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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (53-24)
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28 February 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/29, 16/4, 24/5, 16/5, 17/5, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government's information we have received concerning the **alleged indiscriminate and excessive use of force against protestors, including peaceful ones, leading to the death of at least four people and several injured, as well as the arbitrary arrests, and incommunicado detention of 23 individuals in early January 2014.** The protestors were calling for just favourable and safe working conditions including fair wages and equal pay for equal work, sufficient to provide a decent living for workers and their families.

Mr. Mao Sok Chan was the subject of a joint urgent appeal sent on 1 October 2013 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur

on torture and other cruel, inhuman or degrading treatment or punishment. A reply to this communication is yet awaited from your Excellency's Government.

According to the information received:

On 2 January 2014, in front of Yakjin factory, just outside Phnom Penh, military forces from Royal Cambodian Armed Forces Elite Unit 911 (whose base is on land adjoining the factory), together with individuals wearing plain clothes, clashed with demonstrators calling for an increase in the minimum wage for garment workers. At approximately 10:00 a.m., soldiers from Unit 911 reportedly began violently dispersing the demonstrators, arresting seven individuals. Four were released whereas three, who reportedly received injuries during the clash, were detained within the factory. At approximately 12:00 p.m., a second clash broke out after a soldier reportedly threw a water bottle at a Buddhist monk who was taking part in the demonstration. It is reported that one or more stones were then thrown towards the security forces who responded by advancing into the crowd severely beating demonstrators and bystanders. The soldiers and the individuals in plain clothes used slingshots as well as metal pipes, batons, sticks and lengths of hose pipe and kicked, punched and beat people on the head and face using these weapons. A handful of soldiers were armed with AK-47 weapons, but these were not used.

It is alleged that 12 men were arrested during the second clash, including five Buddhist monks. A number of those arrested sustained serious injuries from beatings, including head injuries. The five monks were released in the evening of the same day?

The ten men arrested on 2 January are named **Vorn Pov**, aged 38, President of Independent Democracy of Informal Economy Association ("IDEA"); **Sokun Sombath Piseth**, aged 31, staff member at the Center for Labor Rights in Cambodia; **Theng Savoeun**, aged 24, Coordinator of the Coalition of Cambodian Farmer Community ("CCFC"); **Chan Puthisak**, aged 40, a land rights activist and leader from Boeung Kak Lake community of evicted families; **Nakry Vanda**, aged 19, garment worker; **Reth Roatha**, aged 20, garment worker; **Yong Sam On**, aged 31, garment worker; **Chhim Theurn**, aged 26, garment worker; **Lun San**, aged 19, garment worker; and **Teng Chanthly**, aged 21, garment worker. All 10 were sent to Phnom Penh Municipal Court the next morning and charged with intentional violence with aggravating circumstances (article 218 of the Criminal Code) and intentional destruction of property with aggravating circumstances (article 411 of the Criminal Code) and face two to five years imprisonment and/or a fine of USD1,000 to USD2,500. The judge ordered their placement in pre-trial detention.

On 3 January, garment workers were also protesting in and around Canadia Industrial Park, on Veng Sreng Road, just outside Phnom Penh. In the afternoon, demonstrators burnt tyres, pieces of wood, and other objects on Veng Sreng Road, blocking access to the area. Dozens of young men carrying large sticks were

present in the area. In the evening, the military police (gendarmerie) arrived in the area and used tear gas, smoke bombs and water cannons to clear the road. Protestors responded by throwing stones at the police.

On the morning of 3 January 2014, as the protesters continued to block the road again in front of the Canadia Industrial Park the military police opened fire on them. At least four men died from bullet wounds: Mr. **Pheng Kosal**, aged 24; Mr. **Yean Rithy**, aged 24; Mr. **Kim Phollin**, aged 29; and Mr. **Korng Ravy**, aged 25. Up to 40 persons were injured by gunfire or beatings and required hospital treatment. The operation on 3 January 2014 was reportedly conducted by a force of up to 2,000 heavily armed gendarmes. Twelve men and one juvenile were arrested.

The 12 men arrested are: Mr. **Mam Piseth**, aged 23, garment worker; Mr. **Nem Sokhoun**, aged 23; Mr. **Phang Tren**, aged 24, garment worker; Mr. **Ry Sinoun**, aged 18, garment worker; Mr. **Heng Roatha**, aged 22, garment worker; Mr. **Pang Vanny**, aged 38, garment worker; Mr. **Hoeun Da**, aged 29, garment worker; Mr. **Cheurn Yong**, aged 23, garment worker; Mr. **Ros Sophoan**, aged 25, garment worker; Mr. **Prong Sarath**, aged 26, private security guard; Mr. **Chea Sarath**, aged 34, moto-taxi driver; and Mr. **Bou Savith**, aged 27, garment worker. The child is Mr. [REDACTED], a 17 year old garment worker. All of the above mentioned 13 individuals were sent to Phnom Penh Municipal Court the next morning and charged with intentional violence under aggravating circumstances (article 218 of the Criminal Code) and intentional destruction of property under aggravating circumstances (article 411 of the Criminal Code) and face sentences of up to, two to five years imprisonment and/or a fine of USD1,000 to USD2,500 . In addition, three of the 13 above mentioned individuals (Chea Sarath, Bou Savith and 17-year-old [REDACTED]) were also charged with obstructing public traffic (article 78 of the Traffic Law, 1 month to one year imprisonment, fine of USD50 to USD500) and insulting public officials (article 502 of the Criminal Code, one to six days imprisonment, fine of 25 cents to USD25). The judge ordered their placement in pre-trial detention.

The whereabouts of the 22 men and one minor arrested at Yakjin and Veng Sreng remained unknown until 8 January 2014. Despite repeated requests from their lawyers and their families, neither the investigating judges, nor the prosecutors were able or willing to confirm where the men were detained. In the morning of 8 January 2014, it was reported that the 23 prisoners were detained at CC3; CC3 has no facilities for minors and, as a Correctional Centre, is set - as per the relevant 2008 ministerial policy - to be a facility for convicted prisoners only. On 17 January 2014, [REDACTED] was moved to Kampong Cham prison, which includes facilities for minors.

A number of the 23 detainees received serious injuries during their arrest, including head injuries. While all 23 individuals have received medical care from doctors, the level of care that the doctors have been able to provide at the prison is reportedly inadequate in the case of at least nine of the 23 detainees.

In addition, the whereabouts of one minor remains unknown: Mr. [REDACTED], alias [REDACTED] aged 16, who was reportedly shot in the chest at the scene, has not been seen since 3 January 2014.

On 12 January 2014, Prime Minister Hun Sen reportedly announced the creation of a committee to study the events of 3 January 2014 on Veng Sreng Road. The committee is headed by Sar Kheng, Minister of the Interior. A spokesperson for the National Police was quoted in *The Phnom Penh Post* on 5 February 2014 stating that a three-week investigation had been concluded and that the results had been forwarded to the Ministry of the Interior. According to the spokesperson, the results of the investigation will be published.

Civil society actors have reportedly voiced concerns as to the independence and legitimacy of this investigation. Allegedly, no independent investigations were conducted into other recent incidences involving the use of lethal force by the authorities including the shooting dead of Mr. **Mao Sok Chan** on 15 September 2013 and of **Eng Sokhon** on 12 November 2013. The latter incident also resulted in bullet wounds injuries to seven others, including 26 year old Mr. **Hoeun Chann** who was paralyzed from the waist down when a bullet severed his spinal cord. It was reported in the Khmer language press on 30 January 2014 that 29 military police officers and 16 national police officers who received minor injuries while policing recent demonstrations had received cash rewards on behalf of the Prime Minister and his wife. It is unclear whether these officers were involved in the events at Yakjin and Veng Streng Street on 2 and 3 January 2014 respectively.

On 8 February 2014, Messrs. Bou Sarith and Yon Sok Chea were released on bail, however the bail applications for the remaining 21 detainees were rejected by the Court of Appeal on 11 February 2014. The decision of the Court of Appeal to deny bail was made without the defendants attending the hearing and despite serious concerns for the health conditions of some of the defendants.

While condemning the violence by some protestors, grave concerns is expressed about the alleged indiscriminate and excessive use of force against the aforementioned protestors, resulting in deaths and injuries, as well as their arbitrary arrests and incommunicado detention. Further concerns are expressed regarding the physical and psychological integrity of those in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned individuals 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 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), acceded to by Cambodia on 26 May 1992.

With regard to the reported deaths resulting from the use of force by the law-enforcement officers, we wish to bring to the attention of your Excellency's Government article 6 of the ICCPR, providing that every individual has the inherent right to life, this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. In its General Comment on article 6, the Human Rights Committee stated that "[t]he protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his [or her] life by such authorities." (HRI/GEN/1/Rev.9, Vol. I, p. 177, para. 3).

The use of lethal force by law enforcement officials is strictly regulated under international law. In this regard, we would like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials (adopted by General Assembly resolution 34/169) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) minimize damage and injury, and respect and preserve human life; (c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Principle 14 further states that "In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary." The principle of necessity under international human rights law is interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life.

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life by any State or non-State actor, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council in resolution 1989/65). In particular, principle 9 provides that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". Principle 18 further requires Governments to "ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their

jurisdiction are brought to justice.” We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

We would also like to refer your Excellency’s Government to the following articles of the ICCPR:

- article 19, 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.”;

- 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 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;” and

- article 22 of the ICCPR, which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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.”

With regards to the individuals who were demonstrating peacefully, 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; and

- article 12, paragraphs 2 and 3 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.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the Special Representative of the Secretary-General on the situation of human rights defenders and in particular to paragraph 98 which states that "in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials".

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, since 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 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. Please provide information on and/or confirm the legal grounds for the arrest and detention of the aforementioned 23 individuals, including their incommunicado

detention from 2 and 3 to 8 January 2014, and how these measures are compatible with international norms and standards as provided for, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Please provide an update on the legal proceedings.

3. Please inform if any complaints have been lodged by those detained as a result of the incidents on 2 and 3 January 2014. What measures were taken to ensure that torture and ill-treatment did not occur/are not occurring?

4. Please indicate which branches of the security forces were involved in the alleged incidents and what instructions they have received or issued in relation to the aforementioned incidents. Kindly specify how these comply with international standards set forth inter alia in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

6. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken on the shootings of 15 September, 12 November 2013, and 2 and 3 January 2014. Have penal, disciplinary or administrative sanctions been imposed on the individuals who opened fire on civilians or ordered the shootings? If so, please elaborate. If not, why not?

7. Please provide information about any investigations undertaken and sanctions imposed on public officials and members of the security forces, whether public or private, allegedly accused of exercising or ordering excessive use of force.

8. Please indicate whether compensation has been provided to the victims or the families of the victims.

9. Please provide information on any actions that have been taken to locate Mr. [REDACTED] missing since 3 January 2014.

10. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in a safe and enabling environment and carry out their peaceful and legitimate activities without fear of harassment, violence or criminalization of any kind.

We undertake to ensure that your Excellency's Government's response will be available 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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

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Special Rapporteur on the situation of human rights in Cambodia

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