

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights in Cambodia**

REFERENCE:  
UA KHM 7/2018

24 August 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights in Cambodia, pursuant to Human Rights Council resolutions 34/18 and 36/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the upcoming trial against human rights defenders Ms. **Lim Mony**, Mr. **Ny Sokha**, Mr. **Nay Vanda**, Mr. **Yi Soksan** and Mr. **Ny Chakrya**. They were the subject of previous communications KHM 3/2016, KHM 6/2016 and KHM 1/2017 and Mr. Chakrya was the subject of previous communication KHM 3/2015. They were also the subject of Opinion No. 45/2016 of the Working Group on Arbitrary Detention, which found their detention arbitrary, and the subject of a press statement issued on 25 January 2017.

They are all current or former staff members of the Cambodian Human Rights and Development Association (ADHOC). ADHOC was the subject of previous communications KHM 5/2012 and KHM 1/2011.

According to the information received:

On 2 May 2016, Ms. Mony, Mr. Sokha, Mr. Vanda and Mr. Soksan were charged with bribery of a witness under Article 548 of the Criminal Code, while Mr. Chakrya was charged as an accomplice to bribery, relating to assistance lent to a woman who had approached them for support; as she was allegedly pressured by the Anti-Corruption Unit to lie about a false allegation. They were sent to pre-trial detention in Prey Sar prison in Phnom Penh, and released on bail on 29 June 2017. The first hearing in their trial is scheduled for 27 August 2018.

We remain concerned that the charges brought against the afore-mentioned human rights defenders appear to be in retaliation for their peaceful and legitimate human rights activities and to be in contravention with their legitimate rights to freedom of association, assembly and expression, rather than for acts constituting a crime. The long period between their initial detention and the trial may be in contravention to the right to a prompt and fair trial within a reasonable period of time.

Further concern is reiterated at the continued statements made by State officials and institutions on matters under police and court investigations, which may place pressure on judicial officials and prejudice the presumption of innocence.

We also express 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, they appear to be in contravention with article 14 of the ICCPR, which guarantees fair trial rights, including the right to be presumed innocent until proven guilty, as well as the right to be tried without undue delay. These allegations also appear to be in contravention with articles 19 and 22 of the ICCPR, which guarantee the rights to freedom of expression and 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 recall Opinion No. 45/2016 of the Working Group on Arbitrary Detention, which found the detention of the above-mentioned human rights defenders arbitrary, falling under the categories of a deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR (category II); and when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).

We would also like to recall the decision of the Constitutional Council of Cambodia of 19 July 2007 which reaffirms, in accordance with the Constitution, that the courts in Cambodia must take into account Cambodia's commitments under the international human rights treaties when interpreting the law and deciding cases.

Moreover, we wish to refer to the 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, we would like to refer to articles 1 and 2, which states that everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and that the State has a prime responsibility and duty to protect, promote and implement all human rights. We would also like to draw attention to article 5, 6 and 12. Article 5 and 6 state that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights. While according to article 12, the state shall take all necessary measures to ensure the protection by the competent authorities of everyone, against any arbitrary action as a consequence of the legitimate exercise of their human rights.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right to fair proceedings before an independent and impartial tribunal, in accordance with article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 detailed information on the measures taken to provide all guarantees of a fair and impartial judicial procedure to Ms. Lim Mony, Mr. Ny Sokha, Mr. Nay Vanda, Mr. Yi Soksan, Mr. Ny Chakrya, as provided by international human rights norms and standards.

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.

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

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