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Situation of human rights in Cambodia

Report of the Special Rapporteur on the situation of human rights in Cambodia

Summary

This is the first report submitted by the newly appointed Special Rapporteur on the situation of human rights in Cambodia, Vitit Muntarbhorn, pursuant to resolution 42/37 of the Human Rights Council. The theme of the report is “recollections, progression and dimensions”, linking the past, present and future. The report reflects on the impact of the coronavirus disease (COVID-19) pandemic; democratic space and civil and political rights; economic, social and cultural rights; the special concerns of various groups; land and environment; civil society; accountability and remedies; and engagement and cooperation. The COVID-19 pandemic is an awakening that is both a calamity and an opportunity.



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I. Introduction

1. Vitit Muntarbhorn, was appointed as Special Rapporteur on the situation of human rights in Cambodia in March 2021 and began his work as mandate holder on 1 May. The present report provides a general overview of the situation during the period from mid-2020 to May 2021, with reflections on the past, present and future, without delving into details in some areas. In subsequent reports, the Special Rapporteur will examine key issues with more details and updates. The theme for the present report is “recollections, progression and dimensions”.

2. The Special Rapporteur is very honoured to have this opportunity to help Cambodia and to be of service to the country, of which he has been a friend for over 40 years. At the outset, he wishes to outline his approach in carrying out his tasks as an independent expert under the Human Rights Council umbrella as follows:

- (a) To help Cambodia in a constructive, principled and respectful manner;
- (b) To support the Cambodian authorities in the implementation of human rights norms and standards, bearing in mind international human rights law;
- (c) To engage with civil society and other stakeholders consistently in the promotion and protection of human rights and to advance human rights protection for all;
- (d) To cooperate with the United Nations system and the international community in strengthening human rights implementation at both the national and local levels.

3. With regard to methodology, the Special Rapporteur recognizes the need to access a variety of sources of information to ensure balanced analysis and cross-checking. He is open to information from the authorities, the United Nations, civil society and other stakeholders to help him provide a fair and objective assessment of the situation. He wishes to propose recommendations to improve human rights implementation in a participatory and inclusive spirit, taking into account the various proposals from a variety of groups with which he will hold a dialogue throughout the year.

4. Owing to the coronavirus disease (COVID-19) pandemic, the Special Rapporteur was unable to undertake a first country visit but he was able to meet some of the different stakeholders through online meetings. He was very pleased to meet the Permanent Representative of Cambodia to the United Nations Office at Geneva and connect with other senior government officials in Phnom Penh, for useful and friendly discussions on the mandate and key developments in the country.¹ By means of online meetings, he also met representatives of diplomatic missions in and outside Cambodia, a variety of civil society organizations and the United Nations country team in the country. The Special Rapporteur would like to thank all those key actors for their kind support and cooperation, and he looks forward to sustained and amicable dialogues on the implementation of the mandate. He very much hopes that when the situation improves, he will be able to visit Cambodia, learn from and reflect on developments at first hand, and offer insights for improvements that are needed fairly and constructively.

II. Recollections

5. At the outset, the Special Rapporteur wishes to recall his affinity with Cambodia and the country’s population with life-based experiences that motivate his involvement with the country and the work related to the mandate. In the 1980s, he witnessed several refugee movements on the Cambodian border and called for the protection of Cambodians and other persons in flight. When he visited one of the refugee camps, he remembers vividly one person who pointed to his spectacles and said: “if you had lived under that (genocidal) regime (from 1975 to 1978), you would have been killed as an intellectual, with those glasses”. On another visit, through a student of his who was working to help refugees, coincidentally he befriended

¹ See Office of the United Nations High Commissioner for Human Rights (OHCHR), “Enhancing access to justice as a key to dialogue” (1 July 2021).

a Cambodian boy who was an interpreter in one of the camps. The child requested a dictionary so that he could teach himself more words and expand his vocabulary. A dictionary was duly bought and sent to him. On the day when the child was to fly to another country to be adopted, the Special Rapporteur recalls going to a temple with him to pray for good fortune and a good future, before bidding him a warm-hearted farewell.

6. Since the 1990s, after the Paris Peace Agreements discussed below were signed, the Special Rapporteur has visited Cambodia many times for different tasks. In 1992, at one of the first United Nations meetings on human rights in the country, he was a participant and made a presentation on the linkage between the Association of Southeast Asian Nations (ASEAN) and Cambodia, bearing in mind that at the time, Cambodia was not yet a member of ASEAN. Since then, he has been to the country on behalf of the United Nations, ASEAN, academia and civil society on a variety of issues ranging from research visits on child rights to meetings and conferences on the drafting of the terms of reference to establish the ASEAN Intergovernmental Commission on Human Rights on the protection of human rights defenders and on the prevention of mass atrocities. He looks forward to engaging with Cambodia again as it approaches its important year as Chair of ASEAN in 2022.

7. A key year was 1991, certainly, a seminal date for recollections. October 1991 saw the signing of the Paris Peace Agreements that brought an end to years of warfare and devastation, deprivation, dispossession and displacement in relation to Cambodia.² The Agreements incorporated the aspirations of peace, human rights, democracy and development that are still resonant today. Importantly, the Agreements recognized that the tragic recent history of Cambodia required special measures to assure the protection of human rights and the non-return to the policies and practices of the past.³ There was also a key section in which it was stipulated that the country's Constitution would state that "Cambodia will follow a system of liberal democracy, on the basis of pluralism".⁴

8. The mandate of the Special Rapporteur can be traced back to those catalytic documents. In a humble sense, cognizant of the recent thirtieth anniversary of the Paris Agreements, those recollections are ever-relevant and ever-present to incentivize more respect for human rights and democracy and to inspire the path of progress and the path to progress.

III. Progression

9. Thirty years on, Cambodia has indeed progressed on many fronts, while other challenges are also pervasive. The country has been elevated from a low-income country to a lower middle-income country. In recent years, before the advent of COVID-19, the growth rate was averaging 7 per cent per annum.⁵ Poverty has been much reduced, although there remains the issue of disparities and deterioration due to the pandemic. Access to education, especially at primary school level, has increased markedly and the country has been well recognized for gains in education. The economic path has shifted from agriculture to industry, especially the garment industry and tourism. Its outreach in economic cooperation has broadened, now with a free trade area with China and another with the Republic of Korea. The country recently joined the Regional Comprehensive Economic Partnership. In the late 1990s, Cambodia became a member of ASEAN.

10. Constructive developments on the human rights front include the fact that Cambodia is a party to eight out of the nine core human rights treaties.⁶ It is the only country in ASEAN which is a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The country is a party to all eight of the International Labour Organization (ILO) fundamental conventions. It does not have the death

² See www.peaceagreements.org/view/378.

³ Ibid.

⁴ A/46/608-S/23177, annex 5, para. 4.

⁵ See <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=KH>.

⁶ The only Convention to which the country is not yet a party is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

penalty and is one of the rare countries in South-East Asia which has ratified the Rome Statute of the International Criminal Court. It is also one of the rare countries in the region which is a party to the international refugee instruments. From being a country that had international peacekeepers operating on its territory after the Paris Peace Agreements were signed, it now contributes peacekeepers to operations as far and wide as Africa. It has engaged consistently with the treaty bodies related to the core human rights treaties. It has enabled Special Rapporteurs under this mandate to visit the country and it has agreed to the continued presence of the Office of the United Nations High Commissioner for Human Rights (OHCHR). During the third cycle of the universal periodic review, Cambodia accepted many recommendations, especially on help for vulnerable groups.⁷

11. The significance of human rights for the country is clearly visible from the mainstreaming of human rights, interwoven with democratic aspirations, in the 1993 Constitution. That year was also the year of the World Conference on Human Rights held in Vienna. Its Declaration and Programme of Action settled the debate between the universality of human rights and national or regional particularities. While bearing in mind the latter, it is the duty of States to uphold the former, especially if there is a conflict between the two. Thus, when the universality of human rights embodied in the right to freedom of expression is faced with a particularity, such as excessive limitations on freedom of expression, the former prevails over the latter.

12. The first mandate holder on the situation of human rights in Cambodia was Michael Kirby for the period from 1993 to 1996. His first report inevitably dealt with the aftermath of the preceding decade-long conflict, such as the demobilization of armed groups, demining and the return of some 370,000 Cambodians who had been displaced.⁸ It set the tone for the totality of civil, political, economic, social and cultural rights to be implemented. There have since been six other mandate holders: Thomas Hammarberg, Peter Leuprecht, Yash Ghai, Surya Subedi, Rhona Smith and now Vitit Muntarbhorn. The Special Rapporteur warmly thanks all his predecessors for their dedicated work and shared wisdom. He recalls that on the occasion of the twentieth anniversary of the Paris Peace Agreements in 2011, the mandate holder at the time observed that: “What has been achieved in Cambodia in a number of areas since the conclusion of the Agreement on a comprehensive political settlement of the Cambodian conflict (the Paris Peace Agreements) is commendable ... The Paris Peace Agreements established the rule of law, human rights and democracy as major pillars of the new political architecture for the country. Thus, the peace process cannot be regarded as complete until the democratic institutions created under the Constitution are able to work effectively and independently. The international community has a particular stake and a responsibility in this regard.”⁹

13. The Special Rapporteur made an additional incisive comment which still rings true today: “... the Special Rapporteur is concerned about the narrowing of the political space in Cambodia, which is not conducive to promoting and strengthening a democratic culture in the country”.¹⁰

14. Those observations made a decade ago were portentous and remain highly relevant. Since then, regression of the democratic space and civil and political rights and freedoms, interlinked with the monopolization of power, has emerged as the most ostensible longitudinal issue. That perspective comes with the benefit of 30 years of hindsight, bearing in mind the special challenges posed by COVID-19 more recently, the details of which are set out below.

⁷ See A/HRC/41/17 and Add.1.

⁸ E/CN.4/1994/73.

⁹ A/HRC/18/46, paras. 2 and 3.

¹⁰ *Ibid.*, para. 54.

IV. Dimensions

15. The Special Rapporteur would like to highlight the following dimensions which reveal the realities saliently at play with the destiny of the country today.¹¹

A. Coronavirus disease (COVID-19) and its impact

16. COVID-19 arrived in the country on 27 January 2020 as a transnational phenomenon and has caused much havoc since, including increasing poverty, disrupting key industries and causing a downturn in the economy. In the initial phase, the number of persons infected was low. The “National Action Plan: preparing for and responding to novel coronavirus (COVID-19) in the Kingdom of Cambodia, February to August 2020” was adopted with four entry points: to reduce and delay transmission; to minimize serious disease and reduce associated deaths; to ensure ongoing essential health services particularly during epidemic peak periods; and to minimize the social and economic impact through multisectoral partnerships.¹² The plan was complemented by the United Nations Cambodia framework for the immediate socioeconomic response to COVID-19.¹³

17. The current year has proved to be more damaging, as there has been a serious new spike of infections, especially between March and May. As of 31 May 2021, 30,094 persons had been infected and there had been 214 deaths.¹⁴ The year has witnessed community-linked local spreading of the pandemic, such as in Phnom Penh, its surrounding areas and all other provinces.

18. From a human rights perspective, there are medical and public health considerations and other considerations, in particular regarding rights and freedoms, to be reviewed. In 2020, a raft of measures was adopted, such as travel restrictions, school closures, quarantine, border closures and business shutdowns, based on a “strong test-and-trace mechanism and external quarantine regime, along with a centralized COVID-19 treatment approach”.¹⁵ Unemployment rose owing to factories being closed, but in the middle of 2020 there were some openings to restore business confidence and lift restrictions, with health-related precautions as a precondition. Cash transfers and other subsidies were handed by the authorities to a large number of people, together with other supportive measures.¹⁶

19. Because of the more serious spread of the pandemic in early 2021, the authorities resorted to more stringent measures, using their powers under the new COVID-19 law discussed below, to impose a lockdown in Phnom Penh and the vicinity in April until early May. Colour zoning, ranging from red to orange and yellow zones, was applied with the strictest measures, such as evening curfews in all zones and constraints on travel and movements in red and related zones. As of 22 May, the lockdown was lifted but other public precautionary measures were still in place. During that period, the authorities adopted various measures to improve the situation, including monthly income guarantees for workers in the garment and tourism industries; cash for work schemes; cash transfers for low-income groups in urban areas and rural areas with affected villages; food provision; cash support to cover food and utilities and cash support for poor families burdened with the impact of COVID-19. However, the Special Rapporteur was informed of food shortages and there is a need for a

¹¹ For a recent governmental analysis of human rights, see “Cambodia human rights situationer II (September 2020–February 2021)” issued by the Permanent Mission of Cambodia to the United Nations Office at Geneva for the forty-sixth session of the Human Rights Council (9 February 2021).

¹² See <http://documents1.worldbank.org/curated/en/248221604903322761/pdf/Cambodia-COVID-19-Emergency-Response-Project-Fact-Sheet.pdf>.

¹³ Available from <https://cambodia.un.org/en/110320-un-cambodia-socio-economic-response-covid-19-framework>.

¹⁴ See World Health Organization COVID-19 situation report No. 48 (31 May 2021).

¹⁵ *UN Cambodia framework for the immediate socio-economic response to COVID-19* (August 2020), p. 14.

¹⁶ World Bank Group, *Cambodia Economic Report. Restrained Recovery: Adapting to COVID-19 in an Uncertain World* (November 2020), p. 10.

more sustained response to help persons in need and to ensure food security and access to humanitarian aid, with food insecurity as a continuous major challenge.¹⁷

20. Various legal tools adopted or applied by the authorities have given rise to concern as they could impinge on human rights. They are exemplified by various laws of a draconian nature and related practices, including those set out below.

B. State of Emergency Law

21. The Law on National Administration in the State of Emergency (also known as the State of Emergency Law) was passed in April 2020.¹⁸ The law enables a state of emergency to be declared and put in place for three months, renewable. It concentrates power in the hands of the executive branch to manage the situation and this includes limitations to be imposed on the movements of people, communications, freedom of expression, assembly and price management. It allows the authorities to monitor the population through extensive surveillance and violators are subject to up to 10 years' imprisonment and substantial fines. On 17 April 2020, the previous Special Rapporteur on the situation of human rights in Cambodia issued a press statement, endorsed by other special procedures, highlighting her concerns and calling for the authorities to be cautious about the invocation of national security and to ensure that the measures in the law complied with international human rights law, in particular the principles of legality, necessity and proportionality.¹⁹

22. On a fortunate note, to date the law has not been applied to the COVID-19 situation, as the latter has been covered by another law described below.

C. Law on Preventive Measures against the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases

23. The Law on Preventive Measures against the Spread of COVID-19 and Other Severe and Dangerous Contagious Diseases (COVID-19 law) was promulgated on 11 March 2021 and confers on the authorities broad powers to limit travel, impose lockdowns and quarantine, and limit freedom of peaceful assembly and the right to work.²⁰ Those in breach are subject to penalties of up to 20 years' imprisonment and hefty fines. The previous Special Rapporteur and other special procedures expressed their concern in a press statement on 12 April 2021.²¹

24. It is reported that over 100 persons have been arrested and are being charged for violations of this law and its subdecrees, some of whom do not have access to a lawyer.²² There is thus an opaque atmosphere emanating from the COVID-19 law, leading to self-censorship and other inhibitions.

D. Disclosure of the names of COVID-19 cases and infringement of privacy

25. Lessons were learned during this period concerning the interface of various measures taken to curb the spread of COVID-19 with the right to privacy. In one instance, the authorities released the details of various persons who had been infected with the pandemic without adequate regard for the right to privacy. Thus, in a communication in December

¹⁷ United Nations Cambodia, "Cambodia COVID-19 lockdown: food security and nutrition brief" (6 May 2021).

¹⁸ See www.icnl.org/covid19tracker/covid19uploads/Cambodia%20-%20Unofficial%20ENG%20translation%20-%20State%20of%20Emergency%20Law.pdf (unofficial translation).

¹⁹ See <https://cambodia.ohchr.org/en/news/cambodia%E2%80%99s-state-emergency-law-endangers-human-rights-warns-un-expert>.

²⁰ See Human Rights Watch, "Cambodia: scrap abusive COVID-19 prevention bill", 5 March 2021.

²¹ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26985&LangID=E.

²² Ouch Sony and Khan Leakhena, "Over 100 people facing court cases for COVID-19 violations", VOD, 28 April 2021.

2020, the previous Special Rapporteur expressed concern at the disclosure of the personal information of individuals infected with COVID-19 and the implications for article 17 of the International Covenant on Civil and Political Rights on the right to privacy, particularly its breach.²³ One underlying reason was to prevent stigmatization of individuals and if contact tracing was to be a means of finding cases, it should be temporary and proportionate to the circumstances. The Special Rapporteur acknowledges that corrective actions were taken by the Ministry of Health, however, local authorities (provincial governments) continue to publish the information in question and a number of Special Rapporteurs have raised concerns in this regard.

26. In early 2021, another disquieting situation arose that involved the disclosure of personal information by the Phnom Penh city administration, which prompted the previous Special Rapporteur and other special procedures to issue a statement advocating respect for the right to privacy.²⁴ There were concerns also in regard to the use of a QR code that has implications for the right to privacy, which were also raised by the previous Special Rapporteur on March 2021.²⁵ This area deserves care and caution and highlights the need for the country to have a specific law on protection of personal data.

E. Overcrowding in prisons and the need for COVID-19 tests

27. The situation of detainees and inmates in prisons has continuously given rise to concern, now accentuated by COVID-19. Prisons in Cambodia are currently housing inmates with an overcrowding rate of over 300 per cent, making social distancing virtually impossible. In a communication of December 2020, the previous Special Rapporteur and another Special Rapporteur expressed concern at the lack of COVID-19 related tests for detainees and various risks of exposure to the disease in prison, as well as overcrowding.²⁶ There was also a statement from a number of special procedures calling for the mandatory testing of persons in prison to prevent the spread of COVID-19.²⁷ In May, the Special Rapporteur learned with concern about an outbreak of COVID-19 in three prisons. There were serious concerns as to whether prisoners were receiving appropriate and equitable access to treatment and over the possible spreading of the virus across all major prisons and other detention facilities. Given the overcrowding, the Special Rapporteur calls on the authorities to take all appropriate legislative and policy measures to reduce the number of persons in prison.

F. Compulsory vaccinations for civil servants

28. In April 2021, another issue emerged: whether public officials should be compelled to have vaccinations and what consequences would ensue if they refused. This related to the subdecree on compulsory vaccination, which obliges civil servants and public officials to be injected with a vaccine. Failure to do so could result in disciplinary action and other sanctions, including dismissal.

29. On 7 December 2020 at a virtual press conference, World Health Organization (WHO) experts stated that they did not recommend mandatory vaccinations. They were of the opinion that States should encourage and facilitate vaccination but not coerce people into

²³ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26599.

²⁴ OHCHR, “Cambodia: UN experts alarmed by ‘naming and shaming’ of COVID victims” (11 December 2020).

²⁵ See <https://cambodia.ohchr.org/sites/default/files/othersource/Joint%20Letter%20by%20UN%20experts%20on%20QR%20Code%20System%20to%20Stop%20COVID-19.pdf>.

²⁶ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25752>.

²⁷ See https://cambodia.ohchr.org/sites/default/files/presstatementsource/Cambodia-%20COVID%20PR%2011.12_Final_Final.pdf.

having it.²⁸ Even if the authorities of a country choose mandatory vaccination, there is a need for circumspection, bearing in mind the international principles of legality, necessity and proportionality, while being open to other options, such as information-sharing among the public to enable them to access vaccines. There remains an issue concerning the acceptability and quality of the vaccine and related information, in accordance with the requirement of article 12 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights. Cambodians generally appear to be willing to take the vaccine but the vaccine administered/available was not endorsed by WHO at the time of preparation of the present report.

30. As a final caveat, there is a need to be vigilant about the vortex of power accumulation by the executive branch and resulting constraints accentuated by COVID-19. Whether in Cambodia or elsewhere, a medical lockdown should not mean a political clampdown.

G. Democratic space and civil and political rights

31. National elections from 1993 onwards and the political backdrop underpinning them are a key barometer for measuring democratic space and the concomitant rights and freedoms. There have been six national elections, in 1993, 1998, 2003, 2008, 2013 and 2018. The next national elections are due in 2023, preceded by commune elections in 2022.

32. The main opposition party in recent times, the Cambodian National Rescue Party, was dissolved by a judgment of the Supreme Court in 2017 on the grounds of plotting with a foreign power and the Court also ordered a five-year political ban for 118 members of the main opposition party. It was an equivocal judgment in the eyes of human rights and democracy. In 2018, the year of the most recent elections, the main opposition party was thus unable to contest the elections, compounded by the fact that many of its leaders and members were banned from politics or were in exile. The Cambodian People's Party won all 125 seats in the National Assembly. Some 20 other parties took part in the elections, but did not win any seats. The political power base in the country has thus become highly concentrated. There have been some opportunities to reinstate those who were banned from politics and to enable the creation of new political parties. It remains to be seen whether the system can become more plural in a credible manner before the next elections.

33. In her final report in 2020, the previous Special Rapporteur identified the issues: civic and democratic space had continued to shrink, without any shift towards political reconciliation, and the country remained in effect a one-party State with the Cambodian People's Party holding all the seats in the National Assembly and virtually all in the Senate. Following the 2017 Supreme Court decision, the Party also holds most local councillor positions and the seats won by the dissolved Cambodia National Rescue Party in local elections in June 2017 were redistributed.²⁹

34. There is thus the disconcerting phenomenon of political monopolization, which attests substantively to the qualitative decline of the democratic polity and related governance.

H. Constraints on freedom of expression, assembly and association

35. The rights to freedom of expression, assembly and association are the backbone not only of political rights but also of democracy. While it is true that Cambodia has a large number of media, it is not only the quantity that counts. The state of ambivalence in the country is seen through a variety of anomalies that restrict the enjoyment of such rights and compromise democratic aspirations. For instance, various comments on and critiques of the response of the authorities to COVID-19 have been countered by intolerant responses such as arrests and detentions. Furthermore, the imposition of red zones has blocked media unnecessarily from covering operations in such areas. Media, especially social media, are

²⁸ See www.who.int/publications/m/item/covid-19-virtual-press-conference-transcript---7-december-2020.

²⁹ See A/HRC/45/51.

likely to be more confined in their coverage if the proposed new law which would impose a national Internet gateway (with much discretion to censor and block materials considered unpalatable by the authorities) is passed in the future. The previous Special Rapporteur, along with two other Special Rapporteurs, asked the authorities to clarify the implications of a subdecree to establish a national Internet gateway to reroute all Internet traffic via a regulatory body before being accessible to users.³⁰ That is amidst a range of attacks on journalists and the impact of official sanctions against various independent media in recent years.

36. On another front, the greater emphasis on digitalization as part of expression in the COVID-19 era invites a human rights-based approach to foster democratic governance: technology can help to expand the space for human rights.

37. With regard to freedom of association and rights at work, even though the country's trade union law was amended in 2019, the space for expression, assembly and association is constrained by the general political atmosphere of heavy-handed controls and prohibitions. Moreover, unionizing is not a simple matter: trade unions have also been affected throughout the years by the murder and arrest of trade unionists.³¹

38. On another front, with regard to a possible law on access to information, it should ensure access by the public to information in the hands of public officials broadly and without bureaucratization. Exceptions limiting access need to comply with international standards, such as necessity and proportionality, and there should be channels to receive complaints and to provide remedies where access is blocked. Little progress has been made on passing the law in recent years.

I. Mass trials

39. Mass trials, particularly of individuals from the main opposition party and those seen to be antithetical to the dominant power base, have caused great concern and stifled the possibility of political pluralism. On 17 January 2020, a number of special procedures issued a statement expressing their concern about the treason trial of Kem Sokha, a key opposition leader, which to date has not ended but has been suspended, originally because of COVID-19.³² However, the prolonged delay in completing the trial might also impact negatively on the status of the accused as a political candidate for the next elections.

40. On 26 November 2020, the Phnom Penh municipal court began the trial of over 135 members of the opposition. That was later split in two trials, which remain suspended owing to COVID-19. On 5 March 2021, a number of special procedures voiced their concern in a statement to the effect that the verdict of the Phnom Penh municipal court could potentially deprive those on trial of their right to engage in public affairs. They further noted that since June 2019, more than 150 people associated with the Cambodian National Rescue Party had been arrested detained and subjected to judicial proceedings.

41. On 1 March, the court convicted nine senior leaders of the former Cambodian National Rescue Party in absentia, including Sam Rainsy, a key opposition leader now in exile, on charges related to an attempt to commit a felony and to attacking and endangering institutions of the Kingdom of Cambodia under articles 27 and 451 of the Cambodian Criminal Code (relating to attempts to commit criminal offences). This is related to their plan of the leaders to return to the country to take part in the political life of Cambodia, which was publicized on social media in October 2019. The experts were "gravely concerned that Sam Rainsy's

³⁰ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26263>.

³¹ See ILO Committee of Experts, "Observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)", available from www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:4056429:NO.

³² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25472.

Facebook posts and video clips of the nine defendants were considered crimes”.³³ Severe sentences, including 25 years’ imprisonment, were imposed by the court.

42. At the end of April 2021, Sam Rainsy was also charged for comments about COVID-19.³⁴ That comes in addition to more than a dozen other cases that remain pending against him since 2015.

J. Overuse of criminal laws and the ambivalence of laws

43. The instrumentalization of various laws potentially raises the spectre of “rule by law”. The application of select criminal law provisions, such as articles 27 and 451 of the Criminal Code, reveals the cloistered environment and power play surrounding the judicial system, while other provisions, such as treason and incitement, have been used on multiple occasions to apprehend and prosecute opponents of those in power. A sample of the legal tools which deserve caution include the following articles of the Criminal Code:

- (a) Articles 305 and 309 on public defamation and related procedure;
- (b) Article 307 on public insult and libel;
- (c) Article 425 on falsification of information;
- (d) Article 453 on plotting against the Government and conspiring to commit treason;
- (e) Articles 494 and 495 on incitement to commit an act which may bring turmoil to the country.

44. In particular, the sections on incitement have been used against so-called “fake news” and mis- or disinformation. There are also other laws such as the 2018 regulation (*prakas*) on the Internet, which gives broad power to the authorities to monitor online content and block information deemed to create turmoil for national security and related grounds.³⁵ Sanctions include up to two years’ imprisonment and accompanying fines.

45. Developments concerning amendments to the Law on Political Parties have given advantages to some political constituents. One amendment in early 2017 banned political parties from associating with anyone convicted of a criminal offence.³⁶ That prevented any relationship between convicted opposition politicians and their political parties.

46. Another amendment of the Law on Political Parties in 2018 opened the door to allow banned politicians to return to politics, with restoration of their political rights.³⁷ In the process, it handed much power to the top echelon of the executive branch to influence the fate of banned politicians.

47. Two other draft laws steeped in ambivalence deserve note: the emerging public order law and the cybercrime law. The draft public order law represents a paternalistic approach to law and order, imposed from the top with possible infringements of human rights ranging from the principle of non-discrimination to freedom of expression and peaceful assembly. Vague wording in the draft includes the proposition to maintain order, “aesthetic value, sanitation, cleanliness of the environment, quietness, social stability, preservation of national tradition ...”. In August 2020, civil society issued a joint statement calling for the discarding of the draft law.³⁸ The morass of negative implications includes unreasonable constraints on

³³ www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26848&LangID=E.

³⁴ See Sebastian Strangio (The Diplomat), “Cambodia opposition leader charged over COVID-19 lockdown comments”, 29 April 2021.

³⁵ See International Press Institute, “Cambodia ‘fake news’ laws tighten noose on press freedom”, 1 October 2019.

³⁶ See Xinhuanet, “Cambodia amends law to ban convicted politicians from leading political party”, 2 February 2020.

³⁷ See The Phnom Penh Post, “Assembly passes amendment to Political Party Law Article 45”, 14 December 2018.

³⁸ See Human Rights Watch, “Civil society organizations call for the draft law on public order to be immediately discarded”, 13 August 2020.

freedom of expression and infringement of women's rights. One article prohibits men from being shirtless in public, while another prohibits women from wearing revealing clothes that affect the national tradition and dignity.

48. As for the draft cyberlaw, it criminalizes statements which have an "adverse effect" on national security, opening the door to potentially spurious assessments of a political kind.³⁹ It imposes obligations on Internet service providers to retain information to help the authorities for at least 180 days. In reality, it would expand the State's surveillance and censorship system, which could violate international standards embodied in the International Covenant on Civil and Political Rights. Behind these laws, there is the issue of judicial independence. It is essential to ensure that judges and prosecutors are distanced from political affiliations. Lawyers working for legal aid and assistance are also much needed.

K. Economic, social and cultural rights

49. Until the advent of COVID-19, there had been much economic progress in the country. However, poverty and inequality are on the rise again because of the pandemic. According to the World Bank, more than 710,000 households (2.8 million people) received cash transfers in January 2021, while only 560,000 households (2.3 million people) were eligible in early June 2020. According to the Bank, this implies that at least 150,000 households (0.5 million people) have been identified as newly poor between June 2020 and January 2021.⁴⁰

50. The gains to date have been shaped by various national development plans. The current plan is the National Strategic Development Plan 2019–2023, which is paralleled by the Rectangular Strategy Phase IV, underlining growth, employment, equity and efficiency.⁴¹ The country has adopted the Sustainable Development Goals with follow-through targets under the Cambodian Goals. There is a national social protection policy framework 2016–2025, particularly to help the poor, the majority of whom are in rural areas, and bearing in mind the growing gap between rural people and urbanites.⁴² The "Identification of the poor" scheme helps them to access free health care and other social and financial support, covering about 16 per cent of the population according to the National Strategic Development Plan. On the important issue of education, the country did well before COVID-19, with nearly universal access to primary education and gender parity.⁴³

51. COVID-19 has dented progress, and planning for the post-COVID future, driven by the "new normal", will be realized more easily if there is broad participation from the public, all the more so if the civic space is expanded rather than curtailed.

L. Vulnerabilities and special concerns of women, children and other groups

52. COVID-19 has highlighted a range of vulnerabilities, such as deprivation, violence and discrimination, and the risks attached to them may become more intersectional. Various groups deserve special consideration.

Women

53. Considerable strides have been made in improving the status of women. These include a decline in maternal mortality linked to progress in sexual and reproductive health. For example, maternal mortality declined from 472 per 100,000 live births in 2005 to 170 in

³⁹ See www.hrw.org/news/2020/11/13/cambodia-scrap-draft-cybercrime-law.

⁴⁰ See www.worldbank.org/en/country/cambodia/overview.

⁴¹ See https://data.opendatacambodia.net/laws_record/national-strategic-development-plan-nsdp-2019-2023.

⁴² See *Cambodia's Voluntary National Review 2019. On the Implementation of the 2030 Agenda for Sustainable Development* (June 2019), p. 17.

⁴³ *Ibid.*, p. 21.

2014.⁴⁴ However, there are still a low number of women in various official positions, such as in the judiciary.⁴⁵

54. COVID-19 has reversed progress and had a negative impact, including work stoppage and unemployment, on garment workers, the majority of whom are women. It has also brought to the fore the issue of violence against women, especially as the stay-at-home phenomenon caused by the pandemic has created a more tense atmosphere in some families, leading to violence. The Domestic Violence Law of 2005 has been critiqued for enabling too much mediation and not enough accountability for those who commit crimes against women.⁴⁶ During the most recent review of Cambodia by the Committee on the Elimination of Discrimination against Women in 2019, the Committee recommended that Cambodia carry out a comprehensive review of and amendments to the law on domestic violence.⁴⁷ The Committee also expressed concern at the lack of access to justice and legal aid for women, especially for gender-based violence.⁴⁸ There is national planning against gender-based violence, through the National Action Plan to Prevent Violence against Women 2019–2023, interlinked with Sustainable Development Goal 5, but the key is implementation, rendered more difficult and aggravated by COVID-19.⁴⁹ There has also been a crackdown on trafficking cases.⁵⁰

Children

55. Until COVID-19, various improvements in child rights and child development were noticeable. For instance, the infant mortality rate decreased from 66 per 1,000 live births in 2005 to 28 per 1,000 live births in 2014.⁵¹

56. Owing to COVID-19, children have had to stay at home and online learning has shone a spotlight on the gap between those who have and those who do not. Similarly, the issue of domestic violence against children has come to the fore. Even before the pandemic, there was an action plan to prevent and respond to violence against children for the period 2017–2021 that aimed to tackle different forms of violence, child marriage, labour and sexual exploitation, and children at increased risk of violence, such as children in rural areas and children of incarcerated women.⁵² The action advocated involves law and policy interventions, monitoring and cooperation, and outreach to access vulnerable children, as well as to provide facilities for recovery and return to society with a child-related sensibility.

57. On another front, with regard to children in conflict with the law, there is a Law on Juvenile Justice of 2016, but the country does not yet have juvenile courts or at least dedicated juvenile judges. There is no evidence that the Law is being applied in regular proceedings, as illustrated in particular by the number of juveniles who are in detention, including in pretrial detention, often for minor offences. According to numbers provided by the General Department of Prisons to OHCHR, as of April 2021, the total number of juvenile inmates (14–17 years old) was 1,406, including 46 girls. There were 640 pretrial juveniles and 766 post-trial juveniles in detention. There needs to be diversion from detention and alternatives found, with the support of families and communities, as part of restorative justice. The recent United Nations report on children deprived of liberty is an invitation for the country to have a plan and related action to ensure that children are treated with special care and protection, with non-custodial measures, preferably through family-based and community-linked supportive action.⁵³

⁴⁴ See www.worldbank.org/en/country/cambodia/overview.

⁴⁵ CCPR/C/KHM/3, paras. 46–47.

⁴⁶ United Nations Children’s Fund (UNICEF) and others, “Ending violence against women and children in Cambodia. Opportunities and challenges for collaborative and integrative approaches” (2020).

⁴⁷ CEDAW/C/KHM/CO/6, para. 25 (b).

⁴⁸ *Ibid.*, para. 11.

⁴⁹ See <https://cambodia.un.org/en/108240-launching-national-action-plan-violence-against-women-2019-2023>.

⁵⁰ CCPR/C/KHM/3, para. 75.

⁵¹ See www.worldbank.org/en/country/cambodia/overview.

⁵² Steering Committee on Violence against Women and Violence against Children, *Action Plan to Prevent and Respond to Violence against Children 2017–2021* (December 2017).

⁵³ A/74/136.

Persons with disabilities

58. Cambodia has been trying to amend its law on persons with disabilities. The obvious international standard is the Convention on the Rights of Persons with Disabilities, to which the country is a party. The reform process gave rise to a dialogue between the previous Special Rapporteur and the authorities, the former underlining international standards so as to entrench a rights-based approach for persons with disabilities. The orientation from the Committee on the Rights of Persons with Disabilities has been to make various components of the Convention, such as the principle of reasonable accommodation, binding and enforceable law. The previous Special Rapporteur therefore sent a communication to Cambodia with a range of points for consideration in regard to potential reform of the 2009 law, including a call to avoid a charity-based approach and to reduce the unreasonably heavy penalties in the law.⁵⁴ The authorities responded by stating the inclusive spirit of the draft law. A key consideration is the informed participation of persons with disabilities in the reform process. In the eyes of the current Special Rapporteur, an often-overlooked challenge is the issue of persons with mental disabilities and the need to have humane means of enabling them to live in society without coercive methods.

Indigenous communities and minorities

59. There is a plurality of indigenous peoples in the country, such as the Kuy, and there is a specific national policy for these communities. Much of the debate is on the issue of the right to land and preservation of their culture and surrounding natural resources, including action against illegal logging and deforestation committed by outsiders. COVID-19 has highlighted other concerns, such as over increasing poverty, inadequate access to health care and related information, and a future that should enable them to develop better, pursuant to the aspiration to leave no one behind in the Sustainable Development Goals.

60. There are at least three key questions of immediate relevance today.⁵⁵ First, there is the issue of the relocation of indigenous communities without effective access to long-term solutions and essential services. Second, there is the challenge of enabling indigenous peoples to own and possess their traditional lands and have them registered without too many procedures, in particular simplification of land titling. Third, in the era of COVID-19, there is the question of protection of such communities from infection and their access to health care, as well as vaccines, and other means, such as microcredits, to facilitate recovery.

61. While some indigenous peoples in the country also belong to minorities, there are other minorities, such as the ethnic Vietnamese and Muslim communities, who are not indigenous. Access to the basic requirements of life, such as birth registration, education, work opportunities and citizenship, are recurrent issues. There is also the continual challenge of empathy for ethnic diversity and the need to avoid negative actions and violence, such as hate speech, which jeopardize peaceful living side by side and which can be prevented through cross-cultural education and socialization.

Detainees and inmates

62. A key issue in places of detention is overcrowding and the detention of persons awaiting trial side by side with those who have already been sentenced. COVID-19 has given rise to major concerns over fear of the pandemic spreading in places of detention, since overcrowding makes social distancing difficult, if not impossible. Issues such as access to COVID-19 tests and health care have been raised by many actors, including the previous Special Rapporteur and other special procedures. According to information received, since April 2021, there have been outbreaks of the pandemic in increasing numbers of prisons, causing much concern. Effective access to health care, including vaccinations, is essential. However, a sustainable solution requires the systematic implementation of a range of alternatives to detention, in particular for pretrial detainees, low-level offenders and vulnerable detainees, including the chronically ill, juveniles, pregnant women and those

⁵⁴ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26370>.

⁵⁵ CCPR/C/KHM/Q/3, para. 26.

detained with children. The necessary adjustments include diversion, particularly of pretrial cases, to non-custodial measures. There are links with other questions too, such as the need to review the Law on the Control of Drugs, as it currently leads to too much incarceration rather than to alternatives, such as community-based care and rehabilitation. That is interwoven with medical considerations beyond COVID-19, in particular cases of HIV/AIDS.

Lesbian, gay, bisexual, transgender and intersex individuals

63. The atmosphere in the country is relatively open on lesbian, gay, bisexual, transgender and intersex issues. However, there are some instances of discrimination and violence, for example bullying from a young age. The country's involvement with the universal periodic review has also opened the door to some potentially constructive reforms. First, there is the possibility of enacting an anti-discrimination law which would be inclusive of sexual orientation and gender identity and help to protect the rights of lesbian, gay, bisexual, transgender and intersex individuals. Second, there is space to explore the possibility of a law to recognize same-sex marriage. These orientations need fuller consultation in the country, with the informed participation of the groups concerned.

Other groups

64. COVID-19 has also raised the profile of various other groups in terms of its impact on their well-being and how to enable them to recover well, with due regard to their rights and freedoms. Youths (namely adolescents and persons in the early years after reaching the age of 18) are obviously a key group that is affected, not only in their access to the final years of their education but also in their access to jobs, now impeded by the pandemic. They may need not only cash support in the interim, but also opportunities to generate work, whether through employment or self-employment. Space for entrepreneurship and initiatives would help to reinvigorate the country. All this needs political space for substantive participation. Migrant workers, including returnees from other countries, are another case in point, not only in regard to their access to health facilities but also to social protection and support for their reintegration into society. As for the ageing population, the national strategic development plan referred to earlier covers them specifically as a group of concern. That is now challenged by all the consequences of COVID-19, ranging from poverty, access to health care and vaccinations, and social protection and support, bearing in mind that a large part of the population still live in the rural areas.

M. Land and environment

65. Competition for land and resources in a growing economy has been one of the most visible points of conflict in recent years and poses challenges to the conservation of forests and natural resources. It is linked with evictions and dislocations of communities, including low-income settlements and indigenous groups. In urban areas, the poor are being pushed to the side by the advent of commercialization and new arrivals, such as rural migrants, are housed in very small spaces, bringing questions of the right to housing and shelter into view. So-called economic growth also puts pressure on the remaining green areas. Interlinked with rural areas, there are difficult issues relating to traditional lands and overlaps with the more modern introduction by the State of protected areas.

66. Commercial activities on such lands initiated by the business sector act as a push factor, marginalizing the livelihood of poorer communities, as well as their existence, unless precautionary measures are adopted, such as due diligence-related impact assessments and measures to mitigate harm. Construction and related modernization might also cause environmental harm unless there are checks and balances in the development process. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework set out the preferred direction for development. There is also a need to incorporate human rights into environmental impact assessments to be carried out prior to project implementation as part of due diligence.

67. In December 2020, the previous Special Rapporteur sent a communication to the authorities in regard to land-related contestation between local communities and State authorities owing to business interests seeking to develop and commercialize land and related resources.⁵⁶ Some of the contested areas are in and around Phnom Penh, while others are in more distant provinces. In particular, the land in question includes wetlands, which have an important role in the ecosystem. Activities causing detriment include landfilling, which would render the utility of the land void and augment the threat of flooding. The authorities replied to the previous Special Rapporteur stating that precautionary measures, such as environmental impact assessments, had been taken and that homes had also been provided to the families affected.

68. In the era of COVID-19, given the precarious nature of displacements and the potential spread of the pandemic, there should not be any evictions. When the situation improves, if the issue of displacement or relocation is to be raised, land-related contestations deserve the full consultation and participation of the stakeholders on the basis of their free, prior and informed consent.

69. Climate change also poses a major challenge to the country in regard to the use and conservation of the environment. In the *Human Development Report 2020*, issued by the United Nations Development Programme, Cambodia's position at 144 out of 190 countries ranked in the planetary pressures-adjusted Human Development Index, invites more action to prevent those carbon emissions and footprints that cause global warming, the use of alternatives to fossil fuel and the incentivization of more adaptation to other sources of energy. The recent arrival of oil tapped from Cambodian territory adds another dimension, inviting care in the use of this resource and ensuring that the proceeds benefit the whole population, with due respect for protection of the environment. There is a need for guarantees premised on intergenerational responsiveness to save such a resource and its benefits for posterity.

N. Civil society

70. There are a large number of non-governmental organizations (NGOs) and associations in Cambodia – official estimates indicate at least 5,000 entities.⁵⁷ However, NGOs working on human rights advocacy and environmental issues tend to be in a difficult position vis-à-vis the authorities, owing to extensive supervision and pressures from the latter, as well as the shrinking (or shrunken) political space already mentioned. In reality, it is, therefore, not the number of NGOs that is determinant; in qualitative terms, there is a need to penetrate the numerical veil and acknowledge the difficulties that some of these stakeholders face in executing their tasks, especially in their interface with the prevailing power stratum.

71. Two anomalous developments are poignant. First, there is a well-known law on NGOs, the Law on Associations and Non-Governmental Organizations, which has been commented upon and critiqued in many circles, including by the previous Special Rapporteur.⁵⁸ The imposition of mandatory registration of NGOs; the paperwork required to fulfil the conditions of registration; scrutiny of the founding members; the requirement that the NGO being registered must act with neutrality; and burdensome reporting requirements are all conditions which can damp down the motivation to help the community. While more professionalization and transparency are welcome, the Law on Associations and Non-Governmental Organizations and other laws already noted above undermine the civic space with disincentives. There are now dialogues under way that may help to reform the law and the results are awaited. The most recent one took place in July 2020 but COVID-19 has halted further meetings. It is essential that dialogues with civil society on this and other key issues are sustained.

⁵⁶ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25774>.

⁵⁷ See statistics from the “Cambodia human rights situationer II”.

⁵⁸ See, for example, <https://cambodia.ohchr.org/en/news/end-mission-statement-special-rapporteur-rhona-smith-her-7th-mission-cambodia>.

72. The second consideration is that the Special Rapporteur is being continually informed of the arrest and detention of human rights defenders, in addition to other harm they have suffered. There are many examples concerning human rights defenders, exemplified by a myriad of prosecutions, attacks and threats against NGOs.

73. In November 2020, the previous Special Rapporteur, together with a number of other Special Rapporteurs, sent a communication to the authorities expressing concern at the arrest and pretrial detention of a number of individuals, some of whom were trade unionists, as well as the criminalization of activities of two NGOs.⁵⁹ They were concerned with the threat of criminal law provisions, in particular sections 494 and 495 of the Criminal Code, to impede the activities of human rights defenders. In a statement to mark the end of her mandate, the former Special Rapporteur noted with concern that at least 18 human rights defenders were currently in detention facing charges for incitement to commit felony, including a young female activist. There had also been dispersal of peaceful demonstrators, with reported use of force. In a more recent case, in May 2021, the Phnom Penh municipal court convicted five human rights defenders and environmentalists linked with an environmental NGO, Mother Nature Cambodia, on charges of incitement to create social chaos, handing down prison sentences of 18 to 20 months and hefty fines.⁶⁰

74. There also remains the question of a Thai pro-democracy activist, Wanchalearm Satsaksit, allegedly abducted in front of his apartment in Phnom Penh in 2020. Given the fact that Cambodia is a party to the International Convention for the Protection of All Persons from Enforced Disappearance, the case deserves an effective investigation and response concerning the circumstances surrounding the enforced disappearance and the persons responsible.

O. Accountability and remedies

75. While punishment of officials for human rights breaches, such as convictions of police officers for intentional violence, is mentioned in the country's third periodic report to the Human Rights Committee,⁶¹ the accountability of officialdom should be more transparent, including in regard to corruption. The Special Rapporteur thus invites the authorities to provide consistent data concerning both disciplinary measures and prosecutions or litigation to make errant officials accountable and the ensuing remedies for victims and their families.

76. On a more international and historical front, in regard to the Extraordinary Chambers in the Courts of Cambodia, dealing with the period of genocidal Khmer Rouge rule in the mid-1970s, there have been three convictions and two of those convicted have died. The only remaining convict, Khieu Samphan, has appealed his sentence. Three other cases, which are at the pretrial stage, have been pending for some time. The three cases at the pretrial stage are those against Meas Muth (case 003), Yim Tith (case 004) and Ao An (case 004/2). They are problematic, as the co-investigating judges have issued separate and opposing closing orders. In each instance, the national co-investigating judge dismissed the charges and the international co-investigating judge indicted the accused. This presents a challenge as the Pretrial Chamber has proven unable to resolve the matter. Clarification is required on the procedures to be followed when the two closing orders have been declared illegal. In May 2021, in regard to one case, the co-investigating judges jointly denied the request of the international co-prosecutor to send the case file to the Trial Chamber for further action.⁶² Despite the cost of the Tribunal and the small number of cases, there are also some lessons

⁵⁹ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25670>.

⁶⁰ See Prak Chan Thul (Reuters), "Cambodia convicts 5 environmentalists over plan to march to PM's home", 5 May 2021.

⁶¹ CCPR/C/KHM/3, paras. 37 and 62–64. There is also the case of Kampong Thom police chief Ouk Kosal on sexual harassment charges. Disciplinary measures appear to have been taken, but there is no information as to any criminal proceedings. See <https://cambodianess.com/article/kampong-thom-police-commissioner-fired-over-sexual-harassment> and <https://www.voacambodia.com/a/rights-advocates-decry-lenient-punishment-for-ousted-police-chief-/5577974.html>.

⁶² See <https://eccc.gov.kh/sites/default/files/media/ECCC%20PRESS%20RELEASE%20Case003.pdf>.

to be learned from its presence and work that have positive implications. The work of the Tribunal is important as a historical record for the country and provides an informed narrative based on evidence collection, collation, deliberation and analysis. It is also educational, as the open process enables the population to learn about legal proceedings and the tragic events of the past, which must not be repeated. Over 300,000 people have witnessed the trials to date and have become part of that momentous socialization process.⁶³

P. Engagement and cooperation

77. The Special Rapporteur welcomes the country's engagement with the United Nations human rights mechanisms, including with this mandate holder. It has been cooperative with many other actors, ranging from international agencies to regional organizations and individual countries. At this juncture, the Secretary-General's call to action on human rights in the era of the pandemic should have a positive cascading effect.⁶⁴ A key implication is that the stimulus for recovery must reflect a human rights-based approach premised on respect for the full range of human rights (civil, political, economic, social and cultural), non-discrimination and inclusion, non-violence and attention to the vulnerabilities of specific groups. Economic, social and cultural rights, such as access to health care, cannot be separated from civil and political rights.

78. Since the 1990s, Cambodia has received huge amounts of aid from such partners as Australia, the European Union, Japan and the United States of America. While some regions have cut back aid and trade preferences to the country because of the political situation, they are invited to ensure that the cutbacks are targeted and do not aggravate the vulnerabilities affecting particular groups. Other reverberations are being felt in the region with more free-trade areas and regional openings with other partners. In regard to liberalization in trade and commercial terms, the need to help spread the benefits equally, so that wealth is enjoyed more fairly among the totality of the population, should not be forgotten. Given that Cambodia will be the Chair of ASEAN in 2022, that will also be an opportunity to support the ASEAN Intergovernmental Commission on Human Rights and have a more substantive role in the protection of human rights.

79. Some activities can be undertaken without entering into much politicization and can invite cooperation:

- (a) Implementation of the Sustainable Development Goals, bearing in mind access to justice, the rule of law and human rights and freedoms (Goal 16);
- (b) Follow-through on the United Nations report on children deprived of liberty by evolving a national plan on the issue and activities to divert children from detention;
- (c) Follow-up on various recommendations accepted by the country at the most recent universal periodic review, in particular the adoption of an anti-discrimination law which will protect lesbian, gay, bisexual, transgender and intersex persons and a law to recognize same-sex marriage;
- (d) Exchange of information and experience with ASEAN countries and others in the Asia-Pacific region that have national human rights commissions, in order to advance the possibility of establishing such a commission in Cambodia that is respectful of international standards.

V. Conclusions and recommendations

80. **The presence of COVID-19 today is an all-pervasive awakening – it is both a calamity and an opportunity. It has dented the economic growth of Cambodia but, given the country's resilience, it can be hoped that the country can overcome the pandemic and return to the path of development. As the country moves towards its Cambodia**

⁶³ See www.eccc.gov.kh/sites/default/files/Outreach%20statestics%20as%20of%20September%202017.pdf.

⁶⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26769&LangID=E.

Vision 2050, adopted by the Government with the aim of creating a prosperous, socially inclusive and environmentally sustainable Cambodia, and towards becoming a developed country, it would be only fair to ask the younger generation what they envision in substantive and practical terms for their country. In tracking the country's recent history, there is a visible truism that the aspirations of peace, human rights, democracy and sustainable development cannot be truly attained unless power is shared between the diversity of stakeholders so that a sense of ownership takes root. That is why what was inscribed 30 years ago at the time of the 1991 Paris Peace Agreements is inevitably resonant and still waiting to materialize: the promise of "a system of liberal democracy, on the basis of pluralism".

81. To that end, the Special Rapporteur proffers two sets of interlinked recommendations, one for the Government and the other for the international community.

82. To the Government:

(a) The Special Rapporteur calls upon the Government to comply with its obligations under international human rights law and follow the guidance of the United Nations on a human rights-based approach to deal with COVID-19 in its public health measures and to ensure that restrictions, such as lockdowns, are balanced with the full range of civil, political, economic, social and cultural rights;

(b) The Special Rapporteur urges the Government to guarantee that basic needs, including access to health care, food and social protection and support to overcome poverty and deprivation, are met, both in regard to the public health emergency and to its extensive impact on people's lives and livelihood, with human rights as key to shaping responses to the pandemic;

(c) The Special Rapporteur underlines the need to address effectively the vulnerabilities, heightened by the pandemic, facing various groups, including women, children and persons with disabilities, complemented by equitable resource allocation for accessible programming;

(d) The Special Rapporteur urges the Government to implement the recommendations it voluntarily accepted during the universal periodic review and the international human rights treaties to which it is a party, and continue to engage constructively with all the treaty bodies, the universal periodic review, the special procedures, including the Special Rapporteur, the OHCHR office and the United Nations country team in Cambodia, and address effectively the challenging issues raised in the present report;

(e) The Special Rapporteur calls upon the Government to desist from applying laws, policies and practices which are in breach of international human rights law and standards and set up swiftly a review of those draconian laws, policies and practices which need to be improved to comply with human rights standards (with a view to their reform, revision or abrogation, as necessary), in addition to holding sustained dialogues with civil society to ensure that their voices are heard and respected;

(f) The Special Rapporteur urges the Government to end investigations and prosecutions of members of the opposition and of human rights defenders, civil society activists and journalists, bearing in mind international human rights standards, due process of law and fair trial guarantees, and to open up the space for dialogue, reconciliation and regeneration;

(g) The Special Rapporteur advises the Government to adopt more measures to propel recovery and revival through activities to support opportunities for the population to reskill and adapt to the COVID-19 and post-COVID-19 era, and broaden the social support and protection system to tackle vulnerabilities and lessen the online and Internet gap between those who have and those who have not;

(h) The Special Rapporteur calls upon the Government to apply the Sustainable Development Goals in an inclusive, participatory and gender-sensitive

manner, with an additional focus on Goal 16, which concerns inclusion, access to justice, rule of law and human rights;

(i) The Special Rapporteur invites the Government to expand education on and for human rights, with lessons learned from the COVID-19 experience, prevent violence and discrimination and promote empathy for the protection of nature and mutual respect and tolerance among humanity from a young age;

(j) The Special Rapporteur urges the Government to liberalize the environment for the next commune elections and national elections, so that a plurality of political parties can participate in a safe and respectful atmosphere, free from the fear of intimidation and harassment.

83. To the international community:

(a) The Special Rapporteur invites the international community to support activities responding to the human rights-based approach to COVID-19 and to continue to support the mandate of the Special Rapporteur and the presence of OHCHR in Cambodia;

(b) The Special Rapporteur urges the international community to strengthen programmes to implement human rights more effectively and qualitatively, bearing in mind the nexus between peace, democracy and sustainable development and their linkage with governance and accountability;

(c) The Special Rapporteur calls upon the international community to help address vulnerabilities and their effect on key groups, such as victims of violence and discrimination, and children deprived of liberty, especially given the realities revealed by COVID-19;

(d) The Special Rapporteur invites ASEAN to work with Cambodia during its tenure as Chair of the Association to advance respect for peace, human rights, democracy and sustainable development, including a response to COVID-19 and its aftermath, by adopting a human rights-based approach;

(e) The Special Rapporteur calls upon the international community to support activities to enable youth in Cambodia to participate in shaping the future direction of their country, respectful of human diversity and environmental sensibility, with a view to a post-COVID-19 recovery and revival that is inclusive and gender-responsive;

(f) The Special Rapporteur encourages the international community to help promote transparency and fairness in the forthcoming commune and national elections, complemented by periodic assessments to review past and present practices, and to incentivize Cambodia to move forward progressively with political liberalization, expanding democratic space and improving governance.
