

o. 24/2013 (Cambodia)

Communication addressed to the Government on 26 June 2013

Concerning Yorm Bopha

The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Yorm Bopha, age 29, is a national of Cambodia. Ms. Bopha is married to Lous Sakhorn and has a son, age 9. She is a high-profile advocate for land rights for victims of forcible evictions from the Boeung Kak Lake community.

4. According to the information received, Ms. Bopha and Mr. Sakhorn were arrested on 4 September 2012. They, along with Ms. Bopha's 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.

5. Following the arrest, Mr. Sakhorn was released on bail, but Ms. Bopha was held in pretrial detention because of the alleged seriousness of the charges and a lack of evidence of health problems that would justify her release. At the time of adoption of the opinion, Ms. Bopha remained in prison.

6. The source submits that Ms. Bopha is being targeted for prosecution on fabricated charges in retaliation for her work as a human rights defender, including her advocacy for the release of a number of Boeung Kak Lake community members arrested, allegedly arbitrarily, in May 2012. The source reports that, as a result of her advocacy, Ms. Bopha was verbally threatened, harassed and intimidated. On 13 May 2012, Ms. Bopha was reportedly told by police that she was "on the blacklist now" and that she would be "in trouble soon".

7. On 26 December 2012, a half-day proceeding took place in the Phnom Penh Municipal Court. The prosecutor claimed that Ms. 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 no evidence of violent acts or intentions by Ms. Bopha or her husband was presented. Testimony that Ms. Bopha and her husband had been nearby, chatting with a neighbour, and had gone to the drink shop after hearing yelling was corroborated by the neighbour and was not contradicted.

8. 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. Sakhorn's sentence was suspended and he was released shortly after the trial. Ms. Bopha's brothers were tried and sentenced in absentia; after their conviction, warrants were issued for their arrest. Ms. Bopha has filed an appeal, the date of which has not yet been scheduled.

9. On 27 March 2013, Ms. 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 4 million riel (US\$ 1,000) for bail. The Supreme Court refused bail on the grounds that Ms. 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 an allegedly special case. The Court supplied neither the reasons for which it determined that she is a flight risk nor any information as to what it meant by "special case".

10. The source questions the judicial independence of the Supreme Court, reporting that a week prior to Ms. Bopha's bail application to the Supreme Court, the Prime Minister of Cambodia, Hun Sen, stated on television that Ms. Bopha's case had nothing to do with land issues and that she had acted "violently and unjustly in the eyes of the government". Further, the source reports that the chief justice of the Supreme Court, Dith Munthy, is a member of the Politburo of the ruling Cambodian People's Party.

11. The source submits that the proceedings against Ms. Bopha did not comply with the minimum fair trial standards set out in the domestic law and Constitution of Cambodia, nor with the international human rights law binding on Cambodia. Rather, a conviction was entered in the face of evidence that the charges were baseless. Ms. Bopha remains in prison despite the lack of any credible evidence that she has done anything unlawful.

Response from the Government

12. The Working Group regrets that the Government has not responded to the allegations transmitted by the Working Group on 26 June 2013.

13. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Ms. Bopha in conformity with paragraph 16 of its methods of work.

Discussion

14. As the Government has chosen not to rebut the prima facie reliability of the information submitted by the source, the Working Group accepts the information of the source as reliable. In cases like the one under consideration, where there is prima facie reliable information that a prominent human rights defender is being deprived of liberty for a regular crime, that the conviction was not supported by reliable evidence and that, in fact, the person was punished for exercising his

or her fundamental rights, the burden is on the Government to provide the Working Group with a reference to at least some of the specific evidence on which the conviction is based.

15. The Working Group considers that Ms. Bopha, a high-profile advocate for land rights for victims of forcible evictions, was arrested and convicted due to her human rights activities and, in particular, her visibility at protests calling for the release of the Boeng Kak 13 and her outspokenness in the media. It was because of these activities that the authorities began to target Ms. Bopha. The information alleging verbal threats and intimidations remains unchallenged by the Government. Also unchallenged is the allegation that before her arrest Ms. Bopha was told by police that she was "on the blacklist" and that she would be "in trouble soon".

16. The Working Group considers that in this case Ms. Bopha was deprived of her liberty for having peacefully exercised her right to freedom of expression, as guaranteed under article 19 of the Universal Declaration of Human Rights and article 19, paragraph 2, of the International Covenant on Civil and Political Rights. Thus, the deprivation of liberty of Ms. Bopha falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

17. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Ms. Bopha has been arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19, paragraph 2, of the International Covenant on Civil and Political Rights; it falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Bopha and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

19. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release Ms. Bopha and to accord her an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 28 August 2013]