necessity, proportionality, legitimate purpose and non- discrimination. Because article 425 allows for criminal sanction for vaguely worded and undefined offences of “destruction, defacement or damage dangerous to other persons”, it can be applied to a very wide range of conduct amounting to protected exercise of expression and information beyond what may be permissibly restricted under article 19(3) of the ICCPR.

Additionally, article 425 does not include a requirement that the alleged false information must be disclosed or disseminated with malice or ill intent. The UN Human Rights Committee has indicated that in order to comply with article 19 of the ICCPR, States should avoid “penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice”.⁹⁶

The Cambodian authorities have used article 425 to target purportedly “false information” about the COVID-19 pandemic.⁹⁷ Although the ICJ recognizes the necessity to combat the spread of false information online to protect public health during the uncertainty of a pandemic, this objective can and must be carried out using less disproportionate and intrusive means than resorting to the criminal law, with its attendant arrests, detentions and onerous fines.⁹⁸ Administrative measures, including regulatory measures, are more likely to meet the tests of necessity and proportionality and ensure the protection of freedom of expression and information.

⁹⁶ UN Doc. CCPR/C/GC/34, para. 47, 49.

⁹⁷ Al Jazeera, ‘Cambodia accused of political clampdown amid coronavirus outbreak’, 24 March 2020, available at: <https://www.aljazeera.com/news/2020/3/24/cambodia-accused-of-political-clampdown-amid-coronavirus-outbreak>.

⁹⁸ ICJ, ‘Southeast Asia: States must respect and protect rights in combating misinformation online relating to COVID-19’, 1 April 2020, available at: <https://www.icj.org/southeast-asia-states-must-respect-and-protect-rights-in-combating-misinformation-online-relating-to-covid-19/>.

ii. Article 437 bis of the Criminal Code: Lèse-majesté⁹⁹

Article 437 bis of the Criminal Code, introduced in February 2018, criminalizes “insults to the King” with one to five years’ imprisonment or a fine of two million (approx. USD 500) to ten million riels (approx. USD 2,500) or both.¹⁰⁰ Legal entities found in violation of the law, including non-governmental and media organizations, can be subject to a ban on their activities, fines between ten million to 50 million riels (approx. USD 2,500 to USD 12,500) and/or dissolution.¹⁰¹

Lèse-majesté laws are not in line with article 19 of the ICCPR, as affirmed by the Human Rights Committee in its General Comment No. 34. There the Committee emphasizes that “all public figures, including those exercising the highest political authority such as heads of State and government, are legitimately subject to criticism and political opposition.” The Committee has specifically expressed concern about *lèse-majesté* laws falling afoul of this principle. In addition, the Committee underscores that “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned”.¹⁰²

The UN Special Rapporteur on the human rights situation in Cambodia and the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have also stated that Cambodia’s *lèse-majesté* provisions are not human rights compliant “as they criminalize the legitimate exercise of freedom of speech”.¹⁰³

99 See ICJ Dictating the Internet Report, 2019, pp. 70 – 71 for more details.

100 *Ibid.*

101 *Ibid.*

102 UN Doc. CCPR/C/GC/34, para. 38.

103 OHCHR, ‘UN experts say constitutional changes in Cambodia impinge on democracy’, 20 February 2018, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22674&LangID=E>.

iii. Article 453 of the Criminal Code: Plotting

Article 453 criminalizes the act of “plotting”, defined as “a resolution agreed upon by two or more persons to commit an attack where the resolution was put into effect by one or more material actions”, with imprisonment from five to ten years.¹⁰⁴

The language of article 453 is ambiguous, with no clarity on what kind of “attack” or “material actions” would fall within its ambit. The article does not further specify the purposes for which this article may be used, which allows the Cambodian authorities to use this article to restrict online expression and content for purposes beyond those permitted under article 19(3) of the ICCPR.

Even if article 453 is used to advance a legitimate purpose identified under article 19(3) of the ICCPR, in a manner necessary and proportionate to the purpose such as national security, its vagueness is at odds with the principle of legality.¹⁰⁵

In actuality, article 453 has been wielded to target political opponents of the Cambodian government for their online expression, in conjunction with articles 494 and 495 of the Criminal Code,¹⁰⁶ in part due to the vague and overbroad language of these legal provisions.¹⁰⁷

¹⁰⁴ Article 453, Criminal Code.

¹⁰⁵ UN Doc. CCPR/C/GC/34, para. 25.

¹⁰⁶ For example, Khmer Times, ‘Former CNRP members say they are puzzled over charges’, 5 February 2021, available at: <https://www.khmertimeskh.com/50810822/former-cnrp-members-say-they-are-puzzled-over-charges/>. See also: Asia Centre, ‘Internet Freedoms in Cambodia: A Gateway to Control’, 2021, at 10, available at: <https://asiacentre.org/internet-freedoms-in-cambodia-a-gateway-to-control/>.

¹⁰⁷ CCHR, ‘Submission to the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression’, 2021, at 6, available at: <https://www.ohchr.org/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/Cambodia-Centre-for-human-rights.pdf>.

iv. Articles 494 and 495 of the Criminal Code: Incitement to commit a felony or disturb social security

Article 494 states that “incitement” is punishable when it is committed: “(1) by speech of any kind, made in a public place or meeting; (2) by writing or picture of any kind, either displayed or distributed to the public; (3) by any audio-visual communication to the public”.¹⁰⁸

Article 495 provides that the “direct incitement to commit a felony or to disturb social security” by employing one of the means defined in article 494 is punishable by “imprisonment from six months to two years and a fine from one million to four million riels” (approx. USD 250 to USD 1,000).¹⁰⁹

The alleged perpetrator must have intended to commit the offence, per article 4 of the Criminal Code,¹¹⁰ to the extent that articles 494 and 495 do not state the requisite *mens rea*. Notably, articles 494 and 495 do not explicitly require that there is a reasonable risk or likelihood that the incited action would result from the action or speech.

The formulation of articles 494 and 495 is so imprecise and overbroad that it can cover a wide range of outcomes beyond the closed list of permissible restrictions contemplated by articles 19(3) and 20(2) of the ICCPR. The vagueness of articles 494 and 495 is also incompatible with the principle of legality.¹¹¹

Further, articles 494 and 495 appear to be inconsistent with the principles of necessity and proportionality. The former UN Special Rapporteur on freedom of expression has made clear that the use

¹⁰⁸ Article 494, Criminal Code.

¹⁰⁹ Article 495, Criminal Code.

¹¹⁰ Article 4 of the Criminal Code provides: “There shall be no offence in the absence of intent to commit it. However, where so provided by law, an offence may result from recklessness, carelessness, negligence or failure to fulfil a specific obligation.”

¹¹¹ UN Doc. CCPR/C/GC/34, para. 25.

of criminal law to restrict expression is only warranted in the most egregious and exceptional cases, including: “(a) child pornography; (b) direct and public incitement to commit genocide; (c) advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and (d) incitement to terrorism”.¹¹² While articles 494 and 495 may be used to target the above-mentioned forms of incitement that warrant criminal sanctions, the articles’ broad formulation of incitement means that other categories of expression, such as incitement to “disrupt social security”, will also be unnecessarily and disproportionately criminalized.

These deficiencies have enabled the Cambodian authorities to continue abusing articles 494 and 495 to arbitrarily restrict online expression and information, under an excessively wide banner of “national security” and “public order”. Notably, these articles have been used extensively to arrest, prosecute, and convict journalists, human rights defenders, and the government’s political opponents for their online expression, in conjunction with the other laws listed in this report. In the context of COVID-19, a spokesperson for the Ministry of Justice has also classified the spreading of “false news” on the COVID-19 vaccine as “incitement”.¹¹³

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

113 Khmer Times, ‘Spreading fake news on C-19 vaccines considered ‘incitement’’, 23 February 2021, available at: <https://www.khmertimeskh.com/50816839/spreading-fake-news-on-c-19-vaccines-considered-incitement/>.

v. Inter-Ministerial Prakas (Proclamation) on Website and Social Media Control¹¹⁴

Clauses 6, 7 and 8 of the Inter-Ministerial *Prakas*¹¹⁵ allow the Ministries of Information, Interior and Post and Telecommunications to monitor, block and shut down websites and social media pages with content “considered as incitement, breaking solidarity, discrimination, create turmoil by will, leading to undermine national security, and public interests and social order”.¹¹⁶

The Cambodian government has used the legal provisions in the Inter-Ministerial *Prakas* to surveil and restrict disfavoured online content.¹¹⁷ The Inter-Ministerial *Prakas* permits the government to directly restrict disfavoured content without going through the courts,¹¹⁸ in spite of its obligation under international human rights law to only restrict content “pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy”.¹¹⁹ The Inter-Ministerial *Prakas* also lacks a provision expressly permitting appeals for those affected by government orders to restrict content, which is inconsistent with the rule of law and the right to an effective remedy under article 2(3) of the ICCPR and the requirement that

114 See ICJ Dictating the Internet Report, 2019, pp. 114 – 115 for more details. See also, Cambodian Center for Human Rights, *Protecting Fundamental Freedoms: A Desk Review of Domestic Legislation and its Compliance with International Law*, December 2019, pp. 37 – 38, available at: https://cchrcambodia.org/admin/media/report/report/english/CCHR_Desk%20Review%20of%20Law_ENG.pdf.

115 “*Prakas*” means official proclamation. It is a ministerial or inter-ministerial decision signed by the relevant Ministry.

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

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

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

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

there should be appeal procedures provided “by a competent judicial authority”.¹²⁰ This, in effect, renders the executive branch, rather than judicial authorities, as the “arbiters of lawful expression”.¹²¹

vi. Law on Telecommunications

The Law on Telecommunications expands the powers of the Cambodian government to control and surveil telecommunication information and communication service data in a manner inconsistent with the rights to privacy and other interrelated rights.¹²²

The Law on Telecommunications provides sweeping powers to the Cambodian government to secretly surveil all telecommunications, including private messaging, if it is conducted with the approval of an undefined “legitimate authority”,¹²³ and requires telecommunications operators and persons involved with the telecommunications sector to provide to the Ministry of Post and Telecommunications “telecommunications, information and communication technology service data”.¹²⁴

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

121 UN Doc. A/HRC/38/35, para. 68.

122 For detailed analyses of the law and its provisions, see, LICADHO, ‘Cambodia’s Law on Telecommunications: A Legal Analysis’, March 2016, available at: https://www.licadho-cambodia.org/reports/files/214LICADHOTELECOMSLawLegalAnalysis_March2016ENG.pdf; Cambodian Center for Human Rights, *List of issues submission for the Human Rights Committee’s third review of the Kingdom of Cambodia*, May 2020, pp. 13 – 15, available at: <https://bit.ly/33J7K0m>.

123 Article 97, Law on Telecommunications (‘Law on Telecommunications’), available at: <https://www.trc.gov.kh/wp-content/uploads/2016/03/Law-on-Telecommunication-in-English-Unofficial-Translation.pdf>.

124 Article 6, Law on Telecommunications.

V. State restrictions on online expression and information

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

These arbitrary restrictions have also been imposed on online expression and information related to COVID-19, which will be discussed in Section VI.

i. Prosecuting and convicting human rights defenders and social media users for "incitement"

Since the release of the ICJ's 2019 report, Cambodian authorities have continued arbitrarily arresting, detaining, prosecuting and convicting human rights defenders and social media users for disfavoured expression and content online. This campaign has been mainly undertaken pursuant to 494 and 495 of the Criminal Code.

The disfavoured online expression and content have included expression on the Cambodian-Vietnamese border, environmental rights issues, and more generally, criticisms of the government. Cambodia has an obligation to respect and ensure the right to exercise such forms of speech pursuant to article 19 of the ICCPR, which protects, *inter alia*, political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights and journalism,¹²⁵ subject only to the restrictions permissible under articles 19(3) and 20 of the ICCPR.

¹²⁵ UN Doc. CCPR/C/GC/34, para. 11.

The use of criminal law to restrict expression will often be an unnecessary and disproportionate response, even if undertaken in pursuit of a legitimate purpose, such as national security or public order. However, as the case studies below demonstrate, the Cambodian authorities are employing excessively broad readings of these justifications to unduly restrict freedom of expression, enabled in part by the vague and imprecise language of articles 494 and 495. The heavy-handed use of criminal sanctions or the threat of sanctions are also unnecessary and disproportionate, in the absence of evidence demonstrating beyond a reasonable doubt the intent to incite violence or hostility.¹²⁶

Land rights and the Cambodian-Vietnamese border

In one high profile illustrative case, **Rong Chhun**, the President of the Cambodian Federation of Unions and a member of the Cambodia Watchdog Council (CWC), an umbrella non-governmental organization of unions representing teachers, workers, farmers, and students, was arrested on 31 July 2020, detained, and charged under articles 494 and 495.¹²⁷ Rong Chhun had posted on his personal Facebook page that several Cambodians farmers had lost their land because of the irregular demarcations of border posts in Tbong Khmum Province.¹²⁸ His arrest was made by 25 to 30

¹²⁶ UN Doc. A/66/290, paras. 81, 83.

¹²⁷ ICJ, 'Cambodia: authorities must end increasing crackdown on human rights defenders', 11 September 2020 ('ICJ September 2020 Statement'), available at: <https://www.icj.org/cambodia-authorities-must-end-increasing-crackdown-on-human-rights-defenders/>; Front Line Defenders, 'Human Rights Defender Rong Chhun Arrested and Charged', available at: <https://www.frontlinedefenders.org/en/case/human-rights-defender-rong-chhun-arrested-and-charged>; Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders, Reference AL KHM 6/2020, 18 August 2020 ('AL KHM 6/2020'), pp. 1 – 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25497>.

¹²⁸ In response, the Office of the Council of Ministers' Border Affairs Committee issued a statement on 31 July 2020 condemning Rong Chhun for "providing false statements": AL KHM 6/2020, p. 2; Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations at Geneva, *Responses from the Ministry of Interior and the Ministry of Justice of the Kingdom of Cambodia As to the Alleged Arbitrary Arrest and Detention of Mr. Rong Chhun*, No: 2020/10/947, 30 October 2020 ('Cambodian Government Response to AL KHM 6/2020'), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35659>.

“unidentified men in plain clothes” who reportedly neither showed an arrest warrant nor provided information as to the reason for the arrest and where he would be taken.¹²⁹ His family did not learn about his whereabouts until he was brought before the Phnom Penh Municipal Court and charged under articles 494 and 495 on 1 August 2020.¹³⁰ On 18 August 2021, the Phnom Penh Municipal Court sentenced Rong Chhun to two years in prison and fined him two million riel (approx. USD 500) for incitement to cause serious disorder to social security.¹³¹

Several UN Human Rights Council experts, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders, expressed concern in a communication to the Cambodian government that “the criminalization of [Rong Chhun’s] speech does not appear to fall within the remit of Article 19(3) of the ICCPR”, and that his “arrest without a warrant” may not “meet the standard of flagrante delicto as outlined under the Criminal Procedure Code.” They expressed concern that his arrest appeared to contravene the right not to be arbitrarily deprived of liberty under articles 9 and 14 of the ICCPR.¹³²

In response, Cambodia’s Ministry of Interior and Ministry of Justice stated that the Phnom Penh Court of First Instance justified the charge based on the dissemination of material that “contain fabrication of Cambodia-Vietnam border demarcation, with a goal of misleading public opinion and instigating social disorder and upheaval affecting national security”, which is a crime under articles 494 and 495.¹³³ With regards to the alleged arbitrary arrest,

129 AL KHM 6/2020, p. 2.

130 Human Rights Watch, ‘Cambodia: Free Prominent Trade Union Leader’, 4 August 2020, available at: <https://www.hrw.org/node/375994/printable/print>.

131 The Phnom Penh Post, ‘Chhun sentenced to two years’, 18 August 2021, available at: <https://www.phnompenhpost.com/national/chhun-sentenced-two-years>.

132 AL KHM 6/2020, p. 3 – 4.

133 Cambodian Government Response to AL KHM 6/2020, pp. 2 – 3.

the Ministry of Interior stated that Rong Chhun had been arrested “with procedural coordination of a Deputy Prosecutor attached to the Phnom Penh Court of the First Instance”, and later detained in accordance with detention warrant No. 8987 dated 1 August 2020 signed by an investigating judge.¹³⁴

It appears that the arbitrary arrest, detention, and charging of Rong Chhun was based on an overly expansive justification of national security and public order, and, likely, an attempt to stifle political expression under this pretext. This is apparent from the Cambodian government’s response to the UN Human Rights Council experts, which does not clarify how exactly Rong Chhun’s online expression was a “fabrication”, or how Rong Chhun intended to “incite social disorder and chaos causing a serious upheaval affecting national security and public order”. This flouts Cambodia’s obligation under the ICCPR to “demonstrate in specific and individualized fashion the precise nature of the threat” and a “direct and immediate connection between the expression and the threat” when restricting the right to freedom of expression.¹³⁵ The UN Human Rights Council experts, in a later communication, expressed concern at the “characterization of his reporting on land rights issues as an attempt to deceive the public”.¹³⁶ The Cambodian government’s response also elides the fact that the vague and overbroad articles 494 and 495 are not, in any event, human rights compliant.

134 Cambodian Government Response to AL KHM 6/2020, p. 2. The Ministry of Interior did not address the UN Human Rights Council’s experts’ concerns on whether the arrest met the threshold required of *flagrante delicto*, as stating that the arrest was carried out “with procedural coordination of a Deputy Prosecutor” does not explain whether the Criminal Procedure Code had indeed been followed.

135 According to General Comment 34, when a “State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”. See, UN Doc. CCPR/C/GC/34, para. 35.

136 *Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Working Group on discrimination against women and girls*, Reference AL KHM 8/2020, 10 November 2020 (‘AL KHM 8/2020’), p. 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25670>.

The arrest and detention of Rong Chhun led to peaceful protests, including protests on 2 and 13 August 2020, to demand his release, and several protestors were arrested, detained and charged in relation to their involvement or planned engagement in these peaceful assemblies.¹³⁷ In particular, **Mean Prommony**, Vice-President of the Khmer Student Intelligence League Association, was arrested on 6 September 2020 allegedly “for his expressed intent online to lead the demonstration in Freedom Park the next day” and charged under articles 494 and 495 by the Phnom Penh Municipal Court,¹³⁸ in apparent contravention of his right to peaceful assembly and expression online.

The Cambodian courts have also convicted several other human rights defenders and activists under articles 494 and 495 for their online expression on the border demarcation issue. In December 2020, two rappers, **Kea Sokun** and **Long Putheara**, were found guilty under articles 494 and 495 by the Siem Reap Provincial Court in relation to lyrics contained in rap songs posted on YouTube about the loss of territory to Vietnam and the country’s economic situation.¹³⁹ Long Putheara was sentenced to five months in prison.¹⁴⁰ Kea Sokun was sentenced to a year and a half in prison, with his sentence upheld by the Battambang Appeal Court in June 2021.¹⁴¹ In May 2021, it was reported that the Pailin Provincial Court sentenced **Yuong So Da**, a schoolteacher, to one year in prison under articles 494 and 495 in relation to a Facebook comment he

137 ICJ September 2020 Statement; Radio Free Asia, ‘Cambodian Police Violently Disperse Protest For Jailed Union Leader Rong Chhun, Arrest Six’, 13 August 2021, available at: <https://www.rfa.org/english/news/cambodia/protest-08132020183055.html>; UN Human Rights Council Experts Communication on Rong Chhun, p. 3.

138 AL KHM 8/2020, p. 8. He has been in pre-trial detention in Phnom Penh Correctional Center 1, and his bail application was denied on 18 May 2021; Front Line Defenders, ‘Bail Denied to Seven Human Rights Defenders’, 21 May 2021, available at: <https://www.frontlinedefenders.org/en/case/bail-denied-seven-human-rights-defenders-1>.

139 ICJ September 2020 Statement; The Diplomat, ‘Two Rappers Convicted of ‘Incitement’ in Cambodia’, 23 December 2020, available at: <https://thediplomat.com/2020/12/two-rappers-convicted-of-incitement-in-cambodia/>; Radio Free Asia, ‘Cambodian Rappers Handed Lengthy Jail Terms For Dissing Government’, 22 December 2020, available at: <https://www.rfa.org/english/news/cambodia/rappers-12222020160950.html>.

140 *Ibid.*

141 *Ibid.*; VOD, ‘Rapper’s Jail Sentence Upheld by Battambang Appeal Court’, 16 June 2021, available at: <https://vodenglish.news/rappers-jail-sentence-upheld-by-battambang-appeal-court/>.

posted in September 2020 implying that “the Cambodian-Vietnamese Friendship Monument in the former Khmer Rouge stronghold of Pailin symbolized Cambodia’s increasing subservience to Vietnam”.¹⁴²

Environmental rights activism

In May 2021, **Phuon Keoreaksmeay**, **Long Kunthea** and **Thun Ratha**, activists from the Mother Nature Cambodia group, were found guilty of incitement under articles 494 and 495 by the Phnom Penh Municipal Court.¹⁴³ Thun Ratha was sentenced to 20 months in prison and fined four million riels (approx. USD 1,000), while Phuon Keoreaksmeay and Long Kunthea were sentenced to 18 months in jail and fined four million riels (approx. USD 1,000).¹⁴⁴

Two of their colleagues, **Alejandro Gonzalez-Davidson** and **Chea Kunthin**, were also convicted in absentia for the same charges, with warrants issued for their arrest. Alejandro Gonzalez-Davidson, founder of Mother Nature environmental movement, was sentenced to 20 months in prison, while Chea Kunthin was sentenced to 18 months. They were also fined four million riels (approx. USD 1,000) each.¹⁴⁵

The environmental activists were convicted of “incitement” for protesting the filling of Boeung Tamok Lake in Phnom Penh due to concerns about its impact on flooding in the city.

On 3 September 2021, Long Kunthea, Phuon Keoreaksmeay and Thun Ratha were arrested shortly after announcing on Facebook the group’s plan for Long Kunthea to conduct a one-person

142 Radio Free Asia, ‘Cambodian Teacher Sentenced to Jail For Criticizing Monument to Cambodian-Vietnamese Ties’, 25 May 2021, available at: <https://www.rfa.org/english/news/cambodia/teacher-05252021213609.html>.

143 ICJ September 2020 Statement; VOD, ‘Mother Nature Environmentalists Found Guilty of Incitement’, 5 May 2021, available at: <https://vodenglish.news/mother-nature-environmentalists-found-guilty-of-incitement/>; Amnesty International, ‘Cambodia: “Outrageous” conviction of five environmental activists must be overturned’, 6 May 2021, available at: <https://www.amnesty.org/en/latest/news/2021/05/cambodia-outrageous-conviction-of-five-environmental-activists-must-be-overturned/>; The Diplomat, ‘Trio of Cambodian Youth Imprisoned for Environmental Activism’, 6 May 2021, available at: <https://thediplomat.com/2021/05/trio-of-cambodian-youth-imprisoned-for-environmental-activism/>.

144 *Ibid.*

145 *Ibid.*

demonstration, which they had intended to livestream online.¹⁴⁶ In relation to the arrest, detention, and charging of the three environmental activists and other human rights defenders, a group of UN Human Rights Council experts, including the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders, and the Working Group on discrimination against women and girls expressed “grave concern regarding the criminalization of the means by which human rights defenders carry out their work”, including “conducting advocacy online via social media platforms”.¹⁴⁷ They also expressed concern about the use of articles 494 and 495 to criminalize the work of human rights defenders and activists “who have merely exercised their right to freedom of assembly and association, and freedom of expression”, especially since individuals “should never be arrested or criminally prosecuted for their peaceful participation in assemblies”.¹⁴⁸

Further, the ICJ is concerned about the evidentiary basis on which the convictions were made, which is a fundamental cornerstone of the rule of law and the right to a fair trial. According to LICADHO, a Cambodian human rights non-governmental organization, the trial “largely consisted of questions regarding the Mother Nature Facebook account, who was funding the environmental rights defenders, and publicly available social media posts, none of which constituted evidence of incitement”.¹⁴⁹

¹⁴⁶ *Ibid.*

¹⁴⁷ AL KHM 8/2020, p. 11. It is worth noting that although the Cambodian government did respond to the UN Human Rights Council experts’ communication, they did not address the additional concerns raised by them, and instead repeated what had already been shared regarding Rong Chhun’s case in the Cambodian Government Response to AL KHM 6/2020; see, *Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations at Geneva*, No. 2021/01/104, 26 January 2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35930>.

¹⁴⁸ AL KHM 8/2020, p. 11.

¹⁴⁹ LICADHO, ‘Environmental Activists Convicted of Incitement for Planning Peaceful Protest’, 5 May 2021, available at: <https://www.licadho-cambodia.org/flashnews.php?perm=287&english>; VOD, ‘Mother Nature Environmentalists Found Guilty of Incitement’, 5 May 2021, available at: <https://vodenglish.news/mother-nature-environmentalists-found-guilty-of-incitement/>.

There were also credible allegations concerning breaches of the right to privacy of the activists, which led to their arrests and subsequent convictions. According to information received by the above-mentioned group of UN Human Rights Council experts, when Thun Ratha was being detained by some 25 police officers, allegedly without being shown an arrest warrant, he was informed by the officers questioning him that “the police had hacked into his Facebook account”.¹⁵⁰ If true, it is unclear what the legal basis for this “hacking” had been, although it must be noted that the surveillance of all telecommunications, including private messaging, is permissible if conducted with the approval of a “legitimate authority” under the Law on Telecommunications.¹⁵¹

On 21 July 2021, it was reported that the three activists were facing an additional charge of “plotting”, presumably under article 453 of the Criminal Code, in relation to an ongoing case against four other activists also from Mother Nature Cambodia.¹⁵² This occurred after investigation judge covertly brought each of them into the court for questioning without the presence of their lawyer. If convicted, they could face ten years in prison, in addition to the 18 and 20 months they are currently serving on convictions of “incitement”.¹⁵³

Other forms of disfavoured expression and content

In June 2020, **Kong Raiya**, a youth activist formerly affiliated with the CNRP, was sentenced to two years in prison under articles 494

150 AL KHM 8/2020, p. 6.

151 Article 97, Law on Telecommunications. There is no definition of what constitutes a “legitimate authority,” or the means by which such an authority is competent to approve surveillance. See also: LICADHO, ‘Cambodia’s Law on Telecommunications: A Legal Analysis’, March 2016, available at: <https://www.licadho-cambodia.org/reports.php?perm=214>.

152 CamboJA News, ‘Three convicted Mother Nature activists handed an additional plotting charge’, 21 July 2021, available at: <https://cambojanews.com/three-convicted-mother-nature-activists-handed-an-additional-plotting-charge/>. The other three activists and Mother Nature co-founder who remains abroad are being charged under articles 453 and 437 *bis* of the Criminal Code, allegedly for their documentation that raw sewage has entered the Tonle Sap River near the Royal Palace; see, Human Rights Watch, ‘Cambodia: Free Environmental Activists’, 22 June 2021, available at: <https://www.hrw.org/news/2021/06/23/cambodia-free-environmental-activists>.

153 Amnesty International, ‘Cambodia: Environmental Activists Face Additional Charges’, 11 August 2021, available at: <https://www.amnesty.ca/ua-urgent-action/cambodia-environmental-activists-face-additional-charges/>; RFA, ‘Cambodia Charges Three Mother Nature Activists With Conspiracy’, 21 July 2021, available at: <https://www.rfa.org/english/news/cambodia/activists-charged-07212021185348.html>.

and 495 for selling t-shirts with images of Kem Ley on Facebook.¹⁵⁴ Kem Ley was a prominent political commentator and human rights defender who was shot and killed in July 2016.¹⁵⁵ The t-shirts contained two of Kem Ley's famous quotes, but did not contain any calls for violence or disorder.¹⁵⁶ Kong Raiya had previously been sentenced to 18 months' imprisonment in 2015 on spurious incitement charges in relation to a Facebook post that criticized the government.¹⁵⁷

Kong Raiya's conviction follows from a call in July 2019 from several UN Human Rights Council experts after Kong Raiya had been arrested, detained, and charged to release him from detention and drop all charges against him, out of concern that the "arrests, detention and criminal charges ... may unnecessarily and disproportionately restrict [his] right to freedom of expression and opinion, the rights to public participation, to freedom of peaceful assembly and of association, and to defend human rights".¹⁵⁸ The UN Human Rights Council experts included the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the

154 Khmer Post Asia, 'Kong Raiya sentenced to two years', 23 June 2020, available at: <https://en.khmerpostasia.com/2020/06/23/kong-raiya-sentenced-to-two-years/>.

155 The ICJ has, in conjunction with other human rights organizations, issued a statement in July 2020 calling for an independent Commission of Inquiry to conduct an effective and impartial investigation into Kem Ley's death. The statement also noted the circumstances surrounding Kong Raiya's conviction; ICJ, 'Cambodia: four years on, no effective investigation into Kem Ley's unlawful killing', 9 July 2020, available at: <https://www.icj.org/cambodia-4-years-on-no-effective-investigation-into-kem-leys-unlawful-killing/>; ICJ, 'Cambodia: No Justice At 5-Year Anniversary of Kem Ley's Death', 9 July 2021, available at: <https://www.icj.org/cambodia-no-justice-at-5-year-anniversary-of-kem-leys-death/>.

156 *Ibid.* The two quotes are: "Wipe your tears and continue your journey", and "Although you do nothing, you would still be victimized. It's just a matter of time when it's your turn."

157 *Ibid.*

158 *Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders*, Reference AL KHM 4/2019, 19 July 2019, p. 2, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24758>. The experts also expressed concern at the detention and charging of Soung Neakpaon, who was "attempting to participate in a commemorative ceremony" at the Caltex Bokor petrol station where Kem Ley was murdered.

promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders.¹⁵⁹

In addition to the arbitrary interference on Kong Raiya's right to freedom of expression through unjustifiable criminal sanction,¹⁶⁰ Kong Raiya's conviction also raises concerns of whether his rights to a fair trial and a duly reasoned decision were respected in the trial proceedings. According to the American Bar Association Center for Human Rights, which monitored Kong Raiya's criminal trial, the prosecution failed to "adduce any evidence to show the shirts would be understood to call for social disorder; that the shirts might have the effect of creating social disorder; or that Mr. Raiya had intended such effects." Nonetheless, the Phnom Penh Municipal Court resolved all doubts in the prosecution's favor and convicted Kong Raiya.¹⁶¹ The Court also reportedly provided "scant reasoning for its verdict, omitting explanation of why it had rejected defense arguments on freedom of expression and why it found that Mr. Raiya possessed the requisite intent".¹⁶²

The prosecution and conviction of human rights defenders and activists can be situated in a wider trend of intimidation and harassment of civil society activists and human rights defenders to

159 *Ibid.* In response, the Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva stated that Kong Raiya's Facebook activity "aims at inciting social unrest and hatred", and that his criminal case are "under the Judiciary, which is [an] independent body", and that Kong Raiya has the "right to defence by a lawyer of his own choice and has the rights to appeal to the higher court in accordance with the applicable law in case they are not satisfied with the court's decision"; *Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva*, Ref. 2019/09/328, 13 September 2019, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34874>.

160 Similar to the aforementioned cases of article 494 and 495, Kong Raiya's online speech is protected under article 19 of the ICCPR, and in the absence of any clear evidence that he intended to incite violence or hostility, cannot be legitimately restricted. Even if in pursuit of a legitimate purpose under articles 19(3) or 20 of the ICCPR, criminal sanctions are disproportionate and unnecessary.

161 American Bar Association Center for Human Rights, *Cambodia v. Kong Raiya*, November 2020, pp. 2 – 4, 19 – 21, available at: https://www.americanbar.org/content/dam/aba/administrative/human_rights/trialwatch/fair_trial_report_cambodia_kong_raiya.pdf.

162 *Ibid.*

silence dissent and other disfavoured expression, in contravention of their rights to freedom of expression, peaceful assembly, association, and political participation.¹⁶³ In September 2020, the Spokesperson of the UN High Commissioner for Human Rights issued a press briefing on the government's "intolerance to dissent ... mainly directed at human rights organizations, environmentalists and human rights defenders", noting, inter alia, how a "number of other organisations have received visits by officials, checking their registration, identity and other documents while also experiencing continued surveillance".¹⁶⁴ On 7 September 2020, the Ministry of Interior issued a statement denouncing Mother Nature Cambodia and Khmer Thavrak as unauthorized organizations, calling on the responsible authorities to prosecute them, presumably under the non-human rights compliant Law on Associations and Non-Governmental Organizations (LANGO).¹⁶⁵

ii. Clampdown on journalists and media platforms

The Cambodian authorities have continued targeting journalists and media platforms solely for carrying out their professional duties of investigating and imparting information to the public in the digital space.

In Cambodia, independent journalists have long been harassed by the authorities, especially when reporting critically about the government.¹⁶⁶ According to the Cambodian Journalists Alliance

163 ICJ September 2020 Statement.

164 OHCHR, 'Press briefing on Cambodia by Spokesperson of the High Commissioner for human rights', 11 September 2020, available at: <https://cambodia.ohchr.org/en/news/press-briefing-cambodia-spokesperson-high-commissioner-human-rights>.

165 ICJ September 2020 Statement. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concerns on the LANGO in a communication to the Cambodian Government. See: *Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Reference OL KHM 2/2015, 8 May 2015, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20323>.

166 ICJ, *Submission of the International Commission of Jurists to the Office of the United Nations High Commissioner for Human Rights Pursuant to Human Rights Council Resolution 45/18*, 16 April 2021 ('ICJ OHCHR Submission on Journalists'), available at: <https://www.icj.org/wp-content/uploads/2021/04/SoutheastAsia-ICJ-OHCHR-Submission-Journalists-Safety-2021-ENG.pdf>; ICJ, 'Cambodia: ICJ and 56 organizations call on authorities to release journalists and cease harassment of independent media', 2 November 2020, available at: <https://www.icj.org/cambodia-icj-and-56-organizations-call-on-authorities-to-release-journalists-and-cease-harassment-of-independent-media/>.

Association, 35 cases of harassment against 72 journalists were documented in 2020, with more than 42 of these journalists being detained for questioning or imprisoned. They also recorded 35 reported harassment cases against 72 journalists in 2020. More than 42 of those journalists involved were detained for questioning or imprisoned. At least 22 journalists were either attacked or threatened with violence while on duty. One journalist died in what the police concluded was a traffic accident without proper investigation.¹⁶⁷ These incidents of violence appear to occur with impunity, to the extent there is a lack of “effective, independent, transparent investigations and prosecuting perpetrators in accordance with international human rights standards”.¹⁶⁸

Prosecuting and convicting journalists

Sok Oudom, owner of Rithysen radio station and website, was convicted on 22 December 2020 to 20 months in prison with a fine of 20 million riels (approx. USD\$5,000) under articles 494 and 495.¹⁶⁹ The charges stem from Sok Oudom reporting on Facebook Live on an ongoing land dispute between residents of Kampong Chhnang and the military.¹⁷⁰

The use of criminal sanctions against reporters for their online reporting is consistent with a wider trend of journalists being convicted and imprisoned for carrying out their work.¹⁷¹ The Cambodian Journalists Alliance Association documented 15 cases involving 31 journalists being imprisoned, of which 11 cases involved charges of incitement to commit a felony under articles 494 and 495 and

167 Cambodian Journalists Alliance Association, *Cambodian Journalism Situation Report 2020*, 29 March 2020 ('Cambodian Journalism Situation Report 2020'), p. 4, available at: <https://www.camboja.net/wp-content/uploads/2021/03/Cambodian-Journalism-Situation-Report-2020.pdf>.

168 *Joint Statement: World Press Freedom Day, Promoting and Protecting Press Freedom guarantees Information as a Public Good*, 3 May 2021 ('World Press Freedom Day Joint Statement'), p. 2, available at: https://media.business-humanrights.org/media/documents/Joint_statement_World_Press_Freedom_Day.pdf.

169 Cambodian Journalism Situation Report 2020, p. 16.

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

171 ARTICLE 19, 'Cambodia's Government Should Stop Silencing Journalists, Media Outlets', 2 November 2020, available at: <https://www.article19.org/resources/cambodias-government-should-stop-silencing-journalists-media-outlets/>.

extortion under article 232 of the Criminal Code.¹⁷² Separately, former Radio Free Asia journalists **Yeang Sothearin** and **Uon Chhin** had their appeal to halt a reinvestigation into their espionage case rejected by the Supreme Court in October 2020, after having had their appeal to halt the reinvestigation into their pornography case also rejected by the Supreme Court in July 2020.¹⁷³ Their case has been described by several human rights organizations as being “left in legal limbo for over three years, with no resolution of their case in sight”.¹⁷⁴ The ICJ has previously noted that these spurious charges against the journalists were “brought with the sole purpose of silencing their work as journalists and chilling other independent voices in the country from speaking”.¹⁷⁵

Revocation of media licenses

The Cambodian authorities have also revoked the licenses of independent media outlets, often in conjunction with the imposition of criminal sanctions on journalists from those outlets.

In May 2020, the Ministry of Information revoked the media license of **Rithysen** for allegedly “publishing information which is exaggerated information, contains incitement to violence, provocation to commit discrimination and provocation to cause social insecurity and chaos”, days before Sok Oudom, its owner, was charged under articles 494 and 495.¹⁷⁶ In April 2020, **CKV TV Online**, an online news outlet, had its license revoked by the Ministry of Information for alleged “severe violation of journalism

172 Cambodian Journalism Situation Report 2020, p. 15.

173 Radio Free Asia, ‘Cambodia’s Top Court Rejects Ex-RFA Reporters’ Plea to Drop Probe of Espionage Charges’, 27 October 2020, available at: <https://www.rfa.org/english/news/cambodia/probe-10272020161213.html>.

174 World Press Freedom Day Joint Statement, p. 1.

175 ICJ, ‘Cambodia: charges against journalists Yeang Sothearin and Uon Chhin must be dropped’, 4 October 2019, available at: <https://www.icj.org/cambodia-charges-against-journalists-yeang-sothearin-and-uon-chhin-must-be-dropped/>.

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

that affects public order”.¹⁷⁷ The Ministry of Information also revoked media licenses of several other media outlets for their reporting on the COVID-19 pandemic, which will be further described below in Part VI (ii).¹⁷⁸

It has been noted by the NGO Freedom House that the process of revoking media licenses “is not transparent”, with “no clear appeal process” and that the “Information Ministry is the sole authority for allocating and revoking media licenses”.¹⁷⁹

This system of having the Ministry of Information as the sole authority for allocating and revoking media licenses is at odds with the Human Rights Committee’s affirmation that State parties should “establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses”, based on criteria that are “reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the [ICCPR].”¹⁸⁰ The revocation of licenses based on a non-transparent process gives rise to concerns as to whether these restrictions are in line with the principle of legality, which requires restrictions on freedom of expression to be clearly “provided by law” and not confer “unfettered discretion” to restrict freedom of expression.¹⁸¹ This also stands to undermine the rule of law principle, required also under human rights law, that there should be express appeal procedures provided “by a competent judicial authority”,¹⁸² to the extent that there is no clarity on whether affected media outlets can appeal their license revocations.

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

178 See ICJ OHCHR Submission on Journalists.

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

180 UN Doc. CCPR/C/GC/34, para. 39.

181 *Ibid.*, paras. 25 – 26.

182 UN Doc. A/HRC/17/27. This principle applies when online content is being restricted through takedown demands from the authorities; it is logical that the same principle should similarly apply to the revocation of media licenses.

The journalists and news outlets were apparently prevented from working and subsequently sanctioned for their work, solely for the feared or actual disseminating of information critical of the government or otherwise disfavoured. To the extent that this was the intended purpose, such an objective would be illegitimate. As affirmed by the UN Human Rights Committee, it is inconsistent with article 19(3) of the ICCPR to penalize or “prohibit a site or an information dissemination system from publishing from publishing material solely on the basis that it may be critical of the government”.¹⁸³

These measures thus illegitimately restrict the professional duties of journalists and media platforms to investigate and impart information to the public, fundamental for individuals in Cambodia to exercise their internationally protected human rights. As highlighted by the UN High Commissioner for Human Rights in November 2020, “[s]ound, independent media, empowered to investigate issues and cite critical views, are key to ensuring that governance and institutions are transparent and accountable”, as they “serve as watchdogs and early warning systems for the full range of potential dysfunctions.”¹⁸⁴

To the extent that the restrictions might have been directed toward a legitimate end, such as protecting public order or national security, they were clearly unnecessary and disproportionate, in the absence of any conduct by journalists and media to incite violence. According to the UN Human Rights Committee, penalizing a media outlet or journalist solely for being critical of the government “can never be considered to be a necessary restriction of freedom of expression”.¹⁸⁵

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

184 UN High Commissioner for Human Rights, “Statement at Global Conference for Media Freedom”, 16 November 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26508&LangID=E>.

185 UN Doc. CCPR/C/GC/34, para. 42.

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

The Cambodian authorities have arbitrarily interfered with the online freedom of expression of women, particularly for their clothing choices, in a discriminatory manner, under an overly broad invocation of protecting Cambodian traditions and values.

It was reported that in April 2020, **Ven Rachana**, also known online as Thai Sreyneang, was convicted to six months in prison under articles 38 and 39 of the Law on the Suppression of Human Trafficking and Sexual Exploitation and under article 249 of the Criminal Code.¹⁸⁶ Her sentence was reportedly reduced to a two month and 15-day prison term, and she was allegedly convicted without access to legal counsel.¹⁸⁷

Ven Rachana was convicted in relation to her videos and photographs on Facebook selling clothing, which was deemed by the authorities to be “too sexy” and in violation of norms of Cambodian culture.¹⁸⁸ This conviction follows from Prime Minister Hun Sen reportedly ordering authorities in February 2020 to “track down Facebook vendors who wear [low cut tops] to sell items like clothes and beauty products” as they were a “violation of [Cambodian] culture and tradition”, claiming that such behavior “contributed to sexual abuse and violence against women”.¹⁸⁹

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

187 *Ibid.*

188 *Ibid.*

189 Reuters, ‘Cover up or be censored: Cambodia orders women not look sexy on Facebook’, 19 February 2020, available at: <https://www.reuters.com/article/us-cambodia-women-internet-trfn/cover-up-or-be-censored-cambodia-orders-women-not-look-sexy-on-facebook-idUSKBN20D278>.

Articles 38 and 39 criminalizes:

- Distributing, selling, leasing, displaying, projecting or presenting in a public place pornography with imprisonment from seven days to one month and a fine from 100,000 to 200,000 riels (approx. USD 25 to USD 50);
- Possessing, transporting, importing or exporting pornography for the purpose of use in commission of the above offense with imprisonment from seven days to one month and a fine from 100,000 to 200,000 riels (approx. USD 25 to USD 50); and
- Producing a pornography for the purpose of use in commission of any offense in the above two paragraphs with imprisonment from one month to one year and a fine from 200,000 to two million riels (approx. USD 50 to USD 500).¹⁹⁰

Article 249 criminalizes any “indecent exposure to others in a public space” with imprisonment from six days to three months and a fine from 100,000 to 500,000 riels (approx. USD 25 to USD 125).¹⁹¹

A group of UN Human Rights Council experts, including the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on protection against

¹⁹⁰ Articles 38 and 39, Law on Suppression of Human Trafficking and Sexual Exploitation 2008, available at: https://sherloc.unodc.org/cld/uploads/res/document/khm/2008/law_on_suppression_of_human_trafficking_and_sexual_exploitation.html/Cambodia_03_-_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf. Article 38 defines “pornography” as “a visible material such as a photograph or videotape, including a material in electronic form, depicting a genital or other similar pornography which excites or stimulates sexual desire.”

¹⁹¹ Article 249, Criminal Code.

violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls, have expressed concern that the “reported targeting and singling out women who use social media platforms represents an apparent misuse of the criminal legislation on pornography and sexual exploitation in a gender-biased way that would result in discrimination and violence against women”.¹⁹² The experts further pointed out that the authorities’ linking of sexual violence and human trafficking to women’s choice of clothes is in direct contradiction with its obligation under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to eliminate harmful stereotypes and prevent discrimination and violence against women.¹⁹³

¹⁹² AL KHM 2/2020, p. 4.

¹⁹³ *Ibid.*

VI. State response to COVID-19 and “false information”

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

These arbitrary restrictions have been mainly carried out pursuant to several legal provisions under the Criminal Code, including articles 307 (public insult), 425 (false information), 437 *bis* (*lèse-majesté*), 453 (plotting) and 494 and 495 (incitement to commit a felony or disturb social security); and article 11 of the new COVID-19 Preventive Law. Notably, in February 2021, a spokesperson from the Ministry of Justice announced that the spreading of “false news” on COVID-19 would be classified as “incitement” under articles 494 and 495 of the Criminal Code.¹⁹⁴

Although the ICJ recognizes the necessity to combat the spread of “false information” online to protect public health and the right to health of persons during the COVID-19 pandemic, this objective, in line with the conditions for limitations under article 19(3) of the ICCPR, can and must be carried out using the least intrusive means, rather than unnecessary and disproportionate measures like arrests, detentions, criminal prosecutions and onerous fines.¹⁹⁵ For example, timely, regular and clear rebuttals by the authorities on what they deem to be false information would have adequately

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

195 ICJ, ‘Southeast Asia: States must respect and protect rights in combating misinformation online relating to COVID-19’, 1 April 2020, available at: <https://www.icj.org/southeast-asia-states-must-respect-and-protect-rights-in-combating-misinformation-online-relating-to-covid-19/>.

advanced public health aims, while still respecting the rights to free expression and information. Furthermore, article 19 of the ICCPR requires that there not be legal sanctions against “untrue statements that have been published in error but without malice”, which extends to allegedly “false information” published without malice about COVID-19.¹⁹⁶

In addition, in certain instances the authorities have sanctioned individuals expressing legitimate criticism and concerns on COVID-19, under the guise of curbing “false information” online. As a group of UN Human Rights Council experts has emphasized, restrictions “taken to respond to the virus must be motivated by legitimate public health goals and should not be used simply to quash dissent”.¹⁹⁷

The actions also may violate Cambodia’s obligation to protect the right to health under article 12 of the ICESCR. The UN Committee on Economic, Cultural and Social Rights (CESCR) has underscored the immediate obligation to refrain from censoring, withholding or intentionally misrepresenting health-related information, and preventing people’s participation in all health-related matters.¹⁹⁸ Cambodia’s approach thus far has risked fostering an atmosphere of self-censorship where people are afraid of sharing vital information or concerns about COVID-19 in fear of being targeted by the State for spreading allegedly “false information” online.

¹⁹⁶ UN Doc. CCPR/C/GC/34, para. 47.

¹⁹⁷ These include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while combating terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to education, the Special Rapporteur on the right to privacy, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to development, the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights to safe drinking water and sanitation, the Independent Expert on human rights and international solidarity, the Independent Expert on the promotion of a democratic and equitable international order, the Special Rapporteur on the Independence of Judges and Lawyers, members of the Working Group on Arbitrary Detention and members of the Working Group on Enforced or Involuntary Disappearances: OHCHR, “COVID-19: States should not abuse emergency measures to suppress human rights – UN experts”, 16 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>.

¹⁹⁸ UN Doc. E/C.12/2000/4, para. 35.

i. Criminal sanctions against social media users

The authorities have imposed or threatened criminal sanctions against a number of social media users for their social media activity in relation to the COVID-19 pandemic.

Notably, on 1 May 2021, the Government Spokesperson Unit demanded the immediate cessation of social media posts intended to “provoke and create chaos” in the context of the COVID-19 pandemic, referring to such posts as “acts of attack” that must be punished.¹⁹⁹ The press release did not provide any legal justification for imposing these possible restrictions on the right to freedom of expression.²⁰⁰ Further, the Ministry of Information announced in January 2021 that it was actively monitoring both open-source platforms (Facebook, YouTube, Twitter and TikTok) and closed-source platforms (WhatsApp, Telegram and Messenger) for “false information” on COVID-19 and vaccines, raising additional concerns of the right to privacy of social media users.²⁰¹

Arrests, detentions, and prosecutions

In April 2021, the National Police Spokesman announced that at least 30 people had been arrested on charges of incitement for criticizing the government since February 2021, amidst the most recent wave of COVID-19 infections in the country.²⁰² Previously, in June 2020, the Office of the High Commissioner for Human Rights and Human Rights Watch had both documented that 30 people were arrested for expressing their views on COVID-19, of whom

199 ICJ Joint Statement on Critical Commentary on COVID-19.

200 *Ibid.*

201 UCA News, ‘Cambodia expands monitoring of ‘fake news’’, 28 January 2021, available at: <https://www.ucanews.com/news/cambodia-expands-monitoring-of-fake-news/91186>.

202 Radio Free Asia, ‘Cambodia’s Hun Sen Isolates Phnom Penh and Takhmao After Citizens Ignore Lockdown Order’, 16 April 2021, available at: <https://www.rfa.org/english/news/cambodia/lockdown-04162021182510.html>. This number likely includes Thun Ratha and Chhun Vean, who were arrested for “incitement” in relation to their comments about the COVID-19 vaccine; see, VOD, ‘Two Deaths Ruled Unrelated to Vaccine, Covid; Two Arrested Over Posts’, available at: <https://vodenglish.news/two-deaths-ruled-unrelated-to-vaccine-covid-two-arrested-over-posts/>.

14 were held in pre-trial detention.²⁰³ In particular, **Koy Sam Ath** and **Lek Seangley** were arrested and charged under articles 494 and 495 for posting on Facebook and TikTok respectively about COVID-19.²⁰⁴

In December 2020, the Phnom Penh Municipal Court charged **Ny Nak** for “public insult” and “incitement to discrimination”, under articles 307,²⁰⁵ 494 and 496²⁰⁶ of the Criminal Code.²⁰⁷ The charges stemmed from a Facebook post he made allegedly mocking the government’s distribution of face masks and Prime Minister Hun Sen’s letter to the King on possibly declaring a state of emergency.²⁰⁸ The post was alleged to have “indirectly insulted Prime Minister Hun Sen”.²⁰⁹ These charges for allegedly “insulting” Prime Minister Hun Sen contravene Cambodia’s human rights obligations, as the Human Rights Committee has emphasized that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”, as heads of State and government are “legitimately subject to criticism and political opposition”.²¹⁰

203 ICJ OHCHR Submission on Journalists, para. 10a; OHCHR, ‘Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19’, 3 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920>; Human Rights Watch, ‘List of arrests and persons in detention for COVID-19 related offenses’, 23 March 2020 (‘Human Rights Watch List of Arrests and Detentions’), available at: <https://www.hrw.org/video-photos/interactive/2020/03/23/list-arrests-and-persons-detention-covid-19-related-offenses>.

204 Human Rights Watch List of Arrests and Detentions.

205 Article 307 of the Criminal Code states: “Insult shall mean outrageous expression, term of contempt or any invective that does not involve any imputation of fact. An insult committed by any of the following means shall be punishable by a fine from one hundred thousand to ten million Riels: (1) any words whatsoever uttered in a public place or in a public meeting; (2) written documents or pictures of any type released or displayed to the public; (3) any audio-visual communication intended for the public”.

206 Article 496 of the Criminal Code states: “The direct incitement, by one of the means defined in Article 494 (Existence of incitement) of this Code, to discriminate to be malicious or violent against a person or a group of persons because of their membership or non-membership of a particular ethnicity, nationality, race or religion, shall be punishable by imprisonment from one to three years and a fine from two million to six million Riels, where the incitement was ineffective.”

207 Phnom Penh Post, ‘Capital court charges man over ‘mocking’ PM in Facebook post’, 13 December 2020, available at: <https://www.phnompenhpost.com/national/capital-court-charges-man-over-mocking-pm-facebook-post>.

208 *Ibid.*

209 *Ibid.*

210 UN Doc. CCPR/C/GC/34, para. 38.

In April 2021, **Korng Sambath, Nov Kloem** and **Pann Sophy** were arrested and charged under article 11 of the vague and overbroad COVID-19 Preventive Law for allegedly obstructing the enforcement of COVID-19 measures, in relation to TikTok videos they made expressing their views on the government's COVID-19 vaccination campaign.²¹¹

Signing pledges not to spread "false information"

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

In March 2020, Human Rights Watch documented the cases of 14 individuals who were arrested, given official warnings and subsequently released upon signing pledges "to stop spreading government-deemed 'fake news'" on COVID-19 on social media.²¹² These 14 included **Men Channouen, Oeung Ching, Serey Ratanak, Chung Chen, Svay Srey Mom, Kan Sopheap, Muth Samean, Tep Phalla, Thai Chhor Yoeun, Chuong Phearum, Ngor Kaov Tong, Mao Sokha, Oeun Samart** and **Choeun Da**.²¹³

A 14-year-old girl was also arrested and released after making a public apology for posting on Facebook that three students at her Chinese language school had contracted COVID-19.²¹⁴

This trend has continued amidst the newest wave of COVID-19 infections in the country. For instance, in May 2021, it was reported that **Tai Song**, a farmer who had posted photos on Facebook of vegetables spoiling as a result of the closure of markets during

211 CamboJA News, 'TikTok users arrested and charged with spreading fake news about COVID-19 vaccines', 14 April 2021, available at: <https://cambojanews.com/tiktok-users-arrested-and-charged-with-spreading-fake-news-about-covid-19-vaccines/>; ICJ Joint Statement on Critical Commentary on COVID-19.

212 Human Rights Watch List of Arrests and Detentions.

213 *Ibid*.

214 *Ibid*.

the lockdown, had been made to “sign a contract saying he would stop” on the basis that the photos could “incite discrimination”,²¹⁵ presumably under article 496 of the Criminal Code. It is unclear from the statement how these photos of vegetables spoiling would “incite discrimination”, or against whom they would “incite discrimination”.

ii. Further clampdown on journalists and media platforms

The authorities have also targeted at least four journalists with disproportionate and unnecessary sanctions or the threats of these sanctions for fulfilling their professional reporting functions related to the COVID-19 pandemic. These restrictions arbitrarily undermine the crucial role of the media in monitoring the operation of and facilitating accountability in health systems.²¹⁶ This accountability is especially vital during a pandemic,²¹⁷ as a free and independent media can help identify viral hotspots or outbreaks, monitor national and international responses and promote transparency and accountability in the delivery of necessary public health services.²¹⁸

Punishing journalists for reporting on the pandemic

On 5 October 2020, **Sovann Rithy**, director of online news outlet TVFB, was sentenced to 18 months in prison under articles 494 and 495 for reporting on advice from Prime Minister Hun Sen that motorbike-taxi drivers sell their motorbikes if they are facing financial

215 According to the news source, the letter stated that the farmer “must first provide information to local authorities, not post it publicly”, so as to “avoid sharing incomplete information, misleading the public and undermining the efforts of officials”; VOD, ‘Kandal Authorities Warn Farmers to Not Upload Negative Pictures’, 4 May 2021, available at: <https://vodenglish.news/kandal-authorities-warn-farmers-to-not-upload-negative-pictures/>; ICJ Joint Statement on Critical Commentary on COVID-19.

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

217 OHCHR, ‘Bachelet alarmed by media clampdowns, says public has right to know about COVID-19’, 24 April 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25823&LangID=E>.

difficulties.²¹⁹ The Information Ministry also revoked TVFB's media license.²²⁰ On 13 November 2020, **Ros Sokhet**, publisher of the Cheat Khmer newspaper, was sentenced to 18 months in prison under articles 494 and 495 for his Facebook posts criticizing the government's response to the pandemic.²²¹

On 24 February 2021, **Shen Kaidong**, editor-in-chief of the Chinese-language news outlet Angkor Today, was arrested and deported to China after he allegedly "published fake news" and "caused social chaos", for reporting that Chinese nationals in Cambodia had been offered chances to buy shots of the COVID-19 vaccine. The Ministry of Information also revoked Angkor Today's license to operate in the country.²²²

On 4 May 2021, the Ministry of Information issued a letter warning journalists not to disseminate information that could "provoke turmoil in society" and threatening legal action against those who disobeyed.²²³ The letter followed viral livestream footage from multiple Facebook news outlets of long queues of COVID-19 patients outside government treatment centres.²²⁴

On 14 July 2021, **Kouv Piseth**, Siem Reap Tannhektar news websites' correspondent, was arrested.²²⁵ He was subsequently

218 ICJ Joint Statement on Critical Commentary on COVID-19.

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

220 ICJ OHCHR Submission on Journalists, para. 9a; ASEAN Today, 'Cambodia expands monitoring of social media to private messaging apps, citing fake news', 18 February 2021, available at: <https://www.aseantoday.com/2021/02/cambodia-expands-monitoring-of-social-media-to-private-messaging-apps-citing-fake-news/>.

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

222 ICJ OHCHR Submission on Journalists, para. 9a; CPJ, 'Cambodia deports Chinese journalist Shen Kaidong for 'fake news' on COVID-19 vaccine sales', 4 March 2021, available at: <https://cpj.org/2021/03/cambodia-deports-chinese-journalist-shen-kaidong-for-fake-news-on-covid-19-vaccine-sales/>.

223 ICJ Joint Statement on Critical Commentary on COVID-19; CamboJA News, 'Information Ministry warns journalists against 'ambulance chasing' after video of long waits for COVID-19 patients goes viral', 4 May 2021, available at: <https://cambojanews.com/information-ministry-warns-journalists-against-ambulance-chasing-after-video-of-long-waits-for-covid-19-patients-goes-viral/>.

224 *Ibid.*

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

placed in pre-trial detention and charged with “incitement” under articles 494 and 495, as well as “obstructing an enforcement measure” under article 11 of the COVID-19 Preventive Law.²²⁶ He was allegedly charged in relation to his Facebook post on 27 June criticizing the government’s decision to use Sinopharm and Sinovac vaccines.²²⁷

Revocation of media licenses

The Cambodian authorities also revoked the media licenses of at least five media outlets for their reporting on the COVID-19 pandemic,²²⁸ often in conjunction with having used criminal sanctions against reporters associated with these news outlets. Many of these news outlets operate online as alternatives to the mainstream print media.

In March 2021, **San Prum News** and the **Cambodia Facebook Journalist Association** had their licenses revoked by the Ministry of Information after **Prum San**, who ran the outlets, posted an allegedly misleading photograph that suggested that an individual had died from COVID-19 on his personal Facebook page. It was reported that the photo was taken down within ten minutes after Prum San realized that the photograph and article was inaccurate.²²⁹ Prum San, who is a Ministry of Information advisor, was also fired from his position in the Ministry.²³⁰ **TVFB** and **Angkor Today** also had their media licenses revoked after Sovann Rithy and Shen Kaidong were penalized for their COVID-19 reporting.²³¹

226 *Ibid.*

227 *Ibid.*

228 CamboJA News, ‘Information Ministry advisor stripped of position, news outlet license’, 15 March 2021, available at: <https://cambojanews.com/information-ministry-advisor-stripped-of-position-news-outlet-license/>.

229 *Ibid.*

230 *Ibid.*

231 ICJ OHCHR Submission on Journalists, para. 9a; ASEAN Today, ‘Cambodia expands monitoring of social media to private messaging apps, citing fake news’, 18 February 2021, available at: <https://www.aseantoday.com/2021/02/cambodia-expands-monitoring-of-social-media-to-private-messaging-apps-citing-fake-news/>; CPJ, ‘Cambodia deports Chinese journalist Shen Kaidong for ‘fake news’ on COVID-19 vaccine sales’, 4 March 2021, available at: <https://cpj.org/2021/03/cambodia-deports-chinese-journalist-shen-kaidong-for-fake-news-on-covid-19-vaccine-sales/>.

Other restrictions on independent reporting

In May 2021, the Cambodian authorities placed a de facto ban on independent reporting in Phnom Penh's "red zones" — areas deemed to be high risk for COVID-19 transmission. On 3 May 2021, the Ministry of Information announced that only State media or journalists invited by the government would be permitted to report from red zones.²³² The Human Rights Committee has made clear that it is normally incompatible with article 19(3) of the ICCPR to "restrict freedom of movement of journalists and human rights investigators within the State [territory]".²³³ Although the Cambodian authorities have justified this on the basis of "public health",²³⁴ the fact that "[o]nly reporters working for state media or under the Information Ministry would receive permission to enter red zones"²³⁵ suggests that these restrictions are being applied in a discriminatory manner that places private, independent media at a "disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news".²³⁶

iii. Targeting of individuals affiliated with opposition political parties

The Cambodian authorities have a long history of repressing perceived political opponents through the effective weaponizing of non-human rights compliant laws against them.²³⁷ This has

232 ICJ Joint Statement on Critical Commentary on COVID-19; VOD, 'Red-Zone News Reporting Is Invite-Only: Information Ministry', 3 May 2021, available at: <https://vodenglish.news/red-zone-news-reporting-is-invite-only-information-ministry/>.

233 UN Doc. CCPR/C/GC/34, para. 45.

234 VOD, 'Red-Zone News Reporting Is Invite-Only: Information Ministry', 3 May 2021, available at: <https://vodenglish.news/red-zone-news-reporting-is-invite-only-information-ministry/>.

235 *Ibid.*

236 CCPR/C/GC/34, para. 41.

237 *Mandates of the Special Rapporteur on the situation of human rights in Cambodia and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Reference: AL KHM 1/2019, 12 April 2019, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24531>; Human Rights Watch, 'Political Prisoners Cambodia', 24 January 2020, available at: <https://www.hrw.org/video-photos/interactive/2020/01/24/political-prisoners-cambodia>; ICJ, 'Cambodia: ongoing misuse of law to silence opponents further deepens impunity and undermines the rule of law', 18 October 2017, available at: <https://www.icj.org/cambodia-ongoing-misuse-of-law-to-silence-opponents-further-deepens-impunity-and-undermines-the-rule-of-law/>.

worsened during the COVID-19 pandemic, as the authorities regularly arrested, detained and charged political opponents under articles 425, 437 bis, 453 and 494 and 495 of the Criminal Code for their online expression.

Articles 425 (false information), 453 (plotting) and 494 and 495 (incitement to commit a felony or disturb social security)

In June 2020, Human Rights Watch reported the arrest of 12 individuals affiliated with the CNRP since January 2020.²³⁸ Of these 12 arrests, at least seven were likely in relation to their social media posts on COVID-19.²³⁹ Six were charged under the overly broad and vague articles 453, 494 and 495 of the Criminal Code, including **Khut Chroek, Ngin Khean, Keo Thai, Sath Sros, Yim Sareth** and **Hin Chhan**.²⁴⁰

The last of the seven arrested is **Phut Thona Lorn**, also known as Lorn Ly, who was later charged by the Siem Reap Provincial Court under article 425 of the Criminal Code for spreading “false information”.²⁴¹ He had posted two videos on his Facebook account questioning whether the Cambodian government needed the Vietnamese government’s assistance to learn about an arrival to Cambodia who later tested positive for COVID-19.²⁴² There are concerns about whether his right to privacy may have been breached, as he was allegedly informed that the police had monitored his Facebook account for a week prior to his arrest, without being informed of the legal basis for such surveillance.²⁴³

This trend has continued after June 2020, with several reports of individuals affiliated with the CNRP being arrested, detained

238 Human Rights Watch List of Arrests and Detentions.

239 *Ibid.*

240 *Ibid.*

241 *Ibid.* See also, Al Jazeera, ‘Cambodia accused of political clampdown amid coronavirus outbreak’, 24 March 2020, available at: <https://www.aljazeera.com/news/2020/3/24/cambodia-accused-of-political-clampdown-amid-coronavirus-outbreak>.

242 *Ibid.*

243 *Ibid.* It must be noted that the surveillance of all telecommunications is permissible if conducted with the approval of a “legitimate authority” under the Law on Telecommunications under article 97 of the Law on Telecommunications.

and charged for their online expression. In February 2021, it was reported that **Thon Chantha** and **Mey Sophorn** were arrested and charged with “incitement” for “false information that incites people to misunderstand the [COVID-19] problem”.²⁴⁴ Thon Chantha had posted on Facebook that alleged that Cambodians were being forced to take the COVID-19 vaccine and Mey Sophorn had posted on Facebook that there was no need to rush vaccinations as Cambodia did not have a large number of COVID-19 cases.²⁴⁵ In March 2021, **Thorn Kimsan** was reportedly arrested for Facebook statements on the safety of Chinese-made vaccines, as such statements were alleged by the authorities to have “gravely affected social security” and constituted “incitement to create social unrest and misunderstandings”.²⁴⁶ In April 2021, **Sam Rainsy**, the former CNRP leader who has been living in exile in France since 2015,²⁴⁷ was charged with “incitement” and had an arrest warrant issued against him for his comments in an interview with Radio Free Asia about the COVID-19 lockdown, corruption of the government and a lack of aid from the government.²⁴⁸

*Article 437 bis: Lèse-majesté*²⁴⁹

Since the promulgation of article 437 *bis* in December 2018, the Cambodian Center for Human Rights has documented eight individuals being charged under its terms, with three having been convicted as of February 2021, of whom at least three are affiliated with the CNRP.²⁵⁰

244 VOA, ‘Two CNRP-linked Individuals Detained for COVID-19 Vaccine Comments’, 1 March 2021, available at: <https://www.voacambodia.com/a/two-cnnp-linked-individuals-detained-for-covid-19-vaccine-comments-/5796877.html>.

245 *Ibid.*

246 Radio Free Asia, ‘Cambodian Activist Arrested For Criticizing Chinese COVID-19 Vaccine’, 15 March 2021, available at: <https://www.rfa.org/english/news/cambodia/vaccine-03152021183359.html>.

247 Al Jazeera, ‘Mockery of justice’: Cambodia’s Rainsy gets 25-year jail term’, 2 March 2021, available at: <https://www.aljazeera.com/news/2021/3/2/mockery-of-justice-cambodias-rainsy-gets-25-year-jail-time>.

248 Radio Free Asia, ‘Court Issues Arrest Warrant for Cambodia Opposition Chief Sam Rainsy For Incitement’, 28 April 2021, available at: <https://www.rfa.org/english/news/cambodia/samrainsy-04282021173607.html>.

249 For a summary and timeline of article 437 *bis* cases, see: Cambodian Center for Human Rights, ‘Three years of the Promulgation of Lèse-Majesté Law’, February 2021, available at: https://cchrcambodia.org/admin/media/newsletter/newsletter/english/Lese%20Majeste%20Snapshot_Final_Eng.pdf.

250 *Ibid.*

On 28 December 2020, it was reported that the Phnom Penh Municipal Court charged **Sam Rainsy** under article 437 *bis* of the Criminal Code.²⁵¹ This charge was based on Rainsy's Facebook posts on 20 and 25 December 2021 criticizing the government's COVID-19 vaccine plan and expressing his opinion that the King is a "puppet who does exactly what Hun Sen tells him".²⁵²

Notably, a spokesperson for the Ministry of Justice stated that "insulting the King does not fall under the right to freedom of expression, but is instead a criminal offense under the law".²⁵³ As noted, the terms of article 437 *bis* and *lèse-majesté* prescriptions of this nature are incompatible with Cambodia's human rights obligations.²⁵⁴ Further, Cambodia's obligations under the ICCPR entails that "public interest in the subject matter of the criticism should be recognized as a defence" to defamation suits, which extends to instances of royal defamation.²⁵⁵

This is the third time that Sam Rainsy has been charged under article 437 *bis*. In May 2019, Rainsy was found guilty *in absentia* by the Phnom Penh Municipal Court for *lèse-majesté* offences and sentenced to four years in prison and fined ten million riels (approx. USD 2,500) for posting on Facebook that an election letter written by King Sihamoni was "fake or written under duress".²⁵⁶ Later in September 2019, Rainsy was again charged under article 437 *bis* in September 2019 for referring to the King as the Prime Minister's puppet in an interview with Radio Free Asia,²⁵⁷ following which the

251 Cambodianess, 'Phnom Penh Court Indicts Rainsy for Insulting King Norodom Sihamoni', 28 December 2020, available at: <https://cambodianess.com/article/phnom-penh-court-indicts-rainsy-for-insulting-king-norodom-sihamoni>.

252 *Ibid.*

253 Cambodianess, 'Phnom Penh Court Indicts Rainsy for Insulting King Norodom Sihamoni', 28 December 2020, available at: <https://cambodianess.com/article/phnom-penh-court-indicts-rainsy-for-insulting-king-norodom-sihamoni>.

254 UN Doc. CCPR/C/GC/34, para. 38.

255 UN Doc. CCPR/C/GC/34, para. 47.

256 Sam Rainsy received four years in prison for *lèse-majesté*, and another four years for allegedly inciting soldiers to disobey orders; Khmer Times, 'Sam Rainsy sentenced to 8 years in prison for insulting King', 2 May 2019, available at: <https://www.khmertimeskh.com/600094/court-finds-sam-rainsy-guilty-in-two-cases/>; Radio Free Asia, 'Cambodian Court Summons Former Opposition Leader Sam Rainsy on Lèse-Majesté Charges', 20 June 2018, available at: <https://www.rfa.org/english/news/cambodia/summons-06202018161940.html>.

257 The Phnom Penh Post, 'Rainsy charged with "insulting the King"', 15 September 2019, available at: <https://www.phnompenhpost.com/national-politics/rainsy-charged-insulting-king>.

Phnom Penh Municipal Court issued an arrest warrant to place him in pre-trial detention.²⁵⁸

Response of the Cambodian government

In response to calls from the United States Deputy Secretary of State for the Cambodian government to drop the “politically motivated charges against members of the political opposition, journalists and activists” in June 2021,²⁵⁹ the Cambodian government asserted that oversight for the case was within the purview of the judiciary. The government contended that “[i]n a society which adheres to democracy and the rule of law, the judiciary is an independent body that cannot obey anyone”.²⁶⁰ This response is similar to the government’s previous claims that “[p]rosecuting and punishing offenders by legitimate authorities, for the interest of justice, should not be read as a menace to democracy and human rights, but rather as an enforcement of the rules of law ... upholding the rules of law means holding perpetrators accountable for their conducts”.²⁶¹

This response does not absolve the Cambodian State of its responsibility for international human rights violations, pursuant to its international legal obligations. The State’s human rights obligations must be upheld by all branches of the State, including the judiciary, and the acts and omissions of all branches engage the responsibility of the State.²⁶² As pointed out by the UN Human Rights Committee, “[t]he executive branch that usually represents the State Party internationally [...] may not point to the fact that an action incompatible with the provisions of the Covenant was

258 The Phnom Penh Post, ‘Rainsy Asean arrest warrants sent’, 17 September 2019, available at: <https://www.phnompenhpost.com/national-politics/rainsy-asean-arrest-warrants-sent>.

259 US Department of State, ‘Deputy Secretary of State Wendy Sherman’s Visit to Cambodia’, 1 June 2021, available on: <https://www.state.gov/deputy-secretary-of-state-wendy-shermans-visit-to-cambodia/>.

260 Khmer Times, ‘CPP says ‘no political prisoners’ in Cambodia’, 3 June 2021, available at: <https://www.khmertimeskh.com/50867226/cpp-says-no-political-prisoners-in-cambodia/>.

261 ICJ, ‘Cambodia: ongoing misuse of law to silence opponents further deepens impunity and undermines the rule of law’, 18 October 2017, available at: <https://www.icj.org/cambodia-ongoing-misuse-of-law-to-silence-opponents-further-deepens-impunity-and-undermines-the-rule-of-law/>.

262 UN Doc. CCPR/C/GC/34, para. 8; UN Doc. CCPR/C/21/Rev.1/Add.13, paras. 4 and 15.

carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility”.²⁶³

The ICJ has previously raised serious doubt about the *de facto* lack of an independent and impartial judicial system, despite the *de jure* guarantees in domestic law and stated commitments to adhere to international standards.²⁶⁴ In addition, the rule of law extends not only to the implementing of domestic laws, but also to ensuring that laws are elaborated and applied in accordance with international human rights law.²⁶⁵ As noted above, the majority of the laws the “politically motivated charges” are based on are not human rights compliant in the first place.

iv. Restricting access to disfavoured online expression and information

In December 2019, the ICJ highlighted how the Inter-Ministerial *Prakas* appeared to enable the blocking of websites in July 2018, prior to the general elections, including the websites of independent news outlets.²⁶⁶ This trend of restricting access to online content has intensified during the COVID-19 pandemic and been extended to social media platforms.

The Cambodian government blocked access to news sites for their articles on COVID-19. In March 2020, **Monoroom**, a Khmer-language news website based in France, was blocked because of

263 UN Doc. CCPR/C/21/Rev.1/Add.13, para. 4.

264 ICJ, *Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study*, October 2017, October 2017, pp. 17 – 19, available at: <https://www.icj.org/wp-content/uploads/2017/10/Cambodia-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2017-ENG.pdf>. For a recent critique of the political influence inherent in the Cambodian judiciary, see, Radio Free Asia, ‘Cambodian Courts Show Pattern of Political Influence, Double Standards of Justice’, 21 May 2021, available at: <https://www.rfa.org/english/news/cambodia/justice-05212021193839.html>.

265 ICJ, ‘Cambodia: ongoing misuse of law to silence opponents further deepens impunity and undermines the rule of law’, 18 October 2017, available at: <https://www.icj.org/cambodia-ongoing-misuse-of-law-to-silence-opponents-further-deepens-impunity-and-undermines-the-rule-of-law/>.

266 ICJ Dictating the Internet Report, 2019, pp. 114 – 115.

its coverage of the pandemic.²⁶⁷ In April 2020, following the arrest of Sovann Rithy and revocation of TVFB's broadcast license, the Telecommunication Regular of Cambodia announced that it would block two of **TVFB's** websites.²⁶⁸ It was stated that tvfb.com.kh and fbtv.news would be blocked. At the time of writing this report, the ICJ was unable to access both URLs.

Additionally, the Cambodian government attempted to suspend Facebook pages and accounts for allegedly spreading "false information" about COVID-19. In May 2020 it was reported that the spokesperson for the Ministry of Information confirmed that "the ministry had notified Facebook of more than 30 Facebook pages and personal accounts that he accuses of "spreading misinformation"", and that "some of these pages had since been taken down".²⁶⁹ More broadly, it was reported that in 2020 the government had taken action against "around 200 Facebook accounts" for allegedly sharing "false information" and inciting violence, with "[s]ome of the accounts being reported to the national police, while others were reported directly to Facebook and to the Ministry of Post and Telecommunications for removal".²⁷⁰

Even if notionally undertaken in the pursuit of the legitimate aim of protecting public health, it appears that this restriction has not been carried out pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal.²⁷¹

267 Reporters Without Borders, '#CollateralFreedom: RSF unblocks eight sites censored during pandemic', 6 November 2020, available at: <https://rsf.org/en/news/collateralfreedom-rsf-unblocks-eight-sites-censored-during-pandemic>; VOA, 'Amid COVID Censorship, News Websites Find Ways to Stay Online', 23 November 2020, available at: <https://www.voanews.com/press-freedom/amid-covid-censorship-news-websites-find-ways-stay-online>.

268 VOD, 'News Site Blocked, Journalist Jailed After Quoting Hun Sen', 9 April 2020, available at: <https://vodenglish.news/news-site-blocked-journalist-jailed-after-quoting-hun-sen/>.

269 Cambodianess, 'COVID-19 Challenges Facebook's Fight against "Fake News" in Cambodia', 19 May 2020, available at: <https://cambodianess.com/article/covid-19-challenges-facebooks-fight-against-fake-news-in-cambodia>.

270 UCA News, 'Cambodia expands monitoring of 'fake news'', 28 January 2021, available at: <https://www.ucanews.com/news/cambodia-expands-monitoring-of-fake-news/91186>.

271 UN Doc. A/HRC/38/35, para. 66.

VII. Role of “Big Tech”

The Cambodian government’s response to the COVID-19 pandemic has raised new concerns about the role of big tech companies, particularly Facebook, and the extent to which they are complicit in the Cambodian authorities’ online censorship.

Facebook’s Transparency Center reported 12 instances of content being restricted in Cambodia based on local law between July and December 2020 following no instances between January and June 2020.²⁷² The Transparency Center noted that the 12 restrictions were not in relation to content on COVID-19.²⁷³ At face value, this seems inconsistent with reports from the Ministry of Information. In May 2020, the Ministry of Information “notified Facebook of more than 30 Facebook pages and personal accounts [accused of] ‘spreading misinformation’” about COVID-19, and that “some of these pages had since been taken down”.²⁷⁴ In January 2021, it was reported that in 2020, the government had taken action against 200 Facebook accounts for allegedly sharing “false information” and inciting violence, with “[s]ome of the accounts being reported to the national police while others were reported directly to Facebook and to the Ministry of Post and Telecommunications for removal”.²⁷⁵

It is possible that these instances of content restrictions have been subsumed under instances of Facebook’s own Community Standards being enforced, which Facebook says it does not disaggregate based on countries. Facebook’s Community Standards indicate that: (i) they remove misinformation from Facebook technologies when “misinformation has the potential to cause imminent physical

272 Facebook Transparency Center, ‘Cambodia: Content Restrictions Based on Local Law’, available at: <https://transparency.fb.com/data/content-restrictions/country/KH>.

273 *Ibid.* Facebook restricted access to 12 profiles and Pages of supporters of Brazilian President Bolsonaro, including in Cambodia, following a court order from Brazil’s Supreme Court.

274 Cambodianess, ‘COVID-19 Challenges Facebook’s Fight against “Fake News” in Cambodia’, 19 May 2020, available at: <https://cambodianess.com/article/covid-19-challenges-facebooks-fight-against-fake-news-in-cambodia>.

275 UCA News, ‘Cambodia expands monitoring of ‘fake news’’, 28 January 2021, available at: <https://www.ucanews.com/news/cambodia-expands-monitoring-of-fake-news/91186>.

harm”, such as “false claims about COVID-19 and vaccines that leading health organizations have debunked”; (ii) they reduce the distribution of content rated as false by their fact-checking partners; and (iii) they apply notices to fact-checked posts and send notifications to the people who posted them.²⁷⁶ This approach has been confirmed to apply in Cambodia by Facebook’s Public Policy Director for Southeast Asia, who stated that comments and posts about COVID-19 had been deleted from the platform for containing information that could lead to physical harm, but noted that he did not have specific statistics to share for Cambodia.²⁷⁷

All of this suggests a lack of adequate transparency on Facebook’s part in terms of the extent to which it is publicizing information on the demands it has received from the Cambodian government to restrict content on its platforms, and the manner in which it is responding. This dereliction flies in the face of its human rights responsibility to provide “granular data concerning the types of requests received [from the State] and actions taken”, with “specific examples [being provided] as often as possible”.²⁷⁸

As mentioned above, the Cambodian authorities have conflated genuine instances of “false information” and legitimate concerns being expressed over COVID-19, and characterized both as “false information” that should be restricted. It is likely that this approach has been similarly extended to the government’s demands to Facebook to restrict COVID-19 content. This may result in protected expression involving criticisms and concerns of the government’s COVID-19 response, even in the absence of potential physical harm, being unduly restricted on Facebook. However, it remains challenging to verify this fully in the absence of publicly available information.

276 Facebook Transparency enter, ‘Our approach to misinformation’, 7 June 2021, available at: <https://transparency.fb.com/features/approach-to-misinformation/>.

277 Phnom Penh Post, ‘Facebook confirms deleting dubious Covid-19 postings’, 18 May 2020, available at: <https://phnompenhpost.com/national/facebook-confirms-deleting-dubious-covid-19-postings>.

278 UN Doc. A/HRC/38/35, para. 52.

The ICJ is concerned that Facebook has not undertaken sufficient due diligence to avoid infringing the right to freedom of expression, by only restricting content subject to an order by an independent and impartial judicial authority.²⁷⁹ As previously noted, the Inter-Ministerial Prakas permits the government to circumvent the courts and directly restrict disfavoured content. If the Inter-Ministerial Prakas is the legal basis upon which the Cambodian government is demanding the restriction of content on Facebook, then Facebook is complicit in enabling the Cambodian government's online censorship by effectively complying with these demands.

Finally, it is worth pointing out that Facebook had previously commissioned Business for Social Responsibility, a global non-profit organization, to conduct a human rights impact assessment of Facebook's operations in Cambodia in December 2019.²⁸⁰ According to the assessment, there was "little evidence of Facebook removing content that should not be removed".²⁸¹ Irrespective of whether or not this assessment was sound, it seems that this conclusion does not presently hold true in the face of the COVID-19 pandemic.

279 *Ibid.*, para. 66.

280 An executive summary of the assessment can be found here: BSR, *Human Rights Impact Assessment: Facebook in Cambodia*, December 2019, available at: <https://about.fb.com/wp-content/uploads/2020/05/BSR-Facebook-Cambodia-HRIA-Executive-Summary2.pdf>.

281 Facebook, *Facebook Response: Cambodia Human Rights Impact Assessment*, 12 May 2020, p. 3, available at: <https://about.fb.com/wp-content/uploads/2021/03/FB-Response-Cambodia-HRIA.pdf>.

VIII. Recommendations

Cambodia retains laws, both old and new, that are not compliant with international human rights law and standards, and in particular the country's international legal obligations under the ICCPR. The Cambodian government is also looking to adopt new laws that if implemented would breach Cambodia's human rights obligations, and stand to further constrict online civic space. These laws are not human rights compliant on their face and also in how they are likely to be applied. These laws (i) are vague and overbroad in their terms; (ii) allow restrictions for an impermissible purpose or, if the purpose is permissible, may be applied in a manner that is unnecessary to that purpose; (iii) prescribe disproportionate and unnecessary sanctions for non-compliance; and (iv) lack independent oversight, including by the judiciary.

The fatal flaws in these laws have enabled them to be increasingly applied to stifle people's exercise of freedom of expression and other fundamental freedoms online. These efforts have intensified in response to the COVID-19 pandemic. Concerns over the independence and impartiality of the Cambodian judicial system have manifested in the form of disproportionate and unnecessary prosecutions and convictions against individuals merely exercising their right to freedom of expression online.

The role of Facebook in having possibly enabled online censorship also requires further scrutiny. The absence of publicly available information on the extent to which Facebook has been receiving takedown demands from the government and the manner to which Facebook has responded suggests that there is a lack of transparency in Facebook's approach to content regulation.

In light of these concerns and challenges highlighted, the ICJ makes the following recommendations:

To the **Parliament of Cambodia**:

- Repeal or substantially amend legal provisions that serve to criminalize or unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline, including the State of Emergency Law; COVID-19 Preventive Law; articles 425, 437 bis, 453, 494 and 495 of the Criminal Code; and the Law on Telecommunications;²⁸²
- Discard or substantially amend drafted laws that serve to criminalize or unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline, including the Draft Law on Public Order and Draft Cybercrime Law;
- In adopting further laws in respect of regulation of expression and information online, establish a participatory process to receive input from the general public, including civil society, academics, lawyers, technology experts and other independent policy advisers or technical experts.²⁸³

To the executive branch of the **Cambodian government**, including the Ministry of Information:

- Repeal or substantially amend executive orders/regulations that serve to unduly restrict the rights to freedom of expression, information, association, political participation and other rights online as well as offline, including the NIG Sub-Decree and the Inter-Ministerial Prakas on Website;
- Refrain from restricting or blocking online content unless the decision to block has been undertaken following a full analysis that applies international standards of

282 UN Doc. A/HRC/38/35, para. 65.

283 *Ibid.*, para. 69.

legality, legitimate purpose, necessity, proportionality and non-discrimination and has been authorized pursuant to an order by an independent and impartial judicial authority, in accordance with due process with the express guarantee of the right to appeal;²⁸⁴

- Refrain from adopting and applying measures that would unduly pressure or induce tech companies to remove online content by users of platforms which amount to a legitimate exercise of users' rights to freedom of expression and information, including through the Inter-Ministerial Prakas;²⁸⁵
- Cease harassment or persecution of all individuals solely for exercising their rights to free expression, information and peaceful assembly online, through the abuse of laws and administrative regulations, such as the COVID-19 Preventive Law and articles 425, 437 bis, 453, 494 and 495 of the Criminal Code;
- In line with the principle of transparency, publicize detailed reports on all content-related requests from State authorities issued to individuals, technological companies, internet intermediaries and internet service providers, and relevant updates or further information on requests;²⁸⁶ and
- Ensure and facilitate equal access to adequate, effective and prompt remedy and reparation for all individuals who have had their rights impaired by harassment or persecution for the exercise of human rights online.

284 *Ibid.*, para. 66.

285 *Ibid.*

286 *Ibid.*, para. 69.

To justice sector actors:

- Drop all charges, issue non-prosecution orders, and refrain from further charges, particularly at the very inception of any such lawsuit, against any individual, including those named in this report, facing prosecution for alleged violation of laws that are non-human rights compliant on their face or which have been applied in a non-human rights compliant manner. This includes the COVID-19 Preventive Law and articles 425, 437 bis, 453, 494 and 495 of the Criminal Code. With respect to the cases of convicted individuals for the aforementioned offences, quash their convictions, and with respect to individuals in pre-trial detention, cease investigation of their cases. Release immediately all persons held in pre-trial detention or imprisoned on conviction in such cases.

To tech companies in the communications sector:

- Publicly affirm commitment to respect and protect human rights, and in that regard to apply international human rights standards, in line with the human rights treaties and their jurisprudence and the prescriptions of the UN Guiding Principles on Business and Human Rights and other industry-specific human rights guidelines developed by civil society, such as the Global Network Initiative;²⁸⁷
- Adopt and implement effective safeguard mechanisms to monitor and ensure their products and services are compliant with international human rights law and standards, including contractual clauses that prohibit

287 UN Doc. A/HRC/38/35, para. 70.

the customization, targeting, servicing or other use of mechanisms which impair human rights, incorporating design features to flag, prevent or mitigate misuse, and human rights audit processes; and²⁸⁸

- Publish and publicize detailed transparency reports on all content-related requests issued by the Cambodian authorities, including detailed reports on requests for takedown of content, and the company's measures in response.²⁸⁹

288 *UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 28 May 2019, UN Doc. A/HRC/41/35, paras 66 to 69.

289 *UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 11 May 2016, UN Doc. A/HRC/32/38, paras 87 to 90.

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