



END OF MISSION STATEMENT
United Nations Special Rapporteur
on the situation of human rights in Cambodia
Professor Rhona Smith

Phnom Penh, 14 March 2018

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I have now completed my fifth visit to the Kingdom of Cambodia in my capacity as UN Special Rapporteur on the situation of human rights in Cambodia. I would like to thank the Government for its invitation to visit and the willingness of so many State officials to meet with me and discuss openly human rights in Cambodia. I would also like to record my appreciation of the dedication and hard work of all OHCHR staff in Cambodia and in Geneva, who have so ably organised and supported this mission.

During this mission I had the privilege of meeting with a number of senior officials, in particular Samdech Heng Samrin, President of the National Assembly, Samdech Krolahom Sar Kheng, Deputy Prime Minister and Minister of Interior, Senior Minister and Minister of Foreign Affairs and International Cooperation H.E. Prak Sokhonn, Senior Minister and Minister of Economy and Finance H.E. Aun Pornmoniroth, Minister of Justice H.E. Ang Vong Vathana, Minister of Health H.E. Mam Bunheng, President of the Court of Appeal H.E. You Bun Leng, Deputy President of the Supreme Court H.E. You Ottara, President of the Cambodia Human Rights Committee H.E. Keo Remy, President of the National Election Committee H.E. Sik Bun Hok, and Secretary of State, Ministry of Social Affairs, Veterans and Youth Rehabilitation H.E. Sem Sokha. I also met with a wide range of other stakeholders including representatives of civil society and political parties, the diplomatic community, the UN country team and others. I am grateful to all those who took the time to share insights and information with me. I have however once again been denied the right to meet with detainees, on this occasion, H.E. Kem Sokha in CC3, though I did visit PJ Prison and was offered the opportunity to meet with Mr. Nhek Bun Chhay.

I am pleased to report on the initial findings of my visit. I will present the final report at the September session of the Human Rights Council in Geneva.

Cambodia is still experiencing strong economic growth and rapid development which has provided resources to improve social protection and access to education, decent work and health care. I am encouraged by the plans to develop social security and health equity funds, and to work towards universal access to health care. I am also encouraged by the pilots on transferring funds to pregnant women and those who have recently given birth. The new maternity pay for women in the textile sector (120% salary for three months) is also positive. Healthcare and social security are expensive but always a worthwhile investment by the Government in its people. All such plans and strategies need to be adequately resourced and robustly monitored: in Cambodia, as around the world, pregnant women continue to lose their jobs for spurious reasons when their pregnancy is apparent or notified. The 'official' reasons vary but women ultimately lose their job and the associated benefits at a time when they and their children are especially vulnerable. There also continues to be people who find they cannot access free healthcare services despite having

the relevant NSSF and HEF cards. **I encourage the government to continue its investment in health, social security and education and to work across ministries and at all levels of government to ensure these services are available, accessible, acceptable and of high quality for all Cambodians.**

Cambodia has pledged its support for all sustainable development goals as well as an additional one on mine and UXO clearance. As Cambodia presents itself to the High Level Panel next year the localisation plan and evidence of concrete moves towards meeting targets is central. Resource mobilisation is key in this regard. When I met with the Minister of Economy and Finance, I discussed the need to prioritise investment in human rights and related sustainable development goals. Adequately resourcing both development activities and the realization of human rights contributes to peace and stability in society. **I look forward to receiving the SDG localisation plan (which I understand will be published this year) and am willing to work with the Government and its chosen development partners towards meeting and exceeding the indicators.**

For gains in economic and social rights to be entrenched, it is also necessary to respect civil and political rights. Since I reported to the Human Rights Council in September, there have been serious curtailments to freedoms of assembly, expression and association, as well as dramatic changes to political participation and electoral rights. As a result, political actors have been banned from engaging in national politics, media outlets have been closed, and many civil society actors are reluctant to speak openly or defend human rights.

At the Human Rights Council in September 2017, following the arrest of Kem Sokha, former President of the Cambodia National Rescue Party (CNRP), many States raised issues of the legitimacy and credibility of the forthcoming elections. The dissolution of the CNRP on 16 November, the banning of 118 CNRP members from political activity for five years and the reallocation of all the party's local and national seats to unelected members of the ruling and other parties has denied a significant portion of the population of their right to take part in public affairs through their freely chosen representatives. **I repeat my call on the Government to restore the space for any Cambodians to exercise the right to stand for election without fear or intimidation. I also call for an urgent reconsideration of the blanket ban on 118 political actors.**

In addition, I have expressed my concern to the Government at the ongoing closing of civil society space and restrictions on fundamental freedoms in Cambodia. Procedural requirements going beyond the law are creating additional obstacles to legitimate work of civil society organisations. The range of provisions in the Criminal Code being used to curtail freedom of expression is ever-increasing. Recent revisions to the Criminal Code and Constitution pave the way for further curtailment of freedoms. Such freedoms can only be limited on narrow proportionate grounds. Laws must be applied consistently by the government and the courts.

I have raised a series of cases with the Government which I believe may create an atmosphere of fear and intimidation that could negatively affect the right to freedom of expression of others, leading to self-censorship and the stymieing of creative and responsible public debate on issues of public interest. This is particularly serious in light of the upcoming national elections on 29 July 2018. **Restricting Cambodians' voices could ultimately threaten the very stability that the Government and the people have worked hard to build. Freedoms of association, expression and peaceful assembly should be protected and developed, not restricted, in a multi-party liberal democracy.**

I have repeatedly expressed my views on the increased tendency of this Government to rule by law rather than in accordance with the rule of law upon which the Constitution is based.

Rule of law is more than the mere application of laws. It means that no one, including the Government, is above the law. All persons, institutions and entities must be accountable to publicly promulgated, independently adjudicated laws which are consistent with international human rights standards. Otherwise, governance becomes purely rule by law, where laws do not respect human rights principles, are not adopted through a transparent process, and are applied in an arbitrary or discriminatory manner.

As I have stated before, all laws should be carefully drafted, with drafts published, subject to consultation, and reviewed for compatibility with those international human rights standards which the country has voluntarily accepted. Practice in this regard continues to be inconsistent. On the one hand, I have been encouraged by the drafting process for the draft law on access to information which I have learned has so far been the product of broad consultation. I have also accepted the offer of the Ministry of Justice to share my views on human rights compatibility of the draft surrogacy law.

However, laws are unfortunately not systematically reviewed by legislators for compliance with human rights. Particular care is needed with fast-tracked laws. The changes to the Constitution and Criminal Code promulgated last month are not currently compatible with international standards on freedom of expression and the permissible restrictions thereon. Laws in Cambodia are therefore not always just laws enacted through a transparent open government system. **I repeat that all laws should be carefully and transparently reviewed prior to enactment to ensure compliance with international human rights standards.**

To ensure the rule of law, enacted laws must also be applied consistently, on an equal basis and with legal certainty. It has become increasingly clear to me that there is inconsistency with the application of laws on evidence. Article 321 of the Criminal Procedure Code is the principal provision. There is no further guidance on evaluating evidence. There are examples of judges in the Court of Appeal throwing out convictions given the lack of evidence but practice is not the same across cases. The dissolution of the CNRP and the ongoing detention of its former leader Kem Sokha, is problematic as the evidence upon which the CNRP was dissolved is in part the same evidence as currently lies with the first instance investigating judge who is deciding whether to proceed with charges of conspiracy with a foreign power against Kem Sokha. **The Ministry of Justice should consider developing clear guidelines on appropriate standards and evaluation of evidence. Lessons may be learned from the work of the ECCC.**

I warmly welcome the work in the Court of Appeal on strengthening judicial reasoning and our discussion of publishing decisions. Greater transparency in judicial decision-making should lead to greater legal certainty, more consistent decisions on evidence and the application of the law and thereby strengthen public perception in the independence of the judiciary. Of course, publishing decisions and reasoning would also be of benefit to universities and the Royal Academy of Judicial Professions in their important work on educating future legal professionals. **Plans to make public judgments and legal reasoning should be progressed.**

Access to justice is still denied to many. I remain concerned at the prevalence of pre-trial detention; I am also alarmed by the practice of trials not taking place within a reasonable time. I reiterate my call for the charges against the staff members at Adhoc to be definitively dropped. It is a violation of the right to be tried without undue delay for charges to linger indefinitely and be reactivated seemingly at random. Recent high-profile examples include Tep Vanny (2013) and Nhek Bun Chhay (2007). A fair trial must be held within a reasonable time of the initial arrest.

This is particularly pressing when people are held in pre-trial detention as is virtually standard in Cambodia.

I welcome the development of a national legal aid policy and urge this to be fully developed then adequately resourced. I reiterate my call for all applicable court fees to be publicly displayed. I also support the ongoing review of the three fundamental laws on the judiciary and the plans to fully train and then deploy court of appeal judges to regional courts of appeal. This will make justice more accessible and remove the necessity of so many detainees having to travel to Phnom Penh for appeal hearings. **I urge the Ministry of Justice to push forward with their local Judicial Service Centres and associated education programme to support the greater use of judicial supervision (rather than pre-trial detention) and to complement the planned expansion of alternatives to custodial sentencing.**

During my visit, I heard of reports of shootings by armed forces at protesters on 8 March over a land dispute with a rubber plantation in Snuol district, Kratie province. I have been following the situation closely, raising concerns directly when meeting with Government officials. I am concerned at information I have received that houses and belongings of the affected community were burned, that at least three people suffered injuries from gun fire and others from beatings allegedly from the mixed forces. While I am relieved that there appears to be no findings of deaths, I regret that OHCHR and civil society observers were prevented from entering the area to fully ascertain this. In the interests of promoting trust and transparency, I believe it is important to allow independent monitors access. **I call for an independent investigation.**

The unrest in Kratie underlines the importance of understanding and addressing the underlying root causes that led to the protests. These root causes – often related to denial of human rights - must be addressed in a fair manner if peace, stability and development are to be sustainable.

In my official meetings, I expressed concern at the prevalence of comments prioritising peace, stability and development over human rights. **I therefore reiterate that human rights are crucial for durable peace, stability and development. They cannot be selectively respected or ignored and they must not be sacrificed. Peace without justice is unsustainable; development without freedom leaves people behind.** This vision is based on the UN Charter and in the 2030 Agenda underlying the Sustainable Development Goals. It is also reflected in Cambodia's constitution which states that Cambodia is to be an 'oasis of peace' based on a liberal multi-party democratic system guaranteeing human rights and respect of law progressively developing the nation.

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Professor Rhona Smith (United Kingdom) was appointed as [Special Rapporteur on the situation of human rights in Cambodia](#) by the UN Human Rights Council in March 2015. As Special Rapporteur, she is part of what is known as the [Special Procedures](#) of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms. Special Procedures mandate-holders are independent human rights experts appointed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. They are not UN staff and are independent from any government or organization. They serve in their individual capacity and do not receive a salary for their work.