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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL G/SO 216/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 18/25, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **restrictions to the enjoyment of the rights to freedom of peaceful assembly, opinion and expression which were reportedly faced by organizers and participants in the ASEAN Civil Society Conference/ASEAN Peoples' Forum 2012 (ACSC/APF) under the theme "Transforming ASEAN into a People Centered Community"**. The event took place from 29 to 31 March 2012 at the Lucky Star Hotel in Phnom Penh and gathered civil society participants from several ASEAN Member States. A Working Group for organizing ACSC/APF 2012, represented by 10 non-governmental organizations (NGOs)/coalition members, together with civil society representatives from 9 other Member States of ASEAN, was established in order to prepare the organization of the Forum. ACSC/APF is an important space for constructive dialogues, debates, exchange of experiences on a variety of issues and formulation of recommendations to ASEAN Member States among civil society representatives from the whole Southeast Asian region.

According to the information received:

On 27 February 2012, the ACSC/APF Organizing Committee submitted a notification letter to the Phnom Penh Municipality to notify the authorities of the organization of the conference - even though the Ministry of Interior Implementation Guide to the 2009 Law on Peaceful Demonstration reportedly does not require prior notification for events qualified as “Public Forum”.

On 12 March 2012, the Phnom Penh Municipality sent a reply letter to the ACSC/APF Organizing Committee, informing them to send their notification letter instead to the Ministry of Interior to seek its advice. The Organizing Committee sent a notification letter to the Ministry of Interior on the same day.

On 28 March 2012 at midday, on the eve of the conference, the Ministry of Interior authorized the event. The substantive delay in replying to the Organizing Committee significantly complicated the organization of the event, in particular as the owner of the Lucky Star Hotel warned the organizers that the hotel would not host the event if the authorization letter was not issued on time.

Despite the approval letter from the Ministry of Interior, the management of the hotel, allegedly acting upon instructions by the authorities, imposed the following restrictions on the ACSC/APF Organizing Committee:

- On the eve of the conference, on 28 March 2012, after the Ministry of Interior allowed the event to take place, several pictures displayed by a participating NGO from Myanmar on the wall of its stand in the exhibition hall, were allegedly removed.
- The Lucky Star Hotel management requested the ACSC/APF organizers to submit a copy of the agenda of the Conference and threatened them to cancel any activity, whatever its nature, that would constitute an “attack” to the Government, or that may be related to “politics”. The organizers were not provided with any written notice explaining which elements would constitute an “attack” to the Government or would be considered as “politics”; similarly, they were not informed of the legal basis for such restriction to the freedom of expression of the organizers or participants. All communication was verbal, and conveyed directly through hotel staff at management level. No clarification was provided regarding the authorities from which, they were allegedly receiving such orders.
- The ACSC/APF Organizing Committee was reportedly requested to submit to the hotel management any video or picture to be shown during the documentary films screening session which was planned for the night of 30 March 2012. Due to the restrictions, the screening event eventually had to be cancelled.
- On 29 March 2012, the hotel management reportedly prohibited the organization of four thematic parallel workshops, which were allegedly

considered as “politically sensitive”. The workshops scheduled to happen on 30 March, were the following: 1) ‘The expansion of Mono-culture Plantations in ASEAN: impacts to forest, farmland and peoples’ livelihood’; 2) ‘Regional Workshop on Land Rights and Eviction’ (at which the Cambodia Office of OHCHR made a presentation on United Nations principles on human rights and business); 3) ‘Promote and Protect the Rights to Land, Territory, Natural Resources and Development of Indigenous Peoples/Ethnic Minorities’; and 4) ‘Promoting Regional Cooperation to Ensure a People-Centered ASEAN in 2014 in Myanmar’. The ACSC/APF organizers managed to find last minute alternative venues for those workshops. The first three workshops were rescheduled to take place at La Parranda Hotel. However, while the regional workshop on Land Rights and Eviction did take place at this alternative venue on 30 March, the La Parranda hotel management informed the organizers that, in accordance to further instructions allegedly received from local authorities, they would not allow the other two workshops to proceed in the afternoon as they were considered to be “sensitive”. Due to the constant pressure on NGOs on the exercise of their freedom of expression, the fourth workshop which was rescheduled in another alternative venue was ultimately canceled by the organizers.

- On 30 March 2012, the thematic workshop on ‘Peace-Building in ASEAN’ held at the Lucky Star Hotel was reportedly closely monitored by hotel staff who warned that the workshop would be immediately suspended in case sensitive pictures were shown. On the same day, the organizers of the Roundtable Discussion on the ASEAN Human Rights Declaration were warned that the Roundtable would not be allowed in case it addressed “politics”.

- On 31 March, 2012, the Lucky Star hotel management threatened about 50 representatives from NGOs from different ASEAN countries against visiting representatives from Phnom Penh communities affected by recent evictions, namely BoengKak and BoreiKeila, as they would not otherwise be allowed to stay overnight at the hotel. Around 20 representatives still visited the two communities, where villagers were reportedly prevented by policemen officers from going outside their communities to meet with the ASEAN NGO representatives. However, the ASEAN NGOs representatives managed to meet with villagers inside the communities.

In their final statement issued on 31 March 2012, the ASEAN Civil Society Conference/ASEAN Peoples’ Forum 2012 stated that “during the ACSC/APF, unacceptable restrictions were imposed on participants’ human rights to freedom of expression and assembly. Certain persons were actively discouraged from attending the ACSC/APF, and workshops on land rights and on Myanmar were not allowed to take place”.

Concerns are expressed that the aforementioned restrictions on the organization of the 2012 ACSC/APF conference, allegedly imposed by the authorities, through private actors, are linked to the legitimate human rights activities of the conference's organizers and participants, in the exercise of their rights to freedom of expression, opinion and peaceful assembly. Public debates on issues of common concern for communities or their representatives, such as land and housing rights or any other issues, even if considered as 'sensitive', should be allowed to take place. The ability to peacefully assemble and express one's opinions and views is an important means by which citizens can influence their governments and leaders, with a view to strengthening democracies.

While we do not wish to prejudge the accuracy of these allegations, we would also 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 (ICCPR), 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 ICCPR, 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 interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others."

We would also 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 connection, we would also 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 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency’s Government the Human Rights Council Resolution 13/13 of 15 April 2010, which recognizes “the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all” as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also “urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity.”

Furthermore, the Special Rapporteur on the situation of human rights defenders, in her report to the General Assembly A/65/223 of 4 August 2010, stated that “the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights, including those of human rights defenders. (...)” The Special Rapporteur argued that the State’s obligation to protect “first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility. Secondly, States should

provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.”

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned organizers and participants of the 2012 ACSC/APFare respected and that accountability of any person found guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts. In view of the preparations for the next ASEAN NGO Forum tentatively scheduled for November 2012, we call on your Excellency’s Government to take all necessary steps ahead of time, to ensure that organizers and participants to the Forum fully enjoy their fundamental rights to freedom of expression, opinion and peaceful assembly.

Moreover, 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 cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected, and that the physical and psychological integrity of those exercising this right is guaranteed.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

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

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