



PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL

**Mandates of 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 the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: UA G/SO 216/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)  
KHM 2/2013

27 September 2013

Excellency,

We have the honour to address you in our capacity as 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 the situation of human rights defenders; 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, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **dispersal of two peaceful protests against alleged election irregularities, one brutally, by law enforcement officials.**

According to the information received:

On the night of 20 September 2013, a peaceful assembly of about 30 individuals reportedly took place at Wat Phnom, in Phnom Penh, to protest against alleged election irregularities and to accompany Prince [REDACTED] during a hunger strike. However, hundreds of military police officers put an end to this gathering.

In the afternoon of 22 September, a group of 25 individuals from the Boeung Kak Lake community, including women and children, reportedly gathered peacefully under a kiosk at Wat Phnom in order to start a hunger strike, with a view to protesting against the same alleged irregularities, and to asking the National

Assembly not to convene the following day. In the evening, the peaceful demonstrators lit up candles forming the word “justice” on the ground.

On the same day, around 9.30 p.m., a large group composed of Daun Penh district police, national gendarme (military police), Daun Penh district authorities and young people dressed in civilian clothes, arrived at Wat Phnom, headed by Daun Penh district deputy Governor [REDACTED]. The security forces and the youth, armed with batons, slingshots, teasers and electric prods, first broke the torch lights of the demonstrators in an attempt to prevent people from taking photos and videos. They then proceeded with beating and firing marbles with slingshots at the peaceful demonstrators, leaving many injured. They also smashed the windscreen of a car after a human rights activist from the Boeung Kak Lake community escaped the scene. Another car belonging to a NGO activist was damaged. At 10:00 p.m., human rights monitors and journalists reached the scene, and were similarly assaulted upon arrival. Some of them had their material destroyed.

At least ten people suffered injuries, ranging from light to serious. Some of them were consequently admitted to Calmette hospital:

From the Boeung Kak Lake community:

- Ms. [REDACTED], 65, was shot with marbles in the chest and face;
- Ms. [REDACTED] (alias [REDACTED]), 73, was shot with a marble in the chest;
- Ms. [REDACTED] is suffering from an open wound in the leg;
- Mr. [REDACTED] is suffering from a broken arm; and
- Mr. [REDACTED] has an open wound on the chin from beating.

Two civil society human rights monitors, including one wearing a clearly visible jacket with the inscription “Human Rights Observer”, were hit with marbles, one in the chest and the other one in the arm.

Five journalists, four foreigners and one Cambodian, were also attacked, hit with batons and electric prods on different parts of their body, including in the neck, arm, leg and back.

Serious concerns are expressed that the dispersal of the peaceful protest of 20 September 2013, and the brutal repression of the one of 22 September 2013, by law enforcement officials and civilians, are linked to the exercise by protestors of their rights to freedom of peaceful assembly and of opinion and expression. In light of these latest incidents, further concerns are expressed for the physical and psychological integrity of those exercising or seeking to exercise such rights in Cambodia.

Without expressing at this stage an opinion on the facts of the case, we would like to refer your Excellency’s Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), 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.”

Similarly, we would also refer to article 21 of the ICCPR, 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 interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

We would like to further 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.”

We would also like to mention the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which he called upon States to:

- ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women; youth; indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights (para. 84(b));

- ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights to freedom of peaceful assembly and of association (para. 84(h));

- ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law (para. 84(i));

In this report, the Special Rapporteur also 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) (para. 89). He further stated that “States should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies” (para. 94).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the 2007 report on the situation of human rights defenders to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage

of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.”

We would like to draw your Excellency's Government's attention 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).

We would like to bring to your Excellency's attention article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would, moreover, like to bring to your Excellency's attention article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's movement and non-governmental organizations world-wide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

We would also like to bring to your Excellency's attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 15 October 1992), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

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 the above-mentioned persons in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the legal basis of the aforementioned measures taken by the security forces, and how such measures comply with the international human rights norms and standards as mentioned above.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been or will be undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation will be provided to the victims.

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

While awaiting your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the abovementioned 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 for 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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