

**Human Rights Council****Forty-fifth session**

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Agenda items 2 and 10

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of  
the High Commissioner and the Secretary-General****Technical assistance and capacity-building****Report of the Special Rapporteur on the situation of human  
rights in Cambodia****Comments by the State\****Summary*

This is to comment on the Draft Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Rhona Smith upon the request of the Office of the High Commissioner for Human Rights in Geneva dated on July 06, 2020.

Cambodia recognizes the roles and mandates of the Special Rapporteur on the Situation of Human Rights in assisting Cambodia in the promotion and protection of human rights. Cambodia maintains the view that the assistance or cooperation must always be driven by the needs of the relevant State and be aligned to its national objectives and priorities, taking into account the national particularities and ownership. The primacy of the role of the State as the human rights duty bearer should be in this process..

The assistance and support provided by the Special Rapporteur on the Situation of Human Rights in Cambodia to the government and people of Cambodia in the promotion and protection of human rights is much appreciated. However, the Government of Cambodia is dismayed by the countless accusation in this report without any evidence base, which is mostly made and provided by the opposition and their alliance. Therefore, we would like here to provide some brief clarifications to those groundless accusations as the following.

\* Reissued for technical reasons on 1 October 2020.

\* The present document is being issued without formal editing.



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## **I. Comment on general context of human rights and political situation**

### **A. Legal action on people illegally aligned with convicted person, Sam Rainsy**

1. Actually the recent legal action against the members of former opposition party by the local and court authority is an attempt to enforce the rule of law against the violators, who try to exempt themselves from law and justice on the ground that they are simply promoting different voices in different ways with a malicious intention. Political rhetoric with full of incitement, hatred, discrimination, violence, harassment, abuses, social riot appeal, call for support of illegal movement and organization and rebellion against legitimately elected government made by those members of former opposition party so far is not the right to freedom of expression and opinion, but an illegal act and must face criminal liability in accordance with the criminal law of Cambodia. If this trend left unchecked it will end up in the way that freedom of expression and opinion is distorted and twisted to undermine rule of law, human rights and democracy at once and for all.

2. As a democratic country upholding human rights and adhering to rule of law, all Cambodian citizens are equally treated before the law regardless of their political affiliation, profession, social status or their past. Each and every person is legally accountable not because of who they are but because of what offences they have committed.

### **B. Pending case of Kem Sokha**

3. On 9 September 2018, the Court of First Instance issued an order to release Mr. Kem Sokha under judicial supervision with some conditions, meaning that he was no longer under pre-trial detention within the maximum period of 18 months in prison.

4. Currently, the case is in being at the trial state of Phnom Penh Court of First Instance, an independent body which cannot be interfered by any institution as guaranteed by the Constitution. According to the procedure law, Kem Sokha has never been placed under house arrest as claimed and alleged wrongly by some other groups because he has fully right to leave his home within the permitted perimeters, use phone, meet or communicate with family, lawyers or any persons who are not prohibited by court. However, due to covid-19 pandemic and upon the request from lawyers of both sides, the trial procedure has been suspended until now.

### **C. Civil and political space and legal action against some civil society activists**

5. In terms of civic and political spaces, the government acted in good faith on anything that it could have done, save for actions that are tantamount to infringing the sovereignty of the nation. For the records and for the sake of transparency, Cambodia upholds a multi-party democratic system with 20 political parties taking part in the last election. It is currently home to 5,441 registered local NGOs and associations, 800 printed media organizations, 70 online publications, 22 TV stations, and 330 radio stations. Cambodia is one of the only three countries in ASEAN that has ratified all 8 core ILO labor conventions where workers can be represented by 5,045 registered trade unions. Cambodia values multi-stakeholder partnership through participatory and rewarding exchange with mutual respect to enhance the quality of technical cooperation and human rights standard on the ground.

6. The Royal Government is strongly committed to promoting genuine dialogue, participation and partnership with Local and International Civil Society Organizations (CSOs), Media and Labor Unions in all aspects of social development. In this spirit, the government has initiated several important measures such as an inter-ministerial working group led by the Ministry to address CSOs' requests and concerns, including issues related to the Law on Associations and Non-Governmental Organizations as well as suggested

amendments. The Ministry of Foreign Affairs and International Cooperation also organized a similar consultative forum with international NGOs in Cambodia.

7. Cambodia appreciates genuine and honest contribution of social, environmental and human rights workers to the development of Cambodia. However, they are not above the law and have no special right to violate the laws without penalty. Moreover, we deplore those who use and exploit the right agenda for political purpose and as the result, some civil society and human rights activists were facing the prosecution for violation of the criminal law of Cambodia. They were not charged arbitrarily and due to the functioning their duties as members of NGOs and civil society organizations, but in line with applicable laws with solid evidences.

#### **D. Freedom of Expression, Free Press and Case of TVFB Reporter**

8. The registered media organizations at the Ministry of Information, owned and possessed by Cambodians and foreigners consist: 445 newspapers; 195 magazines; 21 newsletters; ;449 websites and online TV; 116 printing houses; 22 foreign media agencies; 220 FM radios; 01 AM radio; 210 Analogue TV; 05 Digital TV; 212 Cable TV; 03 OTT; 02 Satellites TV; which show the growth of the media in Cambodia.

9. There are over 5,000 journalists being operated the media activities in the Kingdom of Cambodia; in which there are about 500 international journalists include journalists of RFA and VOA as well. The 41 news associations, 22 foreign media agencies of which has its permanent representative office in Cambodia; they have been given fully right to operate their media activities freely without bother and intimidation.

10. In this regard, with purpose to promote freedom of expression, freedom of press and to enhance good governance with good quality, transparency and accountability; the Royal Government has entrusted the Ministry of Information to lead and draft Access to Information Law. In drafting this law, the Ministry of Information has also cooperated with UN Agencies such as Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNESCO office in Phnom Penh; representative of civil society and academia such as Advocacy and Policy Institute (API), Cambodia Center for Independent Media (CCIM), Club of Cambodia Journalists (CCJ), Cambodia Human Rights Action Committee (CHRAC), Department of Media and Communication (DMC) and Women Media Center of Cambodia (WMC).

11. This draft has been completed discussion and consultation by the Technical Working Group and received highly appreciation from the representative of UNESCO office in Cambodia that this draft has high standard in Asia-Pacific region and applicable as model for other countries. Now, this draft is being reviewed at inter-ministerial level and the Ministry of Information hope this draft will be soon approved by Executive Institution and Legislative Institution.

12. In overall, the Royal Government of Cambodia always promote this important task of journalist and promote freedom of expression, freedom of press in Cambodia and considered journalists as indispensable partner and be a bridge to pass true information from government to citizens and from citizens to government on the basis of collaboration and taking responsibility to media ethics in order to build a society with full of peace and long-term development.

13. Freedom of press and expression does not mean freedom to insult, to fake information or to defame someone. Right to expression of opinion is not right to lie and discredit someone. All western countries also have laws punishing such practices. Statements promoting hatred and xenophobia are also prohibited in Europe.

14. For example, the case of TVFB Reporter, he was charged not because of exercising freedom of press or expression or simply quoting the word of public official, but of a crime related with incitement of hatred and violence with malicious intention in accordance with article 494 and 495 of the criminal code of Cambodia.

## **E. Prison Reform and Torture Issue**

15. Like many developing countries, Cambodia is in the stage of conducting its penal reform including prison reform. To address this issue, the Royal Government is also considering alternative to imprisonment and community-based treatments of offenders starting with juvenile delinquents (the “Tokyo Rules and Penal Code 2009”).

16. The act of torture and ill-treatment of detainees are serious violations under the Cambodian criminal law and the perpetrator including law enforcement personnel are subject to criminal liability. The Royal Government has taken serious prevention actions so far through training and law dissemination among law enforcement personnel as well as enforcement against perpetrators. In relation to pre-trial detention and its extension, it is upon the prerogative of the judiciary to decide in accordance with the provisions stipulated in the criminal code. Final court judgments are now shared with the prison authorities.

17. Cambodia became the first ASEAN state to ratify the United Nations Optional Protocol to the Convention Against Torture (OPCAT) on March 30, 2007 which in turn established an official mechanism for the prevention against torture in 2009, namely the National Mechanism for the Prevention Against Torture and its secretariat in 2010. Since OPCAT was ratified, Cambodia has been visited twice by the Subcommittee for the Prevention of Torture (SPT) in 2009 and 2013. In addition to good measures to prove that rights of detainees are being protected the Royal Government has allowed the UN special rapporteur Prof. Rhona Smith to visit places of detention on numerous occasions prior to 2018.

18. Article 38 of the Constitution and Article 321 of the criminal code nullify confessions derived from ill treatments or torture by the authority in the court of law. Articles 210 –215 of the CCKC, Article 25 and Article 81 of the 2011 Law on Prison as well as the prison regulations handbook all prohibit torture on all forms committed by competent officers who have the duty of care for detainees designated to them.

19. The government also pays much attention on the rights of the detainees through the regular inspection and monitoring of the prison situation in all provinces done by the Cambodian Human Right Committee. Through this monitoring mission, the committee has also intervened several cases related with issue of improper treatment and violence against detainees and also disseminated the domestic and international rules and regulations related with the rights of detainees among all stakeholders through the meeting with prison officials, court officials, local authorities, police and detainees.

## **F. Measure to protect and help vulnerable group from Covid-19**

20. To help protect and support the social and economic rights of the vulnerable group from covid-19, the government has established a program to give cash handouts to the country poorest households to alleviate the financial burden caused by coronavirus. The program will provide 20\$ to rural families and 30\$ to urban families because living expenses are higher in cities. The transfer will be supplemented by smaller payments for each family member, and additional 10\$ for live-in parents over the age of 60 and family members who have HIV infections.

21. The government will spend 25 million us dollar a month to provide money to 560,000 households identified by an existing program as the poorest, which account for about 2.3 million Cambodian, or about 14% of the almost 17 million populations. The cash transfer will be carried out in June and July and will be extended or expanded in the following months according to economic and coronavirus condition

## **G. Administration of Justice, Lengthy pre-trial detention and Case backlog**

22. In principle, the charged person shall remain at liberty. However, the charged person may be provisionally detained under the conditions stated in Article 205 of the criminal code

and the decision on the pre-trial detention is under the competent authority of the investigating judge in compliance with the criminal code (Articles 203 to 222). According to Article 208 of the criminal code, this provisional detention is six-month and can be extended twice, for a maximum period of six months each time. The length of detention as determined by the investigating judge shall be used to conduct the investigation in accordance with the Code of Criminal Procedure for a period of up to 18 months.

23. The period of provisional detention in felony cases as stipulated in the criminal code is similar to the period of detention for felony cases in some countries in the world. In the case of the French provisional detention for serious felony, the maximum period can be up to 24 months or more.

24. Lengthy trial detentions are a direct result of large amount of cases and a low number of judges, prosecutors, and defense attorneys while law enforcement agencies are making more arrests, particularly drug related offenders.

25. Lengthy pre-trial detention and arbitrary confinement of prisoners after their sentences have been completed at times took place because the final court judgments have not been communicated to the prison authorities. Prison directors are instructed to work closely with the court to notify beforehand those whose sentences are reaching their final days to issue releasing papers on time.

26. Ministry of Justice is now launching a campaign to address the case backlog and prison overcrowding issue. This campaign will last up to 6 months only starting from May 2020 to address some contemporary and shortcoming challenges related with case backlog and prison overcrowding issues. However, the Ministry also set up a long term plan and strategies enshrined in our legal and judicial reform program to address those issues, such as establishment of mechanism to enforce alternative sentencing, modernization and digitalization of case registration and management, establishment of specialized courts and regional appeal courts, expansion of legal aid budget and mechanism and increase of more financial and human resources in court system ...etc.

## **H. Cooperation with International Human Rights Mechanism**

27. Government attaches great importance to each treaty body reporting mechanism and UPR and will continue to uphold the principles of the UPR with its non-confrontational, non-politicized and non-selective approach. However, we resolutely oppose the practice of using human rights as a pretext to interfere in internal affairs of others and to undermine their sovereignty and territorial integrity.

28. After the adoption of the report of the 3rd cycle review, Cambodian Human Rights Committee - CHRC and OHCHR in Cambodia had been working together to co-organize workshops and other program activities to disseminate all accepted recommendations to all relevant line ministries and institutions for implementation. Cambodian Human Rights Committee is now monitoring the implementation of those recommendations and will report back to the council either in the in the next cycle review

29. The treaty body reports that are under the responsibility of CHRC had already been submitted on time. However, for other treaty body reports under the responsibility of other line ministries, CHRC will also try to communicate and coordinate with them, so that they can complete and submit the report within the timeframe provided.

30. Cambodian Human Rights Committee is also now finalizing another report on enforced disappearance to be submitted soon to the Committee on enforced disappearance and also the core document to be discussed with all stakeholders and submitted to OHCHR in Geneva.

## **I. Law on the Management of State of Emergency**

31. The assertion that the Law on the Management of the Nation in State of Emergency jeopardizes human rights is unfounded and indicative of a selective and biased application of

human rights. The fact is that this law is permissible by national and international human rights instruments, namely the Constitution of Cambodia, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

32. To respond to the Covid-19 pandemic, many countries in the world have declared state of emergency and lockdown measures to prevent and contain the spread of this virus by inter alia provisionally derogating the people's freedom of movement, rights to peaceful assembly and privacy. Therefore, it is unfair to chide Cambodia for vital legislation.

33. Law on the Management of the Nation in State of Emergency is drafted in compliance with Article 22 new of the Constitution of the Kingdom of Cambodia, in which a decision to place the country in a state of emergency shall be made when the nation faces danger from a war-caused incident or an invasion by foreign forces, a serious emergency affecting public health that leads to disease outbreaks, utter chaos to national security and public order, as well as grave danger that threatens or may cause nationwide spread.

34. The establishment of the Law on the Management of the Nation in State of Emergency is neither, by nature, a human rights violation nor a power-gathering tool as alleged by a handful of opposition groups, but it is a valuable legal tool for the defense of the right to life, the right to peace, social stability and development, which is the people's aspiration throughout the country and in compliance with the principles of the rule of law in the democratic society. This Law also provides a legal basis for implementing Article 22 new of the Constitution and a legal basis for determining Government's authorities to introduce measures which are, by nature, prohibitions or restrictions on the rights of citizens. However, this measure is indispensable in response to the state of emergency for the purpose of protecting national security and public order, people's lives and health, as well as property and environment.

35. Looking at international practice and a number of democratic countries in the region, Cambodia's laws adhere to a set of balanced and central norms and standards, which are neither too strict nor too loose as Cambodia has studied the patterns of practice taken by those democratic countries, including the Cambodian context. In international practice, certain countries adopt strict and rigorous standards, delegating all powers to the executive branch to take all necessary measures without control, while some others allow parliamentary or/and judicial control mechanisms; and in the event of a serious emergency affecting national security, the use of martial law is even permitted.

36. In regard with sanctions for obstruction and violations of government measures in this law, it is very necessary for the effectiveness of law enforcement; without sanction law cannot be enforced. Comparing to law in many other advanced democratic countries, the sanction mechanism in Cambodia's law is much lenient, whereas the law in other countries even permits the use of martial law in the event of a serious emergency affecting national security.

37. In Cambodian laws, powers are not delegated to the executive branch to take measures without any limit, namely under the mechanism of parliamentary control up to two levels: the National Assembly and the Senate (Article 6 of the draft law); in accordance with the parliamentary system of democratic regime, including legal responsibilities of competent authorities who arbitrarily abuse their powers, which violates and contradicts the purpose of this Law (Article 10 of the draft law).

38. The circumstances state of emergency is unpredictable and the declaration of placing the country in a state of emergency is to be considered when desperately needed for the purpose of safeguarding and maintaining security and public order, including lives, health, interests and property of citizens and society as a whole. However, what is most important in this law is the review mechanism, which permits either the National Assembly or Senate to declare separately the state of emergency terminated when the situation permits.

39. The critics so far seem to regurgitate their usual political attacks against government measures or policies. In particular, they aim to criticize Prime Minister Hun Sen. It looks like they assume that the baby will be abusive even before he is born. The critics should have reviewed the SOE Law from a more objective lens than just their human right utopia.

40. As the world faces the Covid-19 pandemic, there are growing concerns about the potential dangers to the nation and society which necessitates emergency actions. It is better to have the law in place. Even if he does not need to use it now, it can be used when it is needed.

## II. Specific comments by paragraph

### Paragraph 18

41. The Government of the Kingdom of Cambodia highly appreciates the encouragement of the Special Rapporteur pertaining to our supports to the recommendations by Argentina and Chile during the third cycle of universal periodic review, in which we agreed to adopt measures necessary to protect the rights of human rights defenders, trade unionists and journalists and to investigate and punish those responsible for the threats and violence against them and their families.

42. Regarding the protection of trade unions, Article 67 of the Law on Trade Unions (LTU) provides special protection from any dismissal without prior permission from the Labour Inspector to not only the elected trade union leaders, but also the unelected candidates. Furthermore, even though the administrative measures and the penalty provisions under the LTU provide for only the written warning and transactional fine, the LTU is not the obstacle to execute other criminal laws.

43. Article 95 of the LTU provides that “[t]he application of the provision of Chapter 15 (Administrative Measures and Penalties) of this law shall not bar the application of other criminal laws, provided that the violation of the provision of this law is an offence defined by other criminal laws.”.

44. In connection with this provision, the violence and discrimination against worker unions are deemed as a criminal offence which is stipulated in Article 217, Article 267 and other articles of the Criminal Code. Therefore, in addition to the fines imposed by the LTU, they can claim for compensation for any damage as a result of unfair labour practice. The employer will also face imprisonment if their actions are constituted as the violence and discrimination against worker unions.

45. In respect of the rights to strike, it is widely understood that the right to strike provided for by the ILO Convention 87 is subject to the domestic law of each country.

46. In this regard, as a signatory of the ILO Convention 87, Cambodia fully respects the right to strike. And in consistent with ILO Convention 87, article 37 of the Cambodian Constitutional Law specifies that “*the right to strike and to non-violent demonstration shall be implemented in the framework of law*”.

47. Based on this provision, it is pretty clear that trade unions and workers shall respect the strike procedure as provided for by the Labor Law. This legislation prohibits any violent actions during strike or demonstration. And as decided by the Freedom of Association Committee of the ILO Governing Body, the principles of freedom of associations do not protect the abuses consisting of criminal acts while exercising the right to strike.

48. In Cambodia, neither worker nor trade unionist has ever been arrested because of their participation in a peaceful strike. As long as they exercise their rights within the legal framework, Cambodia has very strong mechanisms and legislation to safeguard and provide them an adequate protection.

### Paragraph 20

49. “Between April and May 2020, the Special Rapporteur was informed that the Government revoked the licenses of Facebook-based media TVFB, CKVTV and Rithysen Radio Station of three media outlets, under claims that the outlets were publishing information which exaggerated, contains incitement to violence, provocation to commit discrimination and provocation to cause social insecurity and chaos”. **However, before deciding to revoke those licenses, the Ministry of Information had informed and**



**educated them to publish the true information in accordant with all sources, respect the journalists' code of ethic and obey the laws"**

**Paragraph 21, 22 and 23**

50. Mr SUONG Neakpoan born on 2 August 1990, Cambodian, staying at House No. 41, Prek Preung Khang Cheung 2 Village, Sangkat Choam Chao 3, Khan Por Senchey, Phnom Penh is a coffee vendor. On 10 July 2019, at around 9:00 a.m., SUONG Neakpoan handed out numerous leaflets printed with writing "Stop extrajudicial killings" and asked the Royal Government to look for the killer who murdered Mr KEM Ley at Caltex Petrol Station, Bokor, Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh. The activities and contents of the leaflets that SUONG Neakpoan and his cronies posted have caused public disorder, misled the public and intended to incite [the public] to oppose the action of the judiciary that has been investigating the suspect Chuop Samlab. The judge of the Phnom Penh Municipal Court of First Instance issued Arrest Warrant No. 6953 dated 12 July 2019, charging him with incitement to commit felony pursuant to Articles 494 and 495 of the Criminal Code of the Kingdom of Cambodia.

51. Mr KUNG Raiya born on 28 September 1991, renting House No. 4, Concrete Street, Sleng Roling Village, Sangkat Ou Baek K'am, Khan Sen Sok, Phnom Penh, is a student of Pannasastra University of Cambodia. His Facebook account KUNG RaiYa posted an advert selling T-shirts (500 T-shirts according to his confession) featuring an image of KEM Ley and writing "Wipe the tears and set off" on the front of the T-shirt and "If you do nothing, you will certainly suffer; it is just not your turn yet" on the back of the shirt. In coordination with the prosecutor, the Phnom Penh Municipal authorities investigated and brought KUNG Raiya, along with his cronies, for questioning about the aforesaid T-shirt sale activities and comments which intend to incite to commit felony and arouse social turmoil. The judge of the Phnom Penh Municipal Court of First Instance issued Arrest Warrant No. 6937 dated 11 July 2019, charging him with incitement to commit felony pursuant to Articles 494 and 495 of the Criminal Code of the Kingdom of Cambodia.

**Paragraph 26**

52. The Ministry of Environment supports Non-Governmental Organisations (NGOs) and the citizens working as associations in engaging in the activities to protect and conserve the nature in naturally protected areas. People have, so far, been organised into community networks such as the Prey Lang network and NGOs operating in naturally protected areas without having been registered with the Ministry of Interior in accordance with the Law on Associations and Non-Governmental Organisations. The Ministry of Environment has been asking the aforesaid associations or NGOs to register with the Ministry of Interior in line with the legal procedure in force; however, they have been trying to avoid implementing the legal procedure. The cases of Mr Kreung Tola and the 18-year-old youth of the [environmental] organisation Mother Nature are not under the authority of the Ministry of Environment.

**Paragraph 28**

53. In order to promote closer cooperation with civil society organizations, the Royal Government of Cambodia has established a working group for facilitating the challenges and requests of civil society organizations, which is an important mechanism to promote closer cooperation and to build a partnership, as well as to promote great cooperation between the Royal Government and civil society organizations, especially to jointly strengthen the democratic process, to promote human rights and to develop socio-economic sustainably with the participation of all stakeholders.

**Paragraph 29**

54. Based on the results of the previous forums on partnership between the Royal Government and civil society organizations, the Ministry of Interior has introduced a series of measures to support the implementation of the activities of civil society organizations by issuing formal letter No.040 SCN, dated 31 October 2018 and No.2006 SCN, dated 27 November 2018 to all Governors of the capital and provinces to ensure that the associations,

NGOs and local communities have full freedom to conduct activities in the Kingdom of Cambodia in accordance with the laws and regulations in force and its statutes, which are kept at the Ministry of Interior, without notifying the local authorities, and the Ministry of Interior appointed the capital and provincial administrations to organize a consultation forum between civil society organizations that operated within their territory on a regular basis every semester or as needed. Overall, the Royal Government of Cambodia, as well as the Ministry of Interior, is committed to continue organizing a forum on partnership between the Royal Government and civil society organizations twice a year to jointly strengthen the democratic process, to promote human rights and to develop socio-economic sustainably with the participation of all stakeholders.

### **Paragraph 30**

55. The Royal Government of Cambodia also acknowledges that the growth and development of the country up to now are all the part of involvement from all stakeholders, including development partners, the private sector and civil society organizations. Both local and foreign civil society organizations have played an important role in providing and supporting social services in rural and remote communities and operating nationwide in many key areas related to economic and society in Cambodia. At the same time, civil society organizations have also involved in advocating for state reform for the improvement of health, education, human rights, governance, justice system, natural resources, environment and social services, etc.

56. So far, about 500 representatives of civil society organizations have requested the Royal Government to monitor and consider proposals to amend the Law on Associations and Non-Governmental Organizations. Related to this request, the working group of the Royal Government for facilitating challenges and requests of civil society organizations has organized 6th consultative meetings with representatives of civil society organizations from all sectors to find out the purposes and further reasons for propose amendments to 17 articles of the LANGOs, in which starting from November 2019 to 6 July 2020. The result of these meetings discussed and consulted on the 17 articles such as Article 1, Article 3, Article 4, Article 7, Article 8, Article 9, Article 10, Article 11, Article 20, Article 24, Article 25, Article 26, Article 27, Article 30, Article 31, Article 32, and Article 35.

### **Paragraph 31**

57. Never does the Royal Government of Cambodia (RGC) have any policy or action to forcibly evict people. Instead, the RGC always focuses on poor families, who are landless or short of land, or vulnerable families who have occupied state land illegally. The RGC may favourably provide [them] with a suitable proportion of land for making a living and accommodation on a case-by-case basis.

58. The RGC always focuses on the housing sector, establishing a legal framework to support housing related work, for example, Circular No. 03, dated 31 May 2010, on the Settlement of Temporary Construction on State Land that is illegally occupied in the municipality, cities and downtowns, and National Housing Policy approved by the Office of the Council of Ministers at the Plenary Session on 9 May 2014, with the aim of ensuring people across the country have decent houses in which they may live healthily, safely and with dignity, especially for middle-income, low-income and vulnerable people. In addition, on 3 July 2020, the RGC appointed the Ministers of Environment, Agriculture, Forestry and Fisheries, Land Management, Urban Planning and Construction and sub-national administration to clear land and provide land titles to people who have occupied and enjoyed the land for years in the map of the naturally protected areas and forest land that belongs to the state.

59. The RGC has adequate standard documents for managing all land registration and allocations to ensure justice and equality before the law.

As a result, as of the first half of 2020:

- There are 5 decent housing development projects: 8,331 houses and 7,256 private shares; 625 houses occupied/private shares;

- All types of social land concession programme: a total land area of 1,351,722.28 hectares given to 485,071 families and 7,769 houses built for people; currently, concessionaires occupying 6,311 houses or 87.22%.<sup>59</sup> LGBTIQ people in Cambodia often work in certain marginalized sectors, which prevents them from escaping the cycle of poverty. This is exacerbated by widespread family rejection and exclusion in schools and the wider community. CCHR's study and other research also indicated these narrow career sector choices might also partially result from internalized self-limitation developed by transgender women within the wider context of social discrimination.

### **Paragraphs 32 and 33**

60. Cambodia is a leading country in recognising the land ownership rights of indigenous communities; and collective land ownership is guaranteed by the Constitution of the Kingdom of Cambodia and the 2001 Land Law. According to Article 25 of the Land Law, "The lands of indigenous communities include not only lands actually cultivated but also includes reserved necessary for the shifting of cultivation which is required by the agricultural methods they currently practice and which are recognized by the administrative authorities. The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbors." Based on this Law, the RGC developed a policy on land registration and land use rights of indigenous communities and established Sub-decree No. 83, dated 9 June 2009, on Land Registration Procedure for Indigenous Communities. Therefore, indigenous peoples who have been organised into communities are legally recognised as legal persons. There are community internal regulations stating the management and use of collective land in their traditional ways; they may request for the registration of all plots of their land at the Offices of Land Management, Urban Planning, Construction, and Land Management of Cities, Districts, Khans where the communities are located. Plots of community land recognised by the administrative authorities and neighbours must be registered as community collective ownership, except for those being protested by third parties.

61. Collective ownership has the same rights and protections as private ownership, for example, the right to inheritance, the right to use and enjoyment [of property]; however, the communities have no right to dispose of collective land that is state public property to any individual or group. In the event that any community member leaves the community, an appropriate portion of land used by the community which is of a state private share will be transferred exclusively to that member. The communities have the right to use and enjoy the state public land according to their traditions. On 3 July 2020, the RGC decided to assign the Ministers of Environment, Agriculture, Forestry and Fisheries, Land Management, Urban Planning and Construction and sub-national administration to clear land and provide land titles to people who have occupied and enjoyed the land for years in the map of the naturally protected areas and forest land. To this end, the Ministry of Land Management, Urban Planning and Construction issued Decision No. 039, dated 20 July 2020, establishing a commission on the registration of state, private and indigenous community land, resolving land disputes, and developing land use plans in Monduliri province, for the purpose of expediting the registration of state, private and indigenous community land.

62. As a result, the RGC, with the Ministry of Land Management, Urban Planning and Construction serving as its staff, has made its efforts to register the indigenous community land. There were only nine indigenous communities in 2016, and now, in the first half of 2020, there are up to 30 communities. The RGC is committed to the registration of land for ten indigenous communities a year.

### **Paragraph 33**

63. According to the Protected Areas Law of 2008 stated in Articles 11 and 22 as follows:

**Article 11: Each protected area shall be divided into four (4) management zoning systems as the following:**

*1. Core zone: management area(s) of high conservation values containing threatened and critically endangered species, and fragile ecosystems. Access to the zone is prohibited except the Nature Conservation and Protection Administration's officials and researchers who, with prior permission from the Ministry of Environment, conduct nature and scientific studies for the purpose of preservation and protection of biological resources and natural environment with the exception of national security and defense sectors.*

*2. Conservation zone: management area(s) of high conservation values containing natural resources, ecosystems, watershed areas, and natural landscape. Access to the zone is allowed only with prior consent of the Nature Conservation and Protection Administration at the area with the exception of national security and defense sectors. Small-scale community uses of non-timber forest products (NTFPs) to support local ethnic minorities' livelihood may be allowed under strict control, provided that they do not present serious adverse impacts on biodiversity within the zone*

*3. Sustainable use zone: management area(s) of high economic values for national economic development and management, and conservation of the protected area(s) itself thus contributing to the local community, and indigenous ethnic minorities' livelihood improvement. After consulting with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures, the Royal Government of Cambodia may permit development and investment activities in this zone in accordance with the request from the Ministry of Environment.*

*4. Community zone: management area(s) for socio-economic development of the local communities and indigenous ethnic minorities and may contain existing residential lands, paddy field and field garden. Issuing land title or permission to use land in this zone shall have prior agreement from the Ministry of Environment in accordance with the Land Law. This management area does not cover the Apsara authorities and other authorities designated and management area(s) to which the Royal Government has allocated the tasks.*

**Article 22: The State recognizes and secures access to traditional uses, local customs, beliefs, and religions of the local communities, and indigenous ethnic minority groups residing within and adjacent to the protected areas.**

64. Meanwhile, the Ministry of Environment encourages local communities and indigenous peoples to participate in the protection, conservation and sustainable use of natural resources through the establishment of natural protection communities. Any activities contrary to the content of the Protected Areas Law is prohibited.

**Paragraph 38**

65. A 40-year-old homeless man named Chea Phearun died of a heart attack on 31 January 2020 before COVID-19 was brought to Cambodia (on 15 March 2020), according to a report of the Ministry of Health. According to forensic officials, the aforesaid victim died of the heart attack while being transported by ambulance to Po Tong Referral Hospital in Phnom Penh. According to a written record of handing over the body No. 038/20 of the Office of Scientific and Technical Police of the Commissariat of Phnom Penh Municipal Police dated 31 January 2020, the body was examined on clear technicalities and the 40-year-old man Chea Phearun was confirmed to have died of the heart attack

66. With regard to the operations of the Phnom Penh Social Affairs Transit Centre (Prey Speu), we have operated [the Centre] in accordance with the Prakas of the Ministry of Social Affairs, Veterans and Youth Rehabilitation, with a clear definition of roles, duties and management structure. The Centre also has its own internal regulations to ensure order and security, as well as provision of effective services to victims and vulnerable persons staying there. In addition, the Centre has set up a team of more than 10 treating physicians for providing primary health care to vulnerable persons in the Centre; in the event that someone falls seriously sick, the Centre sends them to public hospitals for receiving services and treatment.

67. This Centre has a key role in promoting the social well-being of victims and vulnerable persons who are homeless, providing them with care, accommodation, food and training according to their knowledge, skills and abilities, on the basis of the basic principles of respect for human rights while they are seeking their families, counseling, and emotional reconciliation, all of which benefit them in the Centre. Not in any shape or form do we abandon, persecute or torture them. Instead, this Centre is the only place in Phnom Penh that provides [them] with temporary accommodation, food and safety before studying various cases. The Centre provides victims with treatment, both at in-house health centre and state-run referral hospitals – [services are provided] by Social Affairs staff. Social Affairs staff provides [them] with food, medication and medical care in hospitals. Sometimes they are referred to state-run referral hospitals outside for treatment. The Centre has provided homeless women, women with dementia and pregnant women with health care and referred them to outside hospitals for treatment. The Centre has facilitated their return to their hometowns, providing them with materials for supporting their livelihoods temporarily; they receive equity cards from the government policy. The Centre has a mental health counselling programme to help them understand the cost of labour.

### **Paragraph 39**

68. The Royal Government of Cambodia does not have any drug detention and rehabilitation centres – it has only drug treatment and rehabilitation centres and receives drug addicts voluntarily [from their] parents, guardians, or from courts. Drug addicts are not deprived of liberty to be treated and rehabilitated; in addition, they are not subjected to torture or punishment and other forms of inhuman treatment, and these rights are guaranteed by the Royal Government, civil society organisations, and other stakeholders involved. During the COVID-19 pandemic, the Ministry of Social Affairs, Veterans and Youth Rehabilitation has introduced various measures, following the guidelines of the Ministry of Health – all centres are not allowed to admit new drug users and are provided with sanitation facilities such as soaps, masks, alcohols, gels and infrared thermometers

69. So far victims who have been receiving services from all drug treatment and rehabilitation centres in Cambodia have not been infected with or died from COVID-19. All victims and vulnerable persons receiving temporary accommodation have been provided with food, health care and vocational training for a short period of time and reintegrated with their families.

### **Paragraph 39**

70. So far the Royal Government of Cambodia, with the National Authority for Combating Drugs as the staff, has taken all measures to prevent, suppress and resolve all drug-related issues, with the aim of protecting the well-being and livelihoods of the citizens, as well as contributing to maintaining security, order and social development. In addition to restricting and punishing criminals and those involved in the production, storage, trafficking and distribution of illegal drugs, the Royal Government has taken care to rescue drug addicts by providing [them with] various services and options, at temporary centres, local health facilities and in communities, with the purpose of providing treatment and rehabilitation. These services do not only help drug addicts who have committed offences under Articles 45 and 53 of the Law on Drug Control get out of jail, but also help them get physical and mental health care, general education, life skills training, rehabilitation and other vocational training that can help them form the basis of preventing drug relapse and making a living. Although those temporary centres remain operational, the National Authority for Combating Drugs has increased the integration into families and communities and encouraged the strengthening and expansion of voluntary and community-based treatment and rehabilitation services, in particular, in the context of COVID-19, by increasing up to 450 locations of treatment services in local health facilities, including health centres, referral hospitals, provincial hospitals and national hospitals and training 883 psychiatrists and health workers for providing medical services to drug addicts. With a series of guidelines for all public, private and civil society organisations to adhere to the Ministry of Health's guidelines on accommodation, sanitation and reduction of visits, the National Authority for Combating Drugs has encouraged the private and religious sectors, civil society organisations and local people to support and participate more actively in the process of strengthening and expanding

voluntary and community-based treatment and rehabilitation services. This proves that the Royal Government has taken care of and responded to paragraph 39 before COVID-19 came into existence.

**Paragraph 40**

71. Pursuant to the 2012 Law on Drug Control, Chapter 6, Treatment and Rehabilitation Measures, referral of drug addicts for treatment and rehabilitation to centres shall not be initiated by force. Should drug addicts lack the capacity to express their intention to accept voluntary treatment and rehabilitation, in order to protect general interests and their benefits, forced treatment and rehabilitation shall be given by order of a prosecutor (Article 107, General Conditions for Forced Treatment and Rehabilitation). The Royal Government is paying attention to and resolving [the issue of] overcrowded drug treatment and rehabilitation centres – i.e. integrating victims who recover into their communities, preventing and suppressing drug trafficking, and disseminating [the information] about effects of drug use to citizens and being prepared to launch the National Centre for Drug Addiction Treatment and Rehabilitation (Keo Phos, Preah Sihanouk province) with national standards. The Royal Government is encouraging drug addicts to receive treatment and rehabilitation services in communities.

**Paragraph 40**

72. Rescuing drug addicts is a priority task of the National Authority for Combating Drugs. It has so far provided various treatment and rehabilitation services and amended the Law on Drug Control to ensure institutions with the rights to manage or refer drug addicts for treatment and rehabilitation, and those rights are maintained and protected, including the rights of drug addicts, the rights of drug addicts' families, and the rights of others in communities where drug addicts live. For instance, Article 107 of the Law on Drug Control protects the rights of drug addicts. Articles 105 and 106 define the authority to administer or refer drug addicts and provide options for drug addicts in order for them to receive treatment and rehabilitation rather than imprisonment. These points provide a basis for the past practice – i.e. complying with the legal procedure.

**Paragraph 43**

73. Regarding to this case, Ministry of interior issued the instruction No 015, dated 01 July 2019 on the issuance of administrative documents and civil certificate to Cambodian spouses, Children and foreign migrants. Re-registration for children who was born from Cambodian spouses and foreign migrants is required to complete the form for annulment of civil registry which the working group withdrew the abnormal Cambodian administrative documents in order to be able to re-register civil status in accordance with the procedure carrying out the civil registration works.

**Paragraph 44**

74. . The Report hopes that drafted revision of immigration law 1994 which have been currently reviewing and revising would address the shortcomings of exiting procedures as cited in Point 43 above. In this case, it is a general comment, however, the working group of ministry of interior to amend and revise immigration law have been now discussing and taking all concerns into considerations. GDI thanking you for having raised such valuable comments.

**Paragraph 46**

75. School is a neutral educational place where all kinds of discrimination are strongly prohibited. Providing free and non-discriminatory access to quality education is enshrined in the Cambodian Constitution and Education Law. The Ministry of Education, Youth and Sport provides an inclusive and equitable quality education to all children and youth of all backgrounds regardless of race or ethnicity. The Ministry pays extraordinary attention to the vulnerable groups through the provision of special education programs such as bi-lingual and multi-lingual education programs to ethnic minorities and indigenous communities respectively to not only help them develop their communities through human resource

development but also preserve their identity, culture and language. These special education programs serve as bridge for ethnic minority and indigenous students to be able to acquire education via both their mother tongue and official Khmer language at the early grade level. In addition, the new curriculum framework provides students not only knowledge, skills, attitude and physical health but also instil in them the 21st-century skills and values including critical thinking, problem-solving, creativity, innovation, inter-cultural understanding, team work, leadership, respect of diversity, patriotism, and non-discrimination spirit.

#### Paragraph 46

76. We noted the concern of the Special Rapporteur relating the rights of ethnic Vietnamese to work in garment factories due to their lack of proficiency in the Khmer language. However, we would like to clarify that Article 12 of the Labor Law strictly prohibits employers from all forms of discrimination, including the race, when they make a decision on hiring of any workers.

77. Article 12 of the Labor Law states that “[... no employer shall consider on account of race, colour, sex, creed, religion, political opinion, birth, social origin, membership of workers ‘union or the exercise of union activities to be the invocation in order to make a decision on hiring...].”

78. Furthermore, Article 1 of the Labor Law also specifies that “This law governs relations between employers and workers resulting from employment contract to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.”

79. Based on these provisions, the Ethnic Vietnamese and other foreigners have the rights to work in Cambodia and enjoy the same rights and benefits under the Labor Law like the Cambodian workers. Proficiency in Khmer language is not a pre-requirement for the employment.

#### Paragraph 53

80. The Ministry of Education agrees with the report that “...as happened in many countries, parents, guardians and students were not prepared for an overnight move to homeschooling and remote higher education study.”

81. E-learning is not too new for Cambodia as the Ministry of Education has been mainstreaming digital education as part of its Education Strategic Plan (2019-2023) to respond to the national plan for digital economy. “Digital Education” was made the title of the 2019 Education Congress. Although COVID-19 pandemic has dramatically impacted all sectors of the society, the Ministry of Education has transformed this challenge into opportunity by setting out multiple mechanisms aiming at both preventing the spread of the virus and swiftly fostering digital education in a national scope.

82. **Prevention Intervention:** 1) care for well-being of children in which the intervention focus on sanitation training for parents, how to reduce risk, the promotion of hand-washing and good nutrition; 2) psychological well-being by way of explanation to the students during the lockdown, stress reduction and affection sharing within the families and communities; 3) information dissemination on social media to educate students and parents to help promote sanitation, language development and intellectual development; 4) the introduction of cartoon on literacy and happy family on how to promote prevention and key practices.

83. **Continuation of Education:** The Ministry of Education took the initiative to develop multiple e-learning platforms and produce video contents for all grade levels (K-12 and higher education) and all subjects. The introduction of video contents via various e-learning platforms and social medias was conducted in parallel with teacher training nationwide on how to use those e-learning platforms and distance learning tools. To date, MoEYS have been able to complete both content development and teacher training nationwide.

84. With the public and private partnerships, MoEYS managed to establish satellite TV for Education in order to expand the access, especially for those in the remote areas with little access to the internet connection.

85. With assistance from UNICEF and other Development Partners, MoEYS has produced special radio programs for indigenous groups in two indigenous languages. In addition, MoEYS has produced cartoon broadcasted on social media and TV.

86. The Ministry has also been able to integrate sign language in the video contents for students with disability.

87. In certain remote areas where families do not have access to either online, radio or TV, the teachers use paper-based distance learning approach in which they visit houses to ensure education continuation and encourage students' self-study.

88. As the COVID-19 pandemic continues to threaten the world, it is important to balance between prevention and education continuation.

89. The Ministry of Education rejects the groundless speculation that students "may carry out unpaid work in place of distance education."

90. **School Reopening:** In preparation for the school reopening amidst the COVID-19 pandemic, The Ministry of Education has developed education response plan which includes strategies in school reopening, which will be conducted in three phases. The first phase is for schools with high safety standard from K-12. The second phase is for schools with medium safety standard, and the third one is for those with minimum standard. Even after COVID-19, Cambodian schools will adopt online plus learning strategy or blended learning in which online and onsite education are employed at the same time.

#### **Paragraph 54**

91. The draft report wrote: "The Special Rapporteur notes that such restrictions on the enjoyment of human rights may be permissible in certain circumstances, in particular if they are proportionate to the risk and only to the extent necessary to achieve the public health objective." The Ministry of Health has implemented the COVID-19 Master Plan, comprehensive preventive measures and the prevention of transmission, for public prevention, regardless of race, religion, political tendency or foreign nationals, paid close attention to the poor and vulnerable people and thoroughly consulted with the Inter-Ministerial Committee under the wise leadership of Samdech Akka Moha Sena Padei Techo Hun Sen, Prime Minister of the Kingdom of Cambodia.

#### **Paragraph 57**

92. The draft report wrote: "The Special Rapporteur calls on the Government to carefully plan to ensure any quarantine measures do not constitute arbitrary detention and that people's safety and security is guaranteed. Ensuring the provision of basic essentials for those in quarantine is also necessary, including food, water and medicine." The Ministry of Health has strictly implemented all preventive measures and the prevention of transmission through testing and a 14-day isolation/quarantine of all persons entering or returning to the Kingdom of Cambodia, either by air or by land border, with high responsibility, ensuring public safety and health.

#### **Paragraph 59**

93. The draft report wrote: "The Special Rapporteur received concerns that public health measures were not equally accessible to the most vulnerable populations, including indigenous peoples, ethnic Vietnamese communities and persons with disabilities. Some of these groups do not speak Khmer and do not have access to official information. The limited initiatives to disseminate information to indigenous and ethnic Vietnamese communities were carried out on an ad-hoc basis. Most of the official information was not available in formats accessible to persons with disabilities." The Ministry of Health has strictly adhered to the principle of universality of human rights, especially the right to information, by establishing and launching Hotline 115, in response to public inquiries, 24 hours a day, with regard to COVID-19 – i.e. receiving roughly 10,000 incoming calls per day. Press releases are made daily and through weekly press conferences on the current situation of the pandemic, preventive measures and the prevention of COVID-19 to the general public. Senior health officials broadcast through all types of social media, including radio, television



and other channels on a regular basis throughout the country. The COVID-19 Subcommittee at the sub-national level, including local authorities, communes/Sangkats, also regularly disseminated health education messages. Currently, the Kingdom of Cambodia is able to prevent the COVID-19 pandemic in communities in a highly efficient manner.

### **Paragraph 65**

94. COVID-19 has caused huge impact on many sectors in the globe, including labour and employment. However, because of the right decision of the Government to put in place concrete measures coupled with the strong participation and supports from all the people from when this pandemic emerged, Cambodia could manage to prevent and contain the spread of this disease in the community and the enterprises. More importantly, during this period, the Government has never restricted the rights of people; they are free to work, travel and do other activities as allowed by laws but just follow the health measures of the Ministry of Health and the World Health Organization (WHO).

95. Moreover, the Government has also implemented a lot of measures to cushion the enormous impacts of COVID-19 on the economy and people's livelihood. Some of the main actions taken by the Government are as follows:

#### **The government's measures to support the affected workers are:**

- a) providing monthly extra income support of 40 USD to each suspended worker in garment and tourist sectors;
- b) maintaining the health insurance benefits to the suspended workers and maternity leave benefits, including the financial support to the female workers during the suspension;
- c) suspending the payment of utility costs at workers' rental house during the suspension;
- d) allocating extraordinary budget of 300 million USD for providing social assistance and food security to the vulnerable groups, including workers in the informal economy and returned migrant workers;
- e) planning to upskill and reskill laid-off workers;
- f) conducting trainings on Covid-19 prevention to factories' managers and workers, and strictly inspecting this measure;
- g) advising banks and microfinance institutions to reduce interest rates and delay the collection of loan;
- h) advising the housing developers to postpone the collection of installment payments;
- i) organizing the World Day for Safety and Health through video conference in collaboration with ILO Better Factories Cambodia and ILO/Japan OSH project to promote the awareness of the risk of Covid-19 on safety and health of workers at the workplaces and in the community.
- j) providing treatment for free to infected foreigners, including migrant workers, who were staying and traveling in Cambodia. In this connection, we wish to sincerely thank the Governments of Thailand, Singapore, and Malaysia for providing the free treatment to our migrant workers and nationals who are working or stranded in respective countries. This generous and humanitarian gesture has symbolized ASEAN's collective and solidarity in our responses to this global pandemic.

#### **The government's measures to support the affected business are:**

- a) providing tax holiday and tax exemption for badly affected factories, tourist-related enterprises, and civil aviation;
- b) exempting from paying obligatory contribution to the National Social Security Fund during the suspension;

- c) suspending the payment of seniority indemnity for workers until 2021;
- d) advising landlords not to terminate lease agreement or expel tenants due to the late payment;
- e) exempting Property Stamp Tax from the purchase of houses worth below 70,000 USD to maintain the construction sector.

96. Noticeably, the Government of the Kingdom of Cambodia has so far spent approximately USD8 million as the financial support to 184,470 suspended workers. And as of 26 July 2020, the Ministry of Labour and Vocational Training has also conducted soft-skill training to 41,316 suspended workers.

#### **Paragraph 66 and 93(e)**

97. The Government of the Kingdom of Cambodia took note of the comments from the Special Rapporteur on the amendment of the LTU. However, we would like to provide the background of this amendment as follows:

98. To ensure the freedom of association and social dialogue in accordance with the international standards and ILO's recommendations, the Government amended 10 articles (3, 17, 20, 21, 27, 28, 29, 54, 55 and 59) of the LTU.

99. The Government made this amendment for the purposes to (i) promote and broaden the freedom of association of domestic workers, (ii) facilitate the procedures and formalities of trade union registration and maintaining registration, (iii) facilitate the requirements to acquire the most representative status (MRS) and (iv) promote the rights and duties of minority worker unions.

100. On 25 April 2019, the Ministry of Labour and Vocational Training (MLVT) organized a national tripartite-plus consultative workshop on the Draft Amendment to the LTU under the technical support from the ILO, in which 166 federation unions, the American Center for International Labor Solidarity's representatives (ACILS), the Arbitration Council Foundation's representatives (ACF), 30 employers' representatives, 15 relevant ministries' representatives were invited and 178 attended. MLVT presented 10 amendments to the LTU to reflect the principles laid out in the ILO conventions 87 and 981. The MLVT has taken note of the concerns and certain inputs from relevant parties to review and revise the draft.

101. On 31 May 2019, the MLVT received the written comments from trade unions on the 10 proposed amended articles with additional requests to revise 5 more articles<sup>2</sup> and add a new article. The Cambodian Federation of Employers and Business Associations (CAMFEBA) has provided their comments on the 10 proposed amended articles.

102. The MLVT seriously considered the comments/concerns to the first draft amendment of the LTU provided by the relevant stakeholders during and after the first tripartite-plus consultative workshop in April 2019. Therefore, the MLVT used those comments/concerns as the inputs for further revising this draft amendment before putting it for the second tripartite-plus consultative workshop on 02 August 2019 under the technical support from the ILO. Under this new draft amendment, the LTU was modified as the following:

- **Article 3 (new):** Article 3 of the LTU was amended to make the scope of coverage of the LTU to be the same as that of the Labor Law. This amendment is made to realize the commitment of the Government of the Kingdom of Cambodia to provide same rights and protection to domestic workers as other formal ones.
- **Article 17(new) :** To address the concerns of some trade unions with regard to the submission of trade union financial report, Article 17 of the LTU was amended to require the trade unions to have their financial reports audited by an independent audit firm only when there is a request from its member(s) or donor(s).
- **Article 20(new) :** The MLVT heard the concerns of stakeholders relating to the requirements for being trade union leaders as well as the persons responsible for the administration of trade unions in an enterprise/establishment. Taking those concerns into consideration, the amendment of this article was made to remove Point (c)- (make a self-declaration that they have an educational level, at least being able to

read and write Khmer language) - and Point (d)- (make a self-declaration that they have no misdemeanor or felony conviction) from the list of requirements for Cambodian workers to become a trade union leader or person responsible for administration of trade union. Furthermore, the amendment also allowed the minors to become the trade union leaders or person responsible for the administration of a trade union so long as they have been emancipated. This means that Cambodian **workers will meet the requirements for the abovementioned positions if they are a)-** at least 18 (eighteen) years old or the minors who have been emancipated, and b)- make a self-declaration on a specific residential address.

103. Likewise, Point (d)- (make a self-declaration that they have no misdemeanor or felony conviction) is also no longer the requirement for a foreigner who wants to hold the aforementioned positions in the trade union.

- **Article 21(new)** : Similar to the amendment of Article 20 of the LTU, the Article 21(new) of the LTU does not require either the Cambodians or foreigners who want to hold the position as the leader or person responsible for the administration of an Employer Association to make a self-declaration that they have no misdemeanor or felony conviction.

- **Article 27(new)** : Based on the comments from all relevant stakeholders, this Article does not require an audit to the financial report of a trade union anymore. Such audit, if it is to happen, would only be made by an independent auditing firm and when there is request from member(s) or donor(s) of that trade union.

- **Article 28(new)** : Unlike the old provision, under the amendment of this Article, a [local] trade union would not be automatically dissolved when there is a definitive closure of the enterprise or establishment unless that enterprise or establishment has cleared all benefits to its workers.

- **Article 29(new)** : To address the concerns of stakeholders regarding the reasons that the Labour Court can use to dissolve a trade union, Article 29 of the LTU was amended by deleting Point c) – (leaders and persons responsible for the administration are found guilty of committing a serious offense in the capacity of the worker union or employer association).

- **Article 54(new)** : Under the amendment, Point (c) of Article 54 of the LTU was amended from [c. having the most members with membership identification cards and a proper name list of membership or having received the largest number of votes in the enterprise or establishment as follows :] to [c. having the list of the most members from whom union dues have been deducted or having received the largest number of votes in the enterprise or establishment as follows :]

- **Article 55(new)** : Article 55 was amended as follows:

In a profession or an economic activity or a sector where there are many worker unions, these worker unions shall seek the most representative status recognition by satisfying the criteria stipulated in points “a” and “b” of Article 54 (The Most Representative Status at the Enterprise or Establishment Level) of this law, plus an additional criterion of having the list of 30% members from whom union dues have been deducted in the profession or economic activity or sector wherein they apply for the certification of the most representative status. [...].

The phrase “[...] having the most members with proper membership identification cards of all workers [...]” in the old Article 55 is replaced with the underlined one.

- **Article 59(new)** : Following the comments from stakeholders, Article 59 of the LTU was amended by adding Point (i)- (representing its members in collective labour dispute settlement not arising out of collective bargaining agreement) to this Article. The insertion of Point (i) is aimed at avoiding further confusion/misinterpretation of this Article that minority union does not have the right to represent workers in collective labour dispute.

104. On top of the 10 amended articles, a few trade unions requested for a few more articles to be amended. Taking a due note of the principle of tripartism and the social dialogue, the

Government of the Kingdom of Cambodia welcomed all requests and comments from relevant parties to improve the

- Regarding the implementation of Article 10 “Structure of Worker Unions and Employer Association and Affiliates with Trade union and Employer Association”, the relevant parties agreed on the minimum requirement of members to form a trade union as stipulated in this article. It is important to note that since the adoption of the LTU, we have never received any comments from the ILO regarding this article, and this article does not contravene the ILO Convention. As of October 2019 (the time of the amendment), before and after the adoption of the LTU, the MLVT has registered 5,184 trade unions, comprising of 4,931 local trade unions, 211 federations of trade unions, 31 confederations of trade unions and 11 employer associations. With this increasing figure, it is an undisputable fact that the minimum requirement to form a union does not constitute any barriers to its establishment.
- **Article 13** sets out minimum requirements for trade unions to constitute their statute and also serves as guidance for establishing trade unions. One of the requirements of this article regarding the determination of meeting quorum by absolute majority (at least 50% +1) of its total members for decision making meeting on strike, modification of its statute and general assembly of worker unions is not of any challenge in implementation. The setting of this requirement is to ensure the democracy and mutual interests of the members of trade unions. Without this requirement, the interests of majority members of trade unions can be adversely affected by the voice of the minority members in the event that they wish to strike.
- **Article 14** provides that the trade union registration is solely a formality and to obtain legal personality. Without legal personality trade union shall be incapable to perform any act legally recognized under the law to protect the interests and rights of the trade union, particularly its members. The request to revise this article to add special protection for workers who are former unionists is not necessary because the special protection is already stipulated in articles 43 and 67 of the LTU.
- **Article 43** provides for the appeal against the labour inspector’s decision on dismissal case to the Minister of the Ministry in charge of labour. This is the legitimate hierarchical appeal mechanism. The appeal to the Arbitration Council against the said decision proposed by few worker unions is not valid in terms of administrative complaint procedure. The mandate of the Arbitration Council under the Labour Law is to settle collective labour disputes.
- **Article 47** provides that the complaints related to the election, the right to stand for election, and the irregularity of the election of the shop stewards shall be referred to the Labour Court to settle. This provision aims to protect the rights of workers and to guarantee an impartial, objective and expeditious procedure.<sup>3</sup> Moreover, this type of complaint is not an administrative complaint which shall be lodged to the Minister of the Ministry in charge of labour. Therefore, the request to refer this complaint to the Minister is not valid.
- **Article 67** shall be read together with article 43, where workers and representatives of worker unions obtain fully special protection from dismissal. The request to include a paragraph, “The Ministry in charge of labour shall lodge the complaint to the court to enforce its decision in case the employer fails to abide by the decision” into this article is not necessary because this proposed mechanism already exists in the Labour Law and regulations as well as in practice.

105. In conclusion, the Government has made sufficient progress towards compliance with internationally recognized worker rights. And the amendment of the LTU (LTU) has been made after a series of thorough consultations with tripartite stakeholders and the International Labour Organization (ILO).

106. The concerns of the Special Rapporteur do not reflect the actual meaning and spirit of the amendment because they seem to be still based on the old provisions of the LTU. We; therefore, would like to strongly suggest the Special Rapporteur to thoroughly read amendment again.

**Paragraph 80**

107. We observe that the above statements, maybe inadvertently, describe the consideration of the Pre-Trial Chamber (PTC) in a way that may lead to some confusion about the ongoing judicial proceedings in case 004/2. These include the following:

a). The sentence stating that "...the three national judges would have dismissed the case, while the two international judges would have sent the case for trial" leaves an impression that one of these views represents the correct outcome of the proceedings before the PTC. Pursuant to the ECCC statutory framework, the charges in this case shall be dismissed or sent to trial. It is for the PTC to do so. According to its decision on 19th December 2019, the PTC unanimously found that "the Co-Investigating Judges' issuance of the Two Conflicting Closing Orders was illegal, violating the legal framework of the ECCC". However, it then split on the consequences of this illegality and expressed two different opinions. At the same time, none of the views of five national and international judges received the required supermajority vote and the PTC, as a Chamber, did not clarify the procedural consequences of that latter fact. Nonetheless, this issue, as discussed below, is at the time of writing, being considered by other judicial entities of the ECCC.

b) One sentence, stating that "...the Trial Chamber, which has also declined to rule judicially on the status of the case" is not factually reflecting what actions were taken by the Trial Chamber. Since early January 2020, the Trial Chamber was convened to work on a submission made by the International Co-Prosecutor in relation to case 004/2. As a result, the Trial Chamber issued on 3rd April 2020 a "Joint Statement regarding the Case 004/2 Involving OA An" where it provided its views on the process. The statement expressly states that "issuing a formal decision of the Trial Chamber is not possible" and that the statement has no legal force. The statement was made with a goal of providing transparency to the parties in the case and by being made public also to the greatest public.

c) Finally, the international co-prosecutor has subsequently made an immediate appeal in the case to the Supreme Court Chamber (SCC). These proceedings are ongoing.

**Paragraph 81**

108. The above sentence contains factual errors, which lead to unfortunate misinterpretations. The statement stating that "...administrative components of the court has been to leave proceedings functionally suspended, in a state of complete legal uncertainty" is factually wrong for the following reasons:

a) On the administrative component: The administrative components of the ECCC have no standing in any of its judicial processes. Further, the ECCC Internal Rules mandate the Office of Administration, through its sub-offices, only to implement judicial acts following an instruction or direction of the relevant Chamber as communicated through its greffier. The Office of Administration with its sub-officers, is neither mandated to interpret any judicial decision nor resolve any conflicting instructions received from any of the greffiers. Such obligations fall squarely within the mandate of the judicial entities of the Extraordinary Chambers.

b) On the functional suspension: At the time of writing, a number of submissions are actively being processed by several judicial offices of the ECCC. The two most prominent being (a) immediate appeal filed to the SCC by the international co-prosecutor; and (b) the motion filed to the Office of Co-Investigating Judge by the defence. In fact, no proceedings are suspended.

c) On the complete legal uncertainty: With the proceedings being actively pursued by several judicial authorities with ECCC, any legal uncertainty is not different from other issues being addressed by a judicial body.

109. The sentence describing about the challenge for the victims of the Khmer Rouge, is misleading. The rights of the victims of the Khmer Rouge are promoted before the ECCC far beyond any other similar judicial authority. The statutory framework of the ECCC grant individual victims with a judicial identity and procedural rights as Civil Parties and as victim complainants. These rights have been fully respected and exercised in all proceedings before

the ECCC, including those of case 004/2 both in the past and those ongoing at the time of writing this report.

**Paragraph 93 (e)**

110. “Reference to the conclusions and recommendations mentioned in point 93(e), the Ministry of Information would like clarify that the process of drafting the Access to Information Law, the Ministry of Information have widely consulted with relevant stakeholders through the establishment of the Technical Working Group for Drafting the Access to Information Law (TWG-A2I) with participatory from UN agencies in Cambodia such as UNESCO and OHCHR’s representative and civil society organizations working on human rights in Cambodia in order to consult the draft law. In addition, most comments raised by all members in the TWG-A2I has been taken into account and been accepted.

**Paragraph 93(g)**

111. The Law on Drug Control has been amended to strengthen the effectiveness of preventing, suppressing and addressing all drug-related issues. In 2012, the Law on Drug Control was made with a thorough discussion and extensive participation, especially with the participation of the representatives of the United Nations agencies in Cambodia, including the United Nations Office on Drugs and Crime (UNODC), United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO), etc., especially on the content related to drug addicts. The Law on Drug Control has so far been enforced smoothly, and the provision of choices to drug addicts to receive treatment and rehabilitation services has been extensive. Therefore, there is no obstacle to the Law on Drug Control, and what should be taken into account is work together to strengthen, expand and promote the effectiveness of voluntary and community-based treatment and rehabilitation services, rather than the request to amend the Law.

**Paragraph 93(i)**

112. General Department of Identification has disseminated and promoted the implementation to the specialized officials throughout the capital and provinces, and local officials are implementing by following the procedure. Moreover, Ministry of Interior issued the dissemination of this instruction in capital and provinces. They also set up a steering committee for providing the administrative document and civil certificate to Cambodian spouses, Children and foreign migrants which headed by a deputy provincial governor to lead and promote the implementation of the instruction.

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