

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

REFERENCE:
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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 42/37, 43/4, 42/16 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest and detention of [REDACTED], a 17-year old boy with autism spectrum disorder.**

According to the information received:

On 24 June 2021 at around 20h00, around 20 police officers visited the house of [REDACTED] in [REDACTED], where he lived with his mother, his 12-year old brother and his 84-year old grandmother. According to eyewitness, a Commune Police officer visited the house, searching for [REDACTED]. They stated that police wanted to invite him for questioning. Six officers went up to the second floor of the house and brought down [REDACTED] in handcuffs and drove him away. No arrest warrant was provided and no reason was given to him and his family for his arrest. Police also did not tell them where he was being taken. Two phones were confiscated by the police, belonging to [REDACTED] and his mother.

Since his arrest, it is reported that [REDACTED] has not been granted access to his family nor to a lawyer. On 15 July, his bail request was rejected by the investigating judge, a decision that was upheld by the Phnom Penh Court of Appeal on 3 August.

Following his arrest, [REDACTED] was taken to the Phnom Penh Police Commissariat. He was later taken to the Phnom Penh Court of First Instance, where he was charged with Incitement to Commit a Felony and Insult to Public Officials, in accordance with Articles 494, 495 and 502 of the Cambodian Criminal Code, respectively. The charges are believed to stem from comments that [REDACTED] posted in a Telegram group. The two charges carry a

punishment of imprisonment of up to two years and up to six days respectively. [REDACTED] is currently detained at Correctional Centre 2 (CC2).

[REDACTED] is diagnosed with **autism spectrum disorder** and has difficulties following discussions. The family members have consulted with medical professionals who have confirmed he has an intellectual impairment. His father, Mr. Kak Komphear, a former member of the dissolved Cambodian National Rescue Party (CNRP), is in prison since June 2020. His mother, Ms. Prom Chantha, is a human rights defender and active member of the Friday Women of Cambodia, a network of family members of detained CNRP members who have been holding weekly peaceful assemblies in front of government offices, embassies and the OHCHR Cambodia office since mid-2020, calling for the release of their family members.

[REDACTED] was the subject of previous incidents. On 4 October 2020, [REDACTED] was arrested by police officers in front of the former headquarters of the CNRP for entering the building. He was released from police custody on 6 October without charges. At the time, [REDACTED] had not been allowed access to his legal guardian, a lawyer, or provided psychosocial support. He was allegedly punched and slapped by police officers during interrogation. In another incident, on 27 April 2021, [REDACTED] was attacked with a brick by unidentified assailants causing him serious injuries. His mother filed a complaint with local police but no progress has been made to date in the investigation.

Without prejudging the accuracy of the allegations raised above, we would like to express our concern regarding the repeated arrests and detentions of [REDACTED]. They appear to infringe numerous rights protected by international human rights law, in particular the right to liberty and security of person, including the protection from arbitrary arrest or detention; the right to a fair trial, in particular the right to be informed of the charges and to access legal representation; the right to freedom of expression, enshrined respectively in Articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992; and the right of all individuals, including detainees, to the enjoyment of the highest attainable standard of physical and mental health, which is stated on Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Cambodia on 26 May 1992. Further, specific protections provided under the Convention on the Rights of the Child (CRC), acceded by Cambodia on 15 October 1992, appear to have been disregarded, in particular Article 37, which states that a child deprived of his liberty shall have the right to prompt access to legal and other appropriate assistance and that arrest, detention or imprisonment of a child should only be used as a measure of last resort. In light of the fact that [REDACTED] has autism spectrum disorder, special protections afforded by the Convention on the Rights of Persons with Disabilities, ratified by Cambodia on 20 December 2021, do not appear to have been respected.

We are further concerned that the arrest and the detention also violate various protections provided under domestic law. Article 100 of the Cambodian Criminal Procedure and Articles 18, 21, 22, and 26 of the Cambodian Law on Juvenile Justice highlight that, immediately following arrest or apprehension of a minor, the Judicial Police shall inform the minor's designated representative; that the interview of a minor should be conducted in a child friendly manner with the presence of the lawyer and his guardian; and that any detained minor should have the opportunity to be in contact with his/her guardian, support person, and lawyer before the interview. Moreover, Article 203 of the Cambodian Criminal Procedure Code and Article 39 of the Law on Juvenile Justice provide that pre-trial detention is a measure of last resort. With regard to intellectual disability, Article 31 of the Criminal Code provide for absence or limitation of criminal responsibility if mental disorder "destroyed" or "diminished" a perpetrator's capacity to reason.

International human rights law prohibits arbitrary arrest, detention or imprisonment.¹ This prohibition is an essential corollary to the right to liberty. Both international and national laws state that anyone who is arrested or detained must be informed of the reasons why they are being deprived of their liberty.² This right should apply at all times.³ An arrestee must be notified of the reasons for arrest at the time of arrest.⁴ Particularly with regard to a minor, the CRC states that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."⁵ Moreover, "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".⁶

In accordance with international human rights law, all arrested or detained persons shall have access to a lawyer or other legal representative, and adequate opportunity to communicate with that representative.⁷ Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance.⁸ Parents or guardians should be present at all stages of the proceedings, including during questioning.⁹ Children should be able to consult freely and in full confidentiality with parents or guardians as well as legal counsel.¹⁰ The Committee on the Rights of the Child recommends that the law should expressly provide for the

¹ Article 9 of the Universal Declaration of Human Rights (UDHR), Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR), Article 37 (b) of the Convention on the Rights of the Child (CRC), Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD).

² Article 9 (2) of the ICCPR.

³ Paragraph 16, Human Rights Committee (HRC) General Comment No. 29.

⁴ Article 9 (2) of the ICCPR.

⁵ Article 38 (b) of the CRC.

⁶ Article 38 (c) of the CRC.

⁷ Article 11 of the UDHR; article 14 (3) of ICCPR.

⁸ Article 37 (d) of the CRC.

⁹ Paragraph 42, HRC General Comment No. 32.

¹⁰ Paragraph 53 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

maximum possible involvement of parents or guardians.¹¹ A child should not be questioned unless a lawyer and a parent or guardian are present.¹²

The right to be tried within a reasonable time and to a strong justification for the imposition of pre-trial detention are also both strongly protected. Article 9 (3) International Covenant on Civil and Political Rights (ICCPR) provides that “Anyone arrested or detained on a criminal charge [...] shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.” Therefore, only if judicial supervision or other measures would not be able to adequately address all concerns, and detention of the charged person is determined to be an objective necessity, should pre-trial detention be considered as a last resort. Liberty of the accused should always be the default option, rather than detention.

For minors, international norms and standards discourage the pre-trial detention of juveniles. The arrest, detention or imprisonment of a child should only be used as a measure of last resort, must comply with the law, and be employed for the minimum period of time necessary.¹³ The use of pre-trial detention as a punishment violates the presumption of innocence.¹⁴ Furthermore, when juveniles are detained, their cases must be given the highest priority and handled as quickly as possible to ensure that the period of pre-trial detention is as short as possible.

Article 19 of the ICCPR guarantees the right of everyone to freedom of opinion and expression. The right to freedom of expression includes 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 one’s choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one’s own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11), and all forms of expression and the means of their dissemination are protected, including audio-visual modes of expression (Paragraph 12). We note with concern the apparent retaliatory measures were taken against ██████████ for exercising his right to freedom of expression.

We remind your Excellency’s Government that restrictions to freedom of expression can only be imposed if adhering to the strict criteria established in article 19 (3) of the Covenant.¹⁵ Furthermore, in its General Comment No. 35 (CCPR/C/GC/35),

¹¹ Paragraph 53-54, Committee on the Rights of the Child (CRC) General Comment No. 10.

¹² Paragraph 58, CRC General Comment No. 10; Paragraph 53 (b), United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

¹³ Article 37 of the CRC.

¹⁴ Paragraph 98, CRC General Comment No. 24.

¹⁵ Restrictions must meet the standards of legality, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; necessity and proportionality, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and legitimacy, meaning that they must be in pursuit of an

the Human Rights Committee has stated that arresting or detaining an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary (Paragraph 17).

Specific protection regarding persons with disabilities, including children with disabilities.

The Convention on the Rights of Persons with Disabilities (CRPD) guarantees the right to liberty and security and provides that persons with disabilities who are deprived of their liberty are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the Convention, including by provision of reasonable accommodation.¹⁶ It also requires state parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations.¹⁷ The State party is further under the obligation to “provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons”.¹⁸

With specific regard to children, the CRPD requires States Parties to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children” and “in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration”.¹⁹

The Committee on the Rights of the Child outlined in General Comment 9 that “children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment”. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures and deprivation of liberty should only be applied with a view to “providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime”. In the current case, it is clear that pre-trial detention or imprisonment is not directed at addressing or treating Sovannchay’s impairment but is a punitive measure for alleged actions, which, even if proven, he may not have fully understood.²⁰

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals.

¹⁶ Article 14 of the CRPD.

¹⁷ Article 13 of the CRPD.

¹⁸ Article 25 of the CRPD.

¹⁹ Article 7 of the CRPD.

²⁰ Paragraph 74, CRC General Comment No. 9.

We are issuing this appeal in order to safeguard the rights of the alleged victim from irreparable harm and without prejudicing any eventual legal determination.

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 person 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 on the factual and legal basis for the repeated arrests and detention of [REDACTED] and how these are compatible with international human rights norms and standards related to freedom of opinion and expression; the right to liberty and security and the rights to a fair trial, in particular the right to be informed of charges and the right to access to legal representation.
3. Please provide further information on the compatibility of these measures with relevant provisions of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.
4. Please provide information on the physical, mental and overall health condition of [REDACTED] in pre-trial detention.
5. Please outline the steps your Excellency's Government is taking or plans to take to ensure that children in conflict with the law are treated in line with the Convention on the Rights of the Child with an emphasis on diversion from the formal criminal justice system.
6. Please provide information on access by [REDACTED] to his family, to a lawyer and to medical care, and ensure compliance with the Convention on the Rights of the Child.

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 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.

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.

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

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