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OBJET/SUBJECT: **Statement by the Independent Expert on protection against violence and  
discrimination based on sexual orientation and gender identity**

Please find attached a statement by the Independent Expert on protection against  
violence and discrimination based on sexual orientation and gender identity, which will  
be issued on 20 January 2023.

## **End of Mission Statement**

### **Visit of the IE SOGI to the Kingdom of Cambodia (10-20 January 2023)**

**(Check against delivery)**

#### **Excellencies,**

The mandate of UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established by the United Nations Human Rights Council resolution 32/2 in 2016 and renewed by the Council in 2019 and 2022. The mandate answers the concern of the community of nations about the intolerance, discrimination, and egregious abuses against persons in connection to their sexual orientation and gender identity. The duties conferred upon me are to bring visibility to good practice and challenges, and to provide advice to States in relation to effective measures to address instances of violence and discrimination.

I visited the Kingdom of Cambodia from 10 to 20 January 2023 with a view to establishing a panorama and assessing the implementation of existing national and international human rights standards. During my visit I traveled to Phnom Penh, Siem Reap, and Battambang, where I met with several dozen representatives of the State at the national and provincial levels. I would like to thank the Government of Cambodia for the invitation extended to me to conduct this visit and for its excellent hospitality and cooperation during the visit. I am thankful for the seriousness and openness with which all discussions were held, as well as their commitment to thoughtful attention to these matters in the future.

I also had the privilege of meeting with civil society organizations working in areas that have significant intersections with the concerns of my mandate, which provided their knowledge and opinions with generosity and facilitated contacts with over a hundred persons who shared their life experiences with me.

I also thank the UN Resident Coordinator in Cambodia and the UN Country Team for their decided engagement with the issues under the concern of my mandate, as well as to the Office of the High Commissioner in Cambodia for the excellent support and collaboration.

This end of mission statement will be followed by a full report with my observations, conclusions and recommendations to the Government of Cambodia that will be presented to the Human Rights Council in June 2023.

I was humbled to be invited to a country with such a complex and rich history, deeply held traditions and values, and an ambitious approach to its future and its place in the world order. I strongly believe that the confluence of these factors effectively equips Cambodia with significant advantages to cater to the local, national, and global implications of the new approach that my mandate brings to a reality that is as old as humankind itself: diversity in sexual orientation and gender identity.

Four key factors create a specific context for this visit: the concurrent mandate of the UN Special Rapporteur on the situation of human rights in Cambodia, whose mandate derives from the 1991 Paris Peace Agreements; the impact of the COVID-19 pandemic, which slowed economic growth and put strain on all State and non-State institutions; the

ambitious development objectives of the Cambodian State and its commitment to the Sustainable Development Goals; as well as the local elections that took place in 2022 and upcoming national elections in 2023.

### **A context of which much must be learned**

Some issues deserve clarification. During my visit, I was told on occasion that wealthy LGBT influencers or media celebrities and trans beauty pageant winners are proof of equality in Cambodia. This appears to reveal a notion that the LGBT community is composed only of a small and/or privileged group of persons. In those instances, my interlocutors appeared to be genuinely surprised at the possibility that several hundred thousand Cambodians could have diverse sexual orientation or gender identity. I however think that this is a good working theory: only during the last 10 days I met with over a hundred Cambodians who identify under myriad identities: among them lesbian, gay, bisexual, trans women, trans men, third-sex, queer, and non-binary. They shared their life stories with me, and also spoke of large communities of persons existing all over the country and all over society. Among them are university graduates, farmers, artists, police officers, Government contractors, and human rights defenders; persons with different ethnic backgrounds, including indigenous persons; city and rural folk; persons as young as 18 and as old as 72; persons who declared having economic means and persons who told me that they possess nothing. This suggests that the LGBT population is sizable in Cambodia: this is profoundly relevant for the formulation of public policy, for the principle of leaving no one behind, and for full adherence to the human rights obligations incumbent upon the State.

I find it very positive that before and during my visit I did not receive any information of massive or systematic physical violence against the people with whom I spoke, or known by them. Many stakeholders attributed this situation to values of respect and tolerance present in society and reinforced by religious mores, and to the official position of the Government. My mandate places great value in political statements of support to equality, and I acknowledge the positive impact of statements by the Prime Minister and the President of the Cambodian Human Rights Committee. Without exception, the State agents with whom I held conversations acknowledged at the outset that diversity in sexual orientation and gender identity is a trait inherent to humankind, and that all Cambodian citizens, including members of the LGBT community, are valued members of society who deserve freedom and equality.

Social ownership of the principle of respect is reinforced by constitutional and legal standards, and I would first like to remark on good practices in the legislative framework in place to combat violence and discrimination. Unlike some other countries in the region, Cambodia does not have any legislation explicitly criminalizing sexual orientation or gender identity. Article 31 of the Constitution guarantees equal rights to all regardless of personal characteristics, and as stipulated in the UN Charter, the UDHR and other international human rights conventions ratified by Cambodia, including the ICCPR and ICESCR. When it comes to policy, I welcome the inclusion of lesbian, bisexual and trans women among populations at increased risk of violence in the third National Action Plan to Prevent Violence Against Women (NAPVAW) (2019-2023), as well as the commitment to gender mainstreaming by the Government.

Societal values operate within this legal framework. Family is seen as a key element in the pursuit of happiness, and most parents perceive their children as a prolongation of themselves and consequently wish a stable, quiet, and happy life for them in all possible areas of life: professional, personal and social. In their turn, children will play a fundamental role in the emotional and practical support to their parents as they become

older. Since legal recognition of marriage as the base of a family is deeply cherished and a requirement for the enjoyment of a number of rights, there is great pressure to enter into legally recognised marriages by marrying a person of the opposite sex, something that is compounded by the lack of knowledge of sexual and gender diversity that leads to feelings of shame by families and communities.

Consequently, the level of parental disapproval when their child reveals a non-traditional sexual orientation can be unbearable and in some cases break the family bonds. I heard accounts of LGBT children being or threatened of being rejected by their families, expelled from their homes, or deprived of financial support and not being able to pursue their studies and facing poverty. A study on family violence in 2019 revealed that 81% of lesbian women, bisexual women and trans men under 35-year-old faced emotional violence in their family; 10% had experienced sexual violence, commonly forced marriages; and 35% had at some point in their lives considered or attempted suicide due to their family's denial of their sexual orientation or gender identity and expression.

An overwhelming number of persons that I talked to told me that the first reaction of their parents was trying to “change” them, for example by separating them from their partner, sending them away, or forcing them to do domestic tasks that were deemed appropriate to the sex they were assigned at birth. Discrimination and violence may also come from other family members, such as siblings, grand-parents, aunts or uncles. I heard stories of harassment within family circles based on prejudice and stigma, such as the preconceptions that persons of diverse sexual orientation and gender identity are ill, prone to commit robbery, and cannot be trusted.

All Government representatives that I have met were aware of this issue and highlighted the importance of raising awareness on sexual and gender diversity in the families as a first and necessary step towards the eradication of violence and discrimination.

Through its invitation to undergo a visit to Cambodia, the Government commissioned my expertise to gather information regarding the gaps in the existing legislation and policy framework protecting against violence and discrimination. Conversations with Government representatives, existing studies by civil society organizations and anecdotal evidence gathered during the visit allow me to map a certain number of challenges and situations of discrimination faced by sexually and gender-diverse persons, and that represent obstacles to social inclusion in relation to education, employment and health.

Some of my State interlocutors expressed that discrimination against LGBT persons does not exist. In the absence of official studies or statistical data, information on violence and discrimination based on sexual orientation and gender identity is scattered and incomplete, but I believe that there is enough evidence to strongly suggest that they do face discrimination at home, at school, at work and when accessing health care services. It is also important to note that discrimination can be the result of action or omission, and can also be perpetrated by private individuals.

### *Education*

A survey of LGBT youth in 2015 revealed that 63% of respondents experienced bullying at some point during their time in school, and 94% of them felt the bullying was either partly or entirely because of their sexual orientation or gender identity and expression. It can be done by peers or by teachers, and it also relates to the highly-gendered codes that are included in school rules and regulations. In particular, strict dress codes in school are problematic for students who express gender in a way that

does not fit the dress code, especially regarding haircuts and uniforms.

The Ministry of Education, Youth and Sports highlighted that it recently issued some Guidelines recommending schools to have a flexible approach regarding the dress code and that students of all genders should be free to have long or short hair. However, evidence that I have consistently gathered in Phnom Penh, Siem Reap and Battambang indicates that schools are not yet implementing these guidelines uniformly. This can be a serious obstacle: a 19-year-old person explained that they decided to drop out of school during grade 12, before obtaining their school certificate, because of this reason. Some students told me that they have been thrown out of their school because they did not respect the dress code or that their teachers have threatened to cut their hair. Many people explained that they waited until finishing their studies before expressing their gender identity as they feared that it would have a negative impact on their education. However, in some of those cases, the lack of congruence between the photographs in their education certificates and the person's appearance presented an obstacle to employment.

Shortcomings in the provision of comprehensive sexual and gender education, inclusive of concepts of sexual orientation and gender identity are another issue that was regularly mentioned. I welcome the efforts of the Ministry of Education, Youth and Sports jointly with the Ministry of Health to implement a new "Health Education" curriculum with a component on comprehensive sexual education, which includes concepts on sexual orientation, gender identity, gender expression, and sexual and reproductive health. I encourage the Government to pursue the progress toward the implementation of this curriculum and ensure the inclusion of sexual orientation and gender identity in all related materials, including trainings of teachers and students' textbooks.

### *Employment*

Although sexual orientation and gender identity are not specifically recognised as grounds of discrimination, article 12 of the Cambodian Labour Law contains provisions on non-discrimination in employment, including on the ground of sex. The Ministry of Labour and Vocational Training clarified that such discrimination would be considered as a critical failure. However, the fact that not one complaint of discrimination against LGBT persons has ever been presented to the Ministry does not correlate with many stories conveyed to the mandate, or the scarce available data. For example, in a 2016 survey of trans women, more than one-third of respondents reported having been refused a job because they are trans, and 27% said they had been dismissed from a job because of their sexual orientation or gender identity. Throughout the country, LGBT persons told me that they are regularly invited to interviews for positions that fit their qualifications but are not selected for the job after the interview because of their perceived sexual or gender identity. Many of them do not disclose their identity to their employers by fear of not being hired or being fired. Several persons explained that coveted hospitality and service positions are not given to persons who are perceived as LGBT, because they are suspected of being thieves, sex workers or somehow morally corrupt. Factory jobs, sex work and jobs in the beauty industry appear to many as the only alternatives available.

In the workplace, persons of diverse sexual orientation and gender identity are regularly subjected to mockery and harassment by their co-workers. Several gay teachers working in a private school in the provinces told me that their peers considered that constantly touching and spanking them was acceptable because of their sexual orientation. Impunity for such individual behaviors contributes to creating an environment that is not safe for LGBT workers and in which it is difficult for them to thrive.

Persons of diverse sexual orientation and gender identity are part of Cambodian society and represent a human capital that can play a role in the economic development of the country. To achieve this potential it is necessary to put the conditions in place to ensure that LGBT persons can be fully themselves and have access to positions in all economic sectors of the society. In this context, I welcome Cambodia's intentions to pass a comprehensive anti-discrimination law. I would further recommend the preparation of surveys and studies about the situation of LGBT persons at work, and campaigns of dissemination of the zero-tolerance policy of the Government toward discrimination based on sexual orientation and gender identity.

### *Health*

HIV prevalence is high among trans women (9.6%) and men who have sex with men (4%) compared to the general population (0.6%). HIV/AIDS programs are well-implemented in the country through a network of governmental and non-governmental actors, and led the Government to set the objective of eliminating AIDS by 2025. I welcome the recent introduction of prevention treatments (pre-exposure prophylaxis, known as PrEP) for key populations. The adherence of the Government to the "Global Partnership to eliminate all forms of HIV-related stigma and discrimination" in December 2022 is an excellent step and should be followed by an action plan including concerns related to diverse sexual orientation and gender identity.

I am however concerned that there is very little gathering of data or evidence with regard to the impact of HIV/AIDS on groups that are not among key populations, such as lesbian women, trans men and bisexual persons, and the possible differentiated health outputs of LGBT persons in general.

Anecdotal evidence reveals specific difficulties for persons of diverse sexual orientation and gender identity in accessing health services. They often face inappropriate questions about their sexual and gender identities by health providers, and in some cases they refrain from seeking medical help altogether. A certain number of trans persons expressed difficulties when presenting an ID card not matching their gender identity at the hospital, or when filling hospital forms that only include "male" and "female". They have also explained that, in the absence of specialized training on issues related to gender identity to health providers, they are treated as other patients of their sex assigned at birth without considering their specific needs.

The lack of information and access to gender-affirming treatment for trans and gender diverse persons is an important issue. Although some private clinics offer hormonal therapy, these treatments are costly and only offered in some provinces, and thus do not replace a treatment that could be offered by public health services. In the absence of available treatment in the country, trans and gender diverse persons have recourse to harmful practices such as silicon injection, self-medication of hormonal therapy without regular screenings and without any information on the risks and side effects of gender-affirming treatments.

### *Prisons*

Sexual and gender diversity exists among the carceral population, and the Ministry of the Interior explained that inmates have access to HIV treatment in prison. I am however concerned about the absence of specific protocols and policies on LGBT persons in detention and the lack of data in connection to these populations. While the Ministry could play a key role in filling some of these blanks, the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and

Cruel, Inhumane and Degrading Treatment should also integrate some of the related elements in their visiting methodology.

### *Data*

In addressing any instance of violence and discrimination, the role of State institutions is naturally crucial. Whether we talk about the instances of the chain of justice, or public health, or social services, every institution depends on the existence of public policy aimed at recognising the existence and particular challenges faced by LGBT persons. Such public policy would be a next step for the Cambodian State. The reasons for this are manifold:

- a) on one hand, the system itself tends to invisibilize sexual orientation and gender identity as a feature of human existence, and as grounds for violence and discrimination. State agents are therefore badly equipped to address the particular needs of these populations;
- b) this leads to another major concern: the lack of statistics on the basis of sexual orientation and gender identity in every sector, resulting from the absence of appropriate methods of self-identification, data collection and processing. Official statistics will therefore tend to understate the number of incidents, and prejudicial and inexact categorization of cases results in misidentification, concealment and underreporting. The systemic failure in data collection often results in the virtual invisibility of the concerns and problems of LGBT persons;
- c) in its turn, the lack of data leads to the absence of adequate public policies to respond to the valid concerns and challenges faced by the LGBT community.

I would like to leave on record that persons to whom I spoke identify under myriad identities: among them lesbian, gay, bisexual, trans women, trans men, third-sex, queer, non-binary, and sim. Only some of these terms correspond with the formulaic LGBT acronym. Some of these and other identities transcend rigid concepts of gender identity, gender expression or sexual orientation and, depending on the language, the terms “sex”, “gender”, “gender identity” and/or “sexual identity” are not always used or distinguished. I strongly advise that these perceptions and self-identification of Cambodian persons and communities be the guiding principle of any future development of methodology in the definition of terms, categories and terminologies. In that connection, the manner in which laws and policies define identity terms has a significant impact on whether and to what extent universally protected human rights are recognized and protected under the law; moreover, the use of terms such as “sex”, “gender”, “gender identity” and “gender expression” can either give full effect or unduly limit the universal application of human rights.

### **A human rights-based approach**

Despite constitutional protection against discrimination, including on the ground of sex, in strict juridical terms the non-inclusion of the grounds of sexual orientation or gender identity and the *numerus clausus* nature of non-discrimination provisions could give room to a literal interpretation that does not protect people from discrimination on the basis of sexual orientation and gender identity.

During our conversations, several Government representatives insisted on the idea that the first factor of discrimination against LGBT persons would be “self-discrimination”, defined as the decision to conceal one’s sexual or gender identity by fear of being

rejected, harassed or discriminated against. I would like to take this opportunity to clarify that no one should be forced to reveal their sexual orientation and gender identity in any circumstances, and that the decision to conceal it is a deeply personal choice that is not a factor of discrimination. In fact, it reveals the fear to be subjected to existing forms of violence and discrimination mentioned above.

I would like to underline that members of the community, civil society organizations and human rights defenders represent voices that are indispensable in the design, implementation and evaluation of good public policy. This is due to several reasons, among them, the reality that they know and have the trust of the communities, have worked for decades to provide them with specialized and differentiated services, and because they have created safe spaces where persons create and maintain community. I strongly advise that the State nurture and increment the spaces of dialogue with civil society, based upon examples of good practice implemented by the Cambodian Human Rights Commission.

The agenda for follow-up should be guided by three principal commitments already under consideration of the Cambodian State since its acceptance of related UPR recommendations in 2019: the recognition of LGBT families through the legal recognition of same-sex marriage, the legal recognition of gender identity, and the adoption of comprehensive anti-discrimination legislation.

In particular, lack of legal recognition of same-sex marriages appears to be a key obstacle for social inclusion. “We live peacefully, but not in complete happiness,” said a trans man from Pursat province. Since 1975 he and his wife have been recorded as sisters in their Family Record Book; only his wife can be registered as a parent to their adopted child. I received dozens of testimonies like this, which attested to the obstacles that lack of legal recognition creates in healthcare, inheritance, and adoption records showing equal parentage. The testimonies highlighted the enormous importance that Cambodian citizens attach to the law, and that legal recognition would be the key to unlocking many of the advantages of social inclusion.

International good practices include that legal recognition be accompanied by awareness and sensitization campaigns. I observe that in December 2021, civil society launched the “I Accept” campaign to advance legal marriage in cooperation with the Cambodian national Government, local authorities and LGBTQ+ activists. In my opinion, this is an excellent and promising initiative.

There are good reasons to advise swift action in relation to the legal recognition of marriage: many of my interlocutors conveyed that it is possible for same-sex couples to celebrate traditional marriages, and that these are commonly accepted and viewed favorably.

I will present the full scope of my recommendations in the body of my country visit report. In the meantime, I can preview that my recommendations will fall under three headings:

a) the establishment of a basic knowledge base that documents the current state of persons of diverse sexual orientation and gender identity, including all social indicators (i.e. education level, health, economic status, etc.) that are determining their lived experiences and are relevant to the elaboration and implementation of laws and policies protecting their human rights without discrimination. International good practices in this human rights-based approach to social mapping often include the five following points of departure: health, education, economic well-being, personal security and freedom from violence, and political and civic participation;



b) the formulation of policies and protocols for key institutions having a role in promoting the social inclusion of LGBT persons, including ambitious awareness-raising campaigns within the State structures and designed to reach out to all Cambodian citizens from a young age, involving other stakeholders such as religious authorities and the general population; and

c) the adoption of legislation against discrimination based on sexual orientation and gender identity in all key sectors of social life, including as a priority the recognition of rainbow families through the legal status of same-sex marriage, the legal recognition of gender identity, and the adoption of comprehensive anti-discrimination legislation.

Excellencies,

I heard many moving stories during my visit to Cambodia. One of them was conveyed to me by a 72-years old trans man from the provinces. Starting in 1973 when they first met, he and his wife went through dozens of separations and reunions effectuated by their parents, their families, their communities and State authorities, all of them based on misunderstanding and prejudice. For the last few decades, they have been living together in a house that they built on a small patch of land that they cultivate and that provides their sustenance. Their story weaves together Cambodian and intimate history with the thread of one remarkable conviction, as he said to me: “we always knew that we would rather be dead than not loving each other.”

In their Family Record Book, these two persons are registered as sisters.

It is my sincere hope that these recommendations will be one more element to motivate the Cambodian State to make the legal recognition of their family, and thousands of families like theirs, a reality.

Thank you.

Phnom Penh,  
20 January 2023

ENDS

**Mr. Victor Madrigal-Borloz** (Costa Rica) assumed the role of [UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity](#) on 1 January 2018. His mandate covers all countries and has most recently been renewed by Human Rights Council resolution 50/10. Victor Madrigal-Borloz is the Eleanor Roosevelt senior visiting researcher at the Harvard Law School's Human Rights Program. Until June 2019, he served as the Secretary-General of the International Rehabilitation Council for Torture Victims (IRCT). A member of the UN Subcommittee on the Prevention of Torture from 2013 to 2016, Mr Madrigal-Borloz was Rapporteur on Reprisals and oversaw a draft policy on the torture and ill-treatment of LGBTI persons. Prior to this, he led technical work on numerous cases, reports and testimonies as Head of Litigation and Head of the Registry at the Inter-American Commission on Human Rights and has also worked at the Danish Institute for Human Rights (Copenhagen, Denmark) and the Inter-American Court of Human Rights (San José, Costa Rica).

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