

## **Cambodia: COVID-19 measures must respect, protect, and fulfil human rights**

### **Place people and their human rights at the centre of emergency responses**

#### **Statement**

7 June 2021

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### **Introduction: Cambodia's harsh COVID-19 measures highlight the need for a fundamental shift towards fulfilment of human rights**

Lawyers' Rights Watch Canada (LRWC) welcomes the 20 May 2021 removal of harsh lockdown measures imposed by the Royal Government of Cambodia (RGC). These measures affected hundreds of thousands of people in COVID-19 "red zones" in several parts of Cambodia beginning in mid-April 2021. LRWC is dismayed by the humanitarian and human rights crisis resulting from the lockdown, including household food insecurity, hunger, and financial crisis.<sup>1</sup> LRWC deplores the threats, arrests, and violence used by authorities to suppress dissent and block reports about the situation in red zones.

The crisis in the red zones was caused by serious violations of Cambodia's obligations under international human rights law. Human rights violations throughout the COVID-19 pandemic are a part of the Cambodia's ongoing pattern of suppressing dissent through the misuse of laws and decrees within a legal system that lacks independence. Cambodia has a lengthy history of

harassing journalists, community activists, and human rights defenders who report violations, inequalities, or gaps in rights protection.<sup>2</sup>

The COVID-19 crisis highlights the need for Cambodia to make a fundamental shift in its approach to governance. Cambodia's international human rights law obligations require the RGC to place all rights, including economic, social, cultural, civil and political rights, at the centre of all laws, decrees, policies, institutions, and actions. These rights are indivisible and require the full cooperation of government with civil society in order to ensure that the equal protection of all people's rights and wellbeing is placed at the forefront, particularly during times of emergency.

This statement sets out a summary of LRWC concerns about the RGC's actions during the red zone lockdowns from 19 April to 20 May 2021 and provides recommendations for immediate steps to ensure that all measures to address the COVID-19 pandemic are in full compliance with international human rights law and standards.

## **Factual background**

Cambodia is required by international law to ensure equal respect, protection, and fulfilment of the human rights of all people in the country. This requirement continues during the COVID-19 pandemic.

Cambodia's international law obligations stem from the *Charter of the United Nations*,<sup>3</sup> the *Universal Declaration of Human Rights* (UDHR),<sup>4</sup> and human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights* (ICESCR),<sup>5</sup> and the *International Covenant on Civil and Political Rights* (ICCPR) which Cambodia ratified on 26 May 1992.<sup>6</sup> These obligations extend to all, including women and children, who are also protected by specific international human rights treaties.<sup>7</sup> This statement focuses on the indivisible human rights obligations set out in the ICESCR and ICCPR.

### ***Violation of right to an adequate standard of living including freedom from hunger***

From 19 April to 19 May 2021, people living in designated red zones were prohibited from leaving their homes, even to buy food and other necessities. Many suffered food insecurity and hunger. Red zone residents were forbidden from leaving their homes to go to work, resulting in debt and financial crises for many.<sup>8</sup>

Red zone markets were closed down, and food suppliers were prohibited from entering. While the Ministry of Commerce set up an online food store for red-zone residents, the store offered only eight items for sale – “fish sauce, soy sauce, instant noodles, canned fish, water, rice, and preserved radish.”<sup>9</sup> These items were inadequate for the residents' nutritional needs and unaffordable for many people who could not go out to work. Of the items available, some brands are reportedly linked to businesses connected to government officials, leading to claims of corruption and profiteering.<sup>10</sup>

Government donations of food and necessities to people in red zones were inadequate and unequally distributed. Government food aid was reportedly politicized and denied to people who were perceived as activists or who had no government “connections.”<sup>11</sup>

By the end of April 2021, people desperate for food were reported to be pleading for help on social media or in some cases were engaging in small, food-related demonstrations outside their homes. In one case, residents hung banners from government barricades saying “my village is starving.”<sup>12</sup>

Denial of access to food and other necessities is a serious violation of ICESCR Article 11, which requires non-discriminatory protection of people’s right to an adequate standard of living and freedom from hunger.

#### ***Failure to engage international assistance and cooperation***

The RGC reportedly refused humanitarian assistance from UN bodies<sup>13</sup> and NGOs. Humanitarian NGOs were reportedly “barred from distributing food and other essential aid within red zones despite the urgent needs of at-risk residents.”<sup>14</sup> UN agencies were also denied access to red zones (see more below). This denial of assistance is at odds with Cambodia’s undertaking pursuant to ICESCR Article 2 to take all possible legislative and other measures both as a State and through international assistance and co-operation, in order to realize the economic, social and cultural rights set out in the ICESCR.

#### ***Violation of rights to freedom of expression, information, and public participation***

People pleading for assistance on social media were subjected to threats and arrests.<sup>15</sup> The Prime Minister publicly threatened to deny government food assistance to red zone residents if they continued to express concerns.<sup>16</sup> Journalists were prohibited from reporting on conditions in the red zones and threatened with “legal action” if they failed to comply with COVID-19 regulations.<sup>17</sup>

Members of community organizations were threatened, arbitrarily detained, interrogated for seven hours, and harassed after attempting to submit a petition asking for additional government assistance during the COVID-19 crisis. The petition included requests for government distribution of medical supplies for vulnerable communities, suspension of debts to microfinance institutions and private money lenders, suspension of rental fees for poor and informal workers, and payments for those forced to stay at home.<sup>18</sup>

These restrictions and threats to citizens, media, and human rights defenders are violations of the right to freedom of expression and information protected by ICCPR Article 19 and the right to participate in public debate guaranteed by ICCPR Article 25.<sup>19</sup> Such actions also violate the UN Declaration on Human Rights Defenders, adopted by consensus of the UN General Assembly in 1999.<sup>20</sup> This global consensus demonstrates recognition of the legitimacy and importance of the activities of human rights defenders, including their right to participate in peaceful activities to promote and advocate the protection of human rights. The term “human rights defenders” applies to all persons who, “individually or with others, act to promote or protect human rights in a peaceful manner.”<sup>21</sup> Human rights defenders include not only persons working for human rights

NGOs but also community leaders, journalists or others who are working to promote or protect human rights.

***Violation of the right to freedom from torture and ill-treatment – unlawful police violence***

Police were authorized to use canes to chase and beat people believed to be violating lockdown regulations. Authorities justified this unlawful use of violence on the grounds that some people in red zones were failing to cooperate with health measures.<sup>22</sup> These acts of violence constitute unlawful use of force by police and violate the right to be free from torture and ill-treatment guaranteed by ICCPR Article 7 as well as the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.<sup>23</sup>

The UN *Basic Principles on the Use of Force and Firearms by Law Enforcement* prohibit the unnecessary use of force and require law enforcement officials to “apply non-violent means before resorting to the use of force... They may use force... only if other means remain ineffective or without any promise of achieving the intended result.”<sup>24</sup> Available videos of police violently striking unresisting, unarmed citizens with sticks indicate unnecessary and disproportionate use of force. LRWC welcomed the intervention of the Minister of Interior, H.E. Sar Kheng, who ordered a halt to the beatings after a public outcry.<sup>25</sup>

***UN Country Team delay in seeking access to red zones***

LRWC is concerned by reports suggesting the lack of a “strong, concerted push for access to red zones” by the UN Country Team (UNCT) during their negotiations with the RGC to obtain access to red zones.<sup>26</sup> On 30 April 2021, Amnesty International urged that the UN Resident Coordinator and UNCT should “proactively make every effort to seek approval to deliver emergency assistance to those in need, including in red zones.”<sup>27</sup> According to a later report, the UN Resident Coordinator did not formally request access to the red zones until 4 May 2020, “some three weeks after 50,000 Cambodians requested support from Phnom Penh City Hall.”<sup>28</sup>

**Emergency laws violate Cambodia’s international human rights law obligations**

Certain limitations on freedom of association and movement are legitimate for the purpose of protecting the right to life and the right to health of the public, but the patently unlawful and shocking measures put in place by the RGC in red zones violated the right to health as well as other rights noted above. The harsh measures evident during April and May 2021 cannot be viewed as legitimately necessary or proportionate to the aim of containing transmission of COVID-19. Other methods of ensuring the health of persons confined to red zones could have been made readily available, including enabling mobile food vendors to operate in line with COVID-19 safety protocols, and cooperating with civil society and UN agencies for humanitarian assistance.

Limitations on the rights set out in the ICCPR are subject to strict criteria. In April 2020, the UN Office of the High Commissioner for Human Rights (OHCHR) provided guidance on restrictions during on COVID-19 emergency measures<sup>29</sup> based on the UN Siracusa Principles<sup>30</sup> and the UN Human Rights Committee’s General Comment No. 29.<sup>31</sup> The OHCHR guidance explains that restrictions on civil and political rights must meet four criteria:

- *Legality.* The restriction must be “provided by law”. This means that the limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public.
- *Necessity.* The restriction must be necessary for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need.
- *Proportionality.* The restriction must be proportionate to the interest at stake, i.e. it must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result.
- *Non-discrimination.* No restriction shall discriminate contrary to the provisions of international human rights law.

The OHCHR guidance also pointed out that “[s]tate obligations associated with the core content of the rights to food, health, housing, social protection, water and sanitation, education and an adequate standard of living remain in effect even during situations of emergency.”<sup>32</sup> The UN 2020 policy framework on responses to COVID-19 emphasises that,

now more than ever, human rights are needed to navigate this crisis in a way that will allow us, as soon as possible, to focus again on achieving equitable sustain-able development and sustaining peace, reaffirming the Siracusa principles by stating that “restrictions on free movement [for health purposes] should be strictly necessary..., proportionate and non-discriminatory.”<sup>33</sup>

Despite Cambodia’s international law obligations, the RGC’s measures to address COVID-19 have deployed vague and overbroad emergency laws, decrees, and other measures, applied in contradiction to international human rights law and standards.<sup>34</sup>

### ***State of Emergency Law April 2020***

Cambodia’s 2020 *Law on the Management of the Nation in State of Emergency* (State of Emergency Law)<sup>35</sup> is vague and overbroad, creating sweeping and poorly-defined restrictions on human rights.<sup>36</sup> On 17 April 2020, several UN independent human rights experts expressed concern that the law would violate the right to privacy and freedom of expression and would criminalize peaceful assembly, saying that the penalties of up to 10 years in prison and heavy fines are disproportionate.<sup>37</sup> On 13 May 2020 more than 60 Cambodian civil society organizations and community groups issued a statement setting out concerns about the State of Emergency Law, calling on the RGC to engage in consultation with all stakeholders, including civil society organizations, with a view to amending the law to bring it into compliance with Cambodia’s human rights obligations.<sup>38</sup>

### ***QR Code contact tracing, February 2021***

Cambodia’s QR Code system for contact tracing, introduced in February 2021 has also raised concerns. On 18 March 2021, two UN Experts wrote to the RGC to expressing raising questions and concerns that the QR Code system’s possible violations of the right to privacy and are “not in line with Cambodia’s international human rights obligations.”<sup>39</sup> According to Human Rights Watch, the QR Code system creates “a log of people’s locations [that] reveals sensitive insights

about their identity, location, behavior, associations, and activities that infringe on the right to privacy, adding to the government’s existing intrusive surveillance practices.”<sup>40</sup> The RGC did not explain how the QR Code system ensures protection of the right to privacy. All contact tracing measures should be in line with the right to privacy guaranteed by ICCPR Article 17 and the UN Joint Statement on Data Protection and Privacy in the COVID-19 Response.<sup>41</sup>

### **COVID-19 Law, March 2021**

In March 2021, the RGC passed the *Law on Measures to Prevent the Spread of COVID-19 and other Serious, Dangerous and Contagious Diseases* (COVID-19 Law).<sup>42</sup> The law imposes disproportionate penalties including jail terms of up to 20 years and fines of up to US \$5,000.<sup>43</sup> On 12 April 2021, several independent UN experts called on the RGC to revise the law saying it is “disproportionate and unwarranted.”<sup>44</sup>

### **Effective COVID-19 responses respect human rights and cooperate with civil society**

“People — and their rights — must be front and centre” in all responses to the COVID-19 pandemic, according to the UN Secretary General.<sup>45</sup> The former UN Special Rapporteur on human rights in Cambodia has also emphasized the need to employ the international human rights framework together with the UN Sustainable Development Goals<sup>46</sup> and the UN *Sendai Framework for Disaster Risk Reduction*<sup>47</sup> to successfully address the COVID-19 pandemic, ameliorate its impact and allow Cambodia to ‘build back better’.<sup>48</sup>

Human rights are fundamental to the UN Sustainable Development Goals.<sup>49</sup> In his 2020 Call to Action, UN Secretary General António Guterres emphasised that human rights are at the centre of sustainable development even in times of crisis, pointing out that the Sustainable Development Goals “are underpinned by economic, civil, cultural, political and social rights.”<sup>50</sup>

The *Sendai Framework for Disaster Risk Reduction* likewise emphasises human rights and cooperation among all stakeholders including civil society and media. The Guiding Principles of the Sendai Framework stipulate that “[m]anaging the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development” (emphasis added).<sup>51</sup>

The UN Office for Disaster Risk Reduction noted in July 2019 the need for cooperation with civil society NGOs and networks, urging Cambodia to direct its focus for disaster risk reduction,

towards a more participatory, proactive approach to manage disasters and climate risk, especially at the sub-national and grassroots levels, which are not only the first responders in disasters, but also best equipped to address disasters and climate risk reduction needs in a manner that does not compromise local livelihoods. Untapped potential of self-help groups, livelihoods groups and local environmental protection groups in DRR and CCA has to be realized, with support from the plethora of local NGOs and their networks to enhance people empowerment, poverty reduction, livelihood

diversification and local resilience building catering to locally-driven needs and context (emphasis added).<sup>52</sup>

## Recommendations

LRWC urges the RGC to take the following immediate measures:

1. Undertake a fundamental shift and review of its overall approach to emergency legislation to ensure the centrality of:
  - a. equal protection of all people's economic, social, cultural, civil and political rights in accordance with international human rights law and standards;
  - b. participatory engagement and cooperation with civil society in the development and application of all laws, policies and actions to address the COVID-10 pandemic and other emergencies.
2. Conduct a full review of Cambodia's emergency laws and measures in full cooperation with all stakeholders, including civil society groups, the OHCHR and UN Special procedures, and repeal or amend laws to bring them into line with Cambodia's international human rights law obligations and standards.
3. Cooperate in good faith with UN agencies including the Office of the High Commissioner for Human Rights, the UN Human Rights Council Special Procedures, UN human rights treaty bodies, and promptly implement their recommendations in good faith.

*Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems, and the rule of law through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).*

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<sup>3</sup> United Nations, *Charter of the United Nations*, 24 October 1945, available at: <https://www.un.org/en/about-us/un-charter>.

<sup>4</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, available at:

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<sup>5</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

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<sup>7</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, available at: <https://www.refworld.org/docid/3ae6b3970.html>; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, available at: <https://www.refworld.org/docid/3ae6b38f0.html>.

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<sup>12</sup> Aun Chhengpor, "Protests in Phnom Penh Red-Zone Commune as Food Stocks Diminish," VOA, 30 April 2021, available at: <https://www.voacambodia.com/a/protests-in-phnom-penh-red-zone-commune-as-food-stocks-diminish/5873360.html>.

<sup>13</sup> Human Rights Watch, *supra* note 10.

<sup>14</sup> Amnesty International, *supra* note 1; Megan Tatum, "Cambodia ends controversial COVID-19 restrictions," *The Lancet*, World Report, Vol 397, May 29, 2021, available at: <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2901196-X>.

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<sup>16</sup> Amnesty International, *supra* note 1.

<sup>17</sup> Khuon Narim, "Information Ministry warns journalists against 'ambulance chasing' after video of long waits for COVID-19 patients goes viral," *Camboja*, 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/>; Access Now et al, *ibid*; Radio Free Asia, "Cambodia Threatens Journalists Over Pandemic Lockdown Coverage as Cases Surge," *RFA*, 4 May 2021, available at: <https://www.rfa.org/english/news/cambodia/lockdown-coverage-05042021195704.html>;

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