

**Human Rights Council****Twenty-first session**

Agenda item 10

Technical assistance and capacity-building**Report of the Special Rapporteur on the situation
of human rights in Cambodia, Surya P. Subedi***Summary*

The year 2011 witnessed the twentieth anniversary of the adoption of the Paris Peace Agreements, which consolidated the peace process in Cambodia. The mandate of the Special Rapporteur on the situation of human rights in Cambodia has its origins in the Agreements. As the country approaches its general election, in July 2013, the time is ripe to take stock of the progress made over the past 20 years and to tackle the governance challenges that persist.

Cambodia has made significant progress since the conclusion of the Agreements, passing various milestones in strengthening democracy, human rights and the rule of law. It has held four national or parliamentary elections and three local or commune elections. The latest round of commune elections was held on 3 June 2012 and National Assembly elections are scheduled for July 2013. These are crucial events in the country's journey towards democratization. It was in this context that the Special Rapporteur focused his sixth mission to the country, in December 2011, on a human rights assessment of State institutions relevant to the electoral process in Cambodia, including the laws, policies and practices applicable to elections in the context of the country's international human rights obligations to ensure free and fair periodic elections. The mission was productive. A seventh mission, in May 2012, focused on the impact of economic land concessions on people's rights in Cambodia, and is the subject of an addendum to the present report.

On the basis of the information that he received during his sixth mission, the Special Rapporteur is of the view that reforms should be carried out to ensure that elections in Cambodia are free and fair and that Cambodians can exercise their right to democratic governance in a free political environment. He is concerned by the capacity gaps that persist in the electoral process. Free and fair elections can take place only when there is a free political environment and the people are able to exercise their rights and freedoms, such as freedom of expression and assembly and the right to stand for election. To hold credible elections, the Government must ensure high standards in line with its international human rights obligations before, during and after the casting of votes.

Cambodia has benefited from recommendations made by bilateral and multilateral agencies to reform the electoral process in view of the shortcomings identified in previous elections. It is regrettable, however, that most of those recommendations remain unimplemented. Accordingly, emphasis is laid in the report on an assessment of the independence and capacity of the National Election Committee and the provincial election committees as some of the State institutions responsible for upholding people's rights. There are major flaws in the administration of elections in Cambodia and urgent and longer-term reforms are needed to give Cambodians confidence in the electoral process and in the workings of the National Election Committee. With this in mind, the Special Rapporteur makes constructive recommendations to reform the electoral process and hopes that the Government, the National Election Committee and other stakeholders will take steps to implement them.

With regard to the impact of economic land concessions on people's rights, the Special Rapporteur is of the view that the human cost of such concessions has been high. The absence, in many instances, of proper consultation and negotiation with the people affected when granting such concessions has been a major concern. Previously, the Special Rapporteur had called upon the Government to suspend the granting of new economic land concessions until and unless there was a proper policy framework put in place that met the standards of transparency and accountability and enabled the people affected to participate in consultations before such concessions were granted. The Special Rapporteur was therefore pleased that, during his seventh mission to the country, the Prime Minister issued a decree halting new economic land concessions and pledged to review existing concessions. The Special Rapporteur welcomes this decision and calls upon the Government to ensure that that review is participatory, transparent and inclusive. The addendum to the present report contains an analysis of the nature and impact of economic and other land concessions, in addition to recommendations by the Special Rapporteur to counter the negative impact of those concessions on the lives of Cambodians, especially the rural poor, indigenous peoples and those living on the margins of society.

The Special Rapporteur understands that Cambodia, as a developing country, wishes to capitalize on its land and natural resources with a view to promoting development and bringing prosperity. He acknowledges that historical circumstances, including the policies of the Khmer Rouge regime, have led to a proliferation of land disputes that the Government is seeking to manage. He also recognizes that there are social land concession programmes involving the distribution of land to the landless. Nevertheless, the Special Rapporteur is of the view that land concessions should be granted and managed within a sound legal and policy framework that includes respect for human rights, especially the rights of indigenous peoples, the rural poor and those living on the margins of society.

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I. Introduction

1. The present report is the fourth of the current Special Rapporteur on the situation of human rights in Cambodia and is submitted in accordance with resolution 18/25 of the Human Rights Council.

2. The Special Rapporteur conducted his sixth mission to Cambodia between 5 and 11 December 2011, with the aim of conducting a human rights assessment of State institutions relevant to the electoral process in the country, including the laws, policies and practices applicable to elections in the context of the country's international human rights obligations to ensure free and fair periodic elections. He conducted his seventh mission to the country between 4 and 11 May 2012, focusing on the impact of economic and other land concessions on people's rights. The Special Rapporteur is grateful to the Government for extending its cooperation during his missions and for its willingness to work with him constructively. He was encouraged by its response to the issues that he raised. The Special Rapporteur also congratulates the Government on its current chairship of the Association of Southeast Asian Nations (ASEAN).

3. During his missions, he sought to assess progress in the implementation of the recommendations made in his previous reports to the Human Rights Council and to monitor and address other human rights issues in the country, such as disputes related to land, freedom of expression and a draft law on associations and non-governmental organizations. During his sixth mission, he met a broad range of actors, including the Deputy Prime Minister and Minister of the Interior, rights holders and representatives of civil society, political parties, the National Election Committee, a provincial electoral committee, the Cambodian National Police and the Ministry of Defence, in addition to commentators, foreign diplomats, donors and the United Nations country team. He also met the residents of Boeung Kak and Borei Keila and other victims of recent human rights violations, including indigenous peoples and communities affected by land disputes, economic land concessions and forced evictions.

4. The Special Rapporteur did not meet the Prime Minister, but was grateful to him for sending an emissary.

5. The Special Rapporteur welcomes the progress made in some areas, especially the decisions to carry out further consultations with relevant stakeholders on the draft law on associations and non-governmental organizations and to seek a negotiated settlement of the land disputes in Boeung Kak. He was encouraged by the fact that the Prime Minister himself took the initiative for the municipality of Phnom Penh to provide more than 600 land titles to the remaining residents of the 12.44 ha area. The Special Rapporteur urged the Government to broaden the consultation process to encompass those families excluded from Subdecree No. 183 of 11 August 2011 and to resolve the dispute in a peaceful manner to the satisfaction of all concerned.

6. It is also encouraging to note that Cambodia has continued to engage with United Nations human rights mechanisms, as is demonstrated by the finalization of a draft of its report to the Human Rights Committee under the International Covenant on Civil and Political Rights. The work begun by the Government to implement the recommendations of the universal periodic review process of the Human Rights Council also merits commendation.

7. The Constitution of Cambodia firmly establishes the country as a liberal parliamentary democracy, and elections are central to democracy. Since the elections organized under the auspices of the United Nations in 1993, Cambodians nationwide have embraced democracy with high expectations, and the Special Rapporteur's sixth mission to

the country showed again how seriously all actors were engaging in preparations for the forthcoming elections. Cambodians see a democratic future ahead. After a relatively short history of democracy, Cambodians are accustomed to the idea of voting, and the election organizers have greatly increased their capacity to do so. A key challenge will be to anchor this thirst for democracy in the country's young people. The Special Rapporteur was encouraged by the efforts of the National Election Committee to devise programmes to reach out to the burgeoning population of young people.

8. More generally, since the first elections, in 1993, the Government and electoral institutions have greatly increased their knowledge and strengthened their ability to organize elections. The Special Rapporteur is pleased to report that civil servants working in Government ministries, the National Election Committee, other State institutions and civil society all demonstrate an extremely good understanding of the laws and practices governing the electoral process in Cambodia.

9. During his sixth mission, the Special Rapporteur received much information on the electoral process from people and institutions with often conflicting viewpoints. Many presented information on the improvements made over the past decade to ensure that elections conformed to good international practice and human rights standards. Others alleged irregularities or described systemic problems undermining the country's ability to hold free and fair elections.

10. In view of the forthcoming elections, the Special Rapporteur wrote to the Prime Minister on 21 December 2011 outlining his preliminary findings, observations and recommendations on electoral reform. He is awaiting the Government's response.

11. In the present report, the Special Rapporteur makes constructive recommendations to reform the electoral process and hopes that the Government, the National Election Committee and other stakeholders will implement them.

12. The Special Rapporteur's sixth mission coincided with the celebration of Human Rights Day on 10 December 2011, during which he participated in a march and rally organized by civil society to mark the day. In his address to the rally, he outlined his work in the country to promote and protect human rights. He welcomed the opportunity afforded during the rally and subsequently to interact with Cambodians and to hear their concerns about human rights in the country. He also visited and addressed an event organized by the Boeung Kak community, coming away encouraged by the determination shown by the women residents of the area to defend their rights peacefully.

13. On 7 December 2011, the Special Rapporteur gave the keynote address at the launch of the publication *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, which was published by the Office of the United Nations High Commissioner for Human Rights in English and in Khmer, the first translation of the Guiding Principles into a language other than the six official languages of the United Nations. He greeted some 100 participants, including representatives of the Government (such as the ministries of environment, justice, interior, defence and agriculture, forestry and fisheries); the National Assembly; non-governmental organizations; civil society; the private sector; business associations; professional associations; development partners; and the United Nations. He emphasized that Cambodia's current trajectory of economic and social development would not be sustainable unless it was inclusive and well-planned, and highlighted that business practices should be undertaken responsibly and with appropriate due diligence and oversight. He noted that the Guiding Principles provided a framework within which the Government, business enterprises, civil society and development partners could implement international human rights obligations.

14. On the occasion of the twentieth anniversary of the conclusion of the Paris Peace Agreements, on 23 October 2011, the Special Rapporteur issued a press release in which he noted the progress in peace and economic development in Cambodia over the past 20 years, but referred to continuing problems, in particular with pluralist democracy, the independence of the judiciary and impunity.¹ He also participated in two meetings – in Paris on 23 October 2011 and at the University of California, Berkeley, on 19 November 2011 – at which he shared his views on the evolution of human rights in Cambodia since 1991.

II. Follow-up on recommendations made in previous reports

15. During his missions to Cambodia, the Special Rapporteur sought information about the progress made to implement his previous recommendations on the judiciary and the parliament.

16. The Special Rapporteur is pleased to note that the Government has responded positively by accelerating its legislative programme designed to implement, among other things, the key recommendations that he made relating to the judiciary. The Government has indicated that the relevant recommendations are being implemented or in the process of planning for implementation. The Special Rapporteur is encouraged by indications, such as the establishment of an interministerial working group, that the long-delayed organic laws on the judiciary are moving forward. The Government has not, however, yet responded to the Special Rapporteur's request to commit itself to a time frame or a specific plan of action to implement his key recommendations.

17. With regard to parliamentary reform, the Government has indicated that the Special Rapporteur's previous recommendations are being actively considered, and many of them will be part of the process of implementing the recommendations of the universal periodic review process of the Human Rights Council. The Government has not, however, yet responded to the Special Rapporteur's request for a more specific response or to commit itself to a time frame or a plan of action to implement his key recommendations.

III. Communications sent to the Government

18. During the reporting period, the Special Rapporteur addressed communications to the Government on specific cases of human rights concern, including an urgent appeal together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. On 23 September 2011, he sent a communication with the Special Rapporteur on the situation of human rights defenders in relation to the demolition of five houses in Boeung Kak.

19. A joint allegation letter was sent on 20 April 2012 regarding the alleged forced eviction of some 300 families from Borei Keila on 3 January 2012, in which rubber bullets, tear gas and rocks were allegedly used and some members of the community were arbitrarily detained. The joint communication was also sent by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on

¹ Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11524&LangID=E.

the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

20. A further urgent action letter was sent to the Government on 4 June 2012 in relation to the families in the Boeung Kak dispute, on the basis of information received about the arrest and sentencing of 13 protesters from the eight families affected, the subsequent arrest of two other representatives of the Boeung Kak community and the later arrest of a prominent monk and human rights defender who staged a peaceful protest in support of the community. The communication was joined by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on violence against women, its causes and consequences.

21. On 4 May 2012, the Special Rapporteur joined the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders in a joint allegation letter that focused on information concerning restrictions on the enjoyment of the right to freedom of peaceful assembly, opinion and expression reportedly faced by organizers of and participants in the ASEAN Civil Society Conference/ASEAN Peoples' Forum 2012. The event took place from 29 to 31 March 2012 in the Lucky Star Hotel but was subject to restrictions and/or interference by the hotel management, allegedly at the Government's request.

22. In addition to the letter on electoral reform referred to above, the Special Rapporteur wrote to the Prime Minister on 22 August 2011 in relation to the dialogue between the remaining communities of Boeung Kak and the municipality of Phnom Penh, which resulted in the issuance of Subdecree No. 183 of 11 August 2011 to adjust the size of the Boeung Kak development and provide land title to communities living on a parcel of land of 12.44 ha in size. Regarding this as a positive step, the Special Rapporteur expressed his hope that a similar consultation process would be undertaken in other cases of land disputes in Cambodia and that the suggestions of relevant stakeholders in the consultation process on the draft law on associations and non-governmental organizations would be considered before the submission of the draft law to the National Assembly for approval.

23. Following the suspension of and warnings issued to three non-governmental organizations working to protect human rights in the land and housing sector, the Special Rapporteur wrote to the Prime Minister on 26 August 2011 expressing his concern and requesting the Government to share information in that regard. The Special Rapporteur received a response on 5 October 2011 clarifying the situation and expressing the Government's views.

IV. Recent developments in human rights

24. The Special Rapporteur has continued to monitor the general human rights situation in Cambodia and highlights below some principal developments in this regard.

A. Land and housing rights

25. Land disputes and forced evictions continue unabated in Cambodia, and feature the use of force by the authorities and business enterprises. This led to violent clashes with communities during the reporting period. The high-profile Boeung Kak case saw significant developments in the granting of land title to more than 600 families. Those excluded, however, faced violent eviction on 16 September 2011 when, in village 22, the municipality of Phnom Penh and Shukaku Inc., with the support of the gendarmerie, demolished five houses (believed to be home to a total of eight families), reportedly without negotiations for compensation having been concluded. Families were reportedly not given notice of the eviction, and many lost their belongings in the destruction of their property. There have been numerous protests and demonstrations by the Boeung Kak community, led by women residents, and several episodes of excessive force by the authorities. The case is emblematic of the desperation that communities throughout Cambodia feel in resolving their land disputes, and the ensuing civil unrest.

26. Challenges persist in implementing the domestic legal framework governing land and housing. In early 2010, the Council for Land Policy released a draft housing policy in which the right to adequate housing was recognized. The policy is yet to be adopted by the Council of Ministers, however. Two further pieces of draft legislation – a subdecree on urbanization (proposed by the Ministry of Land Management, Urban Planning and Construction) and a law on the management and use of agricultural land (proposed by the Ministry of Agriculture, Forests and Fisheries) – have been published, but it remains to be seen how they will be harmonized with the existing domestic architecture and the obligations of Cambodia under international human rights law.

27. Of particular concern was the forced eviction of villagers from the Borei Keila community in Sangkat Veal Vong, Khan 7 Makara, Phnom Penh, on 3 January 2012 and its impact on the affected community. The Special Rapporteur was informed that the forced eviction was characterized by the demolition of the some 300 homes and resulted in a violent clash between mixed forces comprising armed police, the gendarmerie, Khan authorities and employees of the Phan Imex Company, on the one hand, and residents of the Borei Keila community, on the other. In addition to the trauma and injuries caused to those present, including some officials, and the immediate humanitarian issues facing the evicted families, the Special Rapporteur is concerned about the legal and procedural issues related to the eviction, which are reportedly linked to a lack of implementation of the site upgrading plan provided for under a 2004 agreement between the Government and the Phan Imex Company. Most significantly, the Special Rapporteur is concerned that the events demonstrated an inability on the part of those involved to settle disputes peacefully and a resort to force by the authorities and communities alike.

28. Furthermore, the 11 January 2012 incident in which 24 women and six children from the Borei Keila community were arrested during a peaceful protest outside the Phnom Penh municipal hall and then detained at the Prey Speu Centre, a social affairs centre, is a stark example of the continued persecution of individuals and communities seeking to claim their rights to land. While not all are as high in profile, the Special Rapporteur is regularly informed of cases of criminalization, harassment and intimidation of human rights defenders, communities and officials involved in land disputes throughout Cambodia.

29. Evictions such as that of Borei Keila render many people homeless or place them in unpredictable housing situations. Communities living in resettlement sites from previous evictions and relocations report inadequate housing, challenges in gaining access to health and education facilities, fissures in the family structure and, most notably, significant difficulties in generating livelihood options. Many communities languish in uninhabitable resettlement sites a significant distance from the city centre that were never adequately

prepared for the arrival of the evicted families. A lack of potable water and sanitation services has been reported, as have poor shelters ill-prepared for rain. The Special Rapporteur is concerned that insufficient planning and humanitarian assistance, coupled with a dearth of opportunities for income generation, are causing further impoverishment and threatening the country's chances of improving its gross domestic product per capita.

30. Resettled communities also face obstacles in registering to vote. Frequently, the voter registration of evicted individuals remains at their former dwelling for administrative reasons and is not transferred to the relocation site. Evicted and resettled communities must then return to their original places of residence, which is often a great distance away and therefore extremely, and often prohibitively, expensive. The risk is that a significant population of those resettled will be unable to vote in upcoming elections owing to administrative and financial difficulties.

B. Freedom of expression

31. Respect for freedom of expression, opinion and assembly remains a principal concern in Cambodia, as expressed by a wide range of interlocutors met by the Special Rapporteur during his missions. The Special Rapporteur has already emphasized in his previous reports his concerns in relation to the impermissible restrictions of freedom of expression caused by, among other things, prosecutions (or threats of prosecution) under the Criminal Code for, in particular, offences related to incitement and defamation. These restrictions on people exercising their right to freedom of expression has, in the view of the Special Rapporteur, resulted in a chilling effect on freedom of expression in Cambodia. It appears that many Cambodians exercise self-censorship in what they say and write, provoked by a fear of arrest and detention. This holds particularly true in respect of people wishing to express views critical of those in power, and those seen as criticizing national development projects such as the current renovation of the national railway system.

32. The Special Rapporteur has previously raised the case of Moeung Sonn, an archaeologist convicted in 2009 of disinformation for suggesting that a new lighting installation could damage the Angkor temples. His final appeal to the Supreme Court was rejected on 11 April 2012, with the Court allowing the charge to be changed from disinformation to incitement without informing either the appellant or his lawyer in a reasonable time to allow for a defence to be prepared.

33. Following the Special Rapporteur's previous report (A/HRC/18/46), the Government released the third and fourth iterations of the draft law on associations and non-governmental organizations. The Government showed an interest in sharing the drafts with civil society and convened consultations thereon. Civil society actors also organized meetings. The Special Rapporteur welcomes the Government's willingness to consult civil society. Significant human rights concerns remain in the new drafts of the law, however. In late December 2011, the Prime Minister announced that the consultations would continue, even if that meant that the adoption of the law would be delayed for some years. The Special Rapporteur applauds the approach taken by the Prime Minister on this sensitive piece of legislation.

C. Extraordinary Chambers in the Courts of Cambodia

34. The Extraordinary Chambers in the Courts of Cambodia continued to make steady progress towards the completion of its trials during the reporting period.

35. The Supreme Court Chamber handed down its judgement in Case 001, bringing to a close the proceedings against Kaing Guek Eav, alias "Duch", the former head of Tuol Sleng

prison (S-21). The Chamber increased Duch's sentence from 35 years to life imprisonment. The Trial Chamber began substantive hearings in Case 002, against Nuon Chea, Ieng Sary and Khieu Samphan. A fourth co-accused, Ieng Thirith, was deemed unfit to stand trial.

36. The progress in Case 002 and the completion of the trial in Case 001 notwithstanding, the proceedings of the Extraordinary Chambers have been overshadowed by allegations of failure to properly conduct investigations into cases 003 and 004. Since October 2011, two international co-investigating judges have resigned, citing perceived political interference and obstruction of efforts to investigate, respectively, for doing so. In the case of the latter, the allegations of obstruction were preceded by a refusal on the part of the Cambodian Supreme Council of Magistracy to recognize the judge's appointment, even though the United Nations continued to reiterate that the Supreme Council was obliged to do so. The Special Rapporteur is concerned by these developments, which undermine the capacity of the Extraordinary Chambers to set a positive example for the domestic court system and to be seen to independently and impartially account for the crimes committed under the Khmer Rouge. He urges the Government and the United Nations to take urgent measures to resolve any disputes regarding the issues surrounding these cases, and to ensure the prompt and proper conduct of investigations and respect for both the suspects' right to a fair trial and the victims' right to a remedy.

D. Human rights defenders

37. Many human rights defenders, civil society representatives and journalists in Cambodia have continued to encounter harassment, intimidation and the threat of a defamation or incitement lawsuit. The threats faced by these individuals have taken a serious turn for the worse, with an increase in the use of live ammunition against people defending their rights and protesting against Government policies and practices. Since the beginning of 2012, there have been at least four incidents in which individuals have been shot. On 18 January 2012, three villagers were seriously injured when guards opened fired during a land dispute on a concession held by the TTY Corporation in Kratie Province. On 20 February 2012, a shooting at a labour protest in the town of Bavet resulted in three women being seriously injured. On 26 April 2012, human rights defender and environmental activist Chut Wutty was shot dead in Koh Kong Province. Most recently, on 16 May 2012, a 14-year-old girl was shot dead in the village of Broma during a violent eviction. Live ammunition has been used in other cases, albeit without resulting in injuries.

38. These incidents have hampered the activities of human rights defenders in Cambodia, with many now fearing for their lives. The Special Rapporteur is shocked by these crimes, for which no one has been convicted. He hopes that these incidents are thoroughly and properly investigated and the culprits brought to justice.

V. Role of State institutions in the context of elections

39. Cambodia is a constitutional monarchy that operates under a multiparty political system. The right to vote is guaranteed under article 34 of the Constitution. The country has a bicameral parliament consisting of the Senate (61 seats) and the National Assembly (123 seats). In the Senate, 57 members are elected by indirect vote (via commune councillors) to serve five-year terms. An additional two members are elected by the National Assembly, and the final two members appointed by the King. This makes the commune council elections (held in the year preceding the National Assembly elections) an important precursor to National Assembly elections, because those elected will also be voting to determine the members of the Senate.

40. In the National Assembly, 123 members are elected by a party-list system with proportional distribution of seats. Assembly members serve five-year terms. In accordance with article 100 of the Constitution, the President of the National Assembly and the two Deputy Presidents advise the King on the choice of a dignitary from among the winning party to form the Government. After the Assembly has given its vote of confidence to the Government, the King issues a subdecree appointing the Council of Ministers.

41. Since the end of the Cambodian conflict in 1991, Cambodia has held four general elections (in 1993, 1998, 2003 and 2008) and two commune council elections (in 2002 and 2007).

A. Commune council elections

42. There are 1,633 communes in Cambodia. Each commune council comprises from 5 to 11 members, depending on demography and geography. Council members are elected through a proportional system, where nationally registered parties can compete by presenting a list of candidates. Their election is governed by the Amended Law on Elections of Commune Councils of June 2006. The organization and administration of the commune council elections is undertaken by the National Election Committee, which appoints provincial, commune and polling station committees to oversee the elections, pursuant to article 7 of the Amended Law. The formula for determining seat allocation is rather complex, and is laid down in articles 23 and 27 of the Amended Law.

43. Pursuant to article 45 of the Amended Law, to register as a candidate in the commune council elections, a person must be a Cambodian citizen at birth, able to read and write Khmer, be registered in the list of voters in the commune where he or she wishes to be elected, and be at least 25 years of age on polling day. This potentially discriminates against Cambodian citizens who were not born in Cambodia. Pursuant to article 49 of the Amended Law, every person who intends to stand as a candidate is to have his or her name recorded on the list of the political party with which he or she is standing. The political party itself must be registered, in accordance with the Law on Political Parties.

44. The commune council elections held in 2007 witnessed a significant increase in the number of candidates and political parties competing, with 12 political parties registered and 102,266 candidates in all 1,621 communes. Another positive development in the registration of candidates was a 5 per cent increase in the number of women candidates in comparison to 2002. The commune council elections held in June 2012 were only the third since the conclusion of the Paris Peace Agreements. These elections were generally conducted in a more peaceful and open environment than previous elections in 2007 and 2002. The National Election Committee demonstrated its ability to conduct good elections at the technical level. As at 31 May 2012, the National Election Committee had acknowledged 14,886 national and international election observers from 40 non-governmental organizations and associations, and 22 special guests from the delegation of the European Union to Cambodia and the embassies of France and Germany in Phnom Penh. It had also accredited 512 national and international journalists from 53 media houses to observe the elections. The 2012 commune elections showed some flaws in the electoral process, however, especially with regard to the process of voter registration and voter identity.

45. To be registered as a voter in the commune council elections, a person must be a Cambodian citizen, at least 18 years of age on the day of voting, resident in the commune where he or she is going to vote, and be neither incarcerated nor certified by a competent institution as insane or under guardianship at the time of voting. Voters must also have registered to vote and be able to produce proof of their identity during the polling period. This proof must show a photo, address, citizenship and birth date, and it is permitted to use

a combination of approved documents, including passports, national identity cards and family books with photos. This marked a major change in the registration process from the previous elections, in which voter registration cards were required. While this change is to be commended, it should be noted that the current system results in some citizens being disenfranchised, such as those without an address or residing away from the address of their permanent residence. A number of interlocutors suggested that the current cumbersome and expensive voter registration system could be replaced with a list automatically generated from a civil registry. This proposal merits closer investigation.

46. In theory, commune council elections should add an additional layer of legitimacy to the country's fledgling democracy by providing for checks and balances on the proportional representation of parties at the national level and further increasing the avenues for multiparty politics to flourish. Provisions in the Amended Law would tend to support this by prohibiting the election of members of the Senate or National Assembly, judges or civil servants in these elections. In practice, however, the elections have suffered from shortcomings, some of which are outlined below.

B. National elections

47. Four parliamentary or national elections have taken place since the conclusion of the Paris Peace Agreements in 1991. The most recent national elections took place in 2008. According to independent monitors, while the 2008 campaign was generally conducted in a more peaceful and open environment than previous elections, the elections themselves fell short of international standards for democratic elections. The improvements in transparency notwithstanding, there was a lack of confidence in the impartiality of the election administrators among election stakeholders. The campaign was marked by consistent and widespread use of State resources by the governing party, and the alleged distribution of money and gifts by candidates and party officials belonging to various political parties was widely reported.

48. The principal legislation governing elections to the National Assembly is the Law on the Election of the Members of the National Assembly. Other laws that also affect the election process include the Constitution, the Law on Political Parties, the Law on the Regime of the Press, the Law on Peaceful Demonstrations, the Law on Nationality and the Penal Code. Furthermore, there are National Election Committee regulations and procedures and directives, joint directives issued by the Ministry of the Interior and the Committee, the Committee's internal regulations, and codes of conduct for political parties, media, observers, electoral officials, members of the armed forces and the police.

49. The applicable laws generally provide a workable framework and largely conform, at least on paper, to international standards and establish the necessary institutions for the conduct of elections. The codes of conduct regulate the rights and obligations of those concerned in a satisfactory manner. The problem lies in the inadequate implementation of the legal provisions and the genuine or perceived lack of independence of the institutions.

50. Similar to the Amended Law on Elections of Commune Councils, the legal conditions for registering as candidate in the National Assembly elections raise some concerns. According to the Law on the Election of the Members of the National Assembly, a candidate must be a registered voter of at least 25 years of age, a Cambodian citizen from birth, have a residence in Cambodia and be nominated by a political party. It does not allow independent candidates to stand in elections and limits the possibility of standing as a candidate to citizens born in Cambodia, thus barring naturalized citizens. In this respect it does not entirely conform to international standards and best practices.

C. Key challenges to the electoral process in Cambodia

51. The Special Rapporteur wishes to note that free and fair elections are underpinned by respect for international human rights norms. Article 25 of the International Covenant on Civil and Political Rights (to which Cambodia is a State party) provides that everyone has the right to take part in the conduct of public affairs in the country, and to vote (and to be elected) at genuine periodic elections that are to be by universal and equal suffrage and to be held by secret ballot, guaranteeing the free expression of the will of the electors.

52. Concerns were brought to the attention of the Special Rapporteur during his sixth mission. One was the use of State resources, including the time of Government employees, motor vehicles and materials, by political parties during their campaigning. The Special Rapporteur raised these concerns with the Deputy Prime Minister and Minister of the Interior, under whose ministry falls the responsibility for assisting the National Election Committee in the conduct of elections. The Special Rapporteur welcomes the assurances that he received that the Government would be instructing all civil servants, police and military personnel that they should not participate in any political activities while working in their official capacities (including the use of Government resources) and that neutrality was to be paramount.

53. Some political parties reported threats, intimidation and harassment (including legal proceedings) against their members and candidates. These are extremely worrying allegations. The Special Rapporteur is of the view that freedom of expression and of assembly is central to holding free and fair elections. To hold free and fair elections, the entire political environment should be free and conducive to exercising the rights and freedoms guaranteed in the Constitution and the international human rights treaties ratified by Cambodia.

54. Cambodian political parties are largely unregulated and generally have no clear democratic procedures for the selection of candidates. The party leadership controls the content of the list, making candidates more loyal to the party leadership than to their own constituents. This can also result in the arbitrary removal of candidates from lists, meaning that they then lose their seats. The combination of proportional representation and party-list systems results in the National Assembly being the weakest link in the Cambodian governance system.

55. Television is increasingly replacing radio in Cambodia as the primary medium through which to communicate with the voting public. Access to media was a key concern among political parties in previous elections. In 2007, equitable media access was granted to all political parties to disseminate their political platforms on at least one programme on one television station. The Equity News Programme, a joint United Nations Development Programme-National Television of Cambodia project, provided equitable access to all political parties on the national television channel TVK. Apart from this, however, extremely limited access to other television channels was provided to political parties for campaign purposes. The broadcast of debates among candidate on national radio also strengthened the principle of equitable access to media for all parties in their campaign activities.

56. The progress seen in the media sphere in the lead-up to the most recent national assembly elections in 2008 was marred by the closure of the Angkor Ratha radio station in Kratie in May 2008, the arrest and temporary detention on defamation charges of *Moneaksekar Khmer* editor Dam Sith in June 2009 and, in the worst incident, the murder on 11 July 2008 of *Moneaksekar Khmer* journalist Khim Sambo and his son Khat Sarinpheata. This crime remains unsolved and unpunished. The use of the State media by the ruling party during the most recent election was to a degree inconsistent with international standards on free and equal access to the media for all electoral contestants. All opposition

parties received access to the State television channel TVK and the State radio channel RNK according to election regulations, and time on a small number of private radio stations without national reach. There appears, however, to have been a lack of equality in access. For example, according to the final report of the European Union Electoral Observation Mission to Cambodia 2008, the State television channel TVK devoted more than 900 minutes in its news programmes to the Government compared to four minutes to the opposition.² The dominance of the ruling party with regard to media access may have undermined the ability of the Cambodian electorate to receive sufficient information about the parties to make an informed choice.

57. Increased intolerance since 2008 of the exercise of freedom of expression in criticizing corruption, impunity and land-grabbing is likely to further affect the political space available to opposition parties in the lead-up to the forthcoming elections. This has already been evidenced by charges of defamation and incitement being levelled at opposition members Mu Sochua (in April 2009) and Ho Vann (in July 2009) and charges of destruction of property and racial incitement at opposition leader Sam Rainsy. Mr. Rainsy was tried in absentia in January 2010 and sentenced to two years' imprisonment in one case and 10 years' imprisonment in another, but remains in exile.

58. Effective civic and voter education is another critical election component. Although the National Electoral Committee has taken significant steps towards increasing understanding of the right to vote and the formal procedure of voting (in particular by disseminating voter information notices that explain to registered voters the process of voting), that the National Election Committee continues to be dominated by supporters of the ruling party has harmed its credibility. In addition, its operation of the voter registration system has left something to be desired in previous elections: controversy over its handling of voter registration during the 2007 commune council elections (in particular the removal of many names from the register) was cause for concern at the time and similar concerns were raised in relation to the commune council elections in June 2012.

VI. Conclusions

59. **The overall situation of human rights has improved over the years, especially with the recent enactment of key legislation to this effect. There remains, however, much to be done to fulfil the obligations of Cambodia under the international human rights treaties that it has ratified. The Paris Peace Agreements established the rule of law, human rights and democracy as major pillars of the new political architecture for the country. Accordingly, the peace process cannot be regarded as complete until the democratic institutions created under the Constitution are able to work effectively and independently. The international community has a particular stake and responsibility in this regard.**

60. **The Special Rapporteur is aware of the very important role played by the Government in strengthening democracy and improving the electoral process in Cambodia. There remains, however, some way to go to achieve the objectives. It is in this area that he wishes to offer his assistance and to have a meaningful and constructive dialogue with the Government.**

² Available from www.eucomcambodia.org/English/PDF/PDF/Final%20Report/final%20report/English/EU_EOM_Final_Report_Com.pdf.

61. The Special Rapporteur is concerned at the information that he has received concerning low voter turnout, a decreasing trend in voter participation and voter fatigue and frustration with the current electoral system. There are several reasons why an individual may choose to opt out of participating in the electoral process. In many cases, however, people do not choose to abandon their right to vote, but face such significant barriers that they are effectively disenfranchised. Expressing frustration with the existing electoral process, a Cambodian citizen wrote in an individual petition to the Special Rapporteur that, if the current state of affairs continued, the ruling party would win the elections forever and that there was no hope for other political parties.

62. The Special Rapporteur is of the view that, for the electoral process to be credible, to be seen to be credible and to command legitimacy in relation to the outcome of the elections, the Government, the National Election Committee and the provincial election committees should ensure conformance to international standards before, during and after the casting of votes. If the electoral process is unable to command the trust and confidence of the electorate, the very foundation of the Cambodian political and constitutional architecture embodied in the Paris Peace Agreements will be shaken and the country may run the risk of a return to violence. The Government must therefore do its utmost to avoid such a situation. Of course, the country needs political stability to accelerate the process of economic development, but that stability should be founded on fairness, equity, transparency, legitimacy and a level playing field to enable all political actors to make an equitable contribution to the country's governance. The international community in general and the United Nations in particular have invested much in Cambodia since 1991 to assist it to move towards a stronger democracy, genuine rule of law and greater respect for human rights. The rights to democratic governance and to participate in free and fair periodic elections are crucial for any democracy, but this holds especially true for a country in transition such as Cambodia.

63. The objective of electoral reform should be to ensure that no violations of electoral laws take place and that the laws themselves conform to international standards. Government interlocutors often respond to the Special Rapporteur that their procedures are in accordance with existing law. What is needed, however, is for the laws to be compatible with international standards flowing from treaties ratified by Cambodia and jurisprudence developed by treaty bodies and with the principle of the rule of law. Cambodia should rise above a mechanical application of democracy and the rule of law and implement the fundamental principles and spirit behind the notion of the rule of law.

64. Voting should not be a privilege but a right of each and every citizen and it is a duty of all State organs to facilitate the exercise of that right. This is especially so on the part of the executive, which must demonstrate the political will needed to undertake serious reform of the electoral laws and processes in Cambodia. The country has come far enough to aspire to hold elections that meet international standards. As a country that has ratified many international human treaties and that currently holds the chairship of ASEAN, Cambodia should aspire to be a model in the region when it comes to holding free and fair elections and should do better than many States whose democracy remains in its infancy. The Special Rapporteur therefore wishes to draw the Government's attention to the following issues that must be addressed in the lead-up to the National Assembly elections scheduled to take place in July 2013.

VII. Recommendations

65. The National Election Committee should have independent and autonomous status in the constitutional and legal structure of Cambodia, with its own independent budget allocated by the parliament. The president and members of the Committee should be drawn from a pool of retired senior judges, senior and distinguished members of the Cambodian bar and senior professors of law, politics and public administration.

66. There should be consensus among the major political parties represented in the parliament on the appointment of the president and members of the National Election Committee and the provincial election committees.

67. The Government should initiate a process to amend article 13 (new) (2) of the law concerning the National Election Committee and other relevant articles to ensure that, within the composition of election bodies of all levels, there is balanced representation of all political parties with representation in the National Assembly.

68. The president and members of the National Election Committee and the provincial election committees should be appointed for a fixed term and have security of tenure. They should be barred from holding positions in political parties during and up to two years after the expiry of their terms of office.

69. The Special Rapporteur has reviewed the mechanism to resolve electoral disputes and is of the view that it should be improved. Currently, the election officials themselves are entrusted with the task of resolving preliminary election disputes. To increase the confidence of all political parties in the election process, there is a need to amend the law and to create another institution, such as a special election tribunal or election court within the judicial structure of Cambodia or as a special election tribunal within the National Constitutional Council to resolve election-related disputes, rather than using the National Election Committee itself to do so.

70. All major political parties should have fair and equal access to the mass media to convey their messages to the electorate. This should include the opportunity to broadcast their message during primetime viewing hours. The way forward could be to establish an independent committee on the management and use of State-run television and radio stations, allowing all major political parties that are represented in the National Assembly to fully use the stations until the day of election campaign on an equal footing.

71. Another issue is the use of State resources, including the time of Government employees, motor vehicles and materials, by political parties during their campaigning. The Government must ensure that all civil servants, police and military personnel do not participate in political activities or use Government resources while working in their official capacities, and that neutrality is paramount.

72. For the elections to be credible, all opposition parties must be free to organize and campaign without fear and hindrance. Elections are not only about polling day, but also the overall human rights context in Cambodia. The Special Rapporteur has been informed of cases of harassment and intimidation of people attending party political meetings of opposition parties by Government officials and the secret police. The Government must therefore ensure that opposition parties are free to carry out their political activities without harassment and intimidation not only around the dates of elections but also in the lead-up to the elections and throughout the parliamentary cycle.

73. There should be a more effective, impartial and non-discriminatory procedure for the registration of voters in Cambodia. Accordingly, the Government should expeditiously provide necessary documents, Khmer nationality identity cards, passports and other necessary civil registration documents to all citizens for nominal fees and should reregister voters using the data from those cards as a basis to establish a new electoral roll.
74. Any Cambodian citizen eligible to vote should be entitled to request registration with the electoral and/or local authorities at any point during the year. Once he or she is issued with an identification card, that card should be valid for life, unless a change in personal circumstances warrants amendment.
75. The commune council elections in June 2012 identified continuing problems with voter identity documents, especially the issuance and use of fraudulent documents (the now-abolished form 1018). The National Election Committee should review the process of issuing such documents to ensure that the system is not abused by political parties in their favour and that there are no electoral malpractices.
76. The National Election Committee should devise special measures to ensure that those who are homeless or have been recently evicted from their land are not disenfranchised in the forthcoming elections.
77. To hold free and fair elections, the entire political environment should be free and conducive to exercising the rights and freedoms guaranteed in the Constitution and the international human rights treaties ratified by Cambodia. The Government should therefore ensure that all persons are able to exercise their rights to freedom of expression, assembly and association.
78. The electoral process, including the voter registration process, and the manner in which electoral disputes are dealt with should be transparent and conform to international standards. For example, the National Electoral Committee should make public the names of polling officers and make the voter list available to candidates from all political parties upon request, affording them an opportunity to challenge the fraudulent inclusion of names on the list.
79. The National Electoral Committee should appoint professional election administrators to replace village chiefs during voter registration and on election day and bring all commune election officers and processes under its own stricter supervision mechanism.
80. The current law, which requires a person to be nominated to stand for election by a political party, should be amended to make it possible for independent candidates to stand in the national elections.
81. Since Cambodia allows dual citizenship, the National Election Committee should make it possible for Cambodians living abroad to exercise their voting rights, at least in the countries where it has diplomatic and/or consular representation, as done by many other countries.
82. Lastly, the Special Rapporteur is aware of the situation of Sam Rainsy, the leader of the Sam Rainsy Party. He has been convicted on charges that are allegedly politically motivated. A political solution should be found to enable him, as the leader of the opposition, to play a full role in Cambodian politics. The Special Rapporteur believes that a concerted effort by the ruling and opposition parties towards reconciliation is in the interests of stronger and deeper democratization of Cambodia. This is especially so in the lead-up to the national assembly elections. For longer-term peace and prosperity in Cambodia, there should be a level playing field for all political parties to compete on an equal footing. The people should have faith in the system of

governance in the country and in periodic elections, which are at the core of democracy.
