



END OF MISSION STATEMENT

Statement by the United Nations Special Rapporteur
on the situation of human rights in Cambodia
Professor Rhona Smith
Phnom Penh, 31 March 2016

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It is an honour and a pleasure for me to have undertaken my second mission to the Kingdom of Cambodia following my appointment by the United Nations Human Rights Council in March 2015 as the Special Rapporteur on the situation of human rights in Cambodia. At the outset, I wish to thank the Royal Government of Cambodia for their invitation and cooperation extended before and during the mission.

I have had the privilege of meeting with senior officials, who were generous with their time and knowledge, including: His Excellency Samdech Vibol Sena Pheakdey Say Chhum, President of the Senate; His Excellency Nguon Nhel, Acting President of the National Assembly; His Excellency Samdech Krolahom Sar Kheng, Deputy Prime Minister and Minister of Interior; His Excellency Eng Chhai Eang, Chair of the National Assembly's First Commission on human rights, complaints and investigations; His Excellency Senator Kong Korm, Chair of the First Commission on human rights, complaints, and investigations of the Senate; His Excellency Im Chhun Lim, Senior Minister and Minister Land Management, Urban Planning and Construction; His Excellency Ang Vong Vathana, Minister of Justice; His Excellency Chea Sophara, Minister of Rural Development; Her Excellency Phoeung Sackona, Minister of Culture and Fine Arts; His Excellency Say Sam Al, Minister of Environment; His Excellency Hang Chuon Naron, Minister of Education, Youth and Sports; Her Excellency Hou Samith, Secretary of State, Ministry of Women's Affairs; His Excellency Sek Bunhok, President of the National Election Committee; and His Excellency Mak Sambath, Chair of the Cambodian Human Rights Committee.

I also met with members of the United Nations system in Cambodia, the diplomatic community and representatives of a broad range of civil society actors and other stakeholders. In addition, I undertook a field visit to Stung Treng and Preah Vihear provinces, where I met with provincial authorities, local civil society representatives, members of indigenous communities and other local people, and private sector actors.

During meetings with ministries and other stakeholders, I have been made aware of efforts towards improving the human rights situation in the country. In particular, I have learned more of the efforts being made to strengthen the functioning of the judiciary, preserve both indigenous and Khmer culture, protect national parks and address land issues. I note the registration of the asylum claims of Montagnards from Viet Nam, which is a positive step towards determination and recognition of status. I also welcome the achievement of gender parity in school enrolment and primary level completion rates. Many ministries reported being engaged in a reform agenda, though many of these processes are not yet complete. I sense a growing awareness of the need to address human rights challenges. This contrasts with the deteriorating political situation, which I refer to later in my statement.

As you are aware, in my role as Special Rapporteur, I am independent from any government or organisation and I serve in my individual capacity. My mandate entails a triple role: to advise, to monitor and to report on the human rights situation in Cambodia. I believe that all three functions are equally important and inter-related.

The key objectives of this mission were two-fold: to raise issues and gather facts for my report to the United Nations Human Rights Council in September, aided by information shared by the Royal Government of Cambodia and a wide range of stakeholders; and to examine the theme of equality and non-discrimination, with a focus on women and indigenous peoples. This mission has deepened my understanding of the situation of human rights in Cambodia and the plight of vulnerable peoples and marginalised groups in society.

Discrimination on any ground is a legitimate concern when promoting human rights in an equitable, fair society. It can be used to limit the enjoyment of human rights by individuals and groups within society. International law is clear that rights and freedoms shall be enjoyed without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation, disability or other status. The Royal Government of Cambodia has voluntarily agreed to be bound by many international treaties which set out these standards. I have chosen to explore the specific implications of discrimination for Cambodia, and plan to continue to focus on the vulnerabilities of specific groups in my future missions.

1) Women's rights

Of great concern to me is the prevalence of violence against women, which continues to present itself as a pervasive human rights violation in Cambodia requiring a multi-sectoral response. A revision of the current Law on Prevention of Domestic Violence and Victims' Protection is important to ensure that the response to domestic violence in Cambodia conforms to international standards. Women who have suffered sexual and gender-based violence encounter barriers when perpetrators should be brought swiftly to justice. As a result of the general lack of gender sensitivity of law enforcement and judiciary personnel for dealing with victims of sexual assaults and crimes, a culture of silence prevails and only a few cases reach the courts. Strengthening judicial mechanisms which protect victims' rights and ensure the fair prosecution of alleged perpetrators as well as developing gender-sensitivity training amongst law enforcement officers and the judiciary, are crucial steps to address these cases. In too many instances, cases of violence against women, including rape and domestic violence, are "resolved" through informal justice systems at the local level.

During my mission, I took note of an increasingly alarming trend in traditional and social media where violence against women is reported upon with no respect for human dignity nor the rights of the victim. Secondary victimization through the failure to protect identity of victims, including minors, continues to occur on a daily basis through such medium. The failure to conform to the most basic ethical standards when reporting on gender-based violence, and the use of exploitive and degrading imagery perpetuates discriminatory stereotypes and contributes to the desensitization and normalization of violence against women. I ask members of the press when covering such cases to consider carefully the rights of the victims.

During my visit, I took the opportunity of meeting with some women who work in the garment industry. While they benefit from significant protective regimes and collective bargaining opportunities in comparison with other fields of work, I was nevertheless dismayed by their difficult living and working conditions. The situation is far worse for other workers, in particular

domestic workers who do not have legal protection and may find themselves in abusive workplaces and/or forced labour situations. Further efforts are needed to provide comprehensive protection to all workers in law and in practice.

Female migrant workers are vulnerable to becoming victims of human trafficking as evidenced by the increased number of reports on cases of human trafficking and labour exploitation. I note with satisfaction initiatives taken by the Government to address this issue, in particular the establishment of a dedicated Committee within the Ministry of Interior to address human trafficking. However, I remain concerned that migrant women are not fully protected in law.

In addition, it became very clear from many meetings that women are not equally represented in political spheres and thus have less influence in decision making at senior levels. In accordance with the treaty obligations Cambodia has voluntarily accepted, women and men should enjoy equal participation. As Cambodia prepares for the commune and sangkat elections in 2017 and the national elections in 2018, there is much more work to be done in removing barriers for women to stand for election and have a fair chance of being elected. I will be taking the issue of electoral lists up with the main political parties.

2) The rights of indigenous peoples

The attempts being made to protect and preserve the traditional cultures of indigenous peoples are to be encouraged. I learned of projects to capture indigenous oral languages and traditional cultural practices when I met with the Minister of Culture and Fine Arts and of the bilingual education programme from the Minister of Education, Youth and Sports.

Several ministries highlighted the challenge of protecting indigenous peoples' rights, in accordance with international standards, whilst continuing to develop the country. The Minister of Rural Development is committed to a holistic approach to indigenous peoples, the relocation of indigenous and non-indigenous communities affected by major development projects. The Minister of Land Management, Urban Planning and Construction shared the Ministry's plan to approve fifty community land titles by 2018, a considerable acceleration of the current process.

This mission I undertook a field visit to Stung Treng and Preah Vihear provinces visiting various communities affected by actual or planned relocations as well as meeting with provincial governors and relevant company representatives. It is clear that, despite the efforts of various ministries, there are still many unresolved land disputes. Like the Minister of Rural Development, the Governor of Stung Treng province seemed acutely aware of the challenges in respecting the rights of indigenous peoples as guaranteed under international and Cambodian law whilst recognising the sovereign right of Cambodia to develop.

Reconciling the rights of indigenous peoples to their traditional ways of life with improved education, health and other infrastructure raises the challenge of assimilation vis-a-vis protection. I consider it a sign of progress that the Government officials with whom I met recognised that the lack of adequate safeguards in the past have led to the problems seen today and they are halting problematic policies, such as the granting of Economic Land Concessions. Nevertheless I urge the establishment of a human rights compliant procedure to address such issues in the future. Such a procedure should ensure that genuine, thorough consultations are held with communities affected. Extra efforts and extended time should be allocated in the consultation processes with indigenous peoples to ensure full engagement of those affected, respect for cultures and traditions, and free, prior and informed consent.

When there is no alternative to resettlement, residents must be given sufficient notice and adequate compensation and/or appropriate alternative housing as well as support during the transitional period. Clear and transparent resettlement plans should be agreed prior to the displacement of communities. In the case of the relocation of indigenous communities, the relocation plan should also consider preservation of sacred forests, burial sites and usufructory practices. Interestingly, having met with some company representatives, they speak of their frustration at being enmeshed in land disputes despite having complied with their legal obligations. It is time for Cambodia to adopt a preventive approach to the management of land and grievances relating thereto.

Given the many long-standing land disputes and the proliferation of new ones, I would welcome efforts to enhance the complaint mechanisms so that they may become truly effective.

3) Human rights education and the right to education

For me, addressing many of these human rights issues involves wider communication and strengthening of education in the widest sense. The increased use of the language of human rights demonstrates a growing awareness of human rights in Cambodia. I am aware of the advances made in equality of education and literacy, especially amongst younger children, and the improvements in access to health for women and girl children. The UN Sustainable Development Goals will ensure a focus on these issues for the next few years.

The challenge now is to match the advances being made on the management of education with reformed contents. There is a need to embed human rights in school curricula to contribute more effectively to awareness and acceptance of human rights accepted by Cambodia. I have accepted the offer of the Minister of Education, Youth and Sports to assist in reviewing the school curriculum to ensure inclusion of elements of human rights education.

4) General situation

I have indicated earlier my concern that Cambodia is close to a dangerous tipping point. Elected leaders have responsibility to act in the interest of those whom they represent. With power comes responsibility to respect for dignity and all human rights not least the right of privacy. All laws must be applied equally and fairly to all political parties and their members to ensure protection of the democratic space in the run up to elections. The political situation which includes renewed threats, judicial proceedings and even physical beatings of members of the opposition, is worrying.

Freedom of expression, association and peaceful assembly

Care must be taken to ensure any restriction on freedom of expression, assembly and association is in accordance with the law and, of course, international human rights standards. Legislative developments including the Law on the Election of Members of the National Assembly, the Law on Associations and NGOs, the Telecommunications Law, and the draft Trade Union Law (which I understand will be passed by the National Assembly early next month) are causing concern. Many stakeholders highlighted a claimed politicisation in the implementation of these and other laws of the Kingdom of Cambodia. I hope that as with the Law on Peaceful Demonstrations, the Government will develop an implementation guide on LANGO clarifying application of the law in line with international human rights treaties, which will be widely disseminated, especially to those involved in law enforcement and administration of justice. Problems arise when laws are not applied consistently to all people. This leads to unnecessary tensions and complaints. There is, for example, a need for all law enforcement officials and provincial authorities to be made

aware of the Ministry of Interior's guidelines on the implementation of the Law on Peaceful Demonstration, not least section 3-2 which clearly precludes a need for prior authorization for educational activities and meetings to discuss and find solutions for any issue. That direction is not being consistently applied, with educational activities generally, and community meetings on resolution of land issues in particular, all too often being restricted. Curbing arbitrary actions by law enforcement authorities requires a proper training programme for them on the laws that they are to enforce

I experienced myself what NGOs are facing when an alleged commune police officer (out of uniform) tried to stop my meeting with indigenous Kui groups in Preah Vihear Province. The implementation guidelines for the Law on Peaceful Demonstration makes clear that such meetings do not require notification or approval.

The legislative process

On the subject of legislation, I have again raised with members of Parliament the desirability of publishing and widely disseminating drafts of laws in order to facilitate meaningful consultation on the text prior to adoption. Engagement in meaningful discussions during the process of reviewing draft legislation can alleviate concerns and result in positive changes to potentially problematic laws. The draft Trade Union Law initially underwent extensive consultation processes and the Access to Information Law is being considered by an inclusive process with inputs from a wide range of actors. The Acting President of the National Assembly assured me that all drafts are uploaded onto the Assembly website upon receipt from the Council of Ministers, which is an important and welcome first step. In every case, the final law must then be fairly applied to all. It is essential for rules to be put into place to ensure transparency in law-making.

The judiciary

I am aware of the work that needs to be done in strengthening the independence of the judiciary and ensuring fair judicial processes for all and adequate access to remedies. The Minister of Justice is also aware and remains engaged in a process of reform. There have been some welcome developments since my last visit, not least the raising of judicial salaries in order to ensure an adequate standard of living for judges, the efforts of the Supreme Council of Magistracy in disseminating the 2007 judicial code of ethics, the expansion of databases for better storage and use of information on court cases, and improved communication among judicial actors enabling faster action and more consistent decisions on specific categories of cases. I look forward to seeing further positive changes in the months ahead.

There is more to do to show the public that the Ministry of Justice is playing a purely administrative support role vis-a-vis the courts. Work must continue to strengthen both the actual and perceived independence of the judiciary from the other branches of government. Making judicial decisions and final judgments accessible to the public would allow for a more informed debate, as well as considerably enhance the training of judicial officials. Finally, reviewing the widespread use of pretrial detention, as opposed to judicial supervision, could alleviate prison overcrowding and strengthen respect for the rights of detainees.

Election preparations

I took the opportunity to meet with the National Election Committee given the importance of their work as attention increasingly focuses on the 2017 and 2018 elections. It is important that consideration is given to acceptable, accessible registration opportunities for all eligible Cambodians, not least migrant workers (within Cambodia and overseas) as well as detainees. It is

ever more important that the NEC can independently work to ensure credible elections. This requires timely registration of all those eligible to vote, provision that everyone eligible can vote only once and a fair and transparent counting system. I was pleased to learn that the NEC and the Ministry of Interior are progressing with the issuance of biometric ID cards to all eligible voters, although challenges remain.

5) Final notes

During my mission, I have benefited from the information and insights generously shared with me by a wide range of actors, national and international, governmental and non-governmental. As before, I am grateful for the expert support provided to me by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia. I am also indebted to the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) for its support. Yesterday, I had the honour of briefing Samdech Krolahom Sar Kheng on my preliminary findings.

My full recommendations to the Royal Government of Cambodia will be outlined in my forthcoming report to the Human Rights Council. According to the schedule at present, this report will be available in August, in advance of the 33rd session of the UN Human Rights Council in September 2016.

END

Professor Rhona Smith (United Kingdom) was appointed by the United Nations Human Rights Council in March 2015. The mandate of the Special Rapporteur derives from the Paris Peace Accords Agreement on a comprehensive political settlement of the Cambodian conflict. Ms. Smith is a Professor of international human rights in the United Kingdom and has previously taught human rights law and undertaken human rights capacity building activities in Cambodia.

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