

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

REFERENCE:  
AL KHM 7/2021

10 June 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 42/37, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ongoing pre-trial detention and continued denial of bail of seven human rights defenders Ms. **Chhoeun Daravy**, Mr. **Hun Vannak**, Mr. **Koet Saray**, Mr. **Tha Lavy**, Ms. **Eng Malai**, Mr. **Muong Sopheak** and Mr. **Mean Prommony**.

Mr. Vannak, Ms. Daravy, Mr. Lavy, Ms. Malai and Mr. Saray are human rights defenders and members of the Khmer Thavrak youth group, a movement which advocates for and promotes the protection of human rights and social justice and raises awareness about environmental issues in Cambodia. Mr. Sopheak and Mr. Prommony are members of the Khmer Student Intelligent League Association (KSILA), which focuses on the mobilisation of students to engage in issues related to social development, good government, and the sustainable use of natural resources.

Mr. Vannak, Ms. Daravy, Mr. Lavy, Ms. Malai, Mr. Saray, Mr. Sopheak and Mr. Prommony were the subject of a previous communication sent by Special Procedures, referenced KHM 8/2020, and Mr. Vannak was included in two more communications, KHM 2/2018 and KHM 3/2017, sent to your Excellency's Government. Issues regarding the circumstance of these arrests, including several violations of the human rights defenders' right to due process, absence of arrest warrants, and the alleged humiliation, intimidation and threatening these human rights defenders were subjected to by authorities upon their arrest and in relation to their signing of statements were highlighted in the above-mentioned communications. We would like to thank your Excellency's Government for replying to the allegations in both KHM 8/2020 and KHM 3/2017, but regret that at the time of writing, no response was received to the allegations raised in KHM 2/2018.

According to the information received:

As stated in previous communications, all seven human rights defenders were reportedly arbitrarily arrested between August and September 2020, in connection with their planning and participation in protests calling for the release of imprisoned human rights defenders and Khmer Thavrak colleagues

in the country. All seven human rights defenders were subsequently charged with “incitement to commit a felony or cause social unrest” under articles 494 and 495 of the Cambodian Criminal Code and placed in pre-trial detention. If convicted, they could face between six months and two years imprisonment and a fine of 4,000,000 Riels (approximately 825 euros). The closing order (indictment) was issued on 6 November 2020. According to the Cambodian Criminal Procedure Code, they can remain in detention for an additional four months until the time they appear before the trial court.

While their trial started on 30 December 2020 and continued on 16 February 2021, the hearing scheduled for 2 March 2021 was postponed to 8 June 2021. This was further postponed to an undefined date as part of a general measure taken by the Phnom Penh Municipal Court and the General Department of Prisons due to the deteriorating COVID-19 situation in the country, including in prisons. As a result, they remain in pre-trial detention almost 10 months later.

On 18 May 2021, the Phnom Penh Municipal Court denied the bail requests of the seven human rights defenders, citing the need to guarantee their presence in trial. During the court session, it was reported that the human rights defenders looked visibly weak and concern was raised about the impact the past 10 months in pre-trial detention is having on their mental health. It was also noted that Ms. Malai’s leg was visibly swollen. The next trial date has yet to be announced, and authorities are reportedly using the COVID-19 pandemic to delay the trial and extend the pre-trial detention of the seven human rights defenders.

Mr. Vannak, Mr. Saray, Mr. Sopheak, Mr. Lavy and Mr. Prommony are detained in Phnom Penh Correctional Centre (CC) in CC1 and Ms. Malai is detained in CC2. Ms. Daravy is currently detained in the Police Judiciaire prison in Phnom Penh. Their lawyers have not been permitted to visit them since February 2021, owing to the COVID-19 pandemic restrictions.

Without prejudging the accuracy of the allegations raised above, we would like to express our concern regarding the continued pre-trial detention of human rights defenders Ms. Chhoeun Daravy, Mr. Hun Vannak, Mr. Koet Saray, Mr. Tha Lavy, Ms. Eng Malai, Mr. Muong Sopheak and Mr. Mean Prommony, who appear to have been arbitrarily detained and deprived of their liberty in response to their legitimate and peaceful work in the defence of human rights and fundamental freedoms in Cambodia, relating but not limited to their affiliation and work with the human rights organisation Khmer Thavrak. It is very concerning that these human rights defenders were arrested because of their organising and participating in demonstrations of solidarity and protest against the arrest of their colleagues and other Cambodian human rights defenders, thus violating their inherent rights to freedom of peaceful assembly and of expression.

We wish to express our concern that the seven human rights defenders above have been denied bail on several occasions, despite the fact that they have spent almost 10 months in pre-trial detention. According to article 209 of the Cambodian Penal Code (CPC), the pre-trial detention of an adult charged with a misdemeanor (i.e. incitement) cannot exceed 6 months; and it may not exceed half the minimum sentence set by law for the charged misdemeanor (in this case, three months as the

minimum sentence provided for under Article 494-495 is six months). In the closing order, provisional detention can be extended for another 4 months, within which the accused has to be brought to trial (Article 249 CPC). The provision states then that the decision to keep the charged person in provisional detention ceases to be effective after four months. If the charged person is not called to appear before the trial court within these four months, the charged person shall be automatically released. Thus according to national law, the aforementioned human rights defenders must be brought to trial in June and July 2021 or otherwise, be released unconditionally. In this regard, the fact that the trial of the human rights defenders has begun but has been postponed due to COVID-19 does not suspend Your Excellency's Government's obligation to apply provisions that are included in the Code of Criminal Procedure Code to safeguard the rights of the accused.

The continued deprivation of their liberty is a direct violation of the right to due process under international human rights law, to cite article 9 of the International Covenant on Civil and Political Rights (ICCPR). It is extremely concerning that the authorities in Cambodia appear to be using the COVID-19 pandemic as an unjustified reason to prolong the detention of these human rights defenders and delay bringing the judicial case against them to trial. We raise our concern about the mental and physical health of the human rights defenders, and the impact this extended period of pre-trial detention on their well-being.

Finally, we reiterate the concern we expressed in previous communications about the circumstances under which Ms. Chhoeun Daravy, Mr. Hun Vannak, Mr. Koet Saray, Mr. Tha Lavy, Ms. Eng Malai, Mr. Muong Sopheak and Mr. Mean Prommony were arrested, and raise our concern once more about the alleged violations of their right to due process, to access legal representation and their right to a fair trial. We are seriously concerned about the reports we continue to receive indicating that the authorities in Cambodia are targeting, threatening, and criminalising human rights defenders in the country in an attempt to incite fear amongst those working to protect human right and fundamental freedoms. This can only have a chilling effect on human rights defenders, who fear they may be criminalised and charged for simply exercising their right to freedom of expression, freedom of association, and freedom of peaceful assembly.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.<sup>1</sup>

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/or comment(s) you may have on the above-mentioned allegations.

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<sup>1</sup> Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

2. Please provide information on the factual and legal basis for the arrests and detention of human rights defenders Ms. Chhoeun Daravy, Mr. Hun Vannak, Mr. Koet Saray, Mr. Tha Lavy, Ms. Eng Malai, Mr. Muong Sopheak and Mr. Mean Prommony, as well as the reported inconsistencies relating to their right to due process, the absence of warrants and the threats and intimidation they were reportedly subjected to by members of the Cambodian authorities upon their arrest.
3. Please provide the reasons why the seven above-mentioned human rights defenders have been kept in pre-trial detention for almost 10 months, without being formally charged and without being granted bail. Please explain why their requests for bail have been denied as well as any information on their access to legal representation. Please also explain the steps being taken, in line with articles 209 and 249 of the Cambodian Penal Code, to ensure that the imprisoned human rights defenders will be brought to trial and/or released by the end of July 2021, so that the time spent in pre-trial detention does not exceed 10 months.
4. Please provide information on the physical, psychological and integral health condition of the seven human rights defenders in pre-trial detention. Please respond to the allegations regarding Ms. Eng Malai's swollen leg and provide information about whether she has been receiving adequate health care.
5. Please provide information on the current prison conditions in Phnom Penh Correctional Centre (CC) in CC1, CC2 and in the Police Judiciary prison in Phnom Penh.
6. Please outline the steps your Excellency's Government is taking or plans to take to ensure that human rights defenders working to promote, protect and defend human rights and fundamental freedoms in Cambodia are protected and guaranteed a safe and enabling environment to carry out their peaceful and legitimate activities.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any

opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo  
Vice-Chair of the Working Group on Arbitrary Detention

Vitit Muntarbhorn  
Special Rapporteur on the situation of human rights in Cambodia

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to the international norms and standards that we feel are applicable to the allegations outlined above. We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992. In particular, we would like to refer to articles 9 which relates to the right to liberty and security, and states that no person should be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Enshrined in this article is the one's right to be brought promptly before a judge and to be brought to trial within a reasonable time or to be released. "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement." We also refer to article 10 of the ICCPR, outlining that those deprived of their liberty must be treated with respect and humanity.

We also to articles 14, 19, 21 and 22 of the ICCPR which provide for the right to a fair and public hearing, the right to be presumed innocent until guilty, to be tried without undue delay, the right to communicate with counsel of one's own choosing as well as the rights to freedom of expression, peaceful assembly and freedom of association. We would like to refer your Excellency's Government to General Comment No. 35 of the Human Rights Committee, which has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (article 19), freedom of peaceful assembly (article 21), and freedom of association (article 22).

We also draw attention to the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings before a Court, (adopted by the Working Group on Arbitrary Detention during its 72nd sessions, held in April 2015). Outlined in principle 1 of these Principles and Guidelines is the right to challenge the lawfulness of detention before a court in order that that court may decide on the arbitrariness or lawfulness of the detention, and obtain without delay appropriate and accessible remedies and principle 5 states that the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention may be exercised by anyone without discrimination. Principle 6 provides that a competent court established by law should decide on the arbitrariness of the detention, and if it is in fact deemed as arbitrary, immediate release must be granted to those detained.

We would like 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, we would like to refer to articles 1 and 2 of the Declaration which 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, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 point c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.