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### Technical assistance and capacity-building

## Assessing protection of those at risk of being left behind

### Report of the Special Rapporteur on the situation of human rights in Cambodia\*

#### *Summary*

Cambodia has now published its localisation plan for the UN sustainable development goals, a plan which reflects the Government's Rectangular Strategy IV and links to the forthcoming National Sustainable Development Plan. Building on the analysis on the sustainable development goals in the 2019 annual report of the Special Rapporteur, this addendum draws together the findings of previous reports 2016-2018 and country visits which focussed on identified vulnerable groups in Cambodia. This addendum seeks to further understanding of which groups may be at risk of being left behind during Cambodia's current development.

The final recommendations include enacting a general law prohibiting non-discrimination on a wide range of grounds, and ensuring this is implemented across public and private sectors. Supporting policies may require to ensure the prohibition on discrimination becomes a reality.

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\* The present document is being issued without formal editing.



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## I. Report of the Special Rapporteur on the situation of human rights in Cambodia

1. This addendum addresses the issue of those vulnerable to being left behind and discrimination in Cambodia. With the substantive focus of the current annual report<sup>1</sup> analysing Cambodia's efforts to localise the Agenda 2030 UN sustainable development goals, analysing the situation of vulnerable and marginalised, disadvantaged groups contributes towards an understanding on who, if anyone, may be left behind whilst Cambodia continues on its path towards higher level development. This addendum draws together the work of the Special Rapporteur during her previous missions when she reported on particularly vulnerable or disadvantaged groups within Cambodia.<sup>2</sup> It also reflects a number of recommendations made to Cambodia on related issues during the working group of the third cycle of Universal Periodic Review in January 2019<sup>3</sup> and in concluding observations of treaty bodies. Those vulnerable to being left behind frequently suffer from discrimination heightening their marginalisation. It is relevant to note that Cambodia has accepted the key UN treaties relevant to prohibiting discrimination.<sup>4</sup> It has also accepted additional monitoring and investigation procedures including the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Inquiry procedure under the Convention against Torture, the Inquiry procedure under the International Convention for the Protection of All Persons from Enforced and the Inquiry procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. No individual communications have progressed under CEDAW and no inquiries have been initiated.

## II. Understanding 'non-discrimination' 'equality' and 'no one left behind'

2. The Royal Kingdom of Cambodia has ratified international human rights treaties which include non-discrimination clauses. These prohibit discrimination on, and guarantee the rights and freedoms without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>5</sup> Other treaties aimed at eliminating discrimination against specific groups across a range of rights and freedoms have also been ratified by Cambodia.<sup>6</sup> Non-discrimination reflects the fundamental concept of universal rights and freedoms. Internationally proclaimed and protected rights and freedom should be available equally to everyone. Cambodia's tragic history attests to the consequences of failing to respect everyone's rights and freedoms. Indeed, in November 2018 the Extraordinary Chambers in the Courts of Cambodia found genocide against both the Cham ethnic and religious group (also known as Khmer Islam) and the Vietnamese ethnic, religious and racial group; and the crime against humanity of

<sup>1</sup> A/HRC/42/60.

<sup>2</sup> A/HRC/33/62 paras 10-27, A/HRC/36/61 paras 14-43, A/HRC/39/73 paras 15-51, A/HRC/42/60 paras 16, 23, 30, 34, 43, 57, 67 and 73.

<sup>3</sup> A/HRC/WG.6/32/L.14.

<sup>4</sup> Cambodia accepted the International Convention on the Elimination of All Forms of Racial Discrimination on 28 November 1983, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 26 May 1992, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women on the 15 October 1992, and the Convention on the Rights of Persons with Disabilities on 20 December 2012.

<sup>5</sup> Article 2 International Covenant on Economic, Social and Cultural Rights, Articles 2 and 26 International Covenant on Civil and Political Rights, Article 2 UN Convention on the Rights of the Child.

<sup>6</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of all forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities.

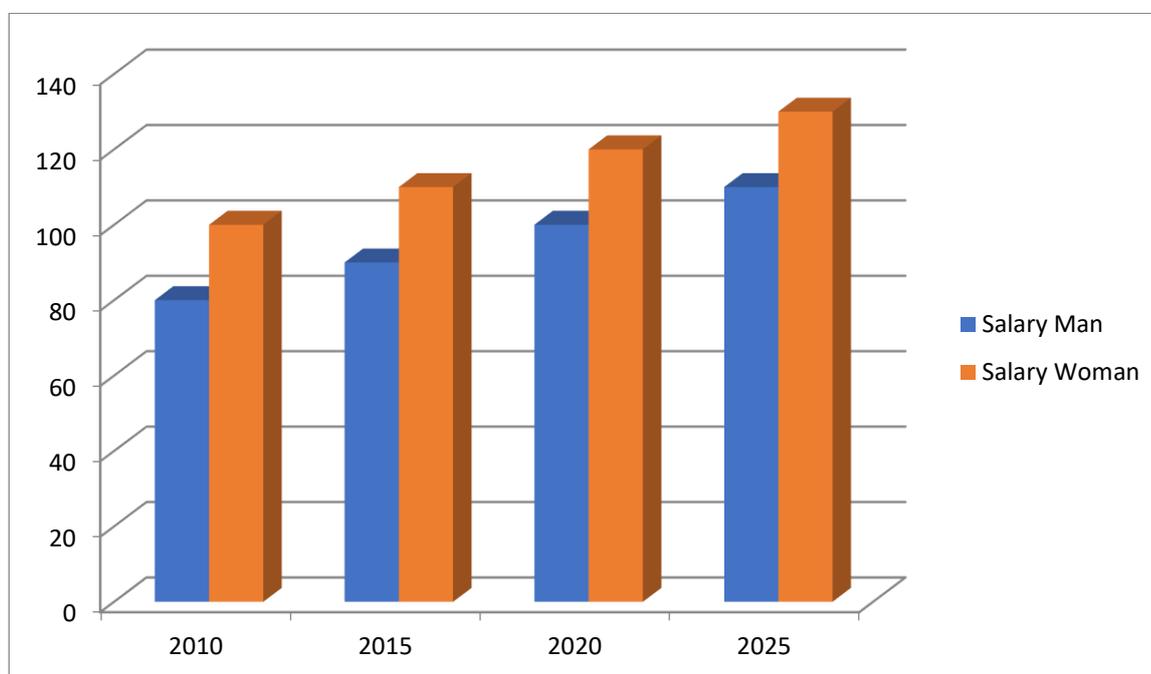
persecution on religious grounds with respect to Buddhists.<sup>7</sup> This case is a salutary reminder of some blatantly discriminatory policies of the last century.

3. Securing non-discrimination, however, does not necessarily ensure actual equality of enjoyment of rights. The preamble to the International Convention on the Elimination of Discrimination Against Women, for example, highlights that ‘discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries’. This emphasises the link between non-discrimination and equality.

4. Discrimination is defined as ‘any distinction, exclusion, restriction or preference based on [...] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’<sup>8</sup> A broad definition is taken to ensure all possible actions are included.

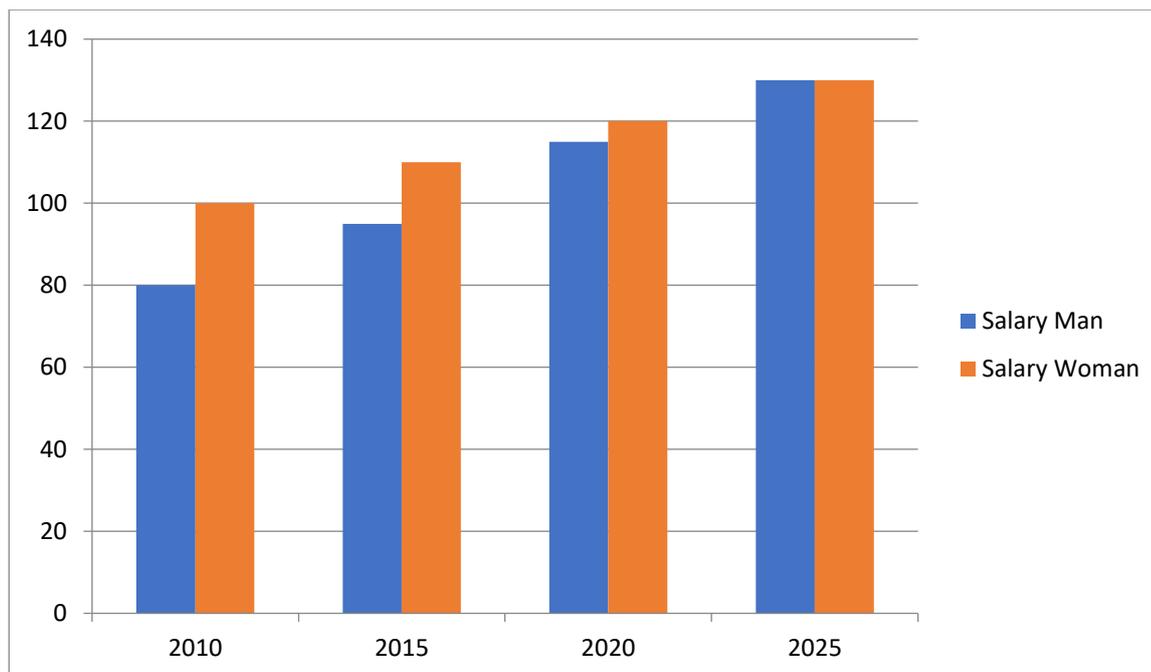
5. Essentially any pre-existing differentiation in treatment may remain if non-discrimination laws are simply enacted and enforced. See diagram one. Should the man and woman be given the same increase in salary, there would appear to be no discrimination, everyone receives an extra 10 USD each year. However, as the diagram shows, the difference between the man and the woman’s salary remains static. This means that states may need to be proactive to remedy any differentiation in treatment, which will ensure that non-discrimination laws secure their intended purpose of preventing discriminatory enjoyment of rights thereby promulgating equality of enjoyment of rights. In this instance, either the woman’s salary would have to be static or, as in diagram two, the man’s salary would have to increase more each year to close the gap and ensure equality. Once equality is secured, the same increase for men and woman would result in no direct discrimination and no inequality.

#### A. Diagrams one and two



<sup>7</sup> Case 002/2 against Nuon Chea and Khieu Samphan, Extraordinary Chambers in the Courts of Cambodia. Note that Nuon Chea died on 4 August 2019.

<sup>8</sup> International Convention on the Elimination of Racial Discrimination Article 1(1).



6. In order for non-discrimination laws and policies to secure de facto equality, any pre existing inequality must be redressed. International human rights law provides an opportunity for states to adopt temporary special measures to achieve the aim of equality and thereby ensure that non-discrimination laws secure equal enjoyment of rights and freedoms.<sup>9</sup>

7. What is fundamental is that no one suffers due to a specific individual characteristic. Equality and non-discrimination apply equally to individual persons as to groups of persons sharing the same characteristic. Each person is unique and different grounds of discrimination may intersect, or layer, to exacerbate the discrimination experienced. Moreover each person's lived reality may be different – one person may experience discrimination on a particular ground whilst another person identifying with the same characteristic may not experience discriminatory treatment when exercising her or his rights. Discrimination can be direct (e.g. someone accrues an advantage or disadvantage solely because of their gender/race/religion etc.) or indirect. The latter can be a policy, law or practice which, whilst overtly fair, even non-discriminatory, may in fact adversely affect or disproportionately affect an individual or group with the same specific characteristic. It does not matter whether or not that was the intention of the measure.<sup>10</sup>

8. Agenda 2030 and the subsequent sustainable development goals include several targets and indicators of particular relevance to non-discrimination and equality, not least Goal 5 on gender equality and Goal 10 on reduced inequalities. Securing the appropriate targets will limit discrimination in some areas. For that to be achieved, private and public sectors, formal and informal, must embed principles of equality and policies of non-discrimination across all activities.

9. An overarching aim of Agenda 2030 is to ensure that 'no one is left behind'. Those 'left behind' during the development of a state will not enjoy the benefits that sustainable development should offer. The 'people' dimension will not be achieved. Analyses have shown that unequal societies with groups marginalised and left behind can pose a risk to peace and security. There should be an intensification of efforts both to identify those individuals or groups likely to be left behind<sup>11</sup> and to ensure they are not being directly or indirectly discriminated against.

<sup>9</sup> Article 4 CEDAW, Article 1(4) ICERD, Article 5(4) CRPD.

<sup>10</sup> CERD GC 32 para 5.

<sup>11</sup> Hence the need for disaggregated data; A/HRC/42/60, paras 22 and 25.

## B. The Cambodian approach

10. The Cambodian Government recognises the need to ensure that no one is left behind. In 2019, Cambodia adopted its localisation plan for the Sustainable Development Goals. This gives specific effect to certain elements of the government's Rectangular Strategy. In its CSDGs Framework 2016-2030, the Government notes that 'the principle of *leaving no one behind*, and the need to address goals, and areas or population groups, which lag behind others is a foremost consideration' and that "going forward, emerging disparities and inequalities will be a key marker in identifying priorities."<sup>12</sup> This reflects a government commitment to reduce inequalities. Given the pace of development in Cambodia, there is a need to ensure that all Cambodians benefit from the country's continuing economic progress. The Government also notes that the '*unfinished business*' under the Cambodian Millennium Development Goals (CMDGs) falls within such prioritized issues, and that subnational analysis underlined provincial disparities, particularly evident on the poverty goal and public service CMDGs. In 2014, poverty incidence was estimated to be as high as 29 per cent in Rattanakiri and Oddar Meanchey, while nutritional deficiencies have appeared to rank above 40 per cent in Preah Vihear and Kampong Chhnang.<sup>13</sup> The Government does acknowledge that the elimination of food or extreme poverty is 'an important success' and something the Government is aware is a long term process.<sup>14</sup>

11. It is a concern that some vulnerable individuals and groups are not referred to explicitly in the CSDG framework. For example, indigenous peoples are not mentioned in any of the indicators. The Special Rapporteur encourages the Government, and in particular sub-national authorities in charge of delivering social and other public services, to pay attention to the rights of indigenous peoples as a foremost consideration. It is estimated that over 97 per cent of the population is ethnic Khmer, and that in addition to the small groups of indigenous ethnic minorities, the rest of the population comprises of small groups of Khmer Islam/ Cham (1.2 per cent), Vietnamese (0.1 per cent) and Chinese (0.1 per cent).<sup>15</sup> The national census undertaken in March 2019 should provide more detailed statistical information. Other vulnerable groups have been considered in the CSDG framework. While no mentions are made in the narrative, the national targets relating to Goal 4 on Inclusive Education, and Goal 10 on Reducing Inequalities demand monitoring of the percentage of schools with adapted infrastructure and materials for students with disabilities (CSDG 4.a.3) and tracking the proportion of people living below 50 per cent of median income, by age, sex and persons with disabilities (CSDG 10.2.1). Further efforts will be needed to streamline data, as estimates of the number and proportion of Cambodians with disability have varied between successive national surveys in ways that could not be explained by the passage of time.<sup>16</sup> As the substantive report notes,<sup>17</sup> disaggregated data is key to evidencing whether people are left behind and also to identifying who may be left behind.

12. On 27 May 2019, Samdech Techo Prime Minister Hun Sen referenced these issues speaking at UNESCAP in Bangkok. He noted that Cambodia had achieved strong economic growth at a rate of 7.7% over the last two decades and become one of the world's fastest growing economies, graduating from low-income to lower middle income country in 2015.<sup>18</sup> He also highlighted a decline in the poverty rate and his view that 'inclusive and peaceful development are necessary conditions for strengthening and ensuring peace and social stability'. The government has proclaimed its support for efforts to promote inclusive development to benefit all Cambodians.<sup>19</sup> Indeed the CSDG Framework highlights the UNDP

<sup>12</sup> Cambodian Sustainable Development Goals (CSDGs) framework (2016-2030), approved by Council of Ministers in full cabinet meeting on 19 November 2018, p 41.

<sup>13</sup> CSDGs Framework, p. 17.

<sup>14</sup> CSDGs Framework, p. 17.

<sup>15</sup> OECD (2017) "Youth Well-being Policy Review of Cambodia",

<http://www.oecd.org/countries/cambodia/Youth-well-being-policy-review-Cambodia.pdf>

<sup>16</sup> See the 2008 National Census, the 2012 Cambodia Socio-Economic Survey, the 2013 Cambodia Inter-Censal Population Survey or the 2014 Cambodia Demographic Health Survey (CDHS).

<sup>17</sup> A/HRC/42/60.

<sup>18</sup> <http://m.en.freshnewsasia.com/index.php/en/localnews/14090-2019-05-27-05-28-55.html>.

<sup>19</sup> CSDG Framework 2016-2030.

Human Development Index which is a composite of health, education and living standards, which evidences strong improvement for Cambodia since 1990.<sup>20</sup>

13. Previous reports and country visits of the Special Rapporteur have sought to identify the most vulnerable and marginalised groups who are at risk of being left behind during Cambodia's ongoing rapid sustained development. An illustrative sample is discussed hereafter. What is apparent, is that these people are often amongst the poorest and most marginalised in society. Understanding the links between poverty and social determinants offers windows into pathways for redressing the inequalities, promoting an inclusive society and ensuring no one is left behind.

### C. Links with poverty and social determinants

14. Addressing those left behind is not straightforward. Poverty is frequently a factor. A disproportionate number of those likely to be left behind are in poverty or near poverty. There are numerous indices and measurements of poverty, some of which are not accepted as accurate reflections by the Royal Government. Irrespective of the measurement used, there is no dispute that there are still people in Cambodia living in poverty and near poverty.

15. Just as international human rights are indivisible, interdependent and interrelated, so too are the causes of, and indeed solutions to, poverty and marginalisation. Understanding key intersections is important when seeking to redress exclusion and inequalities.<sup>21</sup> In turn that requires disaggregated data. SDG Indicator 1.1.1<sup>22</sup> highlights that target 1.1 on eradicating extreme poverty measured as people living on less than USD 1.25 per day can be supported by identifying the proportion of the population below the international poverty line by sex, age, employment status and geographical status (rural/urban). The second target and indicator 1.2.2 references the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions. That figure must be halved. The Royal Government has committed to achieving more than one percentage point reduction in the poverty incidence annually.<sup>23</sup> UNDP note that such a reduction (measured by the Cambodian national poverty line) would significantly reduce extreme poverty.<sup>24</sup> Understanding disparities in lived experiences (and more pertinently the reasons for such disparities) can assist with efforts to bring people from behind. Both quantitative and qualitative data is needed and the Government is reminded that this is a situation in which civil society organisations may be able to contribute relevant data and field knowledge.

16. Intersecting grounds of discrimination often map onto multidimensional indices of poverty.<sup>25</sup> Multidimensional poverty is 'much more intense' in rural areas,<sup>26</sup> a finding of relevance to Cambodia. There is a clear link to social determinants of poverty, including health,<sup>27</sup> adequate standard of living,<sup>28</sup> education,<sup>29</sup> fair work<sup>30</sup> and wellbeing, each of which is tabulated in core international human rights treaties which Cambodia has voluntarily accepted.

17. The multidimensional poverty index has three principal dimensions - health, education and living standards - all equally weighted. Ten indications map on to these three

<sup>20</sup> CSDG Framework 2016-2030 p11/12; see also <http://hdr.undp.org/en/content/human-development-index-hdi>, Cambodia is ranked 146 (<http://hdr.undp.org/en/countries/profiles/KHM>) with an HDI value of 0.582 and a 19.2 co-efficient of inequality.

<sup>21</sup> For example, see CERD GC32 para 7.

<sup>22</sup> UN SDG indicators from A/RES/71/313 (2017) Annex.

<sup>23</sup> National Strategic Development Plan 2014-2018 p118, plan being extended for another four years.

<sup>24</sup> UNDP, Rapid Integration Assessment: Cambodia SDG Profile Card p1.

<sup>25</sup> Eg UNDP Global Multidimensional Poverty Index, <http://hdr.undp.org/en/2018-MPI>.

<sup>26</sup> Oxford Poverty and Human Development Initiative (2018) Global Multidimensional Poverty Index 2018: The Most Detailed Picture To Date of the World's Poorest People, 2nd ed University of Oxford, UK, pXI.

<sup>27</sup> Article 12 International Covenant on Economic, Social and Cultural Rights.

<sup>28</sup> Article 11 International Covenant on Economic, Social and Cultural Rights.

<sup>29</sup> Article 13 International Covenant on Economic, Social and Cultural Rights.

<sup>30</sup> Article 7 International Covenant on Economic, Social and Cultural Rights.

dimensions, two each for health and education and six for living standards.<sup>31</sup> Each indicator maps directly or indirectly on to human rights.

18. Social determinants directly impact everyday lives. Reports and surveys on this is evidence of the interrelationship between different dimensions of poverty and indicators of poverty. The social determinants of health,<sup>32</sup> for example, are defined as the conditions in which people are born, grow, work, live and age and the wider set of forces and systems shaping the conditions of daily life. These influence approaches to the sustainable development goals, reflecting a holistic approach to health, education, reducing violence and so on across the spectrum of rights and freedoms embedded in the SDGs.<sup>33</sup>

19. The Special Rapporteur has learned from the Minister for Health and Minister of Social Affairs, Veterans and Youth Rehabilitation of the efforts being made in Cambodia to guarantee accessible, affordable, quality healthcare for all through various programmes including the Health Equity Fund, National Social Protection Fund and the National Policy on Ageing 2017-2030. The Cambodian Sustainable Development Goals target 3.9<sup>34</sup> seeks to achieve universal health coverage, defined as the number of poor protected by health equity funds amongst the population living under the poverty line, measurable by the percentage of the population covered by social health protection systems. This definition omits the near poor and efforts will have to be intensified to ensure that the same quality of healthcare is available to all.

20. The Government has also stipulated a CSDG target 3.1 on an overall level of health and wellbeing of Cambodian peoples measured by life expectancy at birth and fertility rates through live births by reporting year.<sup>35</sup> The Special Rapporteur has been informed of additional financial support for women during a maternity period though she continues to receive information from women who lose their jobs when pregnant (and consequently miss out on the new enhanced maternity provisions). This is contrary to Article 46 of the Constitution and Article 182 Labour Law.

21. The Health Equity Fund operates to ensure that those who are unable to pay for treatment secure free treatment. This strategy is linked to ID Poor which demonstrates eligibility for free treatment. Case by case decisions can also be made. Whilst there is no doubt that this fund has ensured access to healthcare for many, there remain inevitable issues of corruption including the continuation of differentiations in healthcare for those who can pay (and obtain faster, more comprehensive treatment) and those that cannot. Some commentators have even argued for the abolition of all payments, indicating a tipping point reached in the numbers accessing free healthcare which means determining eligibility is no longer financially viable.

22. Considering the social determinants indicate that a holistic approach is needed to ensure that no one is left behind. Education (SDG4), reduced inequalities (SDG10), clean water and sanitation (SDG6), decent work (SDG8), and zero hunger (SDG2) are especially relevant and indicate the interrelatedness and indivisibility of both the goals and the underpinning human rights. Improved access to clean water, sanitation and adequate nutrition, achieved in part through education for example, will improve health and standards of living as well as reducing some indicators of poverty. Improving completion rates and quality of education, rendering it accessible to all (on merit for higher levels) will open up work opportunities. Improving working conditions enhances health and wellbeing. Whilst perhaps axiomatic, some groups of people remain disadvantaged, not benefitting from (or much) from the improvements secured in health, work, education and so on. These people are already being left behind.

23. Improving physical and mental healthcare, reducing violence in the home and outwith, increasing education opportunities for all, ensuring decent work (and an adequate standard

<sup>31</sup> <https://ophi.org.uk/multidimensional-poverty-index/global-mpi-2018/>.

<sup>32</sup> [http://www.who.int/social\\_determinants](http://www.who.int/social_determinants) Commission chaired by Professor Sir Michael Marmot.

<sup>33</sup> The 2011 World Conference on the Social Determinants of Health adopted the Rio Political Declaration <https://www.who.int/sdhconference/declaration/en/>.

<sup>34</sup> Maps to UNSDG 3.8.

<sup>35</sup> CSDG Goal 3.1.

of living) and reducing poverty will meet UN SDG targets and fulfil human rights obligations. Those left behind are inevitably experiencing detrimental effects on one or more determinants and more than one human right or freedom is engaged.

24. As Cambodia finalises its new National Strategic Development Plan in furtherance of the Rectangular Strategy IV and linked to a range of associated strategies, there is time to identify those in most danger of being left behind and intensify efforts to improve their situation.

### **III. Examples of those in danger of being left behind and discriminated against**

25. The following examples are drawn from existing government, UN and civil society organisation concerns. It is not an exhaustive list, merely representative. In particular, it draws on vulnerable groups identified in previous reports of the Special Rapporteur.

#### **A. Children**

26. In addition to the core human rights treaties, of additional relevance to children, Cambodia has ratified the ILO Convention No. 182 (The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children and the first two optional protocols to the Convention on the Rights of the Child, on involving children in armed conflict and on the sale of children, child prostitution and pornography. Cambodia has yet to ratify the UNESCO Convention against Discrimination in Education.

27. Cambodia has a young population, and the government has invested in a number of measures to support young people including in education (SDG4). Corruption has been reduced especially in the final high school examinations and the quality and accessibility of education has been improved at all levels. Bilingual programmes are available for indigenous children. The Special Rapporteur remains concerned about the situation of children from indigenous and ethnic minority groups, including children of Vietnamese descent, who still suffered disadvantages, including in relation to the availability, accessibility, acceptability and adaptability of education. UNESCO has stated that Cambodia should be encouraged to ensure universal, compulsory and free basic education by taking effective targeted inclusive measures for vulnerable groups, such as persons with disabilities and child labourers, and progressively realize 12 years of free education.<sup>36</sup> More work is also required to ensure children who have been working or exploited are able to return to education.<sup>37</sup>

28. The Committee on the Rights of the Child (CRC) has expressed its concern about reports of continued sexual exploitation of children in the context of travel and tourism, especially in rural areas, the so-called orphanage tourism, in which children in institutions and orphanages were being exposed to sexual exploitation by foreigners, such as tourists and volunteer workers.<sup>38</sup> The CRC urged Cambodia to strengthen its regulatory framework and awareness-raising measures, including in rural areas, and to take all necessary measures to ensure that all cases of child sex tourism and orphanage tourism were investigated and that alleged perpetrators were prosecuted and duly sanctioned.<sup>39</sup> The situation has improved with

<sup>36</sup> UNESCO, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS18.aspx>, p. 6.

<sup>37</sup> APLE Cambodia and ECPAT International, Sexual Exploitation of Children in Cambodia Submission, 9 July 2018 for the Universal Periodic Review of the human rights situation in Cambodia to the Human Rights Council 32nd Session (January-February 2019), UPR third cycle 2017 – 2021.

<sup>38</sup> CRC/C/OPSC/KHM/CO/1, paras. 18–19, see also Joint submission 8, UPR2019 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx>.

<sup>39</sup> CRC/C/OPSC/KHM/CO/1, paras. 18–19. Note that the Ministry of Interior communicated in August 2019, that during the first six months of 2019, one US national was arrested on child prostitution, three Cambodia nationals were arrested for trafficking minors, six Cambodians were arrested for trafficking offences related to child prostitution, thirty-one suspects (including six minors) were arrested on suspicion of sexual relations with minors under fifteen years and fourteen suspects

UNICEF Ministry of Social Affairs, Veterans and Youth Rehabilitation' action plan on safely returning children living in residential care to their families.<sup>40</sup> Although the initial target of thirty percent of children returned by 2019 will not be met, the Special Rapporteur supports the need for great care to ensure children are safely returned to their communities though highlights the advantage that comprehensive network of government social workers could offer this programme.<sup>41</sup>

29. The Human Rights Committee was concerned about the absence of a juvenile justice system and the fact that children were often subject to the same procedures as adults as well as the failure to ensure that minors were detained separately from adults. It recommended that Cambodia take measures to establish a comprehensive juvenile justice system in order to ensure that juveniles were treated in a manner commensurate with their age.<sup>42</sup> This has been in part addressed with the adoption of the Juvenile Justice Law. Both the Ministry of Justice and the Ministry of Social Affairs, Veterans and Youth Rehabilitation are actively involved with UNICEF Cambodia supporting. Nevertheless more intensified efforts are required, including training law enforcement personnel and court officials.<sup>43</sup> Whilst the Special Rapporteur welcomes the December 2018 Juvenile Justice Law Strategic and Operational Plan,<sup>44</sup> child-centred justice is yet to become a reality.

30. Contrary to the provisions in the Labour Law and related Prakas, almost a fifth of children between five and seventeen are economically active.<sup>45</sup> Child labour brings particular challenges for education as UNESCO noted in its submission for UPR3 in 2019.<sup>46</sup> The Special Rapporteur received information on child labour in brick factories. In one report, all of the children interviewed individually said that they work in some capacity at the brick factories where they live with their parents.<sup>47</sup> Another report identifies the detrimental impact of Cambodia's urban construction boom and demand for bricks.<sup>48</sup>

31. Children also work in the informal sector, including in street situations. As the Special Rapporteur noted,<sup>49</sup> many children are left behind quite literally when parents seek work in the city or overseas,<sup>50</sup> often suffering abuse, turning to drug and substance use, or ending up in street situations. The Human Rights Committee has also expressed concern about reports of arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers in "social affairs", youth rehabilitation and drug rehabilitation centres<sup>51</sup> and recommended that the state party should take all measures necessary to put an end to these practices.

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(including three minors and one US national) were arrested on grounds of assault against minors under fifteen years.

<sup>40</sup> Partnership Programme for the Protection of Children, see A/HRC/36/61, para 40; A/HRC/39/73, para 23.

<sup>41</sup> A/HRC/39/73, para 25; see also Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>, para 59.

<sup>42</sup> CCPR/C/KHM/CO/2, 27 April 2015, para. 15.

<sup>43</sup> A/HRC/39/73, paras 26-27.

<sup>44</sup> Available from <https://www.unicef.org/cambodia/reports/juvenile-justice-law-strategic-and-operational-plan-ijlsop>.

<sup>45</sup> United Nations Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>, para. 58.

<sup>46</sup> UNESCO has also stated that the magnitude of child labour in the country needed to be addressed and Cambodia should be encouraged to adopt special and positive measures facilitating their reinsertion into the education system UNESCO submission, available from <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>, para. 18.

<sup>47</sup> Cambodian League for the Promotion and Defense of Human Rights (LICADHO), BUILT ON SLAVERY: Debt Bondage and Child Labour in Cambodia's Brick Factories, [https://www.licadho-cambodia.org/reports/files/221LICADHO\\_Built\\_On\\_Slavery\\_Report\\_ENG.pdf](https://www.licadho-cambodia.org/reports/files/221LICADHO_Built_On_Slavery_Report_ENG.pdf).

<sup>48</sup> Brickell, K. Parsons, L, Natarajan N and Chann S (2018) Blood Bricks: Untold Stories of Modern Slavery and Climate Change from Cambodia (Royal Holloway, University of London).

<sup>49</sup> A/HRC/39/73, para 22.

<sup>50</sup> Olga Creamer, Mia Jordanwood and Setka Sao, Study on the Impact of Migration on Children in the Capital and target Provinces, Cambodia, 2017 UNICEF.

<sup>51</sup> CCPR/C/KHM/CO/2, 27 April 2015, para. 16.

32. Child marriage remains a matter of concern, having a multifaceted and profound impact on children's lives, affecting their health, education, psychological development, social life, relationships and increased risk to future adversities.<sup>52</sup>

33. Sexual violence against children, as well as women, often is not prosecuted;<sup>53</sup> many child victims continue to live with or near the perpetrators. The Special Rapporteur remains concerned that the justice system is not appropriately child-centred with child witnesses retraumatised and not taken seriously. There is a need for more awareness raising and full child sensitivity training of law enforcement and court officials as well as local level (e.g. commune or district) officials to ensure child victims and witnesses are dealt with in a protective, rights-responsive manner. In August 2019, the Ministry of Interior informed the Special Rapporteur that protecting child witnesses was a priority with the Royal Government introducing capacity-building for law enforcement officials and child-friendly court procedures. Healthcare professionals and teachers at the local level should also be trained in dealing with child abuse – these are often the only point of contact for an abused child. The Ministry of Women's Affairs has highlighted the progress being made in establishing policies, laws and mechanisms to respond to gender-based violence.

34. Whilst the relevant targets in SDG16 are excluded from the CSDGs, CSDG 5.2 targets the elimination of all forms of violence against women and girls in public and private spheres, including trafficking and sexual and other types of exploitation. This has two indicators, one on physical sexual violence by a current or former intimate partner, the other with violence by non-partners. In both instances, children are only counted over the age of fifteen, although the government has indicated that there is sexual violence against younger girls. The Government has acknowledged a commitment to strengthening dissemination of the Law on Domestic Violence and Protection of Victims<sup>54</sup> which as noted<sup>55</sup> is often misapplied with mediation and similar being used to settle domestic disputes and women and children all too often returning to live with the alleged perpetrator. The reasons for this failure are many: corruption, discriminatory attitudes towards women and girls, misinterpretation of the law, and lack of resources all combine to perpetuate and entrench a system in which impunity prevails. More must be done to review and implement the law on domestic violence and to ensure all personnel are trained to sensitively handle violence against children.

## B. Persons with Disabilities

35. Samdech Techo Prime Minister has frequently spoken of his support for the rights of persons with disabilities. Certainly the Government has ratified the Convention of the Rights of Persons with Disabilities although its first national report, due January 2015, remains under preparation by the cross ministerial Disability Action Council. Nevertheless, Cambodia adopted a National Disability Strategic Action Plan and the Special Rapporteur has learned of progress made from various ministries particularly the Minister of Education, Youth and Sport, the Minister of Health and the Minister of Social Affairs, Veterans and Youth Rehabilitation.

36. The Convention on the Rights of Persons with Disabilities requires states party to embed a human rights based approach to disability, not a medical model. Accordingly the emphasis is on ensuring that all persons with disabilities are respected as autonomous members of society and a vital component of human diversity. They should not be stigmatised, isolated or segregated. The Special Rapporteur noted in 2017 that many public statements on inclusivity made by government ministers, including the Prime Minister, are

<sup>52</sup> JS5= Joint-Submission by CIVICUS: World Alliance for Citizen Participation, the Cambodian Center for Human Rights (CCHR), the Cambodian Human Rights and Development Association (ADHOC), IFEX, and Solidarity Center, available from <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx> para. 10.

<sup>53</sup> LICADHO, *Getting Away with It: The Treatment of Rape in Cambodia's Justice System*, available <http://www.licadho-cambodia.org/reports/files/210LICADHORReport-GettingAwayWithRape2015English.pdf> at p29.

<sup>54</sup> National Strategic Development Plan 2014-2018 p107.

<sup>55</sup> A/HRC/33/62, paras 24-25.

positive:<sup>56</sup> Cambodia also has relevant laws, strategies and action plans. The current strategic plan includes objectives on reducing poverty, providing equal health services, ensuring full access to justice and preventing discrimination. An interministerial approach has been taken through the coordinating work of the Disability Action Council, which has established offices in all the provinces in order to be more accessible to persons with disabilities. This supports work promoting the rights of persons with disabilities within ASEAN and the Economic and Social Commission for Asia and the Pacific of the United Nations. More work needs to be done to better assess the situation of persons with disabilities and implement supportive, inclusive policies and practices.

37. Many public services remain inaccessible, including some health services. Physical accessibility remains an issue as does access to persons able to communicate with deaf and deafblind persons at the subregional level and in healthcare environments. A consequence of the recent low water levels has been the increase in the number of persons injured by unexploded mines and explosive remnants of war.<sup>57</sup> It is notable that Cambodia has added an eighteenth goal to its sustainable development goals on ending the negative impact of Mine/ERW and promoting victim assistance. Many of those victims are persons who now have disabilities.

38. In education, issues preventing children with disability attending school include social discrimination, lack of transport, lack of assistive devices, physical barriers, teachers' lack of skills in appropriate teaching methodologies and the need for children to help with housework.<sup>58</sup> The Global Partnership for Education study found that 10.1 per cent of Cambodian children had a disability, with cognitive and speech impairments the most common.<sup>59</sup> In Cambodia, children with intellectual disabilities and their families face significant stigma and discrimination, with very few organisations providing services and support. With respect to blind and deafblind children, it is noted that the Ministry of Education Youth and Sports has secured a braille printer but logistical issues remain with translating education books into braille and ensuring blind children are trained in reading braille.<sup>60</sup> There also remains a lack of appropriately trained teachers. Children with intellectual disabilities are frequently not diagnosed and offered appropriate support to enable them to enter and remain in school. This is true also for children with autism spectrum disorders. The Special Rapporteur receives reports of families fearing stigmatisation and unable to find appropriate specialists to identify any disability and advise on appropriate support. Learning needs are rarely identified. Children risk leaving education early.

39. There is a lack of professional support available especially for persons with intellectual and psychosocial disabilities.<sup>61</sup> Persons with mental disabilities and psychosocial disabilities remain stigmatised. Intellectual disabilities in particular are not widely understood in Cambodia and there is a lack of inclusory practices to ensure that all persons with disabilities can participate in decision making at all levels.<sup>62</sup>

40. As the Special Rapporteur found in May 2019, the Social Affairs Transit Centre of Prey Speu now primarily houses persons with disabilities. As this has already been established as a place of detention, given that residents cannot leave of their own free will, this is problematic. Many of the residents appear to have intellectual and psychosocial disabilities. The Special Rapporteur reminds the government that segregation is not appropriate and all persons with disabilities should be fully supported to live independently or with appropriate support in their communities. If people are living in government centres,

<sup>56</sup> A/HRC/36/61, para 43.

<sup>57</sup> <http://www.anroev.org/2019/05/18/the-cambodian-mine-action-and-victim-assistance-authority-cmaa-records-73-increase-in-mine-casualties/>, also reported in the Khmer Times - <https://www.khmertimeskh.com/50605170/cmaa-records-increase-in-accidents-and-casualties>.

<sup>58</sup> Chean Samnang et al, MRTC, Review and Gaps Analysis of Statistics on Persons with Disabilities in Cambodia, March 2009, pp. 39-45.

<sup>59</sup> Adam Huebner, Handicap International's Disability Prevalence Project: Final Report, 2012, p.45.

<sup>60</sup> A/HRC/39/73, para 18.

<sup>61</sup> Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle, available <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>.

<sup>62</sup> Joint UNCT Cambodia Report in the context of Cambodia's third UPR cycle, available <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>, para 72.

conditions must meet international human rights standards. A new centre in Kandal province opened in July 2019 as a centre for persons with mental health conditions. As with Prey Speu, those with independent capacity should be allowed to leave at will.<sup>63</sup> It should be recalled that the Committee on the Rights of Persons with Disabilities has made clear that persons with disabilities cannot be detained on account of their disability. Rather the Convention highlights a ‘shift from the substitute decision-making paradigm to one that is based on supported decision making.’<sup>64</sup> Persons with disabilities must be engaged in any decision-making process affecting them and cannot be forced into treatment against their will.<sup>65</sup> The Special Rapporteur also expresses concern that many persons who may be relocated here will find themselves far from home and the community into which the government wishes to reintegrate them. Isolation and segregation is not acceptable in terms of international human rights. Efforts to reintegrate all persons into their communities and villages is welcomed and efforts to support persons with disabilities should be supported.

41. The Government is reminded of the 2017 Human Rights Council resolution on Mental Health and Human Rights which urges states to fully integrate a human rights perspective into mental health and community services, and to adopt, implement, update, strengthen and monitor existing laws, policies and practices to eliminate *inter alia* social exclusion and segregation.<sup>66</sup> Those with mental health conditions and psychosocial disabilities should be supported to full inclusion and effective participation in society on an equal basis with others. Linking to the CSDGs, 3.5 aims at promoting mental health and wellbeing, defined by the number of adults with depression receiving treatment. Whilst positive, this is narrower than could be suggested by the National Development Plan which noted Goal 1.13 of expanding coverage of primary and complementary mental health and mental-related illness services including addictive substance treatment services. The Special Rapporteur learned in May 2019 of the increase in the number of qualified psychiatrists in Cambodia and she was informed in both November 2018 and May 2019 of the investment and expansion in the number of people trained to support persons with addictions and psychosocial disabilities throughout the country. It is unfortunate that no indicators were chosen on these matters to highlight the government investment and progress being made.

42. Evidence received suggests that many persons with disabilities work in the informal sector; some find themselves in street situations. Many elements of the 2015 recommendations on the National Conference on Persons in Street Situations still require implementation. These include adequate social housing (SDG11; CSDG 11.1;<sup>67</sup> 11.2), social support for persons with psychosocial disabilities including day centre and night shelter, both with free, full and informed consent to access the facilities provided, and legal and social support for entertainment workers who, like children living and working on the street, are especially vulnerable. The Government is encouraged to continue seeking holistic supportive measures to support persons in street situations, especially those with disabilities. Access to financial support, including through the National Social Security Fund, can be limited. Risks of abuse and violence are increased and likelihood of reporting reduced.

### C. Indigenous Peoples

43. Cambodia is home to some 455 indigenous communities, which identify themselves in 24 groups, numbering approximately 179,000 people (1.34 per cent of the population). The communities are often isolated geographically, a fact that poses infrastructure challenges for the Government when providing such essential services as healthcare and education. The Government voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples, and adopted a national policy on the development of indigenous peoples in 2009. Various ministries have specific plans of action and policies regarding indigenous peoples.<sup>68</sup> Indeed, the Special Rapporteur noted the high level of awareness of the Minister and indeed

<sup>63</sup> A/HRC/36/61, 27 July 2017, para. 15.

<sup>64</sup> CRPD/C/GC/1, para 3.

<sup>65</sup> CRPD/C/GC/1, para 7.

<sup>66</sup> A/HRC/36/L.25, para 5.

<sup>67</sup> The National Housing Policy seeks to ensure poor people can live in safety, welfare and dignity

<sup>68</sup> A/HRC/33/62, 5 September 2016, para. 11.

of many government and provincial officials on indigenous peoples.<sup>69</sup> There has been progress in many areas, including in provision of education<sup>70</sup> and healthcare. However, concerns remain re health indicators especially in Rattanakiri and Mondulakiri provinces, where a large number of indigenous peoples live.<sup>71</sup>

44. Land titling continues to be a problem. Progress remains slow with a cumbersome and complicated procedure for securing communal land titles in Cambodia.<sup>72</sup> Whilst the Ministry of Land Management, Construction and Urban Planning is progressing its ambitious plan to resolve all land titling disputes by 2023, there is evidence that indigenous peoples will be left behind.<sup>73</sup> The Special Rapporteur has visited many indigenous groups during her mandate including the Bunong peoples on Stung Treng Province affected by the Lower Sesan II hydroelectric project<sup>74</sup> and the Kui indigenous people in Preah Vihear Province who had some of their farmland and spiritual forest cleared by sugar cane companies.<sup>75</sup> The Human Rights Committee has expressed concern that indigenous peoples were not sufficiently consulted in the decision making process with respect to issues affecting their rights, including management of their communal lands and the allocation of the land for extractive industries and agribusiness.<sup>76</sup> Advance consultation with indigenous peoples can reduce the likelihood of problems, with innovative solutions often emerging from discussions.<sup>77</sup>

45. Cultural rights, including language traditions should be reflected in education (SDG 4.7) and local culture and products (with consent) promoted (SDG 8.9; 12.b). As has been highlighted with children, indigenous people too are not a tourist attraction, it is up to the people themselves to determine the levels of interaction with which they are comfortable and to contribute to sustainable development, including tourism as they choose.

46. Specific intensified efforts are required to ensure that indigenous peoples are identified, and their specific needs considered through appropriate consultation, when planning sustainable development activities and approaches. All too often, the small numbers of persons involved in some areas means that they are in a very real danger of being left behind.

#### **D. Persons of Vietnamese Descent**

47. The ethnic Vietnamese in Cambodia are a heterogeneous minority. Many are recent migrants and people engaging in cross-border trade. Some are in Cambodia documented, others undocumented, and they have many different residency statuses. The Special Rapporteur has met with ethnic Vietnamese and Khmer Krom communities and, as per her annual report, also met with many Vietnamese boat people on Tonle Sap in 2018-9.<sup>78</sup> Many of these people were born in Cambodia, and indeed living there for many generations. She found that many individuals appeared to face challenges with birth registration and identity cards, the lack of which inevitably had an impact on many other rights, particularly to basic social services.<sup>79</sup> Cambodian law allows children of non-citizens living “legally” in the country to be issued birth certificate. However, local officials seem to conflate issuing birth certificates with conferring citizenship, and refuse non-citizens of birth registration. The absence of birth registration for children in these communities creates barriers for obtaining other documentation relevant to exercising future rights and entitlements such as admission

<sup>69</sup> A/HRC/33/62, para 11.

<sup>70</sup> New National Action Plan for Multilingual Education.

<sup>71</sup> JS1= Cambodia Indigenous Peoples Alliance (CIPA); Cambodia Indigenous Youth Association (CIYA); Asia Indigenous Peoples Pact (AIPP), <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx> para 27 and 37.

<sup>72</sup> A/HRC/36/61, 27 July 2017, para 26.

<sup>73</sup> KHM 6/2017.

<sup>74</sup> A/HRC/39/73, para 32; KHM 2/2017; for Bunong people in Mondulakiri, see KHM1/2015.

<sup>75</sup> A/HRC/39/73, para. 32; KHM 6/2018.

<sup>76</sup> CCPR/C/KHM/CO/2, para. 28.

<sup>77</sup> A/HRC/27/52, para. 19.

<sup>78</sup> A/HRC/42/60.

<sup>79</sup> A/HRC/36/61, para 34.

to school and access to Cambodian citizenship.<sup>80</sup> Following the outcome of 2015-2016 Immigrant Census, which revealed that a number of children whose parents are Vietnamese did not go to school, the Ministry of Interior and the Ministry of Education, Youth and Sport coordinated efforts to ensure that such children can attend school like other children. Challenges however remain.

48. In 2016, MIRO found that only 5 per cent of 414 ethnic Vietnamese surveyed in Takeo, Kampong Chhnang and Pursat provinces had birth certificates.<sup>81</sup>

49. The Government published its National Strategic Plan of Identification 2017-2026 in June 2016. This seeks to ensure that everyone is recognized, a goal that is consistent with international human rights law and should ensure that no one is left behind. The Plan should help ensure that all children in Cambodia are able to have their births registered and that all those who have historically been based in the country can once again get appropriate identity cards. Concern has been expressed over the plight of Khmer Krom and ethnic Vietnamese living in Cambodia for generations by many independent experts including the Human Rights Committee,<sup>82</sup> the Committee on the Elimination of Racial Discrimination which requested that Cambodia explain how it was ensuring ‘equal protection and access to basic human rights (education, standard of living, health care) to all persons under the jurisdiction of the State, including minority groups such as the Khmer Krom and ethnic Vietnamese,<sup>83</sup> and the Committee on the Elimination of all Forms of Discrimination Against Women which noted that “women of Vietnamese origin undergo considerable difficulties in the registration of births and the acquisition of Cambodian citizenship, which places them at risk of statelessness’ and recommended that Cambodia ‘intensify efforts to facilitate the birth registration of children born to Vietnamese mothers and their acquisition of citizenship’.<sup>84</sup> CSDG 16.9 aims at securing at least 90% birth registration by 2024, though this figure could be achieved whilst leaving those of Vietnamese heritage behind.

50. Cambodian officials routinely treat ethnic Vietnamese as “foreign nationals” or “immigrants”, despite their strong claims for citizenship. Often their documentation (including proof of citizenship) was lost during their displacement, confiscated by the authorities, or is viewed with suspicion.<sup>85</sup> The Human Rights Committee was concerned about reports of discriminatory and violent acts perpetrated against ethnic Vietnamese persons and recommended that Cambodia strengthen its efforts to combat racist attacks against such persons and consider developing a national action plan against racial discrimination.<sup>86</sup> The Ministry of Interior is working towards regularising and standardising all documentation. In August 2019, it notified the Special Rapporteur that it has recently achieved considerable success in confiscating irregular administrative Cambodian documents owned by foreigners and receiving applications for the recognition of immigrant aliens and permanent resident certificates. After the confiscation of irregular administrative documents owned by foreigners, the Ministry of Interior has instructed the sub-national level administrations and all police units involved in issuing administrative letters and birth certificates for Cambodian spouses, children and immigrant aliens whose documents had been confiscated, to expand the administrative services in response to their needs as stated in Circular 015 of 1 July 2019 issued by the Ministry of Interior.

51. It is clear that more efforts are made to ensure that all those entitled to Cambodian citizenship, including those who have made Cambodia their home for generations and

<sup>80</sup> Hyde, M. (2016), ‘Report on Access to Birth Registration for Marginalised or Vulnerable Populations: A Case Study on Ethnic Vietnamese Minority Communities in Cambodia’, report prepared for the Minority Rights Organization (MIRO), August 2016.

<sup>81</sup> Minority Rights Organization (MIRO) (2016), ‘Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat’, Phnom Penh: MIRO.

<sup>82</sup> CCPR/C/KHM/CO/2, para. 27.

<sup>83</sup> CERD/C/KHM/13, paras. 44, 51.

<sup>84</sup> CEDAW/C/KHM/CO/4-5, paras. 30-31.

<sup>85</sup> Nguyen, L. and C. Sperfeldt (2012), *Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia under Domestic and International Laws Governing Nationality and Statelessness*. Phnom Penh: Jesuit Refugee Service. Available at [http://jrscambodia.org/boat\\_without\\_anchors.html](http://jrscambodia.org/boat_without_anchors.html).

<sup>86</sup> CCPR/C/KHM/CO/2, para. 8.

previously had relevant documentation, can regain their status and rights. Many of these are living in poverty and very marginalised. There is also work to be done, including in education and awareness raising, to eliminate pejorative terminology for Vietnamese living in Cambodia and counter the discrimination these people face in everyday activities.

## E. Older persons

52. The government recognises that the inevitable changes of the demographic situations, especially a rising proportion of the older population, affects not just the older persons but all parts of society and all sectors of the economy. Its 2017 National Ageing Policy aims to further improve the well-being of older persons.<sup>87</sup> To this end, it aims to eliminate age-based discrimination so that older persons are guaranteed the same rights as younger persons and treated on par with them in all respects; to ensure gender equality by focussing more on women who form the majority of the older population and are more vulnerable than their male contemporaries; and to promote intergenerational relations so as to maintain the strength of the joint family system, integral to Cambodian culture.<sup>88</sup> This applies to all those over the age of sixty years.<sup>89</sup> Two goals are stipulated: To ensure that older persons are enabled to fully participate with freedom and dignity for as long as they wish to in family, community, economic, social, religious and political activities; and to ensure that younger persons are better equipped with knowledge that enables them to lead a more productive, healthy, active and dignified life in old age. Despite this commitment, older persons are only mentioned in CSDG indicator 10.4.1 on civil servant retirees.

53. Whilst the National Ageing Policy evidences the government is aware of the matter, the Committee on Elimination of Discrimination Against Women has expressed concern at the lack of data disaggregated by age and sex that could be used to assess the extent of discrimination against older women, especially in access to health care and social security.<sup>90</sup>

54. The Government notes the feminisation of ageing and acknowledges that women will be more affected than men and that women will have greater vulnerabilities.<sup>91</sup> In Cambodia many of these women have survived all male relatives during the era of Democratic Kampuchea. Financial security is a major risk to their wellbeing with few younger relatives to provide the traditional support. This is exacerbated by the internal and external migration of young Cambodians, leaving elderly relatives behind to seek employment and education opportunities in urban areas.

55. Reflecting international human rights documentation, Cambodia has also committed to preparing the younger population for ageing.<sup>92</sup>

## F. LGBTIQ persons

56. The Cambodian government has reiterated its willingness to engage with LGBTIQ issues and have presented Cambodia as a country safe for and open to all persons. In 2017 a committee was created to observe and receive complaints on discriminatory content in the media. Pride celebrations have been organized in Cambodia since 2009, with increasing visibility and participation. CCHR's 2017 survey encouragingly highlights that rainbow families report high levels of acceptance from their communities.<sup>93</sup> In 2017, the Ministry of Education, Youth and Sport, in partnership with NGOs, developed a proposed new "Life

<sup>87</sup> National Ageing Policy 2017-2030, available [https://cambodia.unfpa.org/sites/default/files/pub-pdf/NAP%202017-2030\\_%20Final\\_English-Printed.pdf](https://cambodia.unfpa.org/sites/default/files/pub-pdf/NAP%202017-2030_%20Final_English-Printed.pdf).

<sup>88</sup> National Ageing Policy 2017-2030, pv.

<sup>89</sup> National Ageing Policy 2017-2030, p1.

<sup>90</sup> CEDAW/C/KHM/CO/4-5, 29 October 2013, para. 30.

<sup>91</sup> National Ageing Policy 2017-2030 p7.

<sup>92</sup> National Ageing Policy 2017-2030, p16.

<sup>93</sup> Cambodia Centre for Human Rights, Cambodia's Rainbow Families: Marriage, Adoption and Gender Recognition Rights in the Kingdom, 2017, available <https://cchrcambodia.org/rainbowfamilies/report> with a May 2019 update online.

Skills” curriculum that offers inclusive instruction on LGBTIQ issues, sexual education and gender-based violence. It is scheduled to be part of the curriculum nationwide by 2023.

57. In Cambodia, there is no legislation which supports or proscribes transgender people’s right to be legally recognized according to their self-defined gender. The Cambodian Constitution determines that marriage is between a “husband” and a “wife”, which effectively excludes the possibility of same-sex marriage. Due to rainbow couples’ inability to get legally married, they are also denied numerous rights and privileges arising from marriage, including in relation to joint ownership of property, custody of children, taxation, inheritance and protection from domestic abuse.

58. However, research has indicated that many LGBTIQ persons are in fact discriminated against. The Human Rights Committee has expressed concern about reports of discrimination against lesbian, gay, bisexual and transgender persons, in particular in employment and healthcare settings. It noted with concern the lack of legislation expressly prohibiting discrimination on the grounds of sexual orientation or gender identity.<sup>94</sup>

59. A 2016 report based on empirical research suggests that many transgender women are subject to high levels of discrimination including verbal, physical abuse and sexual harassment in public places.<sup>95</sup> The Ministry of Women’s Affairs notes that this was a small-scale survey of 135 persons. In 2014, The Ministry of Women’s Affairs’ five-year strategic plan noted that bisexual women and transpersons are among the most vulnerable groups in society, facing a higher risk of discrimination, stigma and gender-based violence. Almost a third of those interviewed indicated facing discrimination in work.<sup>96</sup> Violence is also an issue. In a 2016 survey, 92% of transwomen surveyed experienced verbal abuse, 43% physical violence, 31% sexual assault, and 25% rape. In addition 38.7% of transgender women surveyed by CCHR had been arrested by the police at least once, of which 91.67% believed the police arrested them because of their gender identities, and 33.58% reported having been wrongly accused of a crime.<sup>97</sup>

60. LGBTIQ people in Cambodia often work in certain marginalized sectors, which prevents them from escaping the cycle of poverty. This is exacerbated by widespread family rejection and exclusion in schools and the wider community. CCHR’s study and other research also indicated these narrow career sector choices might also partially result from internalized self-limitation developed by transgender women within the wider context of social discrimination.

61. LGBTIQ persons in Cambodia are currently marginalised and positive action is needed to ensure that they are not left further behind.

## G. Women

62. The Government has initiated a number of strategies aimed at improving the rights of women, ending violence against women and advancing the cause of equality. These reflect many of the UN SDGs and indeed the CSDGs. Gender stereotyping, particularly within the family, but also in schools, communities, workplaces and the media, remained common in Cambodia; women remain disadvantaged.<sup>98</sup>

<sup>94</sup> CCPR/C/KHM/CO/2, para. 9.

<sup>95</sup> Cambodia Centre for Human Rights, *Discrimination Against Transgender Women in Cambodia’s Urban Areas*  
[https://cchrcambodia.org/admin/media/report/report/english/2016\\_09\\_21\\_SOGI\\_Report\\_Eng.pdf](https://cchrcambodia.org/admin/media/report/report/english/2016_09_21_SOGI_Report_Eng.pdf).

<sup>96</sup> Cambodia Centre for Human Rights, *Discrimination Against Transgender Women in Cambodia’s Urban Areas*  
[https://cchrcambodia.org/admin/media/report/report/english/2016\\_09\\_21\\_SOGI\\_Report\\_Eng.pdf](https://cchrcambodia.org/admin/media/report/report/english/2016_09_21_SOGI_Report_Eng.pdf).

<sup>97</sup> Cambodia Centre for Human Rights, *Discrimination Against Transgender Women in Cambodia’s Urban Areas*  
[https://cchrcambodia.org/admin/media/report/report/english/2016\\_09\\_21\\_SOGI\\_Report\\_Eng.pdf](https://cchrcambodia.org/admin/media/report/report/english/2016_09_21_SOGI_Report_Eng.pdf).

<sup>98</sup> See Joint Submission 16, available.

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspxv>.

63. A number of government initiatives seek to support women including maternity pay<sup>99</sup> which is now being rolled out. However, reports received suggest that pregnant workers experience discrimination and arbitrary dismissal.<sup>100</sup>

64. Violence against women has been raised in previous reports.<sup>101</sup> A third National Action Plan to Prevent Violence Against Women 2019-2023 currently in preparation will continue addressing gaps and challenges.<sup>102</sup> Given the emphasis on a sustainable violence prevention agenda in the SDGs and CSDGs,<sup>103</sup> further commitments are expected. Some sectors of women remain especially vulnerable to abuse: girls; elderly persons; LGBTIQ persons; women with disabilities; women in street situations; and women in specific areas of work, including sex-workers.

65. Women remain unequal in many areas of work.<sup>104</sup> Amongst the measures proposed by workers, trade unions and civil society organisations to improve labour conditions are: childcare facilities; one-stop service centre for victims of domestic violence,<sup>105</sup> a telephone reporting service and rehabilitation facilities centre for perpetrators of violence; addressing transport of garment sector workers given the prevalence of road traffic accidents; a minimum wage for domestic workers and those in the tourism sector; social protection for entertainment sector workers, street vendors and informal sector workers; and better protection of migrant workers.<sup>106</sup> Registration of all workers with the National Social Security Fund would be one way to support women, particularly those in the informal and entertainment sectors. Prevention of harassment in the workplace must also be addressed. It is noted that Cambodia voted in favour of Convention no 190 concerning the elimination of violence and harassment in the world of work, at the ILO's centennial conference in June 2019. It is recommended that this is followed by ratification then adoption of an implementation plan. More awareness-raising of the rights and dignity of women is needed.<sup>107</sup>

66. Migrant workers remain of concern. Women often leave their families to go abroad either as documented or undocumented workers. For those moving overseas arguably more should be done to ensure appropriate data monitoring including establishing data management systems, documenting the migrant workers and their workplaces and residences, establishing safe shelters for those with problems. The Special Rapporteur visited Sisophon and Poipet in Banteay Mancheay province in 2017 to better understand the impact of migration, especially on the children left behind. She has also received information from migrant workers and those researching on their experiences. Protection of domestic workers inside and outside Cambodia could be strengthened. The Royal Government has strengthened cooperation with the Royal Government of Thailand to address a number of issues common to Lao PDR, Myanmar and Cambodia as sending countries and Thailand as a receiving country. Cambodia has developed a labour centre for workers returned from Thailand (the Special Rapporteur learned of the early plans in 2017) and is developing a migrant worker monitoring database.<sup>108</sup>

<sup>99</sup> A/HRC/39/73, para 54.

<sup>100</sup> Joint submission 15, available.

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx> at 4.39.

<sup>101</sup> A/HRC/33/62, paras 23-25, A/HRC/36/61, para 35, A/HRC/39/73, para 49.

<sup>102</sup> Second Action Plan 2014-2018 available <https://cambodia.unfpa.org/en/publications/national-action-plan-prevent-violence-against-women-2014-2018>.

<sup>103</sup> SDG targets 5.2; 5.3; 16.1; 16.2; CSDGs only address 5.2 and 5.3.

<sup>104</sup> Petition Requesting Resolution of 11 Priority Problems to Protect Workers' Fundamental Rights and the Labour Market, Labour Day May 2019.

<sup>105</sup> The Ministry of Women's Affairs is working with other departments to trial a one-stop service centre in hospitals in Steung Treng and Kampong Cham.

<sup>106</sup> Petition Requesting Resolution of 11 Priority Problems to Protect Workers' Fundamental Rights and the Labour Market, Labour Day May 2019.

<sup>107</sup> A/HRC/33/62, para 27.

<sup>108</sup> General Department of Immigration, General Commissariat of National Police, Ministry of Labour and Vocational Training, Ministry of Foreign Affairs and International Cooperation, and the National Committee for Counter Trafficking.

67. Land rights also have a marked gender dimension, with women especially vulnerable when land disputes arise. Land rights and security for small farmers is a particular issue.

68. In the CSDG Framework, the Royal Government notes that Millennium Development Goal 3(b) on empowering women in decision-making is ‘unfinished business’.<sup>109</sup> The Special Rapporteur notes that the Government has localised SDG5.5 with three indicators monitoring the proportion of seats held by women in legislative institutions (5.5.1), proportion of female civil servants holding management positions (5.5.2) and the proportion of women in commune/sangkat council positions (5.5.3). With respect to the latter, the Special Rapporteur recalls that this is entirely within the power of the governing party who claimed virtually all the seats then held by the former CNRP in November 2017 in line with changes to laws fast-tracked whilst the Supreme Court was seized of the case against that party. Whilst there was a small increase in the number of women overall, the numbers are far from equal. The Special Rapporteur notes that she has been introduced to new female under secretaries of state and secretaries of state in recent missions, a modest increase in female senior civil servant appointments.

69. The United Nations Country Team expressed concern that the Law on the Prevention of Domestic Violence and the Protection of Victims had resulted in a limited number of protection orders for victims and a lack of prosecutions. In 2019 additional legal support for women and girls subjected to violence was introduced. A lack of gender sensitivity among law enforcement and judicial personnel when dealing with victims of sexual assaults and crimes had resulted in a culture of silence and very few cases reached the courts.<sup>110</sup>

70. The Human Rights Committee has expressed concern at discriminatory marriage laws and directives, recommending that Cambodia repeal provisions that discriminated on the basis of sex, age and income regarding marriage.<sup>111</sup>

## H. Cambodian laws, policies and strategies

71. Cambodia currently has no specific law on non-discrimination or promoting equality. This does not mean that non-discrimination and equality laws are absent. Indeed the concept of non-discrimination is embedded in the Cambodian Constitution. Article 31 provides that ‘Khmer citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status’. Other constitutional provisions emphasise equality of men and women<sup>112</sup> and prohibit discrimination against women.<sup>113</sup> As outlined above, many policies and strategies focus on protecting identified marginalised, vulnerable or disadvantaged groups in society.

72. In his foreword to the CSDG framework (2016-2030), Samdech Techo Prime Minister noted that the CSDGs are ‘fully embedded in the Government’s long term agenda to deliver a prosperous, socially cohesive, educationally advanced and culturally vibrant Cambodia, without poverty, one where all Cambodians live in harmony’.<sup>114</sup>

73. There is work to be done but with political will and full resources directed towards the SDGs including through the CSDGs, Rectangular Strategy and National Social Development Plan, poverty can be combatted and steps taken to limit the likelihood of people being left behind in Cambodia.

<sup>109</sup> Cambodian Sustainable Development Goals Framework (2016-2030) p15.

<sup>110</sup> United Nations Country Team submission, Available <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHUNContributionsS32.aspx>, para. 61.

<sup>111</sup> CCPR/C/KHM/CO/2, para. 23.

<sup>112</sup> Articles 34, 36 and 43.

<sup>113</sup> Article 45.

<sup>114</sup> CSDG Framework (2016-2030), pii.

## **IV. Recommendations**

74. The following recommendations reflect recommendations made previously by Special Procedures, states during Universal Periodic Review, civil society organisations, and UN treaty bodies.

(a) The Government should consider enacting a general non-discrimination and equality to law applicable to both government and private entities to advance the principles of non-discrimination and equality at all levels of Cambodian society.

(b) Continue the work of the Ministry of Education, Youth and Sport to review and revise the school curriculum to render education more inclusive, encourage understanding and raise awareness of the inter-relationship of development, the environment, human rights and peace (People, Planet, Prosperity, Peace in Agenda 2030), equality, drug dependency, gender-based violence and the history and culture of Cambodia. This will contribute to a change in culture furthering the realisation of a just, inclusive, stable society.

(c) To deepen understanding of how best to bring marginalised groups from behind, the Government should accept the requests to visit from the UN Special Rapporteur on the Rights of Persons with Disabilities and the UN Special Rapporteur on Contemporary forms of Slavery, including its causes and consequences slavery in respect of child labour and consider extending invitations to other relevant mandate holders.

(d) As committed to in the CSDG Framework (2016-2030) p47, complete a goal by goal review of the quality of indicators and data, prioritising those likely to be left behind. The discussions in July 2019 around the Voluntary National Review to the High Level Political Forum may offer insights.

(e) Accelerate efforts to submit its initial report (due 2015) to the UN Committee on the Rights of Persons with Disabilities and engage in constructive dialogue with the Committee to strengthen the rights of persons with disabilities in the country.

(f) Adopt a human rights based approach towards persons with disabilities, especially those with psychosocial disabilities and mental health conditions.

(g) Consider adopting temporary special measures aimed at promoting the rights of marginalised groups including women.

(h) Adopt legal protections against gender-based violence at work including through the inclusion of a definition for sexual harassment and further protective mechanisms against sexual harassment and discrimination. Review and revise the Law on Domestic Violence and Protection of Victims at the earliest opportunity and accelerate training and awareness raising activities to ensure women and children are supported when reporting violence and that perpetrators can be brought to justice.

(i) Consider the possibility of developing a network of trained Cambodian social workers to identify and work with those most likely to be left behind.

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