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### 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

## **Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights**

### **Report of the Secretary-General\***

#### *Summary*

Submitted pursuant to Human Rights Council resolution 42/37, the present report outlines the role and achievements of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia from 1 June 2020 to 31 May 2021.

During the reporting period, OHCHR in Cambodia documented cases and patterns of violations highlighting the continued erosion of civic and democratic space in the country and ongoing attempts by the Government of Cambodia to restrict pluralism and fundamental freedoms, including by taking measures ostensibly designed to promote public health in the context of the coronavirus disease (COVID-19) pandemic. OHCHR continued to provide technical cooperation in key areas and promoted human rights in the context of the COVID-19 pandemic.

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\* The report was submitted after the deadline so as to include the most recent information.

## I. Introduction

1. Submitted pursuant to Human Rights Council resolution 42/37, the present report outlines the role and achievements of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in assisting the Government and people of Cambodia in the promotion and protection of human rights from 1 June 2020 to 31 May 2021.
2. Throughout the reporting period, OHCHR provided technical support to the judiciary, the Ministry of the Interior, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Justice, the Ministry of Social Affairs, Veterans and Youth Rehabilitation, the Ministry of Rural Development, the Ministry of Land Management, Urban Planning and Construction, the Ministry of the Environment, the Ministry of Labour and Vocational Training, the Cambodian Human Rights Committee, the National Committee against Torture, the Disability Action Council and other governmental and civil society actors. OHCHR continued to monitor the human rights situation, focusing on fundamental freedoms, economic and social rights, and the administration of justice, including in the context of the coronavirus disease (COVID-19) pandemic. It continued to support the United Nations country team in Cambodia.
3. In August 2020, independent consultants carried out an evaluation of the OHCHR country programme in Cambodia<sup>1</sup> and found that while the programme was highly relevant changes should be made to ensure greater sustainability and impact. In line with the recommendations contained in the report on the evaluation, the country office has begun to adjust its structure and programmes to be more financially sustainable and increase capacity to deliver services.

## II. Context

4. The defining feature of the reporting period was the surge in COVID-19 cases starting in February 2021. Up until then, Cambodia had been largely untouched by the virus. It then spread quickly throughout the country, leading to hundreds of new cases each day by the end of April. As in many other countries, the pandemic exposed existing weaknesses in governance, the health system and social protection. In Cambodia, where significant strides have been made in recent years in terms of poverty reduction but where 13.5 per cent of the population still live below the national poverty line, lockdown measures had a severe impact on large portions of the population.<sup>2</sup> A joint study carried out by non-governmental organizations in Phnom Penh two weeks into the lockdown in April 2021 found that 77 per cent of respondents reported having had insufficient food during the seven days prior to the survey.<sup>3</sup>
5. The central pillar of the Government's COVID-19 response has been its vaccination roll-out, with 3 million doses administered by 14 May 2021.<sup>4</sup> While this is commendable, OHCHR is concerned that the roll-out has been on a non-voluntary basis and therefore inconsistent with international human rights norms and standards, although the Government has stated in its comments on an advance version of the present report that vaccinations are only mandatory for civil servants and members of the armed forces and the military. In response to the socioeconomic hardship caused by the spread of the virus, in 2020 the Government introduced a plan consisting of seven stimulus measures, including cash transfers, which ensured a level of social protection to 700,000 of the poorest and most vulnerable households.<sup>5</sup> An economic recovery strategy that took into consideration both the

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<sup>1</sup> OHCHR, *Evaluation of the Cambodia Country Programme 2017–2020: Final Report* (19 August 2020).

<sup>2</sup> See <https://data.adb.org/dataset/basic-statistics-asia-and-pacific>.

<sup>3</sup> Alessandra Danovaro, Danaé Laot and Federico Barreras, "COVID-19 rapid assessment: lockdown situation in Phnom Penh" (People in Need, DanChurch Aid and World Relief, 2021), p. 2.

<sup>4</sup> Ministry of Information announcement No. 1798, on access to information and reporting in restricted zones, 4 May 2021 (in Khmer only).

<sup>5</sup> See <https://cambodia.un.org/en/127454-information-note-3-social-assistance-un-cambodias-covid-19-response>.

short-term response and longer-term issues, including social protection, was announced in April 2021 by the Ministry of Economy and Finance. To mitigate the adverse impact on garment workers, in 2020 the Government provided \$40 to each person per month in cash assistance. The Government has also recently approved a one-time post-lockdown emergency cash payment to garment workers.

6. The Government's response has also relied heavily on the enforcement of criminal law. The Government adopted a new law on preventive measures against the spread of COVID-19 and other severe, dangerous and contagious diseases (known as "the COVID-19 law"), which came into force in March 2021, as well as a series of decrees giving the Government sweeping powers to combat the virus, including by establishing criminal offences that carry prison sentences of up to 20 years. In April 2021, the Prime Minister announced a lockdown in Phnom Penh.<sup>6</sup> Later, the authorities moved to a colour-coded classification system outlining different levels of restrictions in different areas, depending on the caseload. While lockdown measures were in place, resulting in shortage of food, medicines and other essential goods, government officials restricted journalists from reporting from the areas with the highest caseloads and under the most severe restrictions.<sup>7</sup> Arbitrary detentions and physical attacks by unidentified men against human rights defenders and political activists have been documented, including in the context of COVID-19-related measures and the distribution of humanitarian aid.

7. The pandemic hit after years of sustained erosion of civic and democratic space. The Cambodia National Rescue Party was dissolved by the Supreme Court in 2017. Recent years have seen aggressive judicial and physical attacks on opposition politicians.<sup>8</sup> Although four new parties have been established by former members of the Cambodia National Rescue Party since 2018, their re-entry into politics requires the approval of the ruling party.

### III. Enhancing participation and protecting civic space

8. Despite the calls made in September 2019 by the Human Rights Council for the Government to ensure the protection of parliamentary immunity and freedom of political activities,<sup>9</sup> OHCHR has documented judicial harassment and physical attacks on opposition political activists, civil society actors and media workers, among others.

9. OHCHR has documented 28 incidents involving the arbitrary arrest and detention of 62 opposition political actors, most of whom are associated with the Cambodia National Rescue Party and 11 of whom are women. Those detained have been charged with plotting to commit or committing treason; incitement; and lèse-majesté offences. Forty-three were in detention at the time of writing of the present report. In March 2021, Cambodia National Rescue Party leader Sam Rainsy was given a 25-year prison sentence for attempting to commit a felony and for attacking and endangering the institutions of Cambodia. The conviction relates to his failed attempt to return from exile in 2019 and an alleged plot to overthrow the Government. Eight co-accused, all of whom were senior members of the party, received sentences of between 20 and 22 years of imprisonment. On 5 March 2021, United Nations special procedure mandate holders released a statement describing the sentences as "lengthy and disproportionate prison terms which lack clear legal grounds" and said that the convictions raised serious concerns about their compatibility with international human rights law, including the right to be tried by a competent, independent and impartial tribunal.<sup>10</sup> The convictions also run contrary to the call of the Human Rights Council for Cambodia to

<sup>6</sup> Decision No. 49, on putting Phnom Penh and Takmao City in lockdown in order to prevent the spread of COVID-19, 14 April 2021.

<sup>7</sup> Ministry of Information announcement No. 1798, on access to information and reporting in restricted zones, 4 May 2021 (in Khmer only).

<sup>8</sup> A/HRC/45/56, paras. 8–9 and 11.

<sup>9</sup> Resolution 42/37.

<sup>10</sup> OHCHR, "Cambodia: long prison terms for former opposition leaders appalling, say UN experts", 5 March 2021.

expand democratic space for political activists, civil society and the media, including members of opposition parties.<sup>11</sup>

10. OHCHR has documented 14 instances of physical attacks by unknown persons against opposition activists. A child with an autism spectrum disorder, who is the son of a jailed political activist, was arbitrarily detained by the police in October 2020 for over 36 hours, beaten in custody and not allowed access to his legal guardian or a lawyer. In April 2021, the same boy was attacked with a brick by unidentified assailants, as a result of which he required 20 stitches.<sup>12</sup> On 12 May 2021, a Cambodia National Rescue Party activist who had been providing humanitarian aid to families in Phnom Penh during the lockdown was attacked by four unidentified men, thereby sustaining injuries to his head and a broken finger.

11. On 4 June 2020, Thai political activist Wanchalearm Satsaksit was disappeared in Phnom Penh. United Nations special procedure mandate holders wrote to the Government of Cambodia on three occasions requesting specific information regarding his status, fate and whereabouts.<sup>13</sup> The authorities responded without providing the information requested. OHCHR understands that a complaint has been lodged by the family but, more than one year since his disappearance, Cambodia has failed to meet its obligations under the International Convention for the Protection of All Persons from Enforced Disappearance, to conduct a prompt and impartial investigation and to uphold the right of his family members to receive information on the circumstances of the enforced disappearance, on any progress made, on the results of the investigation and on the fate of the disappeared person. In its comments on the present report, the Government stated that the General Commissariat of the National Police continued to gather information on the case and was cooperating with Thailand in its investigation into this disappearance.

12. Trade unions have reported that leaders and activists were targeted through the criminal justice system in the context of COVID-19 and that union activity was restricted at the factory level, with some activists being fired.<sup>14</sup> Workers have held protests to demand unpaid wages, including for work already done for orders that were subsequently cancelled.<sup>15</sup> Unions have reported that workers are unable to cover the cost of food, rent, utilities and loan repayments. With over 1,000 garment workers known to have tested positive for COVID-19 in 2021, those in self-quarantine lack food, water, sanitary products, cash and medical care.<sup>16</sup>

13. The situation of human rights defenders is dire. During the reporting period, OHCHR documented 34 cases of criminal charges being filed against human rights defenders. Twenty-one human rights defenders, including 11 women, were incarcerated after having been charged or convicted for incitement to commit a felony. Of the 21, 16 were detained and/or convicted as a result of demonstrations relating to Rong Chhun, a union leader arrested on 31 July 2020. One woman human rights defender was assaulted by two unidentified men after she visited him in prison.<sup>17</sup> Another was arrested on 7 September 2020 while returning home from a meeting at the OHCHR office, where she had expressed fear of an imminent arrest. Four other human rights defenders from Khmer Thavrak and the Khmer Student Intelligent League Association were arrested on the same day after calling for the release of human rights defenders. They remain in pretrial detention, charged with incitement to commit a felony.<sup>18</sup>

14. Harassment of environmental human rights defenders is on the rise. In February 2021, five activists, most of whom were associated with the Prey Lang Wildlife Sanctuary, were detained for three days for being in a protected area without permission. They had entered

<sup>11</sup> Resolution 42/37, para. 26.

<sup>12</sup> Letter dated 26 October 2020 from OHCHR addressed to the Deputy Prime Minister (ref. No. OHCHR/197/20).

<sup>13</sup> See communications KHM 4/2020, KHM 5/2020 and KHM 7/2020. All such communications are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>14</sup> OHCHR interviews with union representatives, April 2021.

<sup>15</sup> Business and Human Rights Resource Centre, “Cambodia: garment workers protest unpaid wages as COVID-19 disrupts supply chains”, 20 May 2020.

<sup>16</sup> OHCHR interviews with union representatives, April 2021.

<sup>17</sup> See communication KHM 6/2020.

<sup>18</sup> See communication KHM 8/2020.

the area to check for any illegal logging. They were released after having thumbprinted documents pledging not to return to Prey Lang without official permission. The thumbprinting of documents, while common in Cambodia, is contrary to international human rights standards. Another activist has been in hiding since July 2020, when criminal charges were filed against him by a timber trader. In January 2021, an indigenous rights activist was convicted of public defamation for publishing social media comments criticizing the authorities' handling of forest and environmental issues. On 5 June 2020, OHCHR advocated for the release of 18 activists who were associated with the environmental non-governmental organization (NGO) Mother Nature and who had been arrested for their plans to cycle to raise awareness of environmental causes. They were eventually released without charge. In its reply to the present report, the Government stated that the Ministry of the Environment cooperated well with NGOs and that no legally registered group had been subjected to harassment.

15. In a notification to governors, the Ministry of the Interior has stated that civil society organizations have complete freedom to legally carry out activities.<sup>19</sup> However, OHCHR has documented 34 instances of threats, intimidation and harassment of human rights defenders by the Government, public officials and unknown groups during the reporting period. These include threats and acts of harassment against human rights defenders while monitoring protests, searches of NGO premises and threats against union leaders participating in workers' protests. In its reply to the present report, the Government stated that it was ready to assist local authorities in providing better support to and cooperating with NGOs.

16. OHCHR has engaged in discussions with the Ministry of the Interior and civil society representatives on the draft law on associations and NGOs, including during the sixth consultative forum held by the Minister of the Interior in July 2020. OHCHR notes that consultations have been postponed during the pandemic and regrets that the recommendation made by the Secretary-General for Cambodia to incorporate civil society's recommendations in amendments remains unimplemented.<sup>20</sup> In its comments on the present report, the Government stated that it would hold online consultations on this draft law.

17. During the reporting period, OHCHR documented 32 incidents in which peaceful assemblies were subjected to undue interference, restrictions or bans by the authorities. COVID-19-related restrictions raised further concerns regarding the right to peaceful assembly, with the authorities able to cite public health considerations as a means to clamp down on peaceful demonstrations.

18. On 11 September 2020, OHCHR called upon the security forces to stop resorting to unnecessary and excessive force and intimidation against those engaged in peaceful protests.<sup>21</sup> Between June 2020 and January 2021, OHCHR monitored 17 peaceful demonstrations conducted by former Cambodia National Rescue Party supporters and the Friday Women of Cambodia, a group of family members of imprisoned activists and politicians. On 4 September 2020, a member of the group was pushed to the ground by a security officer, which left her unconscious. On 23 October 2020, another member was dragged to the ground and kicked repeatedly by security officers.<sup>22</sup> On 13 August 2020, six demonstrators were detained and released after agreeing to thumbprint documents pledging not to take part in similar activities in the future.<sup>23</sup>

19. OHCHR documented 33 incidents involving undue restrictions on the right to freedom of expression related to public comments and social media posts that were critical of the Government, including 24 cases involving comments relating to the COVID-19 response and related government actions. During the reporting period, 38 individuals, including five women, were arrested. Of that total, 24 were charged with a range of offences, including incitement to commit a felony and plotting against the Government, and two were convicted

<sup>19</sup> Notification dated 27 November 2018 from the Ministry of the Interior addressed to the Governors of the municipal-provincial governing boards (notification No. 2006).

<sup>20</sup> A/HRC/45/56, para. 78 (b).

<sup>21</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26223&](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26223&).

<sup>22</sup> See communication KHM 8/2020.

<sup>23</sup> From June 2020 to May 2021, OHCHR documented 29 instances of the "education" of 119 individuals, including 23 monks and 46 human rights defenders.

essentially for expressing opinions on social issues. United Nations special procedure mandate holders, in a joint letter made public on 28 July 2020, raised concerns about acts of intimidation by a senior government official against a human rights defender in relation to comments he had made on a radio show concerning arrests in the context of COVID-19.<sup>24</sup>

20. OHCHR received consistent reports from journalists and media personnel of harassment, self-censorship and persistent fears of prosecution, including for reporting on the COVID-19 situation. Moreover, OHCHR documented the arrests of six journalists: two were convicted on charges of incitement to commit a felony; one was charged with violating the interprovincial travel ban and was awaiting trial; two others were charged with incitement to commit a felony and released on bail; and a Chinese journalist was deported following the publication of an article on the COVID-19 situation. All the above-mentioned journalists were carrying out routine journalism work that is protected by the right to freedom of expression. On 27 October 2020, the Supreme Court rejected an appeal from two Radio Free Asia journalists who had sought to reverse an order to re-investigate their case.<sup>25</sup> On 11 November 2020, a newspaper publisher was sentenced to 18 months' imprisonment on charges of incitement to cause social chaos (violations of arts 494–495 of the Criminal Code) for a Facebook post criticizing the Prime Minister for failing to find a solution for people in debt owing to the COVID-19 pandemic. During the reporting period, OHCHR also documented nine instances in which media licences for websites or radio stations were revoked in circumstances that raise concern for the right to freedom of expression.

21. Impunity remains an issue of concern, despite the call by the Human Rights Council for Cambodia to urgently investigate and prosecute those involved in the killing of Kem Ley and other serious human rights violations.<sup>26</sup> The killing of Kem Ley, and the killings and disappearances of other individuals, including Chea Vichea and Ros Sovannareth,<sup>27</sup> Chut Wutty and Heng Chantha,<sup>28</sup> Khem Sophath,<sup>29</sup> and six demonstrators killed in 2013 and 2014, have been highlighted in previous reports of OHCHR.<sup>30</sup>

22. The sub-decree on a national Internet gateway, adopted in February 2021, threatens the rights to privacy, freedom of expression and access to information. The sub-decree provides the Government with a disturbing amount of power to monitor and conduct surveillance of online activities, to intercept and censor digital communications and to collect users' personal data. The Government has been developing a law on access to information since 2015. OHCHR is concerned that the current draft fails to establish an independent information commission or a specialized administrative body to oversee the enforcement and implementation of the law, and does not include adequate appeal procedures.

## IV. Administration of justice

### A. Legislative developments and their impact on human rights

23. The COVID-19 law was adopted on 11 March 2021 without public consultation. On 31 March, United Nations special procedure mandate holders outlined concerns arising from the law in a letter to the Government.<sup>31</sup> On 11 March, the United Nations country team sent a technical note to the Government highlighting key areas of concern, including the fact that the law allowed for the handing down of extremely harsh and disproportionate sentences. For example, individuals convicted for violating the COVID-19 restrictions could be imprisoned for between six months and 20 years. Separately, as part of its technical cooperation assistance, OHCHR submitted a legal analysis of the law to the Ministry of Justice and highlighted provisions that were inconsistent with the international human rights obligations

<sup>24</sup> See communication KHM 3/2020.

<sup>25</sup> A/HRC/WGAD/2019/3.

<sup>26</sup> Resolution 42/37.

<sup>27</sup> A/HRC/12/41, paras. 30 and 42.

<sup>28</sup> A/HRC/21/35, para. 5 (c).

<sup>29</sup> A/HRC/27/43, para. 6.

<sup>30</sup> *Ibid.*, paras. 5–6.

<sup>31</sup> See communication KHM 4/2021.

of Cambodia. In its comments on the present report, the Government stated that the COVID-19 law was an indispensable, proportionate, legitimate and necessary response to the pandemic.

24. From mid-April 2021 to the end of the reporting period, according to publicly available information, at least 729 persons have been arrested under the COVID-19 law and related sub-decrees, 126 of whom have been charged. Of the individuals charged, 110 are in pretrial detention and 16 have been convicted. The majority of those convicted were tried without the assistance of counsel, in possible violation of the right to have adequate time and facilities to prepare their defence, as the trials were held under “immediate appearance” procedures. In one case, which highlights the disproportionate sentencing contained in the law, four men arrested in Takeo Province on 18 April 2021 for holding a party were tried and convicted the following day and sentenced to one year of imprisonment.<sup>32</sup> In Kampong Chhnang Province, two women and a minor were arrested by police on 1 May 2021 and held incommunicado in locations unknown to their families for 20 days.

25. OHCHR provided technical support to the Disability Action Council for the drafting of a new law on the rights of persons with disabilities. The authorities’ objective was to bring Cambodian law into line with the Convention on the Rights of Persons with Disabilities.<sup>33</sup> However, as outlined by United Nations special procedure mandate holders, the draft takes a medical approach to disability by focusing on individuals’ limitations rather than on the limitations within society and on the support measures that need to be taken to minimize social barriers.<sup>34</sup> In its comments on the present report, the Government stated that it continued to collect inputs from relevant stakeholders, including organizations representing persons with disabilities.

26. In November 2020, the United Nations country team wrote to the Government expressing concern about some provisions of a leaked version of the draft law on maintaining the public order. The draft included provisions prohibiting and criminalizing the wearing “revealing clothes” by women. Furthermore, women have been arrested and convicted for posting pictures online of themselves in “revealing clothes” and NGOs have been threatened for advocating their right to do so.<sup>35</sup> Other provisions of that draft law may lead to discrimination against persons with disabilities and other marginalized groups.

## **B. Access to justice and the independence of the judiciary**

27. OHCHR monitored 24 court hearings in 14 cases involving 191 members of the political opposition, three journalists and 16 human rights defenders. In most of those cases, arrests were made without warrants and those arrested were interrogated without being informed of the charges against them and without a lawyer being present. OHCHR documented practices of concern in most of the proceedings, including some demonstrating a lack of respect for fair trial rights, in particular in the form of a notable absence of the presumption of innocence. In a case against three human rights defenders affiliated with Mother Nature Cambodia, guilty verdicts were handed down in the absence of any factual or substantial evidence. A United Nations special procedure mandate holder expressed concern at the inability and unwillingness of the court concerned to uphold the human rights of the three human rights defenders.<sup>36</sup>

28. Owing to the COVID-19 situation, some criminal trials, including of human rights defenders and political activists, were suspended. The trial of former opposition leader Kem Sokha, which started on 15 January 2020, was suspended in March 2020, reportedly indefinitely. In its comments on the present report, the Government stated that the continued suspension was at the request of both parties in the case and that the prosecution of Kem

<sup>32</sup> Information received from the General Department of Prisons, 21 April 2021.

<sup>33</sup> Ry Sochan, “Official: draft law on rights of persons with disabilities ‘inclusive’”, *The Phnom Penh Post*, 29 April 2021.

<sup>34</sup> See communication KHM 5/2021.

<sup>35</sup> See communication KHM 2/2020.

<sup>36</sup> OHCHR, “Cambodia: UN expert condemns conviction of three environmental rights defenders, urges their release”, 7 May 2021.

Sokha was not a priority because the defendant was not in pretrial detention and the courts were prioritizing cases involving detainees. The mass trials of over 150 former Cambodian National Rescue Party members, which have been under way since November 2020, have been suspended and no date for their resumption is known.

29. OHCHR continued to support the strengthening of the rule of law and the right to a fair trial. This included carrying out an assessment of the criminal case database in four provinces, a platform for increasing transparency in the courts. In an effort to enhance access to justice for persons with disabilities, OHCHR and the United Nations Development Programme provided training on the Convention on the Rights of Persons with Disabilities to members of the judiciary in three provinces.

30. While OHCHR welcomes the increase in recent years in the national legal aid budget, it continues to be concerned about the coordination of legal aid. Moreover, it notes that the Human Rights Council has encouraged the Government to speedily adopt the legal aid policy,<sup>37</sup> which exists in draft form and proposes a centralized system, but also that the draft policy remains on hold. OHCHR is supporting efforts to conclude, jointly with the Ministry of Justice, an alternative dispute resolution policy in its role as co-chair of the technical working group for legal and judicial reform.

31. With a view to helping to address the gap in legal aid, OHCHR worked with a local NGO to prepare the submission of 59 simplified bail applications by vulnerable individuals, which resulted in the pretrial release of 35 women. Since August 2020, another NGO supported by OHCHR monitored 40 cases of gender-based violence, finding limited access by victims to legal representation and a failure to adequately accommodate child victims in proceedings.

32. The prison population has doubled since 2015,<sup>38</sup> with 38,977 inmates in facilities that can hold up to 8,804,<sup>39</sup> meaning that the prisons are operating at 343 per cent capacity. The situation in prisons is perilous to the point that the conditions may constitute cruel, inhuman or degrading treatment or punishment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment given the levels of mental and physical pain experienced by prisoners, the lack of sleeping space, the inadequacy of the water and sanitation, and the limited access to fresh air and health care.

33. Since May 2020, a campaign to reduce the backlog of cases before the courts of first instance has led to the release of prisoners. This move has had only a limited impact on overcrowding, however, owing to the continuously high number of arrests, especially for drug-related offences (56.9 per cent of prisoners are detained for such offences). The proportion of women imprisoned for drug-related offences (73 per cent) is even higher.<sup>40</sup> Sex workers have been disproportionately targeted in anti-drug operations and forced to make confessions under threat of violence.<sup>41</sup> In its comments on the present report, the Government stated that, had it not acted in the way it did, the prison population would be double the current figure.

34. In the longer term, sustainable and rights-based solutions need to be put in place. For example, consistent use should be made of all types of alternatives to detention, as the United Nations country team has consistently advocated, and the law on drug control should be amended, as called for by the Special Rapporteur on the situation of human rights in Cambodia.<sup>42</sup> In its comments on the present report, the Government challenged the need for such an amendment, stating that the priority should be to strengthen, expand and enhance voluntary and community-based drug treatment and rehabilitation options.

<sup>37</sup> Resolution 42/37, para. 11. See also “2019–2023 joint monitoring indicators on legal and judicial reform: 2019–2020 progress update”, 17 March 2021.

<sup>38</sup> According to official information shared by the General Department of Prisons, the prison population stood at 18,577 in December 2015.

<sup>39</sup> Information received from the General Department of Prisons, May 2021.

<sup>40</sup> A/HRC/47/40, para. 57.

<sup>41</sup> *Ibid.*, para. 61.

<sup>42</sup> A/HRC/45/51, para. 93 (g).



35. The prison authorities have adopted preventive measures to combat COVID-19 in detention facilities, including by quarantining new prisoners, introducing a surveillance test-and-trace system and vaccinating inmates in priority prisons. Some measures have led to additional limitations on rights, including the rights to have access to family members and lawyers, and no steps have been taken to mitigate these impacts on the mental health of inmates, for example, by ensuring regular access to telephones. In its response to the present report, the Government stated that it had facilitated telephone use by prisoners around the country but that the telephone system in nine prisons was outdated.

36. On 9 May 2021, the General Department of Prisons completed the vaccination of most inmates in three priority prisons and, on 14 May 2021, it had also completed the vaccination of all eligible inmates in Preah Sihanouk prison. United Nations special procedure mandate holders had previously expressed concern at the lack of testing available to detainees.<sup>43</sup> There have been outbreaks of COVID-19 in numerous prisons, resulting in at least three deaths. In its comments on the present report, the Government stated that the General Department of Prisons supported the provision of bail and the application of diversionary measures for vulnerable inmates, including minors, in accordance with the Code of Criminal Procedure and noted that the death rate from COVID-19 in prisons was five times lower than in the community.

37. Despite the fact that the Secretary-General has called upon the Government to grant OHCHR access to all places of detention, including to conduct confidential interviews with detainees,<sup>44</sup> confidential interviews were not facilitated during the reporting period.

38. During the reporting period, OHCHR received reports of two suspicious deaths of individuals in custody, both in Battambang Province. The first death happened in police custody on 3 April 2021 and the second in prison on 3 May 2021. OHCHR monitored these cases remotely and provided technical advice to the National Committee against Torture in its investigations into these deaths, including with regard to the prioritization of interviewees and the collection of evidence. In the case of a death in custody in Banteay Meanchey on 1 January 2020, two officials from the provincial military police were convicted on 13 January 2021. While the facts of the case appear to have warranted a charge of torture, an offence that carries a punishment of up to 30 years, the officers were charged with lesser offences and given shorter sentences of between four and seven years.

39. The authorities have acknowledged the existence of 10 cases in which individuals died in treatment or quarantine facilities but not as a result of COVID-19. The causes given by officials included suicide, drug overdose, heart attack and head trauma caused by falls. In each case, however, there are concerns that impartial and transparent investigations into the deaths have not taken place. In at least one case, OHCHR is currently investigating allegations that a man killed a guard while escaping from a treatment facility in Phnom Penh in May 2021 before dying or being killed in custody; there is evidence that the man had been tortured. In another case, a 17-year-old girl died of COVID-19 in Phnom Penh on 26 April but her family were not informed of the fact by the authorities until four weeks later after they had made an appeal on social media for information. In that case, the girl had been admitted to hospital for an unrelated medical issue and contracted COVID-19 while in hospital.

## **V. Economic and social rights**

### **A. Economic impact of COVID-19**

40. The economic impact of COVID-19 is serious. Whereas a family of four in Phnom Penh spends an average of \$474 a month to meet basic needs,<sup>45</sup> work was suspended in hundreds of factories, leaving workers unpaid, or was reduced by 50 per cent in others, which

<sup>43</sup> See communication KHM 9/2020.

<sup>44</sup> A/HRC/45/56, para. 78 (i).

<sup>45</sup> Alessandra Danovaro and Danaé Laot, "Integrated COVID-19 response for poor urban settings in Phnom Penh: baseline survey report" (2021), p. 35.

meant that workers were receiving half of the \$192 a month they were earning as the minimum wage.<sup>46</sup> In recent years, Cambodians have turned increasingly to microfinancing schemes to meet their basic needs; the average loan repayment for a Cambodian family is now equal to \$182 a month.<sup>47</sup> With land being the most common form of collateral for underwriting loans,<sup>48</sup> loss of property among those unable to pay is foreseeable.

41. The Government continued its cash transfer programme using the national poverty identification system, an initiative implemented with the assistance of the United Nations that has benefited more than 700,000 households.<sup>49</sup> In early April 2020, the Interministerial Committee to Combat COVID-19, headed by the Minister of Health, was created to engage all government agencies in the fight against COVID-19. That measure was replicated at the provincial level, where it was led by governors. Following the February 2021 outbreak, a subcommittee on social assistance was created to assess humanitarian needs, identify populations requiring assistance and provide recommendations to the National Committee on COVID-19. In May 2021, the Government launched a new package that included relief for, among others, factory workers and persons infected with COVID-19.

42. While these efforts are welcome, the impact of the pandemic on economic and social rights has nonetheless been far-reaching. Incomes have decreased, jobs have been lost in both the formal and informal sectors and access to health care and social protection has been unequal, with the urban poor, including the scrap collector community, being particularly badly affected. It is estimated that between 390,000 and 570,000 jobs were lost in 2020;<sup>50</sup> the number of jobs lost following the February outbreak is yet to be determined. Food insecurity has increased in terms of the quality and diversity of food, particularly for children, pregnant women and older persons.

43. OHCHR documented 19 peaceful protests held to demand socioeconomic relief in the context of COVID-19 during the reporting period. With the country's economy on the verge of a deeper recession, the poverty rate may increase significantly. While recognizing the measures and policies that have been put in place by the Government to provide health, social protection and economic assistance, there remains an urgent need to further enhance policies and interventions in line with State obligations under the International Covenant on Economic, Social and Cultural Rights. The above-mentioned national poverty identification system should be expanded to address the overarching issues of poverty and inequality, and the Government should continue to increase investment in health, social protection and the public sector, mobilizing the maximum of its available resources and seeking international cooperation if necessary.

## **B. Land and housing rights**

44. As the Human Rights Council has noted, the land situation in Cambodia is deeply problematic.<sup>51</sup> Poor and marginalized communities continue to face forced evictions. A major root cause is the allocation of land concessions to individuals with ties to the ruling party, with victims invariably coming from lower socioeconomic parts of the population. No new laws or policies aimed at addressing the root causes of land and housing issues were developed during the reporting period. A draft law on the environment and natural resources, published in 2016, remains pending after years of consultation with stakeholders. In its comments on the present report, the Government stated that the draft law was under discussion by the relevant line ministries and that it would subsequently be submitted to the Council of Ministers before being brought before the National Assembly.

<sup>46</sup> Statement dated 4 May 2021 by the Labour Advisory Committee of the Ministry of Labour and Vocational Training.

<sup>47</sup> Alessandra Danovaro and Danaé Laot, "Integrated COVID-19 response for poor urban settings in Phnom Penh: baseline survey report" (2021), p. 36.

<sup>48</sup> Microfinance Index of Market Outreach and Saturation, "Cambodia: March 2020".

<sup>49</sup> See <https://cambodia.un.org/en/127454-information-note-3-social-assistance-un-cambodias-covid-19-response>.

<sup>50</sup> See [www.adb.org/sites/default/files/linked-documents/54195-001-sd-03.pdf](http://www.adb.org/sites/default/files/linked-documents/54195-001-sd-03.pdf).

<sup>51</sup> Resolution 42/37.

45. OHCHR observed that, in February 2021, the authorities of Monduliri Province had sought approval to excise more than 3,000 hectares of land from a protected wildlife sanctuary to establish a special economic zone.<sup>52</sup> In 2020, in Preah Sihanouk Province, the Government reclassified State land and granted nearly 173 hectares of land to 14 individuals, including senior government officials, family members and others with close ties to the ruling party.<sup>53</sup> A Cambodian People's Party senator who had already received numerous land concessions over the years received another grant of land in November 2020 through a sub-decree relating to a forested area in Kampong Speu Province.<sup>54</sup>

46. The opaque process for granting land concessions continues, resulting in the protracted suffering of poor and marginalized communities. In Phnom Penh, the privatization of lake areas and the eviction of families living in such areas continue. Since 2003, 60 per cent of the city's lakes and 40 per cent of its wetland areas have been filled in by developers, resulting in the eviction of thousands of families.<sup>55</sup> An OHCHR-supported report found that the ING City project had led to the destruction of the Tompoun/Cheung Ek wetlands and placed the homes and livelihoods of more than 1,000 families under threat.<sup>56</sup> United Nations special procedure mandate holders have expressed concern that, without the wetlands, more than 1 million people are at risk of flooding and exposure to contaminated water.<sup>57</sup>

47. The ongoing development of Boeung Tamok lake could affect 319 poor families, many of which have no land titles and some of which have already been evicted without notice or consultation. Between August 2018 and January 2021, OHCHR documented 16 decisions issued by the Government to reclaim land close to the lake for private and public development projects. OHCHR also documented 11 new land disputes arising from economic land concessions and 16 long-standing land disputes that remain unresolved.

48. Violations of land and housing rights have also occurred in tourist areas. A road improvement project in Siem Reap Province<sup>58</sup> that will affect approximately 5,000 homes has resulted in the eviction of 94 urban poor families.<sup>59</sup> On 26 January 2021, OHCHR, the United Nations Human Settlements Programme (UN-Habitat) and the Resident Coordinator's office met with the Ministry of the Interior to discuss the "smart city" development in Preah Sihanouk Province and to advocate for the promotion of sustainable and inclusive development. In February 2021, OHCHR and the Resident Coordinator's office engaged with the authorities of Preah Sihanouk Province to halt the eviction of 168 families that have been living in an informal settlement there since the 1990s. The eviction did not take place but, as a durable solution was not found, the community remains highly vulnerable. In its comments on the present report, the Government stated that it was reviewing "illegal resettlements" on a case-by-case basis with a view to supporting vulnerable households for which relocation was deemed necessary as a last resort.

49. In Phnom Penh, OHCHR engaged with the authorities to improve conditions at the resettlement site in Bontey Slerk, where 87 families had been living in an informal settlement since the early 1990s. On 13 July 2020, OHCHR met with the District Governor to raise human rights concerns relating to the inadequacy of the infrastructure and of services

<sup>52</sup> Letter dated 5 February 2021 from the Monduliri Provincial Administration addressed to the Minister of the Interior (in Khmer only).

<sup>53</sup> Sub-decrees No. 44 of 27 March 2020, No. 78 of 28 May 2020, No. 97 of 10 July 2020 and No.109 and 17 July 2020 (in Khmer only).

<sup>54</sup> Sub-decree No. 186, 12 November 2020.

<sup>55</sup> Sahamakum Teang Tnaut, "The last lakes", *Facts & Figures*, No. 40, December 2019, p. 1. Available at [https://teangtnaut.org/wp-content/uploads/2019/12/STT-Facts-and-Figures-40-Last-lakes-\\_ENG\\_Final.pdf](https://teangtnaut.org/wp-content/uploads/2019/12/STT-Facts-and-Figures-40-Last-lakes-_ENG_Final.pdf).

<sup>56</sup> Cambodian League for the Promotion and Defense of Human Rights, Cambodian Youth Network, Equitable Cambodia and Sahmakum Teang Tnaut, *Smoke on the Water: A Social and Human Rights Impact Assessment of the Destruction of the Tompoun/Cheung Ek Wetlands*, July 2020.

<sup>57</sup> See communication KHM 11/2020.

<sup>58</sup> See press statement dated 23 September 2020, available at <https://siemreap.gov.kh/detail/9076> (in Khmer only).

<sup>59</sup> OHCHR interviews with NGOs and land rights activists, 1 October 2020.

such as shelter and flood defences at the site. Following advocacy efforts, the Phnom Penh municipality took measures to improve the site, including its flood defences.

50. OHCHR has undertaken a study of 17 resettlement sites in Cambodia. In the report on that study, which will be released in the final quarter of 2021, OHCHR found that evicted communities were sent to resettlement sites before infrastructure and services, including those related to access to safe drinking water and sanitation, roads, electricity, health, education and food, had been put in place. The report highlights a lack of national guidelines on resettlement processes.

### C. Access to land for indigenous people

51. Indigenous peoples' land continues to be granted to private companies, marking a trend that is facilitated by the country's complex, expensive, slow and inaccessible communal land titling process.

52. Of the 455 indigenous communities in Cambodia, only 158 have had their indigenous identities recognized since the issuance in 2009 of a sub-decree on registration procedures for the land of indigenous communities.<sup>60</sup> Recognition is the first step in a long process to protect indigenous people's rights. Government officials have stated that a further 152 indigenous communities have reached the second step of the process and have been registered as legal entities.<sup>61</sup> Thirty-three communities have made additional progress and reached the final stage of the process, which involves land measurement, before final approval and the issuance of land titles.<sup>62</sup> While these are welcome steps, the process is likely to take all the indigenous communities in the country many years to complete. In its comments on the present report, the Government stated that it had established a working group comprising representatives from various relevant ministries to survey the situation of indigenous land ownership in Monduliri Province.

53. In November 2020, the draft discussion paper on the simplification of the communal land titling process developed by OHCHR was shared with the Government. OHCHR has also worked directly with indigenous communities, supporting their efforts to complete the process. That support included assisting 56 indigenous families in Stung Treng Province affected by the Lower Sesan 2 hydropower dam. The community filed a communal land titling application for 7,000 hectares but in January 2021 received an offer of 951 hectares, which it rejected.

54. Throughout the reporting period, OHCHR observed an increase in arrests and detentions of indigenous community members under the law on protected areas. In March 2021, OHCHR intervened with local officials after five indigenous people were arrested by park rangers in Phnom Namlear Wildlife Sanctuary. Three were released within a week but two remain in pretrial detention on charges of violating provisions of the law on protected areas.

55. OHCHR received reports that the Ministry of the Environment and forest rangers had cited COVID-19 restriction measures to prevent indigenous communities from conducting forest-monitoring activities, giving rise to reports of increased illegal logging and the destruction of natural resources. Indigenous communities have informed OHCHR that they are not receiving adequate information on COVID-19 that this makes them particularly vulnerable to outbreaks. OHCHR has highlighted that the Government needs to reach out to indigenous people, in their languages. In its comments on the present report, the Government stated that it had provided training opportunities to indigenous communities on COVID-19

<sup>60</sup> Sub-decree No. 83 of 9 June 2009.

<sup>61</sup> Information provided orally to OHCHR by the Ministry of the Interior, 7 May 2021.

<sup>62</sup> Report of the Ministry of Land Management, Urban Planning and Construction, February 2021, available at [www.mlmpc.gov.kh/?page=document&menu1=214&menu2=292&ref\\_id=24&ctype=article&id=292&lg=kh](http://www.mlmpc.gov.kh/?page=document&menu1=214&menu2=292&ref_id=24&ctype=article&id=292&lg=kh) (in Khmer only).

transmission and preventive measures. However, no details on the number of trainings or participants was provided.

## **VI. Gender and the rights of lesbian, gay, bisexual, transgender and intersex persons**

56. In response to the COVID-19 pandemic, members of the United Nations country team established a core quarantine group after the Ministry of Labour and Vocational Training announced that 30,000 factory workers, mostly women, would be subject to a 14-day Government-imposed quarantine. In February 2021, the group developed a code of conduct for quarantine centres setting out minimum standards for safe spaces for women and children. The National Committee for Counter Trafficking and the Ministry of Health endorsed the code of conduct in February 2021.

57. In December 2020, OHCHR and the United Nations country team participated in a dialogue to mark the seventy-fifth anniversary of the United Nations, which included a session on the rights of lesbian, gay, bisexual, transgender and intersex persons. Representatives of lesbian, gay, bisexual, transgender and intersex persons referred to the 2019 recommendations addressed to Cambodia in the context of the universal periodic review, including those calling upon Cambodia to allow same-sex marriages and to prohibit discrimination based on sexual orientation and gender identity. The Government accepted those recommendations but no action has been taken. There continues to be insufficient legal protection from discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons, no legal recognition of self-defined gender identity and marriage equality within the law, as well as discrimination in the context of adoption.

## **VII. Mainstreaming human rights through the United Nations country team**

58. OHCHR continued to engage with the United Nations country team as a convener of the human rights theme group and the United Nations Development Assistance Framework results group on participation and accountability.

59. OHCHR coordinated submissions by the United Nations country team to the human right treaty bodies. In June and December 2020, the country team made two submissions, to the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

60. In October 2020, OHCHR coordinated a prison visit with the United Nations country team to assess the situation of three prisons that had flooded as a result of heavy rainfall. In November 2020, OHCHR engaged with the World Health Organization to make sure that detainees and prisoners had access to COVID-19 testing.

61. In the context of its surge initiative, OHCHR strengthened the integration of economic and social rights in the work of the United Nations country team, including through human rights-based macroeconomic analyses.

## **VIII. Increasing implementation of the outcomes of international human rights mechanisms**

62. The reports submitted by Cambodia to the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances have been overdue since 2015, and the 2013 list of issues of the Committee against Torture has received no response from the Government. The review of Cambodia by the Committee on the Rights of the Child was postponed to 2022 at the request of the Government. The designation of the National Committee against Torture as the national preventive mechanism continues to be of concern, as there are doubts as to the functional independence of the mechanism in terms of its legal

framework, the selection of its members, its role and duties, and its funding.<sup>63</sup> OHCHR has responded positively to the request from the Cambodia Human Rights Committee for training on the national human rights tracking database.

63. While Cambodia engaged positively in the third cycle of the universal periodic review, in 2019, no implementation plan has been developed since the review. In its comments on the present report, the Government stated that the Cambodian Human Rights Committee was seeking input from government ministries on the implementation of the recommendations arising from the universal periodic review.

64. The Cambodia Human Rights Committee, with assistance from OHCHR and other stakeholders, has recently finalized a zero draft of the law on the establishment of the national human rights institution. The process has been delayed since 2001, when a working group consisting of members of the Senate and the National Assembly, among others, organized a workshop on prospects for the establishment of an independent national human rights institution in Cambodia.<sup>64</sup> The Government accepted recommendations made in 2010, 2014 and 2019, in the context of the universal periodic review, to set up a national human rights institution.

## IX. Conclusions and recommendations

65. **The Secretary-General acknowledges the positive engagement of the Government with OHCHR and stresses the need to adopt a human rights-based approach to strengthening economic development and maintaining peace and social cohesion. During the COVID-19 crisis, respect for human rights is critical to ensure response and recovery efforts that are compliant with international standards. The Secretary-General highlights the crucial role of OHCHR in assisting Cambodians in realizing their human rights, including in the context of COVID-19.**

66. **The Secretary-General calls upon the Government:**

(a) **To initiate a dialogue with all political actors to ensure that all can take part in the 2022 communal and 2023 national elections;**

(b) **To engage at the highest level in discussions with OHCHR on all human rights issues raised in the present report;**

(c) **To ensure that the COVID-19 law, and any other extraordinary measures introduced to protect the health and well-being of the population during the COVID-19 pandemic, are temporary, proportionate and strictly necessary for the prevention of the spread and the treatment of the disease, applied in a non-discriminatory manner and aligned with the international human rights obligations of Cambodia;**

(d) **To review legislation and policies to ensure that any restrictions on rights, including in the context of COVID-19, comply with international human rights norms and standards;**

(e) **To engage with the United Nations country team and other development partners to meet the medical, humanitarian and socioeconomic needs of the population, including in the context of COVID-19 and in the longer term;**

(f) **To expand the national poverty identification system to address overarching issues of poverty and inequality, increase investment in health, social protection and the public sector, mobilizing the maximum available resources, and seek international cooperation if necessary;**

(g) **To strengthen civic and democratic space, end harassment of political actors and human rights defenders and ensure that the draft law on associations and NGOs is in line with international human rights law;**

<sup>63</sup> A/HRC/37/64, para. 31.

<sup>64</sup> A/56/230, para. 29.

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- (h) To ensure thorough and impartial investigations into cases of killings and disappearances that have been highlighted in previous reports, including the case of Kem Lay;
- (i) To reduce the size of the prison population by releasing vulnerable women prisoners with disabilities and pre-existing medical conditions, juveniles, non-violent offenders and persons detained for engaging in conduct that is protected by international human rights law;
- (j) To consider implementing the United Nations system's common position on international drug control through effective inter-agency collaboration and also consider implementing international guidelines on human rights and drug control, including guidelines aimed at prohibiting arbitrary detention and decriminalizing the possession of drugs for personal use;
- (k) To guarantee the right to legal assistance, adopt a national policy on legal aid and create a centralized legal aid system;
- (l) To ensure that OHCHR once again has confidential access to prisons and grant such access to other service providers and human rights monitors;
- (m) To bring the draft law on the rights of persons with disabilities in line with the Convention on the Rights of Persons with Disabilities, including with respect to accessibility and equality of opportunity;
- (n) To simplify the communal land titling process for indigenous peoples;
- (o) To adopt draft national guidelines on evictions and relocations that are in line with the basic principles and guidelines on development-based evictions and displacement;
- (p) To establish a national human rights institution that is in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles);
- (q) To strengthen engagement with United Nations human rights mechanisms, including by presenting a plan for implementing the recommendations made in the context of the universal periodic review;
- (r) To carry out a review of previous recommendations by United Nations mechanisms and treaty bodies and finalize a timeline for the implementation of outstanding recommendations.
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