

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 1/2017

1 June 2017

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 33/30, 34/18, 32/32, 25/18 and 30/23.

With reference to our joint urgent appeal UA/KHM 6/2016 dated 24 November 2016, noting that six months have lapsed since it was sent and that a response is yet to be received, we would like to once again bring our urgent appeal to the attention of the Royal Government of Cambodia and to hereby request a response at its earliest convenience. We are concerned 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 28 April 2016, the situation of human rights defender Ms. **Tep Vanny**, and the removal by district and commune police authorities of banners calling for the release of the aforementioned human rights defenders on 2 and 3 May 2017. The urgent appeal is attached for ease of reference, and any response from the Government will be made available in a report to be presented to the Human Rights Council for its consideration.

The Cambodian Human Rights and Development Association (**ADHOC**) was the subject of three previous communications: KHM 3/2015; KHM 5/2012; KHM 1/2011. Ms. Mony, Mr. Sokha, Mr. Vanda, and Mr. Soksan were the subject of two previous communications: KHM 6/2016, KHM 3/2016. We regret that no responses were received from your Government to these communications.

In addition, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan, Ms. Lim Mony and Mr. Ny Chakrya were subjects of the Opinion No. 45/2016 (Cambodia), adopted by the Working Group on Arbitrary Detention on 21 November 2016, at its at its seventy-seventh session. In its disposition the Working Group has found that the deprivation of liberty of Ny Sokha, Nay Vanda, Yi Soksan, Lim Mony and Ny Chakrya, being in contravention of articles 7, 9, 10, 11 and 20 of the Universal Declaration of Human

Rights and of articles 9, 10, 14, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and III.

Mr. Chakrya, the Deputy Secretary General of the National Election Committee (NEC), was the subject of three previous communications: one related to his capacity in ADHOC, dated 10 August 2015, see A/HRC/31/79 case no. KHM 3/2015; and the other two dated 24 November 2016, see A/HRC/34/75 case no. KHM 6/2016; and 11 May 2016, see A/HRC/33/3 case no. KHM 3/2016.

Regarding Ms. Venny, we regret that a response to two communications on her cases (KHM 1/2014 and 4/2012) is yet to be received, and reiterate the concerns expressed in the previous letters.

According to the information received:

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

On 28 November 2016, the Court of Appeal upheld the extension of the pre-trial detention period for another six months and refused to close the investigation. On 27 April 2017, the Phnom Penh Municipal Court decided to extend the pre-trial detention of the five for up to another six months.

Case of Ms. Tep Vanny

On 23 February 2017, the Phnom Penh Municipal Court convicted Ms. Vanny for “intentional violence with aggravated circumstances” under article 218 of the Criminal Code and sentenced her to prison for two years and six months for participating in the protest. Ms. Vanny was also ordered to pay a fine of KHM 5,000,000.00, as well as a total of KHM 9,000,000.00 to two plaintiffs, both of whom being members of the Daun Penh district para-police. It has been reported that during the trial, no credible evidence was presented to justify the charges brought against her or to prove that she had committed any form of violence.

Removal of banners by district and commune police authorities

On 2 May 2017, district and commune police authorities reportedly removed banners calling for the release of the aforementioned six human rights defenders. Banners were removed from the ADHOC, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and Mother Nature in the Smach Meanchey commune, Koh Kong province. On 3 May 2017, banners were also reportedly removed from three residences in the Srae Ambel district, Koh Kong province. These actions occurred on private property without a search

warrant and were thus a violation of article 40 of the Constitution of the Kingdom of Cambodia, which states that, “the protection of the rights to the inviolability of residence ... shall be guaranteed. Search of residences, properties ... shall be done in accordance with the legal stipulations.”

Serious concerns are expressed over the continued arbitrary detention of Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan, Ms. Lim Mony and Mr. Ny Chakrya. In particular, concern is expressed regarding the decision of 27 April 2017 to extend their pre-trial detention for up to six additional months. These concerns are founded upon reports that grounds for their arrest remain unsubstantiated, that the defendants were not afforded minimal due process guarantees, and that the claims of the defence lawyers have not been investigated. We express equal concern at the conviction of Ms. Vanny, in particular at the unfounded legal basis of her conviction and the lack of sufficient evidence supporting it. Further concerns are reiterated that the aforementioned charges and conviction brought against the above-mentioned individuals appear to be related to their legitimate human rights activities and the exercise of their rights to freedom of expression, peaceful assembly and association.

We would like to refer your Excellency’s Government to the international principles and norms applicable to the present cases.

We would like to refer to articles 19 and 21 of the ICCPR, 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 opinions adopted by the Working Group on Arbitrary Detention (Opinion No. 45/2016), which found a sufficient basis to conclude that Ms. Mony, Mr. Sokha, Mr. Vanda, Mr. Soksan and Mr. Chakrya have been discriminated against on the basis of their status as human rights defenders and in violation of their right to equality before the law and equal protection of the law under article 26 of the ICCPR.

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 Recognised 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. Ny 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 information about how the conviction of Ms. Vanny complies with international human rights law. In particular, please provide detailed information about the evidence upon which the conviction is based.
4. Please provide the legal basis for the removal of the banners on 2 May and 3 May 2017, and explain how this is compatible with article 40 of the Constitution of the Kingdom of Cambodia, as well as 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.

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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Vice-Chair on communications of the Working Group on Arbitrary Detention

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