

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

REFERENCE:  
AL KHM 3/2019

25 June 2019

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 the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 33/30, 36/32, 34/18 and 32/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Mr. **Kem Sokha**, leader of the former Cambodia National Rescue Party (CNRP).

On 19 April 2018, the Working Group on Arbitrary Detention adopted Opinion No. 9/2018, finding that the deprivation of liberty of Kem Sokha, being in contravention of articles 2, 7, 9, 10, 11 (1), 19 and 21 (1) of the Universal Declaration of Human Rights (UDHR) and articles 2 (1), 9, 14, 19, 25 (a) and 26 of the International Covenant on Civil and Political Rights (ICCPR), was arbitrary and fell within categories I, II, III and V.

The Working Group considered that, taking into account all the circumstances of the case, in particular the risk of harm to Mr. Sokha's health, the appropriate remedy would be to release him immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

The Special Rapporteur on the situation of human rights in Cambodia also expressed concerns at the situation of those, such as Mr. Sokha, who remain under "judicial supervision", in a press release from 26 September 2018.

According to the information received:

Mr. Kem Sokha, remains effectively in detention since his arrest on the night of 3 to 4 September 2017, having spent almost a year in Correctional Centre 3 in Tbong Khmum province. Although he was released on bail on 10 September 2018 by the Investigating Judge and placed on "judicial supervision", he is forbidden from leaving a small area around his house, meeting any foreigners, former-CNRP leaders or other individuals linked to the case, and from conducting any political activities. Judicial supervision is authorised under Article 126 of the Criminal Procedure Code of the Kingdom of Cambodia. Article 249 of the

Criminal Procedure Code provides that the charged person can be brought before the court at any time. According to the Ministry of Justice, Mr. Kem Sokha is under “judicial supervision” with restrictions imposed by the Investigating Judge, some for his own safety, and that the period of court supervision could be indefinite.

During her three official visits to Cambodia from 5-14 March 2019, 29 October to 8 November 2018 and 29 April to 9 May 2019 respectively, the Special Rapporteur on the situation of human rights in Cambodia requested to meet with Mr. Sokha. The three requests were denied by the Investigating Judge. A request by the Special Rapporteur to meet with the Investigating Judge was also refused.

On 10 May 2019, four Government lawyers submitted an application to be a civil party in the criminal case against Mr. Sokha. The request was granted on 16 May 2019 and Mr. Sokha’s lawyers were notified on 23 May 2019.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that Mr. Sokha remains under detention and has been in detention for more than the maximum 180 days of pre-trial detention permissible in Cambodian Law, in particular Article 208 of the Criminal Procedure Code. In this context, we would like to recall the Opinion of the Working Group from April 2018 which determined that the arrest and continued detention of Mr. Kem Sokha may be directly related to his political views and leadership of the former opposition party CNRP, in contravention of his rights to freedom of expression and association, and to participate in public affairs, as enshrined in articles 19, 22 and 25 of the ICCPR respectively.

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 explain the exact factual and legal basis of placing Mr. Sokha under judicial supervision with some conditions following the Investigating Judge’s decision from September 2018; and how this decision is compatible with Cambodia’s obligations under international human rights law.
3. Please explain the steps taken to implement the Working Group’s April 2018 decision (A/HRC/WGAD/2018/9) and the Special Rapporteur’s call

for the release of Mr. Sokha from “judicial supervision” and the swift conclusion of the investigation or for the charges to be dropped.

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.

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

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

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

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the 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 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 appeal to your Excellency's Government to take all necessary measures to guarantee the right of Mr. Sokha not to be arbitrarily deprived of his liberty, to a fair proceeding before an independent and impartial tribunal, to freedom of opinion and expression, and to freedom of association, as enshrined in articles 9, 14, 19 and 22 respectively of the International Covenant on Civil and Political Rights (ICCPR).

Under Article 9 of ICCPR, “[d]eprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement under article 12. Examples of deprivation of liberty include police custody, arraigo, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as being involuntarily transported...”<sup>1</sup>

“Article 9 requires that procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures. Article 9 further requires compliance with domestic rules that define the procedure for arrest by identifying the officials authorized to arrest or specifying when a warrant is required. It also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer, **where individuals may be detained**, when the detained person must be brought to court **and legal limits on the duration of detention**. It also requires compliance with domestic rules providing important safeguards for detained persons, such as making a record of an arrest and permitting access to counsel. Violations of domestic procedural rules not related to such issues may not necessarily raise an issue under article 9.”<sup>2</sup> (bold added)

“Without prejudging the arbitrary character or otherwise of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.”<sup>3</sup> “For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the

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<sup>1</sup> General Comment No. 35 (2014) on Article 9: Right to liberty and security of person, CCPR/C/GC/35, para. 5.

<sup>2</sup> Ibid, para. 23.

<sup>3</sup> Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, Report of the Working Group on Arbitrary Detention Working Group on Arbitrary Detention, E/CN.4/1993/24, para 20.

placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.”<sup>4</sup>

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<sup>4</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 4.2.