

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

REFERENCE:
AL KHM 6/2021

4 May 2021

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 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 **Sub-Decree on Compulsory COVID-19 Vaccination**.

According to the information received:

On 11 April 2021, the Government of Cambodia adopted the Sub-Decree on Compulsory COVID-19 Vaccination. Article 3 of the Sub-Decree states the obligation of civil servants and all kinds of armed forces personnel in the executive branch, citizens who hold public office through elections and public officials at legislative bodies, and judges, prosecutors and other officials in the judiciary to receive COVID-19 vaccine. It further states that COVID-19 vaccination shall be also mandatory for individuals based on their professions and infection risks associated with them as determined by the Ministry of Health.

Article 5 of the Sub-Decree outlines that those who avoid COVID-19 vaccination shall receive a warning and reprimand by their concerned institution. In case of repeated failure, the concerned institution may impose other disciplinary actions in accordance with the laws and provisions in force. Although the Sub-Decree establishes that the obligation to receive does not apply to individuals who cannot be vaccinated for medical reasons as permitted by the health authorities, it does not provide any provisions on how to make such determination. The Sub-Decree also fails to establish provisions for appeal or remedy by the concerned population. Further, the Sub-Decree does not establish any provisions to ensure people have adequate information on the national vaccination plan, on the safety and efficacy of the proposed vaccines or on the need for informed consent of those receiving a vaccine.

Senior Government's officials have warned that public servants could be dismissed from their jobs and garment workers' employment contracts could be terminated by their employers if they refuse to get vaccinated.

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 to provisions of the various international human rights instruments, notably the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Cambodia is a State party and in particular the right to health (ICESCR article 12).

The right to health encompasses the prevention, treatment and control of epidemic diseases including through immunization programmes and other strategies of infectious disease control against the major infectious diseases and to enjoy the benefits of scientific progress (ICESCR articles 12 and 15). Access to a vaccine for COVID-19 that is safe, effective and based on the best scientific developments is an essential component of the right to health and the right to enjoy the benefits of scientific progress.¹

At the same time, the right to health also encompasses the right to control one's health and body, and the right to be free from interference, such as non-consensual or coercive medical treatment and experimentation. As clarified by the Committee on Economic, Social and Cultural Rights, States are obliged to refrain from applying coercive medical treatments, unless on an exceptional basis such as for the prevention and control of communicable diseases. However, such exceptions and any limit to economic, social and cultural rights because of the pandemic should be subject to specific and restrictive conditions, in line with article 4 of ICESCR and respecting best practices.² They must be in accordance with the law, including human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society. In essence, they must be necessary to combat the public health crisis posed by COVID-19, be reasonable and proportionate and States should adopt the least restrictive alternative available.³

In this connection, we would like to bring your attention to WHO position of 7 December 2020, where WHO experts did not recommend mandatory vaccination. The health experts stated that States should “encourage and facilitate the vaccination without those kinds of requirements.” Persuading the population on the merits of COVID-19 vaccine would be better than making jabs mandatory.⁴ Also, General guidance on COVID by the UN Secretary General emphasizes the centrality of human rights in shaping the response to the pandemic and how any restriction placed on human rights must be necessary, reasonable, proportionate non-discriminatory and take the least intrusive approach possible to protect public health. The Secretary General guidance also emphasizes the need for the participation and involvement of people in making decisions that affect them to combat the pandemic.⁵

In addition, we would like to bring to your attention that the majority of the vaccines available in Cambodia have not been approved for use by the World Health

¹ E/C.12/2020/2 and E/C.12/2021/1.

² See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health. paras, 34, 44 (b) and (c) and E/C.12/2020/1.

³ Ibid paras 28 and 29.

⁴ See: <https://www.who.int/publications/m/item/covid-19-virtual-press-conference-transcript---7-december-2020> and <https://www.youtube.com/watch?v=pqBRv22RyJM>

United Nations Policy Brief, *Covid-19 and human Rights, We are all in this together*, April 2020.

Organization (WHO), and that Cambodians cannot choose which vaccine to receive. In this connection, we recall that the right to health requires States to make health facilities, goods and services, including vaccines, available, accessible, acceptable and of good quality, and that States parties must guarantee everyone the right to choose or refuse the treatment they want with the full knowledge of the risks and benefits of the relevant treatment, subject to any limitations that meet the criteria of article 4 of the Covenant.⁶

We strongly urge your Excellency's Government to consider revoking the Sub-Decree or take measures to ensure its compliance with international human rights standards.

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 any comment you may have on the above-mentioned allegations.
2. Please explain the measures taken by the Government during the certification process to ensure that the approved vaccines comply with Cambodia's international human rights obligations.
3. Please explain measures the Government will take to ensure the Sub-Decree and its implementation are 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 responsible of 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

⁶ See supra fn 2, para 44 (CESCR, GC 14) and Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on Science and Economic, Social and Cultural Rights para 44.

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

In connection with above alleged facts and concerns, International human rights law guarantees the right for everyone to enjoy the benefit of scientific progress (ICESCR article 15), which includes the development of vaccines in response to pandemics. However, the Committee on Economic, Social and Cultural Rights stresses the importance of participation and transparency in the process. The risks and potential of some technical advances should be made public in order to enable society, through informed, transparent, and participatory deliberation to decide whether the risks are acceptable⁷. As a state party to ICESCR, Cambodia is obliged to develop and implement policies in response to COVID-19 that incorporate elements related to acceptability and quality, including ensuring that the available vaccines are scientifically and medically appropriate and of good quality. Article 19 of ICCPR guarantees freedom of expression including the freedom to seek, receive and impart information including on matters of public health. In this regard, we encourage your Excellency's Government to engage with the public on this matter, seek informed consent of those undergoing vaccination and take steps to ensure that the population has access to vaccines that have been certified or approved by the WHO.

⁷ See Ibid, CESCR, General Comment 25.