

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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the situation of human rights in Cambodia

REFERENCE:
UA KHM 6/2016

24 November 2016

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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the situation of human rights in Cambodia, pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 25/18 and 30/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the continued detention of human rights defenders Ms. **Lim Mony**, Mr. **Ny Sokha**, Mr. **Nay Vanda**, Mr. **Yi Soksan** and Mr. **Ny Chakrya**, who have been in detention since April 2016, as well as the situation of human rights defenders Ms. **Tep Vanny**, Ms. **Bov Sophea**, Ms. **Kong Chantha**, and Ms. **Bo Chhorvy**.

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). Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, and Mr. Yi Soksan were the subject of a previous communication sent on 11 May 2016 (see A/HRC/33/3 Case No KHM 3/2016). We regret that no responses were received from your Government to these communications. We are still concerned that ADHOC members are being targeted due to 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 formerly Head of the Human Rights and Legal Aid Section of ADHOC. Mr. Chakrya was the subject of two previous communications, one related to his former capacity in ADHOC, dated 10 August 2015, see A/HRC/31/79 case no. KHM 3/2015, and the other sent on 11 May 2016, see A/HRC/33/3 Case No KHM 3/2016.

Ms. Tep Vanny is a human rights activist who has been playing a lead role in the campaign against forced evictions of the Boueng Kak lake community. Ms. Vanny received the 2013 Vital Voices Global Leadership in Public Life Award for her human rights work on behalf of her community.

Ms. Bov Sophea, Ms. Kong Chantha, and Ms. Bo Chhorvy are similarly human rights activists from the Boueng Kak lake community.

Ms. Tep Vanny and Ms. Bov Sophea were the subject of two communications issued by special procedures mandate holders on 4 June 2012 (see A/HRC/23/39/Add.2, case no. KHM 4/2012), and on 17 February 2014 (see A/HRC/26/29/Add.1, case no. KHM 1/2014). We acknowledge receipt of the response of your Excellency's Government to the second communication received on 19 February 2014, and reiterate the concerns expressed in the letter. We regret that a response to the first communication is yet to be received.

Ms. Kong Chantha was the subject of one communication issued by special procedures mandate holders (see A/HRC/23/39/Add.2, case no. KHM 4/2012).

Ms. Bo Chhorvy was the subject of one communication issued by special procedures mandate holders (see A/HRC/26/29/Add.1, case no. KHM 1/2014).

According to the information received:

Case of Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksas and Mr. Ny Chakrya:

On 2 May 2016, following the decision of an investigative judge, Ms. Mony, Mr. Sokha, Mr. Vanda, and Mr Soksas were formally charged with bribery of a witness under Article 548 of the Criminal Code. Mr. Chakrya was charged as an accomplice to the bribery. All five were sent to pre-trial detention. The charges were related to allegations that they had instructed and bribed (or were accomplice in doing so) Ms. [REDACTED] also known as Ms. [REDACTED], including through the legal and financial assistance provided to her by ADHOC in relation to criminal proceedings against her at the time. The criminal proceedings themselves related to an alleged extra-marital affair between her and the acting

head of the main opposition political party, purportedly revealed through online posting of audio clips purported to be recordings of flirtatious phone conversations. Ms. [REDACTED] had been summoned for questioning by Counter-Terrorism Police in relation to a defamation complaint lodged against her on the basis of the content of the audio clips, as well as summoned to appear in Phnom Penh Municipal Court based on allegations of providing a ‘false testimony’ when questioned by the police, and of having engaged in prostitution.

On 13 June 2016, the Court of Appeal rejected the request presented by Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan and Mr. Ny Chakrya for release on bail. The subsequent appeal before the Supreme Court is still pending.

On 27 October 2016, the investigating judge reportedly extended their pre-trial detention for six additional months. In the closed hearing, the judge reportedly argued that he intended to examine further witnesses and re-examine other witnesses. The decision was appealed by the defence lawyers.

The defence lawyers have reportedly made claims that the authenticity, source and legality of the audio recordings and their public release online, which are at the start of the initial allegations against Ms. [REDACTED] that led to the case against their five clients, have not yet been investigated or ascertained by the competent authorities. According to Article of 318 of the Cambodian Penal Code, “breaching of privacy of telephone conversation” is punishable by imprisonment from one month up to one year, as is intercepting or recording a private conversation “without the consent of the person concerned, except when authorized by law” (Article 301). Moreover, according to article 40 of the Constitution of Cambodia, “... the protection of the rights to the inviolability of residence and to the confidentiality of correspondences by mail, telegram, telex, facsimile and telephone shall be guaranteed.”

Additionally, Ms. [REDACTED] was reportedly not a witness at the time when she met with the ADHOC staff members and received assistance from the organisation, and as such, the charges against Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda and Mr. Yi Soksan for bribery of a witness under Article 548 of the Criminal Code, and against Mr. Ny Chakrya as an accomplice to the bribery, are reportedly baseless.

Moreover, the questioning of the five while initially detained in police custody at the Anti-Corruption Unit (ACU) in April reportedly exceeded the maximum 72 hours foreseen in domestic law, with charges entered several days after their initial detention. The five persons were allegedly not authorized to meet with their lawyers while being questioned at the ACU until they were sent to the prosecutor for the re-interrogation conducted at the court. According to article 98 of the Code

of Criminal Procedure on assistance of lawyers to police custody, a detained person has the right to speak for 30 minutes to a lawyer or any other person who is selected by the detained person under conditions guaranteeing the confidentiality of the discussion.

Case of Ms. Tep Vanny, Ms. Bov Sophea, Ms. Kong Chantha, and Ms. Bo Chhorvy:

On 15 August 2016, Ms. Tep Vanny and Ms. Bov Sophea were arrested while taking part in a peaceful assembly to mark the 15th week of the so-called ‘Black Monday campaign’ and protest against judicial corruption, in the Daun Penh district in Phnom Penh. They were taken to the Daun Penh district police station, where they were detained for 48 hours. The campaign consists of weekly peaceful protests, held on Mondays, during which participants wear black clothing to call for the release of five detained human rights defenders -Mr. NySokha, Mr. Yi Soksan, Mr. Nay Vanda, Ms. Lim Mony, and Mr. Ny Chakrya, all staff members of the human rights non-governmental organization ADHOC- as well as, subsequently, for justice for the recent murder of prominent political analyst and ‘Black Monday’ supporter Mr. Kem Ley (subject of a communication sent on 12 July 2016, Case No. KHM 4/2016). The campaign began on 9 May 2016 (subject of the communication sent on 11 May 2016, see A/HRC/33/3 Case No KHM 3/2016).

On 17 August, Ms. Vanny and Ms. Sophea were brought to the Phnom Penh Municipal Court for questioning. They were charged under Articles 494 and 495 of the Criminal Code for “incitement to commit a felony”, and trial proceedings were initiated immediately under Article 47 of the Criminal Procedure Code which allows for expedited prosecutions of accused. Ms. Vanny and Ms. Sophea were then taken to pre-trial detention in Prey Sar’s CC2 prison on the outskirts of Phnom Penh.

On 22 August, the Phnom Penh Municipal Court sentenced Ms. Vanny and Ms. Sophea to six days’ imprisonment for “insulting a public official” under Article 502 of the Criminal Code. The original charge of “incitement to commit a felony” was unexpectedly changed during the delivery of the verdict by the presiding judge, following the prosecution’s alleged inability to provide evidence of “incitement”. The lawyers of Ms. Vanny and Ms. Sophea had presented a defense against the original charge and were reportedly given no opportunity to prepare a defense against the new charge.

On the same day, Ms. Sophea was released after having served six days in pre-trial detention. Ms. Vanny was brought back to Prey Sar’s CC2 prison in relation to another case reactivated against her, as follows.

On 19 August, in a separate case, the authorities applied provisional detention for Ms. Vanny, on charges of “intentional violence with aggravating circumstances” under Article 218 of the Criminal Code, in relation to her participation in a peaceful protest near the Prime Minister’s residence in 2013, calling for the release of the human rights defender Ms. **Yorm Bopha** who was then jailed. There had reportedly been no legal or police proceedings in the past three years in relation to this case. The current detention warrant authorises provisional detention until December 2016. Ms. Vanny is facing two to five years’ imprisonment under this charge and remains in detention at Prey Sar’s CC2 prison.

Serious concerns are expressed over the continued detention of Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan and Mr. Ny Chakrya, and the recent decision by the investigating judge to extend their pre-trial detention for six additional months while the grounds for their arrest seem to be baseless in a context lacking due process guarantees, and that these claims by the defence lawyers have not been investigated. Further concerns are reiterated that the aforementioned charges brought against them appear to be related to their legitimate human rights activities and exercise of their rights to freedom of expression, peaceful assembly and association. Serious concerns are also expressed that the arrest and detention of Ms. Tep Vanny and Ms. Bov Sophea, and the aforementioned charges brought against them, together with those brought against Ms. Bov Sophea, Ms. Kong Chantha, Ms. Bo Chhorvy, appear to be related to their legitimate human rights activities and exercise of their rights to freedom of expression, peaceful assembly and association, in particular their involvement in the “Black Monday” campaign. Further concerns are expressed about the lack of due process guarantees and fair trial of Ms. Vanny and Ms. Sophea. The above allegations appear to be in contravention with international law, in particular the right not to be deprived arbitrarily of 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), ratified by Cambodia on 26 May 1992. Finally, serious concerns are reiterated about the general situation of human rights defenders in Cambodia who have been targeted and stigmatized because of their legitimate human rights activities.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency’s Government to the international principles and norms applicable to the present case.

We would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of expression and opinion, freedom of peaceful assembly and freedom of association respectively. We would further like to refer to the joint report of the Special Rapporteur the joint report on the proper

management of assemblies he prepared with the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/31/66), which is particularly relevant to the present situation in Cambodia, most notably in relation to the ‘Black Monday’ Campaign.

With regards to the alleged violations being linked to the human rights work of the above-mentioned individuals, we wish 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, also known as the UN Declaration on Human Rights Defenders, in particular Articles 1, 2, 5, 6 and 8.

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.

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 details of the legal grounds for the extension of the pre-trial detention of Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan and Mr. Chakrya, and the aforementioned charges brought against them, 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 details of the legal basis for the arrest and detention of Mr. Tep Vanny and Ms. Bov Sophea, and the aforementioned charges brought against them, together with Ms. Bov Sophea, Ms. Kong Chantha, Ms. Bo Chhorvy. Please indicate how these measures are compatible with applicable international human rights norms and standards
4. Please provide the details of the proceedings against aforementioned individuals and the legal basis upon which they are sentenced, and explain how these are compatible with the international norms and standards.

5. Please indicate what measures have been taken to ensure that human rights defenders and environmental activists are able to carry out their legitimate work in a safe and enabling environment in Cambodia, including exercising their rights to freedom of peaceful assembly and freedom of opinion and expression, without fear of threats or acts of persecution and harassment of any sort.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

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.

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