



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 216/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (33-27) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 18/25, 16/4, 15/21, 17/5, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged indiscriminate and excessive use of force against individuals in the margins of peaceful protests, leading to the death of one person and several injured, as well as the arrests of at least six individuals.**

According to the information received:

In early September 2013, the opposition Cambodian National Rescue Party (CNRP) announced that it would hold peaceful demonstrations from 15 to 17 September 2013 to protest against alleged election irregularities in the July National Assembly elections.

On 15 September 2013, tens of thousands of CNRP supporters reportedly attended peaceful protests in Phnom Penh, which included marches through some roads and camping out on Freedom Park overnight.

It is reported that roadblocks placed at many streets by the police frustrated some demonstrators as well as residents, business-owners and other individuals who gathered spontaneously around these roadblocks, resulting in further protests at these roadblocks, including in some instances with violence. In the evening, at the Kbal Thnal skybridge, a group of rioters began to violently oppose police forces posted behind barbed-wire fences, throwing stones at them. The rioters managed to destroy the fences, and used parts of them as sticks to attack the police forces who answered back with smoke gas. The rioters moved back on the road, smashing an ambulance, as well as destroying signboards and windows of Chak Angre Leu communal Cambodian People's Party (CPP) office. They also attacked the Chak Angre Leu communal administrative office, smashing motorcycles and doors. Other clashes opposed the police forces to rioters in the immediate surroundings of the Kbal Thnal skybridge and on Monivong bridge. This situation led to the firing of smoke grenades as well as live ammunitions by security forces against the crowd. Mr. **Mao Sok Chan**, a construction worker and by-stander returning home from work, was shot in the head and died on the scene. The autopsy confirmed the death had been caused by an 8mm bullet. Nine persons were seriously injured, eight of whom sustained bullet wounds, and taken to hospitals. One remains in intensive care to date. In addition to the 8mm bullet found in the body of the deceased, AK47 cartridges were also laying on the ground after the shootings. Several individuals, including teenagers, were beaten severely by security forces using truncheons. One of them suffered head lacerations from these beatings.

At least six persons, who allegedly did not take part in the aforementioned incident, were arrested: Mr. [REDACTED], aged 20, construction worker; Mr. [REDACTED], aged 17, high school student; Mr. [REDACTED], aged 18, high school student; Mr. [REDACTED], aged 21, university student; Mr. [REDACTED], aged 28, carpenter; and Mr. [REDACTED], aged 40, carpenter. The 6 individuals were beaten by the police forces during the arrest. The five adults were also beaten during the first interviews with the police in order to make them confess that they were part of the rioters that threw stones at the police forces. On 16 September 2013, all the arrestees were sent to Phnom Penh municipal court of first instance after they were held at the General-Commissariat of National Police overnight. They were preliminarily charged by a deputy prosecutor, with 1) intentional act of violence with aggravating circumstances under article 218 of the criminal code (carrying a sentence of between 2 years and 5 years in prison with a fine of between 4 million Riels and 10 million Riels), 2) wrongful damage to

private property under article 410 of the same criminal code (carrying a sentence of between 6 months and 2 years in prison with a fine of between 1 million Riels and 4 million Riels), and 3) wrongful damage with aggravating circumstances under article 411 of the same criminal code (carrying a sentence of 2 years and 5 years in prison with a fine of 4 million Riels and 10 million Riels). The investigating judge decided to place all six persons in pre-trial detention. They all remain detained as of today. Their defense lawyers have reportedly not had access to the case file so far. Furthermore, the families of five of the six individuals have been unable to visit them in prison.

The origin of the group of rioters is not known at the present time, but it is believed that *agents provocateurs* infiltrated the group of protestors and caused the incident. Before suddenly starting to cause chaos in a coordinated fashion several rioters were seen talking on the phone presumably to coordinate actions and await instructions. In addition, the CNRP had reportedly consistently called upon its supporters to remain calm and to refrain from violence, including through the stewards it had deployed that day.

Grave concern is expressed about the alleged indiscriminate and excessive use of force, including lethal force, against a number of individuals in the margins of the peaceful protests, which led to the death of Mr. Mao Sok Chan and many being injured. Similar concern is expressed about the arrest and detention of the six individuals who reportedly did not take part in the aforementioned incident, whereas rioters, easily identifiable, have not been arrested.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, acceded to by Cambodia on 26 May 1992.

We would also like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone 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 choice."

We would like to further refer your Excellency's Government to article 21 of the International Covenant on Civil and Political Rights, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of

this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this connection, we would like to also refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In addition, we would like to refer to the thematic reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in which he stated that:

- “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6) (A/HRC/20/27, para. 89);

- “States have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including *agents provocateurs* and counter-demonstrators, who aim at disrupting or dispersing such assemblies” (A/HRC/20/27, para. 33);

- “Law enforcement authorities should be prepared and properly trained to handle the presence of *agents provocateurs* and counter-demonstrators aiming to disrupt or disperse the assembly, and to extract them from the assembly or contain them effectively” (A/HRC/23/39, para. 70);

- “The Special Rapporteur calls upon States: ... [t]o ensure access to public space, including public streets, roads and squares, for the holding of peaceful assemblies, with the consequence of rerouting pedestrian and vehicular traffic when necessary” (A/HRC/23/39, para. 83(d)); and

- “The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice which may contribute to the success of the assembly” (A/HRC/23/39, para. 68).

We would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”(adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

With regard to the death of Mr. Mao Sok Chan, we would like to refer to article 6 of the International Covenant on Civil and Political Rights, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

The use of lethal force by law enforcement officials is strictly regulated under international human rights law, according to which, when force is used excessively without strict compliance with the principles of necessity and proportionality, any loss of life that results is an arbitrary deprivation of life and therefore illegal. The principles of necessity and proportionality under international human rights law are interpreted to mean that, including in the context of violent assemblies, lethal force may be used as a last resort, with the sole objective of saving life, as reflected in the aforementioned principles 4 and 5 of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Basic Principle 9 further specifies that “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life by any State

or non-State actor, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle 9 provides that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. Principle 18 further requires Governments to “ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.” We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

Moreover, since 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 cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Have complaints been lodged?
3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned six individuals and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please provide an update on the legal proceedings and measures taken to ensure that their lawyers have access to the case file and that their families are able to visit them in prison.
4. Please indicate the reasons justifying the alleged use of lethal force during the aforementioned protest and how these measures are compatible with the aforementioned international norms and standards.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. In the event that the alleged perpetrators are identified, please provide the full details of any prosecution which has been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

7. Please indicate whether compensation will be provided to the victims or their families.

We undertake to ensure that your Excellency's Government's response is reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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