

# £KINGDOM OF CAMBODIA

## @Detention of six prisoners of conscience

Amnesty International regrets that six prisoners of conscience have been detained in Cambodia's capital city Phnom Penh for over a week, solely for exercising their right to express their peaceful political views. The organization is calling for their immediate and unconditional release.

### ***Arrest and detention***

On the morning of Saturday 5 August, four men were arrested by police in Tuol Svay Prey section, Chamkar Morn district, Phnom Penh, as they were standing outside a building, tying copies of leaflets onto balloons. The four were Lim Nem (38 years old), Kay Vichet (30 years old), Sam Soun (58 years old) and his son Sam Sophann (22 years old). The police confiscated about a hundred copies of the two leaflets which the four men had been tying onto the balloons. Both leaflets were political statements which criticised the coalition Royal Government of Cambodia (RGC), and the political party FUNCINPEC.<sup>1</sup> The four men were taken to the local police station, and later sent to the Phnom Penh Municipal Police Commissariat, Security Office. The police also arrested a fifth man in connection with the case, Son Yin (38 years old) at his home in the capital.

At about 4pm on 5 August, Sith Kosaing Sin (32 years old), the author of the leaflets came to the Municipal Police Commissariat where the men were being held, apparently seeking their release. According to reports, he requested that the police release the five men and detain him instead, as he had written the leaflets, and the five men had been paid 20,000 riels (less than US\$10) by him to distribute them using helium-filled balloons. Sith Kosaing Sin said that he had distributed leaflets using this method on two previous occasions. The police then detained him, but did not release the five other men. On Friday 11 August the men were transferred from the Municipal Police Commissariat, where they had been detained in an office, to T3 prison in Phnom Penh.

Amnesty International has learned that the six are charged under Article 60 of the Supreme National Council Criminal Law with "Incitement not Leading to the Commission of a Crime or Misdemeanour". The case is due to come to court on Wednesday 16 August, following a postponement from Monday 14 August. The judge said he would not consider

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<sup>1</sup> FUNCINPEC is the French acronym for the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia. The leader of FUNCINPEC, Prince Norodom Ranariddh, is the First Prime Minister of the coalition government.

an application for bail before 16 August, so the six men remain detained in T3 prison. Amnesty International understands that they have not been ill-treated, and they have access to defenders of their choice.

### **The detainees**

Sith Kosaing Sin is a former Secretary General of the FUNCINPEC Youth Group. He is currently employed in the Customs Service in Phnom Penh. Son Yin apparently told the police that he assisted Sith Kosaing Sin in hiring the balloon sellers and distributing the leaflets. He is not thought to have had any input into the content of the leaflets. The four other detainees are all balloon sellers, paid by Son Yin on the instructions of Sith Kosaing Sin to tie the leaflets to balloons and release them in Phnom Penh. Amnesty International has learned that in a statement to the police about the case, Sith Kosaing Sin said that he had organized the distribution of the leaflets in order to raise awareness among senior members of FUNCINPEC of the situation of those who supported them in the election.

### **The leaflets**

Amnesty International has obtained translations of the two leaflets written by Sith Kosaing Sin. While the views expressed in the leaflets are critical of the RGC, they are peaceful views, and do not advocate the use of violence against anyone. One leaflet, entitled "Khmer People Welcome the Returning Repatriation of the King Sihanouk to the Homeland" refers to the recent return to Cambodia from China of the monarch King Norodom Sihanouk. The leaflet states; "the population has strong hopes and leaves their destiny with the King ... If the Khmer unify the Khmer will be strong. If the Khmer work together to build the country, then the Khmer will prosper". It then says that the Khmer younger generation wishes to make recommendations to the RGC. A series of recommendations follow, none of them involving calls for violence. The leaflet ends with an appeal to the Secretary of State of the United States of America, Warren Christopher, to "help Cambodia abide by human rights, follow democracy, obey the law and promote independence of the courts, ensure the press law can ensure freedom of expression and the right to speak out against corruption." Warren Christopher visited Cambodia on 4 August this year.

The second leaflet is headed "Statement of a group of ex-youths of FUNCINPEC" and using polite language calls on fellow countrymen, members and former members of FUNCINPEC and "all nationalists" to remember the years of "sacrifice" when the party was founded and fought in the civil war. It then states the view that after FUNCINPEC's victory in the election there has been corruption, which has "ma[d]e their own society shaky, by victimizing those in favour of the nation and democracy, and gradually hav[ing] them removed from this organization, alleging them of being traitors of useless corrupt persons, or alleging them of causing social turmoil." The leaflet then calls on "nation-lovers of all circles,

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both inside and outside the country" to "be absolutely against those acts of human rights violations, absolute power and the suppression of the voices of the people..." At no point in the leaflet does the author advocate the use of violence, or incite others to commit acts of violence in support of his ideas.

Amnesty International has found nothing in the leaflets which incites anyone to commit a crime of any kind. The leaflets are simply the peaceful expression of the political views of the author Sith Kosaing Sin. The detention of him and the five people who helped him to distribute the leaflets is a gross violation of their fundamental human rights to freedom of expression, opinion and association.

### **The charges**

Sith Kosaing Sin and the five other men are being charged with incitement for attempting to distribute the leaflets criticising the RGC. The charges come under Article 60 of the "Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period". This law was adopted by the Supreme National Council (SNC) of Cambodia on 10 September 1992, during the period of the United Nations Transitional Authority in Cambodia (UNTAC). The SNC was the embodiment of Cambodian sovereignty in the period before elections organised by UNTAC, following the signing of comprehensive peace agreements in Paris in 1991 by all four factions involved in Cambodia's long-running civil war. Laws made during the UNTAC period are still valid today in Cambodia, until superseded by new legislation approved by Cambodia's National Assembly. Article 60 of the Provisions states:

*"Incitement not Leading to the Commission of a Crime of Misdemeanour"*

*Any person who, by one of the means listed in Article 59, incites the commission of one of the crimes or misdemeanours covered by the present text, without the offence actually being committed, shall be liable to a punishment of one to five years in prison."*

Article 59 states:

*"Incitement Leading to the Commission of a Crime"*

*Any person who, by speech, shouts or threats made in a public place or meeting, or by writings, publications, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or film that is sold, distributed, offered for sale or displayed in a public place or meeting, or by signs or posters displayed in public, or by any other means of audiovisual communication, directly incites one or more persons to*

*commit a crime shall be punished as an accomplice to the crime. This provision also applies if the incitement leads merely to an attempt to commit a crime."*

Amnesty International has analysed the text of the two leaflets and the actions of the men who wrote and attempted to distribute them. The language used in the texts cannot constitute incitement to violence, and there is nothing in Cambodian law which criminalises the distribution of leaflets by the use of balloons. The actions of the six detained men are not crimes under Cambodian law, nor do they constitute incitement to others to commit a crime.

The peaceful expression of non-violent opposition to a government is a fundamental human right, guaranteed under the International Covenant on Civil and Political Rights (ICCPR). Cambodia is a party to the ICCPR, and is obliged to uphold the standards it lays down regarding basic human rights. The arrest and detention of Sith Kosaing Sin, Son Yin, Lim Nem, Sam Sophann, Sam Soun and Kay Vichet is a clear violation of this obligation. These men are detained solely for the non-violent expression of their peaceful political views as guaranteed by Article 19 of the ICCPR which states:

*"Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom 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 detention of these men also violates Article 9 of the ICCPR which states:

*"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."*

Amnesty International believes the six detainees are prisoners of conscience, and should be released immediately and unconditionally.

### **Illegal detention**

In addition to the fact that these six men have been detained in contravention of international human rights standards, the manner of their detention also breaks Cambodian law. Detention merely on the grounds of suspicion is not permitted under Cambodian law, and apart from a few exceptional cases, arrest warrants must be issued prior to the detention of individuals. Article 13 of the Provisions relating to the Judiciary and Criminal Law and Procedure of 1992 states:

*"Arrest and Detention:*

1. *No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by the time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available."*

Given that the six men were detained in Phnom Penh and not in a remote rural area of Cambodia, there is no reason why they should not have appeared before a judge within the specified time limit. However, nine days after their arrest, they have yet to appear before a judge. On Monday 7 August at 3pm the six were brought by the police to the Municipal Court to see the prosecutor. The prosecutor could not decide what charges should be brought and wanted more time to think about the case, so the men were sent back to the police station. The following day they were brought back before the prosecutor, but again no charges were issued. It seems that charges were finally decided upon on Friday 11 August, and at 5pm on that day the six men were transferred to T3 prison. They have access to defenders, and have permission to tell their families where they are being detained. Amnesty International was pleased to learn that the men have not been ill-treated in detention and are receiving sufficient food, but believes that their detention has no grounds in law, and that they should not have been arrested.

### ***Undermining of fundamental human rights***

The arrest and detention of these six men comes at a time when the rights to freedom of expression, opinion and association in Cambodia are being steadily undermined, as the government seeks to silence all criticism and opposition to its actions. In a document released on 17 July 1995<sup>2</sup>, Amnesty International expressed concern that the RGC has become increasingly intolerant of criticism of its ministers and policies. A string of events, including the unsolved murders of two journalists known for their critical views, threats against outspoken Members of the National Assembly and their families, and the passing of a Press Law which allows for the imprisonment of journalists and falls far short of international human rights standards are worrying developments for human rights in Cambodia. Amnesty International repeats its message to the RGC given in a major report in March 1995:

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<sup>2</sup> *Kingdom of Cambodia: Human Rights Violated: government acts to silence critics* (ASA 23/12/95).

"The Cambodian Government has a special duty to ensure that journalists, editors, human rights workers and members of political parties are able to carry out their legitimate activities ... and to express their peaceful opinions without risk."<sup>3</sup>

Amnesty International greatly regrets the detention of six prisoners of conscience in Phnom Penh since 5 August 1995. The organization recommends that all of them be immediately and unconditionally released.

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<sup>3</sup> *Kingdom of Cambodia: Human rights and the new government* (ASA 23/02/95), 14 March 1995, page 67.