



**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF
THE EXAMINATION OF CAMBODIA'S SECOND PERIODIC REPORT UNDER
ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS**

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

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I. Introduction

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the UN Committee on Economic, Social and Cultural Rights' (the Committee or CESCR) review of Cambodia's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. In the present submission, the ICJ wishes to draw the Committee's attention to its concerns about Cambodia's implementation of and compliance with some of its obligations under the ICESCR. In particular, the ICJ is concerned about the fact that:
 - a. The establishment and development of Special Economic Zones (SEZs) have resulted in human rights violations and abuses of economic, social and cultural rights (articles 1, 6, 7, 8, 9 and 11);
 - b. Through arbitrary restrictions on free expression and information during the COVID-19 pandemic, the authorities have censored health-related information and prevented people's participation in health-related matters, in violation of the right to health (article 12); and
 - c. Human rights defenders and trade unions working on economic, social and cultural rights have been prosecuted and convicted under laws that are not human rights compliant.

II. Special Economic Zones (Articles 1, 6, 7, 8, 9 and 11)¹

3. The establishment and development of SEZs in Cambodia have been associated in many instances with a dilution of legal guarantees for the protection of human rights. Due to a lack of adequate legal protection and/or enforcement, reports of human rights violations and abuses of economic, social and cultural rights are common in SEZs located in the country. These include violations of the rights to adequate housing and livelihood (Article 11), labour rights abuses (Article 6, 7, 8 and 9), as well as instances of failure to ensure transparency and consultation (Article 1 and 11).
4. Some estimates suggest that there are more than 50 SEZs in Cambodia, collectively employing a workforce of 130,000 people in more than 450 factories.² The legal framework that was enacted to establish and regulate SEZs is the Anukret (Sub-Decree) No. 148.ANK.BK on the Establishment and Management of Special Economic Zone, dated 29 December 2005.³ SEZs also form part of Cambodia's National Strategic Economic Development Plan (2019-2023) and Cambodia Industrial Development Policy 2015-2025.
5. While these instruments refer to certain environmental and labour protection measures,⁴ there is no reference to measures necessary to secure the human rights of affected persons, including any explicit protections against forced eviction. These

¹ See also: ICJ, 'Mekong Region: Authorities must address the adverse impacts of economic activity in SEZs on the environment and human rights', 2022, available at: <https://www.icj.org/mekong-sezs-human-rights/>.

² Khmer Times, 'Special Economic Zones in Cambodia Spurring Development', 30 November 2022, available at: <https://www.khmertimeskh.com/501193909/special-economic-zones-in-cambodia-spurring-development/>. Notably, as of February 2022, Open Development Cambodia's dataset identified 48 SEZs in the country; see, Open Development Cambodia, 'Special economic zone', available at: <https://opendatacambodia.net/profiles/special-economic-zones/>.

³ Open Development Cambodia, 'Sub-Decree No. 148 on the Establishment and Management of Special Economic Zone', ("Anukret No. 148") available at: https://data.opendatacambodia.net/laws_record/sub-decree-on-organization-and-management-of-special-economic-zone.

⁴ For example, see Article 11 of the Anukret No. 148.

instruments also fail to identify potential human rights risks or risk management strategies relating to the implementation of SEZ projects, and focus, instead, on the benefits and privileges granted to the investors.

Failure to Ensure Transparency and Consultation (Article 1 and 11)

6. The lack of transparency and participation with respect to SEZs' decision-making, planning and construction, as well as during the operational phases of development, is a key concern.
7. There is a lack of publicly available information regarding SEZs in Cambodia,⁵ inconsistent with the requirements as set out in the ICESCR⁶ and a number of international environmental instruments and best practices.⁷ In addition, persons affected by the SEZs and those who are affected by eviction orders have reportedly not been afforded genuine opportunities to make or challenge decisions made about project plans or future livelihood and living arrangements, against the jurisprudence and recommendations made by the CESCR and other UN treaty bodies,⁸ including the CESCR's recommendations made in paragraph 15, 16 and 30 of its concluding observations on Cambodia in 2009.⁹ This situation is also inconsistent with the right to participate in public affairs, including in the decisions of one's government.¹⁰
8. With respect to the M.D.S. Thmor Da SEZ in Veal Veng District, Pursat Province, for example, the Cambodian Center for Human Rights ('CCHR') has noted that, while the government authorized its establishment on 19 November 2010, local communities reportedly could not access any official documents related to the granting of the SEZ until May 2018.¹¹ They were also not adequately consulted before its establishment, and their attempts to articulate their demands were reportedly ignored, in violation of international law and against good practice.¹²

⁵ CCHR, 'Fact Sheet: Cambodia's Special Economic Zones And Human Rights', September 2018, at 3 ('CCHR Fact Sheet'), available at: https://cchrcambodia.org/admin/media/factsheet/factsheet/english/Factsheet_SEZ%20ENG_01_10_18.pdf

⁶ CESCR, *CESCR General Comment No. 26: Land and Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/26, 22 December 2008, para 20 ('General Comment No. 26')

⁷ For example, Principle 10 of the Rio Declaration on Environment and Development and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('Aarhus Convention'). While Cambodia is not a party, the Aarhus Convention sets out international best practices for procedural obligations and public participation in environmental decision-making and calls for transparency and participation in decision-making.

⁸ CESCR, *CESCR General Comment No. 7: forced eviction*, 20 May 1997 ('General Comment No. 7') and General Comment No. 26. See also: CESCR, Concluding observations on Chad (E/C.12/TCD/CO/3, 2009); CERD Concluding observations on Argentina (CERD/C/ARG/CO/19-20, 2010), Chile (CERD/C/CHL/CO/15-18, 2009) and Congo (CERD/C/COG/CO/9, 2009); HRC Concluding observations on United Republic of Tanzania (CCPR/C/TZA/CO/4, 2009).

⁹ CESCR, 'Concluding observations on Cambodia', UN Doc. E/C.12/KHM/CO/1, 2009, para 30 ('2009 Concluding Observations').

¹⁰ See: UDHR, art. 21 (right to participate in government); CEDAW, art. 7 (right to participate in formulation of government policy); CRC, art. 13 (right to information); see also UDHR, arts. 19, 20 (rights to information, association, assembly, and freedom of expression, which includes right to receive and impart information); ICCPR, art. 19 (right to freedom of expression includes right to receive and impart information); ICESCR, art.13 (component of right to education is the right to participate effectively in a free society).

¹¹ CCHR Fact Sheet; and CCHR, 'Preventing, Mitigating and Remediating Land-Related Rights Violations in the Kingdom of Cambodia: Seven Areas for Improvement', December 2018, ('CCHR 2018 Report'), pp. 18 – 19, available at: https://media.business-humanrights.org/media/documents/files/documents/20181219_BHR_Briefing_Note_ENG-Final.pdf. See also: Kuaycharoen, P., Longcharoen, L., Chotiwan, P., Sukin, K., Lao Independent Researchers, 'Special Economic Zones and Land Dispossession in the Mekong Region', 2020, ('2020 SEZ and Land Dispossession Report'), available at: <https://th.boell.org/sites/default/files/2021-05/SEZs%20%26%20Land%20Dispossession%20in%20the%20Mekong%20Region-Update.pdf>.

¹² CCHR 2018 Report, at pp. 18 – 19.

9. Moreover, SEZ management bodies – that is, the Council for the Development of Cambodia ('CDC'), the Cambodian Special Economic Zones Board ('CSEZB'), the Special Economic Zones Trouble Shooting Committee ('SEZ TSC'), and the Special Economic Zone Administration – are only composed of representatives from governmental institutions.¹³ They are granted broad powers and have no specific duty to consult regularly with affected communities to seek their input.¹⁴ While SEZ TSC has been established to receive complaints from zone developers and investors,¹⁵ no such complaint mechanism exists for SEZ employees or affected individuals or communities to seek redress or register concerns.¹⁶

Abuses of the Rights to Adequate Housing and Livelihoods (Article 11)

10. There have been instances where communities have been forcibly evicted from a site to enable the development of a SEZ as part of a process lacking transparency and fairness, without due consultation, and in contravention of international human rights law,¹⁷ and of the CESCR's recommendation featured in its Concluding Observations in 2009 (para. 30). To our knowledge, there has been no progress made in developing and implementing a legal and institutional framework to prevent forced evictions. In response to the list of issues regarding such a framework, Cambodia did not provide any concrete examples of any progress made.¹⁸
11. To be eligible to develop a SEZ in Cambodia, investors must have at least 50 hectares of land,¹⁹ and in most cases, this land is acquired via a land concession from the State. However, the concession areas for SEZs often overlap with land that is occupied and claimed by local residents.²⁰ For example, many villagers who used to stay in the area of the M.D.S. Thmor Da SEZ reported having been forcibly evicted from their land, at times violently, without any prior notice. According to CCHR, the land dispute affected 97 families from three different villages.²¹ The MDS Thmorda SEZ Co. Ltd bulldozed the houses and plantations of 11 families in November 2014 in the presence of the armed forces, and local and provincial authorities. Some community members who protested were reportedly handcuffed and threatened with arrest.²²
12. Compensation provided to affected communities and individuals has often been inadequate. It was reported that several communities affected by land disputes have not found a satisfactory resolution to their legitimate grievances. Many victims of SEZs' land transfers did not receive fair compensation, as guaranteed in the international human rights law and standards, including the ICESCR and the CESCR's recommendation featured in its Concluding Observations in 2009 (para. 30).²³ Some

¹³ See Article 4 of the Anukret No. 148.

¹⁴ *Ibid.*

¹⁵ Article 4.1 of the Anukret No. 148; and Anukret (Sub-Decree) No. 28. ANKr.BK on the Amendment of Article 4 Point (4.1) Of Sub-Decree N° 148 Dated 29-December 29,2005 on the Establishment and Management of the Special Economic Zone, dated 14 March 2006.

¹⁶ 2020 SEZ and Land Dispossession Report, at 29.

¹⁷ General Comment No. 7 and 26; and the Basic Principles and Guidelines on Development-based Evictions and Displacement ("Basic Principles"), prepared by the Special Rapporteur on adequate housing, which reflect existing standards and jurisprudence on the issue of forced eviction.

¹⁸ Royal Government of Cambodia, 'Replies of Cambodia to the list of issues in relation to its second periodic report', E/C.12/KHM/RQ/2, 6 October 2022, para 78.

¹⁹ See Article 3 of the Anukret No. 148.

²⁰ 2020 SEZ and Land Dispossession Report, at 30.

²¹ CCHR 2018 Report, at pp. 12 – 15 and 19 – 21; and CCHR Fact Sheet, at p. 5.

²² CCHR 2018 Report, at p. 21.

²³ General Comment No. 26, para 28; 2009 Concluding Observations. See also: OHCHR, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', General Assembly Resolution 60/147, 16 December 2005, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>; See also: Basic Principles.

practices, as set out below, suggest that compensation has been an afterthought, rather than forming part of a planning process. Alternative land provided to those affected by the eviction orders did not meet the criteria for adequacy of housing as set out in the CESCR's General Comment No. 4.²⁴

13. For example, victims who were forcibly removed from the M.D.S. Thmor Da SEZ were reportedly intimidated into accepting insufficient financial compensation that did not immediately respond to their specific needs. They were also offered alternative land that was located in an area containing landmines, which clearly did not meet the criteria for adequacy of housing.²⁵ Nevertheless, after more than ten years of dispute, in July 2022, according to the acting governor of Pursat province, the Company eventually agreed to provide 5.5 hectares of land concessions in the area agreed by the parties as residential land to 11 families whose houses and plantations were bulldozed.²⁶
14. Another example is the land dispute between more than 130 families and the company managing Koh Kong SEZ. The affected communities claimed that they had occupied the area since the mid-1980s but between 2009 and 2012, the company bulldozed their land and destroyed most of their crops without adequate compensation. Affected individuals claimed that the compensation was too low and covered only the cost of the demolition of their homes.²⁷ In 2014, a community leader was arrested, detained and charged with theft of materials belonging to the SEZ. He was released after three weeks of community protest.²⁸ Thereafter, in July 2015, as a result of several rounds of negotiations, Koh Kong SEZ Co., Ltd agreed to offer better eviction compensation to the affected communities.²⁹

Labour Rights Abuses (Articles 6, 7, 8 and 9) in the context of SEZs

15. The extensive use of what is euphemistically referred to as "low-cost" labour has led to an environment conducive to labour exploitation, with workers working excessive hours under inadequate working conditions.³⁰ For example, in December 2015, local authorities ordered a total work stoppage at Bavet's Tai Seng and Manhattan SEZs following a week of clashes between workers and police over demands for a higher minimum wage.³¹ In December 2019, it was also reported that more than 40 workers fainted, and one died, while at work in a factory in the Manhattan SEZ.³² Slavery-like

²⁴ Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant*, UN Doc. E/1992/23, 13 December 1991.

²⁵ CCHR 2018 Report, at pp- 27 – 28; and CCHR Fact Sheet, at pp. 5 – 6.

²⁶ Chakrya, K.S., 'Pursat land dispute nearly settled; 7M titles out by '23', The Phnom Pehn Post, 20 July 2022, available at: <https://www.phnompenhpost.com/national/pursat-land-dispute-nearly-settled-7m-titles-out-23>.

²⁷ 2020 SEZ and Land Dispossession Report, at p. 31.

²⁸ David, S., 'Koh Kong community rep's bail request denied', The Phnom Pehn Post, 5 November 2014, available at: <https://www.phnompenhpost.com/national/koh-kong-community-rep%E2%80%99s-bail-request-denied>.

²⁹ 2020 SEZ and Land Dispossession Report, at pp. 30 – 31; Channyda, C., 'Tycoon compensates 135 families at SEZ', Phnom Pehn Post, 10 July 2015, available at: <https://www.phnompenhpost.com/national/tycoon-compensates-135-families-sez-0>. Residents were reportedly awarded up to USD 20,000 in monetary compensation based on the size of their land.

³⁰ Minutes of the meeting on 'the Human Rights Consequences of the SEZs in Mekong Region' organized by the ICJ, EarthRights International, and the Land Watch Thai on 19 July 2022. See also: ICJ, 'Mekong Region: Authorities must address the adverse impacts of economic activity in SEZs on the environment and human rights', 26 July 2022, available at: <https://www.icj.org/mekong-sezs-human-rights/>.

³¹ Dara, M., Rollet, C., 'Bavet quiet as SEZ workers turned away', The Phnom Pehn Post, 24 December 2015, available at: <https://www.phnompenhpost.com/national/bavet-quiet-sez-workers-turned-away>.

³² Kunthear, M., 'Workers faint in Svay Rieng shoe factory: Officials', Khmer Times, 25 December 2019, available at: <https://www.khmertimeskh.com/673467/workers-faint-in-svay-rieng-shoe-factory-officials/>.

labour practices, including forced labour and human trafficking for the purposes of labour exploitation, have also been reported in several instances.³³

16. Reports indicate that factory owners fail to comply with Cambodia's labour laws.³⁴ Several employers in SEZs reportedly entered into short-term employment contracts with their employees, as a means of bypassing various social protection laws.³⁵ Some companies were not registered, resulting in limited legal protection for their employees, who are unable to claim compensation under social security programs due to that fact.³⁶
17. Article 11 of the Anukret No. 148 affirms that, with regard to the use and management of the labour force, the rights and protections contained in Cambodia's Constitution apply in the zones (the SEZs). These include the right to form and be members of trade unions,³⁷ and the right to strike as long as they are "exercised within the framework of the law".³⁸ Nevertheless, such rights are severely constrained in practice.³⁹ In addition, in 2016, Trade Union Law was adopted but has been widely criticized, including by the UN Office of the High Commission for Human Rights (OHCHR), as violating Cambodia's obligations under international human rights and labour law.⁴⁰ Among others, it imposes restrictions on independent unions and on the right to strike by requiring trade unions to seek "Most Representative Status" (MRS) to engage in collective bargaining (see articles 54-56).⁴¹
18. According to CCHR, union members reported facing widespread discrimination, intimidation, and, at times, violence, as well as harassment through the legal process.⁴² Union leaders have been threatened or had their employment contracts terminated for their labour union involvement.⁴³ For example, in May 2022, Keo

³³ For example, in case of Sihanoukville and Thmor Da SEZs, see: Farrelly, N., Dawkins, A., Deegan, P., 'Sihanoukville: A Hub Of Environmental Crime Convergence', Global Initiative Against Transnational Organized Crime, September 2022, available at: https://globalinitiative.net/wp-content/uploads/2022/09/GI-TOC-report_Sihanoukville_For-upload.pdf; and U.S. Department of State, '2022 Trafficking in Persons Report: Cambodia', available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/cambodia/>. See also: Dara, M., Liu, C., 'From Timber to Human Trafficking: Rescued Victims Allege Major Scam Operations in Tycoon's SEZ', VOD English, 17 November 2021, available at: <https://vodenglish.news/from-timber-to-human-trafficking-rescued-victims-allege-major-scam-operations-in-tycoons-sez/>; Hinz, E., 'Cambodia: Human trafficking crisis driven by cyberscams', 9 December 2022, available at: <https://www.dw.com/en/cambodia-human-trafficking-crisis-driven-by-cyberscams/a-63092938>.

³⁴ Keeton-Olsen, D., Sineat, Y., 'Unions Looking for Place Within SEZ Boundaries', VOD English, 14 February 2022, available at: <https://vodenglish.news/unions-looking-for-place-within-sez-boundaries/>; Minutes of the meeting on 'the Human Rights Consequences of the SEZs in Mekong Region' organized by the ICJ, EarthRights International, and the Land Watch Thai on 19 July 2022.

³⁵ Thame, C., 'SEZs and Value Extraction from the Mekong: A Case Study on the Control and Exploitation of Land and Labour in Cambodia and Myanmar's Special Economic Zones', Focus on the Global South, 2017, at pp. 20 – 21. ("2017 SEZ Report").

³⁶ Minutes of the meeting on 'the Human Rights Consequences of the SEZs in Mekong Region' organized by the ICJ, EarthRights International, and the Land Watch Thai on 19 July 2022.

³⁷ Article 36 of Cambodia's Constitution.

³⁸ Article 37 of Cambodia's Constitution.

³⁹ 2017 SEZ Report, at p. 22.

⁴⁰ Office of the United Nations High Commissioner for Human Rights in Cambodia, 'A Human Rights Analysis of the Draft Law on Trade Unions', at 26, available at: <https://cambodia.ohchr.org/en/news/ohchr-cambodia-releases-its-human-rights-analysis-draft-trade-union-law>

⁴¹ Human Rights Watch, 'Only "Instant Noodle" Unions Survive', 21 November 2022, available at: https://www.hrw.org/report/2022/11/21/only-instant-noodle-unions-survive/union-busting-cambodias-garment-and-tourism#_ftn352; Asian Institute of Technology & Mekong Migration Network, 'Jobs in SEZs: Migrant garment factory workers in Cambodia', 2019, available at: <http://dds.ait.ac.th/wp-content/uploads/sites/19/2019/08/Policy-Brief-Cambodia-En2.pdf>

⁴² CCHR Fact Sheet, at p. 5.

⁴³ Keeton-Olsen, D., Sineat, Y., 'Unions Looking for Place Within SEZ Boundaries', VOD English, 14 February 2022, available at: <https://vodenglish.news/unions-looking-for-place-within-sez-boundaries/>.

Vannak, a union leader, was reportedly dismissed from work for trying to set up a workers' union at his garment factory in O'Neang SEZ in Poipet.⁴⁴

III. Restrictions on COVID-19 Expression and Information (Article 12)⁴⁵

19. During the COVID-19 pandemic, the Cambodian authorities relied on then already existing, as well as newly adopted, deficient laws to arbitrarily restrict health-related expression and information, and suppress people's participation in health-related matters, in violation of Cambodia's obligation to protect the right to health under article 12 of the ICESCR.⁴⁶ With respect to this, the authorities justified their actions on the basis of an overly expansive justification of curbing "false information in order to protect public health".
20. In March 2021, Cambodia's National Assembly passed the Law on Preventive Measures Against the Spread of COVID-19 and other Severe and Dangerous Contagious Diseases ('COVID-19 Preventive Law') with the stated aim of "combat[ing] and prevent[ing] the spread of COVID-19" and other severely contagious diseases.⁴⁷ While the ICJ recognizes that responding to the COVID-19 pandemic may require extraordinary measures in order to protect people's health, such responses must still conform to international human rights law, including article 12 of the ICESR and article 19 of the International Covenant on Civil and Political Rights (ICCPR),⁴⁸ among others. However, the COVID-19 Preventive Law contains provisions that are inconsistent with the principles of legitimate purpose, legality, necessity and proportionality.
21. Article 11 of the COVID-19 Preventive Law 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 other people becoming infected with COVID-19 or to a serious impact on public health.⁴⁹
22. These "criminal offences" and the harsh penalties provided in the event of a conviction arising from instances where individuals have commented on the government's COVID-19 response (see the following paragraphs), or in connection with instances of purported non-compliance with public health measures appear to be inconsistent with the principles of necessity and proportionality under human rights law.⁵⁰

⁴⁴ Soriththeavy, K., Amarthalingam, S., 'A Long Road for Independent Unions in SEZs', 31 October 2022, available at: <https://vodenglish.news/a-long-road-for-independent-unions-in-sezs/>.

⁴⁵ See, more generally, ICJ, 'Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses', September 2020, available at: <https://icj2.wpenginepowered.com/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

⁴⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ("General Comment No. 14") UN Doc. E/C.12/2000/4, 11 August 2000, para. 34.

⁴⁷ 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>.

⁴⁸ Committee on Economic, Social and Cultural Rights, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc. E/C.12/2020/1, 17 April 2020.

⁴⁹ 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>.

⁵⁰ UNAIDS, *Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response*, 2020, available at: https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf.

23. The Cambodian authorities have used the vague and overbroad language of article 11 to arrest and charge those criticizing the government's COVID-19 vaccination campaign online, including social media users⁵¹ and a journalist.⁵² The Cambodian authorities have also arrested, detained and prosecuted social media users on charges of "incitement to commit a felony or disturb social security" under articles 494 and 495 of the Criminal Code for criticizing the government's response to the COVID-19 pandemic.⁵³ They have also regularly pressured individuals into signing pledges not to post content on social media that is unfavourable to them.⁵⁴ These pledges amount to threats of legal sanctions and undue interferences with the ability of people to participate in health-related discussions, as non-compliance with them would likely result in criminal penalties.
24. Journalists and media platforms have also been targeted and sanctioned for their reporting on the COVID-19 pandemic. In doing so, the authorities have undermined the crucial role of the media in monitoring the operation of and facilitating accountability in health systems.⁵⁵ On 5 October 2020, Sovann Rithy, director of online news outlet TVFB, was sentenced to 18 months in prison under articles 494 and 495 of the Criminal Code for reporting on advice from Prime Minister Hun Sen that motorbike-taxi drivers sell their motorbikes if they are facing financial difficulties, which was received negatively by the public.⁵⁶ On 13 November 2020, Ros Sokhet, publisher of the Cheat Khmer newspaper, was sentenced to 18 months in prison under the same criminal provisions for his Facebook posts criticizing the government's response to the pandemic.⁵⁷ On 14 July 2021, Kouv Piseth, Siem Reap Tannhektar news websites' correspondent, was charged with "incitement" under articles 494 and 495, as well as "obstructing an enforcement measure" under article 11 of the COVID-19 Preventive Law, allegedly in relation to his Facebook post on 27 June criticizing the government's decision to use Sinopharm and Sinovac vaccines.⁵⁸ Additionally, at least

⁵¹ 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/>.

⁵² 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>.

⁵³ ICJ, *Dictating the Internet: Curtailing Free Expression and Information Online in Cambodia*, November 2021 ("ICJ, Dictating the Internet Report on Cambodia"), pp. 60 - 63, available at: <https://www.icj.org/wp-content/uploads/2021/12/ICJ-Dictating-the-Internet-Cambodia-Engl.pdf>; 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/>.

⁵⁴ ICJ, *Dictating the Internet Report on Cambodia*, pp. 62 - 63.

⁵⁵ *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.

⁵⁶ 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 ("OHCHR Submission on Journalists"), para. 9a, available at: <https://www.icj.org/wp-content/uploads/2021/04/SoutheastAsia-ICJ-OHCHR-Submission-Journalists-Safety-2021-ENG.pdf>; CamboJA News, 'Journalist handed 18-month sentence for incitement', 5 October 2020, available at: <https://cambojanews.com/journalist-handed-18-month-sentence-for-incitement/>.

⁵⁷ ICJ OHCHR Submission on Journalists, para. 9a; 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/>; 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/>.

⁵⁸ 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>.

five media outlets have had their media licenses revoked for their reporting on the COVID-19 pandemic.⁵⁹

25. The Cambodian authorities have intensified their repression of perceived political opponents for criticizing the government's COVID-19 response, by arresting, detaining and charging political opponents under articles 425 (false information), 437 *bis* (lèse-majesté), 453 (plotting) and 494 and 495 (incitement to commit a felony or disturb social security) of the Criminal Code.⁶⁰ Notably, Sam Rainsy, the former leader of the Cambodia National Rescue Party, was charged under articles 437 *bis* for his Facebook posts criticizing the government's COVID-19 vaccine plan and expressing his opinion that the King is a "puppet who does exactly what Hun Sen tells him".⁶¹

IV. Crackdown on Human Rights Defenders and Trade Union Leaders Working on Economic, Social and Cultural Rights

26. Relying on articles 494 and 495 of the Criminal Code, amongst other provisions, the Cambodian authorities have been responsible for a crackdown on human rights defenders and trade union leaders by regularly imprisoning, harassing and intimidating them, particularly those working on economic, social and cultural rights, such as land and environmental issues.⁶² As the CESCR has authoritatively held, "any threats or violence against human rights defenders [will] constitute violations of the obligations of States towards the realization of Covenant rights, since human rights defenders also contribute through their work to the fulfilment of those rights."⁶³

27. For instance, on 18 August 2021, the Phnom Penh Municipal Court sentenced Rong Chhun, the President of the Cambodian Federation of Unions and a member of the Cambodia Watchdog Council (CWC), an umbrella non-governmental organization of unions representing teachers, workers, farmers and students, to two years in prison and fined him two million riel (approx. USD 500) for incitement to cause serious disorder to social security.⁶⁴ Rong Chhun had posted information on his personal Facebook page about the fact that several Cambodians farmers had lost their land because of the irregular demarcations of border posts in Tbong Khmum Province.⁶⁵

⁵⁹ ICJ, Dictating the Internet Report on Cambodia, pp. 63 – 66.

⁶⁰ ICJ, Dictating the Internet Report on Cambodia, pp. 66 – 71.

⁶¹ ICJ, Dictating the Internet Report, pp. 68 – 71; Cambodianess, 'Phnom Penh Court Indicts Rainsy for Insulting King Norodom Sihamoni', 28 December 2020, available at: <https://cambodianess.com/article/phnom-penh-court-indicts-rainsy-for-insulting-king-norodom-sihamoni>.

⁶² See, more generally, The Observatory for the Protection of Human Rights Defenders, 'Human rights defenders and Covid-19: the impact of the pandemic on human rights defenders and their work', available at: <https://observatoryfordefenders-reports.org/covid-19/>; and OHCHR, 'COVID-19 pandemic exposes repression of free expression and right to information worldwide, UN expert says', 10 July 2020, available at: <https://www.ohchr.org/en/press-releases/2020/07/covid-19-pandemic-exposes-repression-free-expression-and-right-information?LangID=E&NewsID=26075>.

⁶³ Committee on Economic, Social and Cultural Rights, *Human rights defenders and economic, social and cultural rights*, UN Doc. E/C.12/2016/2, 29 March 2017, para. 5.

⁶⁴ The Phnom Penh Post, 'Chhun sentenced to two years', 18 August 2021, available at: <https://www.phnompenhpost.com/national/chhun-sentenced-two-years>. He was reportedly released in November 2021 after an appeals court upheld parts of his convictions while releasing him for time served for other charges: Radio Free Asia, 'Cambodian authorities release labor union leader in surprise move', 12 November 2021, available at: <https://www.rfa.org/english/news/cambodia/rong-chhun-11122021154127.html>.

⁶⁵ *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders*, Reference AL KHM 6/2020, 18 August 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25497>;

Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations at Geneva, *Responses from the Ministry of Interior and the Ministry of Justice of the Kingdom*

28. In another noteworthy case, in May 2021, Phoun Keoreaksmeay, Long Kunthea and Thun Ratha, activists from the Mother Nature Cambodia group, were found guilty of incitement to disturb social security under articles 494 and 495 by the Phnom Penh Municipal Court.⁶⁶ The environmental activists were protesting the filling of Boeung Tamok Lake for urban development in Phnom Penh, and were arrested shortly after announcing on Facebook the group's plan for Long Kunthea to conduct a one-person demonstration, which they had intended to livestream online.⁶⁷

V. Recommendations

29. In light of the above concerns, the ICJ calls on the CESCR to make the following recommendations to the Cambodian authorities:

a. In relation to human rights violations and abuses in SEZs:

- Adopt a human-rights based approach to development projects, including the SEZs, and with respect to projects that have an impact on indigenous persons, ensure that decisions about those projects be made in consultation with the individuals and communities concerned with a view to seeking their free, prior and informed consent, particularly with respect to projects that may potentially be harmful to them;
- Ensure transparency, including by making publicly available information and documents related to SEZs;
- Ensure that evictions are only carried out as a last resort after all other feasible alternatives to eviction have been explored. Procedural protections required under international human rights law should be in place before any evictions are carried out, in particular, requirements on genuine consultation, due process safeguards, provision of legal remedies, compensation and adequate alternative housing. Such protections should also be explicitly guaranteed in the Anukret No. 148, as well as other domestic legal and institutional frameworks to prevent forced evictions;
- Establish standing Committees within the SEZs' management bodies with a specific mandate to consult with affected populations and monitor projects. The Committees should include representatives of civil society organizations, unions and affected communities;
- Ensure that SEZ workers enjoy the right to just and favorable conditions of work and the right to social security as guaranteed under articles 6 and 8 of the ICESCR, and urgently investigate and address reports of human trafficking and forced labour in SEZs;
- Ensure that all workers are able to exercise their right to freedom of association and to collective bargaining without undue restrictions and without fearing

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

⁶⁶ Thun Ratha was sentenced to 20 months in prison and fined four million riels (approx. USD 1,000), while Phoun Keoreaksmeay and Long Kunthea were sentenced to 18 months in jail and fined four million riels (approx. USD 1,000). VOD, 'Mother Nature Environmentalists Found Guilty of Incitement', 5 May 2021, available at: <https://vodenglish.news/mother-nature-environmentalists-found-guilty-of-incitement/>; Amnesty International, 'Cambodia: "Outrageous" conviction of five environmental activists must be overturned', 6 May 2021, available at: <https://www.amnesty.org/en/latest/news/2021/05/cambodia-outrageous-conviction-of-five-environmental-activists-must-be-overturned/>; The Diplomat, 'Trio of Cambodian Youth Imprisoned for Environmental Activism', 6 May 2021, available at: <https://thediplomat.com/2021/05/trio-of-cambodian-youth-imprisoned-for-environmental-activism/>.

⁶⁷ *Ibid.*

reprisals. To this end, revise the 2016 Trade Union Law, including articles 54-56, to ensure their compliance with ICESCR and other international labour law and standards; and

- Ensure that effective, prompt and accessible judicial and non-judicial remedies are provided to those who are affected by the implementation of development projects, including the SEZ policies.
- b. In relation to COVID-19 expression and information, and crackdowns on human rights defenders and trade union leaders:
- Repeal or substantially amend legal provisions that serve to criminalize or unduly restrict health-related expression and information, and work on economic, social and cultural rights, including the COVID-19 Preventive Law and articles 437 *bis*, 494 and 495 of the Criminal Code;
 - Cease harassment and prosecution of any individual solely for exercising their rights to free expression and information in relation to economic, social and cultural rights, through the abuse of laws and administrative regulations, such as the COVID-19 Preventive Law and articles 437 *bis*, 494 and 495 of the Criminal Code;
 - 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 submission, facing prosecution for alleged violation of laws that are inconsistent with human rights on their face or which have been applied in a manner that fails to comply with the ICESCR and ICCPR. This includes the COVID-19 Preventive Law and articles 437 *bis*, 494 and 495 of the Criminal Code. With respect to the cases of convicted individuals for the aforementioned offences, quash their convictions, and with respect to individuals in pre-trial detention, cease investigation of their cases. All persons held in pre-trial detention or imprisoned on conviction in such cases should be released; 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 prosecution for their health-related expression.