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Written Statement to the 42nd Session of the United Nations Human Rights Council by Lawyers' Rights Watch Canada (LRWC), NGO in Special Consultative Status, and Asian Legal Resource Centre (ALRC), NGO in General Consultative Status

Item 10 – Technical assistance and capacity-building

The roots of Cambodia's persistent rights violations: Impunity of the powerful*

1. Introduction

Human rights in the Kingdom of Cambodia have remained a constant concern for decades, but recent years have seen marked deterioration of respect, protection and fulfilment of the international human rights obligations Cambodia has undertaken as a party to the 1991 Paris Peace Agreements (PPAs)¹ and numerous UN human rights treaties.² With increasing boldness, Cambodia systematically disregards its international human rights obligations and its Constitution. Instead, Cambodia misuses laws and institutions to shield the enrichment of powerful officials and government-connected business leaders at the expense of development measures that benefit the majority of Cambodians. Cambodia manipulates laws, courts, institutions, and electoral processes to silence critics, including human rights defenders (defenders) and opposition politicians. Continued support for the mandate of the Special Rapporteur on the situation of Cambodia and the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) in Cambodia is critical to ensure Cambodia's accountability to fulfil its multilateral international human rights obligations.

* See the fully footnoted version of this statement at <https://www.lrwc.org/cambodias-persistent-rights-violations-impunity-of-the-powerful-un-statement/>.

2. Cambodia's international obligations in light of its tragic history

Cambodia was among the 19 States that signed the 1991 PPAs to end Cambodia's decades of bloodshed and pursue durable peace through free and fair elections, promotion of human rights, and reconstruction of the country in recognition and respect of the country's sovereignty and independence. In February 1993, the UN Commission on Human Rights (CHR) adopted a resolution recognizing that Cambodia's "tragic history" required "special measures to assure the protection of human rights and the non-return to the policies and practices of the past."³ The CHR resolution welcomed Cambodia's ratification or accession to several human rights treaties and created a UN Centre for Human Rights and a Special Representative to assist Cambodia to fulfil the human rights obligations it had undertaken.⁴

After the May 1993 UN-supervised national election and the formation of a government in September 1993, Cambodia's Constitution came into force confirming that Cambodia "shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."⁵

The UN established the Centre for Human Rights in Cambodia in October 1993 (merged with the OHCHR in 1998). The Secretary General (SG) appointed the first Special Representative on Human Rights in Cambodia (SGSR) in November 1993. The SGSR's inaugural 1994 report recommended that Cambodia give priority to resolution of land disputes due to "[r]isks of oppression, abuse of power and favouritism in the allocation of land amongst competing claimants and local authorities" and to prevent the "rise of persisting conflict and lawlessness."⁶ The SGSR also made recommendations for the right to remedies through independent, impartial courts.⁷ Later in 1994, the SGSR recommended urgent attention to laws for the administration of justice and a reformed land law.⁸

Twenty-five years later, land rights and the administration of justice remain among several intertwined concerns continually emphasized by the OHCHR in Cambodia and by all four UN Special Representatives and two Special Rapporteurs on the situation of Cambodia (collectively referred to as SRs). Other Special Procedures of the Human Rights Council (Council) including thematic SRs, as well as the Universal Periodic Review (UPR) processes, have also conveyed these concerns, as have UN human rights treaty bodies. On the 20th anniversary of the PPAs in 2011, the SR on Cambodia stated:

Cambodia has undeniably progressed over the past twenty years, with peace and stability bringing enormous dividends in terms of wealth and development. Institutions have been established and laws written... However the challenge remains in the implementation of many of these laws and proper functioning of these institutions....The Agreements will remain relevant until their vision is a reality for all Cambodians...⁹

3. Cambodia's failure to implement UN human rights recommendations

A number of Cambodia's laws violate international standards or are implemented in a discriminatory manner, favouring powerful persons or silencing dissent. Courts lack

independence, impartiality, and integrity, and consistently provide influential persons with impunity for rights violations.

a. Land-grabbing and illegal logging

Cambodia adopted a land law in 2001,¹⁰ but land titling remains incomplete,¹¹ including slow progress issuing communal land titles to indigenous peoples.¹² SRs have raised concerns about discriminatory implementation of the law.¹³ There is reported corruption regarding land concessions and concern about widespread illegitimate land acquisition for agribusiness, economic development, and illegal logging,¹⁴ resulting in devastation of forests,¹⁵ natural resources, livelihoods, and indigenous peoples' rights.

Since 1973, Cambodia's forests have been dramatically reduced.¹⁶ From 2000 to 2013, land-grabbing has adversely affected approximately 770,000 people through forced evictions and damage to land and environment without adequate redress or remedies.¹⁷ Women defenders are often at the forefront of peaceful community advocacy for justice and fair compensation and frequently experience attacks, judicial harassment, and arbitrary detention.¹⁸ Land disputes remain rife,¹⁹ with no reliable access to independent, impartial dispute resolution or judicial remedies.

b. Laws and the legal system: Lack of independence and integrity

Executive influence over legal institutions precludes equal access to independent, impartial justice. After years of recommendations from SRs, in 2014 Cambodia passed laws on the judiciary²⁰ which failed to meet international standards by giving undue executive power over the judiciary and prosecutors.²¹ Cambodia's judiciary and legal profession have been weakened by extensive and persistent corruption.²²

Cambodia passed an anti-corruption law in 2010, but implementation has been inadequate despite SRs' recommendations.²³ Cambodia is among the world's most corrupt countries.²⁴ Mistrust of police and courts is among the causes of extrajudicial reprisals against suspected criminals, including 73 recorded "mob justice" killings from 2000 to 2018.²⁵

c. Electoral malfeasance

Irregularities have marred all Cambodian elections,²⁶ but in 2017 hopes for change plummeted when the long-ruling Cambodia People's Party (CPP) created and deployed an overbroad law²⁷ to dissolve the only viable opposition, the Cambodian National Rescue Party (CNRP). A May 2018 decree provided for surveillance and control of pre-election news.²⁸ These and other measures resulted in a July 2018 national election that denied Cambodians' the right to vote in a genuine election.²⁹ The CPP gained 100 percent control of the legislature. The SR deemed Cambodia to be now "de facto a single party State."³⁰

d. Suppression of expression rights

News media are largely controlled by persons linked to high ranking officials,³¹ and independent media are suppressed.³² Persons who criticize public officials in news reports or social media are

criminalized using Penal Code provisions such as criminal defamation, public insult, incitement, and a 2018 lèse majesté law, which fail to meet international standards.³³

e. Attacks on defenders and political opposition

Lawyers, defenders,³⁴ journalists,³⁵ analysts, politicians, or activists who report concerns about illegitimate land acquisition,³⁶ environmental degradation,³⁷ labour rights violations,³⁸ corruption,³⁹ election irregularities,⁴⁰ or other rights violations are regularly subjected to official vilification, intimidation, criminalization, and arbitrary detention (e.g. lawyer Ny Chakrya,⁴¹ defender Tep Vanny⁴²), attacks, enforced disappearances,⁴³ or unlawful killings with impunity (e.g. Kem Ley in 2016,⁴⁴ Chut Wutty in 2012,⁴⁵ and Chea Vichea in 2004⁴⁶). In 2015, the UN Human Rights Committee expressed concern about judicial corruption, and lack of accountability for extrajudicial killings⁴⁷ and disappearances allegedly perpetrated by police and military personnel since the 1991 PPAs, without adequate investigation, prosecution, or compensation to victims.⁴⁸

In September 2017, CNRP leader Kem Sokha was detained and charged with plotting to overthrow the government because of a 2013 speech on nonviolent political change. The SR has been denied visits to Kem Sokha.⁴⁹ In October 2017, several CNRP leaders, including Deputy Leader Mu Sochua fled Cambodia after warnings of likely arrest.⁵⁰ In May 2019, the SR repeated her previous calls for “the release of Kem Sokha from detention and the swift conclusion of the investigation or for the charges to be dropped.”⁵¹ In June 2019, the SR, along with the SR on Freedom of Expression, expressed concern that Cambodian authorities had detained and questioned 140 former-CNRP members about their gatherings or social media statements.⁵²

In August 2015, Cambodia passed a Law on Associations and NGOs (LANGO) despite concerns expressed by Cambodian and international NGOs and the OHCHR in Cambodia⁵³ that it falls short of international human rights standards. Its overbroad provisions enable officials to overreach their lawful authority in violation of freedoms of expression, association, and assembly. Despite the SR’s urging to implement the LANGO in compliance with Cambodia’s international human rights obligations,⁵⁴ government officials have invoked the LANGO unlawfully to break up meetings and trainings of NGOs and community associations, falsely stating that the LANGO forbids holding events without permission from local authorities.⁵⁵

4. Slow implementation of recommendations of Special Procedures and the UPR

Cambodia’s responses to SR and OHCHR recommendations for the past twenty-five years have been characterized by disregard, neglect, delay, resistance, or hostility. Cambodia has demonstrated overt disrespect for SRs, including personalized verbal attacks.⁵⁶ The current SR has been denied visits to persons in detention or under house arrest,⁵⁷ contrary to the terms of reference for country visits of Special Procedures.⁵⁸

During its 3rd UPR in April 2019,⁵⁹ States made 198 recommendations. Cambodia confirmed its acceptance of 173, including recommendations for:

- development that benefits all strata of society;⁶⁰
- fair resolution of land disputes including evictions, relocations and compensation;⁶¹
- judicial independence;⁶²
- compliance with the ICCPR;⁶³
- accountability for rights violations through independent investigations and prosecution of perpetrators;⁶⁴
- freedom of expression for all citizens and journalists including on the internet;⁶⁵
- a safe and enabling environment for civil society, including respect and protection of rights of journalists, defenders, trade union workers, land and environmental activists, and political opposition members;⁶⁶
- revision of laws to align them with international human rights obligations;⁶⁷
- participation of opposition parties in political life;⁶⁸
- fair elections including independence of the National Election Commission;⁶⁹
- implementation of recommendations of the SR on Cambodia;⁷⁰
- acceptance of visits by Special Procedures mandate holders;⁷¹ and
- constructive engagement with all Special Procedures.⁷²

It is not known what if any measures have been taken have been taken to implement these recommendations.

5. Recommendations

LRWC requests that the Council extend the mandate of the Special Rapporteur on the Situation of Human Rights in Cambodia and strongly urge Cambodia to:

- a. Promptly and effectively implement in good faith all the recommendations Cambodia accepted during its third UPR.⁷³
- b. Cooperate with Council Special Procedures,⁷⁴ the OHCHR, and UN human rights treaty bodies, and promptly implement all their recommendations in good faith;
- c. Respect the mandate and person of the SR on the Situation of Human Rights in Cambodia, including facilitating visits with all persons detained or subjected to house arrest, as required by the 2016 terms of reference for country visits of Special Procedures.⁷⁵
- d. Release Kem Sokha from detention, promptly conclude the investigation of allegations against him and drop the charges.
- e. Issue a standing invitation to all Special Procedures, and immediately accept all pending requests for country visits;⁷⁶
- f. Review and repeal or amend all laws, including but not limited to the LANGO, the Law on Political Parties, and Criminal Code provisions on criminal defamation, public insult, incitement, and lèse majesté, to ensure compliance with international human rights obligations,
- g. Invite independent experts to investigate, under UN auspices, all unlawful killings, including murders of defenders Kem Ley, Chut Wutty, and Chea Vichea, in accordance with the 2016 UN Minnesota Protocol on the Investigation of Potentially Unlawful Death;⁷⁷

- h. Adopt a law to protect defenders based on the UN Declaration on Human Rights Defenders⁷⁸ and the International Service for Human Rights Model National Law on the Recognition and Protection of Human Rights Defenders.⁷⁹

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- ⁷⁰ Ibid, accepted recommendation 110.14.
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