Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL KHM 6/2020

18 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 43/4, 42/22, 42/37, 41/12 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 arrest and detention of Mr. Rong Chhun, after he had voiced concern over reports of the land encroachment along the Cambodia-Viet Nam border, as well as violence against demonstrators calling for his release**.

Mr. Rong Chhun, the President of the Cambodian Federation of Unions and a member of the Cambodia Watchdog Council, is a human rights defender. In recent months, he has campaigned for the Government to secure unpaid wages and benefits to laid-off workers, for the release of teachers who had been arrested for making comments on public health and COVID-19, and to address the human rights concerns made by the European Union prior to the lifting of the 'Everything but Arms' preferential trade agreement.

Mr. Rong Chhun was the subject of previous communications, referenced KHM 5/2005, KHM 2/2006, KHM 1/2014, sent on 28 October 2005, 28 February 2006 and 17 February 2014, respectively. We thank your Excellency's Government for the reply dated 19 February 2014.

According to the information received:

On the arrest and detention of Mr. Rong Chhun

On 21 July 2020, Mr. Rong Chhun posted a message on his personal Facebook page stating that there were irregular demarcations of border posts located in Tbong Khmum Province that resulted in Cambodians losing hectares of land. Rong Chhun had previously visited Tbong Khmum Province to meet over one hundred family members who shared accounts of how they were affected by ongoing land disputes as a result of border issues. On 25 July, a media article was

published in which Rong Chhun was quoted urging the Government to pay more attention to this matter as it was affecting the sovereignty of Cambodia. On 31 July, the Office of the Council of Ministers' Border Affairs Committee issued a statement condemning Rong Chhun for providing false statements and urging the Government to take action against him. The Government claimed that Rong Chhun had argued that there were irregularities which resulted in the loss of land to Viet Nam which forced national citizens to be evicted.

At around 9.35 p.m. on 31 July 2020, Mr. Rong Chhun was arrested at his home in Phnom Penh's Meanchey district by 25 to 30 unidentified men in plain clothes. According to information we received, one man was believed to be from the Phnom Penh Police as he wore a black uniform resembling a police uniform. During the arrest, no document or warrant was reportedly shown to Rong Chhun and family members who were at home with him. The men did not provide information as to the reason for the arrest and where he would be taken.

The men informed Rong Chhun's family members to stay inside the house. One family member was threatened with arrest as they attempted to leave to see where Rong Chhun was being taken. In the process, one man from the group stayed at the entrance of the house preventing Rong Chhun's family members from leaving.

At around 10.30 p.m., the family members traveled to the Phnom Penh Municipal Police Commissariat (PPC) after learning from media reports that Rong Chhun had been taken there. Upon arrival, a police officer informed them that Rong Chhun was not present at the PPC, despite the PPC statement reportedly made on the media that he had been held there. The family members waited outside until 03.00 a.m. on the following day (1 August). The family members later learnt that Rong Chhun had been taken to PPC after his arrest and had then been brought before the Phnom Penh Municipal Court in the morning of 1 August.

According to sources, Rong Chhun is charged for "incitement to commit a felony" under articles 494 and 495 of the Criminal Code. He is currently being held in pre-trial detention in Phnom Penh's Correctional Centre 1 and is facing a maximum prison term of two years and a fine of up to 4 million Cambodian Riels (approximately USD 1,000). On 2 August, the Spokesperson of the Ministry of Justice posted on his official Facebook page that he was arrested in *flagrante delicto* for disseminating false news via Facebook in relation to comments made about the Cambodian-Vietnamese border.

On 3 August, the family members of Rong Chhun visited him at the Correctional Centre 1, after they had been denied visit for over two days. The visit ended after two minutes after the prison guards stopped the meeting without providing any reason. It is reported that his lawyers were also allowed to meet with Rong Chhun on 3 August, after being prevented from visiting him for two days.

On the excessive use of force against the demonstrations calling for his release

On 2 August, around 20 to 30 demonstrators gathered peacefully opposite the Phnom Penh Municipal Court to demand the release of Rong Chhun. NGO observers were reportedly not allowed to access the demonstration. On 3 August, publicly available footage showed that a demonstration was violently dispersed by district security officials. It is reported that the authorities used barricades to block people from accessing the area, and deployed security forces to the nearby Olympic Stadium. On 5 August, other publicly available footages show women and youth demonstrators being kicked and pushed by security forces. There are also reports of monk activists and human rights defenders who were arrested and detained in relation to their involvement or planned engagement in peaceful assemblies and who were reportedly forced to sign agreements while under duress to cease future advocacy activities. Additional reports indicate that a number of these individuals remain in pre-trial detention, with some reporting that they had been denied contact with family or lawyers for more than five days.

On 3 August, the Ministry of Justice issued a statement calling for the demonstrators to stop "inappropriate and illegal acts". The Ministry outlined that they could face legal action for "publication of commentaries intended to coerce judicial authorities" under article 522 of the Criminal Code, which carries a maximum sentence of six months' imprisonment and a fine of up to one million Cambodia riels (approximately USD 250). Furthermore, the Governors of the Board of Governors of Phnom Penh Municipality issued an instruction that the gatherings had seriously disturbed social normality, public order, traffic flow and were contrary to the principles of the Law on Peaceful Demonstration. It is also reported that on 5 August, district security officials reportedly prevented a planned procession by a youth group from the Olympic Stadium to central Phnom Penh calling for the release of Rong Chhun.

Reports also indicate that the President of the Cambodian Independent Teachers Association visited Mr. Rong Chhun at Correctional Center 1 on 10 August, after she had previously participated in demonstrations calling for Mr. Rong Chhun's release. Following her visit, at approximately 16:40, two men in black clothes reportedly approached her motorbike near Sla Ket Pagoda on National road 1. The motorbike then stopped next to her and the man riding in the back reached over to grab the handle of her motorbike and pushed it, causing her to crash. She lost consciousness and woke up at the Koki Commune Clinic, after receiving stiches on her upper lip and left leg. She and her husband also received multiple surface wounds and bruises throughout their bodies from the fall. It is reported that unidentified individuals were driving motorbikes in front of her home days before the attack, suggesting that this might have been premeditated.

Without prejudging the accuracy of the allegations, we would like to express our concern regarding the detention of Mr. Rong Chhun, which seems related to the exercise of his right to freedom of expression. We are particularly concerned that the criminalization of his speech does not appear to fall within the remit of Article 19 (3) of

the ICCPR. We are also concerned that Rong Chhun's arrest without a warrant during the night on 31 July may not meet the standard of flagrante delicto as outlined under the Criminal Procedure Code, as the Facebook post which outlined the irregularities and losses of Cambodian land was made on 21 July, ten days before the arrest. In this context, we are concerned that the above allegations might contravene with international law, in particular the right not to be arbitrarily deprived of liberty, 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.

We are further concerned at the disproportionate use of force exercised against peaceful protesters, the subsequent threats to prosecute them under the Law on Peaceful Demonstration and the reported threats and intimidation against the President of the Cambodian Independent Teachers Association in an apparent attempt to prevent them from exercising their right to 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.

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 information on the factual and legal basis for the arrest and detention of Rong Chhun, and how these are compatible with international human rights norms and standards related to the right to freedom of expression and right to take part in public affairs. Please provide further information on the compatibility of the arrest with the right to liberty and security of person, including being informed at the time of arrest of the reasons of his arrest.

3. Please provide information on how the dispersals of the peaceful assemblies on 3 and 5 August 2020 were in conformity with your Excellency's Government's legal obligations under 21 ICCPR and Cambodian law. Furthermore, please provide information on how your Excellency's Government ensures that individuals in the country, including the President of the Cambodian Independent Teachers Association and others who have been holding peaceful assembly outside the Phnom Penh Municipal Court, can freely exercise their right to freedom of peaceful assembly and of association.

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 having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention 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 communications in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

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

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, and while we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case. We would like to refer to articles 6, 9 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Cambodia on 26 May 1992, which guarantee the rights to liberty and security of person, freedom of expression and opinion and freedom of peaceful assembly respectively.

More specifically, article 9 of the ICCPR prescribes that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (art 9.1); the need to inform, at the time of arrest, of the reasons for the arrest and of any charges (art. 9.2) as well as the right to challenge the legality of detention before a judicial authority (art. 9.4). Furthermore, a deprivation of liberty which results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the ICCPR may be deemed arbitrary.

Freedom of expression entails that "everyone shall have the right to hold opinions without interference" as well as that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This right includes not only the exchange of information that is favorable, but also that which may shock or offend. In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. In its General Comment No. 25 on Participation in Public Affairs and the Right to Vote (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee set out that: "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. […] It requires full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.".

On the policing of assemblies, we would like to recall that the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from

harm (CCPR/C/GC/AGO/CO/1 para 21). With regards to the excessive use of force, we would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result". In particular, we would like to refer to the recently adopted General Comment No. 37 of the Human Rights Committee on Right of peaceful assembly (CCPR/C/GC/37), which stressed that "the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. […] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner"