

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 the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 resolutions 24/7, 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged arbitrary arrest and detention, as well as charges brought against, human rights defenders, Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan, Mr. Ny Chakrya, as well as court procedure initiated against Mr. Ou Virak.

The Cambodian Human Rights and Development Association (ADHOC) is a non-governmental human rights organization, founded in 1991. It provides legal assistance to victims of human rights violations, including victims of land disputes, monitors human rights in Cambodia, and engages in human rights advocacy through press statements, conferences, and the publication of thematic reports on the situation of human rights in Cambodia. Ms. Lim Mony serves as a Senior Investigator, Mr. Ny Sokha is the Head of Monitoring, while Mr. Nay Vanda and Mr. Yi Soksan serve as deputies of the latter. ADHOC was the subject of three previous communications sent on 10 August 2015, see A/HRC/31/79 case no. KHM 3/2015, 13 August 2012, see A/HRC/22/67/Corr.2, case no. KHM 5/2012, and 3 February 2011, see A/HRC/18/51/Corr.1, case no. KHM 1/2011. We regret that no responses were received

from your Government to these communications. We are still concerned that ADHOC is being targeted due their peaceful and legitimate human rights work.

The National Election Committee (NEC) is an independent institution that supervises elections in Cambodia. Mr. Ny Chakrya is the Deputy Secretary-General of NEC and was former Head of the Human Rights and Legal Aid Section of ADHOC. Mr. Chakrya was the subject of a previous communication related to his capacity in ADHOC, dated 10 August 2015, see A/HRC/31/79 case no. KHM 3/2015.

Mr. Sally Soen is a national officer with the Cambodia country office of the United Nations Office of High Commissioner for Human Rights in Cambodia.

Mr. Ou Virak is a prominent political analyst, former president of the Cambodian Centre for Human Rights, and founder and current president of Future Forum.

According to the information received with regards to Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda and Mr. Yi Soksan, and Mr. Ny Chakrya:

On 29 February 2016, an audio recording of an alleged intercepted phone conversation between [REDACTED] and the acting President of the Cambodian National Rescue Party (CNRP) and a member of parliament, [REDACTED], in which she reportedly called him her "lover", was posted on that individual's Facebook page and was soon after reposted on another Facebook, entitled "The Truth of CNRP", ownership of which is unknown. [REDACTED] claimed her Facebook account had been hacked into.

On 3 March 2016, similar audio files of alleged conversations between [REDACTED] and another unidentified woman were also posted on Facebook.

On 11 March 2016, Counter-Terrorism Police (CTP) summoned [REDACTED] for questioning in relation to a defamation complaint filed on 1 March regarding the audio recording, during which she denied the authenticity of the recording. A student group that had been publicly pursuing the affair lodged a complaint against [REDACTED] for lying to competent authorities. On 22 March 2016, she was summoned to appear in Phnom Penh Municipal Court based on allegations of providing a false testimony and of having engaged in prostitution, following the lodged complaint.

During the period until the court appearance of [REDACTED], senior State officials commented on the affair. On 17 March, in a speech at a graduation ceremony in Phnom Penh, Prime Minister Hun Sen commented on the case under investigation, declaring he had extensive personal information about her, including details of her passport application, photographs of her travels with [REDACTED], and other proof of their affair on his phone. On 21 March, the National Assembly officially requested [REDACTED] to respond to the allegations

brought by the student group "to safeguard the prestige of the National Assembly and the honour and dignity of parliamentarians". On 22 March, the Anti-Corruption Unit (ACU) held a meeting with the student group and declared that [REDACTED] failure to publicly deny that the voice in the audio recording was his was tacit admission that the recordings were authentic and could be used in court. On 24 March, the ACU announced it was launching a formal investigation into the allegations that [REDACTED] had unlawfully bought properties for [REDACTED]. On 29 March, the National Assembly Spokesperson, Mr. Chheang Vong, declared that the Assembly may consider establishing a special committee to investigate the alleged affair.

On 19 April, following [REDACTED] questioning at the court, the prosecution office attached to Phnom Penh Municipal Court issued a written statement according to which she identified herself and [REDACTED] as the voices on the audio recording released anonymously on social media in March, and she had previously denied following instructions by [REDACTED], and that their relation was arranged by a number of individuals that the prosecution office would continue investigate.

On 23 April 2016, an open letter signed by [REDACTED] was published by a Cambodian online media, in which she accused by name the four members of ADHOC, the OHCHR national officer as well as the president of another rights organisation Silaka and a local commune chief, of convincing her to lie before the Cambodian authorities. The same day, the Ministry of Justice issued a public statement in which it listed all persons named in [REDACTED] letter, stated they "committed illegal acts which seriously affected the rights, freedoms and dignity of [REDACTED] as well as the principle of the rule of law", called their actions "a serious violation of laws applicable in Cambodia" and "strongly condemn[ed] the illegal acts of these CSOs and appeal[ed] to the competent authorities to conduct a thorough investigation and to take strict legal action." The governmental Cambodia Human Rights Committee issued a statement that did not list the names but otherwise used exactly the same terms for its condemnation. The Ministry of Women Affairs and Cambodian National Council for Women issued a joint statement that referred to the open letter and "condemn[ed] those who violated women's rights and appeal[ed] to all relevant competent authorities to take the strictest action in accordance with the law".

On 25 April 2016, the members of ADHOC, NEC and OHCHR were summoned for questioning on 27 and 28 April by the Anti-Corruption Unit (ACU), which has judicial police authority to investigate corruption matters. Mr. Soen Sally did not present himself for questioning on the basis of functional immunity from a legal process as a United Nations staff member. The other five individuals were interrogated between five and six days, first by ACU officers and then by the prosecution office of the Phnom Penh Municipal Court. They were held in custody in the ACU's compound in Phnom Penh, during which period they were

not provided with access to and communication with their lawyers as guaranteed under Cambodian domestic law.

On 2 May 2016, following the decision of an investigating judge, Ms. Mony, [REDACTED], Mr. Vanda and Mr. Soksan were formally charged with bribery of a witness under Article 548 of the Criminal Code. The charge is reportedly related to allegations that they instructed and bribed [REDACTED], including through the legal and financial assistance provided by ADHOC in relation to the criminal proceedings against her. The four human rights defenders were sent to pre-trial detention in Prey Sar prison in Phnom Penh. Mr. Chakrya was charged as an accomplice to the bribery. Mr. Chakrya was subsequently sent to pre-trial detention in the Police Judiciaire Prison. Mr. Soen was charged of the same crime in absentia. All six human rights defenders are facing up to ten years' imprisonment, if sentenced.

On 5 May, the Ministry of Foreign Affairs and International Cooperation informed the United Nations that it would inform the competent authorities to settle the case of Mr. Soen Sally in accordance with the 1946 Convention on the Privileges and Immunities of the United Nations. The other five charged persons are facing up to ten years' imprisonment, if convicted.

According to the information received with regards to Mr. Ou Virak:

On 25 April 2016, Cambodian People's Party (CPP) spokesman, Mr. Sok Eysan lodged a criminal defamation complaint against Mr. Ou Virak, President of the Future Forum. The complaint alleged that in an interview with Radio Free Asia broadcasted on 24 April, Mr. Virak publicly defamed the CPP when he stated that the party was using the affair "to try to put pressure on [REDACTED] and his finances". The complaint seeks 400 million Riels (approx. USD100,000) in damages. It followed a post on the Prime Minister's Facebook page on the same day, calling "on members of the Cambodian People's Party and leaders at all levels to get lawyers to prepare complaints for court cases against those who discredit the CPP by any means. We have shown a lot of tolerance so far, but they do not respect our dignity", and further appealing "to analysts and commentators not to attempt to be fraudulent and claim that the colors red and pink are the same." Speaking at a road inauguration on 26 April, the Prime Minister referred again to the case and stated "I have already told you that your freedom has limits in relation to others' freedoms. [...] You must remember clearly all these points - they have rights, but we also have rights". The Phnom Penh Court prosecution office acted on the complaint and summoned Mr. Sok Eysan to appear on 6 May in relation to his complaint against Mr. Virak, while the latter was summoned to appear on 12 May to be questioned as a suspect.

According to the information received with regards to the "Black Monday" campaign:

On 9 May 2016, a peaceful demonstration took place in Phnom Penh as part of the "Black Monday" campaign, in which participants dressed in black every Monday calling for the release of the above-mentioned persons. Protesters were allegedly prevented from peaceful assembly through the use of roadblocks and heavy deployment of police. Police confiscated banners used during the demonstration, assaulted some protesters and arrested eight human rights defenders taking part in the protest. The arrests followed a warning by the Ministry of Interior, which released a statement one day earlier claiming that the protestors were "inciting" the "Black Monday" campaign and warning that authorities at all levels were charged with enforcing the law in order to maintain "peace, political stability and social order."

Serious concern is expressed at the alleged arrest and detention of, as well as charges brought against, the afore-mentioned human rights defenders that appear to be in retaliation for their peaceful human rights activities and to be in contravention with their legitimate rights to freedom of association, assembly and expression. Concern is also expressed regarding the court proceedings against Mr. Ou Virak that appears to be in contravention with his exercise of the right to freedom of expression.

Further serious concern is expressed at the repeated statements made by State officials and institutions on matters under police or court investigation, which may place pressure on the police and judicial officials and prejudice the presumption of innocence.

We also express serious concern that the alleged measures take place against the backdrop of other measures that have recently been taken with a deterrent effect on the exercise of the rights to freedom of expression, freedom of peaceful assembly and association across civil society, including by human rights defenders in Cambodia.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Without expressing at this stage an opinion on the facts of the case and on whether the deprivation of liberty of Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda and Mr. Yi Soksan and Mr. Chakrya are 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 in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contravention with article 19 and 22 of the ICCPR, which

guarantee the rights to freedom of expression and freedom of association, respectively. Any restrictions to these rights must comply with the provisions of the ICCPR, namely they can only be imposed on legitimate grounds, and must conform to the strict tests of necessity and proportionality. We would like to remind your Excellency's Government that it is incompatible with article 19 of the ICCPR to use criminal provisions as a pretext to suppress and prevent the legitimate exercise of the right to freedom of expression and to silence human rights defenders.

We would also like to reiterate 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, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 the Declaration state that everyone has the right 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. Furthermore, article 5 and 9 which provide for the right to form, join and participate in non-governmental organizations, associations or groups; and the right to offer and provide professionally qualified legal assistance or other relevant advice in defending human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 international instruments.

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:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide details of the legal grounds for the arrest and detention of Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan and Mr. Chakrya, and explain how these measures are compatible with international human rights norms and standards, in particular with articles 9, 14, 19 and 22 of the ICCPR.
3. Please provide detailed information on the measures taken to provide all guarantees of a fair and impartial judicial procedure to the above-mentioned persons, as provided by international human rights norms and standards.

4. Please provide details of the legal grounds why the above persons have been charged with the bribery of a witness and an accomplice to the bribery. Please indicate how these measures are compatible with international human rights norms and standards.

5. Please indicate what measures have been taken to ensure that human rights defenders, as well as national and international human rights organizations in Cambodia are able to carry out their legitimate work in a safe and enabling environment and to exercise their right to freedom of expression and association without fear of threats or acts of intimidation, harassment and prosecution of any sort.

While awaiting a reply, we urge that the rights of civil society be protected and promoted in compliance with international human rights law, in particular with the relevant provisions enshrined in the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights.

We also wish to inform your Excellency's government that we intend to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

José Guevara
First Vice-Chair on behalf of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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