

Mandates of 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; and the Special Rapporteur on the situation of human rights in Cambodia

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Excellency,

We have the honour to address you in our capacities as 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; and Special Rapporteur on the situation of human rights in Cambodia, pursuant to Human Rights Council resolutions 34/18, 32/32 and 36/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Code of Conduct for media in the Election Process, issued by the National Election Committee on 12 March 2018, as well as statements that link the language of the code to calls for boycott of the elections. We have also received information related to the Inter-ministerial Proclamation (*Prakas*) on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia adopted on 28 May 2018.

We are concerned that such statements and several of the provisions in this Code as well as the objective and provisions of the Inter-ministerial Proclamation may unnecessarily and disproportionately restrict the right to freedom of expression and opinion, including the independence of the media, as well as the rights to public participation, to freedom of assembly and to freedom of association.

According to the information received:

On 12 March 2018, the National Election Committee (NEC) issued a Code of Conduct for Media (the Code), part of a broader document: 'Regulations and Procedures for the Election of Members of the National Assembly in the 6th Legislature and the election laws'. The code of conduct also includes a section on "Prohibitions for the Media".

The Code is similar to the code issued by the NEC, on 23 March 2017, prior to the commune elections. Concerns regarding some of the provisions had been raised in the Report of the Special Rapporteur on the situation of human rights in Cambodia, submitted to the Human Rights Council, dated 27 July 2017 (A/HRC/36/61, paras 61-62).

The prohibitions for the media include the following:

- Broadcasting news leading to confusion and confidence loss in the election

- An expression of personal opinion in the ongoing events which are reported
- Publishing or broadcasting news that affects national security, political and social stability
- Use of provocative or offensive language that may cause disorder or violence

On 8 May, the NEC Chairperson wrote to the Ministry of Interior asking for legal action against those making calls for boycott of the election and linked such calls to causing of confusion, leading to the loss of trust in election, public order and national security.

On 24 May 2018, the NEC issued a Press Release titled “Rights and Prohibitions for Media”, highlighting some of the provisions of the Code.

On 28 May 2018, the Ministry of Interior, the Ministry of Posts and Telecommunication and the Ministry of Information adopted an Inter-ministerial Proclamation (*Prakas*) on Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia, which was made public on 4 June, on the Ministries’ websites.

The *Prakas* aims at obstructing and preventing all publications, news content sharing, written messages, audios, photos, videos, and/or other means intended to create turmoil leading to undermining of national defence, national security, relations with other countries, the national economy, public order, anti-discrimination and national culture and tradition. It is enforceable against website publications and any kind of online social media networks in the Kingdom of Cambodia. To ensure its effective implementation, the Ministry of Information, Ministry of Interior and Ministry of Posts and Telecommunication have to establish specialized units as secretariat in order to cooperatively monitor, study, research, find out illegal business activities and publications on websites and social media in order to take legal action against them ...’

The article 7 of the *Prakas* also requests the Ministry of Posts and Telecommunication to:

- Require all Internet Service Providers that are operating in the Kingdom of Cambodia, to install software programs and equip internet surveillance tools to easily filter and block any social media accounts or pages that run their business activities and/or publicize illegally”
- Cooperate with Ministry of Information or relevant ministries and institutions, and/or offer cooperation/help from other relevant ministries or international institutions, in order to block or close the websites and/or social media page that run business activities and/or publicize illegally

which are considered as incitement, breaking solidarity, discrimination, create turmoil by will, leading to undermine national security, and public interests and social order.

Relevant international obligations

We wish to remind your Government of its obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Cambodia on 26 May 1992.

Article 19(1) establishes ‘the right to hold opinions without interference’. Article 19(2) establishes State Parties’ obligations to respect and ensure the right ‘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’.

The Human Rights Committee recalled that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice” (A/HRC/20/L.13).

Under article 19(3), restrictions on the right to freedom of expression must be ‘provided by law’, and necessary ‘for respect of the rights or reputations of others’ or ‘for the protection of national security or of public order (*ordre public*), or of public health and morals’.

The ‘provided by law’ requirement means that any restriction ‘must be made accessible to the public’ and ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ (CCPR/C/GC/34). Moreover, it ‘must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution’. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions ‘target a specific objective and do not unduly intrude upon the rights of targeted persons’. The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be ‘the least intrusive instrument among those which might achieve the desired result’.

In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions (see above) as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

In its General Comment No. 25 on Participation in Public Affairs and the Right to Vote (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee set out that ‘[i]n order to

ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.’ It requires the full enjoyment and respect for the rights and freedoms to ‘engage in political activity individually or through political parties and other organizations ... to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.’

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights state that national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order, or as a pretext for imposing vague or arbitrary limitations. It may only be invoked to protect the existence of the nation or its territorial integrity or political independence against force or threat of force, and where there are adequate safeguards and effective remedies against abuse.

Under paragraph 15 of the General Comment No. 34, the Human Rights Committee made a specific reference to the digital age and the enrichment of the public debate indicating that ‘States parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto’.

The Human Rights Committee also reminded in its General Comment No.34 that ‘Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with Article 19 paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with Article 19 paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.

As recalled by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ‘States should not place undeniable pressures on the private information and communication technology sector that often lead to serious restrictions on the freedom of expression’ (A/HCR/32/38).

We wish to refer to the concluding observations of the Human Rights Committee to the Royal Kingdom of Cambodia in relation to its implementation of article 19 of the International Covenant on Civil and Political Rights in 2015. The Committee

recommended that the Government ‘...ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression.’

We also recall your Government’s obligations under articles 17, 21, and 22 of the ICCPR regarding the rights to privacy, freedom of peaceful assembly, of association.

Specifically, we recall that Resolution 24/5 of the Human Rights Council 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. This includes 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. The resolution further reminds States 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.

Compliance of the Code and Inter-Ministerial Proclamation

We express our concern that the prohibitions of the NEC code and the Inter-ministerial Proclamation contain vague and overly-broad provisions that do not comply with requirements under article 19(3) and could, as a result, restrict other rights and freedoms, in particular freedom of assembly and freedom of association.

In particular, we are concerned that the provisions are not sufficiently precise to enable an individual to regulate his or her behaviour. Further, the provisions appear to confer a significant level of discretion on those enforcing them that would amount to an undue intrusion on the rights of targeted persons. .

Moreover, the issue arises whether the ends identified in the relevant provisions - such as preventing turmoil, the undermining of public order or political and social stability - do in fact justify these limitations on the freedom of expression. In this regard, the Human Rights Committee has established that, ‘the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights....’ (CCPR/C/GC/34).

We are particularly concerned about the provisions of the Code and the Inter-Ministerial Proclamation given the current context of national elections. In order for elections to be genuine, robust and unfettered public debate is crucial. Such debate depends on the free communication of ideas concerning public and political issues so that the public is fully informed of all points of view, even when such views might be opposing and even controversial. The use of information and communication technologies is an extremely important means for achieving this.

In this regard, we highlight our concern in relation to the NEC letter of 8 May, which links the prohibitions in the Code to calls for boycott of elections. In its General Comment No. 34, the Human Rights Committee has explicitly stated that restrictions on calls for boycott of a non-compulsory vote impede political debate. The same would apply to any restrictions on the reporting of issues such as boycotts.

For any Code or Inter-Ministerial Proclamation to be in accordance with the applicable international standards, the provisions would need to be clearly elaborated, particularly terms such as 'national security', 'political and social stability' and 'turmoil', 'national economy' and 'breaking solidarity'.

In view of these comments, we would urge your Excellency's Government to undertake a rigorous and thorough reassessment of the Code and the Inter-ministerial Proclamation to ensure compliance with international human rights laws and standards. We welcome any additional information on or responses to our observations and concerns above.

We would also like to inform your Excellency's Government that this communication, as with other comments on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Your Excellency's Government's response will be made available on the above-mentioned website as well as in a report to be presented to the Human Rights Council for its consideration.

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 issues in question.

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

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