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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on violence against women, its causes and consequences

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4 June 2012

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/18, 16/4, 15/8, 18/25, 15/21, 14/11, 16/5, 17/2, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrests and sentencing of thirteen women from the Boeung Kak Lake community during their peaceful protest, the subsequent arrest of two other representatives from the Boeung Kak Lake community, as well as the arrest of Venerable Loun Savath and the exertion of undue influence on him to cease his human rights work.

In this regard we would also like to recall a previous communication, KHM 6/2011, sent on 23 September 2011 by the Special Rapporteurs on adequate housing, on human rights defenders and on the situation of human rights in Cambodia, regarding the demolition of houses and threats of eviction against villagers of Boeung Kak Lake in Phnom Penh. No reply to this communication has been received.

According to the information received:

On 22 May 2012, thirteen women from the Boeung Kak Lake community - **Kong Chantha, Tol Sreyrov, Tep Vanny, Pov Sophea, Suong Samai, Pan Chhunret, Heng Nom, Chan Navy, Po Davy, Nguon Kimleang, Song Sreyleap, Chheng Leap** and **Nget Kun** (aged 72) - were arrested whilst singing at a peaceful gathering and press conference in Boeung Kak Lake organized by eighteen families whose homes had been buried in the sand by a private developer.

On 24 May 2012, after two nights in police custody, the thirteen women were tried at Phnom Penh Court of First Instance. The trial started at 1:30 p.m., the trial judge denied the request of the three defense lawyers for an adjournment and for four defense witnesses to be heard by the court for the reason that the defense lawyers had had enough time to meet with the thirteen women while they were in police custody. It was alleged that the defense lawyers were also denied their request to have five minutes to consult with their clients. Consequently, the trial took place without the defense lawyers after they walked out of the courtroom in protest.

During the trial, three witnesses for the prosecution who were identified as security staff of Khan Don Penh's Hall were heard. They all testified that the thirteen women had been involved in the construction of houses on the land filled with sand at village 1 in Boeung Kak Lake. They also testified that the thirteen women had been involved in the press conference organized by the eighteen families at which they were seen cursing and throwing stones and sand at public officials. The thirteen women denied all these allegations. It was reported that a short video clip of the demonstration at Boeung Kak Lake was shown in the court but none of the thirteen women was seen in the clip.

The trial judge announced the verdict at 5:15 p.m. that all the thirteen women were found guilty and sentenced to two and a half years imprisonment. Six of the women had parts of their sentence suspended. After the sentencing, the thirteen women were reportedly sent to Correctional Centre 2. According to the information received, the thirteen women had lodged an appeal against the verdict.

During the trial, the police allegedly arrested two other Boeung Kak Lake representatives, **Ms. Ly Channary** and **Mr. Say Sareoun**, who were waiting outside the courthouse to testify. They were charged with the same offences as the thirteen women. They are currently held in pre-trial detention respectively in Correctional Centre 2 and Correctional Centre 1.

On the same day, 24 May 2012, **Venerable Loun Sovath** participated in the peaceful gathering in front of the court as an act of solidarity with the thirteen women. Reportedly, at around 10:00 a.m., while Venerable Sovath was taking some pictures of the gathering in front of the court; he was forced into a civilian car, mainly by police in plain clothes, gendarme and military police, intervention

police and monks surrounding him. It was reported that Venerable Sovath was then driven to the Botum Pagoda where he was detained against his will and maintained incommunicado until 8:00 p.m. He was allegedly questioned over his activism by about fifty religious leaders including the Supreme Patriarch Monk X; the Minister of Cults and Religion, Mr. Y, and the Secretary of State of Cults and Religion, Mr. Z as well as some police in plain clothes.

Venerable Sovath was allegedly coerced into signing an “agreement” or to risk being defrocked and having judicial proceedings initiated against him. The “agreement” letter reportedly stated that “1. He agrees to stop leading or participating in any demonstration, strike, riot, or protesting activities, which harm the public security and social order. 2. He agrees to stay with the Buddhist monks (staying in a pagoda) and follow the Buddhist rules and monks’ Prakases of the Kingdom of Cambodia. 3. In case of violation of these agreements, he shall be responsible before the law without any protest.” Venerable Sovath was allegedly not allowed to call or seek advice from external organizations.

It was reported that Venerable Sovath only thumbprinted the “agreement” presented to him after he was threatened to be defrocked and then prosecuted when he was shown a copy of the decision of an investigating judge, Mr. A, from the Phnom Penh Court, signed and stamped on 14 February 2012 to place him under judicial supervision in connection with a criminal complaint filed against him by the municipal authority in November 2011. The decision indicated that he had been charged with incitement to commit a felony (Art. 495 of the Penal Code) He was also allegedly shown a notification letter sent on 14 February 2012 by Phnom Penh Court to the Minister of Justice and a notification letter sent on 13 March 2012 by the Minister of Justice to the Minister of Cults and Religion about criminal charges and the decision of the Phnom Penh Court against Venerable Sovath.

While Venerable Sovath was detained at the Botum Pagoda, he was reportedly physically inspected and closely monitored by the authorities who allegedly confiscated his mobile phone and other personal belongings. The confiscated items were returned to him once he was released. It is also reported that a similar incident of arrest of Venerable Sovath had taken place on 20 August 2010 when he attended the hearing of a number of Chi Kreng villagers arrested in March 2009 in the Provincial Court in Siem Reap. It is reported that the Siem Reap Department of Cults and Religions issued a letter dated 7 August 2010 claiming that Venerable Sovath’s actions were against both the Buddhist laws and those of the Kingdom of Cambodia and that all levels of authorities must cooperate to prevent Venerable Sovath from continuing with his actions.

Concerns are expressed that the rights to freedom of expression and peaceful assembly of the fifteen representatives of Boeung Kak Lake community and Venerable Loun Sovath have been violated, and that these violations may be directly related to their activities in the defence of human rights. Besides, concerns are expressed for the arbitrary arrests of the Boeung Kak Lake representatives and Venerable Sovath and the lack of due

process throughout the incident. Concerns are also expressed that Venerable Sovath's right to practice his religion as a Buddhist monk has been unduly restricted as a result of his peaceful advocacy for the resolution of land disputes in his community and more generally in the country.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention and share our concerns in relation to present circumstances in light of the applicable international human rights norms and standards.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their life and liberty, and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like also to appeal to your Excellency's Government to take all necessary steps to ensure that the right to freedom of religion or belief of Venerable Loun Sovath is respected and protected, as recognized in article 18 of the UDHR and article 18 of the ICCPR that your Excellency's Government ratified on 26 May 1992.

Human Rights Committee in its general comment No. 22, para. 9, which emphasizes that "[t]he fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. [...]" while para. 10 states that "[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it."

We appeal to your Excellency's Government to take all necessary measures to guarantee to the abovementioned women the right to be free from any gender-based violence, discrimination and abuse. Towards that end, we would like to draw Your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

We would also like to refer to Article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal

terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would further like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone 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."

Similarly, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In this addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right,

individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to the serious concerns expressed about the alleged due process violations, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the rights of the affected persons to fair proceedings before an independent and impartial tribunal as provided in article 14 paragraph 1 of the International Covenant on Civil and Political Rights, which states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". In this connection, we would also like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular to the Principle 6, which states that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

Furthermore, we would like to draw the attention of your Excellency's Government to article 14 paragraph 3 of the International Covenant on Civil and Political Rights, which states that "in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; and (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

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 persons in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Have complaints been lodged with regard to the incidents mentioned above?
3. Please provide information concerning the legal grounds for the arrest of the fifteen representatives of the Boeung Kak Lake community and Venerable Loun Sovath and how these measures are compatible with international norms and standards, including the right to freedom of religion or belief, freedom of opinion and expression and freedom of peaceful assembly?
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries which may have been carried out in relation to the alleged arbitrary arrest of Venerable Loun Sovath and the coercion applied to Venerable Loun Sovath to end his activities as a human rights defender.
5. Please provide the details of the judicial supervision under the criminal charge of incitement to commit felony (Art. 495) in connection with a criminal complaint filed against Venerable Loun Sovath by the municipal authority in November 2011.
6. Please provide detailed information on each stage of judicial proceedings against the affected persons mentioned in this communication and indicate how they comply with the requirements and guarantees of a fair trial as enshrined in article 14 of the ICCPR, and Principle 6 of the Basic Principles on the Independence of the Judiciary.
7. Please provide details on what measures have been taken to safeguard the rights of the above-mentioned persons in compliance with the above international instruments and standards.
8. Please indicate if the appeal made by the thirteen women has been heard by the Court of Appeal. If not, please indicate when the appeal hearing is scheduled for.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the

alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
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