

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

16 May 2013

H.E. Hun Sen
Prime Minister
Office of the Prime Minister
Phnom Penh, Kingdom of Cambodia
Fax: +855 23 36 06 66 / 855 23 88 06 24
(c/o Council of Ministers)
Email: leewood_phu@nida.gov.kh;
cppparty@gmail.com

H.E. Sok An
Deputy Prime Minister and Chairman, Council for
Legal and Judicial Reform
Council of Ministers
Nº. 38, Confederation de la Russie 12209
Phnom Penh, CAMBODIA
Fax: +855-23-880-628, +855-23-880-635, +855-
23-212-490; Email: info@pressocm.gov.kh,
pressocm@gmail.com

H.E. Sar Kheng
Deputy Prime Minister and Minister of Interior
Ministry of Interior,
275 Norodom Blvd,
Phnom Penh, Kingdom of Cambodia,
Fax: + 855 23 212708. Email: moi@interior.gov.kh

H.E. Ang Vong Vathna
Minister of Justice
No 240, Sothearos Blvd.
Phnom Penh, Kingdom of Cambodia,
Fax: 023 364119. Email: moj@cambodia.gov.kh

H.E. Hor Nam Hong
Minister of Foreign Affairs
161 Preah Sisowath Quay
Phnom Penh, Kingdom of Cambodia
Fax: + 855 23 21 61 44 / + 855 23 21 69 39.
Email: mfaicasean@bigpond.com.kh

Your Excellencies:

Re: Judicial harassment and arbitrary detention of Ms. YORM Bopha

I am writing on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

LRWC is disturbed by the conviction and imprisonment of Ms. Yorm Bopha, age 29, in proceedings that failed to adhere to Cambodia's law and Constitution and international human rights standards binding on Cambodia. The facts and circumstances suggest that the criminal proceedings were in retaliation for her work as a human rights defender and therefore illegitimate.

Ms. Yorm Bopha has been a high-profile advocate for land rights for victims of forcible evictions from the Boeung Kak Lake community after the Government leased their land to Shukaku Inc, for development. Her human rights work included advocating for the release of a number of Boeung Kak Lake community members arbitrarily arrested in May 2012. As a result of her advocacy, she has been verbally threatened, harassed and intimidated. On 13 May 2012 was reportedly told by police that she was "on the blacklist now" and that she would be "in trouble soon."

Re: Judicial harassment & arbitrary detention of human rights defender Ms. YORM Bopha

page 1 of 5

On 4 September 2012, Yorm Bopha and her husband, Lous Sakhorn, were arrested. She, her husband and her two brothers, Yorm Kanlong and Yorm Seth, were accused of having assaulted two men, Vat Thaiseng and Nget Chet, on 7 August 2012 and were charged with intentional violence “with aggravating circumstances” under Article 218 of the Cambodian Penal Code. Lous Sakhorn was released on bail, but Yorm Bopha was held in pre-trial detention because of the “seriousness” of the charges and a lack of evidence of health problems.

Proceedings lasting approximately half a day were held on 26 December 2012 in the Phnom Penh Municipal Court. The prosecutor claimed that Yorm Bopha and her husband had conspired to commit an assault on two men sitting in a drink shop and had later arrived at the scene to witness the assaults. However, no charges of conspiracy were laid and there was no evidence presented of violent acts or intentions by Yorm Bopha or her husband. Testimony that Yorm Bopha and her husband had been nearby chatting with a neighbor and had come over to the drink shop after hearing yelling was corroborated by the neighbour and was not contradicted.

On 27 December 2012, all four defendants were convicted and sentenced to three years in prison and ordered to pay 30 million riel (approximately US\$7,500) to each victim (US\$15,000 total). Mr. Lous Sakhorn’s sentence was suspended, and he was released shortly after the trial. Yorm Bopha’s two brothers were tried and sentenced in absentia; after conviction, warrants were issued for their arrest. Mr. Lous Sakhorn maintains that family members played no part in the attack.

Yorm Bopha has filed an appeal, the date of which has not yet been scheduled. On 27 March 2013, Yorm Bopha requested bail, citing a heart condition that requires regular treatment and her need to care for her family, including her nine-year-old son and her husband who is in ill-health. Her husband offered four million riel [US \$1,000] for bail. The Supreme Court refused bail on the grounds that Yorm Bopha’s heart condition had not been verified officially by health authorities, that she had already been convicted and was a flight risk, and this was a “special case.” The Court supplied neither reasons for determining that she is a flight risk nor any information as to the meaning of a “special case.”

Concern with the apparent arbitrariness of the Supreme Court’s conduct and decisions at trial and bail hearings is heightened by other factors suggesting lack of judicial independence. A week before Yorm Bopha’s bail application to the Supreme Court, Prime Minister Hun Sen stated on television that the case of “the Boeung Kak lady” had nothing to do with land issues and that Yorm Bopha had acted “violently and unjustly in the eyes of the government.” LRWC also notes reports that the chief justice of the Supreme Court, Dith Munth, is a member of the Politburo of the ruling Cambodian People Party.

The government of Cambodia is legally bound to ensure that the Cambodian legal system operates in accordance with domestic law and with international human rights law binding on Cambodia, including the International Covenant on Civil and Political Rights (ICCPR). Under the ICCPR, Cambodia has legal obligations to ensure fair and public hearings before competent, independent and impartial tribunals (Article 14). Prior to a fair trial, all persons are entitled to be presumed innocent (Article 14.2.) and to be granted pre-trial release in accordance with ICCPR Article 9. The United Nations Human Rights Committee has stated in its General Comment 8 (1982) that pre-trial detention must be limited and used only in exceptional circumstances. ICCPR fair trial guarantees require that verdicts be based only on evidence presented and tested in open court and not on accusations or interference made behind the scenes. A fair trial affords the accused person’s right to notice of all the inculpatory and exculpatory evidence; to present exculpatory evidence and to test all inculpatory evidence, whether *viva voce* or documentary (ICCPR Article 14(3) (e)).

The proceedings against Yorm Bopha did not afford these minimum fair trial standards. A conviction was entered in the face of evidence that the charges were baseless. Ms. Yorm Bopha remains in prison despite the lack of any credible evidence that she has done anything unlawful.

Yorm Bopha has the right to be presumed innocent until there has been a final decision on appeal; this includes the right to be released on bail unless there are exceptional circumstances. Pre-trial release and release pending appeal ought to be allowed in this case. The grounds for appeal are strong and there is no evidence that her release would jeopardize public safety or the integrity of the legal system. There is no evidence of a risk of flight, and the court has not examined appropriate alternatives to custody.

LRWC concludes on the basis on this information that Yorm Bopha is being targeted for prosecution on fabricated charges to prevent and punish her legitimate activities defending the rights of those forcibly evicted from the Boeung Kak Lake community.

The Declaration on Human Rights Defenders, adopted 9 December 1998 by consensus of the member States of the United Nations General Assembly, states that:

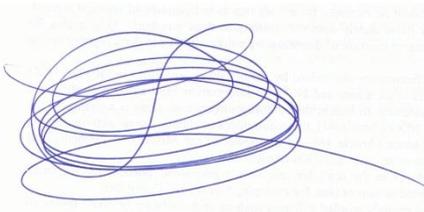
- “everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels” (Article 12.1);
- “everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms” (Article 1);
- “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 present Declaration.” (Article 12.2)

Human rights defenders such as Yorm Bopha are entitled to conduct human rights advocacy and to be protected from all forms of retaliation and judicial harassment.

LRWC requests all necessary steps be immediately taken to ensure the physical and psychological safety and wellbeing of Yorm Bopha and to ensure that she is promptly afforded a fair and impartial appeal hearing by a competent and impartial court in accordance with internationally recognized fair trial and appeal standards. In particular, we urge your government to ensure that all judges, prosecutors and other officials in this case are mandated and empowered to act independently and in accordance with law, including the legal obligations recognized and created by the Universal Declaration of Human Rights, ICCPR and the Basic Principles on the Independence of the Judiciary. The Principles articulate State duties to ensure judicial independence and impartiality and to prevent interference.

LRWC also requests that your government ensure: 1) the safety of all human rights defenders advocating for community and individual rights to the occupation and use of lands and resources; 2) an immediate halt to all forms of intimidation and harassment of human rights defenders including land rights advocates, journalists and others calling for adherence to Cambodia’s international law and Constitutional obligations.

Yours sincerely,



Gail Davidson
Executive Director - Lawyers’ Rights Watch Canada

Copied to:

H.E. Om Yentieng

President, Cambodian Human Rights Committee

Office of the Prime Minister

Phnom Penh, Kingdom of Cambodia

Fax: +855 12 81 37 81 / +855 23 21 11 62 or +855 23 88 10 45 (c/o Council of Ministers)

Email: info@pressocm.gov.kh, pressocm@gmail.com

Ambassador Mr. Sun Suon

Permanent Mission of Cambodia to the United Nations in Geneva

Chemin de Taverney 3

Case postale 213

1218 Grand-Saconnex, Switzerland

Fax: + 41 22 788 77 74.

Email: camemb.gva@mfa.gov.kh; cambodge@bluewin.ch

Mr. Surya Prasad Subedi

UN Special Rapporteur for human rights in Cambodia

C/o Office of the High Commissioner for Human Rights/Cambodia

N_ 10, Street 302, Sangkat Boeng Keng Kang I, Khan Chamcar Mon

P.O. Box 108

Phnom Penh, Cambodia,

Fax: (855) 23 212 579, 213 587, Email: cohchr@online.com.kh

Mrs. Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders

C/o Office of the High Commissioner for Human Rights

Palais Wilson United Nations Office at Geneva

CH 1211 Geneva 10 Switzerland

Fax: +41(0) 22.917.90.06, email: defenders@ohchr.org

Gabriela Carina Knaul de Albuquerque e Silva

Special Rapporteur of the Human Council on the independence of judges and lawyers

c/o Office of the United Nations High Commissioner for Human Rights

United Nations Office at Geneva

8-14 Avenue de la Paix

1211 Geneva 10 Switzerland

Fax: +41 22 917 9006; e-mail: SrindependenceJL@ohchr.org

Mr. Maina Kiai

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

c/o Office of the High Commissioner for Human Rights

Palais Wilson United Nations Office at Geneva

CH 1211 Geneva 10 Switzerland

Fax: +41(0) 22.917.90.06, email: freeassembly@ohchr.org

Mr. Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Palais des Nations
CH-1211 Geneva 10 Switzerland
Fax: +41 22 917 9006, Email: freedex@ohchr.org

Mr. El Hadji Malick Sow
Chair-Rapporteur
Working Group on Arbitrary Detention
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10, Switzerland, Fax: +41 22 9179006, e-mail: wgad@ohchr.org

Office of the UN High Commissioner for Human Rights
No. 10, Street 302, P.O. Box 108 ,
Phnom Penh, Cambodia
Fax: (855) 23 212 579; E-mail: cambodia@ohchr.org

Ambassador Ron Hoffmann
Embassy of Canada
P.O. Box 2090
Bangkok 10501, Thailand
Fax: 66 (0) 2636-0566; email: bngkk@international.gc.ca, bngkk-gr@international.gc.ca