

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY CRIMES RISK ASSESSMENT SERIES

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INTRODUCTION

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In 2005, the United Nations member states unanimously made a commitment to protect populations from the most serious crimes, namely genocide, war crimes, ethnic cleansing, and crimes against humanity. These four atrocity crimes pose a threat not only to human life but also to national, regional, and international peace and stability. In 2014 the United Nations Special Advisers on the Prevention of Genocide and the Responsibility to Protect presented an updated Framework of Analysis (henceforth referred to as ‘the Framework’) to assist with assessing the risks of genocide, war crimes, ethnic cleansing, and crimes against humanity.¹ The Framework serves as a working tool to support the prevention of atrocity crimes around the world. This risk assessment for the Royal Kingdom of Cambodia uses the risk factors and indicators as identified in the Framework. It is designed to serve as a guide for atrocity prevention by identifying the most important risk factors and suggesting future steps that can be taken to address them. Cambodia experienced atrocity crimes during the period of Khmer Rouge rule (1975-79) during which approximately one quarter of the population died, and a protracted civil war thereafter which ended with the Paris Peace Accords of 1991. Although significant steps towards justice and truth-finding have been undertaken – such as the establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC) – the process has not been without challenges, including political interference. Additionally, whilst Cambodia has undertaken a range of measures to prevent a recurrence of atrocity crimes, including through education, efforts remain ongoing.

In the 2018 national elections Cambodia became a de-facto one party state, consolidating power under the Cambodian People’s Party (CPP), and infringing democratic values enshrined into the Cambodian constitution. Since the election, new legislation indicates that Cambodia has backtracked from international obligations, directly violating human rights by restricting civil society to basic rights such as the freedoms to, association, public assemblies and expression. In 2020 COVID-19 saw the Cambodian economy suffer, restricting economic growth and increasing unemployment and poverty levels. Additionally, the pandemic exacerbated pre-existing imbalances in Cambodia’s political and judicial systems, allowing the authorisation of strict ‘draconian’ laws that further erode the human rights of Cambodia’s population. Additionally, as the chair of ASEAN, if Cambodia’s response to human rights violations occurring internationally is indicative of their attitude towards their own violations, there should be serious concern. Close international attention should be paid to the upcoming elections in both 2022 and 2023, as the CPP will aim to stabilise their control into the future.

This report only addresses those risk factors currently relevant to the situation in Cambodia. Note that there is often overlap between distinct risk factors and indicators, and where possible these have been identified with a note on where else in the report these risks factors have been identified. The presence or absence of risks factors does not mean that atrocity crimes will or will not occur.

Summary overview of assessment

At the time of writing Cambodia confronts a **moderate** risk of atrocity crimes due to the consolidation of power across political, judicial and security structures; adoption and application of laws that contradict domestic and international human rights law (including a COVID-19 emergency law), as well as Cambodia’s shifting international relationships with superpowers such as China, the United States and the EU. While these factors have increased the capacity for Cambodia to commit atrocity crimes, in the absence of a real political threat to the current governing body, the motivations to act on this capacity remain relatively low. Regardless, these developments signal a step backwards from past advancements and compromises, leaving Cambodia teetering on a trajectory that is of its past injustices. As national avenues have diminished, support from a range of international actors are required to ensure the full and consistent implementation and application of international human rights standards, the strengthening state institutions and the rule of law, and the improvement of good governance.

FRAMEWORK OF ANALYSIS

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The Framework of Analysis consists of fourteen (14) risk factors of atrocity crimes, with each Risk Factor accompanied by a suite of between 6 and 18 specific Indicators that are used to determine the degree of risk present. Combined, these risk factors and associated Indicators guide the collection and analysis of data to determine the degree and kinds of atrocity crime risk present in a given country. The higher the number of indicators present in a single risk factor, the more important that particular risk factor is in the overall assessment. However, it must be noted that the risk factors and indicators are not ranked, and some risk factors and indicators have greater weight than others as they need to be situated within the context of the country under analysis.

The risk factors are demarcated into two different groups: **Common Risk Factors**, which are the conditions that increase the probability of atrocity crimes occurring; and **Specific Risk Factors** which are divided into the risks associated with genocide, crimes against humanity, and war crimes (ethnic cleansing is incorporated into the other atrocity crimes). The eight common risk factors constitute conditions that increase the risk of any of the four atrocity crimes. They identify the probability but not necessarily the type of crime. The six specific risk factors concern elements that are characteristic to a particular crime and enable the identification of the type of risk. In some cases, the risk factors assessed in this report relate to events and conditions that occurred decades ago. Nevertheless, how such events are being dealt with today can still contribute to the likelihood of other types of atrocity crimes arising in the future. Whilst the specific Risk Factor 11 is briefly engaged with in this report, only a couple of the indicators are relevant, and these are only very partially met.

Common Risk Factors		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian law
Risk Factor	3	Weakness of state structure
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
Specific Risk Factors		
Crimes Against Humanity		
Risk Factor	11	Signs of widespread or systematic attack against any civilian population

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be found by clicking [here](#) or by visiting the UN website at www.un.org.

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

Risk Factor 1 refers to “situations that place a State under such level of stress that it becomes more prone to serious human rights violations and, eventually, to atrocity crimes”. Such an environment is usually generated in situations of armed conflict with a high level of violence but can also evolve in times of peace through political, economic, or social instability. In Cambodia’s case, the Cambodian People’s Party’s (CPP) successfully consolidated power during the 2018 election and have transformed Cambodia’s polity into one of severe political repression. Such repression has been exacerbated by the COVID-19 pandemic, placing the economy and civil society under intense pressure. The pressures of COVID-19 have compiled on pre-existing socio-economic concerns in Cambodia, including unresolved disputes over land concessions affecting hundreds of thousands of Cambodians.

Political instability caused by disputes over power

Indicator 1.4 and **indicator 1.5** refer to political instability caused by “abrupt or irregular regime change or transfer of power” and “disputes over power or growing nationalist, armed or radical opposition movements”, respectively. The past four decades of Cambodia’s political environment had been characterised by varying levels of tensions between the rule of Cambodian People’s Party (CPP) and the Cambodia National Rescue Party (CNRP). The 2013 general election and the 2017 commune elections saw a 44 percent increase in votes for the CNRP, challenging the majority rule of the CPP for the first time and decreasing the number of communes and National Assembly seats held by the government.² The growing support of the CNRP made the current reigning government vulnerable, inciting their repressive behaviour in the lead up to the 2018 elections.

The pre-election environment in 2017 was characterised by violent and incendiary language used by government ministers and senior officials (see further **Risk Factor 7**). Public statements included warnings to vote for the ruling party and threats to deploy military means in case of any post-election protests.³ Not for the first time, the Prime Minister repeatedly warned of a civil war if there was an election loss or any disputes over the CPP’s victory.⁴ An amendment made in 2017 on the Law on Political Parties (LPP) was used to dismantle the political opposition, banning most notably Sam Rainsy a former opposition leader from politics.⁵ This law was used by the Supreme Court in November to dissolve the CNRP and ban 118 party officials from political activities after the Ministry of Interior filed a complaint alleging the opposition party of plotting a regime change. The measure was accompanied by the arrest of opposition leader Kem Sokha over the same allegations.⁶ The presiding judge, a senior official of the CPP, announced the decision to be final and without appeal. The recent amendments to the LPP which the ruling was based upon, included a ban on parties “from receiving contributions from foreign institutions, foreign companies, foreign nationals or foreign funded organizations”⁷ and “supporting or organising any plans or conspiracies [...] against the interest”⁸ of Cambodia.

This legal amendment enabled the reallocation of opposition seats among the CPP and minor opposition parties.⁹ The adoption and application of these legal measures have been heavily criticised by the opposition party and numerous human rights bodies as a systematic attempt by the CPP to secure victory in the July election by turning the multi-party system into what would be in effect a one-party system.¹⁰ Furthermore, in February 2018 the parliament allowed constitutional amendments which tightened restrictions on voting rights and freedom of association.¹¹ These amendments further allowed the government to take action against any political party that does not “place the country and nation’s interest first”, and additionally prevented foreign countries ‘interfering’ with Cambodia’s domestic affairs¹² In the context of these political tensions, some major international donors decided to withdraw resources intended to support the upcoming elections on the grounds that the election could not be free and fair¹³. The US, the EU, Japan, Canada, and Australia declined to send election observers, while respected domestic election monitors who had monitored Cambodian elections in the past also decided to withdraw from the 2018 election.¹⁴ Instead, the elections were monitored by several organisations with close ties to the governments, including the Union of Youth Federations of Cambodia which is led by Hun Sen’s son.¹⁵

Additionally, initiated by Sam Rainsy and run by exiled CNRP members launched the Clean Finger Boycott Campaign which urged voters to boycott the 2018 election.¹⁶ The government responded by classifying non-voters as traitors and threatening them with fines or imprisonment.¹⁷ In April the NEC sent a threatening message to mobile phone subscribers that claimed anyone “criticising, attacking, or comparing their party policies to other parties” could be prosecuted.¹⁸ Furthermore, the government targeted Cambodia’s trade union movement, a traditional ally of the CNRP while simultaneously handing out cash gifts to 700,000 workers in the garment sector.¹⁹

Despite concerns of a boycott, the 2018 election was held and Hun Sen and the CPP won all 125 seats in government, officially classifying Cambodia as a one-party state.²⁰ The voter turnout reported by the government to be 82.71%, far higher than in the 2013 election.²¹ There was however an increase of spoiled ballots, where invalid votes totalled 8.5% in 2018, representing the second-largest group of voters.²² This high number of invalid ballots was interpreted as a protest, as Cambodians opted to spoil their ballots opposed to voting for the CPP.²³ The dissolution of the CNRP and the unfair electoral process in 2018 has widely been viewed as violating the liberal multi-party system that is enshrined in Cambodian law.²⁴ These developments have fuelled “political instability caused by disputes over power” as described under **Indicator 1.5**. The course of action taken by the CPP in the lead up to the 2018 election is a response to their perceived threat of the opposition, which resulted in the dissolution of the CNRP.

Threat of external intervention: The ‘Colour Revolution’

A legal complaint filed by the government in September 2017 alleged that the opposition intended to overthrow the government through a US-backed “Colour Revolution”.²⁵ The Supreme Court agreed, and dissolved the CNRP and banned its members from political participation. The presiding judge, a senior official of the CPP, announced the decision to be final and without appeal. The recent amendments to the LPP which the ruling was based upon, included a ban on parties “from receiving contributions from foreign institutions, foreign companies, foreign nationals or foreign funded organizations”²⁶ and “supporting or organising any plans or conspiracies [...] against the interest”²⁷ of Cambodia. The charges followed the arrest of opposition leader Kem Sokha on 3 September.

In a White Paper series labelled *To Tell The Truth*, the Ministry of Foreign Affairs and International Cooperation explained that these developments were intended to protect the state’s sovereignty from foreign interference.²⁸ The Ministry emphasised “the imperative of the Royal Government to protect at all costs its people from some Western governments’ meddling in internal affairs”.²⁹ According to the Ministry, the CNRP was formed through a United States (US) brokered merger of two opposition parties that received instructions, resources and training from the US government, as well as foreign NGOs and media, with the goal of inciting civil unrest and ultimately an uprising against the current regime.³⁰ According to the government, the violent clashes between protesters and security forces following the 2013 election were part of a systematic foreign-backed attempt to overthrow the government.³¹ At the Court hearing, a public statement made by Kem Sokha in 2013 concerning his engagement with the US was referred to as evidence of a violation of Cambodian law.³² A number of civil society groups and media outlets were also accused of participating in the alleged attempted uprising. According to the Ministry, foreign funded and strongly biased radio broadcasts and newspapers disseminate false information aimed to damage the government’s reputation.³³ It alleged that human rights groups and local NGOs funded by foreign governments assisted the opposition in capacity building and strategic planning.³⁴ In August and September 2017, over 30 radio stations as well as *The Cambodia Daily* newspaper were forcibly to shut down due to alleged legal breaches.³⁵ Two journalists accused of jeopardising national security by sharing information with a foreign state were subsequently detained and charged with espionage.³⁶ Simultaneously, the local US-funded National Democratic Institute was shut down after being accused of providing the opposition with a plan to overthrow the government.³⁷ The Cambodian Centre for Human Rights (CCHR) was threatened to be shut down and investigated by the Interior Ministry in November after being accused of supporting foreign interests and taking a biased stance towards the opposition.³⁸

The rhetoric used by the government in its investigation and prosecution of the political opposition, civil society groups and media outlets, indicate that anyone associated with foreign institutions, or expressing politically opposing views, are deemed a threat.³⁹ Almost *any* public criticism is perceived as an attempt to incite unrest and overthrow the government and interaction with foreign entities is viewed as an attempt to support regime change, suggesting that the ruling party considers its own political fortunes to be synonymous with national security. The CPP has repeatedly portrayed its ruling as the guarantor for peace and stability in the country.⁴⁰ Human rights groups and international actors have criticised these legal measures as thinly veiled efforts to eliminate political competitors.⁴¹

Political Repression caused by autocratic regimes

Hyde and Marinov state that, “elections are prevalent in authoritarian political systems, with many autocrats formally taking office through manipulated but participatory electoral processes”.⁴² This statement holds true to the 2018 Cambodian election, which saw Hun Sen remain in government through the unfair and unfree electoral process before and during 2018. It is anticipated that the same technique will be used again to ensure the CPP are successful in the upcoming communal elections to be held in 2022, and the 2023 general election. The 2018 election saw the backfall of Cambodian democracy, and the recreation of a one-party state. As described above, the pre-election environment demonstrated the government’s willingness to intimidate, exile, restrict and threaten violence upon Cambodian people, specifically those in opposition. The success of the governments autocratic approach was clear, as the CPP won all 125 seats in parliament.⁴³

In 2015, the adoption of the law on Associations and Non-Governmental Organisations (LANGO) in 2015 served as a legal basis for the investigation, suspension, and (in some cases) shut down of major local human rights institutions such as the National Democratic Institute, the CCHR and ADHOC.⁴⁴ The same law required all groups to register meetings, training, protests, marches or demonstrations with authorities, which in 2018 was often cited by authorities to break up gatherings deemed hostile to the government.⁴⁵ Thus, freedom of information and expression were further restricted, violating human domestic and international human rights law (**see further risk factor 2**). Furthermore, in 2018 the National Assembly also adopted the so-called *Lèse-Majesté* provision, which criminalises any public expression insulting the King.⁴⁶ The loosely worded law allows for the prosecution of any form of criticism against the Cambodian Head of State - contributing to self-censorship and limit people’s ability to freely express their opinion.⁴⁷

Cambodian campaign laws required news outlets to provide equal coverage to each party participating in an election, however in the 2018 election there was no evidence of this. Strict censoring measures across media outlets by the government (**see further risk factor 7**) meant the population did not have free access to information on the election.⁴⁸ These restrictions ensured the success of the CPP and laid the groundwork for the autocratic regime that would remain after the election. Since the election win, the CPP has enforced harsher legal measures that have raised serious concern by the international community. Some of these measures include tightening surveillance under the Inter-Ministerial Parakas and the National Gateway, as well as further closures of media outlets, NGOs, and the continued imprisonment of opposition members (see further **risk factor 7**).

In June 2022 Cambodia’s commune elections will be held, closely followed by the official general election in 2023. The government’s restriction on freedom, communications, NGOs, opposition etc. have become tighter since the 2018 election. Due to these restrictions and legal changes, it is anticipated that the CPP will remain in power, and autocracy will be maintained. Since the formal dissolution of the CNRP, the Candlelight Party (CP) was recently established as its successor, and hope to oppose the CPP in upcoming elections.⁴⁹ While there is little chance that elections will be free and open, the CP and Cambodia’s smaller political parties represent a growing population against the autocracy of the CPP. While the capacity of these parties is minimal, there is always concern for post-election protests or gatherings which may incite violence from the governing body (**see further risk factor 2, and indicator 8.8**). Thus, in the absence

of opposition, since the 2018 election “political tension caused by autocratic regimes or severe political repression” [1.6] has increased significantly. Entering the 2022 election the tension produced under an autocratic regime is expected to only increase.

COVID-19 as a Humanitarian Crisis

Indicator 1.3 describes how a “humanitarian crisis or emergency” *can* “place a State under stress and generate an environment conducive to atrocity crimes”. Despite the already unstable political environment of Cambodia after the 2018 elections, the presence of COVID-19 has only catalysed human rights issues under Cambodia’s autocratic rule. With a relatively weak health care system, Cambodia is very vulnerable to a COVID-19 outbreak and cannot be “overwhelmed and overstretched” by high case numbers.⁵⁰ To ensure a COVID-19 outbreak the government drafted and implemented ‘emergency laws’ (see further indicator 7.1) to restrict movement of individuals and the spread of COVID-19. During 2020 Cambodia maintained very low case numbers, and high vaccination rates.⁵¹ Once vaccination rates were high in 2021, ‘emergency laws’ were eased, and individual movement was permitted again. Expectedly, case numbers significantly increased, reaching their peak in July 2021 with 6,680 confirmed cases.⁵² Since this peak, case numbers have plateaued and remain manageable. However, poverty and unemployment are major concerns to the public.

Cambodia has attributed its control over COVID-19 to the ‘emergency laws’ that were introduced. While this response is not dissimilar to other country’s restrictive laws, the political context of Cambodia meant these measures raised serious humanitarian concerns (**see further risk factor 2, 7**). More concerningly, government restrictions were not just isolated to these ‘emergency laws’, but strict legal changes that permitted individual surveillance and wide-spread media control were also introduced under the guise of COVID-19 control⁵³ (see further risk factor 7). Despite Humanitarian concerns, Cambodia received large amounts of foreign aid from organisations such as the World Bank and Asian Development Bank (ADB), as well as from international governments such as the United States of America, Japan and Australia.⁵⁴ Such donations aimed to assist with economic effects, as well as provide humanitarian support to those in poverty.

Economic Instability

Over the past two decades, Cambodia has achieved remarkable economic development. Driven mainly by exports of garments and tourism, the country’s growth has remained at an average annual rate of 7.6%.⁵⁵ Gross domestic product (GDP) per capita has almost tripled since 1994, placing Cambodia in the category of lower-to-middle income countries. A third of the GDP has been attributed to the agricultural sector. Large financial inflows of foreign direct investment as well as official development assistance have been the key engines driving these achievements.⁵⁶ The country has reduced extreme poverty by more than half within one decade, although more than two thirds of Cambodians still live on less than 3 USD a day.⁵⁷

After two decades of impressive economic development, COVID-19 resulted in large negative shocks on the Cambodian economy. A lack of supply, combined with stay-at-home orders meant economic activity significantly decreased.⁵⁸ The tourism sector was most notably affected due to travel restrictions, as well as the garment industry which saw 150,000 factory workers lose jobs.⁵⁹ This caused GDP growth (%) to decrease by 3.15% while unemployment grew by 0.184% in 2020.⁶⁰ A joint study by the Ministry of Economy and Finance and the United Nations Development Programme project these values to increase, with unemployment potentially reaching 4.8%.⁶¹ While these are predictions, researchers stress that the impacts on employment and wages are much larger than macro-economic trends suggest.⁶²

As an immediate response to high levels of unemployment and wage-cuts individuals reacted by selling goods or assets, or taking out micro loans.⁶³ Often these microloans used land titles as collateral, but without jobs or incomes, individuals cannot repay these loans.⁶⁴ While the government offered cash in kind to boost demand chains, they failed to adequately protect borrowers and have left a large proportion of the population without an adequate standard of living.⁶⁵ This has raised further concerns over human rights, which is why foreign aid was provided to Cambodia as stated above.

Additionally, the deteriorating political situation has impacted the economic stability of the country. Although countries provided foreign aid in light of COVID-19, international concerns over human rights in Cambodia have caused long-term economic agreements to fall through. In February 2020 the EU partially withdrew tariff preferences under the EBA on accounts of “serious and systematic violations of the human rights principles.”⁶⁶ As EU is one Cambodia’s largest export market, restricted trading could significantly destabilise the economy. Later in 2020 however, a FTA was signed between Cambodia and China with China offering to liberalise approximately 98% of its tariff lines.⁶⁷ The strengthening of Sino-Cambodia relationships has enabled a steady economic recovery from COVID-19 and suggests that the economy will continue to grow. However, the recent uptick in the economy fails to deal with deep horizontal inequalities and poverty prior to and after the pandemic.

Due to COVID-19 and increasing political tensions with the west, Cambodia’s economy over the past 3 years is indicative of a “severe crisis in the national economy” as well as “acute poverty, mass unemployment or deep horizontal inequalities” as stated by indicator 1.8 and 1.9. While China’s economic support has assisted Cambodia in times of economic instability, it fuels further political tensions and may neglect the human rights of Cambodia’s population at the cost of economic growth.

Disputes over resources

The public service sector remains relatively weak due to ineffective land management and handling of natural resources, as well as access to clean water. Public services remain heavily dependent on foreign aid. The high number of disputes over land acquisitions remain a major issue and a destabilising factor in Cambodia, meeting aspects of **Indicator 1.7**, “Economic instability caused by scarcity of resources or disputes over their use or exploitation”. According to the Cambodian rights organisation LICADHO, more than half a million Cambodians have been affected by state-involved land disputes since 2000.⁶⁸ Most of these disputes have been caused by Economic Land Concessions (ELC) and other land concessions granted to private investors, which has resulted in the eviction of large numbers of poor Cambodians from their homes, many of whom are also deprived of their livelihood.⁶⁹ People affected by land concessions have claimed that the compensation and relocation offers they receive have been inadequate, inappropriate, or not fully understood. In many cases, private companies have engaged in harassment and forced evictions of land, especially from indigenous communities. These measures constitute violations of land and housing rights under international law.⁷⁰ Limited domestic legislation and institutional capacities have led to thousands of disputes over conceded land.

Ongoing efforts by the government aim at strengthening the judicial system in order to resolve such disputes by reviewing land concessions. The 2001 *Land Law* recognises collective land rights for indigenous peoples, which allows communities to legally register their land. Yet, only a fraction of the affected communities have been able to complete the registration of their lands due to lengthy processes and a lack of legal knowledge amongst both the communities and authorities.⁷¹ A moratorium signed by the Prime Minister in 2012 failed to stop an increase in the number of evictions.⁷² In 2016, the Ministry of Land Management established a working group to focus on the resolution of land disputes. According to a ministry report as well as the rights group ADHOC, the group’s work has contributed to a decline in the number of disputes and successfully solved a large number of disagreements. ADHOC further observed that the government has stopped providing ELC to private companies.⁷³ The United Nations Office of the High Commissioner for Human Rights (OHCHR) has been actively engaged in supporting the strengthening local capacities and facilitating dialogue between disputing parties. It has raised awareness on international standards and provided support to evictees and advice to local authorities and businesses to find adequate compensation agreements and hold dialogue with local communities.⁷⁴ Local and international NGOs have been providing legal education and training to communities.⁷⁵

Nevertheless, a high number of cases have not yet been resolved. In addition, there have been reports of threats and harassment against affected communities or individuals, as well as land activists and human rights defenders.⁷⁶ Protests have led to arrests of community members and land rights activists, and a

number of them remain in pre-trial detention facing charges.⁷⁷ A recent protest over a land dispute in the Kratie province escalated into violence after security forces opened fire at protesting villagers. The numbers of injuries and possible deaths remain controversial and unverifiable, as the media and investigating NGOs were denied access to the protest site.⁷⁸ The OHCHR has emphasised the connection between political, social and economic rights and the necessity to address tensions with respect to human rights.⁷⁹ The continued efforts by local actors to further improve domestic legislation and strengthen capacities to resolve land disputes in a peaceful and secure manner therefore remains necessary. This includes the responsibility of private companies to adhere to international and domestic law and to find ways of implementing adequate compensation, and assisting local and international actors to provide the necessary resources and information.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The second risk factor concerns any “past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations.” Atrocity crimes are more likely to occur in an environment where severe violations of international human rights and humanitarian law take place and in societies where past atrocity crimes have not been adequately dealt with through accountability and comprehensive processes of reconciliation and reform.

In addressing its own history of atrocity crimes committed during the Khmer Rouge regime, Cambodia has taken a range of measures to ensure accountability and reconciliation. Domestic efforts have focused on education and the sharing of information on past atrocities and the prevention of their recurrence. The government has committed itself to become the main promoter of atrocity prevention in the region. Yet, under what has become a de-facto one party state, there has recently been serious violations of human rights as Cambodia backfalls into behaviour that is concerningly reminiscent of its past. Additionally, new legislation addressing COVID-19 has authorised the restriction of basic freedoms, raising international concern when the social, political and historical context of Cambodia is taken into account.

A history of atrocity crimes

Indicator 2.2 concerns “Past acts of genocide, crimes against humanity, war crimes or their incitement.” It is estimated that as many as 2 million people, constituting one quarter of the Cambodian population, fell victim to the Communist regime known as Democratic Kampuchea between April 1975 and January 1979. The leaders of the Khmer Rouge regime aimed to radically transform society by eliminating what they called feudal institutions and introducing a policy of social engineering.⁸⁰ With the evacuation of Phnom Penh on 17 April 1975, the forced relocation of hundreds of thousands of Cambodians from the urban areas to the countryside followed. The transformation process was marked by enslavement, systematic torture, extrajudicial executions, starvation, overwork and outbreaks of disease.⁸¹ These atrocities did not trigger an international response, and it was not until after the Vietnamese invasion in January 1979 – which led to the overthrow of the Khmer Rouge regime and to massive flows of displaced persons within and out of the country – that the scope of atrocities was fully understood by the international community.⁸²

In its first efforts to seek accountability and justice, in 1979 the new government established a domestic tribunal in which the two top leaders of the Khmer Rouge were tried in absentia and found guilty for genocide and sentenced to death. However, the tribunal was rejected by the international community for failing to meet international standards of justice.⁸³ At the request of the Cambodian government in 1997, and after years of negotiations, the United Nations assisted in the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. Composed of both Khmer and foreign judges, the hybrid court has jurisdic-

tion to bring to trial the most responsible and senior leaders of the Khmer Rouge regime for violations of Cambodian penal law as well as international law.⁸⁴ In its agreed judicial structure, the court is under the authority of Cambodia, as a majority of the judges, as well as the presidents of both chambers, are Khmer and every decision requires a majority of affirmative votes.⁸⁵

To date, the ECCC has investigated four cases. In two cases, it has convicted three former senior leaders for crimes against humanity and war crimes and sentenced them to life imprisonment. The Prime Minister and the Minister of Information both openly opposed the continuation of prosecution beyond the first two cases, stating this may jeopardise stability and peace in the country.⁸⁶ Such political interference has met heavy criticism, claiming that the court must act independently. Critics highlight the biased nature of the judicial structure of the court in which all judges require government approval.⁸⁷ There have been repeated accusations of political interference since the government tolerated senior officials' refusal to give testimony in the court.⁸⁸ Such incidents have questioned the judicial independence and credibility of the ECCC. They politicise a judicial process which, as the UN Secretary-General reiterated, must remain independent and free from any political interference.

By continuing the investigations, the ECCC can help to address impunity for atrocity crimes. Besides its function to seek accountability, the court has functioned as a useful tool for truth-seeking and education on past atrocity events. The proceedings provided victims with opportunities to participate in the process and give testimonies.⁸⁹ The court hearings were followed by millions of Cambodians on television or on-line, with the court receiving some 98,000 visitors.⁹⁰ The documentation of testimonies and dissemination of information on the atrocities have been assisted by various civil society groups. Furthermore, The Tuol Sleng Genocide Museum and the Documentation Centre for Cambodia serve as a reminder and tool of education on atrocities by providing information from testimonies and archives of the regime.⁹¹

The Cambodian government has taken a range of steps to ensure the prevention of any recurrence of such atrocities. In 2003, the government passed a law against the denial of genocide and war crimes committed by the Khmer Rouge.⁹² As the first state of the Association of Southeast Asian Nations (ASEAN), Cambodia signed and ratified the Rome Statute which established the International Criminal Court.⁹³ The government has repeatedly expressed its support for the Responsibility to Protect and for the UN Secretary-General's efforts to operationalise and implement the norm, both in the domestic and regional context.⁹⁴ The government has appointed a national focal point to promote R2P implementation. In cooperation with academia and civil society groups, the focal point has established a national network to increase awareness on and support for the prevention of atrocities. In cooperation with the Documentation Centre, the Ministry of Education has agreed to integrate genocide education in the teaching curricula of secondary schools.

Despite limitations, the work of the ECCC, in conjunction with civil society groups and the government, has helped to shed light on a dark era. By disseminating information and education on these past events, such acts serve as powerful deterrents for future atrocities. The question of whether there will be further investigations suggests the increased prioritisation of peace and reconciliation over accountability.⁹⁵ This was already reflected in the 'win-win' policy the government adopted in 1993 which aimed to integrate Khmer Rouge soldiers into the government to stop continued fighting.⁹⁶ These measures of transitional justice and truth-seeking have largely contributed to the rebuilding of a conflict ridden environment and serve as significant tools to prevent further atrocities in Cambodia. However, with the recent transformation of the government into an autocratic regime, in which multiple acting members of this regime were also members of the Khmer Rouge, there are serious concerns that Cambodia is at risk of repeating history.

Present Human rights violations

The recent legal and political measures described above constitute "serious restrictions to or violations of international human rights (...) law, particularly if assuming an early pattern of conduct and if targeting

protected groups, populations or individuals.”⁹⁷ as referred to by **Indicator 2.1**. According to the OHCHR, the lack of serious public consultation prior to the adoption of legal amendments to the Cambodian Constitution and the Cambodian Criminal Code, deprives civil society of its right to participate in an inclusive and transparent legislative process.⁹⁸ The rushed adoption, partly excused as ‘urgent’ or ‘emergency measures’, did not allow even a parliamentary debate and therefore undermines the purpose of the legislative organ.⁹⁹ The imprecise wording of new laws leaves space for subjective and politicised interpretation, providing a wide and undefined space for the authorities to apply the law and prosecute individuals and entities. In a legal analysis paper, the OHCHR recommended the reassessment of legal drafts and the revision and clear definition of such terms.¹⁰⁰ The OHCHR further stressed that the legislative process must ensure an inclusive and public debate and thorough review of legal drafts, which need to be in compliance with international human rights law.¹⁰¹

As extensively explored in risk factor 1, the freedom to a fair electoral processes were violated in the 2018 general election. With the CPP in power, and no real opposition, it is expected that the upcoming elections will also fail to be free and fair, infringing upon the rights of Cambodians. Moreover, the OHCHR pointed out that the ability to participate in public affairs requires the rights to freedom of expression, opinion, assembly, and association, as well as the right to receive information, all of which can now lead to arrest in Cambodia.¹⁰² Governmental control over the activities of NGOs or the prosecution for expressing criticism on public figures, are incompatible with human rights law.¹⁰³ The prevalence of incendiary language and restrictions on media have been considered to violate the Cambodian peoples’ freedom to vote freely without any bias deriving from threats or denial of access to information as enshrined in the Constitution.¹⁰⁴ Additionally, after COVID-19, new laws such as the Inter-Ministerial Prakas and the National Gateway violate freedoms of expression, further specifically on the internet and across social media¹⁰⁵ (see further risk factor 7.6 ...“imposition of strict control on the use of communication channels).

Furthermore, the adoption of LANGO in 2015 has since been used to violate the freedom to peaceful assembly. According to a local NGO, as of July 2020 there had been 62 violations of freedom of assembly, with another local NGO corroborating that out of 185 assemblies – authorities restricted 53 in some way, and stopped 21 more.¹⁰⁶ More recently, the arrest and detention of at least 29 casino union leaders and activists during a strike has started an investigation by independent UN rights experts into whether rights to freedom of association, assembly and expression were breached in this instance.¹⁰⁷ The government justified these arrests by classifying the protest as a breach of COVID-19 protocol, however this statement lacks legitimacy.¹⁰⁸ This justification indicates a broader issue with Cambodia’s COVID-19 protocols, such that they often lack transparency and legitimacy (see further **indicator 7.1**). This recent investigation demonstrates that reports of harassment, unfair prosecution and arbitrary arrests are remain regular in Cambodia.¹⁰⁹

Prior to this, reports on harassment and prosecution of members of NGOs, trade unions and human rights groups have been submitted to the UN Special Rapporteur for Cambodia. In her annual report in 2017, the Special Rapporteur expressed her concern over implications of the excessive use of pre-trial detention of prisoners, including members of human rights groups and the political opposition.¹¹⁰ Accordingly, the lack of apparent evidence to support the alleged charges and deprivation of visiting and monitoring rights severely impact their right of liberty (see **Risk Factor 7** “Legal measures affecting fundamental freedoms”).¹¹¹ The UN Working Group on Arbitrary Detention and the UN office in Cambodia found that the detention of Kem Sokha and the convictions of 11 other opposition members are based on discriminatory grounds related to their political opinion.¹¹² In some cases where local authorities have been the alleged perpetrators of violations, allegations have not been followed-up by proper investigation or prosecution (see further **Risk Factor 3** “Inadequate mechanisms of accountability”).¹¹³ Since the Special Rapporteur’s report in 2017, there has been no effort to prevent such violations, suggesting a broader trend of justification and denial under the Cambodian government.

Justification or denial of violations

The behaviour of the Cambodian government towards violations of international human rights law display aspects of **indicators 2.3, 2.4 and 2.5**, which identify the “tolerance” or the “reluctance or refusal to stop” serious violations of international human rights law, as well as the “justification (...) or denial” of their commission. The adoption and application of legal amendments and recent political measures are either presented as being in conformity with existing law or excused as a political necessity in the current climate. Logically, this perception results in the inaction by the authorities to stop them. The Ministry of Foreign Affairs emphasises the short time span of Cambodia’s rebuilding and democratisation process since the fall of the Khmer Rouge regime. Accordingly, the limitations of its institutional and legal capacities require increased efforts to further develop in order to conform with international standards.¹¹⁴ In this ongoing process, the government has prioritised economic prosperity and the reduction of poverty over political and civil rights. Referring to the economic achievements of the past decades, the government places rights such as access to food, housing and employment as more important than the freedom of speech and expression. This particular prioritisation of rights is presented as the “Cambodian way” of transforming a conflict torn country into a democratic state.¹¹⁵

The governmental Cambodian Human Rights Committee has aligned with the Ministry’s position and rejected any claims of human rights violations, stating that peace and stability are essential pre-conditions for human rights.¹¹⁶ These public statements clearly indicate the government’s awareness of a discrepancy between international human rights standards and their domestic application. The reference to its own history and contextualised version of state-building are used as a justification for this discrepancy.

At the same time, the government denies the violations of human rights law in regard to a number of measures. The Government describes the adoption of the LPP as being necessary to protect the sovereignty and multi-party democratic system of the state; essential to limiting foreign interference and the incitement of hatred or violence.¹¹⁷ It refers to the ban of political parties in other states’ constitutions to demonstrate the conformity of the LPP with international practices.¹¹⁸ Consequently, the alleged defamation and incitement by Sam Rainsy for publicly appealing to the military to disobey orders, and similar actions by other opposition members, necessitates a ban from political activity¹¹⁹; the clear evidence of foreign assistance¹²⁰ demand the arrest of Kem Sokha and the dissolution of the CNRP in accordance with the law to protect the political stability and pluralistic democracy.¹²¹ Since the dissolution of the opposition and the 2018 election, Hun Sen maintains that the electoral process was not only free and fair, but there was no violations of human rights.¹²²

Referring to the public statements by the opposition, as well as the media coverage, the Ministry stressed that freedom of speech and expression is not equivalent to defamation and incitement to violence. Rather, they argue the punishment of the latter, enshrined in the Cambodian Criminal Code and found in the penal laws of “all Western countries”, cannot be considered in violation of the fundamental rights to freedom of expression under international human rights law.¹²³ Interestingly, none of the legal measures applied to shut down over thirty radio broadcasts and The Cambodian Daily in 2018 were based on charges of defamation. While the 2017 report published before the closures emphasised the freedom of these media outlets to operate freely *despite* their ‘biased and inciting’ reporting, public statements following the closures emphasised the breaches of tax and contract law and denied any violations of freedom of expression.¹²⁴

Moreover, the government considers the adoption of LANGO as the outcome of a long inclusive consultation process. Instead of limiting freedoms of assembly or association as has been accused, the government states that it is merely exercising its right to regulate the NGOs operating in Cambodia.¹²⁵ The closure of the NDI, for instance, is deemed as simply part of the government’s right to exercise its authority.¹²⁶ The report rejects the claims that the arrests and pretrial detention of numerous human rights activists and opposition members are based on political reasons, laying-out in detail how individual members to the parliament, certain NGOs and even UN personnel, have violated Cambodian law through various actions,

such as bribing witnesses or using fake geographical maps.¹²⁷ Furthermore, it contends that the issue of land disputes has been dramatized and politicised by other political parties, thus subverting the positive achievements of dispute settlements.¹²⁸

However, it must be noted that the government has acknowledged a number of violations of human rights law. In reaction to reports of intimidation and harassment towards individuals before the 2017 commune elections, the Interior Ministry announced an investigation into the incidents, although no investigations against senior officials followed.¹²⁹ Setting a precedent, the King of Cambodia issued an appeal to the Cambodian people in the lead-up to the election to make use of their right to vote according to their conscience and gave reassurances of the secrecy of the electoral process protecting individuals from any threats or harassment.¹³⁰ Furthermore, the OHCHR has been working closely with the judiciary to improve judicial proceedings and the implementation of international human rights standards. These efforts have focused on providing workshops to prosecutors and judicial administrators to progress the functioning of the courts, as well as provide regional training to judges on the use of pretrial detention.¹³¹ Law enforcement officials and prison personnel have also received human rights briefings focussing on the prevention of torture, the use of force and the rights of arrested or detained persons.¹³² While such efforts demonstrate the willingness to improve the capacities of local authorities, there lacks evidence of actual reform, meaning the human rights of Cambodians remain highly vulnerable.

It should be noted here that the framework provided is limited in its capacity to analyse a country's reaction to human rights violations occurring in other countries. However, the significance of Cambodia as the ASEAN chair means there is value in a brief discussion of Cambodia's reaction to the human rights violations occurring in Myanmar. Despite rising international concern of Cambodia's 'democracy', Hun Sen holds the ASEAN chair for the third time since it joined in 1999.¹³³ In response to the February 1st military coup in Myanmar, ASEAN initially sought to bar Myanmar's political representatives from its meetings until the five-point consensus is complied with. However, without consultation from other member states, Cambodia pressed ahead with its engagement with Myanmar.¹³⁴ Hun Sen thus created significant divisions within ASEAN after his controversial visit to Myanmar to meet with Min Aung Hlaing. During this trip the Cambodian government stressed its intention to adopt a policy of "pragmatic engagement" with Myanmar's military administration, breaking ASEAN'S collective decision.¹³⁵ This was interpreted by many as Cambodia legitimising the ruling junta.¹³⁶ Criticisms from other ASEAN members and civil society groups in the region forced Phnom Penh to backtrack its position and upheld the agreement of ASEAN leaders on the five-point agreement, which the junta must comply.

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

The third risk factor concerns "circumstances that negatively impact on the capacity of a state to prevent or halt atrocity crimes". A state protects its populations by establishing institutions and mechanisms that ensure the rule of law and good governance. The lack or the inadequacy of such structures significantly reduces a state's ability to prevent or halt atrocity crimes. Although a weak state will not necessarily be a cause for atrocities, it does decrease the level of protection to its people. Despite the large inflow of financial aid and capacity-building efforts by international actors such as the UN, the insufficiency of resources and capacities of state institutions in Cambodia is reflected by the inadequacy and arbitrary application of human rights standards. To compensate for scarce budgets, institutions like the judiciary and the military have turned to other financial sources, creating a high level of corruption and further diminishing their independence and control. Furthermore, despite international efforts to improve Cambodia's state structures, the immediate concern of COVID-19 appears to have taken precedent in the past two years, resulting in limited or no progress made to improve systematic shortcomings.

Deficiency of human rights in the national legal framework

In Article 31 of the 1993 Constitution, the Kingdom of Cambodia ensures recognition and respect for human rights as defined under international human rights law and guarantees these rights to all Khmer

citizens without discrimination.¹³⁷ This commitment is built on the foundations set out in Article 3 of the 1991 Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (Paris Peace Agreements),¹³⁸ as well as through Cambodia's ratification of several international human rights bodies.¹³⁹ Moreover, in 2012 Cambodia signed the ASEAN Human Rights Declaration which aligns with existing human rights law.¹⁴⁰

Many human rights obligations have been incorporated into domestic law – mainly in the 1993 Constitution – as well as in the Cambodian Criminal Code, which criminalises acts that violate human rights. Nevertheless, Cambodia lacks certain legal provisions of ratified international human rights treaties. In some instances where human rights law is directly applicable without the requirement of adopting domestic laws with the same provision, Cambodian courts have rejected their consideration or ignored their violation.¹⁴¹ More concerning, the recent legal amendments mentioned above contradict elements of international human rights law that Cambodia has ratified, especially political and civil rights. Such shortcomings of human rights law in the domestic legislation have, as discussed above, been justified by the government as a consequence of limited capacities or it has been denied that they are inconsistent with international human rights treaties. Either way, they constitute a conflict between international human rights law and domestic law. The national legal framework, including adopted amendments to the Constitution and the Criminal Code (or drafts currently in the legislation process), does not offer individuals or groups protection in their exercise of fundamental freedoms as laid out in international human rights law. As recent incidents have shown, this not only includes protection from legal prosecution but also physical security from threats, harassment or violence. These factors meet key dimensions of **Indicator 3.1** (“National legal framework that does not offer ample and effective protection...”).

Deficiencies of national institution

The functioning of national institutions depends on the provision of sufficient resources and adequate representation. The lack of sufficient funding of the justice and the security sector has been reflected in the deficiencies in education and training of prosecutors, court and prison staff, as well as law enforcement officials. Such deficiencies, as referred to under **Indicator 3.2** (see also below), undermine the ability of state organs to conduct procedures and work routines in a competent and professional manner, creating room for arbitrariness in the application of international human rights standards.

Law Enforcement

The use of force by the security forces against civilians, most notably during protest in 2013 and 2014, has since raised concern over the lack of control and adherence to human right standards. Reports have repeatedly drawn attention to the continued and common use of torture and ill-treatment of detainees by law enforcement bodies, as well as the conditions of prisons and detention centres.¹⁴² The state lacks capacity to both prevent such incidents or to adequately investigate and deal with reported cases or complaints, which meets aspects of **indicator 3.6** - “Absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse for their claims” and **indicator 3.7** – “Lack of awareness of and training on international human rights and humanitarian law to military forces [...] or other relevant actors.”

The OHCHR has observed shortcomings in the implementation of human rights law by enforcement officials and prison staff. Examples include reports on the excessive use of force to respond to protests, the use of torture and ill-treatment of detainees by prison staff, and overcrowded prisons.¹⁴³ These reports have become more alarming since Cambodia introduced its ‘war on drugs’ campaign in January 2017. A report released in May 2020 by Amnesty International explained that authorities “routinely subject suspects to torture and other forms of ill treatment”¹⁴⁴ Nicholas Bequelin, the regional director of Amnesty International stressed that the war on drugs is “an unmitigated disaster” that has “created a bounty of opportunities for corrupt and poorly-paid officials in the justice system”¹⁴⁵ However, by providing briefings and information on upholding such rights in the conduct of arrest or detainment of individuals, the OHCHR aims to address such deficiencies in the training of respective personnel.

Concerningly, although law requires police prosecutors and judges to investigate all complaints within prisons and detention centres, limited investigations have been carried out.¹⁴⁶ Furthermore, cases of impunity for government officials and family members for human rights abuses in law enforcement have been found in practice (**see further risk factor 3.5 and 3.6**).

Armed forces

To increase the scarce budgetary sources of the military, the ruling party enacted a law in 2010 which enabled the sponsorship of the Royal Cambodian Armed Forces (RCAF) by private companies.¹⁴⁷ Powerful business owners could thus receive private security by the armed forces in exchange for monetary or material donations. In practice, the use of the armed forces by private actors to protect their business interests has faced extensive criticism. Referring to incidents in which violence was used in forced land evictions by units of the military working for businesses, the sponsorship is considered to be a tool of political and economic elites to expand power over resources.¹³¹ This law has also been utilised by foreign governments, such as China who have emerged as the major contributor and in turn, receiver of private services (**See further Risk Factor 5**). The consequences of an increase in Chinese personnel in the country for the Cambodian population is largely ambiguous, however, it has severe consequences on foreign policy and within the international arena (**see further risk factor 5**).

Furthermore, the close ties between the ruling CPP and the RCAF brings the impartiality of the national armed forces into question. A majority of the senior military officials, including the commander-in-chief, also hold high positions in the party. In 2015, the CPP added some 80 members of the military and security forces to its central committee.¹⁴⁸ In light of escalating political tensions and the growing disputes over power, these strong ties raise concern over the RCAF's independence from the party and therefore the civilian control over its own national military (**Indicator 3.4**). According to the constitution, the King is the highest commander of the RCAF. Yet in a public statement in 2015, the deputy commander-in-chief, Chea Dara, declared that the army belongs to the CPP.¹⁴⁹ In reaction government and CPP officials, including the Prime Minister, have distanced themselves from this position by stressing the army's neutrality towards political parties and its duty to defend the elected government. The Defense Ministry commented that this statement does not reflect the official position of the RCAF. The spokesman of the Council of Ministers denied any loyalties between military and CPP leaders and insisted on the military's acceptance of the 2018 election results.¹⁵⁰ However, a 2015 statement by the deputy commander-in-chief and a repeated public announcement by Dara only days before the 2017 elections, expressed the military's support for Hun Sen "forever" and beyond any mandates.¹⁵¹ Simultaneously, the threats by governmental officials and members of the CPP to deploy military means in case of any post-elections disputes, and the Prime Minister's assurance to be backed by the armed forces in case of an election loss, clearly show the CPP's awareness of the military's loyalty. The CPP and military's close relationship remains controversial and may reflect individual military leaders' loyalties towards the CPP rather than a wholesale government-military alliance.¹⁵²

Regardless, Cambodia's military appears to not be funded by its national budget, but is instead dependent on informal methods and often illicit private funding sources connected to the CCP.¹⁵³ This impartiality undermines civilian control over the military as seen in **indicator 3.4**, and begs for genuine reform of Cambodia's armed forces

Human rights institution

The Cambodian Human Rights Committee, the only existing national human rights body in Cambodia, has requested that the OHCHR provide technical assistance and cooperate in providing education to its own staff and to law enforcement officials.¹⁵⁴ Since the announcement of the creation of a politically independent National Human Rights Institution in 2006, the Committee has been in an ongoing consultation process with NGO representatives to draft the law required to establish the body. The need for a national human rights institution has been flagged by the former UN Special Rapporteur and numerous local and

international observers. The consultation was intended to engender more acceptance among non-governmental human rights groups as the Committee has previously faced accusations of not respecting human rights. Disagreements between representatives involved in the drafting process have caused over a decade in delays in passing the relevant legislation needed to establish such a body.¹⁵⁵ In May 2021 the first draft of the NHRI was completed, however there remains concerns that in practice the Cambodian government will not fail to create an “independent, effective and credible” organisation.¹⁵⁶

Judiciary and resource constraints

Due to a shortage of material resources, courts have been set up in dilapidated buildings and the sector lacks a computerised system in which proceedings can be documented and archived. Currently, equipment is mostly provided by staff members.¹⁵⁷ The lack of human resources in the judicial system has allowed individuals with inadequate qualifications to advance to senior judicial positions. These shortcomings meet key aspects of **Indicator 3.2** (“[...] lack sufficient resources, adequate representation or training”) as well as **Indicator 3.9** (“Lack of resources for reform or institution-building, including through regional or international support”). The insufficiency of state funding is compensated by the search of other financial resources. The priority of cases and the course of proceedings is determined by the amounts of money parties of a case offer to the prosecutors.¹⁵⁸ Furthermore, the lack of central guidelines for applying certain legal provisions has led to disparate standards used in courts.¹⁵⁹ Such discrepancies in the conduct of judicial measures creates unpredictability and diminishes the professionalism of the court. The OHCHR has stressed the necessity of central guidelines that must be applied uniformly. As stated above, the OHCHR have also been providing workshops and regional trainings to improve the functioning of the courts and to ensure the consistent application of domestic and international law.¹⁶⁰

Lack of independent and impartial judiciary

Indicator 3.3 concerns the “Lack of an independent and impartial judiciary” and the context in Cambodia suggests that this is currently an issue. In 2014, the National Assembly passed three laws concerning the judiciary in the absence of a majority of the opposition members, namely: the *Law on the Organization and Functioning of the Supreme Council of Magistracy*; the *Law on the Statute of Judges and Prosecutors*; and, the *Law on the Organization and Functioning of the Courts*. Although the call for judicial reform aimed for greater independence of the judiciary from the executive, the laws have been deemed to further increase the control of the government over the courts.¹⁶¹ Prior to their adoption, United Nations Special Rapporteur on the Independence of Judges and Lawyers urged the King to block the laws.¹⁶² According to the new laws, judges and magistrates are appointed and dismissed by a body which consists of members of the Ministry of Justice.¹⁶³ In a 2015 report, the International Bar Association claimed that there was high levels of bias and corruption in the justice system with substantial influence on the courts stemming from the ruling CPP. Judicial officials, including the chief of the Supreme Court, often simultaneously held positions in the CPP, and allegations were made that only those with ties to the CPP would receive judicial appointments.¹⁶⁴ This was partially acknowledged but strongly criticised as an exaggerated claim by the Ministry of Justice.¹⁶⁵ The 2021 Rule of Law Index by the World Justice Project, Cambodia ranked 138 out of 139 surveyed states, ranking the lowest in the Asia Pacific region.¹⁶⁶ The dissolution of the opposition by the Chief of Justice, has been criticised as the most prominent example of the influence of the government over the courts. The legal prosecution of the political opposition, as well as NGOs and media outlets, has led to the wide-spread criticism that the government uses the judiciary as a tool to directly target and weaken any opposition to the governing party.¹⁶⁷

High levels of corruption and poor governance

Indicator 3.5 concerns “High levels of corruption or poor governance.” **In the 2020 Transparency International Corruption Perception Index, Cambodia ranks 160 among 180** countries and territories¹⁶⁸ and thus is perceived as one of the most corrupt states in the world. The professed level of public sector corruption in Cambodia scores 21 out of 100, with 0 indicating ‘highly corrupt’, this score has only improved by one

point since 2018.¹⁶⁹ The government has taken various steps to address corruption and adopted an anti-corruption law in 2010 which came into force the following year. However, its practical implementation has been limited.¹⁷⁰ Cambodia's 2020 result reflect that some progress has been made to improve public services by reducing corrupting in the face of COVID-19, however it is clear that structural and systemic reforms have made no real progressions.¹⁷¹ Additionally, emergency laws introduced to control COVID-19 in 2020 lacked transparency, raising further concerns of endemic corruption (**see further indicator 7.1 ...** imposition of emergency laws).

High levels of corruption in Cambodia stem from ineffective management of natural resources and the misallocation of human resources, which has kept the quality of the public service low and limited opportunities and access to resources.¹⁷² Because of this, 'survival corruption' among low-level public servants highly common.¹⁷³ Moreover, a culture of impunity has fostered corruption among senior officials within political parties and across the RCAF and the judicial system as discussed above.¹⁷⁴ Appointed members to the CPP in the 2018 election were simultaneously high-ranking officials from the military forces and the law enforcement, including all three RCAF commanders- and deputy commanders-in-chief, and the deputy chief of the national police. Although it does not violate any laws, it illustrates the strong political ties between senior members of the military and the CPP. Laws are violated however when these officials do engage in corruption, however impunity prevented any real investigation into allegations of corruption.¹⁷⁵ It cannot be forgotten that Cambodia has been governed by one party for over 30 years. Such strong military-political ties inhibit the ability of checks and balances to prevent abuses of power.

Inadequate mechanisms of accountability

The culture of impunity fostered by deficiencies in the investigation and prosecution of rights violations in many instances highlight the inadequacy of oversight and accountability mechanisms, where victims can seek recourse for their claims (**Indicator 3.6**). The lack of resources and education in the judiciary, as well as the aforementioned high level of corruption among prosecutors and security officials, inhibits the consistent application of legal provisions and the development of central guidelines for an adequate and transparent accountability process. In instances where investigations are not further pursued and perpetrators are not prosecuted for rights violations, victims do not have a body to turn to for redress. The aforementioned arbitrariness of picking up cases by judges is not prevented by any accountability mechanism within the judicial architecture.

In the cases of land disputes, the mechanisms established for complaint and dispute settlement have shown limited capacity in relation to the tremendous number of cases which – despite some positive developments – is demonstrated by the length of the process and the remaining number of open cases. In recent years rural citizens involved with such disputes have begun to turn to international accountability mechanisms for resolutions, the most prominent example being the case against a Vietnamese rubber company, Hoang Anh Gia Lia (HAGL).¹⁷⁶ In 2014 the case was brought to the International Finance Corporation (IFC), purposely bypassing Cambodia's national judicial system, due to the reasons provided above. In 2019, the Cambodian government announced that 700 hectares of HAGL land would be granted back to indigenous groups, illustrating the need for international involvement to consolidate investigations of corruption in Cambodia.¹⁷⁷

Risk Factor 4 focuses on the motives or incentives for certain individuals or groups to resort to force in order to achieve goals or respond to real or perceived threats. From an early warning perspective, it becomes necessary to understand the reasons and drivers of actors to use and justify violence in order to predict them and ideally, develop appropriate prevention strategies. The apparent motives by political and economic elites to remain in control in Cambodia in the past have repeatedly been pursued by resorting to force. Reported incidents of mass violence in the 2013 and 2014 post-election protests, as well as in disputes related to land concessions, display the government’s willingness to use force in order to respond to perceived threats to this control.

Political motives to stay in power

Indicator 4.1 refers to “Political motives, particularly those aimed at the attainment or consolidation of power.” Since the dissolution of the CNRP and the 2018 election, the CPP has successfully consolidated political power. Without a real threat of opposition as of current, the CPP will aim to stabilise and reinforce this power into the future. Since the announcement in December 2021 that Hun Sen endorses his eldest son Hun Manet as the party’s next prime ministerial candidate, the party has additional motivations to maintain political and social stability in the lead up to this transition.¹⁷⁸ Furthermore, the endorsement of his son suggests that Hun Sen is “future-proofing” the rule of the CPP, suggesting the intentions of the party to maintain in power for a long-period of time. In order to maintain stability, it is expected that the CPP will continue to characterise any individual or body, criticising or challenging the government as a threat. As demonstrated in the 2013 and 2018 elections, the prosecution of political opponents who challenge the party’s power and civil society actors who have voiced criticism over the government’s ruling has been seen as a tool to secure power in the face of upcoming elections. Furthermore, the violent crackdown of security forces during elections since 2013, indicate the willingness to resort to force in pursuit of consolidation power. As discussed in **risk factor 2**, such violence has been justified as a necessity in keeping peace and stability. This suggests that violence will likely be used again in the upcoming elections if deemed necessary by the CPP.

Economic Interests

In pursuit of their economic interests, private businesses have reportedly engaged in harassment and violence to force people from seized land. The legal sponsorship deal between the Cambodian armed forces and private investors has been used by businesses to use the military as private security forces to enforce evictions in Economic Land Concessions. In such incidents, units of the military working for land businesses have reportedly turned to physical violence against those evicted. In a complaint lodged at the International Criminal Court in 2015, the armed forces were among businesses and local authorities alleged to have been involved in widespread land grabbing, amounting to crimes against humanity.¹⁷⁹ In 2021, over 100 villagers protested a land dispute, which was quickly shut-down by widespread police raids, beating and the arrests of 30 people.¹⁸⁰ To secure economic interests and the control over resources, as stated under **Indicator 4.3**, private actors have – with the assistance of state actors – used violence against civilians. Despite the efforts of the government to prevent land concessions and grant individual and community land titles, as well as through the assistance of the OHCHR and civil society groups to empower local communities, there continues to be widespread reports of threats and harassment against affected communities and individuals.

Perceived threat of the opposition

Indicator 4.5 describes “real or perceived threats posed by (...) populations or individuals, against interests or objectives” of the actors resorting to violence. As discussed under **Risk Factor 1** (The ‘Colour Revolution’), the measures used to dissolve the opposition and prosecute numerous opposition members, including its leaders, have been justified by the government and the Supreme Court as attempts to incite instability to overthrow the government. The prosecution of human rights activists and members of media outlets (based on different legal grounds) is informed by the same motive – to protect the government’s power under the guise of maintaining national stability.

The commission of atrocity crimes requires the capacities to do so. Risk Factor 5 focuses on the “conditions that indicate the ability” of actors to commit atrocities, namely the substantial resources at their disposal as well as any internal or external support. It must be noted that the mere possession of capacities to commit atrocity crimes does not necessarily imply the intention to commit them. The assessment of this risk factor therefore depends on its relationship to other factors. Major changes to the nature of Cambodia’s relationship with leading international actors has led to the strengthening of the military sector and has increased the capacity to resort to force. These external changes are layered with with a clear imbalance in the control and naturality of Cambodia’s armed forces. Although these elements do not indicate the likelihood of atrocities actually occurring, they do signify an increased capacity to do so.

Strong culture of obedience

The statements in regard to the relationship between the armed forces and the ruling party as discussed under **Indicator 3.4** – “Lack of effective civilian control of security forces” – remains controversial. The commitment to the ruling party expressed by commanders-in-chief of the armed forces displays the presence of a “strong culture of obedience to authority” as referred to under **Indicator 5.4**. However, as mentioned, there remains a discrepancy between these individual statements and the official line of the RCAF. Whether they can be considered representative of the armed forces as a whole or not, the individuals expressing these views are senior military officials. With no acting opposition, the lines between armed forces and the CPP appear to have blurred further. Whilst it is uncertain how this discrepancy might translate into action in the case of political escalations, there has been continued evidence of military response to government opposition in the form of general assemblies. Thus, considering Cambodia’s past experience of atrocity crimes, concerns are raised.

Support of international actors

Indicator 5.8 refers to the “armed, financial, logistic, training or other support” by international actors. Major international donors such as Russia, China and Japan have all been assisting Cambodia in its ongoing capacity building process. China has clearly emerged as the major foreign donor in providing financial aid and training. China’s contributions have largely focused on the provision of military assistance and equipment to the security forces, making it the chief contributor to the RCAF.¹⁸¹ Over the past decade, China’s military presence in Cambodia has become much more prominent. As an example, China and Cambodia have engaged in a defence exercised titled ‘Golden Dragon’, which has expanded from a few hundred people in 2016 to approximately 3,000 personnel in the 2020 iteration of the exercise.¹⁸² Additionally, China has recently increased its military presence at the Ream Naval Base on Cambodia’s south coast.¹⁸³ After Cambodia demolished two U.S. funded facilities on Ream Naval Base, there were confirmed sightings of sand dredging activities run by Chinese military in early 2020.¹⁸⁴ There has since been concerns surrounding China’s intentions of gaining exclusive rights to the port facilities.¹⁸⁵ When questioned the Cambodian government denied that any deal had been made with China for exclusive rights to the base, maintain it remains “open for all”.¹⁸⁶ Despite these discrepancies, it is evident that China and Cambodia’s military relationship has significantly strengthened beyond just foreign aid, with clear arms and intelligence cooperation.

While China strengthened military ties, the United States, who was once a major international donor, placed an arms embargo on Cambodia in December 2020. A statement from the U.S. Commerce Department cited human rights abuses and high levels of corruption among Cambodia’s military to explain the new restrictions on defence services.¹⁸⁷ It is also assumed that the imposed tariffs on arms by the United States were in reaction to China’s increased presence at the Ream Naval Base.¹⁸⁸

In light of the CPP’s consolidation of power, the strengthening of military is concerning. In addition to this, as military cooperation stifles with the west, Cambodia has clearly become dependent on China’s

RISK FACTOR 5 : CAPACITY TO COMMIT ATROCITY CRIMES

armed forces. While China's presence does not directly correlate with an increased capacity to commit atrocity crimes, China's disregard for international obligations and their historical military hostility raises worries that Cambodia will follow suit. Additionally, as relationships with the West diminish, Cambodia lacks incentive to meet international regulations imposed through trade and military deals with western countries such as the EU and the United States.

RISK FACTOR 6: ABSCENE OF MITIGATING FACTORS

The presence of certain elements, such as a strong engagement of national and international civil society and media, diplomatic relations to other states, and close cooperation with international and regional arrangements, can contribute to preventing or reducing serious acts of violence or their further escalation. With the legal restraints on the activities of civil society groups and media in Cambodia, such mitigating factors have gradually been weakened or eliminated. National and international non-governmental organisations lack the ability to adequately organise themselves and represent their interests. Additionally, Cambodia has failed to meet international obligations under the UN according to signed treaties. Lastly, Cambodia has failed to engage in open forms of dialogue on both a national and international level, suggesting they lack the desire to seek conflict solutions.

Lack of empowerment and a strong civil society

Indicator 6.1 refers to "limited or lack of empowerment processes, resources, allies or other elements that could contribute to the ability of protected groups, populations or individuals to protect themselves." The Special Rapporteur to Cambodia has identified various groups of people who have been subjected to discrimination, and currently the processes or resources to empower vulnerable groups, such as indigenous peoples, women or minorities, are limited or poorly implemented. In general, over the past three years the special rapporteur report lacks any real change in regards to marginalised groups, suggesting recommendations have not been considered and these groups still remain vulnerable. Such that, the process of recognising indigenous communities and granting individual or community land titles still remains slow and tedious due to the lack of financial resources and bureaucratic obstacles (see **Indicator 2.1**). It has been recommended that the Government review key laws and policies to fulfil its obligations under international human rights law and ensure the rights of indigenous peoples, progress is yet to be seen.¹⁸⁹ Women still reportedly face discrimination in the labour market and gender-based violence which, in the majority of cases, remains unprosecuted.¹⁹⁰ The most recent reports do stress that the socioeconomic impacts of COVID-19 have disproportionately affected these marginalised groups, with extra concern focused on the growing informal work sectors due to the pandemic.¹⁹¹

The adoption of LANGO and numerous defamation laws (see **Indicator 1.6**) have largely contributed to a "lack of a strong, organised and representative national civil society and of a free, diverse and independent national media", as referred to in **Indicator 6.2**. The majority of NGOs and media outlets that have continued to operate in Cambodia have been targeted through threats of prosecution or allegations of rights violations. They are limited in their activities, as imprecise wording of legal amendments fails to provide a clearly defined space in which they can operate. The restraints on civil society to participate in the political process diminishes its ability to mitigate any growing tensions or conflict, as well as eliminating the means for civil participation and empowerment more broadly. Additionally, COVID-19 restrictions have prevented public assemblies and open communication, the empowerment of Cambodia's society diminishes even more.

Shortcomings of International Obligations

As a member of the United Nations, the Cambodian government is obliged to prepare and submit periodic reports on various human rights treaties it is a party to. Complying with such agreements demonstrates the state's cooperation with international human rights mechanisms, as described under **Indicator 6.7**.

Despite previous concerns, in 2019 Cambodia made significant progress in submitting due and overdue reports to treaty body's and key international covenants.¹⁹² This included the submission of Cambodia's 2019 Universal Periodic Review, which outlined commitments that would be made to better uphold human rights expectations. These commitments however fail to be genuine, leaving human rights organisations cynical. As an example, Cambodia committed to end harassment and arbitrary arrests in the 2019 review, yet since then, the prosecution of human rights defenders and the political opposition has continued to increase.¹⁹³ Furthermore, in 2019 there appeared to be clear efforts to revise the country's common core document, but in 2022 it still has not been updated from the 1997 version. Thus, while efforts to improve documentation have been clear, the OHCHR urges Cambodia to allocate resources so reports can be completed and submitted to maintain compliance with UN's expectations. More concerning however is Cambodia's disinterest in rectifying national human rights violations (see further **risk factor 1**) which indicates a much larger shortcoming in Cambodia's international obligations. In his recent report on the state of human rights situation in Cambodia, UN Special Rapporteur Vitit Muntarbhorn pointed to the "disconcerting phenomenon of political monopolisation, which attests substantively to the qualitative decline of the democratic polity and related governance" in the country.¹ He also noted that the overuse of criminal law and ambivalence of laws "raises the spectre of 'rule by law'."² Specifically, a draft cyberlaw, which criminalizes statements that have an "adverse effect" on national security opens the door to "spurious assessments of a political kind" and expand the state's surveillance and censorship system. This could then violate international norms embodied in the ICCPR.³

Unwillingness to engage in dialogue

Despite the urges by international actors to address the growing political tensions within the country and offers to mediate between the government and the opposition, the government has expressed its unwillingness to engage in dialogue with the banned CNRP. The violent clashes and one-year boycott of the National Assembly by the CNRP following the disputes over the 2013 general election were eventually abandoned with the establishment of a 'Culture of Dialogue'. The agreement intended to guide the interaction between the ruling and the opposition party and was based on a Code of Conduct signed by both Prime Minister Hun Sen and then opposition leader Sam Rainsy, in which both parties agreed to avoid the public use of certain incendiary rhetoric.¹⁹⁴ However, with the arrests of a high-level opposition member and numerous opposition activists in 2015, the Culture of Dialogue agreement unravelled.¹⁹⁵ The CPP's refusal to uphold dialogues with the opposition during and leading up to the prosecution of both opposition leaders, combined with the party's dissolution, has hindered any continuation of the Culture of Dialogue. According to the government, the public defamation by senior members of the opposition violated the Code of Conduct.¹⁹⁶ As mentioned with regards to Indicator 1.4 ("Political instability caused by disputes over power"), the parties have received offers by international actors to mediate in order to address the escalating political tensions. The UN Secretary-General has called on both parties to resume to dialogue and cooperation. He emphasised the imperative of the government to ensure an environment of democratic dialogue free from threats and violence.¹⁹⁷ Leading up to the 2022 election there remains no forms of dialogue with any political opposition from the CPP, infringing upon democratic values and demonstrating that these elections will not be free nor fair. The government is unwilling to engage in dialogue with international actors on these matters. In response to the numerous statements made in the 2018 UN Human Rights Council session, in which UN member states expressed their concern over the deteriorating situation, the government referred to its right of non-interference and urged the international community to stay out of its domestic affairs.¹⁹⁸ Additionally, there was also no clear dialogue between the UN and Cambodia after the latest Human Rights Council Session which is concerning with respect to Cambodia's international obligations. This has increased tensions between the Cambodian government and UN bodies and representatives, which further supports the assertion of limited cooperation with international human rights mechanisms under **Indicator 6.7**. The Special Rapporteur has continuously urged all member states to engage with Cambodia in an open dialogue about human rights.¹⁹⁹

Early Warning Mechanisms

As mentioned with regards to **Indicator 2.2** (“A history of atrocity crimes”), Cambodia has taken a range of proactive measures to prevent any recurrence of atrocity crimes. The government has repeatedly expressed its commitment to promote and implement the Responsibility to Protect domestically and among Southeast Asian states. While other regional arrangements, such as the African Union or the governments cooperating in Latin America have established specific early warning mechanisms and integrated them into their security architecture, ASEAN has so far not developed any methods or bodies responsible for the monitoring, identification and warning of the early signs of atrocities.²⁰⁰ Cambodia’s proactive appointment of a national focal point has been intended to not only coordinate national efforts, but also to set an example for other states in the region to follow. No ASEAN member state has yet done so. A regional network of national focal points is therefore not yet in existence.

On the domestic level, the appointment of a national focal point has led to increased efforts to strengthen atrocity prevention in Cambodia. In cooperation with academia and civil society groups, the training of law enforcement and government officials on a cross-ministerial level has provided information and education on the norm. The application of public seminars has further engaged stakeholders in dialogue to implement the Responsibility to Protect. The ‘Friends of R2P Cambodia’ network has been established to help disseminate information on atrocities and their prevention across the country.²⁰¹ Interestingly though, a revised report provided by the Cambodian Institute for Cooperation and Peace in 2019 appeared to downplay specific risk factors, concluding that the risk of atrocity was low – showing some disparity to the review offered by the APR2P. While these disparities are helpful to note, any education on atrocities and continuous dialogue serve as productive methods of early warning.

Notwithstanding these positive efforts, early warning mechanisms remain weak and under-developed. As previously mentioned, the establishment of an independent national human rights commission with the potential to monitor the human rights situation in Cambodia and identify early signs of atrocities, has so far not been implemented. Such a body would have the potential to correspond with the focal point and increase the effectiveness of identifying early warning signs. Additionally, the ability of a strong and independent civil society, including think tanks, research institutes, rights groups and media, to oversee the situation of human rights in Cambodia and identify potential risks are vital attributes for a functioning early warning mechanism. The recent escalation in restrictions of media and the sharing of information restricts civil society to notify and easily use methods of early warning. Where such civil society actors are limited in their ability to operate, the capacities of early warning mechanisms are reduced.

RISK FACTOR 7 ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

RISK FACTOR VII: ENABLING CIRCUMSTANCES OR PREPARATORY ACTION

Certain events or measures, whether gradual or sudden, can create an environment conducive to the commission of atrocity crimes. Such changes can point to the likelihood that steps are taken to deploy to mass violence and potentially commit atrocities. Yet even where such planning is non-existent, certain changes can create an environment that makes atrocities more likely. The identification of such changes and the probability that they lead to atrocities is therefore crucial for appropriate measures of prevention to be established. Vague language under the newly imposed COVID-19 emergency law has raised concern that freedoms will be restricted beyond the jurisdiction of the health pandemic. Furthermore, the escalation of surveillance and restriction across all media channels has created an environment that could further foster atrocity crimes. This new legislation accompanied with pre-existing systematic shortfalls means 8 indicators are met in Risk Factor 7, and close attention should be paid to these enabling circumstances.

Emergency Laws

Indicator 7.1 refers to the “imposition of emergency laws” that “erode fundamental rights”. In 2020 the threat of COVID-19 created justified circumstances for governments internationally to introduce ‘emergency laws’ that restricted freedom of movement, shut down workforces and schools and increased public surveillance. In April 2020 the Law on the Management of the Nation in State of Emergency was “hastily drafted and passed without consultation”, giving the Cambodian government legal capacity to restrict fundamental freedoms.²⁰² Both Amnesty International and Human Rights Watch have expressed concerns of the vague and broad language of the legislation outlines restrictive measures that could be subject to “misinterpretation or misapplication”.²⁰³ Emergency COVID-19 laws have been controversial on an international level, however the context of Cambodia’s legal and political situation is important in analysing the introduction of such laws. As explored above, poor governance and weak legal infrastructure makes Cambodia systematically vulnerable to the new law. The law bans distribution of information, justifies intrusive surveillance and control of media, as well as prohibiting public assemblies.²⁰⁴ (see further in **risk factor 2**). Cambodia’s pre-existing history of human rights violations suggest that these draconian laws are merely disguised under COVID-19, and are instead efforts by the Cambodian government to further restrict civil liberties and maintain political control.²⁰⁵

Interference with vital state institutions

Indicator 7.2 concerns “interference with vital state institutions, or measures that result in changes in their composition or balance of power (...)”. As discussed in **Risk Factor 3**, the inclusion of the military and security forces in the CPP central committee herald an imbalance in this domain and raise concerns regarding the potential of interference in state institutions. Furthermore, the Ministry of Justice has the authority to appoint and dismiss judges and magistrates, interfering with state institutions considering that many members of the CPP hold high positions in the judicial system including the Chief Justice. As previously noted, such strong ties between the government, the judiciary and the security sector inhibit the balance of power and the ability of mutual control, removing essential elements of a functioning democracy.

Strengthening of the Security Apparatus

Indicator 7.3 refers to “Strengthening of the security apparatus, its reorganization or mobilization against protected groups, populations or individuals”. The increased cooperation between RACF and China’s military indicates the strengthening of Cambodia’s armed forces. As explained in **indicator 5.8**, over the past five years China has increased, military supplies, the size of China-Cambodia military exercises, and most recently familiarised itself with the Ream Naval Base. Furthermore, a new security deal in 2021 provides Cambodia with Chinese surveillance technology, including biometric surveillance and DNA screening equipment.²⁰⁶ International bodies are concerned with Cambodia’s intentions to use this surveillance technology, pleading with the government to be transparent about its uses.²⁰⁷ The deepening of the military cooperation with China has been widely perceived as an attempt by the Cambodian government to demonstrate its military strength and its independence from ‘Western’ donors, who have withdrawn their financial assistance due to rights violations.²⁰⁸

Severe restrictions on communication and civil society

The CPP’s has successfully consolidated power and continue to do so by restricting channels of information to the public, most notably through the closure of NGOs and close monitoring of the internet and social media. Prior to, and directly after the 2018 election, the Cambodian government adopted LANGO to shut down or threaten numerous NGOs (see **Indicator 1.6**) through legal constraints. The shutdown of dozens of radio broadcasts and newspapers based on various legal grounds or political pressure in 2016 has reduced the amount of independent media outlets in the country. In addition to harassment and intimidation, as well as incidents of physical violence and legal prosecution against journalists and members of rights groups and think tanks, these developments have put severe restrictions

on the services and space to operate of media and NGOs, as described under **Indicator 7.7** – “Expulsion or refusal to allow the presence of NGOs, international organizations, media or other relevant actors, or imposition of severe restrictions on their services and movements.”

Alongside the closure of formal sources of information, the Cambodian government has targeted informal channels of information such as social media. Under the guise of COVID-19 measures, these restrictions have escalated drastically in the past two years. In late 2015 the Law on telecommunications authorised the government to monitor private telecommunications and prosecute individuals in cases where electronic communication may jeopardise “national security”.²⁰⁹ Just prior to the 2018 election the government tightened media monitoring by introducing the *Inter-Ministerial Prakas*, requiring all internet service providers to install surveillance software to monitor content.²¹⁰ Under this law the Ministry of Post and Telecommunications has authority to “block or close” webpages and social media pages that “undermine national security, public interests and social order”.²¹¹ More recently, in February 2021 the *Sub-decree on the Establishment of the National Government* was adopted, requiring all internet traffic in Cambodia to be routed through a regulatory body charged with monitoring online activity before it reaches users to preserve “social order”.²¹² This legislation has been introduced 12 months prior to the 2022 elections, arguably in an effort by the CPP to further restrict the freedom to information and speech and control election outcomes further.²¹³ This new law directly infringes upon international human rights standards on the right to privacy, and furthermore restricts freedom of expression, either by prosecution or self-censorship. Thus, there has been a rapid escalation of **Indicator 7.6** – “imposition of strict control on the use of communication channels, or banning access to them.” In conjunction with earlier restrictions placed on NGO’s, Cambodians have very limited means to communicate and act as a civil society, infringing upon the democratic process and enabling the continued consolidation of CPP’s power ahead of the upcoming elections.

Legal measures affecting fundamental freedoms

The use of defamation laws or other legal grounds to prosecute rights groups, media outlets and members of the political opposition and individuals publicly expressing their opinion, have been perceived as measures that directly target entities with opposing political views and violate their rights to liberty and freedom of expression²¹⁴ (See also **Indicator 2**). Numerous members of opposition groups, local NGOs and media outlets have been arrested and detained, often without evidence to support the alleged charges. As noted above, the conviction of several opposition members and the detention of Kem Sokha have been determined to be deprivations of liberty based on discriminatory grounds. The prosecution against political opponents based on political opinion constitutes a violation of international law and meets key aspects of **Indicator 7.8** – “Increased violations of the right to life, physical integrity, liberty or security ...”. Additionally, legislation that escalates surveillance and media control as mentioned above violates the rights to liberty of the Cambodian population as a whole.

Increased Inflammatory Rhetoric

The Culture of Dialogue agreement between the ruling party and the opposition was explicitly designed to delimit the use of inflammatory rhetoric and hate speech. Such rhetoric had previously been used excessively during the 2013 election period and during the post-election violence. Specifically, the language used by both government and CPP officials included threats to resort to the use of force in the case of an election loss or any disputes surrounding the elections.²¹⁵ Some statements by ministry officials threatening violence explicitly referred to torture techniques that were used during the Khmer Rouge regime.²¹⁶ In a public statement, the Prime Minister expressed the party’s willingness to sacrifice human lives to ensure political stability.²¹⁷ Members of the opposition party repeatedly included anti-Vietnamese sentiment against the CPP in their rhetoric.²¹⁸ The use of such incendiary language continued after the failure and fall of the Culture of Dialogue agreement. Referring to the democratic transitions of the ‘Arab Spring’, in 2015 the Prime Minister publicly threatened to deal with any attempts to challenge his power with the use of force and mass arrests.²¹⁹ The use of such incendiary rhetoric highlights the presence of

Indicator 7.13 – “Increased politicization of identity...” and **7.14** – “Increased inflammatory rhetoric...”. History has indicated that the use of inflammatory language was heightened around elections in CPP’s attempt to silence those in opposition, and to pressure the public to vote in favour of the reigning governing body. Despite the upcoming elections in 2022, rhetoric has not been as inflammatory, which instead points to the CPP’s successful silencing of the opposition, and self-censorship and control of the broader population.

RISK FACTOR 8: TRIGGERING FACTORS

Certain events or circumstances, although seemingly unrelated to atrocity crimes, can aggravate conditions that enable the commission of atrocity crimes. From an early warning perspective, it is therefore essential to identify such circumstances and assess their potential impact. The incidents identified under this risk factor mainly complement or overlap with the changes described under the Risk Factor 7. The legal and political measures operationalised in Cambodia over the last few years have led to a change in the power balance between political parties, and combined with the continuous use of inciting rhetoric, have caused an escalation in extant tensions and further fuel an already unstable and unpredictable political environment. The legal and political measures operationalised in Cambodia have led to the complete consolidation of power by the governing body CPP. While this power shift means upcoming elections will be predictable, factors such as COVID-19 mean Cambodia’s social and political environment is still vulnerable to change and may trigger concerning events in the future.

Changes in the political power of groups

Indicator 8.4 refers to “abrupt or irregular (...) changes in political power of groups”. The dissolution of the CNRP by the Supreme Court in November 2017 removed the largest opposition party from the political spectrum. As mentioned under **Indicator 1.5** (‘Disputes over power’), a newly adopted law has redistributed CNRP seats among the ruling CPP and minor opposition parties. In the 2018 election the CPP won 125 seats in parliament, transforming Cambodia into a de-facto one party state, violating the liberal multi-party system that is enshrined in Cambodian law.²²⁰ Since 2018 no political opposition with the capacity to threaten the CPP’s power has formed. Thus, entering the 2022 elections it is unlikely that there will be any changes to political power of groups.

Attacks against basic rights of opposition members

As discussed under the previous Risk Factor (**Indicator 7.8**, “Legal measures affecting fundamental freedoms”), the arrests and detention of numerous opposition members, including opposition leader Kem Sokha, constitute “attacks against the life, physical integrity liberty or security” of opposition members, as described under **Indicator 8.5**. As already discussed, the charges against and detention of Kem Sokha and 11 other CNRP members are constitute acts of discrimination based on political opinion. Reportedly, the court hearings did not provide substantial evidence for their convictions.²²¹ In late November 2020 Kem Sokha was freed from arrest, with the judge announcing investigations were concluded – however he is still banned from politics and cannot travel abroad.²²² Those still detained have reportedly been deprived of visiting or monitoring rights, as well as access to medical assistance, further violating international human rights standards.

Acts of Incitement or hate propaganda

Indicator 8.7 refers to “acts of incitement or hate propaganda targeting particular groups or individuals” and echoes what has already been described under **Indicator 7.13** and **7.14** (‘Increased inflammatory rhetoric and politicisation of identity’). In 2016, the governmental Human Rights Committee released videos showing footage of suppressed protests in European states and the US, as well as scenes from the civil wars in Libya and Syria, alongside explicit warnings of the “excessive use of rights” and the consequences of civil rights. Opposing views and public criticism towards the government and interaction with foreign entities, are associated with the regime change and accused of inciting civil unrest and the

intention to overthrow the ruling party. The naming and shaming of specific civil society organisations, media outlets or individuals alleged of participating in such activities, has been accompanied by threats of legal prosecution, arrests and dissolution. The accusations of jeopardising national security and political stability, the direct (legal) targeting of opposing voices and the threatening language to prevent any disputes or protests, have culminated into a propaganda campaign targeting individuals or entities who publicly express criticism against the government or support for the opposition.

Instability and unpredictability of upcoming elections

Indicator 8.8 concerns “Census, elections, pivotal activities related to those processes, or measures that destabilize them.” The violent incidents following the 2013 general election have demonstrated the high level of unpredictability that can accompany election outcomes in Cambodia. Unlike the 2013 and 2018 election however, the upcoming 2022 election lacks unpredictability. The CPP’s successful consolidation of power means that there is no legitimate political opposition, meaning the CPP will be dominant in the upcoming elections. Thus, it is evident that the upcoming elections will neither be free nor fair, and will lack features that are inherent to democratic systems. Unlike the 2018 elections there appears to be no organised boycott of the elections, most likely due to increased media surveillance and the prevention of public assemblies. However, if protests were to occur there is serious concern that security forces will become violent, and protestors would be detained. In light of this, it remains crucial to observe the reaction and behaviour of people and armed forces during, and especially after, the 2022 and 2023 elections.

Instability caused by COVID-19

The global pandemic had detrimental effects on the economy of Cambodia, causing the workforce to constrict, and poverty to increase rapidly. After the the EU placed tariffs on their FTA agreement with Cambodia the work force (specifically factory workers), already faced severe effects, which only became exacerbated under COVID-19 restrictions. Low demand, partnered with government legislation that restricted the number of workers permitted in factories, meant many were left unemployed, or their household income significantly decreased.²²³ As a nation, Cambodia has therefore experienced “sudden changes that affect the economy or the workforce... as a result of epidemics” as stated in **indicator 8.9**. Furthermore, the weakness of the economy has left Cambodia dependent on foreign aid more than ever – which is slowly decreasing from western countries due to their human rights violations. Thus, making Cambodia even more dependent on financial support from China.

COMMON RISK FACTORS

RISK FACTOR 11 : CRIMES AGAINST HUMANITY

The Framework of Analysis notes that **Common Risk Factors** help to identify the probability of atrocity crimes occurring, without necessarily identifying the type of crime. **Specific Risk Factors** refer to the fact that each crime has elements and precursors that are not common to all three atrocity crimes: Genocide, crimes against humanity, and war crimes. The indicators of the **Specific Risk Factors** identify concrete elements that are characteristic to a specific atrocity crime, and thus the risk of their occurrence. Despite the deteriorating situation in Cambodia having resulted in the discrimination and legal prosecution against the political opposition and various civil society bodies and members, the commission of one of the four atrocity crimes so far remains unlikely. Although the restraints on various actors constitute severe limitations on fundamental freedoms under international and national human rights law, they currently remain below the high threshold of the legal definitions of atrocity crimes.²⁰⁴

Nevertheless, a number of indicators identifying “signs of a widespread or systematic attack against any civilian population” associated with **Risk Factor 11** (crimes against humanity) do seem to be partly present in Cambodia. The inciting language in public statements and threats to deploy military means in response to any disputes or protests with violence, suggest a willingness to use force against civilians. However, no

RISK FACTOR 11 : CRIMES AGAINST HUMANITY

public statements or documents point towards “signs of a plan or policy to conduct” direct attacks against civilians (**Indicator 11.5**). Senior government officials have fuelled tensions between politically opposing views by using incendiary language in public statements and have publicly threatened to use force in the case of any protests. This suggests the presence of the “use of the media or other means to provoke or incite to violent acts”, as identified under **Indicator 11.4**. Regardless, the low presence of indicators under this Risk Factor, make it difficult to identify whether the current circumstances constitute a level of risks that amounts to widespread and systematic violence against civilians.

CONCLUSION

The Framework states that the more risk factors and Indicators present the more likely are the risk of atrocities. Assessing these factors must, however, take place within a broader understanding of the political, historical and cultural context of a state. The above analysis has identified the presence of a number of indicators in all eight **Risk Factors**. The lack of or insufficiency of state capacities underlies various deficiencies in the structure and procedures of Cambodia’s state institutions. In many ways, the decade-long state building process undergone in Cambodia has resulted in significant and applaudable developments. Both the government and civil society actors have demonstrated tremendous progress in addressing past grievances associated with the Khmer Rouge, worked proactively to counter poverty, increased economic prosperity, and implemented significant international legal standards to ensure fundamental rights of individuals and communities. Nevertheless, since the 2018 elections, the consolidation of the power under the CPP and the continued adoption and application of laws that contradict domestic and international law, threaten past advances. Common risk factors 1,2,6,7 and 8 raise the most concern as they highlight changes that have continued to increase risks rapidly over the past five years, raising uncertainty about the future stability of the country. Extant Risk factors (3 and 5) concerning state deficiencies in regard to accountability and the control and balance of power, combined with the growing capacity and threat to resort to force, further intensify these risks factors.

Due to COVID-19, resources allocated towards capacity building, and the restructuring of political and judicial systems in Cambodia have been reallocated to mediate the immediate threat of the pandemic. Thus, little to no change has been seen to state structures, leaving them concerningly weak. Furthermore, the introduction of harsh laws under COVID-19

The risk that a further deterioration of the situation in Cambodia will reach the threshold of atrocity crimes remains low. While multiple factors have increased the capacity for Cambodia to commit atrocity crimes, in the absence of a real political threat to the current ruling party, the motivations to act on this capacity remains relatively low. Furthermore, the current assessment does not identify clear indicators of Specific Risk Factors that tend to signify the likelihood of atrocities occurring. It is stressed however that while atrocity crimes may not be expected, the violations of human rights under the CPP government are expected to continue if international assistance is not deployed. Due to COVID-19, resources allocated towards capacity building, and the restructuring of political and judicial systems in Cambodia have been reallocated to mediate the immediate threat of the pandemic. Thus, over the past five years no progress has been made to improve this situation. Especially as China asserts itself as Cambodia’s primary foreign relationship, other international bodies and larger western countries should remain consistent on offering assistance to the strengthening of Cambodia’s state structures, ensuring elections are as fair as possible under the circumstances and that human right obligations are upheld.

Thus, to address the principal challenges, both immediate measures and long-term strategies are needed. Such challenges include the risk of political violence and the challenge of maintaining stability in a politically sensitive environment, the full and consistent implementation and application of international human rights standards, and the functioning of state institutions and capacities to ensure good governance and the rule of law.

RECOMMENDATIONS

RECOMMENDATIONS FOR THE GOVERNMENT OF CAMBODIA

1	Take immediate steps to ease the political tensions and engage in dialogue with the opposition party. Ensure an inclusive and representative election in the upcoming commune and sankat elections on 5 June 2022 by stopping harassment of the Candlelight Party (CP), the new opposition party aligned with the outlawed Cambodia National Rescue Party (CNRP) of Sam Rainsy and two other parties.
2	Ensure that the rights to freedom of expression and the press, based on pluralism, transparency and accountability, are respected and protected and that an open exchange of information between candidates, political parties and voters is encouraged. This requires that civil society and media care allowed to exercise their right to openly debate and discuss political affairs without prosecution, discrimination, or violence.
3	Ensure that people's right to vote freely and according to their conscience in the June 2022 commune and sankat elections and the subsequent 2023 national elections are respected, as also stipulated in article 51 of the Constitution.
4	Immediately end the use of incendiary language and ensure a non-threatening election environment without intimidation, harassment, or physical violence. Ensure the prevention of any discrimination based on political opinion against individuals or groups.
5	Ensure that the military remains neutral and respects the June 2022 commune and 2023 national election results.
6	Allow the monitoring and election observation by independent bodies including local NGOs and international actors.
7	Cease all politically motivated prosecutions and immediately release all persons detained as a result of the peaceful and legitimate exercise of their fundamental freedoms. End the use of pre-trial detention in the absence of any circumstances that clearly justify its use.
8	Review and revise drafted or adopted legal amendments in order to ensure compliance with domestic and international human rights standards. Specifically, the Law on Political Parties, the Law on the Association of Non-Governmental Organisations and various defamation laws including the Lèse-Majesté Law must be revised or repealed to ensure the rights to freedom of expression, association and peaceful assembly.
9	Continue efforts to implement a fair and comprehensive land planning and management policy that prevents forced evictions from land and inadequate compensation or relocation and ensures the effective and non-violent settlement of land disputes.
10	Continue efforts to provide adequate training and education to law enforcement officials and military forces on international human rights law.
11	Take measures to strengthen capacities and training to the judiciary and develop consistent standards and central guidelines for the application of legal provisions, including international human rights standards, to promote a professional and independent justice system
12	Take steps to address corruption through the adoption and effective implementation of anti-corruption laws and transparency in the structures and procedures of state institutions.
13	Promote efforts and strengthen capacities of academia and civil society to implement R2P at the national and sub-national levels through education, training and awareness-raising. Continue efforts to include awareness and knowledge on atrocities and their prevention in education programs including schools and universities. Engage with non-state actors, scholars on how to disseminate knowledge and educate people and relevant stakeholders on atrocity prevention.
14	Engage with civil society groups and relevant stakeholders to exchange information on atrocity prevention and develop early warning and early action strategies, including a national action plan that would address the risk factors in the country to prevent potential future atrocities.
15	Continue efforts to integrate atrocity prevention in the domestic legal framework, including necessary laws to complement the Rome Statute. Ensure the conformity of domestic legislation with international human rights law and strengthen measures aiming at preventing discrimination and violence, such as the second National Action Plan to Prevent Violence Against Women (2014-2018).

RECOMMENDATIONS FOR CIVIL SOCIETY	
1	Cooperate with other civil society and international actors to ensure that the 5 June 2022 commune and sankat elections will be free, fair and peaceful. Monitor the situation carefully and provide policy advice and election observers to ensure, as far as possible, a transparent and non-violent conduct of the election.
2	Continue to provide input and advice in the legislation process to ensure the conformity of legal amendments with international human rights law.
3	Provide information and support to state institutions to enable an early identification of potential risks. Monitor and share information on early warning signs of atrocities.
4	Continue outreach, education and training on atrocities and their prevention, as well as the engagement of involved stakeholders and key players in dialogue. Develop national and regional early warning mechanisms and contextualised prevention strategies through the research of past events and effective methods.
5	Expand the friends of R2P network to enhance public knowledge and awareness on atrocity prevention.
RECOMMENDATIONS FOR REGIONAL ACTORS	
1	Encourage the government of Cambodia to ensure that the 5 June 2022 commune and sankat election and the subsequent general elections in 2023 are free, fair and conducted in a transparent and non-violent manner.
2	Provide capacities for election monitoring and impartial dispute settlement, such as mediation capacities and private diplomacy to enable a dialogue between the political parties and ease tensions.
3	Strengthen capacities of ASEAN bodies, including the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Institute for Peace and Reconciliation (AIPR), to develop useful early warning and early action strategies and mechanisms.
4	Coordinate efforts by regional actors in preventing atrocities and promote dialogue to exchange information and strategic approaches.
RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	
1	Encourage the government of Cambodia to ensure that the 2022 commune and sankat elections and the subsequent national elections in 2023 is free, transparent, and fair.
2	Provide assistance in the conduct of the 2022 and 2023 elections by deploying impartial election observers.
3	Support national and local initiatives to promote peaceful elections in 2022 and 2023.
4	Monitor the situation carefully and continue to raise awareness on the situation in Cambodia. Maintain open dialogue with the government, offer appropriate recommendations for the improvement of the current situation and urge the government to address present human rights violations.
5	The OHCHR should continue to provide adequate resources, education and training to further strengthen state capacities and the implementation and application of international human rights standards. The Office should continue the support of the legal and judicial reform process to strengthen the rule of law. It should continue to provide awareness-raising and training workshops to strengthen the capacities of civil society organisations.
6	Provide assistance and capacity building to state institutions and civil society actors in their efforts to educate and raise awareness on atrocity prevention and to develop contextualised early warning and prevention mechanisms and strategies.
7	Promote dialogue among regional and international stakeholders to exchange information and enhance the norm in the region. Offer effective ways and methods to promote and implement R2P in the national and regional context.

END NOTES

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