



**FIDH – International Federation for Human Rights
Thai Lawyers for Human Rights (TLHR)
Cross Cultural Foundation (CrCF)**

Joint submission for the review of Cambodia’s initial report

Committee on Enforced Disappearances (CED) - 26th Session

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The Cambodian government has repeatedly failed to comply with key obligations under the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Such failure is illustrated by two cases of apparent enforced disappearance that were registered by the Committee on Enforced Disappearances (CED) in 2014 and 2018, respectively. To date, both cases remain unresolved, and the government has failed to determine the fate and whereabouts of the two victims, adequately investigate their enforced disappearance, and identify the perpetrators.

The first case regards Mr. Khem Sophath, a 16-year-old boy who disappeared during a violent crackdown by Cambodian security forces against striking garment factory workers on 3 January 2014 near the Canadia Industrial Park on Veng Sreng Road, Phnom Penh. The crackdown, which started on 2 January 2014, resulted in at least four workers being fatally shot by security forces, at least 39 wounded, and 23 workers and human rights defenders arrested.

Mr. Khem Sophath was last seen on the morning of 3 January 2014 lying on the ground on Veng Sreng Road, with blood pouring from what appeared to be a gunshot wound to his chest. As bystanders tried to aid him, Mr. Khem Sophath was heard urging them not to help him but to save themselves, saying he “would not survive.” At the time, shots were still being fired at civilians. Those who tried to help him went into hiding, including the main eyewitness, who had himself been shot and did not receive medical treatment until later that day.

Considering the witness’ report and Mr. Khem Sophath’s unknown whereabouts in the context of the extrajudicial killings and arbitrary arrests carried out by Cambodian security forces that day, there are reasonable grounds to believe that Mr. Khem Sophath was subjected to an enforced disappearance.

The second case concerns Mr. Wanchalearm Satsaksit, a Thai activist who was last seen on the afternoon of 4 June 2020 in Phnom Penh. According to eyewitness testimonies, Mr. Wanchalearm Satsaksit was kidnapped in front of his condominium in Phnom Penh by a group of unidentified men dressed in black who took him away in a dark blue/black SUV.

Mr. Wanchalearm Satsaksit is an outspoken critic of the military junta that ruled Thailand between 2014 and 2019 and is also reported to be on a list of individuals accused of violating Article 112 of the Thai Criminal Code (lèse-majesté), for which the Thai police issued arrest warrants. He fled Thailand after the May 2014 military coup.

Mr. Wanchalearm Satsaksit is one of the seven exiled Thai activists who fled to Thailand's neighboring countries and are known to have disappeared between 2016 and 2020. In relation to such cases, a group of United Nations (UN) special procedures stated that the "pattern of cases appears to point towards countries in the region coordinating, assisting or acquiescing to extraterritorially abduct political activists leading to enforced disappearances."¹

The initial report submitted by the government under the ICPPED states that in Cambodia "no one is under circumstances of enforced disappearance" (para. 3) and that Cambodia "does not currently have any official cases or statistical data in relation to enforced disappearance" (para. 85).² Such sweeping denials by the government are contradicted by the fact that the cases of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit remain unresolved.

The government's approach to the two cases is inconsistent with its initial report's pledge to fulfil the obligations stipulated in the ICPPED (para. 85). In particular, regarding both cases, the government failed to comply with its obligations under Articles 3, 12, and 24 of the ICPPED.

Failure to adequately investigate enforced disappearances

Article 3 of the ICPPED imposes an obligation on the authorities to "take appropriate measures" to investigate enforced disappearances. Article 12(1) of the ICPPED imposes an obligation on competent authorities to examine allegations of enforced disappearances "promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation."

In the case of Mr. Khem Sophath, while police indicated they began investigating his disappearance in the aftermath of the early January deadly crackdown on the striking workers in Phnom Penh,³ no information concerning the investigation emerged until 9 September 2014,

¹ OHCHR, *Cambodia - JAL KHM 7/2020*, 11 December 2020; available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25647>

² CED, *Committee on Enforced Disappearances Report submitted by Cambodia under Article 29(1) of the Convention, due in 2015*, 15 October 2021; UN Doc. CED/C/KHM/1; available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FKHM%2F1&Lang=en

³ Cambodia Daily, *Police Blame Family for Stalled Probe Into Lost Boy*, 2 September 2015; available at:

<https://english.cambodiadaily.com/news/police-blame-family-for-stalled-probe-into-lost-boy-93151/>

when the government transmitted to the CED the Ministry of Interior’s investigation report, which was undated. The investigation report contained scant details about the steps undertaken by the authorities to determine Mr. Khem Sophath’s fate and whereabouts. The only actions mentioned in the report were the inconclusive forensic examination of ashes that witnesses believed were the remains of Mr. Khem Sophath, and interviews with an unspecified number of witnesses in relation to the discovery of the ashes. The investigation report concluded that the disappearance of Mr. Khem Sophath was “only a rumor.”

On 14 November 2014, in response to a follow-up communication sent by the CED the previous month, the government failed to provide additional information about the investigation and referred to the outcome of the investigation report transmitted to the CED in September 2014.

Subsequent requests for information, sent by the CED to the government in June 2015, September 2015, and March 2017, were met by blanket denials and absence of additional details about the investigation. On 1 July 2015, the government reiterated its claim that the disappearance of Mr. Khem Sophath was “only a rumor.” On 14 September 2015, the government once again referred to the investigation report transmitted to the CED in September 2014. On 27 April 2017, in the last known official communication issued concerning Mr. Khem Sophath’s case, the government claimed that “the enforced disappearance [of Mr. Khem Sophath] has never occurred in Cambodia.”

In the case of Mr. Wanchalearm Satsaksit, authorities expressed reluctance to investigate his disappearance from the very beginning. On 5 June 2020, National Police Spokesperson Mr. Chhay Kim Khouen denied any knowledge of Mr. Wanchalearm Satsaksit’s kidnapping and said that since no abduction had taken place, no investigation would be done.⁴ “We don’t know about it, so what should we investigate?,” Mr. Chhay Kim Khoeun said in response to a media query.⁵ On the same day, Interior Ministry Spokesperson Mr. Khieu Sopheak suggested the report by the international non-governmental organization Human Rights Watch about Mr. Wanchalearm Satsaksit’s disappearance could be “fake news.”⁶ On 7 June 2020, government Spokesperson Mr. Phay Siphon said he was only aware of the abduction through news media.⁷

As in the case of Mr. Khem Sophath, scant details about the investigation emerged belatedly. The only information concerning the authorities’ investigation surfaced in response to communications sent by the CED to the government. On 19 June 2020, in response to a request for urgent action sent by the CED nine days earlier, the government offered no information about

⁴ AP, *Rights group says another Thai dissident abducted in SE Asia*, 5 June 2020; available at:

<https://apnews.com/40ce0acfa5cdc3356cad1f9e10df695d>

⁵ AFP, *Cambodia police refuse probe into Thai activist ‘disappearance’*, 5 June 2020; available at:

<https://www.dailymail.co.uk/wires/afp/article-8391211/Cambodia-police-refuse-probe-Thai-activist-disappearance.html>

⁶ AFP, *Cambodia police refuse probe into Thai activist ‘disappearance’*, 5 June 2020; available at:

<https://www.dailymail.co.uk/wires/afp/article-8391211/Cambodia-police-refuse-probe-Thai-activist-disappearance.html>

⁷ Khmer Times, *Authorities unaware of alleged abduction of Thai activist in Phnom Penh*, 8 June 2020; available

at: <https://www.khmertimeskh.com/50731231/authorities-unaware-of-alleged-abduction-of-thai-activist/>

steps taken to locate Mr. Wanchalearm Satsaksit, investigate his enforced disappearance, and identify the perpetrators. The government stated that, aside from reports of media outlets, authorities had “neither knowledge nor any lead on the alleged abduction of Mr. Wanchalearm [Satsaksit].” The government further indicated that the “relevant authorities” were “in the process of conducting further investigations into the said case.”

On 12 August 2020, in response to a follow-up communication sent by the CED the previous month, the government issued a note characterized by the scarcity of information collected during the course of the investigation that authorities had purportedly conducted after the disappearance of Mr. Wanchalearm Satsaksit. In the note, almost no new information was provided, and the few details presented (i.e. the plate number of the vehicle in which Mr. Wanchalearm Satsaksit was taken) had in fact been received by the government through the CED communication. The explanation that the authorities had tried to find evidence through security cameras where the abduction had taken place, “but had no clue,” was vague, unclear, and insufficient. The government also cast doubts over undisputable facts surrounding the enforced disappearance of Mr. Wanchalearm Satsaksit. The government’s statement that it would try to find out “if there was a real abduction case and if it had really happened in Cambodia” were an apparent attempt to divert the focus of the investigation away from the few known and undisputable facts related to Mr. Wanchalearm Satsaksit’s disappearance. Mr. Wanchalearm’s presence in Cambodia at the time of his disappearance had been corroborated by eyewitness accounts and Mr. Wanchalearm Satsaksit’s elder sister, Ms. Sitanan Satsaksit, who was in regular contact with her brother and was in fact talking on the phone with him just moment before his abduction in Phnom Penh in the afternoon of June 4.

On 3 March 2021, in response to a joint communication sent by a group of UN special procedures in December 2020, the government failed to provide any information concerning the steps taken to locate Mr. Wanchalearm Satsaksit, investigate his enforced disappearance, and identify the perpetrators. This was the last known official communication issued by the government on the case of Mr. Wanchalearm Satsaksit.

With regard to the obligation to investigate enforced disappearances, the government also acted in a manner that is inconsistent with Cambodia’s obligations under Article 12(2) of the ICPPED. This provision stipulates that when there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities “shall undertake an investigation, even if there has been no formal complaint.”

In the case of Mr. Khem Sophath, the government repeatedly told the CED that the authorities never received a complaint from Mr. Khem Sophath’s family concerning his enforced disappearance. While it is true that such a complaint was never filed, this fact is irrelevant with regard to the implementation of the ICPPED. Indeed, the government’s own initial report to the CED acknowledges that the lack of formal complaint does not exempt the authorities from investigating, “if there is a compelling reason to believe that someone is disappearing” (para. 36).

In the case of Mr. Wanchalearm Satsaksit, the authorities' investigation into his enforced disappearance has appeared wholly inadequate despite the filing of multiple official complaints by his family.

Despite the challenges posed by the COVID-19 pandemic, including travel restrictions and limitations, long quarantine periods, and related costs, Mr. Wanchalearm Satsaksit's family provided crucial support to the investigation into his enforced disappearance.

Mr. Wanchalearm Satsaksit's family secured the services of a Phnom Penh-based Cambodian attorney, who, on 8 July 2020, filed a complaint to the Prosecution Unit attached to the Phnom Penh Municipal Court to request a criminal investigation into Mr. Wanchalearm Satsaksit's case. On the same day, the same complaint was filed with the Ministry of Justice in Phnom Penh. In addition, on 3 July 2020, through the Cambodian attorney, Mr. Wanchalearm Satsaksit's family submitted a petition to the Ministry of Interior to request its intervention in the case. In November 2020, Mr. Wanchalearm Satsaksit's elder sister, Ms. Sitanan Satsaksit, travelled from Thailand, her country of residence, to Cambodia, and, on 8 December 2020, appeared before the Phnom Penh Municipal Court to provide information concerning her brother's case.

The government not only failed to adequately investigate the enforced disappearances of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit, but also attempted to place the burden of the investigation on their families or other external actors.

On 31 August 2015, National Police Spokesperson Lt Gen Kirth Chantharith appeared to blame Mr. Khem Sophath's family for the authorities' lack of progress in the investigation into his enforced disappearance. "We have not seen the family make any official complaints to the National Police in Phnom Penh or anywhere else," Lt Gen Kirth Chantharith said. "As there has been no complaint, there is no cooperation [from the family] with us," he added.⁸ On 1 July 2015, the government went so far as to demand the CED "provide evidences [sic] to prove the disappearance of Mr. Khem Sophath."

On 3 March 2021, the government also bemoaned that Mr. Wanchalearm Satsaksit's family and lawyers "had not extended to the Cambodian authorities any information or cooperation" since Ms. Sitanan Satsaksit's appearance before the Phnom Penh Municipal Court on 8 December 2020.⁹

Failure to protect witnesses

The government also failed to comply with its obligation to take "appropriate steps" to ensure witnesses and persons participating in the investigation "are protected against all ill-treatment or intimidation," as stipulated by Article 12(1) of the ICPPED.

⁸ Cambodia Daily, *Police Blame Family for Stalled Probe Into Lost Boy*, 2 September 2015; available at: <https://english.cambodiadaily.com/news/police-blame-family-for-stalled-probe-into-lost-boy-93151/>

⁹ OHCHR, *Cambodia - JAL KHM 7/2020 - Reply received*, 3 March 2021; available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36030>

In the case of Mr. Khem Sophath, the main witness did not appear when subpoenaed because he was fearful for his safety, and was threatened on 25 May 2014, the day after he had found what he believed to be the remains of Mr. Khem Sophath, together with another witness. In its investigation report, the government attacked the main witness for going into hiding, saying he had “ill intention to manipulate the information in order to intoxicate [sic] the situation.”

In the case of Mr. Wanchalearm Satsaksit, several individuals witnessed his abduction.¹⁰ However, none of them have come forward to provide testimonies to the authorities for fear of reprisal.¹¹

Failure to ensure victims’ participation in the investigations

In both Mr. Khem Sophath and Mr. Wanchalearm Satsaksit’s cases, the authorities have failed to ensure the full and informed participation of their families in the investigations into their enforced disappearance. Such failure is inconsistent with Cambodia’s obligations under Article 24(2) of the ICPPED. According to this provision, authorities should take “appropriate measures” to ensure victims have the right to know “the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person[s].” It must be recalled that by virtue of Article 24(1) of the ICPPED, family members of the disappeared persons are themselves considered “victims,” if they have suffered harm as the direct result of an enforced disappearance.

In both Mr. Khem Sophath and Mr. Wanchalearm Satsaksit’s cases, authorities consistently failed to inform their respective families about the progress and results of the investigations.

In the case of Mr. Khem Sophath, the only known interaction between the authorities and Mr. Khem Sophath’s family was an interview conducted by the Ministry of Interior with Mr. Khem Sophath’s father on 22 May 2014.

In the case of Mr. Wanchalearm Satsaksit, authorities never provided his family with information regarding the progress and results of the investigation. In addition, on 11 August 2020 (Mr. Wanchalearm Satsaksit’s 38th birthday), Ms. Sitanan Satsaksit sought to meet with Mr. Ouk Sorphorn, Cambodia’s Ambassador to Thailand, and deliver a petition to the Cambodian Embassy in Bangkok to request Cambodian authorities investigate Mr. Wanchalearm’s disappearance. However, the Cambodian Embassy ignored her request to meet with the Cambodian Ambassador and refused to receive the petition.

¹⁰ Prachatai, “Argh, can’t breathe”: Thai political exile kidnapped in Phnom Penh, 4 June 2020; available at: <https://prachatai.com/english/node/8561>; VOA, *Eyewitnesses Confirm Thai Pro-Democracy Activist’s Abduction in Phnom Penh*, 5 June 2020; available at: <https://www.voacambodia.com/a/eyewitnesses-confirm-thai-pro-democracy-activist-abduction-in-phnom-penh/5450612.html>

¹¹ CrCF, *3rd edition of Wanchalerm’s family statement on the anniversary of his disappearance*, 4 November 2020; available at: <https://crcfthailand.org/en/2020/11/04/3rd-edition-of-wanchalerm-family-statement-on-the-anniversary-of-his-disappearance-for-5-months-in-cambodia/>; Los Angeles Times, *A Thai dissident was kidnapped. When police had no answers, his sister began to investigate*, 29 December 2020; available at: <https://www.latimes.com/world-nation/story/2020-12-29/thailand-dissident-missing-wanchalearm-satsaksit>

On 12 August 2020, in an apparent attempt to discourage individuals and organizations from attempting to establish the circumstances of Mr. Wanchalearm Satstaksit's enforced disappearances and to assist his family, the government also warned all relevant parties in Cambodia and abroad to "refrain from making any inaccurate evaluation which may affect the investigation process of the authorities."¹²

Failure to ensure adequate compensation

The government has failed to comply with its obligation to ensure that Cambodia's legal system guarantees to victims of enforced disappearance the right to obtain reparation and prompt, fair, and adequate compensation, which include material and moral damages and other forms of reparation, in accordance with Article 24(4) of the ICPPED.

This failure stems from the fact that Cambodia's legislation does not provide for a comprehensive system of reparation for victims. The government's initial report merely cites a general right for victims of criminal offenses "to sue for damages" (para. 74).

Recommendations to Cambodia's government

- Recognize the cases of enforced disappearance of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit.
- Take all appropriate measures to determine the fate and whereabouts of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit, including steps outlined in the Guiding Principles for the Search for Disappeared Persons.
- Conduct prompt, thorough, and impartial investigations into the enforced disappearances of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit and make the detailed findings of these investigations public.
- Seek and receive international technical assistance in order to conduct prompt, thorough, and impartial investigations into the enforced disappearances of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit in accordance with international standards.
- Take all necessary measures to ensure that witnesses in the cases of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit are protected from intimidation and can participate in the investigations without fear of reprisal.
- Ensure the full and informed participation of the families of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit in the investigations into their enforced disappearance.
- Establish a comprehensive system of reparation for victims of enforced disappearance that is fully in accordance with the provisions of Articles 24(4) and (5) of the ICPPED.
- Ensure that the family members of Mr. Khem Sophath and Mr. Wanchalearm Satsaksit obtain reparation and prompt, fair, and adequate compensation, which include material and moral damages and other forms of reparation.

¹² OHCHR, *Cambodia - JAL KHM 7/2020 - Reply received*, 3 March 2021; available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36030>