

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
UA KHM 9/2018

28 December 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Cambodia; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 36/32 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the order of the National Election Committee (NEC) dated 11 December 2018 to enforce its decision of 8 August which found Mr. Chea Chiv, Mr. Thorng Saroeun and Mr. Kruy Kimsiang guilty of causing confusion in relation to the national elections in end July 2018 (Article 142, Law on Members of National Assembly Election (LEMNA)).

Mr. CHEA Chiv a former head of the Cambodia National Rescue Party (CNRP), in Battambang, was fined 10 million Riel (USD 2500), while Mr. THORNG Saroeun, and Mr. KRUY Kimsiang, also former CNRP activists, were fined 5 million Riel (USD 1250) each. As per the latest order of the NEC, the three men are required to pay the fines within 30 days from receipt of order, failing which the NEC would initiate proceedings under the criminal code against them, which may include seizure of property and/or imprisonment.

According to the information received:

On 19 July 2018 – ten days before the national election – Mr. Chea Chiv, invited 38 of his former colleagues including Mr. Thorng Saroeun and Kruy Kimsiang for a lunch at his house at Anlong Vil commune, Sangker district, Battambang province. Subsequently, Mr. Chea Chiv, Mr. Thorng Saroeun, and Mr. Kruy Kimsiang posted a group photo on Facebook showing people holding up their index fingers with the message: “our finger is really clean”.

One day later, some CPP members filed complaints with the Commune Election Commissions and Battambang Election Commission (PEC) against Mr. Chea Chiv, Mr. Thorng Saroeun, Kruy Kimsiang and two other men for obstructing citizens from going to vote.

On 26 July 2018, the Battambang PEC found the five men guilty of violating article 142 of LEMNA and fined them 10 million Riel each. The PEC considered

that their actions amounted to participation in the dissemination of the “Clean Finger” Campaign – launched by some leaders of the banned CNRP calling on people to boycott the ballot. As per the PEC, this contributed to causing confusion leading to loss of trust in the election, making eligible voters reluctant to go to vote, and with intentions to prevent eligible voters from going to vote.

The five men appealed the decision of the PEC at the NEC. In the decision of 8 August (No. 009), the NEC acquitted two men, but upheld the conviction of the three in question. The 10 million Riel fine was upheld for Mr. Chea Chiv, while it was reduced to half for Mr. Thorng Saroeun and Mr. Kruey Kimsiang. This decision was upheld by the Constitutional Council on 15 August 2018 (No. 196/004/2018).

We express concern regarding the enforcement of the NEC decision or any punitive action against Mr. Chea Chiv, Mr. Thorng Saroeun and Mr. Kruey Kimsiang would be inconsistent with international human rights law, as their acts – posting photos suggesting that they will not vote in the elections – fall squarely within the protected exercise of the right to freedom of expression. The information above was also included in the recent report of Special Rapporteur on the situation of human rights in Cambodia to the Human Rights Council in September (A/HRC/39/73/Add.1, para 66).

While we do not wish to prejudge the accuracy of these allegations, we would like to draw attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Cambodia is a party to the International Covenant on Civil and Political Rights (ICCPR). Article 31 of the Cambodian Constitution sets out that the Kingdom will respect human rights, including those stipulated in the ICCPR.

We would like to recall to your Excellency’s Government that the Article 19(2) of the ICCPR states: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice.” Article 19(3), establishes that restrictions on the right to freedom of expression, shall only be such as are “provided by law and are necessary... for respect of the rights or reputations of others; [or] for the protection of national security or of public order (ordre public), or of public health and morals”.

In its general comment on article 19 (no. 34), the United Nations Human Rights Committee has noted specifically that calls for boycott of a non-compulsory vote are protected by the right to freedom of expression. According to the Human Rights Committee: “it may be legitimate to restrict freedom of expression to protect the right to vote under article 25. Such restrictions must be constructed with care: while it may be

permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a non-compulsory vote”.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the grounds for the NCE decision to impose the punitive action against the three men, and explain how this is compatible.
3. Please provide information on the steps taken by Your Excellency’s Government to safeguard the rights of freedom of expression of the above-mentioned persons in compliance with international human rights standards.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression