

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolutions 42/37 and 42/16

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the development of a QR Code system named "Stop Covid" to prevent the spread of COVID-19.**

According to the information received:

On 20 February 2021, the Ministry of Post and Telecommunications (MoPT) announced the development of a QR Code system named "Stop Covid" to prevent the spread of COVID-19. The application was developed jointly by the MoPT and the Ministry of Health (MoH). The initial announcement of the MoPT did not provide details on whether it is compulsory for everyone to use in Cambodia, however a subsequent announcement by the office of the prime minister stated that those that fail to comply will be subject to punishment, including closure of their business. The MoPT has reportedly requested the cooperation of all ministries, departments, private and public enterprises, business owners, restaurant owners and other premises that serve the public, including health facilities, to cooperate by registering for a QR code. According to publicly available information over 2000 public and private institutions have registered to be part of the system. These institutions are required to install it at their respective entity for the public or customers to scan. Customers and/or visitors are required to scan the QR code with their smartphones while entering/checking-in. People use their smartphones to scan the QR code and enter their phone number. SIM cards are registered to individuals at the time of purchase, with a copy of their identity documents kept on record. The system then sends a text message with a security code for the scanner to enter into the system. Individuals without smartphones are required to provide full names, phone numbers and residential addresses.

Many rural and poor Cambodians do not have access to smart phones and/or access to the internet making these mechanisms inaccessible. Even those who have access to smart phones may only have text and telephone enabled therein. Under these provisions those without smart phones and access to this app and to internet may have difficulties in accessing services and facilities. Persons who do not have smartphones are required to provide their full name, phone number and address. Small business owners who are struggling to survive due to pandemic-related economic hardship will further suffer due to this additional

requirement which will pose obstacles for their clients and customers wishing to buy goods and services.

WHO contact tracing guidance recommends “board sensitization”, “community involvement” in developing contact tracing mechanisms and requires the public health agencies “to communicate how information will be used, stored, and accessed and how individuals will be protected from harmful disclosure or identification.” The WHO guidance also recommends effective data and privacy and protection of data from “harmful disclosure” and “identification.”

While we do not wish to prejudge the accuracy of the information received, we wish to express our concern at the above information, which could be in contravention of article 17 of the International Covenant on Civil and Political Rights, ratified by Cambodia in 1992, protecting the right to privacy. Such protection extends to an individual’s privacy, family, home or correspondence and prohibits unlawful attacks on an individual’s honour and reputation. The ICCPR further provides the right to remedy against unlawful interference. Such measures must also comply with the provisions, aims and objective of the ICCPR and specify precise circumstances in which such interferences are permitted.¹ The Special Rapporteur on the right to privacy outlined that the law must include safeguards; if it is not spelt out in sufficient detail, such measures cannot be considered adequate under international law.²

The Secretary-General has emphasized that “human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity.”³

Such measures may also be in breach of article 40 of the Cambodian Constitution, which protects the right to privacy of “residence, and the secrecy of correspondence by mail, telegram, fax, telex and telephone”. The Constitution does not provide a provision for the deprivation or restriction of the right to privacy, but sets legal requirements in relation to searches of residences, properties and individuals. A number of other laws also offer some protection of the right to privacy. These include the law on Telecommunications⁴, Press Law⁵, Civil Code⁶ and Criminal Code.⁷ In terms of redress mechanisms, except for civil cases in which redress may be sought from a court in relation to personal rights, the abovementioned laws do not provide an independent mechanism that may oversee and protect against violations to the right to privacy.

The above allegations suggest the QR system may be in contravention of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Cambodia in 1992, that protects the right to health. This right is inclusive and dependent on other rights, including the rights to privacy and access to information.

¹ Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy)

² Rights to Privacy, Note by the Secretary-General, A/75/147, 27 July 2020,

³ [un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf](#)

⁴ Article 65 b

⁵ Article 7

⁶ Articles 10, 11 and 12

⁷ Articles 301, 302, 314 and 318

While it includes the right to seek, receive and impart information concerning health issues, it cannot impair the right to have personal health data treated with confidentiality (Committee on Economic, Social and Cultural Rights, General Comment 14, E/C.12/2000/4, para 12.b). Article 2 of ICESCR requires the States Parties to the Covenant to guarantee that the rights, including the right to the highest attainable standard of health, enunciated in the present Covenant will be exercised without discrimination.

The World Health Organization has acknowledged that the use of personal data collection forms a part of a legitimate contact tracing.⁸ It has put together ethical consideration guidance which outlines that the measures shall be a) temporary in nature, b) protected by law authorizing the collection and processing of data, c) in line with the principle of proportionality, d) containing data needed to achieve public health goals and e) based on the principle of voluntariness⁹. WHO contact tracing guidance recommends “broad sensitization”, “community involvement” in developing contact tracing mechanisms and requires the public health agencies “to communicate how information will be used, stored, and accessed and how individuals will be protected from harmful disclosure or identification.” Further, WHO guidance also offers recommendations on effective data processes, protecting privacy of users and protection of data from “harmful disclosure” and “identification.” The guidelines also require an independent oversight mechanism to evaluate the ethical and human rights aspects of the response¹⁰. While “the collection, use, sharing and further processing of data can help limit the spread of the virus”¹¹, the collection of vast amounts of personal and non-personal sensitive information may have significant effects beyond the crisis response and could potentially lead to the infringement of fundamental human rights and freedoms.¹²

We are concerned that the announcement made by the MoPT neither indicates the legal justification nor details the measures in place to protect the privacy and data of individuals. We are further concerned that the Government has not provided any assurances to the public suggesting that the use of the QR Code is purely for the management of COVID-19 and cannot be used for any other purposes, despite information indicating that these measures will “not affect privacy”. Furthermore, legal safeguards available to affected citizens are not outlined in the announcement. While recognising that the COVID-19 pandemic presents unprecedented challenges for many societies, it remains paramount that States comply with their burden of proof to demonstrate that less restrictive means were unavailable to the State. We are concerned that Your Excellency’s Government does not seem to have justified why less restrictive means would not be suitable to achieve the stated purpose of protecting the life and health of the population.

In the absence of a legislative framework, these measures are not in line with Cambodia’s international human rights obligations. We fear that such measure pose a risk to the privacy of information and may expose individuals’ personal information without their consent, which violates fundamental human rights; in particular the right

⁸ [WHO-2019-nCoV-Ethics Contact tracing apps-2020.1-eng.pdf](#)

⁹ Ibid, page 3

¹⁰ Ibid, page 5

¹¹ [Joint Statement on Data Protection and Privacy in the COVID-19 Response \(who.int\)](#)

¹² Ibid

to privacy guaranteed by international human rights instruments and Cambodian laws. Additionally, the storage of personal details of individuals in a centralised Government database may be prone to cyber-attacks, un-authorised access or improper surveillance.

We urge your Excellency's Government to make its usage optional subject to individuals' consent, and introduce robust safeguards, ensuring that data collected are strictly used for public health purposes.

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 information on steps taken/to be taken by Your Excellency's Government to ensure that the right to privacy and data of individuals will be protected.
3. Please explain how the decision by the Ministry of Post and Telecommunication is necessary and proportionate.
4. Please provide information regarding:
 - a) Name of authorized Government institutions that will have access to the data collected;
 - b) Timeframe for the storage of the data;
 - c) Where and how the data will be stored and what data protection mechanism is in place;
 - d) Applicable legal measures that concern the obtaining, disposing and retaining of data; and
 - e) What mechanism is in place that will consider grievances and complaints of individuals who may fall victims as result of the data collection process?
5. Please provide measures taken to ensure that access to basic public services, including health care services, is not linked nor dependent on the use of the app.

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex

Reference to international human rights law

With reference to the abovementioned allegations, we refer to the obligations of your Excellency's Government under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by Cambodia in 1992.

Article 2 (1) of the ICCPR provides for the general duty of the State to respect and ensure the rights under the Covenant without distinction of any kind. This entails a negative obligation on the part of the State to refrain from interfering with the rights enshrined in the Covenant outside the permissible limitations explicitly allowed for. It also entails a positive obligation to exercise due diligence to prevent and to protect persons from abuse committed by private actors (General Comment No. 31 on "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" CCPR/C/21/Rev.1/Add. 13, paras. 6 – 8).

Article 17 of the ICCPR states that "1. No one shall be subjected to arbitrary or unlawful interference with his privacy" and that "2. Everyone has the right to the protection of the law against such interference or attacks."

In its practice, the Human Rights Committee has highlighted that the scope of the right to privacy is broad. It encompasses "the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone" (*Coeriel et al v. the Netherlands*, no. 453/1991, para 10.2).

On the other hand, the prohibition on "arbitrary or unlawful" interference under the ICCPR entails a requirement, first, that the interference must be provided by law. The requirement of legality entails that a norm, to be "provided by law", must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction [of the right to privacy] on those charged with its execution" (Human Rights Committee, General comment No. 34: Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, para. 25). Moreover, "[w]hen a State party invokes a legitimate ground for restriction . . . , it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the [right] and the threat" (Ibid, para 35).

The requirement of proportionality entails that "[r]estrictions must not be overbroad. . . restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected. . . The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (Ibid, para. 34). The State has the burden of proof to demonstrate that any restriction with the right to privacy adopted is compatible with the conditions for permissible limitations under the Covenant.

Protections of the right to privacy extends to an individual’s privacy, family, home or correspondence and prohibits unlawful attacks on an individual’s honour and reputation. The ICCPR further provides the right to remedy against unlawful interference. Such measures must also comply with the provisions, aims and objective of the ICCPR and specify precise circumstances in which such interferences are permitted. The Special Rapporteur on the right to privacy outlined that the law must include safeguards; if it is not spelt out in sufficient detail, such measures cannot be considered adequate under international law.

We would like to further refer to Your Excellency’s obligations under article 12 (right to health) of the ICESCR. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) establishes that the right to health is an inclusive right (para. 11) closely linked to and dependent on other rights, including the rights to privacy and access to information (para 3). The right to health encompasses the right to request, receive and disseminate information and ideas about health-related issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality (para 12.b.iv). The Committee also establishes acceptability as an essential component of the right to health and indicates that health services must be respectful of medical ethics and must be designed to respect confidentiality and improve the health status of those concerned (para 12.c).

The World Health Organization has acknowledged that the use of personal data collection forms a part of contact tracing.¹³ It has put together ethical consideration guidance which outlines that the measures shall be a) temporary in nature, b) protected by law authorizing the collection and processing of data, c) in line with the principle of proportionality, d) containing data needed to achieve public health goals and e) based on the principle of voluntariness¹⁴. The guidelines also require an independent oversight mechanism to evaluate the ethical and human rights aspects of the response¹⁵. While the United Nations takes note that while “the collection, use, sharing and further processing of data can help limit the spread of the virus”¹⁶, it outlines that the collection of vast amounts of personal and non-personal sensitive information may have significant effects beyond the crisis response and could potentially lead to the infringement of fundamental human rights and freedoms.¹⁷

We wish to highlight that the United Nations Secretary-General has emphasized that “human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity.”¹⁸

¹³[WHO-2019-nCoV-Ethics_Contact_tracing_apps-2020.1-eng.pdf](#)

¹⁴Ibid, page 3

¹⁵Ibid, page 5

¹⁶[Joint Statement on Data Protection and Privacy in the COVID-19 Response \(who.int\)](#)

¹⁷Ibid

¹⁸[un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf](#)