

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants and human rights and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL KHM 7/2020

11 December 2020

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 42/22, 42/37, 44/5, 43/4, 43/6 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of **Mr. Wanchalearm Satsaksit, a Thai political opposition member who disappeared in Cambodia**, as well as the case **Mr. Osman Karaca, a dual Mexican-Turkish national who was arrested in Cambodia in November 2018, subjected to enforced disappearance for several days, and then deported to Turkey**.

Mr. Wanchalearm Satsaksit, is a political activist affiliated with the United Front for Democracy against Dictatorship (UDD), who was abducted in Phnom Penh, Cambodia on 4 June 2020 by four unidentified armed persons and whose fate and whereabouts remain unknown.

The case of Mr. Wanchalearm Satsaksit has previously been raised in communications with your Excellency's Government on 12 June 2020 (KHM 4/2020) and 15 July 2020 (KHM 5/2020). We thank you for the replies received on 19 June 2020 and 13 August 2020 detailing the steps taken on this case. We remain concerned, however, that his fate and whereabouts remain unknown.

According to the latest information received:

The case of Mr. Wanchalearm Satsaksit, has been filed with the Standing Committee on Legal Affairs, Justice, and Human Rights of the House of Representatives of Thailand. The Standing Committee has engaged with the relevant Thai authorities and the report of its inquiry into the case and its recommendation will be submitted to the Thai Cabinet shortly.

Pattern of disappearances of Thai opposition activists who had fled abroad

There are a number of cases of Thai opposition activists disappearing abroad between 2016 and 2020 in neighboring countries, including that of

Mr. Wanchalearm Satsaksit in Cambodia. These cases point to a pattern of disappearances.

The pattern of cases appears to point towards countries in the region coordinating, assisting or acquiescing to extraterritorially abduct political activists leading to enforced disappearances.

In this regard, it is relevant to note that in March 2018, during a meeting between the Prime Minister of Thailand and the Defense Minister of Cambodia, both countries reportedly agreed to monitor individuals who escape the law by crossing borders.

Given the political affiliations of the individuals, there are reports that the Thai authorities were involved in their disappearances. Furthermore, several of the cases have indications that the individuals were being sought or surveilled prior to their disappearance. For example, Thai police officers visited the home of Mr. Satsaksit's family in Ubol, Ratchathani province, Thailand a few weeks before his disappearance.

The case of Mr. Osman Karaca¹

On 1 November 2018, Mr. Osman Karaca, a dual Mexican-Turkish national, was visiting Cambodia on a business trip, using his Mexican passport. According to the information available, the Turkish diplomatic mission in Phnom Penh reported to the Cambodian police that Osman Karaca was holding a fraudulent Mexican passport, after which the authorities arrested Osman Karaca. The Turkish Embassy then demanded his deportation to Turkey due to "the lack of an international travel document." It is also alleged that the Turkish authorities bribed local officials to secure their cooperation in illegal actions to arbitrarily arrest him. Mr. Karaca was deported to Turkey after he had been subjected to enforced disappearance for several days.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the reported lack of progress in the search and investigations into the disappearance of Mr. Wanchalearm Satsaksit. We are further concerned by the deportation of Mr. Osman Karaca to Turkey after a short-term enforced disappearance.

Should these allegations be confirmed, they would violate articles 6, 7, 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992, which guarantee the right to life, the right to personal integrity, the right to liberty and security of the person, and the right to freedom of expression. We further refer to the Convention for the Protection of All Persons from Enforced Disappearance (CED), which Cambodia acceded to on 27 June 2013, the Guiding Principles for the search for disappeared persons (CED/C/7) and article 13 of the Declaration on the Protection of all Persons from Enforced Disappearance).

With regard to the reply provided by Your Excellency's Government on 13 August 2020 on the case of Mr. Wanchalearm Satsaksit, we welcome information

¹ Transmitted to Cambodia through urgent action under art.30 of the Committee on Enforced Disappearance

on the steps taken. However, we regret that no information was provided on the extent to which the authorities involved in the search and investigation were independent, had access to all relevant information and relevant places. We further underline the importance of a robust and comprehensive strategy of search and investigation, undertaken in good faith and that there is a continuing obligation to search and investigate.

With regards to the case of Mr. Osman Karaca, we underline that the Convention for the Protection of All Persons from Enforced Disappearance and the Declaration on the Protection of all Persons from Enforced Disappearance further make it clear that no individual should be expelled, returned (refouler) or extradited to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance (article 16 of CED and 8 of the Declaration). We underline that this applies irrelevant of the individual's immigration status.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 an update on being conducted into Mr. Wanchalearm Satsaksit's abduction and alleged enforced disappearance. Please include updated information on;
 - a. The steps taken to search, locate and protect Mr. Wanchalearm Satsaksit including through a comprehensive strategy of search and investigation.
 - b. The authorities leading and involved in the search and investigation and the extent to which they are independent, have access to all relevant information, have access to all relevant places where people are deprived of the liberty (official or unofficial) and have sufficient resources.
 - c. Any progress that has been made in the investigation.
 - d. Any information available on Mr. Wanchalearm Satsaksit's current fate and whereabouts.
 - e. The steps taken to ascertain the identity and affiliation of the perpetrators and to hold them responsible.
 - f. The steps taken to ensure cooperation in the search and investigation between the Thai and Cambodian authorities.

3. On the case of Mr. Osman Karaca, please provide any information related to the steps taken to ascertain his nationality and the validity of his passport. Where any attempts made to notify the Mexican consular authorities of his detention?
4. Please also provide information on the safeguards in place to prevent individuals being expelled, returned (refouled) or extradited to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance, including in cases where the individual is alleged to have entered Cambodia in an irregular manner.
5. Please provide information on cooperation and extradition agreements with Thailand and Turkey, and the measures in place to prevent individuals being returned if they may be at risk of enforced disappearance, during or after the extradition.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter and the regular procedure.

We would like to inform your Excellency's Government that a letter raising the disappearances of Thai opposition activists who had fled abroad including Mr. Wanchalearm Satsaksit has been transmitted to the Government of Thailand.

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Felipe González Morales
Special Rapporteur on the human rights of migrants

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to highlight that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment 36).

We reiterate that Cambodia should take all necessary measures to search for, locate and protect Mr. Wanchlearn Satsaksit including through a comprehensive strategy to search for him and investigate his disappearance (article 12 and 24 of Convention for the Protection of All Persons from Enforced Disappearance (CED), which Cambodia acceded to on 27 June 2013, the Guiding Principles for the search for disappeared persons (CED/C/7) and article 13 of the Declaration on the Protection of all Persons from Enforced Disappearance). We re-iterate that the investigation should be **prompt, thorough and impartial** (article 12 of CED and 13 of the Declaration). Furthermore, we underline that Mr. Wanchlearn Satsaksit's family have a **right to truth**, which means the **right to know about the progress and results of an investigation**, the **fate or the whereabouts of the disappeared persons**, and the **circumstances of the disappearances**, and the **identity of the perpetrator(s)** (article 24 CED and the General Comment on the Right to Truth, A/HRC/16/48).

We highlight that the anguish and sorrow of the family may reach the threshold of torture. The right to truth is therefore an absolute right which cannot be restricted and there is an absolute obligation to take all the necessary steps to find the person (A/HRC/16/48). We further underline that his family should be protected from ill-treatment or intimidation if required (article 12 CED and 13 of the Declaration).

The Convention and Declaration further make it clear that no individual should be expelled, returned (refouler) or extradited to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance (article 16 of CED and 8 of the Declaration).

We further highlight that states should cooperate with a view to searching for disappeared persons (article 15 of CED).

We would also like to remind your Excellency's Government that while enforced disappearance is a crime in itself, it may also amount to torture or other cruel, inhuman or degrading treatment or punishment, and is a serious violation of

international law. The Committee against Torture² and the Human Rights Committee³ have concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is an international norm of *jus cogens*, and as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We further highlight that families of forcibly disappeared persons should be protected from ill-treatment or intimidation if required (article 13 of the Declaration). We would also like to underline that enforced disappearances constitute a violation of article 9 (liberty and security of persons) of the ICCPR. Furthermore, we recall that the Human Rights Committee, in its General Comment No. 35, paragraph 17, has qualified the enforced disappearance to be a particularly aggravated form of arbitrary detention

We further respectfully remind you that Article 19 protects everyone's right to seek, receive and impart information and ideas of all kinds. It is subject only to narrow exceptions that must be provided by law and necessary to protect one of an enumerated set of legitimate objectives. As has been interpreted by the Human Rights Committee in its General Comment 34 (CCPR/C/GC/34), article 19 protects all forms of expression and the means of their dissemination, including all forms of audio-visual as well as electronic and internet-based modes of expression (paragraph 12). It also 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 as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination (paragraph 11). Furthermore, we would like to remind you that the Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of right protected by the Covenant may be arbitrary.

² See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

³ CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.