



Legal Briefing: CAMBODIA'S LAW ON PREVENTIVE MEASURES AGAINST THE SPREAD OF COVID-19 AND OTHER SEVERE AND DANGEROUS CONTAGIOUS DISEASES AS APPLIED AGAINST HUMAN RIGHTS DEFENDERS, LAND RIGHTS DEFENDERS, AND OTHER CITIZENS

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Introduction

Cambodia's Law on Preventive Measures Against the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases (Covid-19 Law)¹ resulted in serious human rights violations over the past year through the discriminatory application of its overbroad scope and powers and the imposition of excessive penalties.

In early 2020, the COVID-19 virus spread across the world and created the first global pandemic in 100 years. Cambodia was spared from the worst effects of the Alpha virus and early variants for the first year of the pandemic. That changed in early 2021, as case numbers began to rise with the arrival of more infectious variants. As part of its response to this surge in cases, the Cambodian government passed and implemented the Covid-19 Law.²

This analysis details some of the most serious human rights violations that occurred over the past year through the application of Cambodia's Covid-19 Law and two sub-decrees which establish the legal procedures to implement the law. These violations include restrictions on movement, peaceful assembly, freedom of association and freedom of expression. The purpose of the analysis is to clarify how the law fails to meet national and international human rights standards; the effects that such a law has had on human rights defenders and citizens exercising their rights; and to provide a sharp warning of the dangers of codifying sweeping and unchecked government powers during a public health crisis.

In the span of just 12 days in early 2021, the one-party Cambodian government hurriedly introduced and passed the Covid-19 Law without consultation with civil society, promulgating the law on 11 March 2021. The law grants the government extraordinarily broad powers and discretion to interfere with fundamental social, political and economic rights. The repressive law was reinforced through the passage of two sub-decrees before the end of the March. Local and international stakeholders immediately raised concerns regarding the potential for abuse written into the poorly drafted law, noting mandatory and excessive prison sentences and fines for violating administrative measures and other ambiguously-worded offences.³ Over half the text of the Covid-19 Law is devoted to penalties, including prison sentences of up to 20 years, yet unclear language in the one article regarding liability of authorities can be used to essentially immunise officials for abuse of power.

¹ Law on Preventive Measures Against the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases (Covid-19 Law), NS/RKM/0321/004 (11 March 2021)

² The Royal Government of Cambodia also passed a law in April 2020 that expanded upon the King's constitutional power to declare a state of emergency. See Article 22, Constitution of the Kingdom of Cambodia; Law on Management of the Nation in a State of Emergency, NS/RKM/0420/018 (29 Apr. 2020). The State of Emergency law was previously analysed but never invoked, and therefore will not be included in this analysis of relevant laws as they were applied within the last year.

³ See, e.g., "A Human Rights Analysis of the Law on Preventive Measures Against the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases", OHCHR, April 2021, available at: <https://cambodia.ohchr.org/en/publications-materials/reports>



One year after the implementation of the law, those fears have largely been realised, as the law has been used arbitrarily to repress the work of human rights defenders and land rights defenders, as well as restrict citizens' exercise of freedom of peaceful assembly and other rights. Cambodia was not alone in using Covid-19 as a reason to pass repressive new laws, with the Philippines and Hungary as other notable examples.⁴

In the immediate months following the promulgation of the Covid-19 Law, Cambodia used it to implement restrictive and abusive lockdowns from April to August 2021. These lockdowns affected hundreds of thousands of Cambodians across 30 districts in 13 provinces. Areas of lockdowns were identified by a colour-coded system of yellow, dark yellow, or red zones, with red zones containing the greatest restrictions and an almost absolute ban on movement which severely limited people's access to food and medical care. The 2021 Report of the UN Secretary-General to the UN Human Rights Council noted at least 729 persons were arrested under the Covid-19 Law in the less than two-month period between mid-April and end of May 2021, with 126 persons charged, 110 sent to pre-trial detention and 16 convicted.⁵ The Cambodian government objected to these figures.⁶

In early 2022, as Covid-19 cases and lockdowns subsided, the law was used with greater precision to target human rights defenders, including six labour union members who were arrested and charged under the Covid-19 Law for their involvement in an ongoing peaceful strike. Quarantine measures under the law were arbitrarily used against striking workers in Phnom Penh in February and March 2022 and against land rights protesters in Svay Rieng province in August 2021. The Covid-19 Law was quickly deployed as a new tool in a national legal framework that has been increasingly weaponised against human rights defenders, land rights defenders and critical voices. This documented abuse of power has again reinforced that drafting and passing new laws in Cambodia's one-party system fails to secure and promote citizens' rights. Instead, it codifies ever expanding powers and discretion to be wielded against perceived government opponents and critics, and further entrenches the ruling party.

This analysis was prepared on the basis of unofficial English translations and the official Khmer language of the Covid-19 Law and related sub-decrees. The complete, unofficial English translations and Khmer originals of the law and sub-decrees are available for [reference](#). Additional information was obtained through monitoring activities conducted in the course of LICADHO's mandate. LICADHO continued human rights monitoring and supplying essential services, including social services and legal support, throughout the pandemic. Activities were conducted in consideration of relevant law and emerging directives, and with strict health measures in place, such as the wearing of personal protective equipment

⁴ Kenneth Roth, "How Authoritarians Are Exploiting the COVID-19 Crisis to Grab Power", *The New York Review of Books*, 3 April 2020, available at: <https://www.hrw.org/news/2020/04/03/how-authoritarians-are-exploiting-covid-19-crisis-grab-power>

⁵ *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 to the UN Human Rights Council, A/HRC/48/49*, 16 September 2021, at para. 1, 24

⁶ Summary record of the 3854th meeting on 11 March 2022, UN Human Rights Committee, CCPR/C/SR.3854, 17 March 2022, at para. 20, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSR.3854&Lang=en ("[M]ost of the people who had violated that law had just been fined, cautioned, and allowed to return home. Only 44 cases concerning 115 people had been referred to court..."); see Mao Sopha & Phoung Vantha, "Cambodia Ranked Low for Rule of Law", *Cambodianess*, 15 October 2021, available at: <https://cambodianess.com/article/cambodia-ranked-low-for-rule-of-law> ("[Chin Malin] said...[I]n fact, only about 100 of the more than 700 arrested were taken to court. Of the 100 or so, only 30 were detained. The rest were just fined and allowed to return home.")



(PPE). As Covid-19 cases and administrative measures increased in Cambodia, LICADHO monitored developments and human rights violations and compiled daily briefings. As the pace of developments slowed, Covid-19 briefings were issued on a weekly and then monthly basis. Relevant domestic law, international law and standards, and reporting from local and international organisations were also reviewed. The scope of impact considered is from 11 March 2021 through 31 July 2022.

Overview of the Covid-19 Law and Sub-Decrees

The draft Covid-19 Law was introduced on 28 February 2021 and adopted by the National Assembly on 5 March 2021 at an extraordinary session of the sixth legislature. The Covid-19 Law was reviewed and approved by the Senate on 11 March 2021 at an extraordinary session of the fourth legislature. It was signed into law by the acting Head of State on 11 March 2021 and took immediate effect. There were no consultations with civil society prior to the law's adoption.⁷

The following day, on 12 March 2021, Prime Minister Hun Sen signed the Sub-Decree on Health Measures to Curb the Spread of Covid-19 and other Deadly Infectious Diseases (Sub-Decree on Health Measures), setting forth regulations to implement Article 3 of the Covid-19 Law.⁸ The Prime Minister also signed the Sub-Decree on Administrative Measure for Preventing the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases (Sub-Decree on Administrative Measures), on 31 March 2021, which promulgated further regulations for the implementation of Article 4 of the law.⁹

Many of the problems and violations documented in this analysis were raised by civil society and the United Nations in public statements and communications to the Cambodian government.¹⁰ One year after promulgation, the UN Human Rights Committee raised concerns that the Covid-19 Law was being applied in a discriminatory manner and questioned whether the government would amend or repeal it.¹¹

A. Indefinite Purpose and Scope

The purpose of the Covid-19 Law, the Sub-Decree on Health Measures and the Sub-Decree on Administrative Measures is broadly defined as “protecting people’s lives, public health, and public order”

⁷ See, e.g., “Communication to the Royal Government of Cambodia from the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the independence of judges and lawyers” (Communication of Special Rapporteurs), OHCHR, OL KHM 4/2021, 31 March 2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=26266>

⁸ Sub-Decree on Health Measures to Curb the Spread of Covid-19 and Other Deadly Infectious Diseases (Sub-Decree on Health Measures), No. 37 ANKR/BK (12 March 2021); *see* Article 3, Covid-19 Law (Health Measures)

⁹ Sub-Decree on Administrative Measures for Preventing the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases (Sub-Decree on Administrative Measures), No. 57 ANK/BK (31 March 2021); *see* Article 4, Covid-19 Law (Administrative Measures)

¹⁰ See, e.g., “A Human Rights Analysis of the Law on Preventive Measures Against the Spread of Covid-19 and Other Severe and Dangerous Contagious Diseases”, OHCHR, April 2021

¹¹ “In Dialogue with Cambodia: experts of the Human Rights Committee ask about freedom of expression and raise issues concerning Covid-19 prevention measures”, OHCHR, 11 March 2022, available at:

<https://www.ohchr.org/en/press-releases/2022/03/dialogue-cambodia-experts-human-rights-committee-ask-about-freedom>



and minimising “impact” on Cambodia’s social and economic sectors.¹² The stated purpose of any legislation should clearly articulate the legislature’s intent to guide proper application of the law. The twin aims of protecting people’s lives and public health are broad, yet would be sufficient with additional clarity or guidelines for the government’s obligation to guarantee citizen’s rights.¹³ The subsequent sub-decrees on health and administrative measures, however, do not provide meaningful guidance to tailor application of the law but rather reconfirm broad, ambiguous powers that present a risk for arbitrary enforcement. Discriminatory enforcement violates the human rights guaranteed to Cambodian citizens under the Constitution as well as the guarantee that all citizens shall be equal before the law.¹⁴

Moreover, the addition of “public order” and “impact” on social and economic sectors to the law’s purpose is unnecessary and unacceptably broad and ambiguous. The terms simply create the legal opportunity and justification for the ruling party to suppress the freedoms of anyone perceived as an opponent or government critic, which is contrary to the principles of universality, equality and fairness that underlie human rights. It is therefore evident from the very first articles of the Covid-19 Law and sub-decrees that the law can be abused by using its broad powers to restrict human rights, rather than assisting the government in fulfilling its obligation to protect citizens’ rights.

The scope of the Covid-19 Law and sub-decrees is also limitless. The law and sub-decrees apply to preventing the spread of Covid-19 and any other “severe and dangerous contagious diseases.”¹⁵ There is no definitions section in the Covid-19 Law or sub-decrees, and thus no guidance for determining what constitutes a severe, dangerous and contagious disease. A plain-language reading of those terms indicates a scope so expansive that it is essentially meaningless and risks the law being invoked in response to almost any contagious disease, particularly when read in conjunction with the general purpose. The responsibility for this decision—and when the law can be invoked—is assigned solely to the Ministry of Health.¹⁶ Consolidating this power in just one institution, which is granted absolute authority to apply wide-ranging measures that will significantly impact human rights, with no guidelines or requirements for consultation with other authorities or stakeholders, has disturbing and obvious potential for abuse.

Finally, there are no time limits or requirements for periodic review of whether the wide-ranging health measures are necessary and authorised under the law. Administrative measures are initially limited to a period not to exceed two weeks; however, that period can be extended for an undefined period of time and an unspecified number of times, and is thus effectively unlimited.¹⁷ As Covid-19 is unlikely to disappear, the expansive and vague powers in the Covid-19 Law can be executed at any time, indefinitely, by a significant range of government actors.

B. Overly Broad and Discretionary Powers

The vast powers granted to the Cambodian government in Articles 3 and 4 of the Covid-19 Law are codified in ambiguous language and are unqualified and unlimited. Authorised actions include:

¹² Article 1, Covid-19 Law; Article 1, Sub-Decree on Health Measures; Article 1, Sub-Decree on Administrative Measures

¹³ Articles 31, 32, 38, Constitution of the Kingdom of Cambodia (1993)

¹⁴ Article 31, Constitution of the Kingdom of Cambodia

¹⁵ Articles 2, 15, Covid-19 Law; Article 2, 32, Sub-Decree on Health Measures; Article 2, 20, Sub-Decree on Administrative Measures

¹⁶ Articles 2, 15, Covid-19 Law

¹⁷ Articles 12–13, Sub-Decree on Administrative Measures



- Quarantine¹⁸
- Isolation for treatment¹⁹
- Restriction or prohibition of travel²⁰
- Restriction or prohibition of meeting and gathering of people which “may” cause the spread of Covid-19²¹
- Prohibition or restriction on business operations or professional activities which are “risky” or the sources of the spread of Covid-19²²
- Lockdown of certain Covid-19 infected areas or places²³
- “Other” health and administrative measures “necessary to respond to and prevent the spread of Covid-19”²⁴

Any one of these measures risks significant and unacceptable limits on fundamental human rights including the right to freedom of movement, freedom of peaceful assembly, freedom of association and freedom of expression. Any restrictions on these fundamental rights must be necessary in a democratic society to achieve a legitimate aim, and must also be proportionate to that aim.²⁵ While public health is a legitimate ground for restrictions, any restrictions must still be necessary, proportionate and consistent with other rights provided for under international law.²⁶ Restrictions should only be considered as a measure of last resort. The least restrictive means possible to accomplish a legal objective must be used.²⁷

The Sub-Decree on Health Measures provides some categories and guidance on health measures to be imposed, such as Covid-19 testing, quarantine and isolation, and the Sub-Decree on Administrative Measures establishes exceptions to imposed restrictions. The Sub-Decree on Administrative Measures in particular reverses the legal standards for restrictions on rights. Rather than approaching restrictions as a measure of last resort, the sub-decree permits sweeping restrictions and prohibitions on human rights and then carves out limited and ambiguous exceptions to those restrictions, which are subject to arbitrary enforcement. There is thus significant risk for abuse and that the resulting restrictions will unlawfully infringe on citizens’ rights, and be neither necessary nor proportionate.

A fundamental principle of law is that it must be clearly written in order to provide notice to the public regarding rights and prohibitions. There is no definitions section in the Covid-19 Law or sub-decrees. Key

¹⁸ Article 3, Covid-19 Law

¹⁹ Article 3, Covid-19 Law

²⁰ Article 4, Covid-19 Law

²¹ Article 4, Covid-19 Law

²² Article 4, Covid-19 Law

²³ Article 4, Covid-19 Law

²⁴ Articles 3 & 4, Covid-19 Law

²⁵ See, e.g., General Comment No. 37 on the right of peaceful assembly (Article 21) (General Comment No. 37) at para. 36, Human Rights Committee, CCPR/C/GC/37, 17 September 2020

²⁶ Articles 12(3), 19(3), 21, 22(2), International Covenant on Civil and Political Rights (ICCPR), 1976. Cambodia signed ICCPR in 1980 and ratified the treaty on 26 May 1992.

²⁷ General Comment No. 37 at para. 37; General Comment No. 34 on the freedoms of opinion and expression (Article 19) (General Comment No. 34) at para. 6, Human Rights Committee, CCPR/C/GC/34, 12 September 2011; General Comment No. 27 on the freedoms of movement (Article 12) (General Comment No. 27) at para. 13–16, Human Rights Committee, CCPR/C/21/Rev.1/Add.9, 1 November 1999



terms and phrases remain undefined, such as “beneficial”, “urgency and necessity”, “avoiding quarantine”, “mandatory treatment” and “serious impact on public health”.²⁸ These words and phrases, in their ordinary meanings, are either so vague as to not be meaningful or lack any accepted uniform or associated meaning to guide interpretation. While the unofficial English translations were relied upon for this analysis, the criticism is also true for the official Khmer version of the law. Many of these terms are critical to determining whether a violation of the law has occurred, and different interpretations can trigger significant penalties, including prison time. This risks inconsistency and unpredictability in what and how health and administrative measures are applied; insufficient notice to the public; and the potential for arbitrary application of criminal charges against select individuals.

C. Lack of Meaningful Limits or Oversight

The expansive and largely discretionary powers authorised under the Covid-19 Law can be delegated to a wide range of government actors and authorities in undefined cases of “urgency and necessity”. The Ministry of Health, which as noted above has sole authority to determine what other diseases trigger the law, may be granted authority to impose other health measures in addition to the vague measures already listed in the law.²⁹ Unspecified “ministries, institutions or competent authorities” may be granted discretion to implement far-reaching administrative measures.³⁰

The Sub-Decree on Health Measures clarifies that the Ministry of Health may issue detailed instructions on health measures, which can promote consistency in application and enforcement of the law.³¹ The Sub-Decree on Administrative Measures, however, has no corollary parameters but rather grants wide discretion to municipal-provincial boards of governors to take and implement sweeping administrative measures within their territory “where there is Covid-19 infection”.³² Articles 11, 12 and 13 of the Sub-Decree on Administrative Measures essentially reinforce that municipal-provincial boards of governors have broad, discretionary authority to interpret legal powers and set up the necessary mechanisms to control, monitor, guide, and implement or relax administrative measures, including imposing any other measures deemed to be urgent and necessary to control the spread of Covid-19.

This broad, discretionary authority is even more worrisome considering that Article 12 of the Covid-19 Law and Article 17 of the Sub-Decree on Administrative Measures indicate that competent authorities may not be liable for the arbitrary use of their authority which “causes infringement of individual’s rights and freedom, physical integrity or causes damage to property” unless that act is also “in contradiction to the purposes of this law.” Given the incredibly vague and broad general purpose of the law and sub-decrees, these provisions in effect can be used to immunise authorities for abuse of power and violations of fundamental rights.

D. Excessive Penalties

Over half of the text of the Covid-19 Law is devoted to detailing “punishments” for violations, the majority of which are criminal (i.e. imprisonment and fines) rather than administrative punishments (i.e. suspension of a business licence or closure of a business). This disproportionate emphasis on punishment exists despite key terms in the law going undefined, with little to no guidance for the application of broad powers, and no formal or required oversight for sweeping rights restrictions. Together, this suggests that

²⁸ See, e.g., Article 10, Covid-19 Law

²⁹ Article 3, Covid-19 Law

³⁰ Article 4, Covid-19 Law

³¹ Article 17, Sub-Decree on Health Measures

³² Article 11, Sub-Decree on Administrative Measures



the law is intended to be a punitive tool rather than a means to protect citizens' right to health. UN human rights experts have expressed concern that the grossly disproportionate and excessive penalties proposed for merely breaching health and administrative measures do not appear to be necessary or proportionate, and would thus be inconsistent with Cambodia's obligations under international law.³³

Terms of imprisonment are mandatory for most offences listed under the Covid-19 Law and can span up to 20 years. Terms of imprisonment exceed (significantly in some cases) the penalties for related offences under Cambodia's Criminal Code. The offence of obstruction of public official under the Criminal Code, for example, is punishable by one to three months imprisonment, or six to 12 months in cases with aggravating circumstances.³⁴ Obstruction of enforcement measures under the Covid-19 Law is punishable by a prison sentence of six months to three years, or two years to five years in cases of aggravating circumstances where such act leads to the infection of others or "serious impact on public health".³⁵ The unnecessary and disproportionate nature of penalties under the Covid-19 Law were illustrated in one case where four youths in Takeo province were found guilty of violating administrative measures for a house party with drinking and dancing, and were sentenced to one year in prison and fined.³⁶ In a similarly excessive case, a man in Kampong Cham was sentenced to one year in prison for drinking in front of his home and insulting local authorities.³⁷

The excessive criminal penalties follow from breaches of vaguely worded offences, making them even more troubling. Heightened and significant penalties are applicable for an individual whose action "leads to the infection of Covid-19 to other people" or has a "serious impact on public health".³⁸ With the obvious complication that it will be virtually impossible to prove that one infection resulted from a specific individual when you are dealing with a contagious airborne pathogen, "the infection of other people" could certainly never meet the standard of proof to be established beyond a reasonable doubt.

In addition, the lack of clarity on key elements such as "serious impact on public health" risks inconsistent and arbitrary prosecution. Other articles of the Covid-19 Law, such as Article 9, which contains the most egregious penalties of up to 20 years in prison for the "intentional transmission" of Covid-19 to other people "where such act is committed by an organized group of people or an organized entity", raise similar questions regarding the burden of proof and how "intentional transmission" could be established and distinguished from reckless or negligent transmission.³⁹ The criminal responsibility for an "organized group of people" also raises serious concerns about the potential arbitrariness of prosecuting individuals for an act as simple as participating in a peaceful assembly that observes social distancing and the wearing of masks, if a participant in the demonstration later tests positive.

Rights Violations Under the Covid-19 Law as Applied

A. Unlawful Restrictions on Rights to Freedom of Peaceful Assembly and Association

³³ Communication of Special Rapporteurs, at 3–4

³⁴ Articles 503–504, Criminal Code of Cambodia

³⁵ Article 11, Covid-19 Law

³⁶ Mech Dara & Nat Sopheap, "Covid-19 Arrests: Parties, not wearing masks, smuggling on ambulances", VOD, 20 April 2021, available at: <https://vodenglish.news/covid-19-arrests-parties-not-wearing-masks-smuggling-on-ambulances/>

³⁷ Ibid

³⁸ See, e.g., Articles 8, 10, Covid-19 Law

³⁹ Communication of Special Rapporteurs, at 4



Application of the Covid-19 Law and sub-decrees within the first year resulted in discriminatory and unnecessary restrictions on the rights to freedom of peaceful assembly and association, which were not proportionate or at times even apparently related to the protection of public health. The Covid-19 Law was arbitrarily enforced to break up or prevent demonstrations by labour activists, land rights defenders and others. Land rights demonstrators and striking workers were ordered into quarantine under discriminatory conditions and land community representatives and labour union leaders were arrested, detained and charged under the Covid-19 Law.

The rights to freedom of assembly and association are enshrined in the Constitution of the Kingdom of Cambodia,⁴⁰ the Law on Peaceful Assembly⁴¹ and other domestic and international laws, including the International Covenant on Civil and Political Rights (ICCPR)⁴² to which Cambodia is a party. The UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association specifically addressed governments' continuing obligation to facilitate the free exercise of these rights during the pandemic in a statement, saying "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."⁴³

Despite such warnings, the Covid-19 Law has been applied to discriminatorily repress human rights defenders, land rights defenders and government critics. Article 5 of the Sub-Decree on Administrative Measures, for example, violates the principle of least restrictive measures by broadly authorising restrictions to or the prohibition of "any meeting or gathering of people" before carving out ambiguous exceptions to the general rule.⁴⁴ Authorities thus have significant discretion to decide when and how to restrict the rights to freedom of peaceful assembly and association.

The Covid-19 Law and sub-decrees were applied in this way in an attempt to silence labour unionists during an ongoing strike at NagaWorld, a Malaysian-owned casino with an exclusive operating licence in Phnom Penh. Hundreds of current and former workers from the Labour Rights Supported Union of Khmer Employees of NagaWorld (LRSU) began a strike on 18 December 2021 in response to failed negotiations over improper compensation and layoffs that unfairly targeted union members and leaders.

While nine union members were arrested and charged under the Criminal Code in late December 2021 and early January 2022,⁴⁵ another six NagaWorld employees and LRSU members were charged with obstruction of enforcement measures under Article 11 of the Covid-19 Law in February 2022.⁴⁶ There is no evident justification for charging the six under the Covid-19 Law. Three LRSU members were arrested on 5 February 2022 along with some other workers after leaving a government-established site, where they had submitted to Covid-19 testing. Those three unionists—Seng Vannarith, Sao Sambath and Choub Channath—were held in pre-trial detention from 9 February until 17 March 2022, when they were released

⁴⁰ Articles 41, 42, Constitution of the Kingdom of Cambodia

⁴¹ Article 2, Law on Peaceful Assembly, RKM/1209/025, 5 December 2009

⁴² Articles 21, 22, ICCPR

⁴³ Clément Voule, 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), available at:

<https://www.ohchr.org/en/statements/2020/04/states-responses-covid-19-threat-should-not-halt-freedoms-assembly-and?LangID=E&NewsID=25788>

⁴⁴ Article 5, Covid-19 Law (emphasis added)

⁴⁵ "LRSU president, union activist sent to pre-trial detention on incitement charges", LICADHO, 5 January 2022, available at: <https://www.licadho-cambodia.org/flashnews.php?perm=304>

⁴⁶ "LRSU unionists arrested, imprisoned", LICADHO, 9 February 2022, <https://www.licadho-cambodia.org/flashnews.php?perm=305>



on bail. Three other unionists were also charged under the Covid-19 Law and the case against all six is still pending.

In addition, beginning in early February 2022, authorities invoked the Covid-19 Law in a discriminatory manner to break up the strike on an almost daily basis. Authorities began applying health and administrative measures to prohibit the strike after a worker tested positive for Covid-19, despite reports that the worker had not participated in the strike for two weeks prior to her positive test and widely published photographs showing that the strike was outdoors and the workers wore masks and observed social distancing.

On 5 February 2022, workers were prevented from participating in the strike, ordered onto buses and taken for Covid-19 testing. After submitting to testing and completing government-mandated quarantine measures at home, LRSU workers attempted to resume the strike, only to be forced onto buses and taken to government quarantine facilities.⁴⁷ Between early February and mid-March 2022, authorities detained hundreds of LRSU workers in quarantine centres, overnight or for a period of several days, often after using unlawful force to push, pull and drag them into city buses. In mid-March, authorities began busing workers from the strike site to the city's outskirts, where they then had no option but to organise and pay for their transport home. The forced busing in particular highlights the enormous discretion granted to authorities to use virtually any tactics to restrict the rights to freedom of assembly and of association, which results from the ambiguous and overly permissive clauses of the Covid-19 Law and sub-decrees.⁴⁸ Disruption of the strike and the forced busing continued at almost all attempted gatherings by the strikers until early July 2022.

The Covid-19 measures employed against the LRSU striking workers were beyond stated protocol for the general public and thus presumptively discriminatory. Five UN human rights experts decried the treatment of the LRSU workers in early February as unjustified, unnecessary and disproportionate to the circumstances, and stated that, "authorities appear to have dressed up efforts to stifle peaceful and lawful labour action as public health measures."⁴⁹

Other activists have also been targeted for arbitrary interference with their rights to freedom of peaceful assembly and of association. On 23 October 2021, approximately 60 people attempted a peaceful assembly along Street 120 in Samrong commune, Prek Pnov district, Phnom Penh, seeking the issuance of land titles and family books after occupied land near Tamok Lake was classified as state land. Prek Pnov district authorities ordered the demonstrators, including the Samrong Tbong community representative, to disperse, arguing that their demonstration violated the Sub-Decree on Administrative Measures.

On 2 August 2021, hundreds of families gathered in the Svay Chrum district of Svay Rieng province to protest official efforts to force them to accept inadequate compensation for the seizure of nearly 100 hectares of farmland. On 4 August, Yous Sophorn and En Soth, two community representatives of Samaki Chek Meas community in Svay Rieng province, were fined 2 million riel (US\$500) each by district authorities under the Covid-19 Law for their part in the demonstration, as some demonstrators were allegedly not wearing masks or social distancing. On 13 August, approximately 60 families from the Chek

⁴⁷ "64 NagaWorld Strikers Detained, Sent to Covid-19 Centre", LICADHO, 21 February 2022, available at: <https://www.licadho-cambodia.org/flashnews.php?perm=306>

⁴⁸ See, e.g., Announcement, Phnom Penh Municipal Authority, 15 February 2022 (referencing Covid-19 as a justification for disrupting the site of the strike)

⁴⁹ "Cambodia: Stifling new measures against striking workers are 'unjustified' – UN human rights experts", OHCHR, 16 February 2022, available at: <https://www.ohchr.org/en/press-releases/2022/02/cambodia-stifling-new-measures-against-striking-workers-are-unjustified-un>



and Thnong villages were ordered into 14-day quarantine under the pretext that a villager at the protest had tested positive for Covid-19.⁵⁰

On 27 August, Yous Sophorn and En Soth were arrested. On 28 August, both community representatives were charged under Articles 10 and 11 of the Covid-19 Law for disobeying administrative measures and obstruction of enforcement measures, and sent to pre-trial detention.⁵¹ Following their arrests, more than 100 families in the affected community accepted the government's offered compensation despite their earlier objections. Yous Sophorn and En Soth were released on bail on 15 September 2021, tried on 29 March 2022, and the verdict has been issued but is not public.

It was foreseeable that authorities would abuse broad, discretionary powers to interfere with fundamental rights. In April 2020, for example, a large group of police officers, officers from the Ministry of Environment and local authorities prevented a group of approximately 40 youth, NGO staff and community members from commemorating the 8th anniversary of the murder of environmental activist Chut Wutty in Prey Lang forest. Authorities cited the risk of Covid-19 transmission as the basis for banning the peaceful assembly despite the fact that the gathering was outdoors. Approximately 50 soldiers were deployed to search for five environmental activists who had entered the forest, including Goldman Environmental Prize winner Ouch Leng. Despite the clear evidence warning of the government's abuse of power to restrict fundamental freedoms under the guise of a public health crisis, the Covid-19 Law and sub-decrees were hurriedly passed to codify and entrench that very authority.

B. Unlawful Restrictions on Freedom of Expression

Charges under the Covid-19 Law have been arbitrarily filed against journalists and individuals expressing critical opinions of the government, applying unnecessary and disproportionate restrictions on the right to freedom of expression. The right to freedom of expression is upheld and protected in the Constitution of the Kingdom of Cambodia⁵² and international law, including Article 19 of the ICCPR.⁵³ In May 2021, twelve international NGOs issued a public statement calling on the Cambodian government to amend or repeal the Covid-19 Law, cease harassment of journalists and critics, and use the least intrusive measures in relation to the right of freedom of expression.⁵⁴

Between April and July 2021, immediately following the law's promulgation, at least six individuals were arrested under the Covid-19 Law for expressing opinions or sharing information perceived as critical about the Cambodian government's handling of the pandemic, and charged under the law's broad and vague Article 11 for obstruction of enforcement measures. All six individuals are charged based on activities on social media, such as posting videos that are critical of the government's handling of the pandemic on TikTok. For example, Kao Piseth, a news website correspondent for the Siem Reap Tannhektar, was arrested on 14 July 2021 and later convicted of criminal incitement and obstruction of enforcement measures under Article 11 of the Covid-19 Law after expressing opinions on his Facebook page about the

⁵⁰ Chea Sokny, "Svay Rieng provincial authorities place canal land dispute protestors in Covid-19 quarantine", *CamboJA*, 13 August 2021, available at: <https://cambojanews.com/svay-rieng-provincial-authorities-place-canal-land-dispute-protestors-in-covid-19-quarantine/>

⁵¹ "Two Community Reps Arrested, Charged over Covid Law", *LICADHO*, 28 August 2021, available at: <https://www.licadho-cambodia.org/flashnews.php?perm=290>

⁵² Article 41, Constitution of the Kingdom of Cambodia

⁵³ Article 19, ICCPR

⁵⁴ "Cambodia: Stop silencing critical commentary on Covid-19", *Joint Statement*, 25 May 2021, available at: <https://www.amnesty.org/en/documents/asa23/4183/2021/en/>



government's decision to use the Sinopharm and Sinovac vaccines.⁵⁵ Kao Piseth was sentenced to serve two-years in prison and his conviction and sentence were upheld by the Battambang Appeal Court on 5 July 2022.⁵⁶ Pan Sophy, a worker on a pig farm, was similarly arrested on 9 April 2021 in Kampong Speu and later convicted of criminal incitement and obstruction of enforcement measures for posting a video on the social media platform TikTok, which was critical of the government's handling of the pandemic. Pan Sophy was sentenced to serve 18 months in prison and was still serving his sentence in July 2022.

Charges under Article 11 of the Covid-19 Law carry a mandatory prison sentence, up to three years in prison, and a fine of up to 10 million riel (approximately US\$2,500). If the act of obstruction is proven to have led to the infection of others or has an undefined "serious impact on public health", an individual can be imprisoned for up to five years and fined up to 20 million riel (approximately US\$5,000).

Several of the defendants are charged under both the Criminal Code⁵⁷ and the Covid-19 Law. The layering of multiple charges, each with a mandatory prison sentence, further supports that such measures are not proportionate in response to online expression of an opinion critical of the government, nor are such measures necessary. Moreover, the Human Rights Committee emphasised in General Comment 34 that criminalising the holding of an opinion itself is inconsistent with the spirit and the letter of Article 19 of the ICCPR, as are any efforts to coerce the holding or not holding of an opinion.⁵⁸

Strict limitations and harsh penalties on the free communication of information and ideas particularly by members of the media, such as Kao Piseth, are unnecessary restrictions and particularly worrying. Information on how the Covid-19 Law has been applied within the first year supports the conclusion that it is an additional tool for censorship and suppression of an independent media and journalists. Other legal provisions, such as the crime of incitement, were also widely used during the year to jail, convict, imprison and even deport journalists for reporting on or expressing opinions on the government's Covid-19 response. In addition, journalists were barred from reporting from within red zones without government permission and threatened against publishing information that could "provoke turmoil in society".⁵⁹

C. Unlawful Restrictions on Freedom of Movement and the Right to Health

Sweeping travel restrictions, curfews and lockdowns were imposed across Cambodia between April and September 2021—notably in the cities of Phnom Penh, Sihanoukville, Poipet, Kandal and Siem Reap, which affected hundreds of thousands of Cambodians. For a period of time, police officers in some areas of Phnom Penh used bamboo canes to beat citizens who allegedly violated lockdown measures—a brutal abuse of power initially defended by the Phnom Penh governor.⁶⁰ These lockdowns occurred pursuant to Article 4 of the Covid-19 Law, which expansively permits lockdowns of undefined "Covid-19 infected areas or places."

⁵⁵ "Cambodian reporter facing five years in prison for comment about vaccines", Reporters Without Borders, 21 July 2021, available at: <https://rsf.org/en/cambodian-reporter-facing-five-years-prison-comment-about-vaccines>

⁵⁶ Ngay Nai, "Appeal court upholds sentence against journalist who criticized vaccines", CamboJA, 5 July 2022, available at: <https://cambojanews.com/appeal-court-upholds-sentence-against-journalist-who-criticized-vaccines/>

⁵⁷ Articles 494, 495 (Incitement), Criminal Code of Cambodia

⁵⁸ General Comment No. 34, at para. 9–10

⁵⁹ "Cambodia: Stop silencing critical commentary on Covid-19", Joint Statement, 25 May 2021, available at: <https://www.amnesty.org/en/documents/asa23/4183/2021/en/>

⁶⁰ Ouch Sony, "Police introduce canes for beating lockdown violators, 100 arrested", VOD, 21 April 2021, available at: <https://vodenglish.news/police-introduce-canes-for-beating-lockdown-violators-100-arrested/>



Under the color-coded lockdown system, “red zones” involved the greatest restrictions, prohibiting travel except for medical emergencies. Freedom of movement is interwoven with individual liberty and dignity and is critical to the exercise of other fundamental rights such as the right to work, right to family and right to health.⁶¹ Restrictions on freedom of movement made on a public health basis, while permissible, must still be necessary in a democratic society, proportional and consistent with other rights.⁶² As with limitations on other human rights, the least restrictive measures must be adopted to ensure the right remains protected and any restrictions must be clearly defined to prevent abuse of discretion.⁶³

The Covid-19 Law and Sub-Decree on Administrative Measures, however, again invert the norm and exceptions, beginning with the authorisation to broadly restrict all movement and then listing just a few, unclearly defined exceptions.⁶⁴ This legal construction—inconsistent with international standards—is what created the power for authorities to establish lockdown areas such as red zones with little notice and harsh, overly broad restrictions. Lockdown measures were neither carefully designed nor deliberately applied to minimise adverse impacts on citizens, and inappropriately granted unfettered discretion to various authorities to determine if, when and how any exceptions for freedom of movement would apply.

For example, although Article 4 of the Sub-Decree on Administrative Measures lists travels due to urgent health reasons as an exception to a lockdown, in reality many people were prevented from accessing healthcare services and in some cases were not allowed out of their homes. In May 2021, for example, a 17-year-old mother gave birth at home due to lockdown restrictions, which presented unacceptable risks to the life and health of mother and child. As the government, through its own measures, breached its obligation to uphold fundamental rights, others were left scrambling to fill the void by providing medical services and medicines through virtual or socially distant means.

The Cambodian government’s administrative measures contradicted the stated purpose of the Covid-19 Law and sub-decrees to protect people’s lives and public health, and minimise the impact of the disease on the social and economic sectors. Lockdowns and related administrative measures imposed under the law inflicted significant negative impacts, impairing citizens’ rights to enjoyment of the highest attainable standard of physical and mental health.⁶⁵ Hundreds of thousands of Cambodians were severely restricted in accessing food, medicine, health care, and other essential goods and services. Social media was flooded with posts from citizens about a lack of food and other essential items, and authorities blocked NGOs, charitable groups and the United Nations from delivering much needed assistance. A rapid assessment conducted by INGOs in May 2021 on the lockdown period in Phnom Penh found that 77% of red zone residents had insufficient food and only 43% had received food assistance.⁶⁶ After significant delays, the government eventually implemented a system to sell an extremely limited set of essential goods from a government-run store. Children were among the vulnerable populations denied adequate access to food, essential goods and medical care while also being cut off from education. The harsh restrictions on freedom of movement that were implemented thus likely had a disproportionate impact on children’s mental and physical health and development, as well.

⁶¹ Articles 31, 32, 40, Constitution of Cambodia; Article 12, ICCPR; Article 12, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976. Cambodia signed ICESCR in 1980 and ratified the treaty on 26 May 1992.

⁶² Article 12(3), ICCPR; General Comment No. 27, at para. 2, 11, 15

⁶³ General Comment No. 27, at para. 13–15

⁶⁴ Article 4, Covid-19 Law; Articles 3, 4, Sub-Decree on Administrative Measures

⁶⁵ Article 12, ICESCR

⁶⁶ “Covid-19 Rapid Assessment: Lockdown situation in Phnom Penh”, DanChurchAid et al., at 2, 24 May 2021, available at: <https://reliefweb.int/report/cambodia/covid-19-rapid-assessment-lockdown-situation-phnom-penh>



D. Other Rights Violations in Cambodia's Prisons and Courts

Health measures as directed by the Ministry of Health under the Covid-19 Law and Sub-Decree on Health Measures, including social distancing and controlled entry of the number of persons to a location, applies to public areas and institutions such as the prisons and courts.⁶⁷ The widely disparate responses within these institutions and harmful impacts on fundamental rights exemplify the lack of consistency and negative outcomes that result from granting significant discretion to a range of authorities to implement overbroad and poorly defined restrictions on rights, without a carefully designed formal system of guidance and review.

Overcrowding has been a serious problem in Cambodia's prisons for years. During the height of the pandemic, prisons remained profoundly overcrowded—for example, Kampot Prison was reported at 522% capacity and Koh Kong Prison was reported at 360% capacity in June 2021. Overcrowding is largely caused by the Cambodian authorities' lack of respect for the presumption of innocence, leading to the overuse and abuse of pre-trial detention. Authorities did not sufficiently utilise legal measures for alternatives to detention and bail during the pandemic to reduce prison overcrowding, which would have increased social distancing as directed in Article 7 of the Sub-Decree on Health Measures in compliance with the sub-decree's stated purpose to protect lives and health. Rather than limiting the number of detainees in a facility, prison authorities broadly restricted the entry of all visitors, which included lawyers, prison monitors, NGOs and families. Visitor bans were variable and unpredictable, with no apparent consistency regarding the duration of bans or when and where they were applied. In addition, even within prisons, the visitor ban appeared to be enforced discriminatorily against certain human and labour rights activists.

The prison visitor bans infringed on detainees' constitutional right to defence⁶⁸ by restricting access to counsel for several months in prisons across the country. Access to clients was unpredictable and at times limited to phone calls, and the confidentiality of communications could be violated by requiring legal documents to be transmitted via prison officers rather than directly between lawyer and client. Lawyers were banned from in-person visits during this period despite showing compliance with other health measures including proof of vaccination, testing negative on Covid-19 rapid tests prior to the visit and wearing personal protective equipment. In addition, the visitor ban deprived detainees of essential emotional and material support provided by families and NGOs as well as limited the ability of civil society to monitor the impact of Covid-19 in prisons.

While the prison population ballooned during the pandemic due to arrests and high rates of pre-trial detention, Cambodia's courts sweepingly cancelled hearings and instituted significant delays in proceedings. For example, the mass trial of 60 members and leaders of the former CNRP accused of incitement and plotting was delayed for nine months despite the resumption of other trials and the fact that three of the defendants had been detained for over a year-and-a-half. Many other human rights defenders, land rights activists and members of the former political opposition found themselves detained for long periods of unknown duration and their trials failed to progress, thus violating their rights to a speedy trial and infringing on the presumption of innocence. Non-detained defendants also experienced lengthy delays, which violated their rights to a speedy trial. The trial of Kem Sokha, the former leader of the forcibly dissolved Cambodia National Rescue Party (CNRP) who is charged with conspiracy with a foreign power, was delayed for almost two years under the guise of Covid-19 despite repeated requests from his defence lawyers to resume proceedings.

⁶⁷ Articles 2, 3, 6, 7, 8, Sub-Decree on Health Measures

⁶⁸ Article 38, Constitution of the Kingdom of Cambodia