

A HUMAN RIGHTS ANALYSIS OF THE LAW ON PREVENTIVE MEASURES
AGAINST THE SPREAD OF COVID-19 AND OTHER SEVERE AND DANGEROUS
CONTAGIOUS DISEASES

Prepared by the Office of the United Nations
High Commissioner for Human Rights in Cambodia
April 2021

I. Introduction

1. The present analysis was prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia as a contribution to the consideration of the Law on Preventive Measures Against the Spread Of COVID-19 and Other Severe and Dangerous Contagious Diseases (hereafter “the Law”). OHCHR offers it in the belief that the Law holds direct implications for the ability of Cambodian people to fully exercise their fundamental rights, including the rights to freedom of movement and peaceful assembly and to gain their living by work which they freely choose or accept.

II. Legal framework

2. To help the Royal Government of Cambodia abide by its international human rights obligations, OHCHR has reviewed the compatibility of the Law with the applicable international human rights norms and standards, particularly the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. **Freedom of movement:**¹ Article 12 of the ICCPR provides:

- “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.”

¹ See also Article 13 of the Universal Declaration of Human Rights and the International Labour Organisation’s Decisions on Freedom of Association: “Trade unionists, just like all persons, should enjoy freedom of movement. In particular they should enjoy the right, subject to national legislation, which should not be such so as to violate freedom of association principles, to participate in trade union activities abroad.”, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3943372,2

4. General Comment No 27 of the United Nations Human Rights Committee on Article 12 of the ICCPR articulated that “liberty of movement is indispensable condition for the free development of a person... The right to move freely relates to the whole territory of a State, including all parts of federal States... The permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant.”²
5. **Freedom of Peaceful Assembly:**³
 - a. **Article 21 of the ICCPR:** “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”
 - b. **Article 15 of the Convention on the Rights of the Child:**
 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”⁴
6. General Comment No 37 of the United Nations Human Rights Committee on Article 21 of the ICCPR elaborated that “the fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism...”⁵
7. Further, General Comment No 37 provides that “everyone has the right of peaceful assembly: citizens and non-citizens alike. It also states that “the recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination...”⁶
8. The United Nations General Assembly also reaffirmed the right to freedom of peaceful assembly in its resolution to adopt the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized

² General Comment No. 27 of the United Nations Human Rights Committee on Article 12 of the ICCPR, paras. 1, 2, and 5.

³ See also Article 20 of the Universal Declaration of Human Rights.

⁴ See also Comments on Human Rights Committee’s Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly of the International Covenant on Civil and Political Rights, Committee on the Rights of the Child, https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle21/EXPERTS_CRC.pdf

⁵ General Comment No. 37 of the United Nations Human Rights Committee on Article 21 of the ICCPR, para. 1.

⁶ Ibid., para. 8.

Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders, in 1999.⁷

9. Right to work: Article 6 of the ICESCR establishes:

- “1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”
10. The HRC reaffirms the right to work as enshrined in the International Covenant on Economic, Social and Cultural Rights, “which includes the right of everyone to the opportunity to gain his or her living by work that he or she freely chooses or accepts...”⁸

11. Domestically, these fundamental rights are protected under the Cambodian Constitution, as follows:

Article 31, para. 1:

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights.⁹

Article 36, para. 1:

Khmer citizens of either sex shall enjoy the right to choose any employment according their ability and to the needs of the society.

Article 40, para. 1 and 2:

Citizens’ freedom to travel, far and near and legal settlement shall be respected.

Khmer citizens shall have the right to travel and settle abroad and return to the country.

Article 41, para. 1:

Khmer citizens shall have freedom of expression, press, publication and assembly¹⁰. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.

⁷ A/RES/53/144, Article 5.

⁸ A/HRC/43/L.6, para. 2.

⁹ In its Decision No. 092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts in Cambodia, the Constitutional Council clarified that “ ‘the law’ applicable in Cambodia ... refers to the national law including the Constitution which is the supreme law and other applicable laws as well as the international conventions that Cambodia has recognized.”

¹⁰ See also: Articles 2 and 4 of the 2009 Cambodian Law on Peaceful Demonstration guarantees the right to peaceful gatherings and demonstrations.

III. Analysis of the law:

12. This analysis was prepared on the basis of the Law accessed by OHCHR from the National Assembly’s website on 11 March 2021 as well as an unofficial English translation thereof produced by the Ministry of Justice. The present analysis complements the human rights concerns raised in the technical note submitted by the United Nations Resident Coordinator to the Royal Government of Cambodia on 11 March 2021.

Chapter 1 General Provisions

Article 1: Purpose

This law sets forth health, administrative and other measures to be taken in order to combat and prevent the spread of Covid-19 and other severe and dangerous contagious diseases for the purpose of protecting people's lives, public health and public order, as well as minimizing the impact of the spread of these contagious diseases on the social and economic sectors in the Kingdom of Cambodia.

Article 2: Scope

This law shall apply to the prevention of the spread of Covid-19 and other severe and dangerous contagious diseases as determined by the Ministry of Health in the Kingdom of Cambodia.

Comments:

13. OHCHR welcomes the purpose set forth in Article 1 to “combat and prevent the spread of Covid-19... for the purpose of protecting people’s lives, public health... as well as minimizing the impact of the spread...” However, Articles 1 and 2 contain overly broad terms, including “other severe and dangerous contagious diseases”, “public health” and “public order”. Particularly, the terms “other severe and dangerous contagious diseases” are not defined clearly. In addition, there is no limitation or constraint on the length of time a disease may be the justification for restrictive measures. Thus, the terminology should be clearly defined to ensure legal certainty, consistency in practice, avoid arbitrary interpretation and application and prevent discriminatory enforcement.
14. OHCHR takes note of Article 1 of the Law that states that “... measures are taken for the purpose of protecting people’s lives, public health and public order as well as minimizing the impact of the spread of these diseases...”. A narrower purpose of these provisions, simply limiting the spread of the disease, risks that the direct and indirect health impacts of restrictive measures are not adequately taken into account, particularly as they relate to marginalized and vulnerable groups. While the Law has broader objectives, including protecting public health, the purposes for which public health and other measures may be imposed are narrower and limited to those necessary to combat and prevent the spread of COVID-19.
15. The World Health Organisation’s (WHO) guidance on “Addressing Human Rights as Key to the COVID-19 Response” recommends “...striking a fine balance between protecting

health, minimizing economic and social disruption, and respecting human rights...”¹¹ It also recognises that human rights can help address public health concerns. OHCHR recommends that the Royal Government of Cambodia seeks technical assistance from WHO to ensure that the measures introduced in the Law are in line with WHO’s recommendations.

16. The UN Secretary-General highlighted in his policy brief on human rights and COVID-19 that “human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity.”¹²
17. *OHCHR recommends that the Royal Government of Cambodia revisits the terminology used in Chapter 1 and makes amendments to clearly define the terminology raised in paragraph 13 of OHCHR’s analysis. A clear definition of the terminology will reduce the risk of subjective application and arbitrary interpretation. Amendments are necessary to ensure that public health measures are proportionate, non-discriminatory and aim to protect and respect individuals’ human rights and fundamental freedoms.*

Chapter 2 ***Combatting and Preventive Measures Against the Spread of Covid-19***

Article 3: Health measures

In order to combat and prevent the spread of Covid-19 in the Kingdom of Cambodia, the Royal Government may impose necessary health measures including but not limited to the following:

- sanitation;
- mask wearing;
- social distancing;
- sample collecting for Covid-19 diagnosis;
- quarantine;
- isolation for treatment;
- Covid-19 vaccination;
- health declaration and
- Other health measures necessary to respond to and prevent the spread of Covid-19.

The details of the above health measures shall be determined by Sub-decree.

In case of urgency and necessity, the Royal Government may delegate the authority to the Ministry of Health to impose additional health measures in order to prevent the spread of Covid-19 in a timely manner.

¹¹ See: <https://www.who.int/publications/i/item/addressing-human-rights-as-key-to-the-covid-19-response>

¹² The United Nations Secretary-General’s Policy Brief on Human Rights and COVID-19, 23 April 2020, available at: <https://cambodia.ohchr.org/en/content/un-policy-brief-human-rights-and-covid-19>

Article 4: Administrative and other measures

The Royal Government may temporarily impose administrative and other measures which are necessary and beneficial to respond in a timely manner to the combat against and prevention of the spread of Covid-19 including but not limited to the following:

- *restriction or prohibition of travel;*
- *restriction or prohibition of meeting and gathering of people which may cause to the spread of Covid-19;*
- *prohibition or restrictions on business operations or professional activities which are risky or the sources of the spread of Covid-19;*
- *lockdown of certain Covid-19 infected areas or places;*
- *restriction or prohibition of trade of goods which are risky or the sources of the spread of Covid-19; and*
- *other administrative and other measures necessary to respond to and prevent the spread of Covid-19.*

In case of urgency and necessity, the Royal Government may delegate the authority ministries, institutions or competent authorities to take the above measures and to ensure their implementation in order to prevent the spread of Covid-19 in a timely manner.

Comments on Chapter 2:

18. OHCHR welcomes that the Article envisages “temporary measures” and aims that such measures would benefit public and prevent the spread of COVID-19 and offers the following commentaries and recommendations:
19. However, while acknowledging the necessity for the Royal Government of Cambodia to take precautionary health measures listed in Article 3 in order to combat and prevent the spread of COVID-19, OHCHR is concerned about the broad and ambiguous powers the Law provides to the Royal Government of Cambodia. Explicitly, Article 4 allows the Royal Government of Cambodia to “temporarily impose administrative and other measures” to restrict or prohibit travels, meetings, gatherings, business operations or professional activities, and trade of goods and to impose lockdown of certain areas. Although “other administrative and other measures” may be imposed temporarily, they may directly affect the Cambodian population’s enjoyment of the right to peaceful assembly, freedom of expression and association, freedom of movement and employment. In addition, broad and ambiguous powers to limit fundamental rights and freedoms, including freedom of movement and assembly, are susceptible to abuse and arbitrary application.
20. **Freedom of movement:** Freedom of movement is fundamental in everyone’s life. It allows people to travel to fill jobs, visit health centers, go to school, seek and obtain essential services, which are important for individuals’ daily lives. It also ensures free movement of capital, goods and services. Equally important, freedom of movement allows workers to migrate to other countries for work. Although Article 12(3) of the ICCPR allows for some restrictions on freedom of movement under public health grounds, the restrictions must be provided by law, necessary in a democratic society for the protection of these purposes and

consistent with all other rights recognized in the Covenant.¹³ The Human Rights Committee, which oversees implementation of the ICCPR, has established that “the laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.”¹⁴ Also, the International Labour Organisation’s Committee on Freedom of Association reaffirmed in its decision that “trade unionists, just like all persons, should enjoy freedom of movement”.¹⁵ Thus, Article 4 of the Law appears to be inconsistent with Article 12 of the ICCPR guaranteeing the right to freedom of movement.

21. Freedom of assembly: OHCHR acknowledges the necessity of measures taken to respond to and combat the spread of COVID-19. However, the measures should be taken based on human-rights based approaches in line with the UN Secretary-General’s policy brief on human rights and COVID-19 (see OHCHR’s comments on Chapter 1). Vaguely defined crimes and ambiguous grounds for legal action may enable public authorities to prohibit any peaceful gatherings or block certain areas beyond public health concerns. The Law will have a serious negative impact on the right to peaceful assembly¹⁶, which appears to be inconsistent with Article 21 of the ICCPR. Further, the UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association has reemphasised that it is imperative the COVID-19 crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly in particular.¹⁷
22. Right to work: The right to choose an occupation is guaranteed by Cambodian and international human rights law. The right to work is an individual right and every individual is entitled to it. It encompasses all forms of work, whether independent work or dependent wage-paid work. It includes the right of every human being to decide freely to accept or choose work. This implies not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment.¹⁸
23. “Prohibition or restrictions on business operations or professional activities” and “restriction or prohibition of trade of goods” under Article 4 of the Law out of concerns of COVID-19 or other designated pandemics appear to be in contravention of Article 6 of the ICESCR, which guarantees “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. While the

¹³ General Comment No. 27 of the United Nations Human Rights Committee on Article 12 of the ICCPR, para. 18.

¹⁴ Ibid, para. 13.

¹⁵ See compilation of decisions of the Committee on Freedom of Association, para. 190, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3943372,2

¹⁶ Similar concerns were also raised in a joint statement on 17 April 2020 by several special procedure mandate holders stated that the draft law risked “violating the right to privacy, silencing free speech and criminalizing peaceful assembly” responding to the 2020 Cambodian Law on the Management of the Nation in State of Emergency came into effect, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25801&LangID=E>

¹⁷ UN expert on the rights to freedoms of peaceful assembly and of association: “States responses to Covid-19 threat should not halt freedoms of assembly and association” (2020): <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

¹⁸ General Comment No. 18 of the United Nations Human Rights Committee on Article 6 of the ICESCR, para 6.

purpose of the Law may be to minimize the impact of COVID-19 on social and economic sectors, prohibiting and restricting certain business operations or professional activities or trade of goods may have a disproportionate effect on certain people's incomes and livelihood during the COVID-19 pandemic, raising concerns of discrimination. The Law should provide a mechanism to assess the impact of such prohibition or restrictions, ensuring that they are necessary and proportionate.

24. OHCHR recommends clearly defining the term “competent authorities” and “temporary measures” as stated in the last paragraph of Article 4 of Chapter 2 under the Law. Further, OHCHR recommends that the Royal Government of Cambodia revisits the Law and makes the necessary amendments to ensure that any legal and administrative measures that may restrict the rights and freedoms guaranteed by national and international law are explicitly defined with a specific focus and duration, appropriate and proportionate to the foreseeable risks in line with the requirements of international human rights law. In particular, these measures and restrictions must be temporary in nature, the least intrusive possible to achieve their objective and appropriate to attain public health in a non-discriminatory manner in order to meet the requirements of international human rights norms and standards. OHCHR also recommends a) providing a definition of “temporary measures”, b) providing for regular reviews of the measures introduced, c) including a grievance handling mechanism for affected individuals to complain and seek redress, and d) specifying the names and organisations that may be authorised to issue the restrictive orders.

Chapter 3

Penalties

Article 5: Punishments

Any person who infringes any health, administrative or other measures as stipulated under this law aiming at combating and preventing the spread of Covid-19 shall be punishable under this law.

Punishments under this law include administrative and criminal punishments.

Administrative punishments include the following:

- *Suspension or revocation of the business license, certificate or permit;*
- *Closure of business.*

Criminal punishments include the following:

- *Transactional fine;*
- *Monetary fine;*
- *Imprisonment.*

Other offenses which are subject to transactional fines shall be determined by a sub-decree.

Imposition of transactional fines for infringement of health measures shall be under the authority of the Ministry of Health. Imposition of transactional fines for infringement of administrative and other measures shall be under the authority of ministries, institutions and competent authorities which have imposed such measures.

Payment of transactional fines extinguishes criminal action against offenses stipulated under this law.

Payment of transactional fine shall not lead to exemption from obligations to comply with health, administrative or other measures stipulated under this law.

In case where an offender refuses to pay transactional fine within 30 (thirty) days from the date of receipt of the decision on such transactional fine, an officer qualified as judicial police officer of concerned ministries, institutions and competent authorities shall prepare the case and file to a court in accordance with procedures in force.

Article 6: Ministries or Institutions Empowered to Impose Administrative Punishments

Imposition of administrative punishments as stipulated in paragraph 3 of Article 5 of this law shall be under the authority of the ministries or institutions which have issued the licenses, certificates or permits.

Any offender who disagrees with such administrative punishment may appeal to relevant Minister or head of institution within 30 (thirty) days from the date of receipt of the decision on punishment.

In case where such offender still disagrees with the decision of the concerned minister or head of institution, that said person may file a legal action to the competent court within 60 (sixty) days from the date of receipt of the appeal decision.

The above recourses by the above person shall not have a suspensive effect on the enforceability of the decision imposing such administrative punishment.

Article 7: Offense of Avoiding the Quarantine or Escaping from a Quarantine Venue

An act of avoiding the quarantine or escaping from a quarantine venue during a quarantine period as determined by the Ministry of Health or competent authorities shall be punishable by a transactional fine as determined by a Sub-decree.

It shall be punishable by imprisonment from 6 (six) months to 3 (three) years and a monetary fine from 2,000,000 (two million) Riels to 10,000,000 (ten million) Riels, where such act leads to the infection of Covid-19 to other people.

Article 8: Offense of Avoiding treatment or Escaping from a Treatment Venue

An act of avoiding a mandatory treatment or escaping from a treatment venue as determined by the Ministry of Health or an attempt to commit this act shall be punishable by imprisonment from 1 (one) year to 5 (five) years and a monetary fine from 5,000,000 (five million) Riels to 20,000,000 (twenty million) Riels.

It shall be punishable by imprisonment from 5 (five) years to 10 (ten) years, which such as leads to the infection of COVID-19 to other people.

Article 9: Offense of Intentional Transmission of Covid-19 to other People

An act of intentional transmitting of Covid-19 to other people by any means shall be punishable by imprisonment from 5 (five) years to 10 (ten) years.

It shall be punishable by imprisonment from 10 (ten) years to 20 (twenty) years, where such act is committed by an organized group of people or an organized entity.

Article 10: Offense of Infringement of Administrative Measures

Without taking into account other criminal offenses, an act of intentional infringement of an administrative measure imposed in accordance with this law shall be punishable by a transactional fine from 1,000,000 (one million) Riels to 5,000,000 (five million) Riels.

It shall be punishable by imprisonment from 6 (six) months to 3 (three) years and a monetary fine from 2,000,000 (two million) Riels to 10,000,000 (ten million) Riels, where such act leads to the infection of Covid-19 to other people.

It shall be punishable by imprisonment from 2 (two) years to 5 (five) years and a monetary fine from 5,000,000 (five million) Riels to 20,000,000 (twenty million) Riels, where such act leads to serious impact on public health.

Article 11: Offense of Obstruction of Measures Enforcement

An act of intentional obstruction or deterrence of the enforcement of a measure imposed in accordance with this law shall be punishable by imprisonment 6 (six) months to 3 (three) years and a monetary fine from 2,000,000 (two million) Riels to 10,000,000 (ten million) Riels.

It shall be punishable by imprisonment from 2 (two) years to 5 (five) years and a monetary fine from 5,000,000 (five million) Riels to 20,000,000 (twenty million) Riels, where such act leads to the infection of Covid-19 to other people or serious impact on public health.

Article 12: Liability of Competent Authorities

Any competent official who arbitrarily uses his or her authority in contradiction to the purposes of this law and causes infringement of individual's rights and freedom, physical integrity or causes damage to property of another person shall be liable for his or her act in accordance with laws of the Kingdom of Cambodia.

Article 13: Exemption or Mitigation of Criminal Liability

Any offender of Articles 7, 8, 10, and 11 of this law may have his or her criminal liability exempted or mitigated if such offender provides relevant information to health or competent officials or necessary cooperation useful for timely prevention of the spread Covid-19.

The above exemption or mitigation of a criminal liability shall also be applicable in case where family members of the offender of Articles 7, 8, 10, and 11 of this law provides relevant information to health or competent officials or necessary cooperation useful for timely prevention of the spread Covid-19.

Article 14: Application of other Criminal Laws

Application of the provisions in Chapter 3 of this law shall not prejudice the application of the other criminal laws where an act defined as an offense in this law also constitutes an offense in other criminal laws.

Chapter 4

Same application to other severe and dangerous contagious diseases

Article 15: Same Application of all Provisions of this Law to other severe and dangerous contagious diseases

All measures as well as penalty provisions of this law applicable for Covid-19 shall apply mutatis mutandis to other severe and dangerous contagious diseases to be determined by the Ministry of Health under the scope of this law

Comments on Chapters 3 and 4:

25. **Terminology:** OHCHR notes the vague and broad terminology stipulated in Chapter 3 of the Law, in addition to OHCHR's comments on Chapters 1 and 2 above. These include "intentional transmission", "organized group of people" and "organized entity" under Article 9, "intentional infringement" under Article 10, and "intentional obstruction or deterrence of the enforcement" under Article 11. These terms raise several human rights concerns, including how "intentionality" would be interpreted, determined and applied, especially given the high proportion of asymptomatic COVID-19 cases in Cambodia. For example, in December 2020, WHO data showed that 13 out of 40 positive cases for COVID-19 in Cambodia were asymptomatic.¹⁹ Such provisions can increase stigma and discrimination, be misused and may not be effective in reducing transmission. These provisions may also discourage people from seeking care and going into hiding instead, as experience from the criminalisation of the transmission of HIV/AIDS has shown.
26. **On effective remedy:** States have an obligation to provide an effective remedy, in line with Article 8 of the UDHR and Article 2 of the ICCPR. Effective remedy under international human rights law requires "ensuring that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of special vulnerability of certain category of persons".²⁰ Article 5, paragraph 3, and Article 6, paragraph 1 of the Law empower administrative bodies such as ministries, institutions and competent authorities to impose administrative punishments. Individuals affected by the decisions may lodge a complaint to the relevant administrative bodies representing the same organisation that may have imposed the punishments. While this provision provides scope for some degree of administrative oversight, these provisions may not be adequate to guarantee an independent and impartial process and secure justice, as involvement of the same who take administrative measures will also judge whether those administrative measures were lawful.
27. **On criminal punishments:** OHCHR notes that the imprisonment provisions stipulated in the Law varying from 6 months to 20 years in prison for breaching the Royal Government of Cambodia's public health and administrative measures appear to be excessive and grossly disproportionate. International human rights law prohibits any forms of direct and indirect disproportionate punishment and requires authorities to exercise its coercive power in a way that is proportionate to the offender's wrongdoing. For example, the Human Rights Committee, expressed concern that mandatory minimum sentencing can lead to the imposition of punishments that are disproportionate to the seriousness of the crimes

¹⁹ COVID-19 Joint WHO-MOH Situation Report 24, available at: <https://www.who.int/cambodia/internal-publications-detail/covid-19-joint-who-moh-situation-report-24>

²⁰ Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), 26 May 2004

committed, raising issues of compliance with various articles of the ICCPR.²¹ In April 2021, the UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association emphasised that the COVID-19 crisis is no justification for excessive force to be used when dispersing assemblies nor for disproportionate penalties to be imposed.²²

28. On liability of authorities: OHCHR remains concerned that the Law envisages very limited liability for the competent authorities for any infringement of the Law. While Article 12 provides that liability may be attributed to officials who arbitrarily use their authority in contradiction to the purpose of the Law, it simply refers to the existing laws in Cambodia without explicitly referring to offenses and punishments. As those who may be subjected to the Law are public with little knowledge of other existing laws, OHCHR recommends that a clear reference to the laws that may be relevant to liability of the officials are recalled in Article 12. In the absence of clearly defined liability and ambiguous terminology discussed above, there is a serious risk of arbitrary implementation of the provisions.
29. On the application of other criminal laws: this provision appears to be in contravention of Article 14 of the ICCPR. Under international human rights norms and standards, an accused who has been tried and sentenced for an offense cannot be charged again and sentenced for the same offence. Article 14 (7) of the ICCPR states "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."
30. OHCHR acknowledges that some penal provisions may be required and necessary. However, such punishments should be necessary and proportionate to the seriousness of the crime committed. In comparison with criminal punishments of 'intentional homicide or murder' under Article 199 (10 to 15 years imprisonment), 'torture and acts of cruelty' under Article 210 (7 to 15 years imprisonment) and 'rape' under Article 239 of the Cambodian Penal Code (5 to 10 imprisonment), the maximum 20 years of imprisonment stipulated in Article 9, paragraph 2 of the Law seems to be highly disproportionate, as international human rights law clearly prohibits disproportionate penalty provisions.
31. OHCHR is equally concerned that the arbitrary enforcement of these provisions in the Law may lead to violations of due process and fair trial rights of individuals, especially in the light of reduced activity of the courts due to the pandemic, and to further overcrowding prisons, particularly in the context of COVID-19.
32. Overall comments on transactional fines and monetary fines (hereinafter "fines"): OHCHR considers that fines envisaged in the Law are excessive and disproportionate. Fines for crimes under a normal criminal law serve as an alternative to sentencing, enabling sentencing authorities to exercise discretion. Some of the conducts defined in the Law, for example, 'Offense of Infringement of Administrative Measures' may not warrant a fine and imprisonment. In addition, the discretionary power in sentencing, for example

²¹ Concluding observations of the Human Rights Committee: Australia. 24/07/2000. A/55/40, paras.498-528. (Concluding Observations/Comments).

²² UN expert on the rights to freedoms of peaceful assembly and of association: "States responses to Covid 19 threat should not halt freedoms of assembly and association" (2020): <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

imprisonment from 6 (six) months to 3 (three) years and a monetary fine from 2,000,000 (two million) Riels to 10,000,000 (ten million) Riels, where such act leads to the infection of COVID-19 to other people, contributes to the possibility of arbitrary application of these provisions in the absence of clear and predictable sentencing guidelines.

33. According to the Asian Development Bank, 12.9 per cent of the total population of about 15 million Cambodians lived below the national poverty line (data from 2018), while 8.3 per cent of the employed population earn less than USD 1.90 Purchasing Power Parity a day (data from 2019).²³ Imposing fines of up to USD 5,000 for breaking health or administrative measures under the Law are vastly disproportionate to the earnings of average Cambodians.²⁴
34. *OHCHR recommends that the Royal Government of Cambodia revisits the terminology used in Chapter 3 and makes amendments to clearly define the terminology listed in paragraph 25 of OHCHR's analysis. Clear definitions will reduce the risk of subjective application and arbitrary interpretation, which would undermine its effectiveness and the protection of human rights.*
35. *Further, OHCHR recommends that the Royal Government of Cambodia also revisits the punishments in Chapter 3 and makes appropriate amendments to ensure that criminal punishments and fines are proportionate to the offender's wrongdoing. These should be in line with the standards and practices of international human rights law and other international human rights obligations which Cambodia has voluntarily accepted. OHCHR also recommends that the Royal Government of Cambodia develops and publishes sentencing guidelines with regard to the penal provisions enshrined in the Law.*
36. *Moreover, OHCHR recommends that the Royal Government of Cambodia introduces an amendment to Article 6 that provides an effective remedy to individuals who have been deprived of their rights and fundamental freedoms in line with Cambodia's obligations under Article 2 of the ICCPR.*
37. *OHCHR recommends that the Royal Government of Cambodia explicitly demonstrates its political commitment and puts in place an information campaign to guarantee that the COVID-19 pandemic or similar health emergencies do not provide a justification for unnecessary and excessive restrictions on the exercise of human rights and fundamental freedoms guaranteed by international human rights law and Cambodian legislation, or for disproportionate penalties to be imposed.*

Chapter 5 Transitional provision

Article 16: Continuing Validity of Regulations Issued Prior to this Law

²³ The Asian Development Bank's latest statistical data on poverty and socioeconomic development in Cambodia in April 2020: <https://www.adb.org/countries/cambodia/poverty>

²⁴ OHCHR's comments in this paragraph are also applicable to the Sub-decree on Health Measures to Prevent the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases dated 12 March 2021. The Sub-decree enables for transactional fines up to 50,000,000 (fifty million) Riels under Article 26, which is excessive.

All regulations concerning health, administrative and other measures aimed at combatting and preventing the spread of Covid-19, issued prior to the entry in force of this law and which are not contrary to this law shall remain effective and enforceable until otherwise replaced by other newly issued regulations.

38. **Comments on Chapter 5:** OHCHR maintains all the comments made above that are applicable to Chapter 5.

Chapter 6
Final provisions

Article 17: Abrogation

Any provision contrary to this law shall be abrogated.

Article 18: Urgent Declaration

This law shall be declared as urgent.

Comments on Chapter 6:

39. **Contradiction with international law:** Article 17 challenges the status of International Human Rights Law, which is enshrined in the treaties ratified by Cambodia, the Constitution, and the laws adopted by Parliament. With respect to the treaties ratified by Cambodia, Article 27 of the Vienna Convention on the Law of Treaties stipulates that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Several Articles of the present law conflict with international standards on the rights to freedom of association and expression that are binding upon Cambodia, as explained in the comments thereon. Thus, strict implementation of Article 17 of the Law would lead to violations of Cambodia’s international obligations.
40. **Contradiction with national law:** Article 17 also raises questions regarding the status of the present law in relation to other laws, particularly the Constitution, in which fundamental human rights and dignity are set out, and the Law on Peaceful Demonstration, in which peaceful assemblies are regulated. Provisions in the Law that are not compliant with international law would also constitute violations of the Cambodian Constitution, particularly Article 31 (see paragraph 11 of the present OHCHR analysis).
41. *OHCHR recommends a thorough, substantive and consultative revision to the Law to address the issues raised in the present analysis and thus prevent the contradictions summarised in paragraphs 39 and 40 of the present OHCHR analysis.*
