

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 1/2019

12 April 2019

Excellency,

We have the honour to address you in our capacities 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 use of police and/or judicial authority to intimidate and harass at least 55 former members/supporters of the Cambodia National Rescue Party (CNRP) for having exercised their rights to freedom of expression and peaceful assembly. These include six former-CNRP members from Kampong Speu who fled the country in March 2019 after being summoned by the provincial prosecutor. A further 11 persons were questioned by the police in Banteay Meanchey province, while 38 former-CNRP members were similarly questioned in Kandal province.

According to the information received:

Kampong Speu

On 8 December 2018, Ms. KUN March attended a gathering of former-CNRP members at Treng Troyeung Commune, hosted by Ms KEM Tola, the former-CNRP commune chief. A video of the event was posted on Facebook showing Ms. KUN March making a speech supporting Sam Rainsy as acting CNRP President.

On 23 December 2018, Ms. CHUM Sophorn, a former-CNRP member, hosted a noodle party in her house to invite her friends and associates to her daughter's wedding. Amongst those who attended were some former-CNRP members who featured in a video clip that was uploaded on Facebook. In the video, Mr. TIENG Sien, is seen giving a short speech, on behalf of the former-CNRP leaders at all level in Kampong Speu, supporting the appointment of Sam Rainsy as acting CNRP President and proclaiming that Sam Rainsy and Kem Sokha were one person. He also welcomed the upcoming return of Sam Rainsy in early 2019 and requested the banned 118 former-CNRP leaders not to betray the people's will and Kem Sokha.

On 12 January 2019, Ms. CHUM Sophorn also hosted another gathering for former-CNRP supporters at district level. Videos with similar speeches were also filmed there and posted on Facebook.

On 15 January, Ms. CHUM Sophorn was summoned by Soportep Commune Police for questioning. The police asked her who asked/ordered her to organise the two events she hosted and where she received the money from. On the same day, Ms. KUN March was summoned by the Roka Thom commune police for questioning about being involved in CNRP gatherings. The police asked her to sign a letter accepting her mistake and promising that she would not conduct/participate in such activities again, but she refused to do so.

On 30 January, the Kampong Speu Prosecutor issued summons for Ms. CHUM Sophorn, Ms. KUN March, Ms. KEM Tola, Mr. TIENG Sien and other two guests at the gathering on 23 December. The summons referred to grounds of incitement to commit felony – no further details were given – and asked them to appear for questioning in the Prosecutor’s office on 21 February. The six persons received the summons between 12 and 19 February and all subsequently fled abroad.

Kandal

In December 2018 and January 2019, some former-CNRP members from Kandal province gathered in various places and filmed videos of themselves supporting Sam Rainsy as President and calling for unity between him and Kem Sokha. After the videos were uploaded on Facebook, at least 38 former-CNRP members have been questioned by police about these gatherings and/or videos clips.

Amongst those questioned was Mr. LY Mengkhieng from Sa’ang district, who was questioned for more than 4 hours by Sa Ang District Police on 18 December 2018. The police asked him about a video he posted on Facebook showing him making a pro Sam Rainsy speech at a gathering of around 20 former-CNRP members on 16 December. He was released after signing a letter that he would not post further videos or do anything that affected national security. The Kandal provincial Governor told local media that the police called him to remind him that the CNRP had been dissolved by the Supreme Court and that references to it were unlawful. Similarly the Ministry of Justice spokesperson Chin Malin is quoted as saying that their actions were not covered by right to freedom of expression as they were “in support of a criminal, as convicted by the court... supporting an illegal movement, [Rainsy’s] ‘Cambodia National Rescue Movement’, which has the intention to destroy peace and topple the government.”¹

Banteay Meanchey

On 1 Jan 2019, Mr. KHAN Lai, a former-CNRP supporter in Poipet Commune had a housewarming party with 200 guests including other former-CNRP members. During the party, some of them gathered and filmed videos of themselves expressing support to Sam Rainsy and CNRP. These videos were then shared on Facebook. On 2 January 2019, a group of 10 policemen arrived to

¹ <https://www.phnompenhpost.com/national-politics/rainsys-facebook-supporter-questioned>

question him about the gathering. He was also summoned by the police in Poipet. Over the next two months, another ten former-CNRP members in Banteay Meanchey province were similarly questioned by the police about the 1 January and other similar gatherings.

Amongst those questioned was Mr. TUOT Veasna, a 36 year old former-CNRP provincial chief. The police in Monkul Borey district questioned him on 10 January and released him after he signed a document pledging to not support CNRP and keeping the police informed of his movement. Mr. TAY Seng Oun, a 70 year old former executive board member of the provincial CNRP was also similarly questioned on 03 January by Poipet commune police.

A 49-year-old former-CNRP official was questioned for 9 hours on 2 January by military police in Poipet for wearing a military-styled jacket and for his support to former-CNRP. He was released after he signed a document agreeing not to support the CNRP or carry out any protests. Two other former-CNRP officials in Poipet were also similarly questioned, ostensibly for wearing military clothes. They said that they were jackets with US military insignia – commonly sold in Cambodian markets.

According to the local police deputy commissioner, the crackdown on former-CNRP was not due to an order from Commissioner-General of National Police or from the provincial governor. He said that as the CNRP was dissolved, the police had the authority to monitor any movements or gathering related to CNRP to prevent unlawful acts.

Similar reports of questioning by local police have also been received from Battambang and Kampong Cham provinces. While we have not received sufficient information from these provinces, the questioning nonetheless appears has been widespread across provinces. We are also concerned that these actions took place around the same time as a recording of a telephone call was leaked on social media. In the recording, the Prime Minister is 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 comes into effect.

We express concern at the summoning of the Ms. March Kun, Ms. Sophorn Chum, Ms. Tola Kem, Ms. Sien Tieng, Mr. Mengkhieng Ly, Mr. Lai Khan, Mr. Veasna Tuot and Mr. Seng Oun Tay, which appear to be directly related to their political affiliation. We furthermore express concern at the insufficient grounds presented for the summoning as these grounds represent an unlawful restriction to the legitimate exercise of the right to freedom of expression.

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. In connection with above alleged facts and concerns, we would like to draw your attention to articles 19, 21 and 22 of the ICCPR which guarantee the right to freedom of opinion and expression, to freedom of peaceful assembly and to freedom of association.

Any restriction to the right to freedom of expression must be provided for by law; may only be imposed for legitimate grounds, as set out in article 19(3) of the ICCPR; and must conform to the strict tests of necessity and proportionality to protect the legitimate rights of others, public order and national security. Authorities will have to demonstrate that restricting the speech of the kind made by the above-mentioned individuals meets these standards. We would like to recall that the protection of the right to freedom of expression is particularly high in circumstances of public debate concerning public figures in the political domain and political institutions. The mere fact that forms of expression are considered to be insulting is not sufficient to justify the imposition of penalties and all public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition (see UN Human Rights Committee General Comment No.34).

With respect to Article 21, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has pointed out that 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).

For further elaboration of the above-mentioned standards, please refer to the **Annex on Reference to international human rights law** attached to this letter.

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 information about the legal basis for the summoning of the above-mentioned individuals, and explain how this complies with international human rights standards.
3. Please provide information about the evidence used to accuse the above-mentioned individuals of being engaged in criminal activities and in activities posing a threat to national security.

4. Please provide specific information about the grounds for criminal action against the six former-CNRP members at the Kampong Speu provincial court.
5. Please provide information on the steps taken by your Excellency's Government to safeguard the rights of freedom of assembly and 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 of international human rights 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 , without expressing at this stage an opinion on the facts of the case, we would like to recall Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a party.

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.”

Any restriction to the right to freedom of expression must be provided for by law; may only be imposed for legitimate grounds, as set out in article 19(3) of the ICCPR; and must conform to the strict tests of necessity and proportionality to protect the legitimate rights of others, public order and national security. Authorities will have to demonstrate that restricting the speech of the kind made by the above-mentioned individuals meets these standards. We would like to recall that the protection of the right to freedom of expression is particularly high in circumstances of public debate concerning public figures in the political domain and political institutions. The mere fact that forms of expression are considered to be insulting is not sufficient to justify the imposition of penalties and all public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition (see UN Human Rights Committee General Comment No.34).

Article 21 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).

We wish to refer your Excellency’s Government that, as stipulated by the Human Rights Council that States have an “obligation to respect and fully protect the civil, political, economic, social and cultural rights of all individuals, inter alia the rights to freedom of expression and opinion and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs, and that respect for all such rights, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society, such as (...) responding to humanitarian crises, including armed conflict, promoting the rule of law and accountability, achieving transitional justice goals, (...) combating racism and racial discrimination, supporting crime prevention, (...) and the realization of all human rights”. (A/68/53/Add.1)