

Mandates of the the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL KHM 4/2019

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 36/32, 35/15, 34/18, 32/32, 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest, detention and criminal charges of Mr. Kong Raiya and Mr. Soung Neakpaon in relation to activities seeking accountability for the killing of the political and social activist Mr. Kem Ley.

According to the information received:

On 23 March 2017, after a half-day trial hearing, an individual was found guilty by the Phnom Penh Municipal Court of the murder of Mr. Kem Ley and sentenced to life imprisonment. On 24 May 2019, Cambodia's Supreme Court rejected the appeal for a reduction of the individual's sentence and upheld his life imprisonment term. Besides, there is an ongoing investigation case seeking to identify others who may have been involved in Mr. Ley's murder. There has been no development in this second case, and no individuals have been summoned in relation to the investigation. To date, Cambodian authorities have not implemented recommendations made by local and international organizations for an independent, transparent and impartial investigation conducted by an independent body, or sought assistance from States and international organizations with respect to forensic analysis or data collection.

Since the murder of Mr. Ley, there has been a number of commemorative activities and peaceful gatherings organized by different groups.

Mr. Kong Raiya, aged 28, was arrested on 9 July 2019. Prior to his arrest, Mr. Raiya made Facebook posts selling t-shirts featuring the image of Mr. Kem Ley and provided contact details for a taxi that could transport people to Phnom

Penh to participate in a ceremony for the anniversary of the killing of Mr. Kem Ley. Mr. Raiya had been arrested in August 2015 and sentenced to 18 months in prison following posts made on Facebook.

Mr. Soung Neakpaon, aged 29, was arrested on 10 July 2019, outside of the Caltex Bokor petrol station where Mr. Kem Ley was murdered. Mr. Neakpaon was attempting to participate in a commemorative ceremony at the station, but was arrested by authorities when approaching the perimeter of the Caltex parking lot. Information received confirms the peaceful nature of the assembly at the time of his arrest.

Mr. Raiya and Mr. Neakpaon are currently detained at Phnom Penh's Correctional Center 1 and charged under articles 494 and 495 of Cambodia's Criminal Code related to "incitement to commit offences".

Disruptions during activities surrounding the commemorations for Mr. Kem Ley were reported on 9 and 10 July 2019, in Phnom Penh, Banteay Meanchey, Kampong Cham, Kampong Chhnang, and Kandal provinces. The reported interferences in these peaceful acts, although they did not result in charges and prolonged detention for those involved, contribute to minimize the space for freedom of peaceful assembly, expression, and political debate in Cambodia.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the arrests, detention and criminal charges against Mr. Kong Raiya and Mr. Soung Neakpaon may unnecessarily and disproportionately restrict their right to freedom of expression and opinion, the rights to public participation, to freedom of peaceful assembly and of association, and to defend human rights.

We are also concerned by the alleged failure to conduct adequate investigations to clarify Mr. Ley's killing.

In view of international human rights law and standards detailed below, we urge your Excellency's Government to undertake a rigorous and thorough reassessment of its policies and practices to ensure compliance with your international obligations.

We call for both individuals to be immediately released from detention and have all charges against them dropped.

We also reiterate the call of five Special Procedure mandate holders in a communication dated 12 July 2016 (AL KHM 4/2016) to investigate the alleged murder of Mr. Kem Ley. In their communication, the mandate holders expressed grave concern that the death of Mr. Ley might be related to the legitimate exercise of his right to freedom of expression, in particular his advocacy activities and his work in favor of human rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the legal grounds for the arrest, detention and charges against Mr. Raiya and Mr. Neakpaon, and how these are compatible with your obligations under international human rights law.
3. Please provide further details, and where available the results, of the investigation carried out and the prosecutions undertaken in relation to the murder of Mr. Kem Ley.
4. Please indicate what measures have been taken to ensure that human rights defenders in Cambodia are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which our concerns are based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression of

concern on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Clément Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

We wish to remind your Government of its obligations under various articles of the International Covenant on Civil and Political Rights (ICCPR), acceded by Cambodia on 26 May 1992.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we call upon your Excellency's Government to take all necessary measures to respect Article 19(1) of the ICCPR which establishes 'the right to hold opinions without interference'. Article 19(2) establishes State Parties' obligations to respect and ensure the right '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 choice'.

Under article 19(3), restrictions on the right to freedom of expression must be 'provided by law', and 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'.

We also recall that according to Article 21 of the ICCPR, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others." The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34). Moreover, it 'must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution'. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions 'target a specific objective and do not unduly intrude upon the rights of targeted persons'. The ensuing interference with third parties' rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be 'the least intrusive instrument among those which might achieve the desired result'.

In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter

alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions (see above) as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

In its General Comment No. 25 on Participation in Public Affairs and the Right to Vote (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee set out that ‘[i]n order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.’ It requires the full enjoyment and respect for the rights and freedoms to ‘engage in political activity individually or through political parties and other organizations ... to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.’

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights state that national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order, or as a pretext for imposing vague or arbitrary limitations. It may only be invoked to protect the existence of the nation or its territorial integrity or political independence against force or threat of force, and where there are adequate safeguards and effective remedies against abuse.

Under paragraph 15 of the General Comment No. 34, the Human Rights Committee made a specific reference to the digital age and the enrichment of the public debate indicating that ‘States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto’.

The Human Rights Committee also reminded in its General Comment No. 34 that ‘Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with Article 19 paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with Article 19 paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.

As recalled by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ‘States should not place undeniable pressures on the private information and communication technology sector that often lead to serious restrictions on the freedom of expression’ (A/HCR/32/38).

Moreover, we recall that Resolution 24/5 of the Human Rights Council reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections. This includes persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights. The resolution further reminds States to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

In order for political and democratic engagement to be genuine and robust, unfettered public debate is crucial. Such debate depends on the free communication of ideas concerning public and political issues so that the public is fully informed of all points of view, even when such views might be opposing and even controversial. The rights to freedom of expression and assembly are extremely important means for achieving this. In this context, we wish to refer to the concluding observations of the Human Rights Committee to the Royal Kingdom of Cambodia in relation to its implementation of article 19 of the International Covenant on Civil and Political Rights in 2015. The Committee recommended that the Government ‘...ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression.’ Furthermore, we would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In relation to the case of Mr. Ley, we would like to remind your Excellency’s Government of the duty to investigate, prosecute, and punish all violations of the right to life. In its General Comment No. 36, the Human Rights Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, and that investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. The Human Rights Council in Resolution 35/5 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” reiterated the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of executions, to identify and bring to justice those responsible; and to

adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of executions.