

Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the situation of human rights defenders

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(Please use this reference in your reply)

4 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 42/20, 42/22, 48/, 46/7 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary detention, attack, threat, criminalization and violations of the right to due process of the environmental human rights defender Mr. Chhorn Phalla, who has advocated for indigenous peoples' land rights and the protection of forests in Ratanakiri and Mondulkiri Provinces. He was sentenced to five years imprisonment by the Ratanakiri Provincial Court in Cambodia on charges under the Forestry Law.**

Mr. Chhorn Phalla is an environmental human rights defender and an advocate for the rights of indigenous peoples and the protection of forestlands in Ratanakiri and Mondulkiri Provinces. He has been active in the protection of forests and natural resources in Seda commune, Lumphat district, Ratanakiri province for more than ten years. Mr. Phalla collects information and documents evidence of environmental destruction to file lawsuits against competent authorities who fail to perform their duties in protecting natural resources and forest lands. Mr. Chhorn Phalla has been serving a five-year prison term in the Ratanakiri Provincial Prison for "clearing forestland and enclosing it to claim for ownership" under article 97 (6) of the Cambodian Forestry Law.

According to the information received:

On 17 July 2017, Mr. Chhorn Phalla filed a complaint at the Ratanakiri Provincial Court against seven local officials for committing felonies or misdemeanours. The complaint is in relation to an incident which occurred in June 2017, when approximately 30 villagers reported illegal logging to local authorities but were instead accused of taking part in illegal logging themselves, including Mr. Chhorn Phalla. On 18 December 2018, the prosecutor of Ratanakiri Provincial Court dismissed the case but the complainants, including Mr. Chhorn Phalla, appealed this decision.

On 8 July 2020, Mr. Chhorn Phalla peacefully attended a public forum in Samuth Krom village, organized by the authorities in Seda commune hall,

Ratanakiri province. He was reportedly beaten in the middle of the hall by around 16 men for 20 minutes, after he provided comments publicly on the complaint he had lodged against local officials in 2017. He was surrounded and punched all over his head and body, resulting in injuries on his back and head. It was reported that the police officers who were present at the public forum did not intervene.

On the same day, the Deputy Village Chief, police officers and at most 100 villagers reportedly came to his house and threatened that he would be assaulted again if he did not withdraw his complaint. They would not allow him to leave his house until he withdrew his complaint; however, he refused to do so. In the evening, Mr. Chhorn Phalla was taken by a district police officer and asked to thumbprint a document to withdraw his complaint, but Mr. Chhorn Phalla did not thumbprint the documents as he lost consciousness and was taken to hospital. He was admitted to Ratanakiri Provincial Hospital, and was subsequently transferred to a private clinic in Phnom Penh on 10 July 2020.

After his recovery, Mr. Chhorn Phalla wanted to return to his village but could not due to the threats against him. In August 2020, Mr. Chhorn Phalla sent letters to the Ministry of Interior, the Ministry of Justice and the Prime Minister's Cabinet Office, requesting for protection to return to his home. On 2 February 2021, he was escorted from Phnom Penh to his village by government officials reportedly from the Prime Minister's Office and the Ministry of Interior.

Information indicates that on 20 September 2021, Mr. Chhorn Phalla was arrested, without being shown an arrest warrant, by a judicial police officer from Seda Commune Police while he was doing an errand at the Commune Administration Post. The investigating judge conducted a hearing on the same day and ruled to detain Mr. Chhorn Phalla who was sent to prison on the same day, charged with having "felled trees, encroached and cleared forest land, set forest fire, and bulldozed forestlands to claim ownership", under article 62 (1) of the Protected Areas Law.

On 29 September 2021, the Ratanakiri Provincial Court conducted a public hearing with Mr. Chhorn Phalla accusing him of encroaching and clearing forestland for ownership. While the prosecution claimed that Mr. Chhorn Phalla cleared 60 hectares of forest land and state economic land concessions, Mr. Phalla refused to acknowledge this and reported that the accusation was linked to his human rights activism. After cross-examination, the prosecutor decided to change the charges from encroaching on state forestland, article 62 (1) of the Protected Areas Law to "clear forestland and enclose it to claim for ownership" under article 97 (6) of the Forestry Law.

Reports indicate that the court should have issued its judgement on 27 October 2021, however the verdict was postponed, due to cases of COVID-19 in Ratanakiri Prison, where Mr. Chhorn Phalla was imprisoned. Due to COVID-19, he was reportedly not allowed to see his family for the first two weeks of his detention.

On 10 November 2021, the court convicted Mr. Chhorn Phalla under the new charges and sentenced him to five years imprisonment under article 97 (6) of the Forestry Law. Reportedly, witnesses stated that Mr. Chhorn Phalla did not clear forestland and enclose it to claim for ownership, and that Mr. Phalla himself stated that he does not own any land in the area. Concerns have been raised about the duration of Mr. Phalla's pretrial detention; having been detained for more than four months since his arrest on 20 September 2021, which corresponds to the maximum duration foreseen in the Code of Criminal Procedure for misdemeanours. Mr. Phalla currently depends on a human rights non-governmental organization for financial support to cover the expense of his medicines for diabetes.

Reportedly there are two additional court cases pending against Mr. Chhorn Phalla. On 4 August 2017, he was charged with illegally encroaching on state forest land, under article 97 (6) of the Protected Areas Law. On 14 July 2020, he was charged with public defamation under article 305 of the Criminal Code for his actions at the public forum on 8 July 2020.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern over the allegations of arbitrary detention and harassment of Mr. Chhorn Phalla by the National Police, and the failure to ensure his right to due process, including the right to a fair trial and have adequate time and facilities for the preparation of his defense. This includes the failure to fully investigate and prosecute the perpetrators of the violent attack against Mr. Phalla, which caused him serious injuries.

The judicial proceedings against Mr. Phalla appear to represent a criminalization of his activism as an environmental and indigenous rights defender. The steps taken to intimidate Mr. Chhorn Phalla, indigenous peoples and human rights defenders, appear to constitute deliberate measures intended to restrict their peaceful and legitimate work in defense of their human rights and their collective right to live in freedom, peace and security as distinct peoples. The targeting of indigenous peoples and human rights defenders through intimidation, threats, and criminalization are of particular concern, as it appears to be in direct retaliation for their legitimate and peaceful activities promoting indigenous peoples' rights and the defence of their traditional lands, territories and resources. We are concerned that such allegations will not only denigrate the efforts of the above mentioned environmental and indigenous human rights defenders to denounce human rights violations, but also the efforts of other human rights defenders and human rights organisations in this sense, contributing to a chilling effect on civil society and the ability to freely exercise the right to freedom of expression and freedom of assembly and association without fear of retaliation.

We raise our concerns that the legal basis for such a legal prosecution does not seem compatible with the conditions for permissible restrictions to the right to due process and as such may be unlawful under international human rights law.

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.

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.
2. Please provide the full details of the factual and legal basis for the legal proceedings that led to the detention of Mr. Chhorn Phalla, including his arrest without the presentation of an arrest warrant, and the stage of judicial proceedings against him.
3. Please provide reasons for the pre-trial detention of Mr. Chhorn Phalla.
4. Please provide information as to the measures taken to ensure the physical and psychological integrity of Mr. Chhorn Phalla whilst in custody.
5. Please explain what measures have been taken to ensure that Mr. Chhorn Phalla is able to exercise his due process rights, such as the right to a fair and public hearing by a competent, independent and impartial tribunal, and to have adequate time and facilities for the preparation of his defense.
6. Please provide information on the health and security conditions of Mr. Chhorn Phalla, while he is being held in the Ratanakiri Provincial Prison and what measures will be taken to guarantee his personal, physical and mental integrity, especially in the context of his diabetes and the COVID-19 pandemic.
7. Please provide information, and where available, the results of any investigations into the attack against Mr. Chhorn Phalla on 8 July 2020 during the public forum held in Samuth Krom village.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment
of a safe, clean, healthy and sustainable environment

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 6, 9, 14, 17, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992, which guarantee the rights to liberty and security of person, fair trial guarantees, including the presumption of innocence and the adequate time and facilities for the preparation of defense.

In connection to article 6 of the ICCPR, we would like to highlight the Human Rights Committee's General Comment No. 36, concerning the right to life. In its General Comment, the Committee stated that the obligation of State parties to respect and ensure the right to life "extends to reasonably foreseeable threats and life-threatening situations".¹ Concerning human rights defenders specifically, the Committee stated that the duty to protect the right to life requires State parties to take "special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" and that such persons "include human rights defenders"². We would like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

International human rights law prohibits arbitrary arrest, detention or imprisonment.³ This prohibition is an essential corollary to the right to liberty. Both international and national laws state that anyone who is arrested or detained must be informed of the reasons why they are being deprived of their liberty.⁴ This right should apply at all times.⁵ An arrestee must be notified of the reasons for arrest at the time of arrest.⁶

Furthermore, in accordance with international human rights law, all arrested or detained persons shall have access to a lawyer or other legal representative, and adequate opportunity to communicate with that representative.⁷

The right to be tried within a reasonable time and to a strong justification for the imposition of pre-trial detention are also both strongly protected. Article 9 (3) International Covenant on Civil and Political Rights (ICCPR) provides that "Anyone arrested or detained on a criminal charge [...] shall be entitled to trial within a reasonable time or to release. 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 judgment." Therefore, only if judicial supervision or other measures would not be able to adequately address all concerns, and detention of the charged

¹ Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para 7.

² *Ibid.*, para 23

³ Article 9 of the Universal Declaration of Human Rights (UDHR), Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR), Article 37 (b) of the Convention on the Rights of the Child (CRC), Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD).

⁴ Article 9 (2) of the ICCPR.

⁵ Paragraph 16, Human Rights Committee (HRC) General Comment No. 29.

⁶ Article 9 (2) of the ICCPR.

⁷ Article 11 of the UDHR; article 14 (3) of ICCPR.

person is determined to be an objective necessity, should pre-trial detention be considered as a last resort. Liberty of the accused should always be the default option, rather than detention.

In connection with the above alleged facts and concerns we also 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, article 1, 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 fundamental freedoms at the national and international levels, and article 2, which provides that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

We would also like to make specific reference to article 9, which holds that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights. Finally, we would like to refer to article 12 of the Declaration, which holds that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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.

We would also like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28 and 48/17 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

We furthermore wish to highlight the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of Cambodia. We would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in

the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Cambodia and mentioned above.

Article 2 of the UNDRIP establishes that indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. Article 7 further provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. UNDRIP in its article 15 also asserts that “States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society”.

We also would like to draw the attention of your Excellency’s Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, which stipulates that " The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 indicates that States have the obligation to respect the right to health, in particular by refraining from denying or limiting equal access of all persons, including prisoners or detainees, to preventive, curative and palliative health services (par. 34). We would also like to refer to article 12(2)(c) of the Covenant, which obliges States to take the necessary measures for the prevention, treatment and control of epidemic diseases (see also General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, par. 16). Likewise, in its Statement on the COVID-19 pandemic, the Committee states that States should adopt special and specific measures to protect and mitigate the effects of the pandemic on groups in vulnerable situations, such as persons in detention centers.

Finally, the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolution 48/13 on 8 October 2021. The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”