

JOINT STATEMENT

Civil Society Organizations call for the Royal Government of Cambodia to Amend the State of Emergency Law to Protect Human Rights

Phnom Penh, 13 May 2020 – Without urgent and substantial amendment, the new *Law on the Management of the Nation in State of Emergency* (“*State of Emergency Law*”) grants the Royal Government of Cambodia (“RGC”) powers to restrict the fundamental freedoms of the Cambodian people without limit. The recently promulgated *State of Emergency Law* was impulsively drafted without adequate consultation to protect and promote human rights. While we acknowledge that the RGC has stated that their goal in drafting this law was to protect public health during the COVID-19 pandemic, we, the undersigned civil society organizations (“CSOs”) and communities, are very concerned that this law grants the RGC excessive powers to restrict fundamental freedoms and therefore poses a serious threat to human rights. **We call on the RGC to undertake immediate and meaningful consultation with relevant stakeholders, including the Office of the United Nations High Commissioner for Human Rights (“OHCHR”), and substantially amend the *State of Emergency Law* to ensure its compliance with Cambodia’s human rights obligations.**

The *State of Emergency Law* was hastily passed in the context of a years-long government campaign to suppress and silence dissenting voices among the Cambodian public, civil society and independent media. Since the beginning of the COVID-19 pandemic, civil society has witnessed increased restrictions by the RGC on the Cambodian people’s right to freedom of expression as guaranteed in the Constitution of the Kingdom of Cambodia (the “Constitution”). These measures have included the arrests of 40 people accused of sharing ‘*fake news*’ about the virus, as reported by the national police, the arrest of prominent reporter Sovann Rithy and the revocation of TVFB’s broadcasting license as well as public threats to arrest human rights defenders who have commented on the government’s response to the pandemic. We are legitimately concerned that this campaign of silencing the Cambodian people could be exacerbated through implementation of the *State of Emergency Law*.

A declaration of a state of public emergency is not a free-for-all on human rights. Under domestic and international law, Cambodia may introduce legislation to govern states of emergency to ensure public emergencies are managed in accordance with the law, and many states globally have already enacted such legislation. Cambodia’s introduction of a *State of Emergency Law* is in line with Article 22 of the Constitution and Article 4 of the International Covenant on Civil and Political Rights (“ICCPR”). However, in its current form, *the State of Emergency Law* presents an alarming risk to human rights in Cambodia. The law provides the RGC with extensive powers to implement measures restricting human rights with few limitations in place to ensure they are enforced in compliance with the law.

Under international law, if a measure departs from the RGC’s human rights obligations in an emergency, it must be strictly necessary and objectively proportionate to the situation. This means the RGC must ensure the nature and scope of powers are tailored to the severity and type of each particular emergency. In addition, it must comply with other international laws, and must not discriminate based upon race, color, sex, language, religion or social origin. These legal requirements, taken from the ICCPR, are given constitutional status in Cambodia and are directly applicable in domestic law. Although the RGC indicated in its recent letter to the OHCHR that this law would be implemented cautiously based on the principles in the ICCPR, these limitations must be written into the law to prevent misapplication or abuse. A number of the provisions in the *State of Emergency Law* do not comply with these standards. Our concerns include:

1. *Article 5*: The powers granted to the government under Article 5 are particularly alarming. The law prescribes vague, sweeping and unfettered powers to the government to implement

measures during states of emergency, including restricting or prohibiting movement, free speech and business activities, closing public and private spaces, surveilling communication as well as monitoring and controlling social media. If a state of emergency was declared, these measures are likely to severely constrain a range of fundamental freedoms including freedom of association, assembly, information, movement, as well as the right to work and the right to ownership of property. There are no limitations written into Article 5 restraining these measures in compliance with human rights law, meaning the law could easily be wielded without respect for human rights and to inappropriately target individuals, CSOs or the free media. Article 5 **must be amended to include strictly defined limitations and conditions to the powers granted** to mandate respect for human rights while responding to emergencies and ensure the law is not used to further silence or intimidate dissenting voices.

2. *The criminal offenses in Articles 7, 8 and 9:* the potential for using the law to target human rights defenders, civil society, the media, as well as members of the public, is exacerbated by the imprecise criminal offenses created by the law which mandate severe penalties for not complying with emergency measures for both individuals and organizations. The RGC must **revisit the ambiguous wording of Articles 7, 8 and 9 to ensure they uphold the principles of legality and proportionality** and to protect the law from manipulation to target civic space, free media and dissenting voices.
3. *The lack of government accountability:* despite granting extensive powers to the RGC, the *State of Emergency Law* includes very little in terms of checks and balances. Article 3 mandates that a decision by the National Assembly or Senate to terminate a State of Emergency *must* be made by Royal Decree *at the request of* the Prime Minister. This clause illegitimately transfers oversight power to end a State of Emergency from the National Assembly and Senate to the Prime Minister and is a clear violation of Article 86 and 102 of the Cambodian Constitution. Article 6, which is intended to provide a degree of oversight and accountability, is a hollow provision that is insufficient to safeguard the law's implementation. While we recognize the RGC has stated in its letter to the OHCHR that they intend to implement the provisions in compliance with human rights law and are "*committed to its obligations in accordance with Article 4 of the ICCPR*", there are no provisions in the law itself enforcing this. This is not sufficient, and the law must be revised to **introduce an adequate and independent oversight mechanism** to prevent abuse and misapplication. Without government culpability, the executive powers are limitless.

During times of crisis and public emergencies, it is more important than ever for the RGC to respect their human rights obligations, and this respect needs to be embedded into legislative responses. While we recognize the prioritization of protecting the right to health during the COVID-19 crisis, this must be balanced with respect for *all* human rights.

We call on the government to undertake inclusive and legitimate consultation with stakeholders with a vision to amend the law. These amendments must include limitations on the exercise of power by the RGC to ensure the law is not susceptible to abuse and to bring the law into compliance with Cambodia's human rights obligations.

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This statement is endorsed by:

- 1 185K Tita Chambak Thom Community (Kampong Chhnang)
- 2 197 Land Community (Koh Kong)

- 3 92 Community (Phnom Penh)
- 4 Alliance for Conflict Transformation
- 5 Angdoug Thmor Community (Preah Sihanouk)
- 6 Angdoug Trabek Land Community (Svay Rieng)
- 7 Banteay Srey Community (Phnom Penh)
- 8 Bat Khteah Community (Preah Sihanouk)
- 9 Boeung Bram Community (Battambang)
- 10 Boeung Chhouk Community (Phnom Penh)
- 11 Boeung Trabek Community (Phnom Penh)
- 12 Borei Keila Community (Phnom Penh)
- 13 Building Community Voice Cambodia
- 14 C I 5 Community (Preah Sihanouk)
- 15 Cambodian Alliance Trade Unions
- 16 Cambodian Center for Human Rights
- 17 Cambodian Center for Independent Media
- 18 Cambodian Food and Service Workers' Federation
- 19 Cambodian Independent Teachers' Association
- 20 Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
- 21 Cambodian Youth Network
- 22 Chikor Kraom Land Community (Koh Kong)
- 23 Choeung Prey Community (Kampong Cham)
- 24 Chray Indigenous Community (Ratanakiri)
- 25 Coalition of Cambodian Farmer Community
- 26 Community for Nature Protection (Pursat)
- 27 Community Legal Education Center
- 28 Dok Por Community (Kampong Speu)
- 29 Equitable Cambodia
- 30 Fishery Community (Koh Kong)
- 31 Forest and Biodiversity Preservation Community (Svay Rieng)
- 32 Forestry and Natural Resource Community (Pursat)
- 33 Former Boeung Kak Women Network Community (Phnom Penh)
- 34 Independent Democracy of Informal Economy Association
- 35 Khmer Kampuchea Krom for Human Rights and Development Association
- 36 KHMER THAVRAK
- 37 Khmum Srok Thlok Community (Kampong Thom)
- 38 Klaing Teuk 78 Community
- 39 Koh Sralao Fishery Community (Koh Kong)
- 40 Land Community, Phnom Krenh Village (Pailin)
- 41 Lawyers' Rights Watch Canada
- 42 Lor Peang community (Kampong Chhnang)
- 43 Meanchey Land Community (Svay Rieng)

- 44 Minority Rights Organization
- 45 Orm Laing Community (Kampong Speu)
- 46 Ou Chheu Teal Community (Preah Sihanouk)
- 47 Peam Reus Community (Kampong Speu)
- 48 Phnom Bat Community
- 49 Phnom Kram Community (Siem Reap)
- 50 Phum 23 Community (Phnom Penh)
- 51 Phum Bo Loy Community (Ratanakiri)
- 52 Phum Pa Or Community (Ratanakiri)
- 53 Phum Samut Kram Community (Ratanakiri)
- 54 Prek Takung Community (Phnom Penh)
- 55 Prek Tanou Community (Phnom Penh)
- 56 Prey Chher Pich Sangva Laor Chhert Community (Kampong Chhnang)
- 57 Prey Long Community (Kampong Thom)
- 58 Railway Station, Toul Sangkae A Community (Phnom Penh)
- 59 Raksmeay Samaki Community (Kampong Speu)
- 60 Sahmakum Teang Tnaut
- 61 Samaki Romeas Haek Land Community (Svay Rieng)
- 62 SOS International Airport Community (Phnom Penh)
- 63 Sre Prang Community (Tbong Khmum)
- 64 Steung Khsach Sor Forestry Resource (Kampong Chhnang)
- 65 Tany 197 Community, Chikhor Leur commune (Koh Kong)
- 66 Tunlong Community (Kampong Cham)

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