CAMBODIA: In landmark decision, UN body declares the detention of five human rights defenders arbitrary #FreeThe5KH

Geneva-Paris-Phnom Penh, December 18, 2016. Our organisations welcome the recent Opinion adopted by the United Nations Working Group on Arbitrary Detention (WGAD) that recognise the arbitrary nature of the detention of human rights defenders Ny Chakrya, Ny Sokha, Yi Soksan, Nay Vanda, and Lim Mony. Our organisations call upon the Cambodian authorities to implement the Opinion of the WGAD by releasing the five human rights defenders immediately and providing them appropriate compensation.

On November 21, 2016, the WGAD ruled that the ongoing detention of Mr. Ny Chakrya, Deputy Secretary-General of the National Election Committee (NEC), and four staff members of the Cambodian Human Rights and Development Association (ADHOC), Messrs. Ny Sokha, Yi Soksan, Nay Vanda, and Ms. Lim Mony, was “arbitrary.”

Following a submission made by the Observatory for the Protection of Human Rights Defenders (OMCT-FIDH partnership), the Cambodian Center for Human Rights (CCHR) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) in June 2016, the WGAD’s Opinion No. 45/2016 ruled that the five human rights defenders (HRDs) “have been discriminated against based on 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.” This is the first time ever that the WGAD - or any other UN mechanism receiving individual complaints - has referred to HRDs as a protected group that is entitled to equal legal protection under Article 26 of the International Covenant on Civil and Political Rights (ICCPR). The ruling also recognised the violation of the five HRDs’ “rights to offer and provide professionally qualified legal assistance and other relevant advice and assistance in defending human rights.”

In addition, the WGAD found that the targeting of ADHOC staff members for having provided “legitimate legal advice and other assistance” violated the five HRDs’ right to freedom of association. It ruled that violations of fair trial rights (including the fact that the five were denied legal counsel from the beginning of their questioning), unjustified pre-trial detention, and statements made by the Cambodian authorities which denied the five the presumption of innocence - all of which contravene Cambodia’s international human rights obligations in respect to the right to a fair trial - are also serious enough to consider their ongoing detention as arbitrary.

The WGAD concluded 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.”

“We welcome this landmark Opinion adopted by the Working Group, and now call upon the Cambodian authorities to act on the ruling and immediately release Ny Chakrya, Ny Sokha, Yi Soksan, Nay Vanda, and Lim Mony and drop all charges against them,” declared our organisations today.

The five human rights defenders have now been in pre-trial detention on charges of bribery for 234 days since their arrest in April 2016. Their deprivation of liberty infringes on both international human rights law and Article 205 of Cambodia’s Criminal Procedure Code, which sets out the conditions under which provisional detention can be ordered. On November 30, 2016, the Supreme Court upheld a previous decision adopted by the Court of Appeals on June 13, 2016 to refuse to release the five HRDs on bail. On November 28, 2016, the Court of Appeals upheld the extension of the pre-trial detention for another six months and refused to close the investigation. All five detainees are being held alongside convicted criminals, contrary to Article 10(2)(a) of the ICCPR, and Article 26 of Cambodia’s Law on Prisons.
On September 22, 2016, the Phnom Penh Municipal Court convicted Mr. Ny Chakrya on charges of defamation, malicious denunciation, and publication of commentaries intended to unlawfully coerce judicial authorities and sentenced him to six months in prison. The charges stemmed from a criminal case dating back to the time when he was Head of the Human Rights Section at ADHOC. Mr. Ny Chakrya’s conviction was upheld by the Court of Appeal on December 14, 2016.

“These cases bear all the hallmarks of politically-motivated harassment of human rights defenders because of their legitimate human rights activities, and are illustrative of the Cambodian Government’s deliberate effort to eliminate all dissenting voices. We urge the Cambodian authorities to stop the harassment of all human rights defenders in the country,” concluded our organisations.

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The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by the World Organisation Against Torture (OMCT) and FIDH. The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. OMCT and FIDH are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.

The Cambodian Human Rights and Development Association (ADHOC) is a non-governmental, independent and non-partisan human rights organisation founded in 1991, which promotes and protects human rights in Cambodia by means of its 24 provincial offices and its headquarters in Phnom Penh. ADHOC’s Human Rights and Legal Aid Section, Land and Natural Resources Section and Women and Children’s Rights Section monitor the human rights situation on the ground, intervene in case of violations, provide assistance to victims of rights violations - including free legal aid, and engage in empowerment activities.

The Cambodian Center for Human Rights (CCHR), founded in November 2002, is a non-aligned, independent, non-governmental organisation that works to promote and protect democracy and respect for human rights throughout Cambodia.

The Cambodian League for the Promotion and Defense of Human Rights (LICADHO), established in 1992, seeks to protect and promote civil, political, economic and social rights in Cambodia through advocating for the rights of Cambodian people and monitoring human rights abuses from its main office in Phnom Penh and 13 provincial offices.

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