



General Assembly

Distr.: General
29 May 2018

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

Opinion No. 3/2019 concerning Uon Chhin and Yeang Sothearin (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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 31 October 2018, the Working Group transmitted to the Government of Cambodia a communication concerning Uon Chhin and Yeang Sothearin. The Government has not replied to the communication. 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).



Submissions

Communication from the source

4. The case submitted by the source relates to two individuals: Uon Chhin, a 50-year-old Cambodian national and Yeang Sothearin, a 36-year-old Cambodian national. Both men reside in Trapang Theleoung Village, Po Senchey District, Phnom Penh.

5. Mr. Uon and Mr. Yeang are former freelance reporters for Radio Free Asia in Cambodia. Mr. Uon worked as a reporter and videographer, while Mr. Yeang worked as a reporter and editor. During their employment with Radio Free Asia, they covered land and social issues, including human rights violations in these areas. According to the source, reporting on these issues does not violate Cambodian law.

6. The source alleges that, since 2017, the authorities have systematically targeted opposition politicians, political activists and independent media outlets. As a result, on 12 September 2017, the Radio Free Asia office in Cambodia was forced to close due to allegations that it owed taxes and had committed “administrative violations”. According to the source, these grounds were used as a pretext to shut down independent media outlets across the country, including Radio Free Asia. The source adds that, as a result of the crackdown, numerous opposing voices such as opposition members, journalists and activists have been forced to leave Cambodia. The source claims that, on 22 September 2017, the Ministry of the Interior announced that any former Radio Free Asia journalists who still reported for that broadcaster would be arrested.

7. On 30 September 2017, the freelance contracts of Mr. Uon and Mr. Yeang with Radio Free Asia expired. However, the source alleges that as the reporting by Radio Free Asia was often critical of the authorities, both men remained under government surveillance.

8. Following the expiration of his freelance contract, Mr. Uon ran a video production business from a room at the Marady Hotel in Phnom Penh to generate income. In particular, he produced videos of weddings and karaoke events. Mr. Yeang was unable to find work after his contract with Radio Free Asia expired.

9. Due to the nature of his video production business, Mr. Uon often moved video equipment in and out of his hotel room. He was also active on social media and posted photos of the new video equipment on a social media platform. The source reports that the police became increasingly suspicious of Mr. Uon’s public display of video equipment. On 14 November 2017, the police confronted him about his work and accused him of continuing to report for Radio Free Asia by running a studio out of the hotel room. Mr. Uon denied these allegations and called Mr. Yeang to the hotel room to confirm that they no longer worked for Radio Free Asia. When Mr. Yeang arrived, the Meanchey District Police arrested both journalists.

10. The source alleges that no arrest warrant was presented when Mr. Uon and Mr. Yeang were arrested. Moreover, Mr. Uon and Mr. Yeang were not informed of any charges against them. The source further submits that, given the widespread imprisonment of activists, critics of the Government and independent journalists, and the closure of numerous media outlets by the authorities, the order for the arrest of Mr. Uon and Mr. Yeang likely came from the central Government.

11. Following their arrest on 14 November 2017, Mr. Uon and Mr. Yeang were taken to Municipal Police Headquarters in Phnom Penh. On 16 November 2017, they were taken back to the Marady Hotel and the premises were searched as part of the investigation. On 18 November 2017, the investigating judge ordered that Mr. Uon and Mr. Yeang be placed in pretrial detention in Phnom Penh Correctional Centre 1, commonly known as Prey Sar Prison.

12. According to the source, Mr. Uon and Mr. Yeang made numerous requests for bail but these were denied. On 4 December 2017, they were initially denied bail on the grounds that they represented a flight risk, despite having already handed over their passports upon arrest. On 26 December 2017, the Court of Appeals upheld the earlier ruling denying bail.

13. On 4 April 2018, shortly after an additional “production of pornography” charge was brought against Mr. Uon and Mr. Yeang, the Court of Appeals announced that the detention of Mr. Uon and Mr. Yeang would continue. Neither of the two men was present for this decision. The source reports that the lawyer representing Mr. Uon and Mr. Yeang argued that they had been detained at the police station for longer than the 48-hour period prescribed by law. However, the judge found that their detention by the judicial police was in accordance with articles 95 and 379 of the 2007 Code of Criminal Procedure, as Mr. Uon had been detained for 42 hours and 35 minutes and Mr. Yeang had been detained for 42 hours and 5 minutes.

14. On 19 April 2018, Mr. Uon and Mr. Yeang were again denied bail on the grounds that they posed a flight risk and their release could hinder the judicial inquiry. The source notes that the decision was taken despite the fact that Mr. Uon and Mr. Yeang had submitted their passports and identification cards, and their family members had assured the authorities that Mr. Uon and Mr. Yeang would not leave Cambodia while the case was open. On 21 May 2018, Phnom Penh Municipal Court extended the pretrial detention for six months to allow for continuing investigations. On 23 July 2018, Mr. Uon and Mr. Yeang were denied bail by the Supreme Court on the grounds that they might pose a risk to public order and security during the ongoing proceedings.

15. The source emphasizes that, according to article 9 (3) of the Covenant, as a general rule persons awaiting trial should not be detained in custody, but release may be subject to guarantees to appear for trial. Furthermore, the Human Rights Committee has ruled that pretrial detention should only be employed to the extent that it is lawful, reasonable and necessary, and to prevent flight, interference with evidence or the recurrence of crime or in cases where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.¹ In the present case, Mr. Uon and Mr. Yeang clearly posed no such threat, as they had submitted their passports and their families had provided guarantees that they would not leave Cambodia, and no sufficient evidence against them has been uncovered.

16. On 21 August 2018, Mr. Uon and Mr. Yeang were released on bail under court supervision, having been detained without trial for nine months and seven days.

17. The source reports that Mr. Uon and Mr. Yeang both suffer from an undiagnosed skin disease that they contracted from fellow inmates while in detention. According to the source, they did not receive proper medical treatment while in Prey Sar Prison, and endured squalid and cramped conditions that posed serious threats to their health.

18. In addition, the source states that Mr. Uon and Mr. Yeang applied to annul the legal proceedings against them and for the existing charges to be dropped due to non-compliance with detention procedures when they were first arrested and the lack of evidence against them. On 17 September 2018, the Supreme Court rejected this application. As a result, Mr. Uon and Mr. Yeang remain on bail pending trial.

19. According to the source, Mr. Uon and Mr. Yeang face up to 15 years’ imprisonment on charges of “illegally collecting information for a foreign source” under article 445 of the 2009 Criminal Code and of “production of pornography” under article 39 of the 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation. Article 445 of the Criminal Code (Provision of a Foreign State with Information which Undermines National Defence) provides:

The act of giving or facilitating easy access by a foreign State or its agents to information, processes, objects, documents, data, information technologies or memorandum[s] ... which undermine the national defence is punishable by an imprisonment from 7 (seven) years to 15 (fifteen) years.

20. According to the source, given the subject matter of article 445, the underlying reason for the detention of Mr. Uon and Mr. Yeang is their past association with Radio Free

¹ General comment No. 35 (2014) on liberty and security of person, para. 38. See also *Cámpora Schweizer v. Uruguay* (A/38/40, annex VIII), para. 18.1.

Asia. The source alleges that the charges against the journalists are fabricated and represent a strategy by the authorities to suppress freedom of expression and to deter journalists in Cambodia from continuing to report for the Radio Free Asia office in the United States of America. The source adds that the authorities repeatedly failed to provide any clear evidence of criminal activities to justify the arrest and detention of Mr. Uon and Mr. Yeang. In particular, the Deputy Prosecutor of Phnom Penh failed to provide concrete evidence to support the charges under article 445.

Legal analysis

21. The source submits that the detention of Mr. Uon and Mr. Yeang is arbitrary according to categories II and III.

22. In relation to category II, the source submits that the arrest and detention of both individuals was the result of their exercise of the right to the freedom of expression under article 19 of the Universal Declaration of Human Rights, article 19 of the Covenant and article 41 of the Cambodian Constitution, as well as the exercise of their right to freedom of association under article 20 of the Universal Declaration of Human Rights and article 22 of the Covenant. The source recalls that the Covenant entered into force in Cambodia on 26 August 1992.

23. The source reiterates that, at the time of his arrest, Mr. Uon was independently producing videos for weddings and karaoke events. Mr. Yeang had not yet found employment after his contract with Radio Free Asia expired. While working for Radio Free Asia, both journalists peacefully reported on land and social issues, which is not prohibited by law. Nevertheless, the source alleges that their professional reporting resulted in ongoing persecution by the authorities, including depriving them of the freedom of expression necessary for their work as journalists.

24. In addition, the source argues that Mr. Uon and Mr. Yeang were prosecuted under article 445 of the 2009 Criminal Code, which contains overly broad and vague terms. For example, the article does not clearly define actions that would constitute providing “easy access” by a foreign State to information or that would “undermine the national defence”. According to the source, such broad terms could include lawful reporting on social issues, and the ambiguity of that law allows the authorities to target journalists. In the present case, the authorities were unable to produce any concrete evidence indicating that Mr. Uon or Mr. Yeang had engaged in any effort to provide a foreign State with information to undermine the national defence. Given the lack of legal support for the charge of espionage, the arrest and detention of Mr. Uon and Mr. Yeang under article 445 of the Criminal Code was arbitrary and violated their freedom of expression.

25. The source further alleges that the arrest and detention of Mr. Uon and Mr. Yeang, and the charges against them, are based on their former association with Radio Free Asia. According to the source, Radio Free Asia provided a platform for journalists to engage in open and free reporting on pro-democratic activism and human rights issues. Mr. Uon and Mr. Yeang were detained because of their association with this independent media network, and this is evident from the pattern of coordinated arrests of fellow journalists. The source argues that these simultaneous arrests suggest that the authorities aimed to silence Radio Free Asia and other independent media networks, thereby violating its members’ right to freedom of association.

26. In relation to category III, the source submits that the detention of Mr. Uon and Mr. Yeang is arbitrary since the detention and unsupported charges violated international norms relating to the right to a fair trial. The source recalls that the minimum international standards of due process applicable to the case of Mr. Uon and Mr. Yeang are found in the Universal Declaration of Human Rights, the Covenant, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

27. According to the source, the arbitrary nature of the detention of both individuals is evident from: (a) their arrest without a warrant; (b) the denial of legal counsel within 24 hours of their detention; and (c) the continued unwarranted charges and denial of appeals by the Supreme Court.

28. The source claims that Mr. Uon and Mr. Yeang were not presented with an arrest warrant or informed of any charges against them in accordance with articles 9 (2) and 14 (3) (a) of the Covenant and principles 10 to 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source alleges that when they were taken into custody by the Phnom Penh Police in Mr. Uon's hotel room, neither Mr. Uon nor Mr. Yeang was informed of the reasons for the arrest. As a result, there was no legal basis for their arrest and their deprivation of liberty was arbitrary.

29. Moreover, the source alleges that Mr. Uon and Mr. Yeang were held incommunicado during their first 24 hours of detention at Phnom Penh Municipal Police Headquarters. They were not given the option of retaining a lawyer to receive prompt and full communication of their order of detention or to present evidence in their defence, as required by article 14 (3) (d) of the Covenant, principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

30. Finally, the source submits that Mr. Uon and Mr. Yeang were not afforded their right to be presumed innocent as they were held in pretrial detention for nine months. The investigating judge extended their pretrial detention and repeatedly denied bail requests, citing security concerns as the reason, despite the fact that Mr. Uon and Mr. Yeang had surrendered their passports. Mr. Uon and Mr. Yeang were also denied access to certain hearings of their case, including the hearing on 4 April 2018, when the judge announced their continued detention. The source claims that this treatment violated articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant.

31. The source emphasizes that, despite the active investigation of the conduct of Mr. Uon and Mr. Yeang, the authorities repeatedly failed to uncover and produce any clear and sufficient evidence against them to support the criminal charges of espionage or the production of pornography. According to the source, shortly after the arrest of Mr. Uon and Mr. Yeang, a spokesman of the Ministry of the Interior admitted that Phnom Penh Municipal Court was trying to determine what law the pair might have broken and was investigating to find the crime. The source reiterates that notwithstanding the lack of clear and sufficient evidence, on 17 September 2018, the Supreme Court rejected the application to annul the legal proceedings and charges against Mr. Uon and Mr. Yeang.

32. The source concludes that the authorities have repeatedly denied bail without sufficient grounds and hindered the efforts of Mr. Uon and Mr. Yeang to appeal their case, which demonstrates that the domestic remedies available have been ineffective in addressing the present case. In that regard, the source emphasizes that the outcome of appealing court decisions is not likely to be impartial and would be subject to influence from the authorities. The source claims that the arrest and detention of Mr. Uon and Mr. Yeang was conducted in violation of articles 97, 98 and 99 of the 2007 Code of Criminal Procedure. Those articles specifically provide for a record to be kept when persons are taken into police custody, including the reasons for the detention, and for detainees to have access to a lawyer and medical assistance during police custody.

Communication from special procedure mandate holders

33. On 2 March 2018, the Working Group and several other special procedure mandate holders sent a joint urgent appeal to the Government in relation to the arrest and detention of several individuals associated with media outlets, including Mr. Uon and Mr. Yeang.²

34. In the communication, the special procedure mandate holders expressed concern at the criminalization of the freedom of expression in Cambodia, including under vague provisions in the Criminal Code relating to the offence of "conspiracy with a foreign power". Furthermore, the mandate holders noted that the proceedings against Mr. Uon and Mr. Yeang appeared to have been conducted in violation of the right to due process and a

² Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23669>.

fair trial, in particular violating the principle of equality of arms and the right to have adequate time and facilities for the preparation of one's defence enshrined in article 14 of the Covenant.

35. The Working Group regrets that the Government did not respond to that communication.

Response from the Government

36. On 31 October 2018, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 31 December 2018 about the current situation of Mr. Uon and Mr. Yeang. The Working Group also requested the Government to clarify the legal provisions justifying their detention and the charges against them, as well as the compatibility of those provisions with the obligations of Cambodia under international human rights law.

37. The Working Group regrets that it did not receive a response from the Government to the communication. The Government did not request an extension of the time limit for its reply, as provided for in the methods of work of the Working Group.

Discussion

38. The Working Group takes note that Mr. Uon and Mr. Yeang were granted bail on 21 August 2018. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. The Working Group is mindful that Mr. Uon and Mr. Yeang are currently conditionally released on bail under court supervision and may be subject to rearrest and further detention in future. Accordingly, the Working Group considers that it is important to render an opinion.

39. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

40. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

41. The source alleges that Mr. Uon and Mr. Yeang were not presented with an arrest warrant at the time of their arrest on 14 November 2017 and that they were not informed at that time of the reasons for their arrest or of any charges against them. Although it had an opportunity to do so, the Government did not challenge these allegations.

42. The Working Group recalls that, according to article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Therefore, for deprivation of liberty to be considered lawful and not arbitrary, established legal procedures and guarantees must be respected. In the present case, Mr. Uon and Mr. Yeang were arrested without an arrest warrant and without being informed at that time of the reasons for their arrest, in violation of article 9 (1) and (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. As the Working Group has stated, in order for deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.³

43. Given that Mr. Uon and Mr. Yeang were arrested without an arrest warrant and without being informed of the reasons for their arrest, the Working Group finds that the

³ See, e.g., opinions No. 36/2018, No. 35/2018, No. 75/2017 and No. 46/2017.

Government failed to establish a legal basis for their arrest and pretrial detention. Their deprivation of liberty was therefore arbitrary under category I.⁴

44. In addition, the source alleges that Mr. Uon and Mr. Yeang were deprived of their liberty as a result of the peaceful exercise of their rights to freedom of expression and freedom of association under the Universal Declaration of Human Rights and the Covenant. Mr. Uon and Mr. Yeang were charged with espionage under article 445 of the 2009 Criminal Code and with the “production of pornography” under article 39 of the 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation.

45. In its submission, the source argues that Mr. Uon and Mr. Yeang were subjected to unwarranted charges and pretrial detention for their previous reporting on land and social issues as freelance journalists for Radio Free Asia, despite the fact that both men were no longer employed by that media outlet at the time of their arrest. The Government did not challenge that allegation. Accordingly, the Working Group finds that the arrest and detention of Mr. Uon and Mr. Yeang violated their right as journalists to freedom of expression which, according to article 19 of the Universal Declaration of Human Rights, includes the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers. This right includes the expression of every form of idea and opinion capable of transmission to others, including political discourse, commentary on one’s own and on public affairs, discussion of human rights and journalism.⁵

46. Moreover, even if Mr. Uon and Mr. Yeang continued to report for Radio Free Asia following the expiration of their contracts (as appears to be alleged by the Government in its case against both individuals), the Working Group is of the view that this activity falls within the boundaries of the freedom of opinion and expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group recalls that the holding and expression of opinions, including those that are critical of, or not in line with, official government policy, is protected under international human rights law.⁶ Importantly, there is nothing to suggest that Mr. Uon and Mr. Yeang behaved in a violent manner or in any way incited violence through their previous or current activities that might have given cause to restrict their behaviour.⁷

47. In the absence of any alternative explanation of the charges from the Government, the Working Group considers that the source has established a *prima facie* case that the arrest and detention of Mr. Uon and Mr. Yeang were part of a pattern of silencing opposing voices, such as journalists and media outlets across Cambodia, in violation of their right to freedom of association with Radio Free Asia and other independent media networks. This pattern has also been noted by other independent observers. For example, a United Nations press briefing note issued prior to the arrest of Mr. Uon and Mr. Yeang referred to the increasingly hostile operating environment for media outlets, including Radio Free Asia, in Cambodia in the lead-up to the 2018 elections.⁸

48. Furthermore, the Working Group finds that the permitted restrictions on the freedom of expression and association under articles 19 (3) and 22 (2) of the Covenant do not apply in the present case. The burden is on the Government to show that the prosecution of Mr. Uon and Mr. Yeang on espionage and production of pornography charges is a necessary,

⁴ The source did not specify when Mr. Uon and Mr. Yeang were notified of both charges against them. The Working Group is therefore unable to determine whether the authorities promptly informed the accused of the charges against them or whether, by failing to do so, there was an additional violation of article 9 (2) of the Covenant.

⁵ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11.

⁶ *Ibid.*, paras. 42–43.

⁷ *Ibid.*, paras. 21–36. There is no evidence to indicate, for example, that restrictions might have been legitimately imposed under article 19 (3) of the Covenant for the protection of national security or public order.

⁸ See United Nations, Office of the United Nations High Commissioner for Human Rights, “Press briefing note on Yemen, Cambodia and Guatemala”, 25 August 2017. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21996&LangID=E. See also A/HRC/39/73, paras. 7, 61–65, 92 (i) and 93 (a).

reasonable and proportionate response in protecting national security or public order, and it has not done so. In any event, in its resolution 12/16, the Human Rights Council called on States to refrain from imposing restrictions that were not consistent with international human rights law, including restrictions on discussion of government policies and political debate, reporting on human rights, the expression of opinion and dissent, the free flow of information and ideas, and access to or use of radio technology (para. 5 (p)).⁹

49. The Working Group wishes to make further observations on article 445 of the 2009 Criminal Code, the provision under which Mr. Uon and Mr. Yeang have reportedly been charged with espionage. The Government has offered no explanation of how the previous or current actions of the two individuals amount to providing “easy access by a foreign State” to information that “undermine[s] the national defence”. The determination of what constitutes an offence under this provision appears to be left entirely to the discretion of the authorities. In its jurisprudence, the Working Group has consistently found that vague and overly broad provisions that could result in penalties being imposed on individuals who have merely exercised their rights cannot be regarded as being consistent with the Universal Declaration of Human Rights or the Covenant.¹⁰ The principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.¹¹ The Working Group considers that article 445 is so vague as to be inconsistent with international human rights law, and calls upon the Government to bring this provision into line with its obligations under the Covenant.

50. 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. In its resolution 36/32 (para. 22), the Human Rights Council 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 called upon the Government to guarantee the rights to freedom of expression and association.¹²

51. The Working Group concludes that the pretrial detention of Mr. Uon and Mr. Yeang resulted from the peaceful exercise of their rights to freedom of opinion and expression and freedom of association, and was contrary to articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. Their deprivation of liberty was therefore arbitrary under category II. The Working Group refers this matter to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

52. Given its finding that the deprivation of liberty of Mr. Uon and Mr. Yeang was arbitrary under category II, the Working Group wishes to emphasize that both individuals should not face trial in the future. The Working Group considers that there were multiple violations of the right of Mr. Uon and Mr. Yeang to a fair trial during their initial police custody and pretrial detention, none of which has been denied by the Government.

53. The source alleges that Mr. Uon and Mr. Yeang were held incommunicado during their first 24 hours of detention at Phnom Penh Municipal Police Headquarters. According to the source, they were not given the option of retaining a lawyer to receive prompt and full communication of their order of detention or to present evidence in their defence. In its

⁹ See also Human Rights Committee, general comment No. 34, para. 30 (noting that it is not compatible with article 19 (3) of the Covenant to invoke national security laws to suppress or withhold information of legitimate public interest that does not harm national security or to prosecute journalists for having disseminated such information); and CCPR/C/KHM/CO/2, para. 21.

¹⁰ See, e.g., opinions No. 9/2018, No. 26/2013, No. 27/2012 and No. 46/2011.

¹¹ See, e.g., opinion No. 41/2017, paras. 98–101.

¹² 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.

submission, the source refers to article 98 of the 2007 Code of Criminal Procedure, which appears to allow for a delay of 24 hours before legal counsel is provided to a person in police custody.¹³ However, as the Working Group has repeatedly stated in its jurisprudence, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with international law.¹⁴

54. As the Working Group stated in principle 9 and guideline 8 of 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, all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.¹⁵ In the present case, the failure to provide Mr. Uon and Mr. Yeang with a lawyer from the moment of their apprehension violated their right to legal assistance guaranteed by articles 10 and 11 (1) of the Universal Declaration of Human Rights and their right to communicate with counsel of their choosing in accordance with article 14 (3) (b) of the Covenant.

55. In addition, the source submits that Mr. Uon and Mr. Yeang were not afforded their right to be presumed innocent as they were held in pretrial detention for over nine months following their arrest on 14 November 2017. The investigating judge extended their pretrial detention and repeatedly denied bail requests, citing security concerns as the reason, despite the fact that Mr. Uon and Mr. Yeang had surrendered their passports and their families had given guarantees that they would not leave Cambodia while the case was pending. Mr. Uon and Mr. Yeang's applications for bail were rejected and their pretrial detention was ordered to be continued on at least six occasions (on 4 and 26 December 2017; on 4 and 19 April 2018; on 21 May 2018; and on 23 July 2018) before their eventual release on bail on 21 August 2018.

56. The Working Group recalls that, according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the rule, and as short as possible. Pretrial detention 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. This determination must include whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary.¹⁶

57. In the present case, while it appears that the courts conducted an individualized review of the case in relation to the risk posed by both individuals, the Government has not provided any indication that alternatives to pretrial detention were considered. As the source points out, Mr. Uon and Mr. Yeang had surrendered their passports and identification cards, and their families had provided guarantees that they would not leave Cambodia. While the Government has not contested the assertions, these important factors do not appear to have been taken into account in a consideration of whether non-custodial alternatives were genuinely available. Under these circumstances, the pretrial detention of Mr. Uon and Mr. Yeang did not meet the requirements of article 9 (3) of the Covenant and was inconsistent with their right to the presumption of innocence under article 14 (2) of the

¹³ Article 98 provides:

Where the period of 24 hours from the starting of the police custody has been lapsed, the detainee may request to talk with a lawyer or other person who is selected by him/her, provided that the selected person is not involved in the offense. This person shall be informed of the request for selection immediately and by all available means. On condition of guaranteeing confidentiality of the discussion, the selected person may enter into the custodial cell and talk with the detained person for 30 (thirty) minutes. Following the meeting, the selected person may make a written note to be attached to the file.

See also opinion No. 45/2016, para. 50.

¹⁴ See, e.g., opinions No. 79/2017, No. 75/2017, No. 45/2016, No. 46/2011 and No. 13/2007.

¹⁵ See also Human Rights Committee, general comment No. 35, para. 35.

¹⁶ *Ibid.*, para. 38.

Covenant. As noted earlier, the Working Group considers that the present case should not proceed to trial. However, if Mr. Uon and Mr. Yeang are to be tried, the trial must occur within a reasonable time, otherwise they are entitled to release under article 9 (3) of the Covenant. They are also entitled to be tried without undue delay under article 14 (3) (c) of the Covenant.

58. Furthermore, the source alleges that Mr. Uon and Mr. Yeang were denied access to certain hearings of their case, including the hearing on 4 April 2018, when the judge announced their continued detention. The Working Group considers that Mr. Uon and Mr. Yeang had the right to appear in person at all of their pretrial hearings to review the legality of their detention.¹⁷ As the Human Rights Committee has stated, the physical presence of detainees at the hearing may assist the inquiry into the lawfulness of detention, and serves as a safeguard for the right to security of person.¹⁸

59. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Uon and Mr. Yeang an arbitrary character under category III.

60. The Working Group wishes to express its concern about the health of Mr. Uon and Mr. Yeang. According to the source, both men suffer from an undiagnosed skin disease that they contracted from fellow inmates while in pretrial detention for over nine months at Prey Sar Prison. The source alleges, and the Government has not denied, that Mr. Uon and Mr. Yeang did not receive appropriate medical treatment while in detention, and endured squalid and cramped conditions in Prey Sar Prison that posed serious threats to their health. In the view of the Working Group, this treatment fell short of the standards set out, *inter alia*, in rules 1, 24 and 27 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group urges the Government to ensure that Mr. Uon and Mr. Yeang are unconditionally released with immediate effect, and that they receive the necessary medical care.

61. The Working Group considers that the situation of Mr. Uon and Mr. Yeang involves serious human rights violations and has decided to refer the present case to the Special Rapporteur on the situation of human rights in Cambodia for appropriate action.

62. Furthermore, the Working Group notes with concern the silence of the Government in not availing itself of the opportunity to respond to the allegations made in the present case and in other communications from the Working Group.¹⁹ The circumstances of the present case demanded a compelling justification for the arrest and pretrial detention of Mr. Uon and Mr. Yeang for over nine months, which the Government has not provided.

63. The Working Group would welcome the opportunity to work constructively with the Government to address the arbitrary deprivation of liberty in Cambodia. Given that the human rights record of Cambodia was recently subject to review during the third cycle of the universal periodic review in January 2019, an opportunity exists for the Government to demonstrate its commitment to the recommendations made by enhancing its cooperation with the special procedure mandate holders of the Human Rights Council and by bringing its laws into conformity with international human rights law.

Disposition

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

The deprivation of liberty of Uon Chhin and Yeang Sothearin, being in contravention of articles 9, 10, 11 (1), 19 and 20 of the Universal Declaration of

¹⁷ See opinions No. 78/2018, para. 75; No. 18/2018, paras. 54–55; and No. 9/2018, para. 50. See also 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, principle 11 and guideline 10.

¹⁸ See Human Rights Committee, general comment No. 35, paras. 34 and 42. See also Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 32 (2) and 37.

¹⁹ See, e.g., opinions No. 9/2018, No. 45/2016 and No. 24/2013.

Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

65. The Working Group requests the Government of Cambodia to take the steps necessary to remedy the situation of Mr. Uon and Mr. Yeang 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.

66. The Working Group considers that, taking into account all the circumstances of the case, including the risk of further harm to the health of Mr. Uon and Mr. Yeang, the appropriate remedy would be to release Mr. Uon and Mr. Yeang unconditionally and accord them an enforceable right to compensation and other reparations, in accordance with international law.

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

68. The Working Group requests the Government to bring its laws, particularly article 445 of the 2009 Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Cambodia under international human rights law.

69. In accordance with paragraph 33 (a) of its methods of work, 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, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights in Cambodia, for appropriate action.

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

Follow-up procedure

71. 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. Uon and Mr. Yeang have been released unconditionally and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Uon and Mr. Yeang;
- (c) Whether an investigation has been conducted into the violation of Mr. Uon and Mr. Yeang'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.

72. 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.

73. 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.

74. 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.²⁰

[Adopted on 24 April 2019]

²⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.