



END OF MISSION STATEMENT

Statement by the United Nations Special Rapporteur
on the situation of human rights in Cambodia
Professor Rhona Smith
Phnom Penh, 19 October 2016

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Introduction

I have now completed my third mission to the Kingdom of Cambodia. My findings and recommendations will feed into the report I will finalise in May 2017 for consideration by the Human Rights Council in September 2017. At the end of last month, I spoke to my first substantive report submitted to the Council. As that report was submitted in May 2016, I was able to update the Council on developments since June. My comments stand repeated raised in that report today.

I would like to thank the Government for its invitation to visit and the willingness of so many ministers to meet with me and discuss frankly the current situation in the country. I would also like to thank OHCHR staff in Cambodia and Geneva for all their hard work supporting the mission. Additionally, I would like to express my appreciation to the wide range of interlocutors who were willing to meet with me and share their experiences, hopes and concerns.

In this visit, I have had the privilege of meeting with senior Governmental officials: His Excellency Prak Sokhonn, Senior Minister and Minister of Foreign Affairs and International Cooperation; His Excellency Ang Vong Vathana, Minister of Justice; His Excellency Hang Chuon Naron, Minister of Education, Youth and Sports; Her Excellency Ing Kantha Phavi, Minister of Women's Affairs; His Excellency Vong Sauth, Minister of Social Affairs, Veterans and Youth Rehabilitation; and His Excellency Keo Remy, Chair of the Cambodian Human Rights Committee. I was also pleased to meet with His Excellency Pa Socheatvong, Governor of Phnom Penh. I also met with the acting leader of the Cambodia National Rescue Party, His Excellency Kem Sokha.

I am grateful to the members of the United Nations system in Cambodia, the diplomatic community and representatives of a broad range of civil society actors and other stakeholders, including from the private sector, who took time to share insights and information with me. In addition, I undertook field visits in Phnom Penh, and Kampong Speu province, met with municipal and provincial authorities, and with members of ethnic and indigenous groups and other communities.

Many events are being held to mark the twenty-fifth anniversary of the signing of the Paris Peace Accords on 23 October 1991. These Accords laid the foundation for present-day Cambodia, a state which has built on the peace and stability secured to develop into an active member of ASEAN, the UN and other international organisations. From the inception of the Accords, recognition of international human rights standards has been an integral part of Cambodian governance. Article 3 of the Agreement concerning the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia proclaims that 'all persons in Cambodia shall enjoy the rights and freedoms in the Universal Declaration of Human Rights and other relevant human rights instruments'. Article 31 of the Constitution reinforces this commitment to human rights, as does the impressive range of human rights treaties Cambodia has voluntarily accepted. Human rights compliance is a matter of international concern. Cambodian history demonstrates the tragic

consequences of human rights not being adequately respected and robustly protected. Cambodia must not return to a situation of war and strife with the loss of so many lives, the destruction of livelihoods and the traumatising, dispossession and displacement of so many of its people. Respect for human rights is an integral part of ensuring lasting peace. Human rights are not a threat to national security and human rights monitoring does not threaten sovereignty. I was very encouraged that the Minister of Foreign Affairs and International Cooperation agrees that respect for sovereignty and respect for human rights are compatible.

During my meetings with Government ministers I have been struck by their willingness to work on measures improving the human rights situation for all Cambodian people. Many ministries are currently working on the analysis of targets and indicators for measuring advancement of the Sustainable Development Goals.

Strengthening the collection of reliable data will enable progress to be more accurately measured. I learned of the work on advancing the rights of persons with disabilities, protecting children (e.g. juvenile justice law and the law on national adoption), protecting indigenous communities and other minority groups and strengthening the protection of women's rights. Cambodia also increased its representation at the XXXI Olympiad and Paralympics. With respect to the rights of women, it is encouraging to learn of the efforts being made to mainstream gender across ministries and their work. **I strongly recommend the Government adopts an inclusive multi-agency and inter-ministerial approach for progressing economic and social rights. In particular, persons with disabilities, women, indigenous peoples and minority groups must be represented not only as objects of development, but as active contributors and leaders.**

I am somewhat disappointed that the Government has fallen further behind in reporting to the UN treaty bodies. Engaging with the international monitoring processes accepted by Cambodia is an important indicator that Cambodia is willing to improve the human rights situation. OHCHR agreed to a request from the Committee to provide training on drafting these reports; this should strengthen reporting capacity. **I recommend the Cambodian Human Rights Committee to coordinate with other ministries and councils and prepare a comprehensive schedule for reporting on all human rights treaties.**

Vulnerable groups

I am particularly concerned about the plight of many vulnerable groups of peoples I have met on this trip. As I noted before, Article 31 of the Constitution provides that Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, colour, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations. As the Government works towards developing a response to the UN Sustainable Development Goals, it is important that no one is left behind. I am therefore examining the situation of some groups in that light.

Minority groups and indigenous peoples

Minority groups are entitled to specific protection in terms of Article 27 of the International Covenant on Civil and Political Rights.

Urban Cham communities, I was pleased to learn, generally feel well integrated into Khmer society and do not feel that their religion or ethnicity affects how they are treated. The poorer Cham, however, face the same challenges as other poor Khmer, including vulnerability in respect of their social and economic rights, such as access to clean water, sanitation and healthcare.

On a positive note, the Minister of Education, Youth and Sports informed me that the salaries of some 1400 Muslim teachers are now supported by the Ministry.

In contrast, some ethnic Vietnamese and Khmer Krom communities who have lived in Cambodia for generations, albeit displaced during the armed conflict, appear to face challenges with birth registration and identity cards, which impacts on many other rights. I note the development of a national strategic plan of identification and hope this will help ensure all children in Cambodia can have their births registered and all those historically based in the country can once again secure appropriate identity cards. All children are entitled to a nationality and birth registration. I am concerned that a number of people living here are stateless or at risk of being rendered stateless. This seems ironic when Cambodia is offering itself as a place of safe refuge for those currently in the Nauru processing centre. **I recommend that the Royal Government abide by its Constitution, national laws and the international conventions it has ratified with regard to nationality, citizenship and non-discrimination. I further recommend that the Government take steps to prevent and end statelessness in Cambodia.**

Indigenous peoples continue to face challenges, not least with respect to land. Land concessions and development projects often adversely impact on traditional livelihoods and cultural traditions. The communal land title process is time-consuming, costly and complex. This mission, I met with representatives from the Suoy indigenous community and found additional problems arising when some members of an indigenous community successfully register individual land title under directive 01 whilst other members of the community are seeking community land title for the now reduced area of claimed land. On a more positive note, I understand that bilingual education is still being rolled out. **I recommend the Government now consider simplifying the communal land titling process to reduce the number of steps required. I also suggest the Government reviews current laws and policies to ensure fulfilment of the UN Declaration on the Rights of Indigenous Persons and ensures dissemination and implementation at the local level. This should also help guarantee an indigenous voice in future national policies and strategies.**

Persons in 'street situations'

People who live, work or are otherwise dependent on the streets are particularly vulnerable. I have visited the Drop-In Centre (formerly known as Prey Speu) to assess the living conditions and treatment of those rounded up and sent there. **It is simply unacceptable to round up people from the streets.**

Whilst the Minister of Social Affairs, Veterans and Youth Rehabilitation explained improvements made to this facility, there is no doubt that further expansive and dramatic improvements are necessary. I was concerned at the number of people crammed into basic rooms without adequate ventilation and with limited water and sanitation facilities. Despite claims that those 'rounded up' and brought to the centre must remain for a week to enable arrangements to be made by their families to collect them, most people I met had been there for considerably longer and were being held against their will. That is not consistent with the concept of 'drop in' or with law. Many of the detainees have health issues, including psychosocial disabilities, HIV/AIDS and drug addiction/use. Many of the detainees claimed they could not maintain contact with children and families outside. However, the appropriate professional medical support is not currently available. I understand that an holistic, coordinated inter-ministerial and multi-agency response is needed and must be adequately resourced to alleviate the situation, and I welcome the reassurances that there will continue to be twenty-four hour access to this centre for UN and non-governmental organizations. **A proper facility that provides the necessary care, services and assistance to persons in street situations should be prioritised and I strongly recommend that expeditious action be taken by the**

Government to implement recommendations of the National Conference on Persons in Street Situations held in Phnom Penh last December.

On a related issue, I learned of the drug rehabilitation centres for drug users and the planned facility in Kandal Province for people with psychosocial disabilities. I hope that an holistic response to addressing their real needs, ensuring they are supported and, where appropriate, can be successfully rehabilitated into the community, is taken.

Land

Land remains a source of conflict. This country has developed dramatically in the last twenty-five years. However, the move from subsistence living to industrialisation brings challenges. Notwithstanding the positive intentions of the Land Law, too many Cambodians lack title to the land they live on. The legacy of economic land concessions remains a problem for all: companies holding concessions; individuals dispossessed of their lands; local authorities; and the Government. The situation is complicated. Loss of land, however tenuous the title may be, is a serious issue for those affected.

During my visit to Kampong Speu, I met with many people who claimed to have lost their farmland, received inadequate compensation and are now destitute. I met with a representative of a sugar company to learn of the challenges posed to and by companies which receive ELCs from the Government yet find themselves in dispute with affected communities years later. The pending audit of sugar concessions could address some of the alleged violations of human rights in Cambodia's sugar industry. **All land disputes should be solved by a process free from threats, violence and intimidation of any parties. All those offered compensation packages for loss of land should understand all relevant information to ensure free and informed decision-making.**

Rule of Law and Justice

The Paris Peace Accords make clear that the constitution is the supreme law of the land and that an independent judiciary will be empowered to enforce such rights. The Cambodian constitution in Article 31 makes clear the emphasis to be placed on respect for human rights and on ensuring that the law is applied without discrimination on any ground. Yet, there are many examples of the law being applied in an apparently discriminatory or politicised manner. With respect to the five detained individuals from ADHOC, I reiterate my call at the UN Human Rights Council that their charges should be proven or they should be released immediately with their case closed. Many Cambodian laws were drafted in cooperation with donor countries and a range of international experts. The resulting laws are, however, Cambodian. It is for the Cambodian Government to ensure those laws are applied in a manner which complies with ratified human rights standards. One example of an area in which further clarification could be useful is the law of evidence. A few articles in the Criminal Procedure Code reference the evidentiary requirements in law – for example, Articles 118, 127 and 321. However, it appears that different judges apply different evidentiary standards of proof. Everyone charged with a criminal offence has the right to know and challenge the evidence led. **I strongly urge the Ministry to consider drafting guidelines on the evidentiary requirements and to ensure all judges are fully trained thereon. To facilitate greater understanding of judicial decisions, I recommend that the Ministry of Justice build on the training being undertaken at the Royal Academy of Judicial Professions and require all judges to publish the (legal) reasoning adopted in each case. I also repeat my recommendation that the Ministry ensure every court displays a current list of official court fees and any other legitimate charges which can be levied. Should evidence emerge of additional fees being accepted to facilitate a case, disciplinary investigations must follow.**

Prisons

I visited Correctional Centres 1 and 2 in Prey Sar Commune. I regret that I was not allowed to meet with the detained ADHOC staff and Senator Hong Sok Hour. CC1 had an initial maximum capacity of

approximately 1,300 but currently held 4,736 detainees and CC2 was reported as having a capacity of 600-700, but hosted 959 detainees. This has obvious consequences for the conditions in the prison. I note the efforts being made by the Director General of Prison and the Prison Directors to reduce the overcrowding, for example, by moving prisoners elsewhere and I know that the Ministry of Interior is aware of this growing problem. Whilst full prison reform is an important step, it will inevitably take time. One small step discussed during my mission, which would improve family visits, would be displaying notices at the front entrance to each detention centre stating that no payments can be made to guards or other staff at the prisons. Currently of course guards cannot ask for money but I have learned that nevertheless many families often feel obliged to give money. **The Ministry of Interior should prioritise an holistic response to the conditions in prisons and work on alleviating the problems caused by overcrowding. The actions undertaken by the Government in response to the reports by the UN Sub-Committee on the Prevention of Torture (SPT) on Cambodia should be publicly disseminated as should the reports themselves.**

In the meantime, I suggest that reducing automatic recourse to provisional detention would help alleviate the problem. Article 203 of the Criminal Procedure Code notes that provisional detention should be exceptional. Instead it is almost standard. Rarely are full reasons given although Article 205 lists the acceptable reasons and there is a form available for judicial use. In CC1, I was told that only 3,224 detainees had been finally convicted and 1,512 men were either on provisional detention or were awaiting the result of their appeal processes (and thus not treated as convicted). I also understand from the Ministry of Justice that a pilot on alternatives to custodial sentences is underway for minor misdemeanours (less than six months' sentencing). This is encouraging. I am pleased to report that the Minister of Justice agreed to intensify efforts to extend and use alternative sentencing and increase efforts to encourage judicial use of alternatives to provisional detention. **The Ministry of Justice should embark on awareness-raising to ensure public understanding and support for alternatives to provisional detention and custodial sentencing, where Cambodian law so permits. The pilot on non-custodial sentencing should be reviewed and urgent consideration given to extending it.**

Electoral preparations

I have followed up on preparations for the forthcoming commune/sangkat and national elections. I am pleased to note that voter registration is ongoing and appears to be proceeding smoothly. Those individuals or groups with complaints can raise them directly with the NEC for resolution. I am concerned that there are groups of people who live in Cambodia yet do not have the appropriate identification documentation to allow them to register to vote. The position of migrant Cambodian workers remains unclear and more effort is perhaps needed to ensure all eligible Cambodians can vote. I am also concerned that the deputy secretary general of the NEC is currently in detention, awaiting trial on one set of charges, and has been convicted on unrelated charges. Article 4 of Annex 5 to the Paris Peace Accords states in terms of the constitution that 'Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process.' I am also reminded of the text of Annex 3 to the Paris Peace Accords, the tenor of which is reflected in Cambodian law – everyone should be able to participate in the electoral process and freedoms of speech, assembly and movement should be fully respected, with all political parties enjoying an equal platform. **The NEC must continue its important work to ensure full voter registration. All genuine notified complaints must be promptly investigated. Voter education will allow eligible voters to make an informed choice.**

Recent developments

I am saddened by the deterioration in the political situation since my mission in March. There is a deep loss of trust between the two principal political parties. **I urge both parties, through intermediaries as necessary, to explore opportunities for working productively together. Both parties were elected in 2013 to serve the people of Cambodia. The people deserve that those they entrusted do so professionally in the best interests of the people.**

Civil society and non-governmental organisations can assist the Government in ensuring Cambodia is a country which meets, even exceeds, its human rights obligations by monitoring violations of human rights on the ground, assisting victims pursuing due legal process and bringing substantive issues to the attention of the Government. Since the time of the first Special Representative of the Secretary-General to Cambodia, the vibrant civil society has been symbolic of modern Cambodian society. The Government has engaged with civil society across a range of issues, including drafting laws and policies, allowing different perspectives to be contributed. The Paris Peace Accords (Article 3 and 15 of the two Agreements) provide that Cambodia undertakes to 'support the right of all Cambodian citizens to undertake activities that would promote and protect human rights and fundamental freedoms'. Civil society is also under a duty to respect the law of Cambodia and respect the rights and freedoms of others. The mere act of defending human rights should not politicise such activities. Particular consideration must be given to women human rights defenders who are often subjected to additional threats and consequences for their personal security and for their families. Human rights defenders and activists are not, necessarily, political actors. **The Government must support those undertaking activities promoting and respecting human rights. I join other members of the Human Rights Council and other civil society who call for an independent, impartial and transparent investigation into the death of Kem Ley.**

All provincial authorities must be encouraged to apply the Law on Peaceful Demonstrations in accordance with the Ministry of Interior's guidelines on the implementation thereof. There is no legal requirement of approval of education and training activities, for example. Demonstrations and processions should be notified to ensure that the authorities can facilitate the activity whilst ensuring minimised disruption to others. The presumption in law is that processions and demonstrations should go ahead, as happened at the weekend, with the one hundred day funeral procession of Kem Ley. **The Government must support all Cambodians undertaking activities promoting and respecting human rights not least through the application of the Law on Peaceful Demonstrations. The Ministry of Justice should also consider decriminalising defamation (Articles 305-306) and public insult (Articles 307), offences which are increasingly being invoked against human rights defenders.** International human rights law requires these offences, if they exist, to be civil matters.

Concluding remarks

In the Paris Peace Accords, the founding principles of the current Cambodian Constitution were agreed. The new Cambodia was to be a liberal democracy, with an independent judiciary enforcing the rights enshrined in the new constitution. All Cambodians were to be supported returning and resettling. Political neutrality was to be respected, as were all human rights and fundamental freedoms accepted by the country. The Cambodia of 2016 is very different from the Cambodia of 1991. The progress and development is well worth celebrating, however imperfect aspects of that progress may be. The time for the Government to blame the troubles of the last century for the situation today is surely over. Cambodia has earned its place on the international stage as an equal sovereign state and, as such, the Government must take responsibility for fully implementing at the

national, provincial and commune/sangkat levels all those rights and freedoms in the treaties it has so willingly ratified.

I have received a sense of willingness amongst Government ministries to work towards improving the human rights situation on the ground. I therefore reiterate my pledge to assist by advising, monitoring and reporting on the human rights situation in Cambodia.

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. She has taught human rights law in Cambodia in the past.

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