Oral Update and Address of Professor Vitit Muntarbhorn, Special Rapporteur on the situation of human rights in Cambodia, United Nations (UN) Human Rights Council (HRC), March 2022.

It is an honour and a pleasure to assist the UN as Special Rapporteur to help promote and protect human rights in the Kingdom of Cambodia. This oral update is in response to the UN HRC resolution last year which extended this mandate for two years and called for an additional oral update this year. Although I have not yet visited the country as a mandate-holder, due to the COVID-19 pandemic, during the past nine months since my first written report was drafted, I have held many online dialogues with a variety of stakeholders, including State authorities, in particular HE Somdech Sar Kheng and HE Ith Samheng, members of civil society, diplomats and UN personnel, to keep abreast of the situation. I thank all of them warmly for their inputs and also the Office of the UN High Commissioner for Human Rights (OHCHR) team in Phnom Penh and Geneva for the excellent support.

This update is divided into two parts. The first part highlights immediate concerns pertaining to the issue of political space leading up to the Commune elections in June 2022, and it will be the focus of the oral presentation in the HRC. The second part reiterates and augments concerns from the 2021 written report of the mandate-holder, following key developments over the past nine months; they will not be covered explicitly in the oral presentation due to limited time. There are also reflections on technical assistance and capacity-building.

At the outset, the situation in the country can perhaps be described as straddling a testament and a predicament, with human rights precariously nestled in between. The testament is the 30th anniversary of the Paris Peace Agreements (October 1991) which brought peace to the country after a long period of warfare and the “recent tragic past”; it established a pivotal framework for human rights, democracy and sustainable development in the country. Yet, those aspirations are far from being fulfilled due to an all-pervasive predicament, namely, the monopolization of power by the ruling elite and constraints imposed, particularly on civil and political rights, undermining the quest for democracy, most evidently in the past decade.

To be fair, there have been some gains along the way. The Peace Accords remain a key linchpin to guide the preferred path to development in the country. During the past year, the country hosted the Asia-Europe Summit and is currently Chair of the Association of Southeast Asian Nations (ASEAN), enabling it to enhance its profile through inter-regional and regional dialogues, despite various intractable problems. It should not pass unnoticed that with regard to the former, the partners from the two regions adopted the “Phnom Penh Statement on the Post-COVID-19 Socio-Economic Recovery” (November 2021), with this key message to be
heeded: “The pandemic should not be used as a pretext to limit democratic and civic space, compliance with international human rights law and respect for fundamental freedoms, and rule of law.”

The country has been commended widely for its extensive vaccination programme, rolled out for the population against the pandemic. Economically, it has the potential to recover well. The pandemic has brought about the realization that while cash transfers to help the people during the pandemic were and are necessary, other aspects of life such as health care, educational access, food security, reskilling and upskilling for job opportunities, and the vulnerabilities of specific groups such as women, children, informal workers, persons with disabilities and the unemployed also need effective coverage. Accordingly, a social protection law, a new law on disabilities, a child protection law and a national roadmap on Universal Health Coverage are now being drafted. All these instruments needed to be well-grounded in human rights, including the principle of non-discrimination.

There have also been some recent improvements in regard to law reform and the justice system. Backlogs of court cases are now being cleared, while there is a need to improve the criminal justice system together with broader and more accessible legal aid and assistance. There have also been constructive dialogues on steps towards possible same sex marriage laws, on LGBTI, and on shared experiences from the ASEAN region concerning the strengths and weaknesses of national human rights commissions, bearing in mind the “Paris Principles” concerning National Human Rights Institutions.

Yet, the panorama of human rights and democracy in the country remains intimidating and disconcerting on many fronts. There has been regression-recession-retrogression in relation to civic space and political space due to what is, in substance, all-intrusive single-party rule. This is based upon a prism of power control and predominance, targeted towards singular self-survival and self-perpetuation.

Towards the end of 2021, mass trials of members of the political opposition resumed after a lull due partly to the pandemic. They involve over 150 persons, perceived or actual political opponents of the current power base whose plight dates back to the situation some five years ago. The period “2015 plus” saw a burgeoning of a viable opposition in the form of the Cambodian National Rescue Party (CNRP) which competed well with the power group now in power in the form of the Cambodian People’s Party (CPP). The former won some 43 per cent of the votes, as compared with 50 per cent of the votes for the latter, during the 2017 commune elections. Yet, they were disbanded later by court order, resulting in the disenfranchisement of the main political opposition and its members, including a ban from political participation for five years. The seats were then allocated to the CPP and it was the latter which prevailed in the 2018 national elections. The consequence was that all 125 seats in the National Assembly fell into the hands of a single party, the single party. Subsequently, an array of court cases has been initiated against members of the opposition, and these are personified by the mass trials which have been pending for a long time.
The first mass trial led to the conviction on 1 March 2021, of 9 senior leaders of the former CNRP in absentia on charges related to “attempt to commit a felony” and “attack and endanger institutions of the Kingdom of Cambodia” under sections 27 and 451 of the Cambodian Penal Code.

The second mass trial led to the conviction on 17 March 2022 of 21 persons allegedly affiliated with the CNRP, including 7 leaders (10 years in prison) and 14 CNRP supporters and relatives (5 years in prison).

The third mass trial with 60 accused has been ongoing since 26 November 2020 and could be nearing completion.

A fourth case, with 76 accused, has yet to resume following a suspension during the peak of the COVID-19 pandemic.

Irregularities inherent in these trials include the lack of credible evidence, failings concerning respect for fair trial rights and due process guarantees and the fact that several of the so-called accused are being tried in absentia in breach of human rights guarantees. They have thus been described by commentators as “show trials” and “witch hunt”.

Of course, the key test for progress or regress this year is whether the Commune elections in June 2022 will be free and fair, resulting in the promise of democratic pluralism voiced by the Peace Accords 30 years ago. The preparations are witnessing more registration of political parties, more candidates, and more voters - under the penumbra of single party predominance. Some members of the banned opposition party, mentioned earlier, are regrouping with new parties and are being rehabilitated politically and legally, but a number are still in prison and are part of the mass trials mentioned, awaiting the judicial process, as a consequence of their political affiliations. It remains to be seen whether a viable and effective opposition can emerge at the local level, leading up to the national elections in 2023 and senatorial elections in 2024. The electoral system should also be adjusted to enable Cambodians residing abroad to vote without having to return to Cambodia. This should be complemented by reform of the law on elections to ensure independence from interference emanating from the top of the Executive branch. There is all the more need for political parties and civil society to engage in activities in a pluralistic political landscape grounded on international human rights law, with broad-based monitoring to expose violations and to advocate remedies.

All parties should shun inflammatory speech, tantamount to incitement to hatred based on violence and discrimination, as proscribed by the provisions of International Covenant on Civil and Political Rights to which the country is a party, while respecting freedom of expression in general and ensuring that constraints on such freedom and other freedoms comply with the standards of international human rights law.
An additional caveat is that while the electoral body-and-mind should be open to changes, it should not be disingenuous about the tentacles of entrenched power which instrumentalist State institutions, mechanisms, personnel and resources for their own ends.

At this juncture, the second part of the update now underlines the following developments in the past nine months. Nothing illustrates better the situation than the whole range of court cases facing those who are seen to be antithetical to the power base during the past year. The most callous was the case of the 16-year-old boy with autism spectrum disorder who was detained for months by the State authorities for allegedly insulting the power base. He did not have access to his family during his arrest, interrogation and while in detention and was possibly incarcerated because his father was an opponent of the ruling elite and his mother was part of a civil society movement acting on behalf of political detainees. The breaches of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities were both self-evident. The country’s Juvenile Justice law was not applied to comply with international standards which advocate that diversion of minors from the criminal justice system should be the rule rather than the exception. Non-custodial measures are preferred and detention should only be a measure of last resort, bearing in mind that incarceration might damage the child both physically and psychologically.

A number of UN Special Procedures, including this mandate-holder, acted on behalf of persons who were harassed, persecuted and or prosecuted by the authorities throughout the year. These included a range of human rights defenders, environmentalists, journalists, trade unionists, members of the political opposition, Cambodian refugees in neighbouring countries, other nationals affected by malpractices in Cambodia, and civil society members who were merely exercising the rights to freedom of expression, peaceful assembly and association, although looked upon with aversion by the powers-that-be.

The latest case from the end of 2021 involves the arrest and detention of a number of trade unionists and workers of the Naga World casino in relation to their months-long peaceful strike to advocate their rights as workers against unfair dismissal and other grievances. In principle, their rights are guaranteed by not only general human rights instruments but also specific international labour treaties on freedom of association and collective bargaining, as well as by the Cambodian Constitution and the national labour law. Human rights observers, including the UN, civil society and journalists, have been impeded from monitoring the situation transparently.

While constraints are understandably needed sometimes to prevent the spread of the pandemic on the basis of international standards, the measures used against peaceful strikers, including arrests, harassment and detention, have been inordinate in scope and scale. Any claims that constraining measures are required under the country’s anti-COVID law should be viewed with circumspection, as that law has been applied not only for medical lockdown but also for political clampdown vis a vis those seen as adversaries by the power base. While
those arrested in these strikes were recently released on bail, charges against them should be dropped, especially with a view to peaceful settlement of the dispute.

On a related front, while towards the end of 2021, a number of detained human rights defenders and environmentalists were released, the charges against them have not been dropped and they are still under court supervision and other law-and-order conditions. Many had also been detained for long periods and subjected to repressive fines before their release; they should not have been prosecuted at all if the political atmosphere had been, was and is more tolerant of dissent.

There is a related discrepancy. It is all too obvious that the various parts of the State machinery are heavily influenced by the accumulation of Executive power at the top. The range of court cases against those diverging from the power base attests to the weaponization of the judiciary with political consequences. In reality, there is the ominous judicialization of injustices which inhibits respect for human rights norms and the space for democratic pluralism.

Those impediments are compounded by other anomalies affecting the national system. There is over-legislation, especially of draconian laws, including the many laws which constrain freedom of expression. These include the national Telecommunications law, the Prakas (Decree) on the Internet and the most recent sub-decree entrenching a single Internet Gateway which would mean expansive surveillance of content on the internet as well as to enable the authorities to switch off the information flow arbitrarily. While the implementation of this Gateway law was suspended recently, in the face of global and local criticism, that law and other laws need to be repealed altogether. A range of other negative laws and policies were noted in my report to the UN HRC last year, and they include an emerging Cybercrime law and a Public Order law with its moralistic message which will affect women’s rights (since there will be stipulations on how to dress according to the paternalistic tone exuding from the apex of the political system). Equally, there is over-use of various criminal laws to stifle dissent, especially the provisions of the Penal Code (such as sections 494 and 495) on incitement to commit a felony, (section 453) on plotting and (section 443) on conspiracy with a foreign power.

Other laws which await reform include the Law on Associations and Non-Governmental Organizations which obliges civil society actors to register with the authorities and subjects them to excessive scrutiny and surveillance, and the domestic violence law which should be more gender-sensitive. With regard to the latter, there is a need to depart from the current mediation/conciliation emphasis which may retraumatize victims as it presses them to negotiate solutions with their violators. From another angle, the country should expedite the adoption of a law on personal data protection and on access to public information, with clear limitations on the use of national security and public order as grounds to limit protection of the population and their rights.

To counter the gamut of human-rights averse laws, policies and practices, there is a simple message which needs political will to ensure an equitable response: namely, desist from
applying draconian instruments; reform and repeal them; avoid adopting new laws and policies of a politically cloistering kind; release human rights defenders and political dissidents; drop the charges against them; restore and re-enfranchise a variety of political parties and their members, as well as release those who are in prison for their political affiliations; refrain from harassing and attacking journalists and advocates/defenders of human rights, of environmental protection and of democracy; ensure independence and transparency of the judiciary and related personnel such as prosecutors and lawyers; and personify good leadership and peer influence by abiding effectively by human rights and democracy under the international Rule of Law.

The criminal justice system also awaits improvement to tackle the overload of the prison system which impinges upon a range of rights and to adopt more non-custodial measures, especially in relation to pre-trial cases. Since the majority of detainees in prison are held on drugs-related charges, there is a need to explore more rehabilitative measures rather than retributive sanctions. Furthermore, access to detainees at least by the UN should be facilitated - to be able to interview them with full confidentiality.

In regard to other human rights, economic, social and cultural issues need to be attended to so as to ensure recovery and revival which should be people-based in the post-pandemic phase. A particular concern is increasing indebtedness, leading to loss of land as collateral of loans inched with microfinance, and diminishing food security, aggravated by recent rise in oil prices and potential food famine due to the war in Ukraine. Improved access to and resumption of education, after the disruption caused by the pandemic, are essential, also to overcome the online gap between those who have and those who have not. There is a need to allocate more resources to the social sector, bearing in mind that public expenditure on this front has been declining in recent years, and to fulfil the promises under the International Covenant on Economic, Social and Cultural Rights which the country has ratified.

There are special groups deserving more protection and assistance, including women, children, persons with disabilities, (migrant) workers, indigenous peoples and minorities. The issue of natural resources, in particular, land holdings, land titling, and related privatization of State land calls for effective participation of local communities and guarantees against the seepage of vested interests often linked with the power base. There should be safeguards against evictions premised on the principle of “free, prior and informed consent” as the basis for negotiations concerning land usage interlinked with traditional communities thereon, with effective measures against land grabs by encroachers. Housing and the other basics of life are guided already by the Sustainable Developments Goals which interrelate with local and national economic and social development policies, and these issues were also covered under the UN’s recent Universal Periodic Review with which the country engaged constructively.

Concomitantly, there is a need for more mitigation and adaptation programmes to counter climate change.
During the past year, there have also been issues of deportation or “refoulement” of Cambodian refugees back to Cambodia from abroad, against their will, with returnees detained on arrival. Given that the country itself is a party to the international Refugee Convention, it should eschew forced return of its nationals from other countries when and where they are internationally recognized refugees. It should release all detainees with this status. On another front, there is the reported upsurge of cross-borders gangs operating in areas heavily laden with various kinds of foreign investment. People have been lured into situations of human trafficking and forced labour via online scams and other forms of deception. This modern slavery, particularly in regard to what civil society calls “slave compounds” linked with officialdom and vested interests, should be countered by more victim-friendly law enforcement and national-cum-international anti-crime cooperation. On the other hand, there remain the cases of enforced disappearance and other key violations concerning Cambodians and foreign national(s) raised in my earlier report and subsequent monitoring, such the cases of Sin Khon and Wanchalerm Satsaksit, which deserve effective follow-up, especially to overcome the atmosphere of impunity. On the transparency and accountability front, there should be more measures to prevent and eliminate corruption, especially in regard to those who are related to the power base.

Finally, there should be reflections on technical cooperation and capacity-building which were raised in the UN HRC resolution last year and which will be discussed in more detail in the forthcoming written report of this mandate-holder (to be drafted before the middle of 2022). First, the country has benefited enormously from these inputs during three decades. The lesson learned is that while external assistance has been critically important to help rebuild the basics and functioning of Statehood, stocktaking is needed to ensure that it does not aggravate the democracy deficit and the human rights lacunae, especially in regard to civic space and political space.

Second, some areas are already garnering new support and these can be further advanced. In particular, the various recommendations accepted by the country in regard to the most recent Universal Periodic Review, such as to have a law against discrimination on the basis of LGBTI, a law to allow same sex marriage and a law to recognize gender identity and gender affirmation, offer vistas for cooperation. Likewise, the recommendations from the Human Rights Committee due this year in the latest monitoring cycle pertaining to the country. Another area of promise is to deal responsively with children deprived of liberty and to improve the judicial and social system to attend to the needs of children in a variety of difficulties, with due regard for gender sensibility. Civil society also deserves help, especially in regard to assistance and capacity-building on digital security and on protection against surveillance and harassment.

Third, Cambodia is in a position to help other countries as part of technical cooperation. For instance, it already contributes manpower and woman power to international peacekeeping. Recently it contributed truckloads of medical help to an ASEAN neighbour in the struggle against the pandemic. It has also a wealth of experience to be shared with other countries on
de-mining. Indeed, technical cooperation and capacity-building should be appreciated as a two-way flow which is mutually beneficial for partnership-building, avoiding a dependency syndrome.

In sum, we are thus invited to be cautious about the political potholes which lie and lurk along the road ahead, to be tested very soon with the Commune elections in the country. Ultimately, the challenge is for the existing power base to convince the global/local community that it is willing to liberalize, to share and care, in substance rather than in form – (metaphorically) to convert those backbreaking minefields into pathfinding milestones.

Thank you.