Conditional Release of Human Rights Defenders Violates Fundamental Rights to Freedom of Expression and Assembly

Executive Summary
This Briefing Note addresses the dangerous increasing practice of the Royal Government of Cambodia (the “RGC”) of forcing human rights defenders (“HRDs”), protesters and everyday citizens to sign written statements agreeing to not partake in future demonstrations or illegal activities, as a condition of their release or to avoid charges. This practice represents an unlawful restriction on HRDs’ and individuals rights to freedom of expression and assembly and dangerously restricts the environment in which HRDs operate.

The first section of this Briefing Note outlines recent and past cases of HRDs, protesters and Facebook users being required to sign written statements agreeing to not take part in future illegal activities. The second section then demonstrates the illegality of the practice in light of the RGC’s international legal obligations while the third section analyzes its chilling impact on HRDs’ work. The final section concludes with the following recommendations to the RGC:

- Cancel such letters previously signed and consider them as null and void;
- Put an end to the practice of forcing HRDs and citizens exercising their fundamental rights to freedom of expression and assembly from signing statements that restrict their rights in order to be released or avoid charges;
- Immediately lift the current illegal ban on assemblies and demonstrations;
- Put an end to all political and judicial harassment and violence against peaceful protesters and HRDs; and
- Acknowledge the importance of HRDs and human rights organizations, and the need for their protection.

This Briefing Note is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in the Kingdom of Cambodia (“Cambodia”).

A Dangerous Practice
Amidst a recent ban on demonstrations,¹ the authorities have taken to arresting protesters and in particular HRDs, temporarily detaining them without charge, and then conditioning their release upon signing written statements consenting to not participate in future protests, demonstrations or illegal activities.

The increase in the number of arrests of HRDs and their subsequent conditional release began after 4 January 2014, when the Ministry of Interior issued a press release stating that there was to be a ban on further demonstrations, assemblies, or marches until “public order and security are restored.” In addition, the newspaper Koh Santepheap reported on 6 January 2014 that the district governor of Russey Keo in Phnom Penh called on the police to disband gatherings of more than ten persons. According to the Cambodia Daily, on 21 January 2014, Brigadier General Kenh Tito, Spokesman for the National Military Police, said that the ban would be in place until “public order and security are restored,” meaning that the ban would be lifted when the opposition Cambodian National Rescue Party (“CNRP”) takes seats in the National Assembly.²

This ban was implemented after Cambodia has been the scene of violent clashes on 2, 3 and 4 January 2014 between security forces and CNRP and garment workers protesters, the latter of whom are demanding higher minimum wages. The security forces excessive use of force on protesters resulted in the death of at least four individuals, dozens of injuries and the arrest of 23 people.

The ban was first tested on 6 January 2014, by five Boeng Kak Lake community HRDs: Tep Vanny, Yorm Bopha, Bo Chhorvy, Song Sreyleap and Pan Chunreth. At 8.00 am, they started a march to the French Embassy asking for the release of HRD Vorn Pao and nine other peaceful demonstrators previously arrested on Thursday 2 January 2014.³ The five Boeng Kak Lake activists were arrested by the police at around 8.40 am and immediately taken to the Phnom Penh Municipal Police Station. They were released at 4.45 pm only after they agreed to sign a letter stating that they will temporarily not engage in further protests or illegal activities.⁴

The arrests continued on 19 January 2014, when Sok Chhun Oeung, acting President of the Independent Democracy of Informal Economy Association (“IDEA”), was arrested while attempting to hold a vigil for the 23 persons that have been detained since the violent clashes on 2 and 3 January 2014. He was held overnight at the Phnom Penh Municipal Police Station and released around 10:00 am the next morning, only after signing a similar letter.⁵

¹ CCHR “Ban on Assemblies, Marches and Demonstrations in Cambodia” (Factsheet) (January 2014), http://bit.ly/1b2MuSO
Two days later, on 21 January 2014, eleven human rights activists and peaceful protesters were temporarily arrested by Daun Penh security guards and taken to the Phnom Penh Municipal Police Station. They included Boeng Kak Lake rights activists Tep Vanny, Yorm Bopha, Song Srey Leap, Phan Chunreth, Poung Sopheap, Erm Sreytouch, Bov Sorphea, and Ngoun Kimlang; Cambodian Independent Teachers Association (“CITA”) President Mr. Rong Chhun; Cambodian Alliance of Trade Unions (“CATU”) member Cheang Thida; and Housing Rights Task Force (“HRTF”) communication officer Ms. Long Kimhaeng. The first six arrests took place in front of the Embassy of the United States during a demonstration to deliver a petition calling for the release of the 23 people. The five others were arrested about 10 minutes later while making their way to the French Embassy. All eleven people were released that afternoon after signing a letter stating they would not incite or take part in further illegal activities or demonstrations.6

This is not the first time the RGC has required HRDs to sign away their rights to future protests. On 21 April 2011, eleven members of the Boeng Kak Lake community were arrested during a peaceful demonstration protesting the destruction of their homes. According to the Phnom Penh Municipal Police Chief Touch Naruth, “The villagers who were arrested were told to sign a contract promising to stop protests that cause public disorder, and to stop using violence and arguing with the police.”7

In addition, on 11 July 2013, Rong Panha, a representative of the Cambodian Confederation of Unions (“CCU”), took part in a protest of approximately 500 garment workers from the Tai Nan factory in Freedom Park, in central Phnom Penh. The workers gathered to submit a petition, listing their demands, including higher compensation, to Prime Minister Hun Sen. The demonstration resulted in violence after the arrival of several hundred riot police, which lead to Mr. Rong Panha being beaten with batons and taken away by police van to the office of the Phnom Penh Police Commissariat.8 Mr. Panha was only released after thumb printing a document stating he instigated the conflict that resulted at the protest9 and would not take part in future activities such as demonstrations.

In addition, this practice has not only been applied to protesters and HRDs, but recently has been also used to restrict freedom of expression on Facebook. Cheth Sovichea was summoned by the military police and threatened with defamation charges after criticizing police Chief Ieng Vandy on his Facebook page in November 2013. He was not charged only because he agreed to sign a statement apologizing for his comments.10 Similarly, Phel Phearun posted the details of his interactions with the authorities in a traffic offense case on his Facebook page in January 2013, and was summoned to appear to the police station to answer questions in relations to a defamation case the following month. The charges were not put forward only after he agreed to not take part in similar actions in the future.11

6 CCHR “Continuous Temporary Arrest of Human Rights Activists and Ban on Demonstrations” (HRD/FoEX Alert) (21 January 2014) http://bit.ly/1dMv9Ku
8 CCHR “Violent Response to Workers Protest” (Factsheet) (July 2012) http://bit.ly/1dKrA7u
10 “Facebook user arrested for defamation freed” The Cambodia Herald (21 November 2013) http://bit.ly/1f6m4jG
Forcing the signature of letters limiting the activities of HRDs in relation to freedom of expression and freedom of assembly is quickly turning into a dangerous pattern. It is uncertain how these statements will be used in the future by the RGC, but they represent a constant threat to HRDs and protesters and the involuntary nature and unjust climate under which they are attained indicates a violation of basic human rights.

An Unlawful Practice
The illegality of these forced signatures and contracts lie in their capacity to excessively restrict the enjoyment of the rights to freedom of expression and peaceful assembly. HRDs are forced to sign letters to forego their right to take part in demonstrations, as a condition of being released or not having charges pressed against them. This disallows them from exercising their fundamental human right to freedom of expression and assembly, and their rights as HRDs, and holds the threat of arrest over them if they do choose to demonstrate.

The right to freedom of assembly is promoted and protected by Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”), which provides that Khmer citizens shall have the right to “freedom of expression, press, publication and assembly.” Article 35 of the Constitution also provides that all Khmer citizens shall have the right to participate actively in the political life of the nation. In addition, Article 31 of the Constitution incorporates the United Nations Universal Declaration on Human Rights (“UDHR”) and international covenants and conventions related to human rights, including the International Covenant on Civil and Political Rights (the “ICCPR”) into domestic law, which was ratified by Cambodia in 1992. The direct applicability of international human rights norms in Cambodian courts was further reaffirmed by a decision of the Constitutional Council on 10 July 2007.12

As a consequence, the RGC is under the legal obligation to comply with the provisions of the ICCPR and international human rights standards. Article 21 of the ICCPR, designed to protect the right to peaceful assembly, allows for some restrictions “that are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

The United Nations (“UN”) Human Rights Committee, in General Comment No. 31,13 stated that “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.” Restrictions to the right to freedom of assembly are permitted only in very narrowly defined circumstances. However, the letters that the authorities require HRDs and protesters to sign are excessively broad.

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12 Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007)
The letters prohibit HRDs to further demonstrate as a general statement. There is no provision regarding which type of protest they are not allowed to join, or for how long the prohibition applies. As such, the letters amount to a blanket restriction on the right to freedom of assembly which is overly inclusive and thus disproportionate and excessive. Furthermore, while restrictions may be justified and necessary on public order grounds, especially immediately after violent events, this justification loses its relevancy as time passes. For this reason, any restriction to the right to peaceful assembly should be strictly limited in time so as to remain necessary.

In addition, what constitutes an illegal activity can also lead to debate. For instance, in the context of the arrests in January 2014 described above, the RGC considers protests illegal because of an unlawful ban on assembly. According to international law, peaceful protesters legally exercised their right to peaceful assembly while the RGC illegally restricted it. As such, when the RGC qualifies an activity of “illegal,” it could very well be the restriction itself that is illegal.

Furthermore, the letters find no legal basis. Signatures are obtained under threat and pressure often at the police station while HRDs are being detained. They are obtained through coercion and in exchange for liberty or no charges. As such, they are null and void and cannot be considered as a “contract” between the authorities and the individual and thus carry no legal obligations.

**A Chilling Practice for HRDs**

This practice has a serious negative impact on the work of HRDs as it restricts their ability to promote and protect human rights but also represents a serious threat of arrest hanging above their heads. Article 5 of the UN Declaration on Human Rights Defenders\(^{14}\) recognizes the right to peaceful assemblies and the UN Special Rapporteur on the Situation of Human Rights Defenders considers the right to peaceful assembly essential for human rights defenders working locally, nationally and globally to promote and protect human rights. Without enjoyment of this right, HRDs will be restricted in their ability to fulfill their fundamental role of protection and promoting human rights.\(^ {15}\)

In addition, this practice represents a constant threat of arrest for HRDs. As noted by the UN Office of the High Commissioner for Human Rights (“OHCHR”), “It is common for some State authorities falsely to push defenders into administrative ‘illegality’ and to use this as the basis for a subsequent arrest, detention and conviction.”\(^ {16}\) The practice of collecting signatures sets a dangerous precedent. As activists continue to exercise their rights to assemble and express themselves, they have to live with these unjust and involuntarily obtained “contracts” hanging over their heads at every protest. These signatures are obtained involuntarily, and give the RGC leverage and a superficial justification to arrest these activists in the future.

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The permanent threat of arrest is in contradiction with the Human Rights Council’s resolution on protecting human rights in the context of the right to protest which states that “that everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protest, without fear of being injured, beaten, arbitrarily arrested and detained, tortured killed or subjected to enforced disappearance”. In addition, any future arrests made solely based on these letters should be considered arbitrary and unlawful detention.

Conclusion
With this practice, not only does the RGC violates HRDs and citizens’ right to freedom of expression and assembly but it also severely discourages and inhibits the exercise of human rights by Cambodian citizens. In addition, this dangerous practice is a clear attempt at restricting the environment in which HRDs operate and a clear attempt at putting an end to their activities.

As such CCHR recommends that the RGC:
- Cancel the letters previously signed and consider them as null and void;
- Put an end to the practice of forcing HRDs and citizens exercising their fundamental rights to freedom of expression and assembly from signing statements that restrict their rights in order to be released or avoid charges;
- Immediately lift the current illegal ban on assemblies and demonstrations;
- Put an end to all political and judicial harassment and violence against peaceful protesters and HRDs; and
- Acknowledge the importance of HRDs and human rights organizations, and the need for their protection.

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