

Mr. President, Excellencies, Ladies and Gentlemen

It is my honour to present my first 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 scheduling of meetings during visits and in their willingness to maintain contact with me between missions. My report on the situation of human rights over the last year is available as A/HRC/33/62. I also draw attention to the explanations of the government in the GDoc, particularly as regards the cultural barriers to limiting pre-trial detention. To comply with the UN requirements, my report was written and submitted to OHCHR in May (the late submission footnote was due to internal delays by the document processing unit). In this oral report, I intend primarily to update the Council on recent developments.

First, some areas of progress...

Following a change in portfolio of several ministers in the Royal Cambodian Government, His Excellency, the new Minister of Land Management, Urban Planning and Construction, has pledged to accelerate the rate of conferral of communal land titles and the total granted is now 14 (paragraph 16 of my report).

On women's rights, there are plans to draft a surrogacy law which should help protect Cambodian women from unscrupulous surrogate brokers and counter human trafficking arising from this.

Progress on strengthening the organisation of the courts is ongoing and could build a foundation for a more impartial judiciary with specialised chambers, appropriate salaries and a code of conduct.

The National Election Committee is continuing to make progress on voter registration for the 2017 and 2018 elections.

In terms of reported communications:

- 1) The Urgent Appeal and subsequent Allegation Letter (KHM 5/2015 and KHM 2/2016) on the arbitrary detention of human rights defenders working with Mother Nature. Three of the subjects were convicted in July 2016 and released following almost a year's pre-trial detention.
- 2) Mr Ny Chakrya (Deputy Secretary General of the National Election Committee), and subject of an Allegation Letter in August 2015 (KHM 3/2015), was convicted last week and sentenced to six months in prison and a fine. It should be noted that he has been detained since May in relation to a separate set of charges (subject of an urgent appeal in May). The importance of rights to adequate defence and presumption of innocence for Mr. Ny Chakrya are particularly acute as he had been detained for several months leading up to the trial.
- 3) Urgent Appeal KHM 3/2016 in May on the arrest and detention of a number of human rights defenders working with the Cambodian Human Rights and Development Association (known as ADHOC). All these individuals remain in detention awaiting trial. This group includes Mr. Ny Chakrya. Their alleged crimes still appear based on legitimate work undertaken as human rights defenders. Charges should be proven or the individuals released immediately.

Over the last year, I have received a number of petitions, conveyed during my missions and outwith. The majority concern land issues, many longstanding and familiar to the Council. I have just received a translation, and will be able to commence work, on some. At this juncture, it is appropriate to record my gratitude to the phenomenal national staff in the Cambodian Office of the High Commissioner for Human Rights. Their knowledge, professionalism and dedication to improving the human rights situation in Cambodia is seemingly without limits despite the threat of arrest for one member of staff in relation to his work as an OHCHR official.

Noting that the Memorandum of Understanding between the Government and OHCHR has still not been renewed, I submit that both sides should work towards this expeditiously.

Mr. President, Excellencies,

Twenty-five years ago, many members of this Council and the UN were engaged in the discussions which led to the Paris Peace Accords of 23 October 1991. This framework for a comprehensive political settlement of the Cambodian conflict helped to bring peace to Cambodia and laid the foundation for a Cambodia based on a supreme constitutional law which included 'special measures to assure protection of human rights' (annex 5, para 2). There can be little doubt that with the help of the international community and a strong and vibrant community of non-governmental organisations, the Cambodian people and their elected governments have transformed the country. The benefits of progress have however, not been enjoyed equally amongst the whole population. Moreover, the protection of human rights in Article 31 of the Constitution is seriously threatened. Article 31 provides

'The Kingdom of Cambodia shall recognize and respect human rights.... Khmer citizens are equal before the law, enjoying the same rights... regardless of race, color, sex, language, beliefs, religions, political tendency, birth origin, social status, wealth or other status.'

The constitution and many laws purport to protect those international human rights treaties the Cambodian government has voluntarily accepted. As is correctly the case, laws are ultimately applied and enforced by the courts. In Cambodia, there is increasing evidence that the application of those laws by the courts casts doubt on the independence of the judiciary insofar as the laws are being applied in a manner which harshly punishes political dissent and comment. I reiterate the Constitution – '*Khmer citizens are equal before the law regardless of political tendency*'. I fully accept that an independent judiciary must not be compromised by the executive or legislature. Indeed that is a core requirement of international human rights law. However, the current body of pending cases and convictions appear to disproportionately affect the political opposition. Even if the Cambodian courts are to be taken as independent, as the government reiterates, then the only viable explanation is that the laws are capable of being applied in a way which restricts core human rights protected by the Cambodian constitution. Those laws must therefore be reviewed and revised as necessary. This is perhaps a particular issue in Cambodia as many of these laws were adopted rapidly, drawing on foreign legal traditions to build a legal framework. There is also an urgent need to review elements of the criminal procedure code and evidence rules given the number of convictions which lack the ordinary standards of legal proof – for example a conviction for forgery without proof that the document was actually forged/changed by the accused (for example, Senator Hong Sok Hour); reliance on the *in flagrante delicto* exception in the Constitution (Article 80(3)) for

removing parliamentary immunity when the arrest was being effected after the alleged crime (Mr. Kem Sokha, Acting President of the CNRP, for example).

I am also concerned at the number of accusations of leading and involvement in an insurrection – it seems that Cambodian authorities are of the opinion that the country is on the brink of a precipice, rather than the stable, peaceful country the government indicates. Public campaigns demanding the release of prisoners and notified public gatherings to voice political dissent do not *ipso facto* constitute insurrection, incitement, or a challenge to public order. Laws recently adopted demand political neutrality of trade unions and non-governmental organisations but their enforcement even prevents gatherings for education and training purposes.

In June, during the Council's tenth anniversary session, many states raised concerns over the democratic space in Cambodia. Further statements were made earlier this month. Concerns have also been expressed by the High Commissioner for Human Rights as well as by myself and other special procedure mandate holders. There is no doubt that certain laws are increasingly being used to stymie political debate and accountability. Respect for the rule of law in a democratic society does not mean rule by law with laws applied in a manner which restricts free political debate, freedom of expression and the vocalisation of dissent. I list some oft invoked legal provisions in paragraph 31 of my report, and in paragraph 32, I summarise the international human rights guidance on regulating political speech including permitting statements which may be considered insulting to a public figure. Notwithstanding Article 31 of the Constitution '*[t]he exercise of personal rights and liberties by any individual shall not adversely affect the rights and freedom of others*', there is an inevitable balance to be sought between potentially competing rights. Rights of privacy must also be respected – several charges are based on online material or telephone conversations, the legality of which remains to be ascertained. I reinforce my recommendation that the Government reviews the salient provisions of the criminal code (including the crimes of defamation and insult) and the application of the laws on peaceful demonstration, on trade unions and on associations and NGOs to ensure full compliance with the International Covenant on Civil and Political Rights. OHCHR Cambodia and many other actors have published analyses of compatibility and I am also ready to assist.

In my report, I note (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.'. There has undoubtedly been further deterioration. In recent weeks, there have been military exercises in Phnom Penh which have contributed to a sense of intimidation and fear amongst many, continuing arrests and charges curtailing legitimate political debate and dissent, regular boycotting of sessions of the National Assembly and Senate by the CNRP and a call for a mass demonstration. Fourteen members of Parliament representing the CNRP are currently charged, under arrest in pre-trial detention, or have been convicted of various crimes. Although I am aware that there has been action against some members of the CPP, the effect is much more profound on the opposition in terms of numbers and the gravity of the charges and sentences. One leader of the CNRP is in voluntary exile; the other remains in the CNRP headquarters to avoid arrest - he was convicted *in absentia* earlier this month for the crime of refusing to appear in court. Criminal convictions preclude political office thus the seriousness of the situation cannot be underestimated. In addition to the violence reported in paragraph 7 of my report, in July of this year, Mr. Kem Ley, a prominent

political activist, was shot dead in Phnom Penh. One individual is currently under arrest though many questions remain unanswered in connection with these incidents.

There is provocation and counter-provocation in the rhetoric of both the main political parties yet during the last election, the Cambodian people expressed their support for both these parties and they must therefore work together to serve those who elected them. In 2014, the “culture of dialogue” was the device chosen by those political parties to do so. It is no longer a reality, but the temporary halt to the aggression seen recently (I am pleased to report that Samdech Techo Prime Minister has just called for a temporary ‘ceasefire’ in the political hostilities) provides an opportunity to resume it by addressing the fundamental issues. In paragraph 55 of my report, I noted that if the political situation is not stabilised in an environment of respect for human rights, the credibility of the forthcoming elections would be seriously undermined.

Mr. President, Excellencies, the aspiration expressed in the preamble to the Paris Peace Accords twenty-five years ago *‘to promote national reconciliation and to ensure the exercise of the right to self-determination of the Cambodian people through free and fair elections’*, remains relevant today.

Thank you.