Fact Sheet: **Human Rights Defenders in Cambodia**
Timeline: 2016
Snapshot: Human Rights Defenders ("HRDs") in Cambodia have found themselves subject to increased instances of judicial harassment, arbitrary arrest, and even violence. The Cambodian Center for Human Rights ("CCHR") calls for the end of this harassment and urges the Royal Government of Cambodia ("RGC") to urgently comply with its international and domestic obligations to protect and respect the rights of HRDs.

Introduction

HRDs in Cambodia continue to find themselves subject to harassment, threats, and even violence, in violation of domestic and international law, including a number of instruments that specifically affirm the importance of HRDs and their work, and the protections they enjoy. To mark International Human Rights Defenders Day 2016, this fact sheet has been produced by CCHR, a non-aligned, independent, non-governmental organization ("NGO") that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia ("Cambodia").

Legal framework

Although Cambodian domestic law contains no provisions specific to HRDs, HRDs benefit from the same rights protections and guarantees that all individuals enjoy under international human rights law ("IHRL"). The fundamental freedoms of expression and assembly are protected under Article 41 of the Cambodian Constitution, and freedom of association is guaranteed by Article 42, while Article 31 recognizes the applicability of the human rights protections contained in the international treaties ratified by Cambodia. The direct applicability of Cambodia's obligations under international treaties was confirmed by a 2007 decision of the Constitutional Council.[1]

A number of specialized mechanisms and international instruments contain specific protections for HRDs. The United Nations ("UN") Declaration on Human Rights Defenders (the "HRD Declaration")[2] was the first international instrument aimed solely at protecting HRDs. Despite not being legally binding, its adoption by the UN General Assembly by consensus represented a significant step forward in the international recognition of HRDs' work, and represented a strong political commitment by the international community to protect HRDs. The HRD Declaration does not create new rights, but restates some specific duties of both HRDs and States and reaffirms the right to promote and strive for the protection and realization of human rights and fundamental freedoms, the right to freedom of expression and peaceful assembly, and the right to form, join and participate in non-governmental organizations, associations or groups. The HRD Declaration also emphasizes the duty of governments to ensure their protection. According to Article 12(2), the relevant authorities must protect HRDs from arrest, violence, threats, retaliation and any discrimination arising from their HRD activities and it emphasizes that HRDs ought to be protected under national law.[3] In November 2013, the first ever

[1] Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007).
[2] United Nations General Assembly Resolution, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' (8 March 1999) UN Doc A/RES/53/144, http://bit.ly/19w8LEm.
[3] Ibid, Article 12(3).

resolution on women human rights defenders ("WHRDs") was adopted by the UN General Assembly's Third Committee, addressing some of the specific risks, discrimination and violence faced by WHRDs.[4]

In 2000, the then UN Commission on Human Rights[5] established a Special Rapporteur on the situation of HRDs (the "Special Rapporteur") as part of its mandate to assist in the implementation of the HRD Declaration.[6] Among other things, the Special Rapporteur can receive information and individual complaints[7] about the violation of HRDs' rights and can communicate with the relevant Member States regarding these cases. The Special Rapporteur also undertakes country visits to investigate the situation of HRDs in a particular country and presents annual reports to the UN Human Rights Council.

What is a HRD?

The HRD Declaration defines HRDs as all people who, individually or within groups and associations, act to eliminate violations of human rights and fundamental freedoms of peoples and individuals.[8] These rights may be civil, political, economic, social and/or cultural and may cover issues ranging from apartheid to forced evictions. HRDs are often human rights professionals, journalists, lawyers or community representatives; however many others qualify as HRDs.[9] In order to be categorized as a HRD, individuals must be non-violent and must accept the universality of human rights.[10] HRDs may be undertaking a range of different activities, such as documenting human rights violations, providing education or training about human rights, protesting for the respect of the environment, awareness raising, etc.[11]

Situation of HRDs in Cambodia

During Cambodia's last Universal Periodical Review by the UN Human Rights Committee ("UPR") on 28 January 2014, nine states recommended that the RGC improve protection of HRDs, for example by engaging in a meaningful national dialogue with HRDs, complying with international freedom of expression standards and halting any actions of intimidation or harassment.[12] The RGC accepted the majority of recommendations, including seven relating directly to HRDs, such as the Czech Republic's suggestion to revise the Penal Code as well as other laws so that they comply with international freedom of expression standards and prevent the harassment of HRDs, journalists and NGOs, and Austria's recommendation to respect and protect the rights of human rights defenders and journalists to

[4] United Nations General Assembly Resolution 'Promotion of 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: protecting women human rights defenders', (18 December 2013), UN Doc A/RES/68/181, http://goo.gl/yz4xwt

[5] The UN Commission on Human Rights was replaced by the UN Human Rights Council in 2006. See, United Nations Human Rights, Office of the High Commissioner for Human Rights, 'United Nations Human Rights Council', http://goo.gl/dr0bl.

[6] Ms. Margaret Sekaggya held this post from 2008- 2014, and was succeeded by Michel Forst who was appointed in June 2014. See, United Nations Human Rights, Office of the High Commissioner for Human Rights, 'Special Rapporteur on the situation of human rights defenders', http://bit.ly/1q1Hfc6.

[7] Individual complaints about allegations of HRDs' rights can be submitted to the Special Rapporteur. See, United Nations Human Rights, Office of the High Commissioner for Human Rights, 'Submitting complaints', http://bit.ly/1C4DJEi.

[8] UNGA Res. (n 1), fourth preambular paragraph.

[9] United Nations Office of the High Commissioner for Human Rights (OHCHR), 'Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights' (April 2004), http://goo.gl/EnVkvy

[10] Ibid.

[11] Ibid.

[12] Ireland, Czech Republic, Austria, Chile, New Zealand, Belgium, France, Germany, Portugal and Tunisia made recommendations on the topic. See, United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review on Cambodia' (27 March 2014) UN Doc A/HRC/26/16, http://goo.gl/XzZk9M.

conduct their work without hindrance, intimidation or harassment. Nonetheless, the RGC did not support Tunisia's suggestion to ensure a favorable climate for the activities of human rights defenders, nor Portugal's recommendations to protect human rights defenders from harassment and arbitrary arrest, and lift all restrictions to peaceful demonstrations.[13]

Unfortunately, recent months have borne witness to an escalating crackdown on civil society by the RGC, with prominent HRDs harassed, arrested, and even attacked. CCHR recorded 58 arrests relating to the exercise of fundamental freedoms from July to September 2016, a significant increase from the 37 arrests reported in the preceding three months. There have been 33 arrests at "Black Monday" protests so far, involving 21 different individuals, some of whom have been arrested multiple times. The increasing judicial harassment of critics of the RGC has also been accompanied by the introduction of an array of repressive laws that disproportionately affect HRDs, such as the much-criticized Law on Associations and Non-governmental Organizations and the new Trade Union Law. Furthermore, certain provisions of the Cambodian Criminal Code are being selectively implemented in a manner that disproportionately affects HRDs, such as criminal defamation (Article 305),[14] 'incitement' (article 494),[15] intentional violence (article 217)[16] and obstructing a public official (article 503), [17] as well as the offense of obstructing a public road under Article 78 of the Traffic Law.[18]

HRDs have also found themselves subject to increased police harassment. Examples of such harassment include the threat of arrest,[19] as well as the unjustified arrest of activists who are then released without charge[20]. The police have also been involved in the breaking up of meetings of activists and community-based organizations in the provinces[21], with CCHR recording four separate instances in Preah Vihear province alone between April and June 2016. Frequently these incidents of harassment have been coupled with police violence. Most recently, a human rights monitor was subject to police violence during a march to peacefully celebrate World Habitat Day on 10 October 2016 in Phnom Penh.[22] The RGC's ongoing repression and intimidation of HRDs in the conduct of their work is indicative of the rapidly shrinking democratic space in Cambodia and demonstrates the lengths to which the RGC is willing to go in order to suppress dissent in the run up to the upcoming elections.

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[13] Ibid.

[14] See, for example: "Legal Proceedings Against Equitable Cambodia Staff Members" (22 August 2016) http://bit.ly/2g9Dxgb; "Defamation case against Ny Chakrya" http://bit.ly/2g9f0wD; "CPP spokesman files defamation suit against independent analyst Ou Virak while the Anti-Corruption Unit summons civil society workers" (26 April 2016) http://bit.ly/1pI1Kyt

[15] See, for example: "Charges Against Tep Vanny And Bov Sophea" (19 August 2016) http://bit.ly/2hhcEaY; "Cambodian Student Sentenced to 18 Months for Facebook Post" *LICADHO* (15 March 2016) http://bit.ly/2h5dSHp

[16] See for example: "Four Union Leaders and Two Injured During Attack on Capitol Protest Charged" *LICADHO* (8 February 2016) http://bit.ly/2h5uuRL; "Conviction and additional charge against human rights defender Ms Tep Vanny" (22 August 2016) *Front Line Defenders* http://bit.ly/2h1U1s9

[17] See for example: "Cambodia: 4 land activists condemned to 6 months in prison for 'insulting and obstructing public officials'" *AHRD* (19 September 2016) http://bit.ly/2h23dN7

[18] See for example: Mech Dara, "Court Sentences Seven Activists to One Year in Prison" *The Cambodia Daily* (11 November 2014) http://bit.ly/2hrrsUC

[19] See for example: "Cambodia: Local governor threatens to arrest activists over workshops on human rights and democracy", *AHRD* (May 6 2015) http://bit.ly/2gjiGdx

[20] See for example: "CAMBODIA: New wave of arrests targeting human rights defenders threatens to destroy vibrant human rights community" *FIDH* (9 May 2016) http://bit.ly/1UMZUcx

[21] See for example: Buth Kimsay "Police Block Meeting Between UN Envoy and Kuoy Villagers" *The Cambodia Daily* (30 March 2016) http://bit.ly/1qgtrPW

[22] Ben Sokhean and Micheal Dickison, "Guards Beat NGO Official During Land Protest" *The Cambodia Daily* (11 October 2016) http://bit.ly/2dHh8rN

Case study: Pre-trial detention of five human rights defenders

Since April 2016 four current staff members of Cambodian Human Rights and Development Association ("ADHOC"), Mr. Ny Sokha, Mr. Yi Soksan, Mr. Nay Vanda and Ms. Lim Mony, along with former ADHOC staff member and current deputy secretary-general of the National Election Committee, Mr. Ny Chakrya, have been detained on charges related to their legitimate and routine provision of advice to Ms. Khom Chandaraty, who was subject to investigation following accusations that she was having an affair with deputy opposition leader Kem Sokha. Ms. Chandaraty subsequently alleged that the five had convinced her to lie during questioning. The five have unsuccessfully appealed the denial of bail in their case all the way to the Supreme Court, despite none of the six justifications for pre-trial detention laid down in article 205 of the Criminal Procedure Code being present in this case. They plan to appeal to the Supreme Court against the decision to extend their detention for a further six months. The case has been met with significant criticism, including by four UN Special Rapporteurs, who noted that elements of the case "*suggest that this entire episode is nothing more than a politically-motivated persecution of civil society*."[23]

Case study: Killing of Dr. Kem Ley

On 10 July, just before 9am, prominent political analyst Dr. Kem Ley was gunned down in broad daylight at a gas station in central Phnom Penh. The murder triggered immediate demonstrations and calls for justice at the scene of the crime. The Prime Minister and ruling party have publicly condemned the killing, and the prime suspect maintains that it was motivated by an unpaid debt of $3,000. However, many observers maintain that Dr. Ley's murder was politically motivated, given his position as a vocal critic of the RGC.[24] Cambodia's obligations under international human rights law require that an impartial and independent investigation into the killing is carried out; however, while a suspect was arrested immediately after the attack, since then it appears that little or no progress has been made in the investigation.[25]

Case Study: Arrest and detention of Tep Vanny

Tep Vanny, a prominent Boeung Kak community activist, was arrested on 16 August following a peaceful vigil on the occasion of the 15th 'Black Monday' protest. Many observers have suggested that Ms. Vanny, along with fellow Boeung Kak lake activist Bov Sophea, were specifically targeted by the police given their long history of activism. A Spanish academic, Marga Bujosa Segado, conducting research in the Boeung Kak lake community, was arrested alongside the activists and deported the next morning. On August 22 Tep Vanny and Bov Sophea were convicted of "insulting a public official," after the judge changed the charges during the hearing, and sentenced the pair to six days in prison.[26] However, Tep Vanny remained in detention on previously dormant charges of insulting and obstructing public officials, in relation to a protest in November 2011. She was convicted on 19 September 2016 and was sentenced to six months in prison. Tep Vanny potentially faces at least two further charges in relation to different

[23] "UN rights experts urge Cambodia to stop attacks against civil society and human rights defenders" (12 May 2016) http://bit.ly/1XmYpmj

[24] Radio Free Asia, "Kem Ley Murder Recalls a Familiar Pattern of Political Intrigue in Cambodia" (26 July 2016) http://bit.ly/2ggji3L

[25] Khuon Narim and George Wright, "Inactivity Defines Kem Ley Murder Inquiry" The Cambodia Daily (10 November 2016) http://bit.ly/2fnjjAe

[26] Lay Samean and Ananth Baliga, "Activist walks free as Boeung Kak duo's charges changed" The Phnom Penh Post (23 August 2016) http://bit.ly/2bKU4FS

incidents. One charge of intentional violence relates to a protest she led in front of the Prime Minister's residence in 2013[27], and another investigation relates to a 2012 complaint of insult and making death threats, despite the complainant – another Boeung Kak evictee - withdrawing the complaint[28]. The resurrection of these older cases in order to apply pressure to a HRD is emblematic of a popular tactic to suppress activism.

Conclusions and recommendations

The continued harassment of HRDs in the conduct of their work has become all too familiar in Cambodia. In order to ensure respect for the rights of HRDs in Cambodia and allow them to carry out their important work without fear, CCHR urges the RGC to:

- Fully comply with its obligations to protect and respect the rights of human rights defenders under domestic and international law, including recommendations made in the UN Human Rights Committee's 2014 Universal Periodic Review of Cambodia that the RGC has yet to implement;[29]
- Ensure an independent, prompt and thorough investigation into the death of Dr. Kem Ley, as required by Cambodia's obligations under IHRL, and seek international assistance for this purpose;
- Cease all judicial and other harassment of human rights defenders and immediately release all detained HRDs, including the four imprisoned ADHOC staff and Ny Chakrya, whose continued pre-trial detention is without any legal basis and in violation of domestic and international law;
- Review recently adopted laws, notably the Law on Associations and Non-governmental Organizations and the Trade Union Law, as well as other legislation that restricts the activities of HRDs, such as relevant provisions of the Cambodian Criminal Code, with comprehensive inputs from civil society actors, and amend them to bring them into line with the Constitution and IHRL.

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[27] Sek Odom, 'Jailed Activist Grilled Over 'Moribund' Case', The Cambodia Daily (20 August 2016) http://bit.ly/2ghX03f
[28] Sek Odom, 'Boeng Kak Granny Denies Making Threat', The Cambodia Daily (4 Novmeber 2016) http://bit.ly/2hr6Knz
[29] See note 12 above.