

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:
AL KHM 2/2019

4 June 2019

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, in addition to the information contained in communication KHM 1/2019 dated 12 April 2019, regarding the continued use of police and judicial authority to intimidate, harass or detain at least another 72 former members/supporters of the Cambodia National Rescue Party (CNRP) for having exercised their rights to freedom of expression and of peaceful assembly. These include court summons for 35 former-CNRP members in Battambang in May, the questioning of 35 persons by the different communal police in Kampong Thom province in April and May 2019, and the charges against and detention of at least two individuals since early 2019.

According to the information received:

Mr. **PAN Soksovanny**, male, former member of the CNRP's national executive (working group) committee based in Kandal Stung district, Kandal province. On 28 November 2017, after the dissolution of CNRP, he was arrested by the Boeung Tompon commune police in Phnom Penh, accused of forming a colour revolution against the government. He was questioned for two days at the police station. He was released with the condition that he not report the case to any human rights organization or media and stay at home. After the incident, he returned to his mother's home in Kampong Thom province, where he reportedly had arguments with the local authority related to the CNRP. The local authority threatened to sue him. Due to his fear of being arrested, he fled to Siem Reap province. There, he

was under surveillance by a village security guard. On 21 January 2018, he fled Cambodia.

On 27 July 2018, together with other former CNRP members and supporters abroad, he posted photos of their “clean fingers” on Facebook. On 28 January 2019, he went back to Cambodia to visit his sick mother in Kampong Thom province. Then, he went to Phnom Penh to visit his two-year-old son living with his sister. On 1 February 2019, while he was taking the bus to leave Phnom Penh for Kampong Thom, he was arrested by the police. He was taken to the National Police Commissariat. He was handcuffed and his mobile phone and other documents were confiscated. Between 1 and 3 February 2019, he was questioned about his activities. On 3 February, he was taken to the prosecutor, who questioned him about his Facebook post criticizing the government and supporting Sam Rainsy. He was charged with four offences: 1) defamation (article 305 of the Criminal Code), 2) incitement to commit felony (article 495 of the Criminal Code), 3) unauthorized holding of weapon (article 490 of the Criminal Code), and 4) attempted murder (article 199 of the Criminal Code). He was sent to prison on pre-trial detention. The investigation has allegedly concluded and he is awaiting trial.

Mr. **SOU Yean**, 45, male, former CRNP Tbong Khmum Provincial Councillor. On 22 April 2019, Tbong Khmum Police arrested Mr. Yean at his house at Prey Treak Village, Teak Commune, Memot District, Tbong Khmum province for questioning, related to a Facebook post dated 20 April 2019. On 23 April 2019, he was charged with incitement to commit a felony (article 495 of the Criminal Code) and placed in pre-trial detention in Tbong Khmum Prison.

Court summons in Battambang. Between late April and May 2019, 35 former CNRP members were summoned by two Battambang prosecutors for questioning for allegedly violating the Supreme Court’s verdict on the dissolution of the CNRP. This list includes: Ms. **SIN Chanpeourozet**, Mr. **KHOUN Chamroeun**, Mr. **MOK Ra**, Mr. **SIN San**, Mr. **SOEUM Lav**, Mr. **THORNG Saroeun**, Mr. **KONG Bunheang**, Mr. **DOEUM Saroeun**, Mr. **ROEUN Kep**, Mr. **POUK Lyhak**, Mr. **KHAN Bunpheng**, Mr. **PHAN Reth**, Mr. **YOUM Dong**, Mr. **HORM Eab**, Mr. **VI Von**, Mr. **TON Samorn**, Mr. **SAING Bunmao**, Mr. **SUN Chamroeun**, Mr. **SOK Sopheak**, Mr. **PHOEUK Lum**, Mr. **CHEA Chiv**, Mr. **KRUY Kimsaing**, Mr. **MANG Chhoeun**, Ms. **NY Romdoul**, Mr. **POV Taing**, Mr. **SAM Vongdara**, Mr. **SENG Bunthorn**, Ms. **SENG Raksmeay Mony**, Mr. **LIM Sitha**, Mr. **SOUN Saren**, Ms. **CHAN Ouksopha**, Mr. **UTH Choeun**, Mr. **BUN Sareth**, Mr. **CHHOR Selly** and Ms. **LOEUM Oeub**. None of the summoned individuals were informed of the activities that were considered a violation of the verdict in the summons. The lawyer was not allowed to photocopy any of the case files. During the questioning, the former CNRP members were questioned on three different cases.

Case No. 339

On 2 December 2018, Mr. DOEUM Saroeun and his family went to have breakfast at a restaurant owned by a former CNRP colleague. There, he met approximately 10 former CNRP colleagues. They did a Facebook livestream on one of the former CNRP members' Facebook account, showing their support for Sam Rainsy as acting president of the CNRP, and their support to Sam Rainsy and Kem Sokha as one person. Between 8 and 9 May 2019, Mr. DOEUM Saroeun and other 10 former CNRP colleagues who appeared in the Facebook post were questioned by a Battambang prosecutor related to their gathering and their speech on the video clip. None of the summoned were detained.

Case No. 338

On 19 July 2018, Mr. Chea Chiv, a leader of the former CNRP in Battambang Province, invited 38 of his former colleagues for lunch at his house at Anlong Vil commune, Sangker district, Battambang province. Subsequently, Mr. Chea Chiv posted a group photo on Facebook showing people holding up their index fingers with the message: "our finger is really clean". The subsequent complaint lodged by some CPP members and the convictions and fines imposed by the Battambang Provincial Election Commission (PEC) and the National Election Committee (NEC) on Mr. Chea Chiv, Mr. Thorng Saroeun and Mr. Kruey Kimsaing were the subject of joint communication KHM 9/2018 in December 2018. In this regard, we take note of the response from the Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations in Geneva dated 5 February 2019.

On 18 January, Mr. Chea Chiv, Mr. Thorng Saroeun and Mr. Kruey Kimsaing decided to pay the fines imposed on them, for fear of being arrested. Between 16 and 17 May 2019, the three men and eight other former CNRP members who were present at the lunch were questioned by a Battambang prosecutor on the above facts.

Case No. 340

In early May 2019, nine former CNRP members also received a summons to be questioned by a Battambang prosecutor on 24 May 2019 for violating the Supreme Court verdict on the dissolution of the CNRP. On 24 May 2019, the prosecutor decided to postpone the questioning to an undisclosed date. There is no further information on the reason for the summons, although it is alleged that it may be linked to their previous activities prior to the election and their support to the dissolved CNRP.

Police questioning in Kampong Thom: In early January 2019, around 35 former CNRP members in Phnom Penh and in Kampong Thom, including Mr. **SORN Sunheng** (former Commune Chief of Prsat Commune), Mr. **DONG Sun** (2nd Deputy Commune Chief of Chhuk Sach) and Mr. **UCH Leng** (2nd Deputy Chief of Baray Commune) gathered at a restaurant in Sontuk district in Kampong Thom province to celebrate the International New Year. During the gathering, around 30 of them, including Mr. Sorn Sunheng and Mr. Uch Leng, made a video expressing their support to Sam Rainsy as acting president of the CNRP.

On 27 April 2019, Mr. Dong Sun received a summons from the Chhuk Sach commune police to go to police post office for questioning in the afternoon on the same day. He was questioned about his gathering at the restaurant. On 30 April 2019, Mr. Uch Leng was questioned by Baray Commune Post Police related to their above gathering. On 14 May 2019, Mr. Sorn Sunheng received a summons from the Prasat Commune Police Post to come in for questioning related to the gathering, which he did on 15 May. All three were allowed to return home after the questioning.

Between April and 15 May 2019, another 32 persons who were present during the gathering were questioned by communal administrative police in Baray, Stung Saen and Sonthuk districts.

Similar reports of questioning by local police and of detention orders by the courts have also been received from Phnom Penh, Kampot and Kampong Chhnang provinces. While we have not received sufficient information from these provinces regarding the individuals concerned, the questioning nonetheless appears to be widespread across various provinces.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that these judicial actions against members of the former CNRP may indicate an escalating trend of suppression of dissenting opinions, in an attempt to silence and intimidate critical voices. The arrest and detention of Mr. Pan Soksovanny and Mr. Sou Yean, as well as the summons issued to 35 members of the former CNRP in Battambang province and around 35 in Kampong Thom province seem to be directly related to their political views and membership in the former opposition party, in contravention of their rights to freedom of expression, peaceful assembly and association, as enshrined in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) respectively, acceded to by your Excellency's Government in 1992. Article 31 of the Cambodian Constitution sets out that the Kingdom will respect human rights, including those stipulated in the ICCPR.

In particular, we are concerned about the use of criminal law to target legitimate speech, both offline and online, that is protected under international human rights norms and standards, as enshrined in article 19 of the ICCPR.

We furthermore express concern that the summons appear to have been issued in contravention of the right to due process and a fair trial, in particular the principle of equality of arms and the right to have adequate time and facilities for the preparation of one's defence, including access to appropriate information, as enshrined in article 14 of the ICCPR.

Furthermore, we are concerned that allegations of this nature continue to be received despite the concerns previously communicated to your Excellency's Government on similar incidents. As referred to in KHM 1/2019, we are concerned that these actions continue to take place following a recording of a telephone call leaked on social media. In the recording, the Prime Minister was apparently calling on Government officials to destroy the remaining networks of the opposition party at the local level before the withdrawal of an EU-trade agreement possibly comes into effect.

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.

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 legal basis for the charges against the two individuals placed in pre-trial detention mentioned above and explain how this complies with international human rights standards.
3. Please provide information on the legal basis for the questioning and summoning of the individuals named above and explain how this complies with international human rights standards.
4. Please provide information on which basis the lawyer was denied the right to photocopy the casefiles of his clients.
5. Please provide information on the steps taken by your Excellency's Government to safeguard the rights of freedom of peaceful assembly and

of expression of the above-mentioned persons in compliance with international human rights standards.

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.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, 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.

We would like to recall to your Excellency's Government that 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." Restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. In this context, we also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society, and which reminds that any limitation to the right to freedom of expression must be determined by law and conform to the strict test of necessity and proportionality.

In its general comment on article 19 (No. 34), the United Nations Human Rights Committee – the expert body responsible for the monitoring and interpretation of the Covenant – 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".

Article 21 of ICCPR recognises the right to peaceful assembly. As the Special Rapporteur on the rights to freedom of peaceful assembly and of association has pointed out, an assembly is an intentional and temporary gathering in a private or public space for a specific purpose and "includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in" (A/HRC/20/27, para 24). While limitation of the above rights is permissible, such limitations shall be stated in the 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".

Furthermore, article 14 of the ICCPR recognises that all persons shall be equal before the courts and tribunals. In its general comment on article 14 (No. 32), the Human Rights Committee noted that "[t]he right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and

reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.” It goes further in stating that “[f]airness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.”