

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA  
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14 April 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of Mr **Kong Raya** to 18 months imprisonment for comments he had made on his Facebook profile.

According to the information received:

On 07 August 2015, Mr Kong Raya posted the following comment on his Facebook profile: "Does anyone want to launch a Color Revolution with me? Any day, in the near future I will launch a Color Revolution in order to change the vulgar regime. Even if I am jailed or die, I have to do it". He was allegedly arrested on 20 August 2015 and charged the following day with incitement to commit a felony and sent into pre-trial detention at Prey Sar prison. The charges were brought under articles 494 and 495 of Cambodia's Criminal Code. These provisions relate to publicly spoken or published provocation to commit crimes, and direct provocation to commit a felony, respectively. Following multiple hearings in the Phnom Penh Municipal Court in September 2015, a final judgment was rendered on 15 March 2016 sentencing Mr Kong Raya to 18 months imprisonment.

It is alleged that the sentencing of Mr Kong Raya is one among several similar cases in Cambodia. From August 2015 to February 2016, at least 23 persons have reportedly been threatened for making critical comments on social media, and in addition, seven other people were arrested for making such comments online.

It has also been reported that on 28 December 2015, during a graduation ceremony speech at the Royal University of Law and Economics in Phnom Penh, the Prime Minister warned that Facebook users who criticize government policy on sensitive issues, or resort to personal insults, could be traced in a matter of hours. In late 2014, the Council of Ministers' Press and Quick Reaction Unit announced the creation of a "Cyber War Team", with the stated aim of monitoring all online activity to "protect the government's stance and prestige", while the Ministry of Interior allegedly announced that it would install surveillance equipment in all of Cambodia's mobile phone networks and Internet Service Providers.

While we do not wish to prejudge the accuracy of the aforementioned allegations, we would like to express grave concern at the sentencing of Mr Kong Raya to 18 months imprisonment, due to his legitimate exercise of his right to freedom of expression online. 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, ratified by Cambodia on 26 May 1992.

While the standards of international law permits governments to restrict expression, any limitation on 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 Mr Kong Raya 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).

We are also particularly concerned at the statements made by the Prime Minister on 28 December 2015 and more generally at the impact of the targeting of online speech, particularly those by critical or dissenting voices. These would impose undue restrictions on the legitimate exercise of the right to freedom of expression and exert a great deterrent effect that could gradually lead to the creation of a culture of self-censorship, both online and offline, which could prevent people from freely discussing political matters and refraining from engaging in participatory political dialogue. We would therefore like to express our concern in relation to the deterrent effect these measures may have on human rights defenders in the country.

We are also greatly concerned at the allegations related to the creation of a "Cyber War Team" and use of surveillance technique applied to all Cambodia's mobile phone networks and Internet Service Providers. In that regard, we would like to recall that the

right to privacy is essential for individuals to express themselves freely. The right to privacy is guaranteed by article 12 of the UDHR and article 17 of the ICCPR. Monitoring of individuals' communications and activities on the phone and on the internet can constitute a violation of the right to privacy, and, by undermining people's confidence and security on the internet, impede the free flow of information and ideas online. While the right to privacy can be subject to restrictions under certain exceptional circumstances, such interferences is permissible only if the criteria for permissible limitations under international human rights law are met.

We would like to refer your Excellency's Government to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 Mr. Kong Raya in compliance with international instruments.

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 therefore 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 detailed information on the legal procedures available to review and appeal the decision that resulted in the sentencing of Mr Kong Raya, and on the measures taken to provide all guarantee of a fair and impartial judicial procedure, as provided by international human rights norms and standards.
3. Please provide information for the justification of using articles 494 and 495 of the Criminal Code on the case of Mr Kong Raya, indicating how these are compatible with international human rights norms and standards, in particular article 19 of the ICCPR.
4. Please provide information on measures taken, or to be taken, to revise the interpretation and application of the Criminal Code to bring it in conformity with Cambodia's obligations under international human rights instruments such as the ICCPR.
5. Please provide information on measures taken, or to be taken, to ensure that expression related to public and political figures, including critical and dissenting expression, and also measures to ensure that human rights defenders in

Cambodia are able to carry out their legitimate work in a safe and enabling environment, without the threat of harassment or criminal prosecution.

6. Please provide information on the plans to create a “Cyber War Team” and install surveillance equipment in all mobile phone networks and internet service providers, and kindly explain how these measures are compatible with Cambodia’s obligations under international human rights norms and standards, especially in relation to article 17 and 19 of the ICCPR.

While awaiting a reply, we would like to appeal to your Excellency’s Government to repeal the decision against Mr Kong Raya and to revise the application of articles 494 and 495 of the Criminal Code to ensure its conformity with international human rights standards.

We would appreciate receiving a response within 30 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders