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Agenda item 10

Technical assistance and capacity-building

Japan: draft resolution

42/... Advisory services and technical assistance for Cambodia

The Human Rights Council,

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms as enshrined in the Charter of the United Nations, as reaffirmed in the Universal Declaration of Human Rights and in accordance with their respective obligations under the International Covenants on Human Rights and other applicable human rights instruments,

Recalling General Assembly resolution 60/251 of 15 March 2006,

Recalling also Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, and stressing that special procedure mandate holders shall discharge their duties in accordance with those resolutions and the annexes thereto,

Recalling further Human Rights Council resolution 36/32 of 29 September 2017 and other relevant resolutions,

Bearing in mind the report of the Secretary-General on the role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights,¹

Recognizing that the tragic history of Cambodia requires special measures to ensure the protection of human rights and the non-return to the policies and practices of the past, as stipulated in the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, signed in Paris on 23 October 1991,

Taking note of the new developments in Cambodia, especially the achievements and improvements in economic and cultural fields over recent years through its relevant national plans, strategies and frameworks,

Noting the efforts made by the Government of Cambodia to rebuild the country and to promote individuals' rights, freedoms and dignity while maintaining peace, stability, social security and public order, and to promote development and enhancing the quality of life of the population, and stressing the importance of respect for and the promotion and protection of human rights in this regard,

¹ A/HRC/42/31.



1. *Reaffirms* the importance of the Extraordinary Chambers in the Courts of Cambodia as an independent and impartial body, and believes it will significantly contribute to eradicating impunity and establishing the rule of law by, inter alia, exploiting its potential as a model court of Cambodia;

2. *Welcomes* the progress made with regard to the Extraordinary Chambers in the Courts of Cambodia, including the delivery of the judgment made by the Trial Chamber in case 002/02 against former senior leaders of Democratic Kampuchea, Nuon Chea and Khieu Samphan, who were sentenced to life imprisonment for genocide and other crimes on 16 November 2018, and supports the position of the Government of Cambodia and the United Nations to proceed with the tribunal in a fair, efficient and expeditious manner to fulfil its mandate, given the further advanced age and frail health of the persons charged and the long overdue justice for the people of Cambodia;

3. *Expresses continued concern* over the financial situation of the Extraordinary Chambers, urges the Government of Cambodia to work with the United Nations and the States providing assistance to ensure the highest standards of administration of the Extraordinary Chambers, stresses the need for the Government and the international community to provide all appropriate assistance to the Extraordinary Chambers, and also stresses the importance of efficient and sustainable management of financial resources by the Extraordinary Chambers;

4. *Calls upon* the Government of Cambodia to transfer the knowledge and share the good practices of the court officials at the Extraordinary Chambers;

5. *Welcomes* the positive engagement of the Government of Cambodia in the third universal periodic review process and its acceptance of most of the recommendations made therein and the progress so far in their implementation;

6. *Also welcomes* the reports of the Special Rapporteur on the situation of human rights in Cambodia² and the recommendations contained therein, and invites the Government of Cambodia to engage with the Special Rapporteur on the best ways to implement them;

7. *Further welcomes* the conclusion in October 2018 of a new memorandum of understanding for the implementation of a technical cooperation programme on human rights between the Government of Cambodia and the field office in Phnom Penh of the Office of the United Nations High Commissioner for Human Rights to extend the mandate of that office for another two years, takes note of the need to maintain close and respectful consultations between the Government of Cambodia and the Special Rapporteur towards further improvements in the situation of human rights in the country and for the continued technical cooperation between the Office of the High Commissioner and the Government, and encourages the Special Rapporteur and the field office in Phnom Penh to continue to exchange information in order to assist in the effective implementation of their respective mandates, bearing in mind their independence;

8. *Commends* the positive cooperation between the Government of Cambodia and the Office of the High Commissioner, particularly for the protection of land rights for indigenous peoples, and encourages the enhancement of cooperation between the Government and the Office of the High Commissioner, as specified in the memorandum of understanding between the Government and the field office in Phnom Penh of the Office, and calls upon the Government to implement the recommendations made by the Special Rapporteur, taking into account the national context of Cambodia;

9. *Takes note* of the adoption of the Cambodia Sustainable Development Goals by the Government of Cambodia and the submission of its voluntary national review for 2019 at the high-level political forum on Sustainable Development in July 2019, and encourages the Government to implement the Cambodia Sustainable Development Goals with the support of the international community and to conduct governance reform by including robust targets and indicators on Sustainable Development Goal No. 16;

² A/HRC/39/73 and Add.1, A/HRC/42/60 and Add.1.

10. *Reaffirms* the need for the Government of Cambodia to strengthen efforts to consolidate and abide by the rule of law, including through the adoption, amendment and further implementation of essential laws and codes for establishing a democratic society and an independent judiciary;

11. *Takes note* the plans for expansion of judicial service centres, the construction of regional appeal courts and the increase in the legal aid budget as an effort by the Government of Cambodia to improve judicial access, and encourages the Government to speedily adopt the legal aid policy in order to ensure access to justice for all;

12. *Notes* the efforts and progress made by the Government of Cambodia in promoting legal reform under the leadership of the Council of Legal and Judicial Reform, including enforcing basic laws, such as the civil procedure code, the civil code, the criminal procedure code and the penal code;

13. *Also notes* the implementation of three fundamental laws on the judiciary, namely the Law on the Statute of Judges and Prosecutors, the Law on the Organization and Functioning of the Courts and the amendment to the Law on the Organization and Functioning of the Supreme Council of the Magistracy, and urges the Government of Cambodia to continue further its efforts at judicial reform, including through the fair, effective and transparent application of these laws;

14. *Stresses* the need for the Government of Cambodia to continue to enhance its efforts to investigate urgently and to prosecute, in accordance with due process of law and its obligations under international human rights treaties, all those who have perpetrated serious crimes, including violations of human rights, expresses deep concern over the death of the political analyst on 10 July 2016 and the perceived chilling effect this has had on civil society and independent voices in Cambodia, calls upon the authorities of Cambodia to launch a full and transparent probe into those cases and stresses the importance of a full independent judicial process under the Cambodia courts of law;

15. *Notes* the efforts made by the Government of Cambodia in combating corruption, encourages the implementation of the penal code and the anti-corruption law, and also encourages the Government to continue other such efforts, including through the activities of the Anti-Corruption Unit;

16. *Welcomes* the efforts made by the Government of Cambodia in combating crimes, such as trafficking in persons, the exploitation of labour and the sexual exploitation of women and children, and urges the Government to make further efforts to this end, in concert with the international community, to combat outstanding key problems in this area;

17. *Takes note* of the latest findings regarding gender-based issues in Cambodia, and encourages the Government of Cambodia to strengthen its efforts on gender-based issues, including by effectively enforcing existing laws and regulations;

18. *Encourages* the Government of Cambodia to continue implementing its five-year strategy for gender equality, promoting women's economic, social and political empowerment, including their participation in decision-making processes, and the expansion of women's economic benefits through improved working conditions, social protection and labour standards;

19. *Also encourages*, in this context, the Government of Cambodia to more effectively monitor the implementation of the 2001 Land Law, and to make continuous efforts to promote women and vulnerable groups in obtaining land ownership and rights;

20. *Notes* the efforts made by the Government of Cambodia to resolve land issues, inter alia, through the implementation of relevant laws and regulations, including a moratorium on economic land concessions and systematic land registration, expresses concern at the outstanding issues in this area, and urges the Government to continue and enhance its efforts to resolve them equitably and expeditiously in a fair and open manner, taking into consideration the rights of and the actual consequences for the parties concerned and in accordance with relevant laws and regulations, such as the Land Law, the Law on Expropriation, the Circular on the Settlement of Illegal Temporary Building in Cities and

Urban Areas and the National Housing Policy, and by strengthening the capacity and effectiveness of relevant institutions, such as the National Authority for Land Dispute Resolution and cadastral committees at the national, provincial and district levels;

21. *Also notes* the commitments made and the progress achieved by the Government of Cambodia in implementing its obligations under international human rights treaties and conventions to which it is a party, and urges the Government to continue to take steps to meet its obligations under those treaties and conventions, and to this end to strengthen its cooperation with United Nations agencies, including the Office of the High Commissioner, through enhanced dialogue and the development of joint activities;

22. *Further notes* the commitment of the Government of Cambodia to establish a national human rights institution, and urges that this be done in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and upon sufficient consultation with relevant stakeholders;

23. *Welcomes* the efforts made by the Cambodian Human Rights Committee, especially in resolving complaints from individuals;

24. *Also welcomes* the efforts and progress made by the Government of Cambodia in promoting decentralization and deconcentration reform with the aim of achieving democratic development by strengthening subnational and grass-roots institutions;

25. *Expresses serious concern* over the deterioration of the civil and political environment in Cambodia due to the chilling effects of judicial prosecutions and other actions taken against members of political parties, civil society and the media, in particular the arrest, detention and continued judicial supervision of political opposition leader Kem Sokha, the dissolution of the former opposition party and the banning of a significant number of the former opposition party from political activity, and calls upon all parties, inter alia, the ruling party, to work together towards de-escalating the tensions and building trust and confidence by restoring dialogue with relevant stakeholders in the country, and, noting voices of concern about further suppression of critical and independent opinions in the country, calls upon the Government of Cambodia to guarantee, inter alia, the right to freedom of expression and freedom of association and assembly, and to fulfil its accountability for the cases concerned;

26. *Gives attention* to the conclusions and recommendations of the reports of the Special Rapporteur³ and her statement of May 2019, which expresses concern about the pressure on former members of the opposition party, including more than 100 members summoned or questioned by the court or the police, and the considerable number of convictions, calls for the release of Kem Sokha and the swift conclusion of the investigation into his case, takes note that nine members of the former opposition party have received the right to conduct their political activities due to the amendment to the law on political parties in January 2019, and strongly encourages the Government of Cambodia to ensure political rights to all, to make continuous efforts to solve the issue of the ban on political activities of senior members of the opposition party, and to expand democratic space for political activists, civil society and the media, including members of opposition parties, to actively, peacefully, responsibly and openly participate in inclusive political debate, and strongly encourages all parties to prioritize national reconciliation, peace and stability;

27. *Expresses deep concern* about the continued restrictions imposed on offline and online media, civil society and political parties and the negative impact of the Law on Associations and Non-Governmental Organizations, the amendments of 28 February and 10 July 2017 to the Law on Political Parties, the Law on Trade Unions and the revision of the Penal Code, and urges the Government of Cambodia to make continuous efforts to ensure the rights to freedom of expression, peaceful assembly and association and an environment

³ A/HRC/39/73/Add.1 and A/HRC/42/60.

conducive to the conduct of political activities by all political parties under democratic principles and the rule of law;

28. *Takes into account* the conclusions and recommendations made by the Special Rapporteur in her report,⁴ in which she calls into question the process and the result of the national elections held in 2018, while taking into account the high voting rates, regrets the large number of invalid votes cast in the elections, and urges the Government of Cambodia to fully respect, protect and promote the civil and political rights of all Cambodians in order to steadily promote nationbuilding with the support of a wide range of Cambodians;

29. *Notes with concern* that the 2017 amendments to the Law on Political Parties could lead to an arbitrary restriction on the activities of political parties, encourages all stakeholders to promote a peaceful democratic process under the rule of law and adherence to a system of pluralistic liberal democracies, in accordance with the Constitution, and calls upon the Government of Cambodia to ensure the protection of parliamentary immunity and freedom of political activities for this purpose;

30. *Urges* the Government of Cambodia to take appropriate measures to encourage and enable civil society, including independent trade unions and media, to play a constructive role in consolidating democratic development in Cambodia, including by ensuring and promoting their activities and in promoting equal access to the media by all parties;

31. *Notes* the large presence of more than 5,000 entities operating associations and non-governmental organizations, and urges the Government of Cambodia to further take account of the interests and concerns of all stakeholders in enacting and/or implementing various laws and measures that may affect the activities of civil society, in particular, by reviewing the Law on Associations and Non-Governmental Organizations, in order to further nurture a vibrant civil society, and to protect and ensure freedom of speech, association and peaceful assembly in accordance with the Constitution and the International Covenant on Civil and Political Rights;

32. *Also notes* the effort of the Government of Cambodia with regard to relations with civil society, such as the new instruction issued on 31 October 2018 by the Ministry of the Interior to subnational authorities, reminding them that non-governmental organizations have full freedom to conduct their activities in accordance with Cambodian law and on the holding of a biannual dialogue between the Government and civil society organizations, as well as the instruction of 27 November 2018 abolishing the three-day prior notification requirement, and calls upon the Government to make continuous efforts to contribute to the improvement of relations with civil society, including at the subnational level;

33. *Expresses concern* at the reported general reluctance among many people to speak out in public for fear of arrest and surveillance, and the limited number of peaceful assemblies and demonstrations allowed in accordance with the Law on Peaceful Demonstration, and encourages the Government of Cambodia to continue to take action to promote the rights and dignity of all Cambodians by protecting civil and political rights, including freedom of opinion and expression, in accordance with the historical context of Cambodia, and to this end to ensure that all laws are interpreted and applied in a judicious manner so as to promote economic, social and cultural rights in accordance with the rule of law;

34. *Invites* the Secretary-General, agencies of the United Nations system present in Cambodia and the international community, including civil society, to continue to work with the Government of Cambodia in strengthening democracy and ensuring the protection and promotion of the human rights of all people in Cambodia, including by providing assistance in the fields of:

(a) Drafting laws and assisting the establishment of an independent national human rights institution;

⁴ A/HRC/39/73/Add.1.

(b) Capacity-building to strengthen legal institutions, including by improving the quality and independence of judges, prosecutors, lawyers and court staff, and drawing on the expertise gained by Cambodian nationals working in the Extraordinary Chambers in the Courts of Cambodia;

(c) Capacity-building to strengthen national institutions for criminal investigations and law enforcement, as well as providing the equipment necessary for these ends;

(d) The implementation of accepted universal periodic review recommendations;

(e) Assisting the assessment of progress in human rights issues;

35. *Decides* to extend for two years the mandate of the Special Rapporteur on the situation of human rights in Cambodia, and requests the Special Rapporteur to report on the implementation of her mandate to the Human Rights Council at its forty-fifth and forty-eighth sessions, and to engage in a constructive manner with the Government of Cambodia for the further improvement of the situation of human rights in the country;

36. *Requests* the Secretary-General to report to the Human Rights Council at its forty-fifth and forty-eighth sessions on the role and achievements of the Office of the High Commissioner in assisting the Government and the people of Cambodia in the promotion and protection of human rights;

37. *Decides* to continue its consideration of the situation of human rights in Cambodia at its forty-eighth session.
