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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

Opinion No. 75/2021 concerning Ros Sokhet (Cambodia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 12 August 2021 the Working Group transmitted to the Government of Cambodia a communication concerning Mr. Sokhet. The Government replied to the communication on 28 September 2021. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Ros Sokhet is a national of Cambodia. He was born in 1979 in Svay Rieng Province, Cambodia. Mr. Sokhet's identification card expired on 11 November 2020, during his time in prison, and he has not been issued with a new one.

5. The source reports that Mr. Sokhet is an independent journalist, often critical of the authorities. In 2011, he founded the independent newspaper *Khmer Nation*, and frequently posted content on current affairs to his personal Facebook page up until his arrest. His personal and *Khmer Nation's* Facebook accounts each have approximately 5,000 followers.

6. The source further notes that prior to his arrest in June 2020, Mr. Sokhet's reporting had already led to reprisals from the Government. In 2009, he was convicted of disseminating false information and sentenced to two years' imprisonment. The Special Rapporteur on the situation of human rights in Cambodia, who visited Mr. Sokhet in prison in early 2010, called for his release, and following public outcry at his detention, Mr. Sokhet was eventually released after having served 12 months.

Arrest and detention

7. According to the information received, between 17 May and 24 June 2020, Mr. Sokhet published eight posts to his personal Facebook page, including on behalf of *Khmer Nation*, which were critical of the Prime Minister, the Government and public officials. The source notes that these posts did not contain any violent language or calls for social unrest.

8. The source also reports that shortly thereafter, the Phnom Penh Municipal Anti-Cybercrime Bureau began investigating Mr. Sokhet, and on 25 June 2020 he was arrested. The arrest warrant referenced his posts about the Prime Minister and alleged incitement to provoke serious social disorder. The following day, the police interrogated Mr. Sokhet. He was then transferred to Prey Sar Prison, where he was held in pretrial detention for four months.

9. According to the source, on 28 June 2020 Mr. Sokhet was formally charged with incitement to disrupt social order, under articles 494 and 495 of the country's Criminal Code. Between 2 and 4 September 2020, Mr. Sokhet was indicted and his case was referred to the Phnom Penh Municipal Court of First Instance for criminal prosecution.

10. Mr. Sokhet's trial was held on 27 October 2020, and reportedly only lasted approximately 90 minutes. At the outset of the trial, the judge noticed that Mr. Sokhet was visibly unwell, due to his underlying health issues; after confirming that he was able to answer questions, however, the trial continued.

11. It is reported that during the trial, the judge first recalled Mr. Sokhet's conviction in 2009, before reading out the indictment and all eight Facebook posts. The judge and the prosecution then proceeded to examine Mr. Sokhet in turn, with each enquiring about the intention behind his Facebook posts. Mr. Sokhet maintained that he only wanted to make his Facebook page popular by using eye-catching headlines and photographs, not to incite disruption of the social order, and the prosecution provided no evidence to the contrary. In fact, notes the source, neither the trial judge nor the prosecution even mentioned any "disruption of the social order" that could have been incited by Mr. Sokhet's posts. Instead, the prosecution's theory of the case appears to have been that Mr. Sokhet had insulted prominent figures and dignitaries.

12. When questioned by his defence, Mr. Sokhet again reaffirmed his intention to increase the readership of his Facebook page by posting sensitive titles but without sensitive content. Mr. Sokhet also stated that he had submitted a letter of apology to the Prime Minister, and that he was suffering from a number of health-related problems.

13. The source also reports that after Mr. Sokhet's testimony and examination, the judge examined the prosecution's only witness, the head of the Phnom Penh Municipal Anti-Cybercrime Bureau, who had led the investigation. This official stated that Mr. Sokhet's posts could provoke social disorder, but offered no evidence to support that statement, and neither

did he specify what type of social disorder might be provoked. Moreover, when asked, he admitted that the police had received no complaints from the public about the posts. The judge also asked whether the head of the Phnom Penh Municipal Anti-Cybercrime Bureau was aware that Mr. Sokhet had made similar posts in the past; he responded that he was not. He also admitted that he had only read some of the content of Mr. Sokhet's posts on Facebook.

14. In his closing statement, defence counsel reiterated that Mr. Sokhet had made the Facebook posts in his capacity as a journalist, and that he had had no intention to incite disruption of the social order but instead only wanted to draw readers to his Facebook page. Moreover, defence counsel emphasized that no social disorder had resulted from the Facebook posts. Defence counsel also requested bail for Mr. Sokhet to receive medical treatment, and closed with a plea for leniency on the mitigating grounds that Mr. Sokhet had admitted to making the posts, had submitted a letter of apology to the Prime Minister and was suffering from serious medical conditions. Mr. Sokhet closed with a plea to be granted bail in order to receive medical treatment. He was denied this request.

15. The source reports that on 11 November 2020, Mr. Sokhet was convicted of incitement to disrupt social order, was sentenced to 18 months' imprisonment (with credit applied for time already served) and was fined 2 million riels (approximately \$500). The source notes that the judgment does not provide any reasoning to support the court's guilty verdict, nor does it address the specific arguments made by the defence at trial. Instead, it simply concludes that Mr. Sokhet used his Facebook account to post messages that intentionally undermined social order.

16. The source reports that Mr. Sokhet remains in detention in Prey Sar Prison in Phnom Penh. It asserts that Mr. Sokhet's ongoing detention exposes him to significant health risks, due to his chronic heart condition, compounded by his detention in an overcrowded and unsanitary prison during the coronavirus disease (COVID-19) pandemic. Mr. Sokhet suffers from coronary heart disease which, if untreated or aggravated, is life-threatening, and may lead to severe heart damage and heart attack. Prior to his arrest, Mr. Sokhet received regular treatment for his condition; he was visibly ill at trial, and requested bail to obtain essential medical treatment.

17. The source describes precarious conditions in Prey Sar Prison, including extreme heat, polluted air, severe overcrowding and insufficient food rations. The source states that prisoners are deprived of access to fresh air, exercise, clean running water and soap. They are, furthermore, denied medical treatment. The source recalls that the Working Group has already noted that the treatment afforded to certain detainees in Prey Sar Prison poses serious threats to their health and falls short of standards set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).²

Analysis of violations

18. The source notes that Cambodia is a party to the International Covenant on Civil and Political Rights, and has not submitted any reservations under that treaty. The source also notes that the Covenant provides for the right to freedom of expression and prohibits arbitrary detention. In this regard, the source submits that the deprivation of liberty of Mr. Sokhet is arbitrary and falls under categories I, II, III and V of the Working Group.

19. In relation to category I, the source argues that Mr. Sokhet's detention is without legal basis because it is predicated upon a law that is impermissibly broad and vague.

20. It recalls that article 9 of the Covenant states that no one shall be subjected to arbitrary arrest or detention. It further recalls that the Working Group has stated previously that one of the fundamental guarantees of due process is the principle of legality, including the principle of certainty.³ The Working Group has emphasized that legality and certainty are fundamental guarantees of due process, meaning that an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to

² See opinions No. 3/2019 and No. 45/2016.

³ See opinion No. 10/2018.

which a sufficiently certain sanction was attached. Thus, vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate the due process of law that is undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.

21. The source further refers to the Working Group's previous jurisprudence concerning Cambodia, where it noted that it has consistently found that vague and overly broad provisions that could result in penalties being imposed on individuals who had merely exercised their rights to freedom of opinion and expression cannot be regarded as being consistent with the Universal Declaration of Human Rights or the Covenant.⁴ The Working Group has clarified further that such laws allow for excessively broad interpretations of their provisions, thereby resulting in unjustified and arbitrary criminalization of the legitimate exercise of the right to freedom of expression.⁵

22. The source submits that Mr. Sokhet was detained and convicted pursuant to similarly impermissible provisions. Articles 494 and 495 of the country's Criminal Code prohibit incitement to disrupt social order, without defining "incitement" or "social order". The source argues that these provisions are sufficiently vague and broadly worded and susceptible to abuse that they cannot provide a legal basis for detention. The source provides an example of how susceptible such laws are to misuse, by recalling that immediately after Mr. Sokhet's arrest, the Phnom Penh municipal police chief commented to news reporters that Mr. Sokhet had committed the crime of incitement to provoke social disorder by criticizing the top leader. Likewise, at trial, the prosecutor made no reference to any actual incitement that could have been caused by Mr. Sokhet's posts. Instead, it was claimed that Mr. Sokhet had merely insulted prominent figures and dignitaries. The source therefore concludes that Mr. Sokhet's detention is arbitrary under category I.

23. The source further argues that Mr. Sokhet's imprisonment for incitement to disrupt social order falls within category II of the Working Group's mandate, as his prosecution and conviction violate his right to freedom of expression. The source recalls that the Working Group has previously explained, in another opinion involving Cambodia, that under no circumstances can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, be compatible with article 19 of the Covenant.⁶ But that is precisely what happened in the present case, affirms the source.

24. The source recalls that it is stated in article 19 (2) of the Covenant that everyone has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and ideas of all kinds. Furthermore, according to article 19 (3) of the Covenant, there are only limited justifications for restricting freedom of expression, such as for the protection of national security, public order or public health, and that even then, restrictions may only be imposed subject to stringent conditions. The right to freedom of expression specifically protects criticism of government officials and their actions,⁷ or indeed other forms of political discourse.⁸ The Working Group has also made clear that this includes speech made over the Internet⁹ and on Facebook.¹⁰

25. The source also recalls that the Working Group has previously analysed whether restrictions on freedom of expression, including criminal prosecution, are necessary and proportionate by assessing four factors: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies

⁴ See opinion No. 9/2018.

⁵ See opinions No. 27/2012, No. 20/2017 and No. 10/2018.

⁶ See opinion No. 9/2018.

⁷ See opinions No. 41/2005 and No. 9/2018.

⁸ See opinions No. 39/2015 and No. 44/2016.

⁹ See opinions No. 41/2005 and No. 44/2016.

¹⁰ See opinion No. 43/2011.

against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.¹¹

26. The source further recalls that the Working Group has emphasized that governments seeking to justify restrictions on speech based on the threat that it allegedly presents must specifically identify relevant language in the speech at issue that creates the threat.¹² For instance, in one case, the Working Group carefully reviewed the substance of a detainee's public proclamation and found no call for violence, concluding instead that it amounted to nothing more than vigorous political criticism.¹³ Similarly, the Working Group has stated that a vague and general reference to public order, without being properly explained and documented, is insufficient to convince the Working Group that restrictions on freedom of expression by way of deprivation of liberty are necessary when using the Internet.¹⁴

27. The source submits that during Mr. Sokhet's trial, no attempt was made by the trial judge or the prosecution to identify specific language in his Facebook posts that amounted to incitement. On the contrary, the prosecution's witness admitted that he had not even read all of the posts, and simply asserted that the posts that he had read could provoke social disorder, without providing any further detail or elaboration. The prosecution's witness also conceded that no disruption of the social order had occurred following Mr. Sokhet's posts, and that no member of the public had complained about Mr. Sokhet's posts.

28. Further, the source states that the conflation of the incitement charge and the concept of defamation confirms the disproportionate nature of the Government's response in the present case. Prior to trial, a police official referred to Mr. Sokhet as having criticized the Prime Minister. At trial, the prosecution specifically asked Mr. Sokhet why he had insulted prominent figures and dignitaries. But to the extent that Mr. Sokhet's speech is assimilated to alleged defamation, the source argues that international jurisprudence rules out detention as a response. In this regard, the source recalls that the Working Group has held that the proper remedy for defamation lies in a civil libel claim rather than in criminal sanctions, because it is the least intrusive measure sufficient to achieve respect of the rights and reputations of others.¹⁵ Similarly, the Human Rights Committee has held that imprisonment is never an appropriate penalty for defamation,¹⁶ and therefore a fortiori no detention based on charges of defamation may ever be considered either necessary or proportionate.¹⁷

29. The source concludes that in light of the above, Mr. Sokhet's detention in response to critical speech is contrary to his freedom of expression protections under the Covenant, and thus falls within category II of the Working Group.

30. Furthermore, the source argues that Mr. Sokhet's trial violated his right to be presumed innocent and his right to an independent and impartial tribunal. His subsequent detention thus falls within category III of the Working Group.

31. In this regard, the source recalls that article 14 (2) of the Covenant guarantees that every person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The Committee has clarified that this right imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.¹⁸ Thus, in *Larrañaga v. Philippines* and *Ashurov v. Tajikistan*, the

¹¹ See opinions No. 41/2017 and No. 58/2017.

¹² Human Rights Committee, general comment No. 34 (2011).

¹³ See opinion No. 5/1999.

¹⁴ See opinion No. 6/2016.

¹⁵ See opinion No. 51/2017. See also *Cacho Ribeiro v. Mexico* (CCPR/C/123/D/2767/2016).

¹⁶ See the Committee's general comment No. 34 (2011), para. 47.

¹⁷ See *Cacho Ribeiro v. Mexico*.

¹⁸ See the Committee's general comment No. 32 (2007). See also *Saidov v. Tajikistan* (CCPR/C/122/D/2680/2015).

Committee determined that the court's failure to address serious evidentiary issues in its judgment had violated the defendants' right to be presumed innocent.¹⁹

32. The source submits that Mr. Sokhet's trial was similarly marked by serious evidentiary failings. In particular, the prosecution simply informed the court that it had determined the existence of a crime, without adducing any evidence to demonstrate that Mr. Sokhet's posts had called for, or might have the effect of inciting, social disorder. The prosecution failed to describe the type of disorder that the Facebook posts could have incited. Likewise, the prosecution made no attempt to establish that Mr. Sokhet had intended to incite social disorder, the required mens rea and a necessary element of the offence, and did not refute Mr. Sokhet's defence that his only intention was to increase the popularity of his Facebook page.

33. Moreover, the source points out the fact that the prosecution's witness, who had led the investigation, admitted that he had only read some of Mr. Sokhet's Facebook posts, which, in its view, further indicates that Mr. Sokhet's guilt was presumed from the outset. The source states that despite these failings, the court accepted the prosecution's position and offered no reasoning in its judgment to underpin why it found Mr. Sokhet guilty of intentional incitement.

34. The source states that Mr. Sokhet's conviction, despite the evidentiary failings, also indicates that he was denied his right to be tried by an independent and impartial tribunal. It recalls that article 14 (1) of the Covenant guarantees a fair and public hearing by a competent, independent and impartial tribunal established by law. Specifically, the Working Group has concluded that judgments rendered by tribunals must give the appearance of impartiality to a disinterested observer.²⁰ In *Toshev v. Tajikistan*, for instance, the Committee found a violation of not only article 14 (3), but also article 14 (1), of the Covenant, where the court had disregarded the defence's motions to summon and examine important witnesses as well as the defence's objections to the content of the trial transcript.²¹

35. Finally, the source submits that Mr. Sokhet was prosecuted, convicted and detained based on the political opinions he had expressed in his Facebook posts criticizing senior dignitaries and government policy. On this basis, his detention is also arbitrary under category V.

36. The source recalls that the Working Group has identified several non-cumulative indicators that serve to establish the discriminatory nature of detention based on actual or perceived political opinion. These include the following: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, including for example through previous detention; (b) other persons with similarly distinguishing characteristics have also been persecuted; or (c) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.²²

37. The source argues that each of these three indicators applies to Mr. Sokhet, demonstrating the arbitrary nature of his detention. First, it is submitted that the Cambodian authorities have already prosecuted and imprisoned him for allegedly disseminating false information. Second, the source claims that Cambodia has launched a campaign of persecution against other journalists like Mr. Sokhet, routinely arresting or intimidating independent journalists who report critically on the country's leadership. Third, it is argued that Mr. Sokhet's detention is situated within a wider crackdown on freedom of expression that appears to be designed to suppress dissent.

38. Furthermore, the source notes an overlap between category II freedom of expression claims and category V claims based on political opinion. In general, when a deprivation of liberty results from political expression, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination based

¹⁹ *Larrañaga v. Philippines* (CCPR/C/87/D/1421/2005); and *Ashurov v. Tajikistan* (CCPR/C/89/D/1348/2005).

²⁰ See opinion No. 12/1994.

²¹ *Iskandarov v. Tajikistan* (CCPR/C/101/D/1499/2006).

²² A/HRC/36/37, para. 48.

on political views.²³ The source submits that this presumption applies in favour of Mr. Sokhet and is further supported by the police chief's statement that Mr. Sokhet was arrested for criticizing the Cambodian leadership.

Response from the Government

39. On 12 August 2021, the Working Group transmitted the source's allegations to the Government of Cambodia, under its regular communication procedure, requesting detailed information about the current situation of Mr. Sokhet by 11 October 2021. The Working Group also requested that the Government clarify the legal provisions justifying his continued detention, as well as the compatibility of his detention with the obligations of Cambodia under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Cambodia to ensure Mr. Sokhet's physical and mental integrity.

40. On 28 September 2021, the Government responded. In its two-page response, the Government reproduces in one page the messages posted by Mr. Sokhet. The Government also notes that according to the report of the judicial police and to the answers provided by the accused, including the consistency of the above-mentioned facts and supporting evidence collected, it is proved that Mr. Sokhet's act constitutes incitement to cause serious social chaos (via Facebook) and jeopardize national security. The Government alleges that, while committing the offence, Mr. Sokhet, an adult, functioned normally and showed no indications of mental disability. It adds that the accused was competent enough to comprehend the acts he had committed and understand his responsibility for them. Based on the above-mentioned factual and legal grounds, including sufficient supporting evidence, the Government concludes that Mr. Sokhet's act constitutes a criminal offence inciting serious social chaos (via Facebook), under articles 494 and 495 of the Criminal Code.

41. On 27 October 2020, the Phnom Penh Municipal Court of First Instance conducted a public hearing of the case, in the presence of the accused, Mr. Sokhet, and of his defence counsel. After concluding the oral arguments and reviewing all the evidence, the Court decided to sentence Mr. Sokhet to 18 months in prison and a fine of 2 million riels, in application of the Court's criminal verdict No. 2588 dated 11 November 2020.

42. After the Phnom Penh Municipal Court of First instance publicly pronounced the verdict on 11 November 2020, Mr. Sokhet filed an appeal on 5 December 2020 to have the whole decision annulled. The case is currently being handled by the Court of Appeal in accordance with the applicable legal proceedings.

43. On the basis of the above-mentioned facts and the answers given by the accused and his defence counsel during the public hearing, the Government submits that it is clearly proved that, with wicked intent, Mr. Sokhet had been disseminating fabricated news and inciting public anger for his own benefit. The Government affirms that the acts committed by Mr. Sokhet went beyond the bounds of his freedom of expression. According to the general principle theory of the Criminal Code of Cambodia, acts by natural persons or legal entities that instigate social unrest are an offence.

44. The Government contends that the case of Mr. Sokhet reflects enforcement of the law for an offence, in accordance with the provisions of the law and the legal procedures applicable in Cambodian courts.

Further submissions from the source

45. On 13 October 2021, the source made further submissions, in which it concluded that the Government had failed to address any of the factual and legal arguments that had been put forward to demonstrate the arbitrary nature of Mr. Sokhet's detention under categories I, II, III and V of the Working Group's methods of work, and in violation of the Covenant.

²³ See opinion No. 88/2017.

Discussion

46. The Working Group thanks the source and the Government for their submissions.

47. In determining whether Mr. Sokhet's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²⁴

Category I

48. Mr. Sokhet suffers from coronary heart disease for which he was receiving treatment before this arrest, which, if untreated, can be life-threatening. He is being held in Prey Sar Prison. The Working Group has previously found this practice of holding pretrial detainees alongside the general prison population at this prison to be in violation of minimum international legal standards.²⁵

49. It is stated in article 9 (3) of the Covenant that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Working Group recalls the Human Rights Committee's view that pretrial detention should be an exception and as short as possible, and must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.²⁶

50. In the present case, taking into account all circumstances, the Working Group concludes that an individualized determination of Mr. Sokhet's circumstances was absent, and, as a result, his detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant. In reaching this conclusion, the Working Group notes that the Government did not submit any information to suggest that such a determination took place or to rebut the source's submissions.

51. While the source does not make any submissions on whether Mr. Sokhet was brought before a judge to challenge his pretrial detention, the Working Group recalls the right to be brought promptly before a judicial authority to challenge detention, within 48 hours of the arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.²⁷ The right to bring proceedings before a court so that the court may decide without delay on the lawfulness of detention is protected by article 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant, and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.²⁸ As the Working Group has found, the inability to challenge detention before a court also violates the right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant, placing the individual outside the protection of the law, in violation of the right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

²⁴ [A/HRC/19/57](#), para. 68.

²⁵ See opinion No. 45/2016.

²⁶ Human Rights Committee, general comment No. 35 (2014), para. 38.

²⁷ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; and No. 30/2019, para. 30.

²⁸ Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54 ; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64; and the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#)), para. 3.

52. Based on the above, the Working Group concludes that that it is impossible to invoke a legal basis for Mr. Sokhet's detention, and that his detention is therefore arbitrary under category I.

Category II

Freedom of opinion and expression

53. The source argues that Mr. Sokhet's conviction violates his right to freedom of expression under article 19 of the Covenant. The Government submits that he was convicted for violating the Criminal Code for his acts that exceeded the limits of freedom of expression.

54. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely, the restriction must be provided by law, be designed to achieve a legitimate aim (namely the protection of national security, public order, public health or morals), and be imposed in accordance with the requirements of necessity and proportionality.²⁹

55. Mr. Sokhet's prosecution and conviction fail to satisfy these requirements. As discussed above, the arrest and detention of Mr. Sokhet was not "provided by law".³⁰ In order for a legislative provision to be characterized as a "law" within the meaning of article 19 (3) of the Covenant, it must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.³¹ Furthermore, the provision cannot confer, on those charged with its execution, unfettered discretion to restrict freedom of expression.³² Articles 494 and 495 of the Criminal Code are incompatible with article 19 (3) of the Covenant because they are impermissibly vague and overly broad.

56. It is not disputed that Mr. Sokhet published eight posts to his personal Facebook page that were critical of the Prime Minister, the Government and public officials. The Government has provided no specific information as to how Mr. Sokhet presented a threat to any of the legitimate interests enumerated in article 19 (3) of the Covenant. Instead, the Government submits that, by their very nature, Mr. Sokhet's posts incite social disorder. This broad-brush manner in which the law appears to have been applied to Mr. Sokhet does not accord with international standards, which require specificity and individualized assessment of the risk posed as a result of the exercise of freedom of expression, as discussed above. In this regard, the Working Group recalls its findings that when seeking to restrict speech, governments must specifically identify the language creating the alleged threat on the basis of which the restriction is implemented.³³

57. Any restriction on the right to freedom of expression must be a necessary and proportionate means of achieving a legitimate aim, meaning that it must be "the least intrusive instrument among those which might achieve their protective function".³⁴ The Human Rights Committee has emphasized that the form of expression is highly relevant in assessing whether a restriction is proportionate. As stipulated by the Human Rights Council, the following types of expression should never be subject to restrictions: discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.³⁵ It has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.³⁶ The Human Rights Committee has also

²⁹ Human Rights Committee, general comment No. 34 (2011), paras. 21–36.

³⁰ *Ibid.*, para. 22.

³¹ *Ibid.*, para. 25.

³² *Ibid.*

³³ See opinion No. 41/2005.

³⁴ Human Rights Committee, general comment No. 34 (2011), para. 34; and [A/HRC/14/23](#), para. 79 (g) (iv).

³⁵ Human Rights Council resolution 12/16; and [A/HRC/14/23](#), para. 81 (i).

³⁶ Human Rights Council resolution 12/16, para. 5 (p).

specifically recognized that article 19 (2) protects the work of journalists and “includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment”.³⁷ As such, article 19 (2) of the Covenant protects the holding and expression of opinions, including those which are not in line with government policy.³⁸

58. In the present case, as the source submits, the conflation of the incitement charge and the concept of defamation underlines the disproportionate nature of the Government’s response. As such, Mr. Sokhet’s arrest, prosecution and conviction are disproportionate and cannot be justified as the least intrusive instrument among those which might achieve their protective function.³⁹

59. Furthermore, article 19 (3) of the Covenant must not be used by governments for the muzzling of any advocacy for democracy by journalists.⁴⁰ The Working Group reiterates its finding in another opinion involving Cambodia, that under no circumstances can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, be compatible with article 19 of the Covenant.⁴¹

60. In addition to these Working Group findings, the Special Rapporteur on the situation of human rights in Cambodia and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have expressed concern at “an escalating trend of suppression by the Cambodian Government of dissenting opinions in what appears to be an attempt to intimidate or silence political opinion”, noting in particular “the use of criminal law to target free speech, both offline and online”.⁴² The Human Rights Council has expressed serious concern over the deterioration of the civil and political environment in Cambodia due to the chilling effects of judicial prosecutions and other actions against members of political parties, civil society and the media, and has called upon the Government to guarantee the right to freedom of expression and association, and take appropriate measures to encourage and enable civil society to play a constructive role in consolidating democratic development in Cambodia.⁴³

61. The Working Group concludes that Mr. Sokhet’s detention resulted from the peaceful exercise of his right to freedom of opinion and expression and was contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. For these reasons, the Working Group finds that Mr. Sokhet’s arrest and detention is arbitrary under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights in Cambodia.

Impermissibly vague law

62. The source submits, and the Government does not dispute, that Mr. Sokhet was prosecuted and convicted for the crime of incitement to disrupt social order under articles 494 and 495 of the Criminal Code.

³⁷ *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

³⁸ Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

³⁹ Human Rights Committee, general comment No. 27 (1999), para. 14.

⁴⁰ Human Rights Committee, general comment No. 34 (2011), para. 23 (noting that journalists are frequently subjected to such threats, intimidation, and attacks, because of their activities).

⁴¹ Opinion No. 9/2018, para. 42.

⁴² United Nations Office of High Commissioner of Human Rights, “Cambodia: UN experts concerned at government moves to silence political opponents”, 19 June 2019, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24711&LangID=E>; and see [A/HRC/36/61](#) and [A/HRC/39/73/Add.1](#) (reports of the Special Rapporteur on the situation of human rights in Cambodia).

⁴³ Human Rights Council resolution 48/23, para. 21; and opinions No. 9/2018, para. 45, and No. 3/2019, para. 50. See also Human Rights Council resolution 36/32, para. 22. On 21 March 2018, during the thirty-seventh session of the Council, 45 States also issued a joint statement on the human rights situation in Cambodia, expressing concern about the escalating repression of the media and urging the Government to refrain from using judicial, administrative and fiscal measures as political tools against the media.

63. The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law, and regulate their conduct accordingly.⁴⁴ The Working Group reiterates that laws may be so lacking in sufficient detail of the conduct that may be penalized that it is impossible to invoke a legal basis justifying the deprivation of liberty.⁴⁵ Charges involving vague and imprecise offences jeopardize the ability of individuals to exercise their fundamental rights and are likely to result in arbitrary deprivation of liberty. In this regard, the Working Group recalls its jurisprudence on prosecution under vague penal laws.⁴⁶

64. The Working Group finds that the vague and overly broad nature of articles 494 and 495 fails to distinguish between violent acts and the peaceful exercise of fundamental freedoms. Critical elements of the crime such as “incitement” and “social order” are not defined. In the absence of parameters to regulate their use, these provisions are susceptible to being arbitrarily applied, as has happened in the case of Mr. Sokhet.

65. While the Government asserts that it is proved that Mr. Sokhet’s act constitutes incitement to cause serious social chaos (via Facebook) and jeopardize national security, it has not provided any information to substantiate this, apart from listing Mr. Sokhet’s Facebook posts. As such, the Working Group observes that the Government has not explained how Mr. Sokhet’s conduct could be considered as inciting disruption of the social order. Importantly, there is nothing to suggest that he engaged in or incited violence as part of his activities that might have given cause to restrict his behaviour. His reporting on social media does not demonstrate any evidence of inciting or engaging in violent behaviour. Moreover, the source submits that, at Mr. Sokhet’s trial, a prosecution witness conceded that no disruption of social order had followed his posts. On the contrary, he had worked peacefully as a journalist publishing articles online, exercising his fundamental rights.

66. The Working Group finds that articles 494 and 495 of the Criminal Code are incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered “prescribed by law” and as “defined with sufficient precision”, due to their vague and overly broad language.⁴⁷

67. For the reasons set out above, the Working Group finds that the detention of Mr. Socket is arbitrary under category II.

Category III

68. Given its finding that Mr. Sokhet’s detention is arbitrary under category II, the Working Group emphasizes that no trial of Mr. Sokhet should have taken place. The Government and the source agree that on 11 November 2020, Mr. Sokhet was convicted of incitement to disrupt social order. The source submits that the case was appealed and that his conviction was upheld by the Court of Appeal on 30 June 2021, while the Government submits that as at 12 August 2021, his case was on appeal. The Working Group considers that Mr. Sokhet’s right to a fair trial and due process was violated.

69. The source submits that the judge in Mr. Sokhet’s case resolved all doubts in the prosecution’s favour, failed to address Mr. Sokhet’s defences, and overlooked material evidentiary gaps (see paras. 30–34 above.) While the Government asserts that Mr. Sokhet’s conviction is based on “factual and legal grounds including enough supporting evidence”, it does not address the specific issues raised by the source. The source submits and the

⁴⁴ Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014), para. 22.

⁴⁵ Opinions No. 11/2021, para. 65; No. 6/2021, para. 60; No. 36/2020, para. 54; No. 52/2018, para. 78; and No. 35/2018, para. 36.

⁴⁶ See, for example, opinions No. 9/2018 and No. 2019/3. See also opinions No. 15/2020, para. 58; No. 45/2019, para. 54; No. 44/2019, para. 55; No. 9/2019, para. 39; No. 8/2019, para. 54; No. 46/2018, para. 62; No. 36/2018, para. 51; No. 35/2018, para. 36; No. 79/2017, para. 54; No. 75/2017, para. 40; No. 27/2017, para. 35; No. 26/2017, para. 51; No. 40/2016, para. 36; No. 45/2015, para. 15; No. 26/2013, para. 68; No. 27/2012, para. 41; No. 24/2011, para. 24; No. 20/2003, para. 19; No. 13/1999, para. 12; No. 27/1998, para. 9; and No. 21/1997, para. 6.

⁴⁷ Human Rights Committee, general comment No. 34 (2011), para. 25.

Government does not dispute that the judge first recalled Mr. Sokhet's 2009 conviction before reading out the indictment and his eight Facebook posts during his trial.

70. The right to an independent and impartial tribunal is set out in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. The Working Group recalls that the Human Rights Committee has noted that the requirement of competence, independence and impartiality of a tribunal under article 14 (1) of the Covenant is an absolute right that is not subject to any exception.⁴⁸ The Committee has further observed that the tribunal must also appear to a reasonable observer to be impartial.⁴⁹ In this regard, the Working Group recalls that, in 2019, the Special Rapporteur on the situation of human rights in Cambodia noted that "the judiciary has faced challenges, including allegations of corruption and bribery, as well as executive interference in its work, and a resulting lack of public trust in it".⁵⁰

71. The Working Group finds that these factors also constitute a denial of Mr. Sokhet's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights. The brevity of Mr. Sokhet's trial strengthens this conclusion. The source submits and the Government does not dispute that Mr. Sokhet was convicted after a trial that lasted 90 minutes. As the Working Group has previously noted, a short trial for a criminal offence, which by the Government's own admission intended to jeopardize national security, indicates that Mr. Sokhet's guilt had been determined prior to the trial.⁵¹

72. The Working Group concludes that the above-mentioned violations of the right to a fair trial are of such gravity as to render Mr. Sokhet's deprivation of liberty arbitrary under category III. The Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers.

Category V

73. In addition, the Working Group considers that Mr. Sokhet was targeted because of his activities as a journalist who disseminated posts that were critical of the Government. His prosecution and imprisonment are consistent with a pattern of harassment against him, as evidenced by his prior prosecution and imprisonment for allegedly disseminating false information, in 2009, which is not disputed by the Government. Moreover, this matter was raised by the judge during his trial, thus highlighting this pattern.

74. The Working Group finds to be credible the source's allegations that Cambodia has launched a campaign of persecution against other journalists like Mr. Sokhet, by routinely arresting or intimidating independent journalists who report critically on the country's leadership. Moreover, it would appear that Mr. Sokhet's detention is situated within a wider crackdown on freedom of expression that appears designed to suppress dissent. In this regard, the Working Group recalls two previous opinions on Cambodia, in which it noted that "the law is increasingly being used to restrict the democratic space",⁵² and highlighted the "widespread concern within the international community about the application of criminal law in Cambodia to restrict the exercise of human rights".⁵³ In addition to the Working Group's findings, there is widespread concern within the international community about the application of criminal law in Cambodia to restrict the exercise of human rights.⁵⁴ On 11 October 2021, the Human Rights Council adopted a resolution on Cambodia expressing serious concern at the deterioration of the civil and political environment due to sustained judicial prosecution. On 2 November 2021, United Nations special rapporteurs criticized Cambodia for "weaponizing" its court system to methodically reduce the scope for citizen

⁴⁸ Human Rights Committee, general comment No. 32 (2007), para. 19.

⁴⁹ *Ibid.*; and see opinion No.12/1994.

⁵⁰ [A/HRC/42/60](#), para. 58.

⁵¹ See, for example, opinions No. 36/2018 and No. 75/2017.

⁵² Opinion No. 45/2016, para. 41.

⁵³ Opinion No. 9/2018, para. 45.

⁵⁴ [A/HRC/41/17](#), paras. 110.82, 110.84, 110.92, 110.97 and 110.110.

action, and called upon the country to protect freedom of expression after the convictions of 15 human rights defenders and political activists in two separate cases.⁵⁵

75. Moreover, as established in the discussion above concerning category II, Mr. Sokhet's detention resulted from the peaceful exercise of his fundamental rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁵⁶ The source's submission is supported by the police chief's statement that Mr. Sokhet was arrested for criticizing the Cambodian leadership.

76. For these reasons, the Working Group finds that Mr. Sokhet was deprived of his liberty on discriminatory grounds, on the basis of his political or other opinion. His detention therefore violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary according to category V.⁵⁷ The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

Concluding remarks

77. The Working Group wishes to express its serious concerns about Mr. Sokhet's health situation, as reported by the source. This includes his underlying heart condition, which can be life-threatening if left untreated. Mr. Sokhet's situation is exacerbated by him being held in Prey Sar Prison, which is notorious for its appalling detention conditions. In addition, the source submits that detainees are denied medical treatment. The Working Group has previously observed that the treatment afforded to certain detainees in Prey Sar Prison "posed serious threats to their health" and fell short of the Nelson Mandela Rules.⁵⁸ In these circumstances, the Working Group expresses grave regret that Mr. Sokhet (who, according to the source, appeared visibly ill at trial) was denied his request for bail to obtain essential medical treatment.

78. According to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. In particular, rule 27 (1) requires that all prisons ensure prompt access to medical attention in urgent cases, and that prisoners who need specialized treatment or surgery be transferred to specialized institutions or civil hospitals. The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

79. Finally, the Working Group notes with concern the source's submission that Mr. Sokhet's identification card expired on 11 November 2020, during his time in prison, and that he has not been issued with a new one.

80. Mr. Sokhet has been in detention in Prey Sar Prison from 26 June 2020 or thereabouts, that is, for over 15 months. In light of his underlying heart condition, Mr. Sokhet's health risks are greatly amplified as a result of being detained in an overcrowded prison during the COVID-19 pandemic. The Working Group calls upon the Government to immediately and unconditionally release him, and to ensure that he receives the required medical treatment as soon as possible.

⁵⁵ See the press release of 2 November 2021 by the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, available at

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27745&LangID=E>.

⁵⁶ Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

⁵⁷ See opinions No. 45/2019, No. 44/2019, No. 9/2019, No. 46/2018, No. 45/2018, No. 36/2018, No. 35/2018, No. 79/2017 and No. 75/2017.

⁵⁸ Opinions No. 3/2019, para. 60; No. 45/2016, para. 23; and No. 9/2018, para. 55.

Disposition

81. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ros Sokhet, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14, 15, 16, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

82. The Working Group requests the Government of Cambodia to take the steps necessary to remedy the situation of Mr. Sokhet without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

83. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Sokhet immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Sokhet.

84. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Sokhet and to take appropriate measures against those responsible for the violation of his rights.

85. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (b) the Special Rapporteur on the situation of human rights defenders, (c) the Special Rapporteur on the independence of judges and lawyers, (d) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and (e) the Special Rapporteur on the situation of human rights in Cambodia, for appropriate action.

86. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

87. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Sokhet has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Sokhet;
- (c) Whether an investigation has been conducted into the violation of Mr. Sokhet's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Cambodia with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

88. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

89. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

90. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁵⁹

[Adopted on 18 November 2021]

⁵⁹ Human Rights Council resolution 42/22, paras. 3 and 7.