



KINGDOM OF CAMBODIA
Nation Religion King

Permanent Mission of the Kingdom of Cambodia
to the United Nations Office and other International
Organizations at Geneva

Ref. 2019/09/ 328

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights in Geneva and with reference to the verbal note ref: AL KHM4/2019 dated 19 July 2019 entitle '**Joint Communication from Special Procedures**', has the honour to enclose herewith the clarification from the Ministry of Justice concerning the case of alleged arbitrarily arrest, detention and criminal charges of Mr. Kong Raiya and Mr. Soung Neakpaon, which took place in July 2019.

The Permanent Mission of the Kingdom of Cambodia would be very grateful if the said response could be forwarded to its highest destination.

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations avails itself of this opportunities to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 13 September 2019



The United Nations Office of the High
Commissioner for Human Rights
Geneva

In case of alleged arrest of Mr. Kung Raiya and Mr. Suong Neakpaon does not restrict the freedom of expression and peaceful assembly, but it is the enforcement of the law by competent authority to prevent social unrest resulted from malicious activity inciting hatred and call for rebellion against legitimately elected government and which are supported, organised and managed by political organisation. According to the documents received by Phnom Penh Court of First Instance, the Ministry of Justice would like to provide the summarised facts, legal grounds, and proceedings as follows:

1. The case of Mr. Kung Raiya

In July, Mr. Kung Raiya, who owns a Facebook account named KUNG Raiya, has promoted t-shirt with Kem Ley's photo and text "wipe your tears and continue your journey" printed on the front and another text "if you do nothing, you will be victim, it is just not yet turn" printed on the back. This activity aims at inciting social unrest and hatred. After this Facebook post, police, with the coordination of the Prosecution at Phnom Penh Court of First Instance, has investigated and arrested Kung Raiya, [REDACTED] on 09 July 2019. After inquiries, the authority has allowed [REDACTED] to return home since they are not involved. The authority has forwarded Kung Raiya's case to Phnom Penh Court of First Instance. Based on Kung Raiya's answer and evidences, the prosecutor has decided to open an investigation and charge with provocation to commit offence, as stipulated in article 494 and article 495 of the Criminal Code, by means of introductory submission No. 2972 អឃ្លី dated 11 July 2019 and forwarded the case file to Investigating Judge.

In the Judicial Investigation process, following the completion of inquiries of the charged person in presence of 02 lawyers and reviewing the evidences in the case file, investigating judge decided to provisionally detain the charged person through Order No. 4280 "ឈ"ជំពូស dated 11 July 2019 and order to detain the charged person at Correction Centre "ម១" through Order No. 6937 "ឈ"ជំឃ្លី dated 11 July 2019. Defender's lawyers has filed a request for release, but it was rejected by the investigating judge with a statement of reason, and they file an appeal. In this process, the investigating judge has summoned some relevant witness to give testimonies and has issued a rogatory letter authorising the Anti-Cybercrime Department to investigate and collect more evidences.

Currently, the case file is in the judicial investigation process at the Court of First Instance awaiting the witnesses' testimonies and the result of the Anti-Cybercrime Department's investigation. The allegation that Kung Raiya was arrested, detained and charged for a felony is incorrect since that person was charged for "provocation to commit offence" as stipulated in articles 494 and 495 of the Criminal Code which is a misdemeanour subject to 6 months to 2 years of imprisonment.

2. The case of Mr. Suong Neakpaon

Suong Neakpaon was arrested on 10 July 2019 after he told the media and the public that "the government should look for the killer who murdered Dr. Kem Ley" while him and the public

knew that the killer was arrested immediately after the offence committed and the offender was already convicted by the court. The conduct of Soung Neakpaon may mislead the public on the action taken by the authority and erode confidence in the court's decision to incite social unrest. Soung Neakpaon has been prosecuted by prosecutor to the Phnom Penh Court of First Instance for provocation to commit crime in accordance with Article 494 and Article 495 of the Criminal Code, through Introductory Submission No. 2987 អ.យ.ជ dated 11 July 2019 and forwarded the case file to the investigating judge.

During the judicial investigation, after questioning the charged person in presence of two defence lawyers and reviewing the evidence in the case file, the investigating judge decided to temporarily detain the charged person by Order No. 4834 “ណ”ជពស dated 12 July 2019 and order to detain the charged person at the correction center “ម1” by Order No. 695 “ណ”ជយជ dated 12 July 2019. The charged person’s attorney-at-law has filed a request for release, but it was reject by the investigation judge with a statement of reason, and an appeal was filed. At this stage, the investigating judge also summoned some relevant witnesses to testify and issued a rogatory letter authorising the Anti-Cybercrime Department to investigate and collect more evidences.

Currently, the case file is in the judicial investigation process at Court of First Instance pending witnesses’ testimonies and the result of the Anti-Cybercrime Department’s investigation. The allegation that Soung Neakpaon was arrested, detained and charged for a felony is incorrect since that person was charged for “provocation to commit offence” as stipulated in articles 494 and 495 of the Criminal Code which is a misdemeanour subject to 6 months to 2 years of imprisonment.

In conclusion, the criminal cases involving these two individuals are under the Judiciary, which is independent body, and, as guaranteed to the Constitution and the Code of Criminal Procedure, the charge person has the right to defence by a lawyer of his own choice and has the rights to appeal to the higher court in accordance with the applicable law in case they are not satisfied with the court’s decision. On the other hand, based on the procedure and measure taken by the court regarding charged persons, the court properly implements the laws of the Kingdom of Cambodia and the lawyers was involved in the procedures in both of the prosecution and judicial investigation processes and exercise the rights to appeal to the Investigation Chamber.