

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 in Cambodia

REFERENCE:
UA KHM 4/2017

6 September 2017

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 in Cambodia, pursuant to Human Rights Council resolutions 34/18 and 30/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **administrative and legal measures against media outlets which would severely restrict the independence of media in Cambodia.**

According to the information received:

Revocation of license and closing of radio stations

On 11 August 2017, the Ministry of Economy and Finance requested the Ministry of Information to take action against the US-funded radio outlets Radio Free Asia (RFA) and Voice of America (VOA), for failing to pay taxes and not being licensed as news organizations with the Ministry of Information. This coincided with a statement by the Prime Minister ordering officials to investigate media outlets for failing to pay tax. Both radios are in contact with both Ministries to regularize their license and tax situations. Until that date, the Ministry of Information had consented for both radio outlets to operate in Cambodia without any formal registration as they were only hiring airtime from other radio stations.

On 21 August 2017, the Ministry of Information abruptly revoked the licenses of radios emitting on a total of 36 FM frequencies in 19 provinces and the Phnom Penh Municipality. The grounds cited in the ministerial decisions were that the radios concerned had violated their license with the Ministry and the terms on which they had been permitted to operate. No further detail was provided. No prior reminder or warning had been issued by the Ministry. Most of these radios were renting airtime to RFA and VOA, to the independent Voice of Democracy (VOD) broadcast of the Cambodia Centre for Independent Media (CCIM), and, for one of them emitting in 16 municipality/provinces, to a programme by the main opposition party, the Cambodia National Rescue Party.

On 24 August 2017, the Ministry of Information indicated in a press conference that he would file criminal complaints to the Courts for “breach of trust”, against radio stations that did not honour their license agreement, as those radio stations would have not clearly requested in their agreement with the Ministry the authorization for renting airtime for RFA and VOA, or had exceeded their approved rental time. Separately, on the same day, one radio was authorized by the Ministry of Information to continue broadcast on the condition to go back to the rental time initially approved in its license with the Ministry

On 28 August 2017, five radio stations submitted a written request to the Minister of Information asking for their license to be reinstated, on the promise to strictly abide with the content of their agreement. A response is pending.

On 3 September, the Ministry of Information sent an administrative letter to the last two radios that had remained authorised to broadcast RFA and VOA after the 21st of August. The letter ordered them to immediately stop broadcasting VOA and RFA on the ground that their Cambodian offices were not registered at the Ministry of Information, or see their own license revoked.

As a result from these successive measures, VOD and opposition-aligned Moha Nokor Radio have been both completely taken off air across the country, while RFA and VOA are no longer available on FM bandwidth.

The Cambodia Daily newspaper

On 4 August 2017, the Ministry of Economy and Finance notified the independent English language newspaper The Cambodia Daily of a tax reassessment according to which the media company had to pay 25,756,015,695 Riels of tax arrears (approximately USD 6.3 million). The tax bill dates back 10 years and covers the newspaper’s operations both under the previous ownership and under the new ownership since 1 April 2017. It is to be settled within 30 days. The amount includes 40% penalty and 2% interest per month, with more than half of the total amount related to the interest.

The tax reassessment notice containing confidential tax information was leaked to the government aligned online media outlet Fresh News which published it on 4 August 2017, before it was delivered to The Cambodia Daily. In addition, the General Director of the General Department of Tax (GDT) publicly spoke about the case on 20 August, declaring that the newspaper would be completely shut down if it failed to pay the bill by 4 September 2017.

On 22 August 2017, the Prime Minister publicly called the paper a “Chief Thief” and said it would have to pay, or “pack and go”. On the same day, the Ministry of

Information wrote to the Cambodia Daily that its application for the renewal of its license, submitted on 25 July 2017, was not being considered by the Ministry, as the newspaper owed unpaid taxes to the State. The previous license expired on 12 August 2017.

The Cambodia Daily disputed the basis and information used for the calculation of the tax bill and reiterated at several occasions its willingness to collaborate in a transparent audit process while calling for the respect of basic ethics of professional confidentiality. No review of the tax bill was accepted by the tax authorities.

As a result, on 3 September, the newspaper announced its last edition for the following day, namely the deadline set by GDT to pay back all tax allegedly due, and its “immediate closure amid threats”. The GDT Director publically stated that The Cambodia Daily would still have to pay taxes owed, even if it closed down, and that the person responsible for the publication would not be allowed to leave Cambodia until the payment be made.

On 4th September, Fresh News published an official letter from GDT to the Immigration authorities, instructing them to prevent the owner and the manager of the Cambodia Daily from leaving the country.

In July 2016, Fresh News website published an anonymous letter titled “Behavior Plunging Cambodians into a Bonfire of War Because of Foreigners” along with an altered 1943 Nazi propaganda cartoon in which the logos of The Cambodia Daily, The Phnom Penh Post and Global Witness were superimposed over the faces of characters about the decapitation of a woman identified as “Peace” on a Cambodian flag. The cartoon was entitled “Global Witness, Cambodia Daily and Phnom Penh Post are the enemy of Peace and Development in Cambodia”. At the time, the spokesperson of the Council of Ministers stated that the logic of the letter was sound and that both newspapers were “part of the opposition against the Prime Minister”.

The incidents described above raise serious concern about the application of Cambodian law, and their fair and equal application without distinction on any ground. We are concerned that the measures above represent disproportionate restrictions and appear to have taken place without due process, and that they may be directly related to the nature of the media concerned, whether they are independent, opposition-aligned or US-funded. We are further concerned that the current restrictions against the media is affecting the fundamental right of people to freely seek, receive and impart information and ideas through the media of their choice, a right that is recognized in the constitution of Cambodia and protected under Cambodia’s international obligations. Considering the importance of the right to freedom of expression, including media freedom, for the

enjoyment of the right to participate in public affairs, we are concerned that these developments are taking place, as Cambodia is entering its last year before the parliamentary elections in July 2018.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to refer to article 19 of the International Covenant for Civil and Political Rights (ICCPR), ratified by Cambodia in 1992, which provides for the right to freedom of opinion and expression. In this connection we would like to underline that any restriction to freedom of expression must meet the high threshold established by article 19(3) of the ICCPR, that is, be provided by law, and necessary and proportionate for the protection of a legitimate objective. We also reiterate the principle enunciated by Human Rights Council 12/16, which calls upon States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including practices such as the closing of publications or other media and the abuse of administrative measures.

The full texts of the human rights instruments and standards recalled above are available on 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 the above-mentioned entities in compliance with international instruments.

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 provide information about the legal basis for the revocation of the radio licenses. Please explain how this measure, and the lack of prior notification, complies with Cambodia's obligations under international law, in particular with article 19 of the ICCPR and with the guarantees of due process.
3. Please provide information on the conditions upon which media licenses from the Ministry of Information can be reinstated, renewed or issued, and any legal restrictions to the operations of licensed organizations.

4. Please provide the full details of the procedures and norms followed by the Ministry of Economy and Finance in undertaking the audit of the Cambodia Daily as well as the rules of due process.
5. Please provide information on the legal and administrative framework governing media in Cambodia, in particular with regard to the protection of freedom of the media, and any restriction thereof provided for by law.
6. Please provide information on the legal framework governing bankruptcy in Cambodia as well as on the power of tax authorities to provide instruction to the immigration police.

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 intend to 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.

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

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia