

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr. Malick Sow (Senegal)

Ms. Shaheen Ali (Pakistan)

Mr. Vladimir Tochilovsky (Ukraine)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

In the matter of

Yorm Bopha

v.

Government of the Kingdom of Cambodia

**Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50,
2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/1**

Submitted by:

Lawyers' Rights Watch Canada

EXECUTIVE SUMMARY

This Petition requests the United Nations Working Group on Arbitrary Detention to render an Opinion that the arrest and detention of Ms. Yorm Bopha, amounts to arbitrary detention.

Ms. Yorm Bopha is a human rights defender. She is a resident of the Boeung Kak Lake community which, since 2007, has been in conflict over land with Shukaku Inc., a powerful company with strong connections to senior government officials. Shukaku Inc. is owned by Mr. Lao Meng Khin, an influential businessman and member of the Senate from the ruling party, the Cambodia Peoples' Party (CPP). In 2007, Phnom Penh municipality leased a 133-hectare area of Boeung Kak Lake to Shukaku Inc. for development purposes. The development plan affected 4,252 families residing in the Boeung Kak Lake community. In July 2010, the government issued sub-decree No. 71 dated 20 July 2010 to allow the company to develop 126.85 hectares of land in the Boeung Kak Lake community. This development on the Boeung Kak Lake community land provided for no proper compensation to the affected families; most families were to receive US \$8,000 each to vacate the land. Members of the Boeung Kak Lake community found this solution unfair and started demanding acceptable solutions through protests, advocacy and negotiations with company representatives and through letters to municipal officials and other government institutions to seek their intervention. The Boeung Kak Lake community has no intention to oppose the development plan; rather, they demand a proper solution for the community. The main purpose of ongoing protests by the community is to get justice and protect their houses. Due to strong community advocacy, the government issued a new sub-decree No. 183 dated 11 August 2011 to reserve 12.44 hectares of the leased land for the Boeung Kak Lake community. Since receiving this decree, the Phnom Penh municipality has failed or refused to set a land boundary for the Boeung Kak Lake community, yet they cooperated with the company to create obstacles and put pressure on 794 families to accept inappropriate solutions. For example, they did not recognize approximately 100 families within the scope of the 12.44 hectares set aside for the community. They also used the court system to bring groundless charges against them. The Phnom Penh municipality has been unable or unwilling to seek a satisfactory solution to this land issue. Moreover, the local authority always supports the company and allows it to do whatever they want on that land, such as putting sand into the community, destroying houses or making threats. The company and Phnom Penh municipality have used prosecutions as a tool to put pressure on the community to suppress its demands. So far there have been 11 criminal cases against Boeung Kak Lake community members. During peaceful protests, Boeung Kak Lake community representatives including Ms. Tep Vanny, Ms. Heng Mom, Ms. Kong Chantha, Ms. Bo Chorvy and other women were intimidated, mistreated and arrested and detained several times. On 22 May 2012, 13 Boeung Kak Lake women were arrested and detained in prison. Yorm Bopha campaigned for the release of the 13 women. As a result of her advocacy, she was arrested, prosecuted on fabricated charges and convicted and sentenced in unfair court proceedings.

This Petition respectfully requests that the Working Group render an Opinion requesting the Government of the Kingdom of Cambodia to terminate Yorm Bopha's arbitrary detention and bring the situation into conformity with the principles set forth in the International Covenant on Civil and Political Rights.

BASIS FOR REQUEST

Yorm Bopha is a citizen of the Kingdom of Cambodia, which acceded to the International Covenant on Civil and Political Rights (ICCPR) on 26 May 1992. By virtue of the Constitution of the Kingdom of Cambodia, Article 31, Cambodia is also bound by the principles of the Universal Declaration of Human Rights (UDHR). Cambodia is also bound by the principles of the UDHR that have acquired the status of customary international law.

Yorm Bopha has been arbitrarily arrested and detained. She and her husband, Lous Sakhorn, were arrested on 4 September 2012 by policemen of Sangkat Sras Chork, Phnom Penh, when they went out of their home to get their new identity cards at Sangkat Sras Chork Office. A group of policemen arrested them without showing an arrest warrant even though Yorm Bopha and Lous Sakhorn insisted on seeing a warrant. The policemen said that they had a warrant for their arrest but did not show the warrant. Yorm Bopha and Lous Sakhorn knew nothing about the reason for arrest or the accusations against them. Immediately after the arrest, the couple was sent to Phnom Penh Municipality Court where they were interrogated by a prosecutor. At the time they were questioned by the prosecutor, they did not have lawyer with them, because their arrest had happened very quickly, and they had no time to get a lawyer. The prosecutor charged them with intentional acts of violence pursuant to Article 218 of Cambodia's Criminal Code. They were then questioned by investigating judges in the presence of a lawyer. The judge ordered Yorm Bopha's detention and released her husband under judicial supervision. Since then, Yorm Bopha has been denied release both prior to the 27 December 2012 trial proceedings and prior to the 14 June 2013 appeal proceedings. The trial and appeal proceedings were unfair and failed to meet the standards of Cambodian law or international law binding on Cambodia.

For the reasons stated below, the arrest and detention of Yorm Bopha violate the fundamental guarantees enshrined in international law and constitute Category II and Category III arbitrary detention as defined by the Working Group on Arbitrary Detention and is therefore entitled to immediate and unconditional release.

This Petition is a formal request for an Opinion of the Working Group on Arbitrary Detention pursuant to Resolutions 1991/42 and 1997/50 of the Commission on Human Rights and Resolution 15/18 of the Committee on Human Rights.

**MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING
ARBITRARY ARREST OR DETENTION¹**

I. IDENTITY

1. Family name: Yorm
2. First name: Bopha
3. Sex: Female
4. Birth date or age (at the time of detention): age 29
5. Nationality/Nationalities: Cambodian
6. (a) Identity document (if any): this information is not available

(b) Issued by: information not available

(c) On (date): unknown (d) No.: unknown
7. Profession and/or activity (if believed to be relevant to the arrest/detention):

Ms. Yorm Bopha is a 29-year old resident of the Boeung Kak Lake community, Phnom Penh, Cambodia, where she worked in a handicraft workshop to support her family. She is married to Mr. Lous Sakhorn and has an 8-year-old son, Lous Lyhour. For several years she has been involved in land rights human rights advocacy on behalf of residents of the Boeung Kak Lake community subjected to forcible evictions by a government-sponsored development corporation.²



¹ The Working Group in its first report to the Commission on Human Rights, when establishing its methods of work, stated that “failure to comply with all formalities [regarding the presentation of information about a petitioner and the use of the model questionnaire] shall not directly or indirectly result in the inadmissibility of the communication.” Working Group on Arbitrary Detention, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Working Group on Arbitrary Detention*, Commission on Human Rights, 48th Sess., U.N. Doc. No. E/CN.4/1992/20 (21 January 1992), par. 8, <http://www2.ohchr.org/english/issues/detention/docs/E-CN4-1992-20.pdf>. In Petition No. 29/2006, a petition was accepted (and detention was found to be arbitrary) based almost entirely on newspaper articles. The Working Group determined that the information was reliable because it came from 'independent and reliable sources' including NGOs. UN Working Group on Arbitrary Detention, *No. 29/2006, Communication addressed to the Government concerning the case of Mr. Ibn al-Shaykh al-Libi and 25 other persons* (8 December 2005), [http://unwgadatabase.org/un/Document.aspx?id=2309&terms=\(+29%2f2006+\)](http://unwgadatabase.org/un/Document.aspx?id=2309&terms=(+29%2f2006+)). In addition, the facts herein have been confirmed by lawyers representing Yorm Bopha.

² “Meet Yorm Bopha,” *Free Yorm Bopha*, available at: <http://freethe15.wordpress.com/meet-bopha/>

II. ARREST

1. Date of arrest: 4 September 2012

2. Place of arrest (as detailed as possible):

Yorm Bopha was arrested in Phnom Penh, Cambodia, along with her husband, Lous Sakhorn. Police in plain clothes followed Yorm Bopha and her husband after they departed from their home and arrested them while they were travelling to obtain identity cards.

3. Forces who carried out the arrest or are believed to have carried it out:

Police of Sangkat Sras Chork, Phnom Penh, who have close connections with former Phnom Penh governor, Kep Chuk Tek Ma.

4. Did they show a warrant or other decision by a public authority?

No. At the time of arrest, no warrant or other decision by a public authority was shown to justify the arrest.

5. Authority who issued the warrant or decision:

Phnom Penh Municipal Court: The Prosecutor of Phnom Penh Municipality Court issued a warrant accusing Yorm Bopha and her husband of intentional acts of violence according to article 218 of Criminal Code of the Kingdom of Cambodia on 16 August 2012. Yorm Bopha was not provided with a copy of the warrant or otherwise notified of the charges prior to her arrest on 4 September 2012. Prior to the arrest, the police and prosecutor did not interview them as would be normal in an investigation. After the arrest, the investigating judge issued an order to detain Yorm Bopha in Correctional Center 2 (Prey Sar Prison).

6. Relevant legislation applied (if known):

Article 218, Criminal Code of the Kingdom of Cambodia, 2009 (Criminal Code), “intentional violence with aggravating circumstances.”

III. DETENTION

1. Date of detention: 4 September 2012

2. Duration of detention (if not known, probable duration):

Yorm Bopha has been detained since 4 September 2012. On 27 December 2012, Yorm Bopha was convicted by the Phnom Penh Municipal Court of the charge of ‘intentional violence with aggravated circumstances’ and sentenced to three years in prison. On 14 June 2013, the Appeals Court upheld the conviction for intentional violence with aggravated circumstances, added a conviction for conspiracy, and suspended the last year of her three-year sentence. As of 14 June 2013, the estimated date of release is in September 2014. An appeal to the Supreme Court has been filed and no hearing date set. The Supreme Court could overturn the conviction or modify the sentence.

3. Forces holding the detainee under custody:

General Department of Prisons (GDP)
Ministry of Interior
P.O. Box 1126, Phnom Penh, Cambodia 12202, Kingdom of Cambodia
tel: +855 12 878 626, fax: +855 23 726 207
(H.E. Kuy BunSorn, Director General)

4. Places of detention (indicate any transfer and present place of detention):

Yorm Bopha was held at Prey Sar Prison in Phnom Penh until 10 May 2013 when she was transferred to the Police Judiciaire (PJ) prison in Phnom Penh on 10 May 2013, where she is still held.

5. Authorities that ordered the detention:

On 4 September 2012, the investigating judge issued a warrant to detain her in Prey Sar Prison. On 7 November 2012, the Court of Appeal upheld the detention warrant of the investigating judge. This decision was appealed to Supreme Court. On 26 & 27 December 2012, the Phnom Penh Municipality Court convicted her of intentional violence with aggravated circumstances and sentenced her to three years in prison and to pay 60 million riel to two civil plaintiffs. On 26 March 2013, the Supreme Court upheld the decision of Appeal Court to deny release pending the appeal from conviction and sentence. On 5 June 2013, the Appeal Court commenced an appeal by way of trial de novo and on 14 June 2013 retained the verdict of the Phnom Penh Municipality Court but suspended the last year of her three-year sentence.

6. Reasons for the detention imputed by the authorities:

Conviction on 27 December 2012 for committing “an act of intentional violence with aggravating circumstances” against two named victims by asking or directing others to carry out an assault. On 14 June 2013 the Appeal Court upheld the conviction, but added a conspiracy charge, clarifying that Yorm Bopha did not commit the actual violence but rather conspired for others to do so.

7. Relevant legislation applied (if known):

Article 218, Criminal Code.

IV. CIRCUMSTANCES OF THE ARREST AND/OR DETENTION AND REASONS WHY LRWC CONSIDERS THE ARREST AND/OR DETENTION ARBITRARY.

Ms. Yorm Bopha³ has been a high-profile advocate for land rights for victims of forced evictions from the Boeung Kak Lake community, Phnom Penh, Cambodia, since the government leased the community lands to Shukaku Inc, for development in 2007. During the 1980s, people began to settle around the lake which is located in north-central Phnom Penh. By 2007, it was estimated to be populated by more than 4,000 families, many of who

³ While the facts in this petition mention four accused persons, this petition relates only to the detention of Ms. Yorm Bopha.

used the lake to grow aquatic vegetables and to harvest snails. The lake also acted as a rainwater catchment for the city. In 2007, Shukaku Inc., a company owned by Mr. Lao Meng Khin, a Senator from the ruling Cambodia People's Party (CPP), received a 99-year lease from the government of Cambodia to develop a 133-hectare area covering Boeung Kak Lake and nine villages around the lake. On 26 August 2008, Shukaku Inc. began to fill in the lake to make way for private luxury homes, stores and office buildings. The resulting abrogation of land rights of existing residents and the destruction of the lake is alleged to contravene the Land Law.⁴ There is also concern that filling in the lake may cause damage to Phnom Penh's drainage system.⁵ Disputes arose with villagers over forced evictions and the inadequacy of compensation.⁶ In 2008, Amnesty International estimated that more than 20,000 persons had been displaced by the development.⁷ In August 2011, the World Bank froze funding to Cambodia until the Cambodian government stopped the evictions and agreed to fair compensation for remaining residents.⁸ Many residents left the area after reportedly being coerced into accepting compensation criticized as inadequate.⁹ Some forcible evictions were conducted with video-recorded violence including police beatings of activists with bricks and batons.¹⁰

Yorm Bopha became an "accidental activist" in 2008 after forced evictions at Boeung Kak Lake.¹¹ Since then she has been active in protests supporting land rights of residents affected

⁴ Land Law, 2001 (English translation) available at: <http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Land/Law%20on%20Land.%202001%28EN%29.pdf>. The official Khmer version of the Land Law is available at: <http://www.gocambodia.com/laws/data%20pdf/Law%20on%20Land/Law%20on%20Land.%202001%28KH%29.pdf>; "Bridges Across Borders Southeast Asia and Housing Rights Task Force Condemn Illegal Filling of Boeung Kak Lake," Bridges Across Borders, 26 August 2008, available at: http://babcborders.org/newsarchives/Boeung_Kak%20Lake_Filling%20.html.

⁵ CAMBODIA: Questions over legality of evictions in name of development, IRIN, 18 August 2008, available at: <http://www.irinnews.org/report/79863/cambodia-questions-over-legality-of-evictions-in-name-of-development>; City Defends Boeung Kak Project, Attacks Critics, Open Development, 20 June 2012, available at: <http://www.opendevdevelopmentcambodia.net/news-source/the-cambodia-daily/city-defends-boeung-kak-project-attacks-critics/>.

⁶ CAMBODIA: Questions over legality of evictions in name of development, IRIN, 18 August 2008, available at: <http://www.irinnews.org/report/79863/cambodia-questions-over-legality-of-evictions-in-name-of-development>; Land and Housing Working Group, *Cambodia Land and Housing Rights in Cambodia*. Parallel Report 2009 to the UN Committee on Economic, Social and Cultural Rights, available at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/CHRE_Cambodia_CESCR42.pdf

⁷ Land and Housing Working Group, *Cambodia Land and Housing Rights in Cambodia*. Parallel Report 2009 to the UN Committee on Economic, Social and Cultural Rights, page 6, available at http://www2.ohchr.org/english/bodies/cescr/docs/ngos/CHRE_Cambodia_CESCR42.pdf. citing Amnesty International, Rights Razed: Forced Evictions in Cambodia, AI Index: ASA 23/002/2008, February 2008, page 7, available at <http://www.amnesty.org/en/library/info/ASA23/002/2008>.

⁸ Mark Tran, "World Bank suspends new lending to Cambodia over eviction of landowners," *Guardian*. 10 August 2011, available at: <http://www.guardian.co.uk/global-development/2011/aug/10/world-bank-suspends-cambodia-lending>.

⁹ Cambodia urged to halt Boeung Kak Lake forced evictions in Phnom Penh, Amnesty international, 19 September 2011, available at: <https://www.amnesty.org/en/news-and-updates/cambodia-urged-halt-boeung-kak-lake-forced-evictions-phnom-penh-2011-09-19>

¹⁰ Video: Boeung Kak Lake Activist Savagely Beaten by Mob of Police Officers during Forced Eviction, LICADHO, 17 September 2011, available at <http://www.licadho-cambodia.org/video.php?perm=25>

¹¹ Heng Reaksmeay, "Family of Jailed Activist Pleads for Her Release," VOA Khmer, 4 January 2013, available at <http://www.voacambodia.com/content/family-of-jailed-activist-pleads-for-her-release/1577818.html>

by the development.¹² She is a member of the Boeung Kak Lake community and has participated in numerous peaceful demonstrations. She has been threatened, harassed, intimidated or assaulted by authorities as follows:

- While peacefully protesting, she has reportedly been threatened numerous times, beaten a number of times and twice shocked by electric stun batons.¹³
- After one peaceful protest, NGO monitors provided her with safe escort home after they learned that police had reportedly been ordered to “arrest the one with the blue krama on her head” (referring to Yorm Bopha).¹⁴
- In May 2012, when 13 members of the Boeung Kak Lake community were arrested and detained during a peaceful protest, Yorm Bopha campaigned for their release during demonstrations and became a media spokesperson for the community, often publicly criticizing government officials.¹⁵
- On 13 May 2012, she was reportedly told by police that she was “on the blacklist now” and that she would be “in trouble soon.”¹⁶

On 4 September 2012, Yorm Bopha, along with her husband, Mr. Lous Sakhorn received “a telephone call from a local police official who told them that they needed to renew their identification cards for voting.”¹⁷ On orders from Phnom Penh Municipal Court,¹⁸ Phnom Penh Municipal Police in plain clothes followed Yorm Bopha and Lous Sakhorn after they departed from their home, and arrested them while they were travelling to obtain their identity cards.¹⁹ Arresting police did not show a warrant or inform Yorm Bopha or Lous Sakhorn of the reason for their arrest and took them directly to Prey Sar Prison in Phnom Penh.²⁰ They were not given an opportunity to have a lawyer when interrogated by the prosecutor. They did not learn the reason for their arrest until they met with the investigating judge approximately two or three hours after the arrest.²¹ The Investigating Judge, Te Sam

¹² CAMBODIA: Questions over legality of evictions in name of development, IRIN, 18 August 2008, available at: <http://www.irinnews.org/report/79863/cambodia-questions-over-legality-of-evictions-in-name-of-development>

¹³ No precise dates of these incidents are available. LICADHO reports that she has “lost count of the number of times she has been threatened” and that she “cannot remember how many times she has been beaten during protests but she clearly remembers being shocked twice by electric stun batons.” LICADHO. “Human Rights Defender Yorm Bopha: Another Mother from Boeung Kak Imprisoned.” Phnom Penh: LICADHO, 2012, available at

<http://www.licadho-cambodia.org/reports/files/173Free15+AI-BophaProfile-English.pdf>

¹⁴ No specific date of this incident is available. “Meet Yorm Bopha,” *Free Yorm Bopha*, available at:

<http://freethe15.wordpress.com/meet-bopha/>

¹⁵ Morm Moniroth and Sok Serey, “Cambodian Courts Under Fire,” *Radio Free Asia*, 27 December 2012, available at <http://www.rfa.org/english/news/cambodia/verdicts-12272012192315.html>. No precise date of this incident is available.

¹⁶ Free Yorm Bopha. “Meet Yorm Bopha,” n.d., available at <http://freethe15.wordpress.com/meet-bopha/>

¹⁷ CCHR, “Boeng Kak Activist Arrested and Charged by Phnom Penh Municipal Court” (Alert) (5 September 2012), available at:

http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=26&id=5

¹⁸ Joshua Lipos, “Clamor for Activists’ Freedom,” *Radio Free Asia*, 8 October 2012, available at

<http://www.rfa.org/english/news/cambodia/freedom-10082012171317.html>

¹⁹ Housing Rights Task Force, “Legal Analysis Of The Case Of Yorm Bopha,” 20 March 2013, available at http://hrfcambodia.org/doc/legal/Yorm%20Bopha%20HRTF%20legal%20analysis%20%20March%2027%2013_2.pdf

²⁰ CCHR, “Boeng Kak Activist Arrested and Charged by Phnom Penh Municipal Court” (Alert) (5 September 2012), citing an interview with Yorm Bopha in prison. Report available at:

http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=26&id=5

²¹ Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, available at

Ang, reportedly “would not reveal reasons for the arrest or elaborate on the nature of the charges. He simply reiterated that they were accused of intentional violence ‘with aggravating circumstances’ and had as a result been detained.”²²

On 4 September 2012, Yorm Bopha, her husband Lous Sakhorn, and her two brothers, Yorm Kanloang and Yorm Seth, were charged with an intentional act of violence “with aggravating circumstances” under Articles 217 and 218 of the Cambodian Criminal Code²³ against two named victims, Mr. Vat Thaieng and Mr. Nget Chet. Lous Sakhorn was released on bail, but Yorm Bopha was held in pre-trial detention. The Court cited the “seriousness” of the charges and a lack of evidence of health problems as the reason for refusing to release her pending the trial.²⁴

A trial was held in the Phnom Penh Municipal Court on 26-27 December 2012. The prosecutor alleged that Vat Thaieng and Nget Chet had been assaulted by Yorm Kanloang and Yorm Seth (brothers of Yorm Bopha) in a bar located in the Boeung Kak Lake district. The prosecutor advanced the theory that Yorm Bopha had instructed her brothers to attack the named victims because they had stolen her car mirror and that Yorm Bopha and Lous Sakhorn, had arrived at the bar later in order to witness the assaults. No charges of conspiring or aiding and/or abetting the alleged assault were before the court at the 26-27 December proceedings. There was no evidence before the court that Yorm Bopha or Lous Sakhorn authorized, directed or assisted in carrying out the assault. Yorm Bopha and her husband testified that they had been nearby chatting with a neighbour and had come to the drink shop after hearing yelling. This evidence was corroborated by the neighbour and was not contradicted.²⁵ Yorm Bopha and Lous Sakhorn deny any involvement in any assault on the two men. The evidence of the named victims was inconsistent, and there was no identification of Yorm Kanloang or Yorm Seth. The named victims testified that they had been at a drink shop located at 5, Street 86, Phum 2 Village, Srah Chork Commune, Dun Penh District, Phnom Penh; they claimed they were assaulted by two men, one with an axe and the other with a screwdriver. The named victims admitted they had been drinking rice

http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

²² Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, available at

http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

²³ Kingdom of Cambodia, Criminal Code, in force 10 December 2010, Khmer-English Translation, Bunleng Cheung, 2011. Not available online. Khmer version available at: <http://www.ewmi-praj.org/Files/Criminal%20Code%20of%20the%20Kingdom%20of%20Cambodia%20-%2030%20Nov%202009.pdf>

²⁴ Community Legal Education Centre (CLEC). Denial of Release Pending Appeal Highlights Political Interference in the Court System, Statement 27 March 2013, citing available at <http://www.clec.org.kh/clecnews.php?cnsID=60>; Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

²⁵ Shane Worrell and Khouth Sophak Chakrya, “Activist Yorm Bopha denied bail,” *Phnom Penh Post*, 28 March 2013, available at <http://www.phnompenhpost.com/2013032864750/National/activist-yorm-bopha-denied-bail.html>; Housing Rights Task Force, “Legal Analysis Of The Case Of Yorm Bopha,” 20 March 2013, available at http://hrfcambodia.org/doc/legal/Yorm%20Bopha%20HRTF%20legal%20analysis%20%20March%2027%2013_2.pdf

wine for up to five hours before the incident, that it was dark at the time, and that their memories were “hazy.”²⁶ According to human rights monitors present at the trial:

The three Prosecution witnesses did not claim to have heard the Defendant give direct instructions to her brothers to attack the Alleged Victims. In any event, inconsistencies in their testimony cast doubt over its reliability. The first witness, Vath Sarath, said that the Defendant accused the Alleged Victims of stealing her car mirror and that she had helped to free her brother, Yorm Kanloang, when Vath Sarath caught him. However, the testimonies of Vath Thaiseng and the second witness Al Saing Heun, do not corroborate Vath Sarath’s assertion that he had caught Yorm Kanloang. Vath Thaiseng claimed that Al Saing Heun captured Yorm Kanloang, and Al Saing Heun, although he said that he captured one of the brothers, testified that it was Yorm Seth. It should also be noted that Vath Sarath is the father of Vath Thaiseng and the uncle of Nget Chet. The third witness for the Prosecution, An Sivmey, said that the motor taxi driver Al Saing Heun had captured one of the perpetrators before Vath Sarath even arrived on the scene. This does not corroborate with Al Saing Heun’s testimony, in which he stated that he had followed Vath Sarath to the scene.²⁷ (emphasis added)

Other than the victims’ testimony naming Yorm Knalang and Yorm Seth, there was no evidence actually identifying either of these accused brothers by photograph or otherwise as being the perpetrators of the assault or at the scene. As these two accused were never arrested and were not present in court, their testimony was unavailable.

Both of the named victims, as civil parties to the dispute, stand to gain an award for significant compensation as a result of the conviction of the defendants. Article 312, states that there is an “incompatibility between the status as a civil party and the status as a witness” in a criminal trial and that civil parties may not act as witnesses in a criminal trial. Article 322 of the Code of Criminal Procedure provides that civil parties may be present in court, but that “witnesses shall stay in the waiting room prepared for them and from which they cannot see or hear anything in the court room. While in the waiting room during the hearing, the witnesses are not allowed to communicate with each other.”²⁸ The named victims did act as witnesses and were present in court during the entire trial. They were not required to give their evidence under oath.²⁹ Yet their inconsistent testimony was the evidence used to convict the defendants.³⁰ Yorm Bopha stated in evidence that she did not

²⁶ Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, p. 6, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

²⁷ Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, p. 6, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

²⁸ Cambodia Code of Criminal Procedure, 2007, Khmer-English translation, http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf

²⁹ Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, p. 7, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

³⁰ Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, p. 6, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

know the victims and that while her car mirror had been stolen, so had many car mirrors in the community and she did not know who had stolen it.³¹

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). All four were convicted of the same charge of committing an intentional act of violence with aggravating circumstances under the Cambodian Criminal Code. 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. Yorm Bopha and Lous Sakhon have stated that neither of the brothers was at the scene and to their knowledge, neither of the brothers had been in the Boeung Kak neighbourhood since 2011.³²

After sentencing, Yorm Bopha was taken to the Prey Sar Prison in Phnom Penh. On 10 May 2013, she was transferred to the Police Judiciaire (PJ) prison in Phnom Penh.³³

Yorm Bopha's appeal of her conviction was held on 5 June 2013 and 14 June 2013 by the Appeals Court in Phnom Penh. The Appeals Court held a trial *de novo*. The prosecution's evidence was provided by the two named victims, who are also civil parties. These witnesses remained in the court room the whole time, did not give testimony under oath and stood to gain considerable compensation from a confirmation of the guilty verdict. The accounts of these witnesses are described by independent human rights monitors as "convoluted and uncorroborated," the "prosecution witnesses, one of whom was the father of one of the named victims, continually changed their stories and contradicted one another."³⁴ The Appeals Court, on 14 June 2013, apparently accepting that Yorm Bopha did not carry out the assault, added a conviction for "masterminding the assault" or conspiracy despite the absence of evidence of such involvement.³⁵ The presiding Judge, Taing Sunlay, suspended the last year of the three year sentence, leaving Yorm Bopha with two years imprisonment, and reduced the amount of damages Yorm Bopha and the co-accused must pay to the plaintiffs from 60 million riel to 20 million riel (US \$5,016.27 or € 3,770.78 as at 15 June 2013).³⁶

³¹ A detailed summary of the evidence is found in Cambodian Center for Human Rights, Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560), 2 June 2013, available at http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013-06-02-The-case-of-imprisoned-activist-Yorm-Bopha_EN.pdf

³² Housing Rights Task Force, "Legal Analysis Of The Case Of Yorm Bopha," 20 March 2013, available at http://hrtcambodia.org/doc/legal/Yorm%20Bopha%20HRTF%20legal%20analysis%20%20March%2027%2013_2.pdf; Khouth Sophak Chakrya and Shane Worrell, "Motodops' shaky testimony," *Phnom Penh Post*, 6 June 2013, <http://www.phnompenhpost.com/2013060666109/National/motodops-shaky-testimony.html>

³³ Chakrya Khouth Sophak, "Yorm Bopha moved from Prey Sar prison," *Phnom Penh Post*, 13 May 2013, available at: <http://www.phnompenhpost.com/2013051365569/National/yorm-bopha-moved-from-prey-sar-prison.html>.

³⁴ Observatory for the Protection of Human Rights Defenders, Urgent Appeal – The Observatory, KHM 006 / 1212 / OBS 119.2, Conviction / Arbitrary detention Cambodia, 18 June 2013, available at <http://www.fidh.org/cambodia-upholding-of-the-conviction-of-housing-rights-activist-yorm-bopha-13492>

³⁵ Khouth Sophak Chakrya and Shane Worrell, "Yorm Bopha verdict upheld," 15 June 2013, available at <http://www.phnompenhpost.com/national/yorm-bopha-verdict-upheld>; Khy Sovuthy, "Jail Sentence for Anti-Eviction Activist Upheld," *Cambodia Daily*, 15 June 2013, available at: <http://www.cambodiadaily.com/news/jail-sentence-for-anti-eviction-activist-upheld-31073/>.

³⁶ Khy Sovuthy, "Jail Sentence for Anti-Eviction Activist Upheld," *Cambodia Daily*, 15 June 2013, available at: <http://www.cambodiadaily.com/news/jail-sentence-for-anti-eviction-activist-upheld-31073/>.

REASONS FOR CONSIDERING THE DETENTION ARBITRARY:

1. Violation of fair trial rights through failure to provide a fair trial in accordance with ICCPR requirements that:
 - a. verdicts be based only on relevant evidence presented and tested in open court and not on the basis of an unproven theory or directions given behind the scenes; and,
 - b. the accused receive timely notice of the charges and of all the relevant inculpatory and exculpatory evidence, and be afforded the opportunity to present exculpatory evidence and to test all inculpatory evidence, whether viva voce or documentary (ICCPR Article 14(3) (e)).
 - c. the determination of charges must be made by an independent and impartial tribunal (ICCPR, Article 14(1)).

The conviction of Yorm Bopha for “an act of intentional violence with aggravated circumstances” was contrary to the evidence. A guilty verdict was entered after the Municipal Court heard undisputed evidence that neither Yorm Bopha nor her husband took part in the 7 August 2012 assault. No evidence was presented to support the prosecutor’s theory that the accused had conspired to “mastermind” the assault. The Appeals Court added a conspiracy charge that accorded with the prosecutor’s theory, even though it did not accord with the evidence.

At trial, Yorm Bopha received no notice of a charge of conspiracy, nor was she charged with conspiring to mastermind the assault prior. It is not known what, if any, notice she received of a conspiracy charge or any evidence supporting it, prior to the appeal. The evidence presented to link Yorm Bopha with masterminding the assault (evidence that she accused one of the victims of stealing her car mirror and evidence that she helped to free one of the assailants) was insufficient to support a finding of guilt and, in addition was contested and not corroborated. Ms. Yorm Bopha remains in prison despite the lack of evidence that she has done anything unlawful.

The Human Rights Committee (HR Committee), in *General Comment No. 13(8)*, states that Article 14(3) includes

8. ...the right of everyone to be informed in a language which he understands of the charge against him... Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention...the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority... this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such...

2. Improper use of pre-trial detention in violation of rights to liberty, the presumption of innocence and release pending trial and pending appeal, and failure to adhere to the requirements of the ICCPR³⁷ and the Constitution of the Kingdom of Cambodia

³⁷ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 16 May 2013]

(Constitution).³⁸ The Constitution ensures recognition of rights protected by the ICCPR and ensures that prosecutions and detentions strictly comply with the law.

- a. Article 31 of the Constitution, states : “The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human Rights and all the treaties and conventions related to human rights, women’s rights and children’s rights.”
- b. Article 38 states: “...The prosecution, arrest, police custody or detention of any person shall not be done, except in accordance with the law... The doubt shall benefit the accused. Any accused is presumed innocent up to the final verdict of the court.”
- c. Article 38 provides that “Any individual shall have the right to his/her own defense through the judicial system..”
- d. Article 32 provides that “Everyone has the right to life, liberty and security of person”

The ICCPR, Article 14.3 guarantees, “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Cambodia’s Constitution also guarantees an independent judiciary:

- a. Article 51 states: “The Kingdom of Cambodia adopts a policy of liberal multi-party democracy... The powers shall be separated between the legislative power, the executive power and the judicial power...”
- b. Article 150, also provides that the Constitution is the supreme law of the Kingdom of Cambodia... All the laws and decisions of all the state institutions must be absolutely in conformity with the Constitution.”
- c. Article 128 provides that “The Judicial power is an independent power. The Judicial power is the guarantor of impartiality and the protector of the citizens’ rights and liberties.”

ICCPR guarantees the right of all persons to be presumed innocent (Article 14.2.) and to be at liberty “except on such grounds and in accordance with such procedure as are established by law.” (ICCPR Article 9). As stated by the United Nations Human Rights Committee (HR Committee) in General Comment 8 (19⁸²) pre-trial detention must be limited and used only in exceptional circumstances.

The HR Committee has explained, with respect to arbitrary detention that

The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.⁵

³⁸ *Constitution of the Kingdom of Cambodia*, as amended 1994, 1999, 2001, 2005, 2006. Unofficial Translation Version Supervised by the Constitutional Council March 2010 , available at Constitutional Council of Cambodia: <http://www.ccc.gov.kh/english/CONSTITUTIONEng.pdf>

Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.³⁹

In General Comment No. 8, the HR Committee states that, "... pre-trial detention should be an exception and as short as possible..." The HR Committee has ruled that detention should not continue beyond the period for which the State party can provide appropriate justification.⁴⁰ It is the duty of judicial authorities to ensure that that the pre-trial detention of an accused person does not exceed a reasonable time. To this end,

they must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set these out in their decisions on the applications for release...

International law regarding release pending appeal is the same providing there are reasonable grounds for the appeal, as there were in this case.

Cambodia's Code of Criminal Procedure (CCP)⁴¹ accords with ICCPR requirements.

- a. Article 48 stipulates: "The court can temporarily detain the accused by making a reasoned order. In the order, the court shall apply the conditions provided in Article 205 (Reasons for Provisional Detention) of this Code."
- b. Article 203 further states: "In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section."
- c. Article 205 identifies the following possible justifications for detention: "Provisional detention may be ordered when it is necessary to:
 1. stop the offense or prevent the offense from happening again;
 2. prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices;
 3. preserve evidence or exhibits;
 4. guarantee the presence of the charged person during the proceedings against him;
 5. protect the security of the charged person;
 6. preserve public order from any trouble caused by the offense." (emphasis added)

No evidence of any of these risks was presented. The Courts failed to consider the legal duty under both the ICCPR and the national legislation to ensure pre-trial release except when there is evidence of one or more of the above noted risks and there are no alternatives to detention that could adequately guard against such established risks. No evidence of the risks identified in the CCP was presented to the court at the application for Yorm Bopha's release before the Phnom Penh Municipal Court on 4 September 2012, the Appeal Court on 7 November 2012 or the Supreme Court on 27 March 2013. The denial of release and the detention of Yorm Bopha pending the December 2012 proceeding and pending the appeal both failed to meet the legal requirements of the CCP, the Constitution and the ICCPR of "exceptional" circumstances or necessity.

³⁹ *Albert Womah Mukong v. Cameroon* (458/1991), at para. 9.8, reaffirmed, *inter alia*, in *Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi v. Algeria* (1085/2002), at para. 8.3, and *Rafael Marques de Morais v. Angola* (1128/2002), at para. 6.1.

⁴⁰ *Salim Abbassi v. Algeria* (1172/2003), at para. 8.4.

⁴¹ Cambodia Code of Criminal Procedure, 2007, Khmer-English translation, http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf

On 4 September 4 2012, Yorm Bopha was denied pre-trial release by the Phnom Penh Municipal Court.⁴² Her husband, Lous Sakhorn, charged with the same offence, was granted pre-trial release. This apparent arbitrariness is consistent with the analysis that the purpose of the Yorm Bopha prosecution was not to enforce criminal law but to punish and quell her legitimate human rights advocacy.

On 7 November 2012, Yorm Bopha appeared at the Appeal Court for a hearing on her application for bail. The hearing was closed to the public.⁴³ Evidence of Yorm Bopha's heart and respiratory problems was presented on her behalf.⁴⁴ No evidence was presented of any CCP risks, and the Court did not consider any alternatives to detention. The Court's stated reason for denying release was that Yorm Bopha did not possess medical documentation to prove she has a health problem, and because her case is "too serious."⁴⁵

On 27 March 2013, Yorm Bopha applied to the Supreme Court for release on conditions pending determination of her appeal from conviction, 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 \$1,003.25 or €754.16 as at 15 June 2013) for bail. The Supreme Court refused 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 that this was a "special case."⁴⁶ The Court supplied no reasons for its determination that she is a flight risk or any information as to the meaning of a "special case." There was no evidence before the court of risk of flight.

None of the reasons provided referred to any consideration of alternatives to detention. The decisions imply a misunderstanding of the right to pre-trial release. The court seemed to presume the law requires the accused to prove the existence of an exceptional circumstance (e.g. ill health) that necessitate release. Both domestic and international standards provide that the onus is on the prosecutor to provide evidence of exceptional circumstances that *prima facie* necessitates detention and the absence of an alternative that could adequately protect the identified right to safety of the public and/or the integrity of the legal process. The Court neither considered nor received evidence of the exceptional circumstances enumerated in Article 203 of the CCP that could justify detention in the absence of adequate alternative conditions. Neither the presumption of good health nor an assessment of the case being "serious" provide a legal justification for detention pending trial or appeal. The arbitrary refusal to allow even conditional pre-trial release raises concern of outside interference in the courts' determinations. A refusal to order pre-trial release is consistent with the extra-legal

⁴² "Civil Society Statement: Two Days, Two Unjustified Pre-Trial Detention Orders," Free Yorm Bopha, 6 September 2013, available at <https://freethe15.wordpress.com/2012/09/06/civil-society-statement-two-days-two-unjustified-pre-trial-detention-orders/>

⁴³ "Bail Hearing on Nov. 7 at 8am," Free Yorm Bopha, 6 November 2013, available at <https://freethe15.wordpress.com/2012/11/06/bail-hearing-on-nov-7-at-8am/>

⁴⁴ So Chivi, trans. Samean Yun, and Parameswaran Ponnudurai. "Cambodian Land Rights Activist's Bail Plea Rejected," *Radio Free Asia*, 27 March 2013, <http://www.rfa.org/english/news/cambodia/land-03272013191716.html>

⁴⁵ "Justice: Denied," Free Yorm Bopha, 7 November 2012, available at <https://freethe15.wordpress.com/2012/11/07/justice-denied/>

⁴⁶ Shane Worrell and Khouth Sophak Chakrya, "Activist Yorm Bopha denied bail," *Phnom Penh Post*, 28 March 2013, available at <http://www.phnompenhpost.com/2013032864750/National/activist-yorm-bopha-denied-bail.html>.

purpose of sending a cautionary message to other human rights defenders opposing government-approved actions.

3. Lack of judicial independence and lack of impartiality. There are factors that suggest lack of judicial independence and impartiality, which have been a longstanding concern of United Nations bodies including the Special Rapporteur on the situation of human rights in Cambodia.⁴⁷ The conviction of Yorm Bopha on the basis of inconsistent and uncorroborated inculpatory evidence and in the face of corroborated and uncontradicted exculpatory evidence can be explained only as a gross error or a pre-determined result not dependent on evidence. A mistake of this magnitude would have been cured by an appeal before an independent and impartial tribunal. In addition to the evidence that Yorm Bopha has been singled out and targeted for persecution by police authorities, there is evidence of high level political influence in this case. A week before Yorm Bopha's bail application to the Supreme Court on 27 March 2013, Prime Minister Hun Sen stated on television that the case of "the Boeung Kak woman"⁴⁸ had nothing to do with land issues, that she (Yorm Bopha) had acted "violently and unjustly in the eyes of the government,"⁴⁹ and that this was a "simple case of her beating someone up."⁵⁰ As the Cambodian Center for Human Rights points out:

"Such public commentary on judicial matters by the head of government when the case has not yet been concluded and the Defendant is awaiting her appeal hearing, is bound to affect the fairness of the process and raises serious concerns regarding the independence of the tribunal and the Defendant's right to a fair trial, particularly regarding the presumption of innocence."

It is also noted that the Chief Justice of the Supreme Court, Dith Munthly, is a member of the Politburo of the ruling Cambodian People Party.⁵¹

V. INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN WITH LEGAL AND ADMINISTRATIVE AUTHORITIES, THEIR RESULTS and THE REASONS WHY SUCH STEPS WERE INEFFECTIVE.

Appeals to higher courts according to law have been taken at all possible times. Applications for pre-trial release have been taken made to the Municipal Court, the Appeal Court and the Supreme Court. None of these steps have been successful for reasons detailed above. Recourse to the Supreme Court of Cambodia is on questions of law alone and does not address mistaken interpretations of facts. An appeal to the Supreme Court of Cambodia was

⁴⁷ See, e.g. Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/21/63, 16 July 2012, http://cambodia.ohchr.org/WebDOCS/DocReports/3-SG-RA-Reports/A-HRC-21-63_en.pdf. Surya P. Subedi, Special Rapporteur on the Situation of Human Rights in Cambodia. "Cambodia must move forward with judiciary, land and electoral reforms – UN expert," 27 May 2013, available at <http://www.un.org/apps/news/story.asp?NewsID=45006&Cr=cambodia&Cr1=#.Ub-ottjJdUk>.

⁴⁸ "Hun Sen: activist imprisonment not over land dispute," Cambodia Herald, 19 March 2013

<http://www.thecambodiaherald.com/cambodia/detail/1?page=13&token=OWY3NDljOTc5ZmZ>

⁴⁹ So Chivi, trans. Samean Yun, and Parameswaran Ponnudurai. "Cambodian Land Rights Activist's Bail Plea Rejected," *Radio Free Asia*, 27 March 2013, <http://www.rfa.org/english/news/cambodia/land-03272013191716.html>

⁵⁰ "Cambodia: Supreme Court Keeps Activist Jailed: Donors Should Step Up Pressure for Unconditional Release of Yorm Bopha," Human Rights Watch, 29 March 2013,

<http://www.hrw.org/news/2013/03/29/cambodia-supreme-court-keeps-activist-jailed>

⁵¹ "Cambodia: Supreme Court Keeps Activist Jailed: Donors Should Step Up Pressure for Unconditional Release of Yorm Bopha," Human Rights Watch, 29 March 2013,

<http://www.hrw.org/news/2013/03/29/cambodia-supreme-court-keeps-activist-jailed>

filed on 17 June 2013. The length of time between filing and hearing of Supreme Court Appeals varies, and it can not be predicted when the Supreme Court appeal will be heard.

VI. FULL NAME AND ADDRESS OF THE LAWYERS RIGHTS WATCH CANADA

Lawyer's Rights Watch Canada (LRWC)
3220 West 13th Avenue
Vancouver, BC CANADA, V6K 2V5
Tel: +1-604 738-0338
Fax: +1-604 736-1175
Email: lrwc@portal.ca

This petition has been prepared using news reports and reports from human rights organizations including Cambodian human rights organizations representing Yorm Bopha.



Date: Sunday, August 11, 2013

Signature:

A handwritten signature in blue ink, appearing as a series of overlapping loops and lines.

Gail Davidson, Executive Director, LRWC