

Mandates of the Special Rapporteur on violence against women, its causes and consequences; 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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on discrimination against women and girls

REFERENCE:
AL KHM 2/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17, 42/37, 34/18, 41/12, 34/5, 41/18 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **arbitrary arrest and detention of Ms. Ven Rachana, an online clothes seller, and Ms. Morn Eva, a transgender woman. We also refer to the comments made by Government officials targeting human rights NGOs that issued a statement in defence of women's rights following their detention.**

According to the information received:

On 17 February 2020, Prime Minister Hun Sen delivered a speech at the annual meeting of the Cambodian National Council for Women held at the Peace Palace in Phnom Penh. During the speech, the Prime Minister urged relevant government offices to investigate and take action against women who made and published videos of themselves wearing "revealing" clothes, while live streaming on Facebook and other social media platforms, to sell products, considered "pornographic" by the Prime Minister. He claimed that these women damage "morality, traditional Khmer women's values, and Khmer culture" and women who wear "sexy outfits [...] provoke sexual desire among men, leading to sexual violence and human trafficking". A representative of the Ministry of Posts and Telecommunications reportedly declared that the Ministry would ask Facebook

and other social media platforms to block the profiles of women accused of these practices.

The case of Ms. Ven Rachana

On the evening of 18 February 2020, Ms. Ven Rachana was arrested at her condominium by ten male police officers, and was taken to Toul Kork Police Station in Phnom Penh. She was told by a police officer that her arrest was under a joint operation conducted by district and commune police, the prosecutor, and Phnom Penh city hall and that it was related to her posting videos and photos of herself on Facebook wearing “sexy clothes”, which violated Cambodian culture. Ms. Rachana sells clothing products online, such as, underwear and accessories and had posted videos and photos of herself on Facebook to advertise these products.

Ms. Ven Rachana (also known as Thai Sreyneang), 39 years old, is reportedly charged under articles 38 and 39 of the Law on the Suppression of Human Trafficking and Sexual Exploitation in relation to pornography and under article 249 of the Criminal Code in relation to indecent exposure. She could be subjected to a maximum prison term of one year and forced to pay 2,000,000 Riels (approx. USD 478) if found guilty.

A police officer allegedly prepared a confession for her to read in front of a video camera, which was later broadcast on the Police Department’s Facebook page without her knowledge or consent. The transcripts included a declaration that she would stop posting photos on Facebook, and she apologised to the Prime Minister and the Cambodian public. On 19 February 2020, she was released at around 11.00 a.m.

Following her release, Ms. Rachana returned to her condominium and, as part of her economic activities, posted four photos of men’s clothes for sale on her Facebook page; in one of these photos, part of her hip was showing. At around 3.00 p.m. on the same day, six police officers came to her condominium and took her back to the police station. The police confiscated her phone and she was not allowed to contact her family. She was held at the police station for three nights.

On 21 February 2020, at around 9.00 a.m., she was taken to a hearing with the prosecutor and the investigating judge. On 22 February 2020, she was transported to Correction Centre 2 and was detained there without the ability to contact a family member until 4 March, when a family member visited her, two weeks after she was arrested. She was not informed of the charges brought against her and she was not provided a lawyer.

On 24 April, according to media reports, the Phnom Penh Municipal Court convicted her under articles 38 and 39 of the Law on the Suppression of Human Trafficking and Sexual Exploitation and under article 249 of the Criminal Code and sentenced her to six months in prison. It appears that later the Court reduced the sentence to a two month and 15 day prison term and suspended the rest. However, she is not aware of the articles of law under which she was convicted. She was reportedly convicted without access to legal counsel.

The case of Ms. Morn Eva

On 19 February 2020 at around 5.30 p.m., Ms. Morn Eva, 28 years old, was leaving her workplace and was approached by a police officer on a motorcycle who told her to accompany him to the Toul Kork Police Station in Phnom Penh. When she arrived at the station, an officer showed her a Facebook video in which she was offering sexual services. Ms. Eva admitted that she had sent this video privately to a client through a closed channel on Bigo Live, a global live video platform, in mid-January 2020. However, she informed the police she had not posted it publicly on Facebook herself. The officer said that she had violated Cambodian tradition and culture. She was detained at the police station for six nights from 19 to 24 February 2020 and was questioned by three police officers without the presence of a legal representative. The police also confiscated her phone, preventing her from contacting family members. One family member visited her on 20 February after hearing about her arrest in a news report.

On 24 February 2020, at around 2.00 p.m., she was taken to a hearing with the investigating judge who told her that she would be detained at the Phnom Penh Prison but no clarification was provided on the duration of her detention. Both the prosecutor and the judge advised her to get a lawyer, but she did not know whom to contact. She was not informed of the charges against her nor how long she would be held in pre-trial detention.

On 25 February, she was taken to the Phnom Penh Prison and currently remains without a lawyer. As a breadwinner for the family, she has concerns related to the livelihood of her mother and seven siblings. It should be noted that Ms. Eva had gone through gender-affirming surgery six months earlier, which requires her to have regular medical visits. She has not been able to access healthcare since her detention and has not been able to access her hormone treatment.

Ms. Morn Eva is reportedly charged under article 39 of the Law on Suppression of Human Trafficking and Sexual Exploitation in relation to pornography. She could be subjected to a maximum prison term of one year and obliged to pay 2,000,000 Riels (USD 478) if she is found guilty.

Threats by public officials against women's and human rights NGOs

On 19 February 2020, seven NGOs and individuals, including the Cambodian NGO Committee on CEDAW, ActionAid Cambodia, Klahaan Organization, Gender and Development for Cambodia, Banteay Srei Organization, Cambodian Centre for Human Rights, and Sok Leang, issued a joint letter to the Prime Minister urging him to respect women's rights to self-determination, expression and bodily integrity. The letter noted that his speech was contradictory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The letter further outlined that the argument that women who wear "sexy" outfits could lead to sexual violence is false, misleading, and should be discouraged. The statement further urged the Government to uphold its treaty obligations and implement article 5 of CEDAW and take appropriate measures to modify the social and cultural patterns to eliminate the prejudices and customary practices against women.

On 24 February 2020, the Ministry of Women's Affairs issued a statement supporting the Prime Minister and authorities' actions. On 2 March 2020, the Prime Minister criticised the NGOs during the graduation ceremony of Asia Euro University in Phnom Penh, sarcastically suggesting human rights defenders and their family members should make videos of themselves dressed in similar clothing, so that he could post the videos online.

While we do not wish to prejudge the accuracy of these allegations, we are concerned by the fact that these allegations, if confirmed, would indicate a deeply troubling trend of sex- and gender-based stereotyping and discrimination against women with serious implications on their rights to non-discrimination, due process, freedom from arbitrary detention, freedom of association and of expression and their abilities to earn an income.

We would like to point out that remarks by authorities linking sexual violence and human trafficking to women's choice of clothes directly contradict the State's obligation to eliminate harmful stereotypes and prevent discrimination and violence against women. In addition, the reported targeting and singling out women who use social media platforms represents an apparent misuse of the criminal legislation on pornography and sexual exploitation in a gender-biased way that would result in discrimination and violence against women. We also note that the alleged intention by the Government to have women's profiles removed from social media platforms could represent a violation of their right to participate in the public life, in line with article 11 of the CEDAW.

In particular, we express concern about the allegations of arbitrary arrest and detention of Ms. Ven Rachana and Ms. Morn Eva, and in particular about the latter's physical integrity in view of the allegations that she is denied access to the appropriate and continuous medical treatment she needs in light of her recent surgical procedures, in

accordance with Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

If confirmed, the allegations that one or both victims were not informed of the charges against them, were not provided access to free legal counsel, were denied contact with family or friends, and were forced to confess would represent violations of the victims' rights to due process and to freedom from arbitrary detention as protected in the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia in 1992. The allegations also comprehend violations to the right to privacy.

Finally, we would like to express our concern regarding the allegations of harassment against civil society organisations and leaders, which would prevent the exercise of their freedom of association and of expression, as well as undermine their work in defence of women's human rights and the prevention of violence against women in Cambodia. In particular, we are concerned that the discriminatory and harassing remarks were made by the highest authorities of your Excellency's Government. We therefore call on your Excellency's Government to take urgent and effective steps to ensure the safety and security of human rights defenders and to create an enabling environment for them.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the application of the criminal law provisions on pornography and indecent exposure and on their compatibility with article 5 of the Convention for the Elimination of All Forms of Discrimination against Women.
3. Please inform whether your Excellency's Government has requested or has the intention to request social media platforms to block the profiles of women who are accused of going against morality; if so, whether the platforms have followed this request; and the compatibility of such measures with Cambodia's international human rights obligations.
4. Please explain how the legal grounds for the arrest and detention of Ms. Ven Rachana and Ms. Morn Eva are compatible with Cambodia's

obligations under international human rights law as stated, inter alia, in the International Covenant on Civil and Political Rights.

5. Please provide information on the opportunity given to Ms. Ven Rachana and Ms. Morn Eva to secure a lawyer and have appropriate legal representation throughout the process, including by providing free legal counsel and aid; if not, the reasons for this denial.
6. Please provide information on the measures taken to ensure that the needs of Ms Ven Rachana and Ms Mora Eva as women detainees have been met, including access to medical care by Ms. Morn Eva, considering her specific and time-sensitive health needs.
7. Please provide information about actions taken to prioritize non-custodial measures in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as well as recommendations by WHO and the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the current context of COVID 19 pandemic.
8. Please provide information as to the specific measures that have been put in place to ensure that those who defend human rights in Cambodia can carry out their legitimate work in a safe and enabling environment without fear of harassment and intimidation from the authorities, along with specific information as to the steps taken to support and promote the work of human rights defenders particularly women human rights defenders in the country.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In addition, we call on the Government of Cambodia to refrain from reproducing discriminatory and harmful stereotypes that blame women for the violence they suffer, and to take measures towards preventing such violence. We also call on the Government of Cambodia to take action, particularly in the current context of a global pandemic, to protect the health and safety of people in detention and to implement the measures recommended by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment in its Advice of 25 March 2020 to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic.¹ Especially, in accordance with the WHO recommendations of 15 March 2020 concerning the response to Covid-19 in prisons and other places of detention, we urge the Government of Cambodia to prioritize the use of non-custodial measures at all stages of criminal proceedings, including during the pre-trial phase, during the trial and sentencing, as well as after sentencing. Priority should be given to non-custodial measures for suspected offenders and prisoners with low-risk profiles and dependents, while paying particular attention to pregnant women and those with dependent children.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on violence against women, its causes and consequences

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¹ <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to the Convention on the Elimination of Discrimination against Women, ratified by Cambodia in 1992, and in particular the obligation regarding women's rights to non-discrimination and the enjoyment of de jure and de facto equality laid out in article 2. As laid out by the Committee on the Elimination of Discrimination against Women (CEDAW Committee), in its General Recommendation no. 35, States parties to the Convention on the Elimination of All Forms of Discrimination against Women must take appropriate measures to "dismantle the commonly held victim-blaming beliefs under which women are responsible for their own safety and for the violence that they suffer", including sexual violence.

We remind your Excellency's Government that, in its recent review of Cambodia (CEDAW/C/KHM/CO/6), the CEDAW Committee expressed its concern over "social norms that justify gender-based violence against women and girls and blame the victim rather than the perpetrator, and the high prevalence of such violence", and called the State to address the root causes of violence. The Committee also called on the Government to ensure that the rights of women in the informal employment sector in Cambodia be effectively protected, particularly considering that they are the majority of workers in that sector.

In its thematic report on women's health and safety (A/HRC/32/44), the Working Group on discrimination against women and girls considers that the criminalization of women in prostitution/sex work places them in a situation of injustice, vulnerability and stigma and is contrary to international human rights law. It notes that the Convention on the Elimination of All Forms of Discrimination against Women calls for prohibition of the exploitation of prostitution and not for punishment of the women in prostitution/sex work themselves; the well-established position of the Committee on the Elimination of Discrimination against Women that women should not be criminalized for prostitution; and the stipulation in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) that efforts should be made to discourage the demand that fosters all forms of exploitation of women, including trafficking for sexual exploitation. The Working Group states that international organizations and human rights bodies have called on States to ensure, at a minimum, that women in prostitution/sex workers have the right to access sexual health services; are free from violence or discrimination, whether committed by State agents or private persons;

and have access to equal protection of the law. In particular, States should also ensure that law enforcement officials serve a protective function, as opposed to engaging in or perpetuating violence against women in prostitution/sex workers.

We would also like to bring to Your Excellency's attention article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. In that regard, we would also like to draw your attention General Assembly Resolution 68/181 which urges States to acknowledge publicly the important and legitimate role of women's rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them.

We would like to refer your Excellency's Government to articles 19 and 22 of ICCPR, which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

In addition, we wish to recall Rule 24 of the Nelson Mandela Rules, which specifies that prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

We would like to bring to your Excellency's attention principle 9 of the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, which recommends the adoption by States of policies with respect to access to and continuation of gender affirming treatment and medical care for LGBT persons deprived of their liberty.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the article 6 (b) and (c), of the UN Declaration on Human Rights Defenders which provide for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

We would like to draw your attention General Assembly Resolution 68/181 whereby States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves. (OP5, 19 and 20)