

The Role of the Cambodian Judiciary in Political Cases

A Case Study from Takeo Province

July 2010



Leang Sokchouen being escorted to the Takeo provincial court after 33 hours of incommunicado police custody



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Background

On Saturday, May 29, 2010, at 6:15 a.m., Mr. Leang Sokchouen, an employee of LICADHO, was arrested at his home in Phnom Penh's Sen Sok district by police officers from the Internal Security Department of the Ministry of Interior. Subsequent to his arrest, Mr. Sokchouen was transferred to the Headquarters of the National Police Commissioner in Phnom Penh, where he was held incommunicado for more than 33 hours, despite repeated requests by family and his lawyer to be able to access him.

Cambodia is State party to the International Covenant on Civil and Political Rights (ICCPR)¹. Article 9 (1) of the ICCPR reads as follows:

"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 established by law."

The Human Rights Committee, the treaty body which is tasked with monitoring the State parties' performance under the ICCPR, has stated that deprivations of liberty must in all cases be carried out in accordance with domestic legislation (principle of legality). More importantly, the Committee has held that deprivations of liberty *must not be arbitrary*, clarifying that *"arbitrariness is not to be equated with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."*²

Leang Sokchouen's arrest and remand in custody by the Cambodian judiciary bears all the hallmarks of inappropriateness, injustice, lack of predictability and due process outlined by the Human Rights Committee. These violations are characteristic of political systems that fail to genuinely implement basic principles of the rule of law.

Preliminary Investigations and the Introductory Submission against Leang Sokchouen

Preliminary Investigations and Introductory Submission against Leang Sokchouen

On 28 April 2010, the provincial police of Takeo filed a report to the Public Prosecutor's Office at the Takeo Provincial Court, requesting the opening of a judicial investigation³ in relation to four alleged incidents of distribution of leaflets in Takeo province. The incidents occurred between 9 November 2009 and 21 April 2010. According to the provincial police, the leaflets were aimed at *"insulting the leaders of the country and the King father."* The Takeo provincial

¹ Article 31 of the Cambodian Constitution stipulates that *"The Kingdom of Cambodia shall recognize and respect human rights as defined in the United Nations Charter, the Universal Declaration of Human Rights, and all treaties and conventions related to human rights, women's rights and children's rights."*

² Communication No. 458/1991, A.W. Mukong v. Cameroon in UN doc. GOAR, A/49/40 (vol II), p. 181, para 9.8

³ See Article 124 in connection with Articles 43-45 of the Criminal Procedure Law

police also informed the Department of Internal Security at the Ministry of Interior about the alleged incidents.

On 29 April 2010, as an addendum to the initial police report, the public prosecutor in Takeo, Mr. Meas Sopheak, formally opened a judicial investigation and instructed the provincial police "to search for evidence and submit an investigation report to his office."

On the following day, 30 April 2010, the Takeo provincial police submitted its investigation report to the public prosecutor, which consisted of three main sections: (i) police investigations at the sites of leaflet distribution, (ii) statements of four witnesses, (iii) results of wire tapping. In essence, the police report about the findings at the sites contained nothing more than a listing of venues and numbers of leaflets found, while the role of the "witnesses" (or police informants) was confined to basically confirming the occurrence of the incidents. The witness statements in the police report did not contain any specific reference to a possible involvement of Leang Sokchouen whatsoever.

In the passage dealing with the wire taps, the provincial police named two so-called "masterminds" who had apparently been in touch with four "other suspects" through mobile phone. One of the four suspects in the wire tap section of police report was identified as "Mr. Leang Sokly, called Chhouen", a Vietnamese national with residence in Phnom Penh's Russei Keo district (the personal details of this person were probably copied from the client registration files of the mobile phone company).

In addition to the obvious discrepancies concerning the name, Mr. Leang Sokchouen is a Khmer national residing in Phnom Penh's Sen Sok district. Furthermore, the wire tap records make no reference to the content of the phone conversations. The investigation report remained silent as to how the provincial police had identified the "two masterminds", and what possibly incriminated the four individuals that allegedly had phone conversations with the so-called masterminds.

On 7 May 2010, the public prosecutor issued an *introductory submission* against four individuals on charges of disinformation (Article 62 of the UNTAC Law). The charges were relation to one specific incident of an alleged distribution of 587 anti-government leaflets on 4 January 2010, in Don Keo town of Takeo province. With the issuance of the introductory submission, the public prosecutor opened judicial investigations against the four suspects⁴.

One of the individuals charged was a person referred to in the submission as "Mr. Leang Sokly, called Chouen", a Vietnamese national with residence in Phnom Penh's Russei Keo district. Despite the obvious gaps and inconsistencies in the report of the Takeo provincial police, as well as the lack of evidence, the public prosecutor did not conduct any additional investigations prior to the issuance of the introductory submission. The sole basis for his submission was the report of the provincial police of 30 April 2010.

The charges of disinformation against the four suspects were based on an alleged incident that occurred four months earlier on 4 January 2010. There was no element of urgency. It remains unclear as to why the public prosecutor refrained from summoning and interrogating the suspects in accordance with Article 114 of the Criminal Procedure Law. This

⁴ Article 124 in connection with Articles 43 and 45 (misdemeanors) of the Criminal Procedure Law

would have allowed the prosecutor to clarify the discrepancies related to the personal data of at least one of the suspects and to collect information beyond that contained in the police report. Neither the judicial police nor the public prosecutor made any attempts during their preliminary investigations to formally contact the suspects.

Judicial Investigation by Investigating Judge and Police Custody

After receiving the introductory submission of 7 May 2010 from the public prosecutor, the investigating judge at the Takeo provincial court, Mr. Plang Chlam, placed the persons listed in the submission formally under judicial investigation⁵ on charges of disinformation in relation to the alleged distribution of 587 leaflets on 4 January 2010 in Don Keo town of Takeo province. On 11 May 2010, he then issued an "*Order to Bring*" in accordance with Articles 189 and 190 of the Criminal Procedure Law against the suspects, including "*Mr. Leang Sokly, called Chouen*".

Prior to issuing the order, the investigating judge abstained from summoning the suspects for interview⁶. Instead, the investigating judge authorized police to apprehend the suspect without prior notification. Thus, when police officers from the Internal Security Department arrested Mr. Leang Sokchouen at his home on 29 May 2010, he was still completely oblivious of the criminal charges pending against him.

According to Article 193 of the Criminal Procedure Law, the "*Order to Bring*" requires the executing judicial police officers to bring the cited individual before the investigating judge "*immediately*". If, "*due to the circumstances*", the cited individual cannot be brought before the investigating judge immediately, that person must be presented to the investigating judge the following day at the latest, or otherwise be released. Despite this, the Internal Security Department waited nearly three weeks to execute the "*Order to Bring*" against Mr. Leang Sokchouen on May 29, 2010, a Saturday. This allowed the "*circumstances*" for not being able to bring the suspect before the investigating judge "*immediately*", due to the weekend closure of the Takeo court.

The order could have been executed on a workday, to ensure the immediate transfer of the suspect before the investigating judge in Takeo. Instead, Leang Sokchouen was taken to the Headquarters of the National Police Commissioner in Phnom Penh, where he was held incommunicado for more than 33 hours from the time of his arrest on Saturday, 29 May 2010 at 6h15 a.m. until Sunday, 30 May 2010, at 3h40 p.m.

Despite multiple requests by his family and his lawyer to be allowed to meet with Leang Sokchouen, the police refused to grant access. During the 33 hours in police custody, Leang Sokchouen was subjected to interrogation methods and strategies which oscillated between threats and enticements with the aim to extract a confession in relation to charges that remained completely obscure to him.

The police failed in their legal duty to inform Leang Sokchouen about the reasons of his arrest, including his remand in custody, as well as his right to meet with his lawyer or any

⁵ Article 126 (1) of the Criminal Procedure Law

⁶ Article 186 of the Criminal Procedure Law

other person selected by him after 24 hours.⁷ According to the Criminal Procedure Law, the police officers are held to produce a written record of custody, which must include “*the identity of the detained person.*”⁸ The judicial police should have taken note of the obvious discrepancy between the personal data of Leang Sokchouen and the person identified in the “*Order to Bring*” as “*Leang Sokly, called Chouen, Vietnamese national, residing in Russei Keo district.*” Yet, the police failed to notify the investigating judge about these crucial discrepancies, or to consider Leang Sokchouen’s release pending further investigation.

Provisional Detention

On Sunday, 30 May 2010 at 3h40 p.m., Leang Sokchouen was presented to the investigating judge in Takeo by police officers from the Department of Internal Security⁹. This was the first time that the lawyer and family members could meet with Leang Sokchouen.

The investigating judge reprimanded the reporting police officer for having appeared in plain clothes and not having produced a written report, but stopped short of taking any procedural action. During the hearing regarding the issue of provisional detention Leang Sokchouen’s lawyer raised the question of the incorrect “*Order to Bring.*” Referring to serious problems with the identification of the suspect as included in the official order which displayed huge discrepancies in terms of the name, the nationality and residence of his client, he requested Leang Sokchouen’s immediate release.

The lawyer also argued that regardless of the conflicting identity issue, there would be no legal grounds to divert from the important principle enshrined in the Cambodian Criminal Procedure Law that a “*charged person shall remain at liberty*”¹⁰. He stated that his client had been charged with a misdemeanor, not a felony. He also said that the grounds listed in the law for provisional detention were not met,¹¹ referring to Leang Sokchouen’s permanent residence, regular employment and stable family relations that would guarantee his appearance before the court whenever required.

Despite this, the investigating judge ordered Leang Sokchouen to be taken in provisional detention. He cited concerns that the suspect (1) might repeat the commission of the offense¹², (2) might harass witnesses, victims or collude with accomplices¹³, (3) is at heightened risk of flight¹⁴, or (4) might still pose a threat to public order¹⁵. These grounds are routinely used by courts in political cases to ensure that the affected individuals remain in custody, until the

⁷ Article 97 of the Criminal Procedure Law

⁸ Article 97 (2) of the Criminal Procedure Law

⁹ Article 193 of the Criminal Procedure Law

¹⁰ Article 203 of the Criminal Procedure Law

¹¹ Article 205 of the Criminal Procedure Law

¹² Article 205 No. 1 of the Criminal Procedure Law

¹³ Article 205 No2 of the Criminal Procedure Law

¹⁴ Article 205 No.4 of the Criminal Procedure Law

¹⁵ Article 205 No.4 of the Criminal Procedure Law

executive has submitted orders on how to proceed with the case. A subsequent request by the lawyer in writing to release his client on bail was rejected on the same grounds.

Charges of Disinformation

According to the introductory submission by the public prosecutor, the person identified as “*Mr. Leang Sokly, called Chhouen*” was charged with disinformation¹⁶, a provision that has been routinely used by government authorities over the years to file lawsuits against dissenting opinions, including journalists, editors and political activists¹⁷.

The offense of disinformation stipulates that “*a person responsible for a publication or other means of communication who takes a decision to publish, distribute or reproduce information which is false, fabricated, falsified or untruthfully attributed to a third person, and did so in bad faith or malicious intent and the act leads disturbance of public peace or is likely to disturb public peace*” is liable to a prison term of six months to three years, a fine or both. The specific charges in that case relate to the alleged distribution of 587 leaflets on 4 January 2010 in Don Keo town of Takeo district.

Apart from the problem of establishing the individual involvement of each suspect, the major challenge for the prosecution will be to prove that the leaflets contained “*information which is false, fabricated or falsified*”, since they are of political content, expressing opinions rather than facts. Further, the concept of disturbance of public requires the prosecutor to prove that the alleged distribution of 587 leaflets in a single incident was likely to lead to large-scale unrest, shaking the very foundations of security and order of the entire nation.

Conclusion

The criminal investigation, arrest and detention of Leang Sokchoeun were characterized by a series of grave breaches of Cambodian procedural legal provisions. These provisions aim to protect Cambodian citizens from arbitrary and unlawful deprivation of liberty.

The only effective measure to remedy the arbitrariness of the entire criminal investigation, and the deprivation of Leang Sokchouen’s liberty would consist of in his immediate and unconditional release from provisional detention. Further, an investigation should be conducted into the circumstances of his incommunicado detention for 33 hours at the Headquarters of the National Police Commissioner by police officers from the Department of Internal Security.

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¹⁶ Article 62 of the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period (the so called UNTAC Law)

¹⁷ See among others, the 2009 Human Rights Report: Cambodia, 11 March 2010, US State Department <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135988.htm>