

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

REFERENCE:  
AL KHM 9/2020

4 December 2020

Excellency,

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

In this connection, we would like to bring to the attention of Your Excellency's Government information we have received concerning **COVID-19 exposure-related risks in prisons and the lack of testing available to detainees**.

According to the information received:

On 12 November 2020, the Director-General of the General Department of Prisons at the Ministry of Interior visited and met with prison officials and detainees at the Banteay Meanchey prison. On 13 November he did the same at Kampong Thom. On 23 November, the Director-General reportedly visited Correctional Centre 1 (CC1), Correctional Centre 2 (CC2), and Police Judiciaire (PJ) in Phnom Penh and also met with prisoners and prison officials.

On 29 November 2020, the Prime Minister announced publicly that Cambodia recorded local community transmission of COVID-19 for the first time, this as allegedly coming from members of the family of the Director-General and the Director-General himself who reportedly tested positive to COVID-19.

Reportedly, a family member of the Director-General, who works at Siem Reap Prison, is among the 17 individuals who have tested positive in Siem Reap and Phnom Penh as part of this cluster of community transmission.

At the time of this communication, it is reported that no detainee has received a COVID-19 test, while more than 5,000 individuals including prison officials and their family members have accessed such testing. Furthermore, prisons in Cambodia are severely overcrowded. As of November 2020, CC1 was at around 380% capacity, CC2 was at around 280% capacity, PJ was at around 170% capacity, and Siem Reap was at around 290% capacity". This puts specific groups of people at higher risk, including individuals with underlying health conditions, elderly detainees, women detained with children and pregnant women, juveniles and persons with disabilities.

It was also reported that since 30 November in person-family visits have been suspended in the five affected prisons and that a pre-existing ban on phone calls remains in effect in all prisons.

While we do not wish to prejudge the accuracy of the information received, we wish to express our concern at the above, which could be in contravention of article 6 of the International Covenant on Civil and Political Rights, ratified by Cambodia in 1992, that protects the right to life. Accordingly, by depriving persons of their liberty, States assume responsibility to care for their life and bodily integrity. States have a heightened duty of care to protect inmates' physical, mental health and well-being and must take any necessary measures to protect the lives of individuals deprived of their liberty (Human Rights Committee, General Comment No. 36, para. 25).

Infectious and communicable diseases may spread easily in overcrowded detention facilities due to poor hygiene and sanitation, which may adversely impact on the human rights of the detainees. If not promptly and adequately treated, infections and communicable diseases may lead to lethal consequences.<sup>1</sup> We remind Your Excellency's Government that adequate soap, clean water and other infection control measures should be provided free to those deprived of their liberty and measures taken to ensure all persons can protect themselves and those around them.

In the context of a pandemic such as COVID-19, where the risk of contagion endangers the health and life of the population, States have a greater duty to prevent violations of the rights of persons deprived of their liberty, avoiding overcrowding and ensuring hygiene and sanitation in prisons and other detention centers as indicated by various United Nations Special Procedures and the United Nations High Commissioner for Human Rights.<sup>2</sup> While taking note of the recent efforts by the Ministry of Justice to address the backlog of cases in courts, the prisons in Cambodia remain seriously overcrowded. We are concerned of the risk that COVID-19, once in the prison population, may spread swiftly with devastating consequences. Preventing the spread of COVID-19 in detention centres is an issue of public health and in the interest of not only the persons deprived of liberty but also of the staff of the facilities and the general public.

As a matter of urgency, we request Your Excellency's Government to prioritize mandatory COVID-19 testing for all detainees at the above-mentioned prisons as a measure to control any potential outbreak and ensure that all personnel working in the affected prisons exercise the highest level of infection prevention and control in accordance with the WHO guidelines. We would strongly urge Your Excellency's Government to work closely with WHO to maximize preparedness for combatting the

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<sup>1</sup> Report of the High Commissioner for Human Rights, Human Rights in the administration of justice (A/HRC/42/20): [https://www.ohchr.org/Documents/Issues/RuleOfLaw/Violence/A\\_HRC\\_42\\_20\\_AUV\\_EN.pdf](https://www.ohchr.org/Documents/Issues/RuleOfLaw/Violence/A_HRC_42_20_AUV_EN.pdf); and Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Deprivation of liberty and the right to health (A/HRC/38/36): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/101/42/PDF/G1810142.pdf?OpenElement>

<sup>2</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>

disease in detention centers and ensure that persons deprived of their liberty have access to COVID-19 related measures including prevention, testing and treatment.

In case of suspension of in-person family visits, substitution by other measures, such as free phone calls, should be made available in the prisons affected and any interference with privacy or family must not be arbitrary or unlawful. Particular efforts should be made to ensure family visits and alternatives are provided to all persons in detention who are in situations of vulnerability, including persons with disabilities who may not otherwise be able to maintain contact with their families through other means, to ensure that they are not placed in facilities in non-punitive isolation or quarantine with access to appropriate medical care.

We urge that Your Excellency's Government take steps to address prison overcrowding by prioritising the release of individuals with underlying health conditions, elderly detainees, women detained with children and pregnant women, juveniles, persons with disabilities, persons accused/convicted for committing minor offences, persons with imminent release dates, those detained for offences not recognized under international law. We urge the Government to release pre-trial detainees under judicial supervision and consider non-custodial options for others. The Government should also take concrete steps toward release anyone whose detention is arbitrary or otherwise does not comply with domestic or international human rights standards.<sup>3</sup>

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.
2. Please provide information on steps taken/to be taken by Your Excellency's Government to ensure that all detainees at the above-mentioned prisons will have access to COVID-19 testing, including whether Your Excellency's Government is planning to allocate additional funds and human resources in this regard.
3. Please provide information on the measures that Your Excellency's Government will take to ensure appropriate health-care for detainees in case they have contracted COVID-19 and preventing measures to control the spread of the virus.

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<sup>3</sup> <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>

4. Please indicate the measures Your Excellency's Government is undertaking to reduce the prison overcrowding in these prisons, including alternatives to detention, in light of the local transmission of COVID-19.

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 to ensure the full protection against infection and treatment in event of infection of all those deprived of their liberty on an equal basis to others in the community.

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

## **Annex**

### **Reference to international human rights law**

The above alleged facts and concerns seem to be in contravention of the right to the highest attainable standard of physical and mental health stipulated in article 12 of the International Covenant on Economic, Social and Cultural Rights, also ratified by Cambodia in 1992. Accordingly, States have the obligation to respect this right by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 34). We would also like to specifically highlight article 12(2)(c), which obliges States to take the steps necessary for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” (see also General Comment No. 14, para. 16).

We would like to recall that, on 2 April 2020, the Sub-committee on the Prevention of Torture issued advice to States Parties and national preventive mechanisms relating to the COVID-19 pandemic (CAT/OP/40/2). The particular vulnerability of prison populations was highlighted. Drawing on the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charges without discrimination on the ground of their legal status. This includes access to COVID-19 testing on equal footing and appropriate conditions for appropriate and safe isolation or quarantine as required.