

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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

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Excellency,

We have the honour to address you in our capacity 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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 30/23, 25/2, 24/5, 24/6, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest, and in some cases arbitrary detention, and lack of due process and fair judicial proceedings of members of the main opposition parties, Cambodia National Rescue Party (CNRP) and Sam Rainsy Party (SRP), which may be directly linked to their political views and CNRP/SRP membership. Specifically, the information pertains to:

- Allegations of arbitrary arrest and lack of due process guarantees of 7 Members of Parliament: Ms. **Mu Sochua**, and Messrs. **Men Sothavrin**, **Hor Vann**, **Keo Phirum**, **Real Khmerin**, **Nut Romduol**, and **Long Ry**;

- Allegations of arbitrary arrest, lack of due process guarantees and continued arbitrary detention of another 3 CNRP members and activists: Messrs. **Yon Kimhour**, **Roeun Chetra**, and **Yea Thong**;

- Allegations of arbitrary arrest and unfair trial of 11 members and activists: Messrs. **Meach Sovannara, Oeur Narith, Khin Chamroeun, San Kimheng, Neang Sokhun, Sum Puthy, Ouk Pich Samnang, Tep Narin, An Pakthorm, San Seyhak, and Ke Khim;**

- Allegations of arbitrary arrest, detention, unfair trial and inadequate medical treatment of Mr. **Hong Sok Hour**, a Senator of the Sam Rainsy Party; and

- Allegation of arbitrary removal of the parliamentary status and immunity of Mr. **Sam Rainsy**, the leader of the CNRP, on the basis of a conviction dating to 2011.

According to the information received:

The cases against CNRP Members of Parliament (MPs) and other CNRP members in relation to a protest held in Freedom Park on 15 July 2014

From 15 to 17 July 2014, eight members of the Cambodia National Rescue Party (CNRP), including seven Parliament Members-elect and Mr. Oeur Narith, parliamentary assistant to one of the MP-elect, were arrested after violence broke out between protesters and security forces at Freedom Park in Phnom Penh during a demonstration. The eight members were released on bail on 22 July 2014, after the Cambodia People's Party (CPP) and CNRP came to a political agreement to conclude the prolonged political stalemate. Notwithstanding their release, the seven parliamentarians still stand accused of intentional violence with aggravating circumstances, leading an insurrection movement and incitement to commit a felony (under articles 28, 218, 459 and 495 of the Criminal Code), while Mr. Oeur Narith was tried and sentenced to 20 years' imprisonment on 21 July 2015 on charges of leading an insurrection movement (under article 459 of the Criminal Code).

On 2 August 2014, three members of the CNRP's youth wing, Mr. Neang Sokhun, Mr. San Kimheng and Mr. Khin Chamroeun, were arrested and charged with joining and leading insurrection (under articles 456 and 459 of the Criminal Code). They were released on bail on 22 August 2014.

On 26 August 2014, Mr. Ouk Pich Samnang, a CNRP activist, was summoned for questioning by a court, charged with participating in an insurrection and obstructing the work of authorities under articles 456 and 457 of the Criminal Code, and placed under conditional judicial supervision.

On 27 and 28 August 2014, the Phnom Penh municipal court summoned Mr. San Seyhak, Secretary of the Phnom Penh pro-CNRP Youth Movement, and Mr. An

Pakthorm, assistant to Morm Phalla, executive chief of the CNRP within the Phnom Penh municipality, under articles 456 and 457 of the Criminal Code. They both were placed under conditional judicial supervision. On 27 August 2014, CNRP youth member Mr. Tep Narin was summoned for questioning in relation to the events of 15 July. He was arrested and placed in pre-trial detention on 13 November for participating in an insurrection, under articles 456 and 457 of the Criminal Code.

On 29 September 2014, Mr. Sum Puthy, a CRNP district councilor, was arrested and placed in pre-trial detention on charges of participating in an insurrection under articles 456 and 457 of the Criminal Code.

On 11 November 2014, Mr. Meach Sovannara, a CNRP MP candidate and Director of the CNRP Information and Media Department, and Mr. Ke Khim (“Vin Dy”), a CNRP activist, were arrested and placed in pre-trial detention on charges of leading an insurrection under articles 456 and 459 of the Criminal Code.

On 21 July 2015, the Phnom Penh Municipal Court sentenced CNRP members Mr. Oeur Narith, Mr. Khin Chamreun, and Mr. Meach Sovannara to 20 years in prison on charges of leading an insurrectionary movement (under article 459 of the Criminal Code). CNRP members and activists Mr. San Kimheng, Mr. Neang Sokhun, Mr. San Seihak, Mr. An Pakthorm, Mr. Ouk Pich Samnang, Mr. Ke Khim, Mr. Sum Puthy, and Mr. Tep Narin were sentenced in a joint trial to seven years in prison each on charges of participating in an insurrectionary movement (under articles 456 and 457 of the Criminal Code). All of them are currently serving their sentences at the Correctional Center 1 prison in Phnom Penh and have filed appeals.

According to observers that monitored the trials, significant irregularities and violations of international fair trial standards were observed during the criminal proceedings. Specifically, the accused were not given adequate time and facilities for the preparation of their defense. During the last day of the trial, on 21 July 2015, only one of the 11 defense lawyers, who represented five of the accused, was present while the remaining lawyers had boycotted the trial after their request to have hearings held only once or twice a week had been rejected by the court. The verdict was handed down without the court hearing the legal conclusions from the defense lawyers, as the judges called for the closing arguments and denied the defendants’ request for a delay until their lawyers could be present. Moreover, witness statements were made by individuals who could not be cross examined by the defense and no material evidence for the alleged crimes was produced. A number of observers also challenged the independence and

impartiality of the judges, citing as an example, the fact that the judges reportedly only deliberated for 15 minutes before the verdicts were handed down.

Separately, on 4 August 2015, Mr. Yun Kimhour and Mr. Roeun Chetra, CNRP activists, were arrested and detained for their participation in the 15 July 2014 demonstration at Freedom Park. Mr. Yea Thong, also a CNRP activist, was arrested and detained on 5 August 2015. All three were charged with leading an insurrection movement, participation in an insurrectionary movement and intentional acts of violence (articles 459, 457 and 218 of the Criminal Code). Their case is currently under investigation and they are being held in pre-trial detention at the Correctional Center 1.

The case of Mr. Hong Sok Hour

On 12 and 13 August 2015, a Senator for the Sam Rainsy Party (which later merged with CNRP), Mr. Hong Sok Hour, reportedly posted on Facebook an allegedly inaccurate version of the 1979 Cambodia-Vietnam border treaty. On 15 August, Mr. Hong Sok Hour was arrested, less than two days after Prime Minister Hun Sen accused him of treason to the nation. It is reported that Mr. Hong Sok Hour's arrest may have been illegal, as his parliamentary immunity was not removed beforehand. Although it was alleged that Mr. Hong Sok Hour's arrest had been carried out during the commission of a crime or immediately after, in accordance with article 86 of the Code of Criminal Procedure, article 7 of the Law on the Status of Senators establishes that the accusation, arrest, or detention of any senator who commits a crime shall be made only in accordance with the law and procedures and only once his/her parliamentary immunity has been removed.

On 16 August 2015, Mr. Hong Sok Hour was put on pre-trial detention by the investigating judge on charges of forging public documents, incitement to commit crimes and using forged public documents (under articles 629, 494, 495 and 630 of the Criminal Code). These accusations could result in 17 years of prison. On 2 and 7 October 2015, the First Instance Municipal Court of Phnom Penh conducted hearings in Mr. Hong Sok Hour's trial. On 7 October, the hearing was postponed to an unscheduled date to establish the source of the document reportedly posted by Mr. Hong Sok Hour. On 2 and 17 September and 4 November 2015, the Appeal Court rejected a bail request presented by Mr. Hong Sok Hour's lawyers.

On 21 October, Mr. Hong Sok Hour's defense lawyers lodged an appeal against the interlocutory judgment of the Phnom Penh Municipal Court of First Instance, which required the defense to submit the documents in their possession related to the 1979 treaty and other electronic material. The following day, the presiding judge, Mr. Ros Piseth, ordered the defense to submit these documents, to which they reportedly complied. On 30 November, the Criminal Chamber of the Appeals

Court conducted a hearing on the appeal against the interlocutory judgment. The appeal was rejected based on article 385 of the Code of Criminal Procedure (Appeal against Interlocutory Judgment), although no reasoning was given.

On 1 December 2015, Mr. Kor Vandy, investigating judge of the Phnom Penh Municipal Court, issued an arrest warrant against Mr. Sam Rainsy, leader of the Cambodia National Rescue Party, Mr. Satya Sambath, who helps run Mr. Rainsy's Facebook page, and Mr. Ung Chungleang, Mr. Hong Sok Hour's assistant, on charges of being accomplices to forging public documents, incitement to commit crimes and using forged public documents (under articles 29, 629, 494, 495 and 630 of the Criminal Code). Mr. Sam Rainsy had been summoned by the Court to appear on 4 December for questioning related to these charges.

Reportedly, Mr. Hong Sok Hour has existing health problems including a stomach ailment and high blood pressure, which have been aggravated by poor prison conditions. Despite Mr. Hong Sok Hour's medical conditions requiring specific medical assistance, the Correctional Center 1 prison authorities have reportedly failed to prescribe adequate medical treatment, causing deterioration in Mr. Hong Sok Hour's medical condition as a result. The family has allegedly twice requested that a doctor from the human rights organization LICADHO be permitted to visit Mr. Hong Sok Hour. However, the Phnom Penh Municipal Court investigating judge Mr. Kor Vandy reportedly rejected that application, arguing that an "additional request" had to be lodged before the Phnom Penh Municipal Court. On 25 September, the investigating judge once again rejected such a request, indicating that there had been no health condition report from the prison, and that he could be examined by the medical service at the prison.

Doctors from LICADHO are reportedly allowed to conduct monthly visits and provide medical care in other detention facilities, Doctors from LICADHO have regularly conducted monthly visits and provided medical care in detention facilities in the past, however access has been difficult since additional requirements were put in place by the Directorate-General of Prisons as a prerequisite for the renewal of LICADHO's prison visit authorisation which expired in June 2015. Furthermore, the Correctional Center 1 prison guards were reportedly asking for additional payments from Mr. Hong Sok Hour's family, limiting their right to visit him. It is also reported that Mr. Hong Sok Hour's cell is severely overcrowded, hosting around 17 detainees.

The case of Mr. Sam Rainsy

On 13 November 2015, an arrest warrant was issued by the Phnom Penh Municipal Court against Mr. Sam Rainsy, the leader of the Cambodia National Rescue Party on the basis of a 2011 conviction for "defamation and public insult",

“incitement to commit offences” and “incitement to discriminate” (under articles 305, 494 and 496 of the Criminal Code respectively). The conviction relates to an incident in 2008 when Mr. Sam Rainsy alleged that the Foreign Minister Mr. Hor Namhong had collaborated with the Khmer Rouge regime while detained at Boeung Trabek.. Mr. Sam Rainsy was sentenced in absentia to two years in prison and a fine of 8 million riels (equivalent to roughly USD 2,000). The verdict was upheld by the Appeals Court in 2013, but the sentence was never implemented. It is reported that Mr. Sam Rainsy believed that the Royal Pardon granted to him on 12 July 2013, which allowed him to return to Cambodia in time for the National Assembly election, had applied also to the 2011 conviction and 2013 appeal upholding the conviction.

On 16 November 2015, the National Assembly voted to remove the parliamentary status and immunity of Mr. Sam Rainsy in accordance with article 14 of the Law on the Statute of Members of the National Assembly and article 139 of the Law on Election of Members of the National Assembly. In the meantime, Mr. Sam Rainsy is said to have postponed his scheduled return to Cambodia from abroad on the basis of security and other concerns.

On 1 December 2015, another summons was issued by Mr. Vong Bunvisoth, deputy prosecutor of Phnom Penh Municipal Court, against Mr. Sam Rainsy to appear before the court on 4 January 2016 for questioning related to the charge of defamation due to a Facebook post on 17 November 2015. The criminal complaint was lodged by Mr. Ky Teach, lawyer of Mr. Heng Samrin, President of the National Assembly.

Serious concern is expressed at the alleged arbitrary arrest, in some cases alleged arbitrary detention, prosecution and unfair trial of the aforementioned members of the main opposition party, Cambodia National Rescue Party (CNRP), which seems directly related to their political views and membership in the opposition party and to the exercise to their rights to freedom of expression, association and peaceful assembly. Similar concern is expressed at the alleged arbitrary arrest, unfair trial, continued detention and health deterioration of Mr. Hong Sok Hour, a Senator for the Sam Rainsy Party and the alleged arbitrary removal of the parliamentary status and immunity of Mr. Sam Rainsy, both of which appear directly related to their political views and memberships in the opposition party and to their exercise to their rights to freedom of expression, association and peaceful assembly. Further concern is expressed that these judicial actions against members of the CNRP may indicate an escalating trend of suppression of criticism against the Government and may have been precipitated by the forthcoming elections – the communal election scheduled for 2017 and the National Assembly election scheduled for 2018 - in an attempt to silence and intimidate critical voices. Concern is also expressed at the interference in the work of legitimate human rights organizations and defenders, such as doctors from LICADHO.

Without expressing at this stage an opinion on the facts of these cases and whether these judicial actions against the aforementioned individuals are arbitrary or not, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth by the situation described above.

The arrest, detention, prosecution and conviction of the above-mentioned persons seems to be directly related to their political views and membership in the opposition party, in contravention of their rights to freedom of expression, peaceful assembly and association, as enshrined in Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) respectively, acceded to by your Excellency's Government in 1992.

The trials of the above-mentioned individuals appear to have been conducted in contravention of the right to due process and a fair trial, in particular the principle of equality of arms and the right to have adequate time and facilities for the preparation of one's defence including access to appropriate information, as enshrined in article 14 of the ICCPR, as well as the Basic Principles on the Role of Lawyers. We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of individuals in detention 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 ICCPR.

Regarding allegations about the deterioration of the health condition of Mr. Hong Sok Hour while in detention reportedly due to the lack of adequate medical treatment, we would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Cambodia, on 26 May 1992, and which establishes that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services.

In connection with the above, we would like to refer your Excellency's Government to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (Rule 118)

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 human rights instruments.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide the full details of the legal grounds for the charges laid against Ms. Mu Sochua, Messrs. Men Sothavrin, Hor Vann, Keo Phirum, Real Khmerin, Nut Romduol, Long Ry, Yon Kimhour, Roeun Chetra, Yea Thong, and Hong Sok Hour and the sentences imposed on them, indicating how these are compatible with abovementioned international norms and standards.
3. Please provide the full details on the legal grounds for the conviction and sentencing of Messrs. Oeur Narith, Khin Chamreun, Meach Sovannara, San Kimheng, Neang Sokhun, San Seihak, An Pakthorm, Ouk Pich Samnang, Ke Khim, Sum Puthy, and Tep Narin and indicating how these measures are compatible with abovementioned international norms and standards.
4. Please explain the reason for the delay in, and the timing of, the issuance of the arrest warrant for Mr. Sam Rainsy by the Phnom Penh Municipal Court given that the final court verdict was delivered in March 2013 with the Appeals Court upholding the sentence. Please also provide further information on the application or otherwise of the royal pardon received by Mr. Sam Rainsy in 2013 with respect to this case.
5. Please state the measures taken to ensure that Mr. Hong Sok Hour is given adequate and non-discriminatory medical attention and care while in detention, in compliance with international norms and standards.
6. Please indicate the reasons why Mr. Hong Sok Hour's request to receive medical care from a doctor attached to LICADHO, a non-governmental organisation, has not been approved and why additional requirements have been put in place by the Directorate-General of Prisons as a prerequisite for the renewal of LICADHO's prison visit authorisation.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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.

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers