



## Follow-Up Submission by The Cambodian NGO Committee on CEDAW (NGO-CEDAW) on the Recommendations made to Cambodia by the CEDAW Committee in November 2019

This NGO follow-up report has been coordinated by The Cambodian NGO Committee on CEDAW (NGO-CEDAW), a registered NGO and coalition of Cambodian civil society organizations (CSOs). It includes substantial input from our member organizations as well as other CSOs working in Cambodia.

19. The Committee recommends that the State party fully guarantee the rights of women human rights defenders, trade union leaders, land and environmental activists and members of the political opposition party, particularly their rights to freedom of expression, assembly and association, without harassment, surveillance or other undue restrictions.

**This recommendation has not been implemented.**

Despite Cambodia's commitments in the Constitution and in recent UN review processes to protect the exercise of fundamental freedoms of women and girls, the State routinely restricts and violates these rights in practice, and there is no domestic legal process for obtaining remedies for violations of these rights. Public polls conducted yearly by the Cambodian Center for Human Rights (CCHR) reveal that women consistently feel less free than men to exercise their fundamental freedoms. Moreover, women feel less free since the last CEDAW review session for Cambodia. In 2020,<sup>1</sup> only 26% of men (down from 60% in 2016) felt free to participate in political life and only 16% of women (down from 33% in 2016) felt free to do the same. Additionally, women who exercise their fundamental freedoms in the pursuit of causes that contrast with the Royal Government of Cambodia (RGC)'s position or agenda are frequently subjected to undue restrictions. Despite the Committee's urging, civil society has not observed any effort by the RGC to reduce its ongoing harassment and restrictions of women activists' exercise of fundamental freedoms.

The treatment of female union leaders who face hurdles which have been exacerbated during the COVID-19 pandemic illustrates the erosion of freedom in Cambodia. One target is the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU), whose members are predominantly women. In December 2021, LRSU launched a strike and demonstrations near the NagaWorld casino in central Phnom Penh following layoffs of 1,329 workers by NagaWorld in 2021.<sup>2</sup> Layoffs were made under the guise of COVID-19 even though the business made substantial profits in 2020 and the company is continuing to build Naga 3, which will require an additional 4,000 employees.<sup>3</sup> Eighty-two percent of workers who were dismissed were union members, including the entire local union

<sup>1</sup> [https://cchrcambodia.org/admin/media/factsheet/factsheet/english/20211122\\_Public Perceptions of Fundamental Freedoms in Cambodia-Five Year Trends-ENG.pdf](https://cchrcambodia.org/admin/media/factsheet/factsheet/english/20211122_Public%20Perceptions%20of%20Fundamental%20Freedoms%20in%20Cambodia-Five%20Year%20Trends-ENG.pdf)

<sup>2</sup> <https://www.licadho-cambodia.org/pressrelease.php?perm=478>

<sup>3</sup> *ibid.*

leadership.<sup>4</sup> Union leaders also noted that the layoffs targeted women who were pregnant or had recently given birth.<sup>5</sup> The recent strike has called for the reinstatement of 365 workers.

Government officials in December 2021 posted claims on social media that pregnant women were being forced to protest as part of a color revolution and that the demonstrations are instigated by foreigners, allegations which undermine Cambodian women's agency and fundamental freedoms.<sup>6</sup>

Between 31 December 2021 and 7 March 2022, at least 35 LRSU strikers were arrested for "incitement", pursuant to Articles 494 and 495 of the Criminal Code or for obstruction of enforcement measures under COVID-19 laws.<sup>7</sup> Strikers were subsequently released on bail or following signed contracts with police, however 11 union leaders and members – including seven women – spent up to two and a half months in pre-trial detention before being released on bail in March 2022.<sup>8</sup> The 11 were each charged with incitement to commit a felony under Articles 494 and 495 of the Criminal Code or obstruction of COVID-19 measures under Article 11 of the Law on Measures to Prevent the Spread of COVID-19 and other Highly Contagious Diseases (COVID-19 Law), despite the fact that the right to strike is enshrined within the Cambodian Constitution, Cambodia's Labor Law, and the Law on Trade Unions. The COVID-19 Law was applied disproportionately to strikers. The Phnom Penh Police Commissariat claimed that the arrests were made after the Phnom Penh Municipality announced many times that the strike was illegal and affected social security and public order.<sup>9</sup> The LRSU president and secretary, as well as 5 other union members were detained.<sup>10</sup> These women each face up to two years in prison if convicted.

Throughout 2022, the government has continued to exercise undue restrictions on the LRSU, including blocking them from accessing toilets nearby the strike site, refusing to let them leave the site when they wish, forcing them onto buses to abandon them outside the city center, and forcing them into quarantine centers through a misuse of COVID-19 prevention measures. Strikers are continuing to routinely gather as of June 2022, yet continue to be blocked from doing so and forced into buses before being left outside the city center. Several security forces sexually harassed unionists, including one incident on 22 February 2022, in which a male officer grabbed and squeezed the breast of one woman striker as she was being forced onto a bus. Similarly, on 29 December 2021, state authorities used vulgar sexual language toward a group of women strikers and threatened to sexually assault them.

Additionally, since early 2020, four other prominent women unionists<sup>11,12,13,14</sup> were charged, fired, threatened with legal action, and/or otherwise discriminated against for their unionism.

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<sup>4</sup> <https://www.licadho-cambodia.org/pressrelease.php?perm=486>

<sup>5</sup> <https://cambodianess.com/article/nagaworld-laying-off-employees-during-the-covid-19-pandemic-is-inhuman-union-leaders-and-ngos-say>

<sup>6</sup> <https://vodenglish.news/color-revolution-foreign-influence-accusations-cloud-nagaworld-strike/>

<sup>7</sup> <https://www.licadho-cambodia.org/articles/20220307/175/index.html>

<sup>8</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=304>

<sup>9</sup> <https://www.licadho-cambodia.org/pressrelease.php?perm=489>

<sup>10</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=304>

<sup>11</sup> <https://www.theguardian.com/global-development/2020/jun/16/jailed-for-a-facebook-post-garment-workers-rights-at-risk-during-covid-19>

<sup>12</sup> <https://www.rfa.org/khmer/news/social-economy/jacka-shoes-factory-workers-fired-after-joining-union-051020200725.html>

<sup>13</sup> <https://cambojanews.com/labor-ministry-warns-union-leader-for-allegedly-inciting-workers/>

<sup>14</sup> <https://www.rfa.org/khmer/news/social-economy/employer-of-master-blacksmith-factory-in-svay-rieng-accused-of-union-discrimination-02052021074840.html>

Another example is the treatment of the “Friday Women,” a network of family members of detained former opposition members from the forcibly dissolved Cambodia National Rescue Party (CNRP). Since June 2020, they have frequently demonstrated to call for the release of their relatives from prison. The Friday Women have faced consistent violence<sup>15</sup> at the hands of the authorities including beatings, kicking, and dragging in response to their legitimate exercise of their rights to association, speech, and peaceful protest.<sup>16</sup>

Women environmental activists have likewise been targeted, particularly members of Mother Nature Cambodia<sup>17</sup> and the youth group Khmer Thavrak.<sup>18</sup> At least six women activists were arbitrarily arrested and detained on vague charges for up to more than 15 months during 2020 and 2021, after they raised awareness of critical environmental issues and/or participated in peaceful protests. Two female Mother Nature activists were convicted of incitement under Articles 494 and 495 of the Criminal Code for their environmental activism and sentenced to spend 14 months in prison, with the remainder of their 18-month sentences suspended.<sup>19</sup> Alongside a male fellow activist, they were charged in a second case with plotting and insulting the King under Articles 454 and 437(bis) of the Criminal Code. They are currently on bail, subject to restrictive judicial conditions, and continue to face up to 10 years in prison if convicted.<sup>20</sup> Two Khmer Thavrak members were similarly convicted of incitement and sentenced to serve 14 and 15 months in prison respectively for joining peaceful demonstrations calling for the release of other activists, with the remainder of their 20-month sentences suspended.<sup>21</sup> A third activist was also convicted of incitement for joining a peaceful demonstration and calling for the release of imprisoned activists, and spent over 15 months in prison before the remainder of her 20-month sentence was suspended.<sup>22</sup> Despite being released, they have each been placed under probation for several years with restrictive conditions.

Finally, the Law on the Suppression of Human Trafficking and Sexual Exploitation (Trafficking Law)’s pornography provision was used in 2021 against women deemed to dress or act “too sexy” on Facebook, and the Ministry of Culture is mulling a new code of cultural conduct to further restrict women’s self-expression.<sup>23</sup>

25(b) Undertake a comprehensive review of the law on the prevention of domestic violence and the protection of victims and amend its provisions to define, prohibit and criminalize all forms of gender-based violence, including domestic violence and marital rape, to facilitate the process of obtaining protection orders and to ensure that victims/survivors of domestic violence have access to effective remedies and that perpetrators are held accountable;

**This recommendation has not yet been implemented.**

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<sup>15</sup> [https://cchrcambodia.org/index\\_old.php?url=media/media.php&p=newsletter\\_detail.php&nsid=188&id=5](https://cchrcambodia.org/index_old.php?url=media/media.php&p=newsletter_detail.php&nsid=188&id=5)

<sup>16</sup> <https://www.article19.org/wp-content/uploads/2021/12/Cambodia-UPR-Mid-term-report.pdf>

<sup>17</sup> <https://www.voacambodia.com/a/arrested-mother-nature-activists-accused-of-plotting-to-topple-government/5934558.html>

<sup>18</sup> <https://cchrcambodia.org/admin/media/newsletter/newsletter/english/Timeline-of-Activists-Arrested-for-Protesting-For-Rong-Chhun-Release-Eng.pdf>

<sup>19</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=297>

<sup>20</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=302>

<sup>21</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=295>

<sup>22</sup> <https://www.licadho-cambodia.org/flashnews.php?perm=300>

<sup>23</sup> <https://thmeythmey.com/?page=detail&id=110232>

Prior to the last CEDAW review, the draft third National Action Plan to Prevent Violence against Women (2019-2023) (NAPVAW3) was submitted to the Council of Ministers for approval as a national policy. It was adopted in October 2020 in substantially the same form.<sup>24</sup> This plan contains a section on legal strategy (3.2.3.1) with 2 activities related to the review and amendment of the Law on the Prevention of Domestic Violence and the Protection of Victims (DV Law). First, there is an activity to “Establish legal technical working group to review and analyze the DV Law” and second is an activity to conduct an analysis of the DV Law “to identify key areas for alignment with national and international standards and a strategy for amending the law”. There is no timeframe proposed for actually amending the law; an amendment is not part of NAPVAW3, and is not on track to happen before the next CEDAW review session.

Moreover, NAPVAW3 does not include a dedicated budget for any activities. Like the previous plan, it depends to a great degree on separate grants from international development partners for its implementation; there is no money earmarked from the national budget. The Australian government in late 2021 announced that it would provide additional funds for the last two years of the action plan; however, as previously noted, the actual amendment of the law is not part of NAPVAW3. The activity funded will be a road map to making the amendment at an unspecified point in the future. Moreover, there is still a very real concern that many members of the government and the legal community believe that the law is good enough as is, and there may not be sufficient support for the specific amendments recommended by the Committee. In fact, some activities in NAPVAW3 seem to reflect a reluctance to quickly amend the DV Law. Specifically, the plan includes drafting guidelines on mediation, supporting the understanding that mediation is a key strategy to address violence against women. The actual guidelines that were adopted; however, require alternative dispute resolution to be conducted only by trained mediators at the parties’ request after pre-screening of potential parties to ensure that mediation is not coerced or used where any person is at risk of violence. Additionally, there is an activity to revise the explanatory notes on the DV Law, which is scheduled for completion prior to amendment of the law. While these activities may help reduce the systemic use of conciliation in domestic violence cases, they do not reduce the need for legal reforms to ensure full access to justice for survivors. For example, protection orders are still only optional under the DV Law, and the RGC’s report from April 2022 notes that there are still only 10 provinces with the necessary forms, and only 25 orders issued in those provinces over the last 3 years. No improvement has been made since the last report in 2018.

A legal technical working group to review and analyze the DV Law was first proposed in 2016 by the Ministry of Women’s Affairs (MoWA) with financial assistance from UN Women. However, those efforts to review the law ceased to function after MoWA conducted one consultation workshop with key civil society organizations (CSOs) in 2016. At that time MoWA anticipated that an interministerial working group would be established and would then review the law, but this never occurred. In order to implement the activity in NAPVAW3, RGC should quickly establish a working group with representatives of MoWA, the Ministry of Justice, Ministry of Interior, the Bar Association, the Parliamentary Institute of Cambodia, the Council of the Ministers, and representatives of a broad range of CSOs. Members should have the technical expertise to make meaningful contributions to the analysis. RGC should further develop a clear, time-bound workplan and set aside resources from the national budget for this working group to ensure the adequate functionality and effectiveness of the

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<sup>24</sup> The entire NAPVAW3 is published online in English and Khmer at <https://cambodia.unfpa.org/en/publications/royal-government-cambodia-national-action-plan-prevent-violence-against-women-2019-2023>

working group. Otherwise, there is a real risk that it will cease to function, further delaying any substantial amendment of the DV Law, and further delaying effective legal remedies for survivors of domestic violence.

Finally, it must be noted that there continues to be a lack of coordination and transparency in the activities related to the amendment of the DV Law. For example, there is a draft Law on Child Protection that is not being widely shared or reviewed in light of the existing efforts to amend the DV Law. Organizations participating in the development of policies under NAPVAW3 are requested not to share drafts publicly until they are finalized. Once a draft is finalized by a working group, consultations with CSOs are often nominal at best. Only when there is substantial concern expressed by the donor development partners is a draft given significant revisions with CSO input. Therefore, a greater degree of cooperation among RGC, development partners, and CSOs (including those outside existing technical working groups, such as LGBTIQ rights organizations and child rights organizations) is needed at the beginning of the process to ensure that the law is brought up to international standards.

47(d) Ensure that the draft law on surrogacy does not impose criminal liability or administrative sanctions on women who act as surrogates and seek technical support from the Office of the United Nations High Commissioner for Human Rights in Cambodia so that the law is in compliance with international human rights standards.

**This recommendation has not been implemented.**

The Cambodian government established a policy banning all forms of surrogacy in 2016 and equating commercial surrogacy with human trafficking<sup>25</sup> under the assumption that surrogates are the legal parents and are selling their babies. This remains Cambodia's policy, and criminal sanctions are still being used against anyone violating that ban. However, in practice, this is mainly used against Cambodian women who hoped to earn some income by becoming a surrogate. Thirty-three women who were arrested in June 2018 for becoming surrogates despite the government ban were charged with human trafficking and were released only under the condition that they take on all financial and legal responsibility for raising the children. The charges were not dropped and court hearings continued even after the Committee urged the RGC not to criminalize or sanction women acting as surrogates.<sup>26</sup> In 2020 the court convicted the surrogates of human trafficking and sentenced them to 5 years in prison each, but reduced the time to 4 months and 21 days with the remainder suspended.<sup>27</sup> Meanwhile, the children have been denied the right to know or obtain the nationality of their biological parents, and the biological parents have been denied any access to the children.

Drafting of a law on surrogacy began in 2017. From 2018 to 2019, there were discussions between the government of Cambodia and the UN special rapporteur on the situation of human rights in Cambodia to see if the draft law could be revised to meet human rights standards. However, no copy has been shared publicly, no consultations have been held with civil society, and the process appears to have stalled. The pause is ostensibly due to COVID-19, but progress had stalled prior to the pandemic.<sup>28</sup> In April 2022, the RGC announced that the law previously drafted would be considered again, but needed further review.<sup>29</sup>

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<sup>25</sup> <https://vodenglish.news/a-surrogate-family-and-the-law-that-criminalized-them/>

<sup>26</sup> <https://www.phnompenhpost.com/national/surrogate-mothers-testify>

<sup>27</sup> <https://cne.wtf/2021/10/26/chinese-cambodian-appeal-surrogacy-sentence/>

<sup>28</sup> <https://vodenglish.news/a-surrogate-family-and-the-law-that-criminalized-them/>

<sup>29</sup> <http://fna.asia/f54cdb7>

The most recent version of the draft law which was obtained by organizational members of NGO-CEDAW appears focused solely on surrogacy, but remains aimed at continuing the ban on all international surrogacy<sup>30</sup> and only permitting altruistic domestic surrogacy in very limited situations. For example, only married Cambodian couples could become the egg/sperm providers, and only married Cambodian women who already have a child, have not been a surrogate before, are not related to the egg or sperm donor, and whose husbands agree could become surrogate mothers. The surrogate and her husband would be the legal parents at birth and would go through a court-authorized adoption process with the biological parents. A national committee would be set up to oversee all aspects of surrogacy and would have to give permission for any surrogacy agreement to be entered into. Criminal penalties would still apply to anyone not properly applying for surrogacy agreements, offering incentives to be a surrogate, acting as an intermediary or publicly providing information that might imply that someone could become a surrogate or that someone is interested in surrogacy. This is so broad that almost any speech or writing about surrogacy could become criminalized. Most significantly, while this draft did not specifically criminalize surrogate women who do not meet the narrow requirements of the law, it does nothing to prevent the government from continuing to prosecute such women under the existing Criminal Code and Law on Suppression of Law on Suppression of Human Trafficking and Sexual Exploitation (Trafficking Law). Persons involved in surrogacy have been charged and convicted for violating Article 16 of Trafficking Law, which prohibits selling or exchanging humans across borders, and Article 332 of the Criminal Code, which bans being an intermediary between an adoptive person/couple and a pregnant woman. There is no effort to amend these laws to stop their misuse against women.

A related issue is the frequent international trafficking, often to China,<sup>31</sup> of Cambodian women who are then subjected to forced marriage and forced pregnancy by men who cannot easily find a spouse in their home country. The number appears to have increased since COVID-19,<sup>32</sup> with over 300 Cambodian women trafficked in the first nine months of 2021 alone.<sup>33</sup> Some Cambodian women trying to escape such situations have been told that they could leave after they give birth, but are forced to give up their children in order to gain their freedom to return home. While the government is prosecuting such cases when the traffickers can be found, far more effort must be done by the State to address the economic hardships faced by Cambodian women that make them vulnerable to criminals who make false promises of jobs abroad.

There is a fundamental link between surrogacy and trafficking of women as brides because women surrogates are often taken advantage of and in the position of the least power in the process. While the Cambodian government is addressing the trafficking of women across international borders, they are not taking action to address how surrogacy at times victimizes women through trafficking within Cambodia. By continuing to view surrogacy solely as a child-trafficking issue and criminalizing women's

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<sup>30</sup> In 2020, the Special Rapporteur on the Sale and Sexual Exploitation of Children issued a report on its visit to Bulgaria and found that "the lack of a regulatory framework [on international commercial surrogacy arrangements] leaves the recognition of parenthood open and dependent on foreign legislation". para. 17. The Special Rapporteur recommended for the government to "adopt comprehensive regulations to govern the practice of commercial surrogacy arrangements...to protect surrogate mothers from exploitation..." para. 74(i).

Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material: Visit to Bulgaria, February 14, 2020, U.N. Doc/A/HRC/43/40/Add.1, Human Rights Council: 43rd session.

<sup>31</sup> <https://www.voacambodia.com/a/cambodia-reports-111-cases-of-trafficked-brides-to-china-last-year/5440833.html>

<sup>32</sup> <https://www.reuters.com/article/cambodia-china-trafficking/pandemic-seen-fuelling-cambodian-bride-trafficking-to-china-idUSL8N2IQ2MF>

<sup>33</sup> <https://vodenglish.news/bride-rescues-from-china-number-more-than-one-a-day/>

decision to act as surrogates, the government fails to recognize the right of women not to be trafficked into surrogacy.