

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the right to privacy

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 42/37, 42/16 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the disclosure of personal information of individuals infected with COVID-19**.

According to the information received:

On 4 December, the Ministry of Health (MOH) issued a press release, announcing its decision to disclose the identity and personal information of individuals infected with COVID-19 in the media. The Prime Minister subsequently endorsed this decision. The press release stated that the objective of the publication of personal details was to increase the effectiveness of COVID-19 prevention measures and to identify persons that were exposed to COVID-19 patients.

Following this decision, on 5 December, the MOH issued two statements; the first statement contained personal information, including names, ages, sex, work places, and home addresses of ten people, who were tested positive with COVID-19. The second statement included similar details of two individuals, indicating that they may be the first sources of the alleged "28 November community event". On 6 and 7 December, the MOH further published personal information and details of individuals tested positive with COVID-19. The personal information of the individuals was further disseminated by local media and shared widely in social media.

While we do not wish to prejudge the accuracy of the information received, we wish to express our concern at the above information, which could be in contravention of article 17 of the International Covenant on Civil and Political Rights, ratified by Cambodia in 1992, that protects the right to privacy. The protection extends to an individual's privacy, family, home or correspondence. International human rights law requires that such measures be provided for by law, necessary and proportionate in a democratic society. They must also comply with the provisions, aims and objective of the ICCPR and specify precise circumstances in which such interferences are permitted.¹ The Special Rapporteur on the right to privacy has outlined that any law

¹ Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy)

impacting on privacy must include both safeguards and remedies for the persons affected; if it is not spelt out in sufficient detail, such measures cannot be considered adequate under international law.²

The global pandemic has put health data protection safeguards to the test. Reasons of public health have always provided, and still do, a legitimate legal basis for the processing of personal data and health-related data, with the aim of fighting and containing the spread of a pandemic. The Special Rapporteur on the right to privacy acknowledges that the processing of health-related data is legitimate when it is carried out in the public interest and with adequate safeguards.³ Confidentiality and privacy laws should be enacted, so that COVID-related information on individuals should be included within definitions of personal/medical data subject to protection and that the unauthorized use and/or publication of COVID -related information on individuals should be prohibited.

The disclosure of identity and personal information may also be in breach of article 40 of the Cambodian Constitution, which protects the right to privacy of “residence, and the secrecy of correspondence by mail, telegram, fax, telex and telephone”. The Constitution does not provide a provision for the deprivation or restriction of the right to privacy, but sets legal requirements in relation to searches of residences, properties and individuals. A number of other legislations also protect the right to privacy. These include the law on Telecommunications⁴, Press Law⁵, Civil Code⁶ and Criminal Code⁷. In terms of redress mechanisms, except for civil cases in which redress may be sought from a court in relation to personal rights, the abovementioned laws do not provide an independent mechanism that may oversee and protect against violations to the right to privacy.

Above allegations seem to also be in contravention of article 12 of the International Covenant on Economic, Social and Cultural Rights ratified by Cambodia in 1992, that protects the right to health. This right is inclusive and dependent on other rights, including the rights to privacy and access to information. While it includes the right to seek, receive and impart information concerning health issues, it cannot impair the right to have personal health data treated with confidentiality (Committee on Economic, Social and Cultural Rights, General Comment 14, E/C.12/2000/4, para 12.b).

The World Health Organization has acknowledged that the use of personal data collection forms a part of contact tracing.⁸ It has put together ethical consideration guidance which outlines that the measures shall be a) temporary in nature, b) protected by law authorizing the collection and processing of data, c) in line with the principle of proportionality, d) containing data needed to achieve public health goals and e) based on the principle of voluntariness⁹. The guidelines also require an independent oversight

² Special Rapporteur on the right to privacy, A/75/147, 27 July 2020,

³ A/75/147 para. 35 and A/74/277, annex, para. 4.1 (f).

⁴ Article 65 b

⁵ Article 7

⁶ Articles 10, 11 and 12

⁷ Articles 301, 302, 314 and 318

⁸ http://www.WHO-2019-nCoV-Ethics_Contact_tracing_apps-2020.1-eng.pdf

⁹ Ibid, page 3

mechanism to evaluate the ethical and human rights aspects of the response¹⁰. While the United Nations takes note that while “the collection, use, sharing and further processing of data can help limit the spread of the virus”¹¹, it outlines that the collection of vast amounts of personal and non-personal sensitive information may have significant effects beyond the crisis response and could potentially lead to the infringement of fundamental human rights and freedoms.¹²

We are concerned that the announcement made by the MOH does not indicate the legal justification and period that the measure, which is prima facie disproportionate and unnecessary under any circumstances, will be enforced and/or remain valid. While recognising that the COVID-19 pandemic presents unprecedented challenges for many societies, it remains paramount that States comply with their burden of proof to demonstrate that less restrictive means were unavailable to the State. Cambodia does not seem to have justified why less restrictive means would not be suitable to achieve the stated purpose of protecting the life and health of the population.

Furthermore, in the absence of an appropriate legislative framework, these measures are not in line with Cambodia’s international human rights obligations. We fear the Government will continue to expose individuals’ personal information without their consent, which violates fundamental human rights; in particular the right to privacy guaranteed by international human rights instruments and Cambodian laws. We also fear that individuals whose personal information is disclosed may be stigmatized or potentially be seen as threats to safety. In this regard, we reiterate the positive duty of the State to ensure the rights of everyone within their jurisdiction without distinction of any kind, and the specific obligations to prohibit and counter threats against individuals, as well as incitement to discrimination, violence and hostility.

We urge your Excellency’s Government to immediately halt the publication of personal information, to respond appropriately to protect the right of individuals to privacy and to provide remedy to individuals affected by the recent exposure.

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/or comment(s) you may have on the above-mentioned allegations.
2. Given that medical data is internationally recognised as sensitive data which requires special safeguards in order to be processed in the first place, would you kindly give full details of the special safeguards provided for by law and operational procedures in order to protect medical data in an adequate manner. Specifically, please provide

¹⁰ Ibid, page 5

¹¹ [Joint Statement on Data Protection and Privacy in the COVID-19 Response \(who.int\)](#)

¹² Ibid

information on steps taken/to be taken by Your Excellency's Government to ensure that the right to privacy of individuals infected by COVID-19 will be protected.

3. Please provide the legal basis and all other possible justification for the decision by the Ministry of Health to expose personal details of individuals infected with COVID-19 and how it complies with Cambodia's international human rights obligations and domestic laws.
4. Please explain how the decision by the Ministry of Health is necessary, proportionate and non-discriminatory, noting that Cambodia has only recorded 40 active cases.
5. Please provide information on the measures taken to prevent the stigmatisation of those infected with COVID-19 (including for example anti-stigma sensitization or campaigns), and the measures taken to prevent threat against those individuals whose identities have been disclosed by your Excellency's Government and by others.
6. Please provide information on the measures that Your Excellency's Government will take to ensure appropriate remedy for individuals affected by the recent decision of the Ministry of Health.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 may 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.

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

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law and guidelines

In connection with above alleged facts and concerns, we refer to the obligations of your Excellency's Government under article 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia in 1992, guaranteeing the right not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

We also bring to your attention the Article 12 of the Universal Declaration of Human Rights prohibits any arbitrary interference with a person's privacy, family, home or correspondence. The right to privacy is essential to human dignity, and any restriction in its enjoyment must be prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.

Kindly take note of the Recommendation on the protection and use of health-related data outlined in the Special Rapporteur on privacy's 2019 report to the General Assembly (A/74/277, Annex, pg 5-27).¹³ We would like to further refer to Your Excellency's obligations under article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Cambodia ratified in 1992. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) establishes that the right to health is an inclusive right (para. 11) closely linked to and dependent on other rights, including the rights to privacy and access to information (para 3). The right to health encompasses the right to request, receive and disseminate information and ideas about health-related issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality (para 12.b.iv). The Committee also establishes acceptability as an essential component of the right to health and indicates that health services must be respectful of medical ethics and must be designed to respect confidentiality and improve the health status of those concerned (para 12.c).

We would like to further highlight that, over and above other safeguards provided for by law, informed consent is integral to the right to health and protects the right of the patient to be involved in health care decision-making. It also assigns associated duties and obligations to health-care providers and the State. Public health measures should always strive for voluntary participation to be fully effective and minimize compromising the rights to privacy and self-determination of the person. Any potential limitations of informed consent must be substantiated by scientific evidence and implemented with participation, transparency and accountability on the principles of gradualism and proportionality (A/64/272, para 31). These elements do not seem to have been applied in this case.

¹³ Contained in the Annex is an abbreviated version of the recommendation, focusing on key elements. When transposing it into domestic law, States should use the full version, which is available at www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/DraftRecommendationProtectionUseHealthRelatedData.pdf.