

**Special Rapporteur on the situation of Human Rights in Cambodia**  
**Interactive Dialogue with the Human Rights Council, 27 September 2017**

**Initial statement**  
**CHECK AGAINST DELIVERY**

Mr President, Excellencies, Ladies and Gentlemen, it is my honour to present my second substantive report on the situation of human rights in Cambodia. I would like to record my humble appreciation to the Council for choosing to extend the mandate of the Special Rapporteur on the situation of human rights in Cambodia for two years in resolution 30/23. I would also like to record my gratitude to the Royal Government of Cambodia for its cordial support for my work both in terms of the swift issuing of invitations to undertake formal visits and with scheduling of official meetings during visits. I also acknowledge the statement made by His Excellency Keo Remy at the opening of this Council session and the expressed intention of the Government to support the continuation of the mandate of the Special Rapporteur.

My report on the situation of human rights over the last year is available as A/HRC/36/61. To comply with the UN requirements, it was written and submitted to OHCHR at the beginning of June, though it was possible to include some brief updates following the review by the state. In this oral statement, I primarily intend to update the Council on developments in Cambodia since May, given the radical developments since the report A/HRC/36/61 was submitted.

As noted at paras 44-49, Cambodia is between elections. The local level sangkat/commune election on 4 June 2017 appears to have been orderly and with few irregularities requiring resolution by the National Election Committee. The voter registration programme went well and some ninety percent of the electorate cast votes. This is positive and encouraging given the general election is scheduled for 29 July 2018. However, the general situation leading up to and indeed after the election is alarming in a country which claims to be a pluralist liberal democracy (as per the Constitution). There have been two particularly pertinent changes in the Law on Political Parties, one in February which permitted the dissolution of political parties without appeal and one in July which prohibits a party from using voice messages, images, written documents or activities of a person convicted of a felony or misdemeanour. In the Cambodian context, these amendments disproportionately affect the political opposition actors. In practice, the fate of the political opposition appears to be in the hands of the Executive. Since early August, the presidents of three opposition parties have been detained. The regular violent rhetoric of government ministers and senior military officers creates fear, a barrier to free elections. The same is true of earlier rhetoric from other parties inciting hatred. **As I have said before with power comes responsibility and regular threats and scaremongering has no place in a peaceful society such as Cambodia which still bears the scars of its tragic past.**

Last year, I noted (at paragraph 8) that '[w]ithout genuine conciliatory efforts on the part of the two main political parties to re-establish the culture of dialogue in an atmosphere of mutual respect, the situation of human rights in Cambodia could well deteriorate further in the months ahead.'. As I speak, the president of the CNRP, the main opposition party in Cambodia, is in pre-trial detention (upheld by the Court of Appeal yesterday) on a charge of conspiracy with a foreign power, an act implying "fomenting hostilities or acts of aggression against Cambodia". The Government has

publicly explained that the conspiracy arose from a speech made by HE Kem Sokha in Australia in 2013 which is available online. Despite this, he was claimed to have been arrested *in flagrante delicto*, therefore obviating the normal processes for removing parliamentary immunity. He was detained in prison (CC3) before being charged and denied many of the legal rights in Cambodian law including confidential access to his lawyers and the presence of his lawyers during questioning by the investigating judge.

**I call on the government, parliament, and on the judiciary to take steps to ensure that the *in flagrante delicto* provisions are only used in situations which meet the normal definition of that term. This is the 4<sup>th</sup> time in two years that it has been used to arrest an opposition member of Parliament.**

**Great care must also be taken to ensure that there is a strong evidentiary base for any charges levied. At para 54 of the current report, I note the disparate evidentiary standards used in courts and I repeat the call for the standard of proof to be the same in all cases and for the Ministry of Justice to consider drafting guidelines on evidentiary requirements.**

The reported pressure on NGOs has been compounded over the last few months with the application of various provisions of the Law on Associations and Non-Governmental Organisations (LANGO). All NGOs are required to submit accounts to the Ministry of Interior this month. Many organisations have concerns over this, shared by Trade Unions submitting accounts to the Ministry of Labour. Regular activities of NGOs are also affected – the Minister of Interior confirmed to me in August that he now requires civil society organisations to report all activities to the commune and district authorities, including education/training activities. Such reporting is not legally required by LANGO and also appears contrary to Cambodia’s Law on Peaceful Demonstrations and associated Guidelines. Although the government claims the reporting is to ensure the safety of NGO staff and facilitate their activities, it is understandable that NGOs consider this an intrusive form of monitoring and control. The application of the provision in LANGO that NGOs must be politically neutral is proving problematic when many activities deemed as critical of the government are considered political. A similar provision appears in the Trade Union law. In contemporary Cambodia, almost anything can be alleged political. Calls for respect for human rights and democracy are now branded as political manipulation and biased attacks against the Government. **The Government should revert to the protection and encouragement of the vibrant civil society for which the country was known and rightly celebrated. Any restrictions on activities should only be as necessary in accordance with both Cambodian and international human rights laws.**

A related issue is the dramatic reduction in freedom of the media in Cambodia. Starting on 21 August 2017, just after I concluded my mission, several radio stations were shut down or had restrictions imposed. Radio is a major source of information in Cambodia so any restriction in licensing or access to bandwidths inevitably limits the freedom of Cambodians to receive information. Earlier, on 4 August 2017, the Cambodia Daily newspaper was served with a tax re-assessment indicating alleged tax arrears of some 6.3million USD, due within thirty days. No due process or negotiations followed, the paper’s licence was not renewed and it published its final edition on 4 September 2017, bringing to an end its 24 years of independent press reporting. **During an election year, political debates and critiques as well as access to various sources of information**

**are essential to ensure the electorate can fully understand the policies and goals of those they are being invited to elect.**

The range of laws employed to restrict criticism against the Government and quell political debate continues to increase. Serious charges of secession, insurrection, forgery, and treason have been used with charges of defamation and incitement remaining common. On the evidence available, they seem to be applied inconsistently in a discriminatory manner. **There are many dangers with a state being ruled more by law than in accordance with the rule of law.**

The Government, on its part, has publicly expressed concern over what it considers a campaign of disinformation twisting historical facts and events in an attempt to create a negative image of Cambodia and blame the Government. Indeed His Excellency Keo Remy elaborated on several aspects of the government view in his statement at the opening of this Council session and His Excellency Prak Sokhonn likewise at the General Assembly last week. Government ministers have often reminded me of the necessity of preserving public order and stability. Whilst this is true, political debates and even criticism of the policies of the government (and opposition) are a normal part of any democratic society. Yet, restrictions of the democratic space and undermining of democratic institutions have reached an unprecedented level in Cambodia's post-1993 history.

Mr President, Excellencies, in my report prison overcrowding is noted at para 24. This year the situation has deteriorated to dangerous levels. Due to the Government's active campaign against drugs, some ten thousand individuals have been arrested and/or detained. Many remain in prisons, and I observed juveniles detained in the same cells as adult women. Other persons are held in drug rehabilitation or drop in centres. As they are not permitted to leave such centres, these are, in human rights terms, places of detention. As such, there is work to be done to ensure their detention is regularly reviewed, in accordance with law and not arbitrary. Of course, there is also a need for a holistic response to their treatment, rehabilitation and reintegration into society.

On the subject of detention centres, I should also note that in August, I was again refused permission to hold confidential meetings with detainees in two prisons though I was given open access to drop in and rehabilitation centres.

Mr. President, Excellencies, turning to formal communications sent to the government over the last year and treaty body reporting. As per the footnote on page 7 of the report, the four staff members of Adhoc and the deputy secretary of the NEC were released under judicial supervision on 29 June 2017. **Whilst I welcome their conditional release, given they were detained for 427 days without significant progress in substantiating the charges against them, I call for the charges against them to be definitively dropped through non-suit orders (Article 247 of the Criminal Procedure Code).** It is a violation of the right to be tried without undue delay for charges to linger indefinitely and be reactivated seemingly at random. The case of the activist Tep Vanny is also in point – she is currently serving two and a half years in prison (upheld on appeal in August 2017) for allegedly instigating violence at a demonstration in 2013. Anyone arrested and charged with an offence in accordance with the law has a right to trial without undue delay (article 14(3)(c) ICCPR). **Should insufficient evidence be available to bring the case to trial, the charges should be dropped and their records expunged.**

I welcome the commitment offered in August by the Ministry of Foreign Affairs and International Cooperation to henceforth respond to communications and thereby engage in dialogue with the special procedures on issues of concern. I also welcome the commitment of the Cambodian Human Rights Committee to work on scheduling the submission of overdue UN treaty body reports and planning for the timely submission of reports thereafter.

In spite of the foregoing, there have been some positive developments on matters raised in my written report which were brought to my attention in August.

The Ministry of Justice updated me on a number of areas in which progress is planned and confirmed an increase in budget. The electronic criminal database is being rolled out and the Ministry is also planning a comprehensive electronic case management system. All applicable court fees will now be displayed, and there is greater use of the pre-trial detention forms. These are moves towards greater transparency in the justice system. I was also told of plans to work on raising awareness about judicial supervision as an alternative to pre-trial detention, a possible pilot project on promoting alternatives to custodial sentencing and plans for alternative dispute resolution in certain appropriate cases. Whilst I welcome the willingness of the Ministry to begin awareness raising and embark on pilot programmes, it is notable that the support of OHCHR Cambodia is sought by the Minister for the first two programmes rather than relying on Ministry resources.

The plans for progressing the sustainable development goals are still being prepared and I look forward to working with the government and their chosen development partners on this in the years ahead.

As I noted in my end of mission statement in Cambodia last month, the country seems to be moving inexorably towards a precipice. Given the positive commitments to human rights expressed by many Government ministers I met in August and their willingness to recognise challenges, it is my fervent hope that Cambodia will retreat from the precipice it is teetering on. I undertake to continue monitoring the situation including during my missions before and after the election. There can be no more threats of violence, quelling insurrections, civil war, inciting hatred, or racially inflammatory statements from any political party. So many have worked tirelessly in Government and outwith to ensure the peaceful transition of Cambodia from conflict and genocide to democracy, in accordance with the constitution on which modern Cambodia is based. This path must be continued, and the gains in human rights protection built by Cambodia since 1993 must be preserved, not undermined. It is what all Cambodians deserve. I pledge to support Cambodia in these endeavours and call on the Council and other States to support Cambodia in this quest.

END