



INDIVIDUAL COMPLAINT

Request for allegation letter on the case of
Uon Chhin and Yeang Sothearin

To the attention of:
U.N. Working Group on Arbitrary Detention

New York, October 4, 2018

Individual Complaint brief prepared and submitted by:
The Human Rights Foundation Center for Law and Democracy

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The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law. HRF is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies.

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Table of Contents

I.	Procedural elements	5
a.	Mandate of the U.N. Working Group on Arbitrary Detention.....	5
b.	Standing of the Human Rights Foundation to submit an individual complaint	6
c.	Grounds for the initiation of the procedure involving investigation of individual cases ..	6
d.	Confidentiality for victim and confidentiality waiver for HRF	8
e.	Consent given by the victim.....	8
II.	Questionnaire	8
a.	Identity.....	8
b.	Arrest.....	9
1.	Date of arrest:	9
2.	Place of arrest:	9
3.	Forces who carried out the arrest or are believed to have carried it out:.....	10
4.	Did they show a warrant or other decision by a public authority?.....	10
5.	Authority who issued the warrant or decision:	10
6.	Legal basis for the arrest including relevant legislation applied (if known):	10
c.	Detention	10
1.	Date of detention:	11
	Uon Chhin and Yeang Sothearin were arrested on 14 November 2017, and were arbitrarily detained until their release on bail on 21 August 2018.....	11
2.	Duration of detention:	11
	Uon Chhin and Yeang Sothearin were imprisoned from 14 November 2017 until 21 August 2018, spending a total of nine (9) months and seven (7) days in detention.	11
3.	Forces that held the detainees under custody	11
4.	Places of detention (indicate any transfer and present place of detention).....	12
5.	Authorities that ordered the detention.....	12
6.	Reasons for the detention imputed by the authorities	13
7.	Legal basis for the detention including relevant legislation applied (if known):.....	13
8.	Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary	14
a.	Background on Uon Chhin and Yeang Sothearin.....	14
b.	Arrest and detention of journalists and independent media	14

c.	Indicate reasons why you consider the arrest and/or detention to be arbitrary: Legal Analysis	15
i.	Deprivation of Liberty under Category II: Violation of Articles 18 and 20 of the UDHR, Articles 19 and 22 of the ICCPR, and Article 41 of the Cambodian Constitution	16
ii.	Deprivation of Liberty under Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial in the case of Uon Chhin and Yeang Sothearin is of such Gravity that Their Detention is Rendered Arbitrary	18
9.	Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.....	21
10.	Urgent Appeal	25
11.	Identity of the persons submitting the case	26
III.	Petition	26

I. Procedural elements

a. Mandate of the U.N. Working Group on Arbitrary Detention

In accordance with the most recent mandate of the U.N. Working Group on Arbitrary Detention (WGAD), clarified and extended by resolution 1997/50 and 24/7 of 26 September 2013, the tasks of the WGAD are:¹

- (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases;
- (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;
- (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;
- (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (15 Mar. 2006), has further extended the mandate through Resolution 6/4, 15/18, and 20/16.

b. Standing of the Human Rights Foundation to submit an individual complaint

Pursuant to the mandate of the WGAD, the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),² and the publication “Working with the United Nations Human Rights Programme, a Handbook for Civil Society” (Handbook for Civil Society),³ the Human Rights Foundation (HRF), a nongovernmental human rights organization, is permitted to provide information on a specific human rights case or situation in a particular country, or on a country’s laws and practice with human rights implications.

c. Grounds for the initiation of the procedure involving investigation of individual cases

c.1 The WGAD working methods

According to the methods of work of the WGAD⁴, deprivation of liberty is arbitrary if a case falls into one of the following categories:

- 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 sentence or despite an amnesty law applicable to him) (Category I);
- b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights⁵ (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

² See Manual of Operations of the Special Procedures of the Human Rights Council (Aug. 2008) ¶¶ 23, 38 and 133, available at https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf.

³ See Working with the United Nations Human Rights Programme, a Handbook for Civil Society (2008), available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

⁴ See Methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (12 July 2016), available at <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

⁵ International Covenant on Civil and Political Rights, 16 Dec. 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Cambodia is a state party to the International Covenant on Civil and Political Right (ICCPR). It acceded to the ICCPR on 26 May 1992.

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).

c.1 The WGAD working methods as applied in the present case

The case of Uon Chhin and Yeang Sothearin, associated with Cambodia's ongoing crackdown on independent media, falls under Category II and Category III of the above-mentioned criteria. The detention of Uon and Yeang, which will be discussed below, is arbitrary under Category II because the government of Cambodia has deprived them of their liberty as a result of their exercise of the right to freedom of association and freedom of expression, failing to comply with its international obligation under Articles 18 and 20 of the Universal Declaration of Human Rights (UDHR), and Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR). Uon and Yeang's detention is also arbitrary under Category III because the government of Cambodia has violated their right to a fair trial, failing to comply with Cambodia's international obligations, and to meet the minimum standards of due process rights under Articles 10 and 11 of the UDHR and Articles 9 and 14 of the ICCPR.

HRF believes that the case of Uon Chhin and Yeang Sothearin satisfies the requirements to initiate the "individual complaint" procedure. HRF has received credible allegations that Uon and Yeang's detention posed serious threats to their health, given the neglect of their hygiene in prison. Due to a lack of proper hygiene, Uon and Yeang both suffered from undiagnosed infectious skin diseases that they contracted from fellow inmates. While Uon and Yeang were released on bail on 21 August 2018, HRF believes that without the intervention of the WGAD, Uon Chhin and Yeang Sothearin are at imminent risk of being re-arrested, and their potential detention will place their physical health at further risk.

d. Confidentiality for victim and confidentiality waiver for HRF

In accordance with the Manual of Operations, in communications sent to governments, the source is normally kept confidential. The Manual of Operations also states that an information source may request that its identity be revealed. Accordingly, HRF waives its right to confidentiality and requests that its identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the government of Cambodia in connection with the information supplied herein.

e. Consent given by the victim

Uon Chhin and Yeang Sothearin, via their family members, have authorized Joy Park from HRF to submit this individual complaint on their behalf to the U.N. Working Group of Arbitrary Detention. Proof of their consent is attached to this complaint as Exhibit 1.

II. Questionnaire

The following questionnaire was retrieved from Fact Sheet No. 26 of the WGAD (Annex V), available on the website of the United Nations High Commissioner for Human Rights, in accordance with the Manual of Operations.⁶ The focus of this individual complaint is the arbitrary detention of Uon Chhin and Yeang Sothearin, which began on 14 November 2017, in retaliation for their exercise of their right to freedom of peaceful association and freedom of expression, as guaranteed by the UDHR and ICCPR.

a. Identity

1. Uon Chhin:

- a. Family name: Uon
- b. First name: Chhin
- c. Sex: Male
- d. Birth date: March 6, 1969
- e. Nationality/Nationalities: Cambodian
- f. Profession: Former freelance reporter at Radio Free Asia – Cambodia
- g. Address of usual residence: Trapang Theleoung Village, Sangkat Chormchau, Po Senchey District, Phnom Penh

⁶ See "Model Questionnaire to be Completed by Persons Alleging Arbitrary Arrest or Detention," U.N. Working Group on Arbitrary Detention, *available at* <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

2. Yeang Sothearin

- a. Family name: Yeang
- b. First name: Sothearin
- c. Sex: Male
- d. Birth date: March 2, 1983
- e. Nationality/Nationalities: Cambodian
- f. Profession: Former freelance reporter at Radio Free Asia – Cambodia
- g. Address of usual residence: Trapang Theleoung Village, Sangkat Chormchau, Po Senchey District, Phnom Penh

b. Arrest

1. Date of arrest:

Uon Chhin and Yeang Sothearin were arrested on November 14, 2017.

2. Place of arrest:

According to HRF's source at Radio Free Asia (RFA), Uon Chhin and Yeang Sothearin were arrested by the Meanchey District police at a hotel room that Uon Chhin rented from the Marady Hotel in Sangkat Stoeung Meanchey, Meanchey District, Phnom Penh.

Since 2017, Prime Minister Hun Sen's authoritarian government in Cambodia has targeted opposition politicians, political activists, and independent media outlets in systematic crackdowns to consolidate power. As part of the crackdown, RFA's Cambodia office was forced to close on September 12, 2017 amid pressure from the government. The government employed tactics such as accusing media outlets of owing "back taxes" in order to forcibly shut down independent media such as RFA and Cambodia Daily.

As a result of the shutdown, Uon's and Yeang's freelance contracts with RFA expired on September 30, 2017, and they subsequently ceased to work for RFA Cambodia. However, due to their previous reporting for RFA, Uon and Yeang were the target of government surveillance.

Following his leave from RFA, Uon ran a video production project from the rented hotel room at Marady Hotel to generate income. Through this project, he received pay for producing videos for weddings and karaoke. Yeang's contract expired at the same time, but he had been unable to find other career opportunities at the time of his arrest.

Due to the nature of Uon's video production project, he often moved pieces of video equipment in and out of his hotel room. Uon was also active on social media and posted photos of new video equipment on Facebook.

On November 14, 2017, growing increasingly suspicious of Uon's public display of video equipment, the police confronted Uon about his work at his hotel room, accusing him of running an RFA studio out of the hotel room and continuing to report for RFA. Uon denied the allegations and called Yeang to the hotel room to corroborate that they no longer worked for RFA. When Yeang arrived at the hotel room, the police arrested both journalists.

3. *Forces who carried out the arrest or are believed to have carried it out:*

According to HRF's source, the Meanchey District police carried out the arrest of the Uon and Yeang. HRF believes, based on the systematic imprisonment of activists, critics of the government, and journalists, that the orders for the arrest came from the national government.

4. *Did they show a warrant or other decision by a public authority?*

No, an arrest warrant was not presented at the time of Uon and Yeang's arrest. Uon and Yeang were not informed of any charges against them at the time of their arrest.

5. *Authority who issued the warrant or decision:*

Not applicable (explanation in section 4 above).

6. *Legal basis for the arrest including relevant legislation applied (if known):*

As an arrest warrant was not presented at the time of the Uon and Yeang's arrest, there is no legal basis for their arrest.

c. Detention

Uon Chhin and Yeang Sothearin were arrested on November 14, 2017 and detained for nine (9) months and seven (7) days without trial, until August 21, 2018.

Uon and Yeang both suffer from an undiagnosed skin disease which they contracted from fellow inmates while in detention, for which they did not receive proper medical

treatment while imprisoned. Uon and Yeang were “enduring squalid, cramped conditions” in Prey Sar Prison, and their detention posed serious threats to their health.⁷

After nine (9) months and seven (7) days of arbitrary detention and numerous bail appeal denials, Uon and Yeang were released on bail under court supervision on August 21, 2018. Both face up to fifteen (15) years’ imprisonment on charges of “illegally collecting information for a foreign source” and “production of pornography.” Uon and Yeang were wrongfully charged under Article 445 of the 2009 Cambodia Penal Code (“Treason and Espionage”), as well as under Article 39 of the 2008 Cambodia Law on the Suppression of Human Trafficking and Sexual Exploitation. The government repeatedly failed to provide any clear evidence of criminal activities or wrongdoing to justify their arrest and detention.

HRF is concerned that the clearly arbitrary and unjustified imprisonment of Uon and Yeang resulted in further deterioration of their physical health, particularly in light of the blatant medical neglect for their skin diseases. Their physical health will face further deterioration if they are returned to arbitrary imprisonment should they be convicted or re-arrested.

1. Date of detention:

Uon Chhin and Yeang Sothearin were arrested on November 14, 2017, and were arbitrarily detained until their release on bail on August 21, 2018.

2. Duration of detention:

Uon Chhin and Yeang Sothearin were imprisoned from 14 November 2017 until 21 August 2018, spending a total of nine (9) months and seven (7) days in detention.

3. Forces that held the detainees under custody

Security forces held Uon Chhin and Yeang Sothearin in custody at the Municipal Police Headquarters in Phnom Penh, and the journalists were held in detention at Phnom Penh’s Correctional Centre 1 (CC1), or Prey Sar Prison. However, their order of arrest

⁷ *US Lawmakers Call for Increased Pressure on Cambodia to Release Former RFA Reports*, RADIO FREE ASIA (14 June 2018), <https://www.rfa.org/english/news/cambodia/lawmakers-06142018143312.html>.

likely came from the central government, due to the coordinated assault on other independent media in Cambodia.⁸

4. Places of detention (indicate any transfer and present place of detention)

Following their arrest on November 14, 2017 at the Marady Hotel, Uon Chhin and Yeang Sothearin were taken to Phnom Penh's Municipal Police Headquarters. On November 16, 2017, Uon and Yeang were taken back to the hotel, where the premises were searched and the investigation continued. On November 18, 2017, the investigating judge ordered Uon and Yeang's official pre-trial detention in Phnom Penh's Correctional Centre 1 (CC1), or Prey Sar Prison, in Cambodia.

5. Authorities that ordered the detention

Uon and Yeang's arrest is part of Hun Sen's crackdown on the political opposition, independent media, and freedom of expression and association in Cambodia. Given the coordinated efforts of these arrests, it is evident that Uon and Yeang's detention relates to the national government's direct orders, which had already forced numerous media outlets to end broadcasting and shut down.⁹ RFA's reporting is often critical of Hun Sen's authoritarian regime, which makes RFA journalists a target of surveillance within Cambodia. While Uon and Yeang no longer worked for RFA at the time of their arrest, they were nevertheless under police surveillance. The surveillance order directly relates to Hun Sen's systematic crackdown on independent media.

⁸ See *Urgent Action: Former Journalists Charged with Espionage*, AMNESTY INTERNATIONAL (7 Dec. 2017), <https://www.amnestyusa.org/wp-content/uploads/2017/12/uaa26617-1.docx>; see also *Harassment of Journalists Accompanies Ban on Opposition Party*, REPORTERS WITHOUT BORDERS (17 Nov. 2017) [hereinafter *Harassment of Journalists*], <https://rsf.org/en/news/cambodia-harassment-journalists-accompanies-ban-opposition-party>.

⁹ The *Cambodia Daily* was forced to cease publication on 4 September 2017 (*Cambodia Daily Shuts Down Amid Government Threat of Closure for Tax Debt*, RADIO FREE ASIA (5 Sept. 2017), <https://www.rfa.org/english/news/cambodia/closure-09052017175036.html>). Additionally, *The Phnom Penh Post*, largely deemed the "last bastion of a free press in Cambodia," was bought out by a Malaysian investor with close ties to Hun Sen's administration in May 2018 (Julia Wallace and Mike Ives, *A Newspaper is Sold, and Cambodians Fear the End of Press Freedom*, THE NEW YORK TIMES (7 May 2018), <https://www.nytimes.com/2018/05/07/world/asia/cambodia-phnom-penh-post-sale.html>); *Phnom Penh Post Sold to Malaysian Investor*, VOICE OF AMERICA (5 May 2018), <https://www.voanews.com/a/phnom-penh-post-sold-malaysian-investor/4381221.html>.

6. Reasons for the detention imputed by the authorities

Both Uon and Yeang were investigated on the basis of suspicion of espionage under Article 445 of the Cambodian Criminal Code, for allegedly supplying “a foreign state or its agents” with information that “undermine[s] the national defence.” While the Phnom Penh Deputy Municipal Police Chief claimed that the police had collected materials and confessions linking Uon and Yeang to continuing to work for RFA at the time of their arrest,¹⁰ the Deputy Prosecutor of Phnom Penh failed to provide concrete evidence to support the charges under Article 445. Rather, the sole basis for bringing criminal charges against Uon and Yeang was to admonish them for their past peaceful association with RFA and freedom of expression.

HRF believes that the arrest and detention of Uon and Yeang, as well as other members of the media, were the result of repressive operations initiated by the Municipal Police targeting independent media, under orders from the Cambodian national government.

7. Legal basis for the detention including relevant legislation applied (if known):

Uon Chhin and Yeang Sothearin were wrongfully charged with espionage under Article 445 of Cambodia’s Criminal Code. Article 445 states:

*Article 445: Provision of a Foreign State with Information which Undermines National Defence*¹¹

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 slip which undermine the national defence is punishable by an imprisonment from 7 (seven) years to 15 (fifteen) years.

Given the subject matter of Article 445 of Cambodia’s Criminal Code, and as was referenced earlier, HRF believes that the underlying reasons for the wrongful detention of Uon Chhin and Yeang Sothearin are their past association with RFA – Cambodia, which had come under the national government’s scrutiny as part of a clampdown on

¹⁰ Mom Sophon, *RFA Reporters Face Espionage Charges*, KHMER TIMES (17 Nov. 2017), <https://www.khmertimeskh.com/5090884/rfa-reporters-face-espionage-charges/>.

¹¹ 2009 Penal Code of Cambodia, *available at* https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf.

independent media throughout Cambodia to deter journalists from reporting content that might be critical of Hun Sen's regime.

8. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

a. Background on Uon Chhin and Yeang Sothearin

Uon Chhin and Yeang Sothearin were employed as a reporter and videographer and reporter and editor, respectively, with RFA until the expiration of their contract. They departed from RFA about one week after its Phnom Penh office closed on 12 September 2017. After leaving RFA, Uon operated a video production business for karaoke and weddings out of a room at the Marady Hotel in Sangkat Stueng. At the time of his arrest, Yeang had not yet found employment. He acted as witness for Uon to confirm they were no longer working for RFA.

While employed with RFA, Uon and Yeang reported on land and social issues, and the reporting of such is not against Cambodian law.¹² Journalists, as well as members of the United States Congress, have collectively demanded the release of Uon and Yeang.¹³

b. Arrest and detention of journalists and independent media

The case of Uon Chhin and Yeang Sothearin is part of the systematic crackdown against any political opposition, civil society groups, and independent media, which have increasingly been subject to arrest and detention by Cambodia's authoritarian regime. On 22 September 2017, the Cambodian Ministry of Interior announced that it would arrest any former RFA journalist who still reported for RFA.¹⁴ Uon and Yeang were no longer employed by RFA but noted that they were arrested for having "broadcasted the real situation about Cambodia,"¹⁵ namely the human rights violations under Hun Sen's regime.

¹² *Cambodia Appeals Court Upholds Ruling Denying Former RFA Reporters Bail*, RADIO FREE ASIA (26 Dec. 2017), <https://www.rfa.org/english/news/cambodia/appeal-12262017160640.html>.

¹³ *See US Lawmakers*, *supra* note 7.

¹⁴ *Cambodia: Release Ex-Radio Free Asia Journalists*, HUMAN RIGHTS WATCH (12 May 2018), <https://www.hrw.org/news/2018/05/12/cambodia-release-ex-radio-free-asia-journalists>.

¹⁵ *Cambodian Journalists Charged Espionage Denied Bail*, REUTERS (19 Apr. 2018), <https://www.reuters.com/article/us-cambodia-politics/cambodian-journalists-charged-with-espionage-denied-bail-idUSKBN1HQ0ME>.

As previously mentioned, RFA shut down its Cambodia bureau on September 12, 2017, amidst numerous threats against its reporters, along with threats of tax and administrative violations.¹⁶ Numerous opposition members, journalists, and activists have been forced to flee the country as a result of the crackdown, including leaders of the opposition party Mu Sochua and Sam Rainsy. The fabricated charges against Uon and Yeang are representative of a methodical authoritative ploy to suppress freedom of expression and to threaten and deter journalists in Cambodia from continuing reporting for RFA's United States office. Those found guilty by the Cambodian court under charges of espionage face up to fifteen (15) years in prison.

c. Indicate reasons why you consider the arrest and/or detention to be arbitrary: Legal Analysis

The detention of Uon Chhin and Yeang Sothearin constitutes an arbitrary deprivation of their liberty¹⁷ falling within Category II and Category III, as established by the WGAD.¹⁸ A detention is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13-14, and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18-19, 21-22, and 25-27 of the International Covenant on Civil and Political Rights.¹⁹ A detention is arbitrary under Category III, "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."²⁰

¹⁶ The Cambodia authorities have closed RFA and Voice of America, as well as the Voice of Democracy station, using a pretext of owed back taxes and administration violations (*See RFA Closes Phnom Penh Bureau Amid Crackdown by Hun Sen*, RADIO FREE ASIA (12 Sept. 2017), <https://www.rfa.org/english/news/cambodia/crackdown-raf-09122017084157.html>).

¹⁷ The U.N. Commission on Human Rights considers "arbitrary" those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by the States (Resolution 1991/42, as clarified by resolution 1997/50).

¹⁸ Office of the High Commissioner for Human Rights, Revised Methods of Work of the Working Group, paras. 8(b) & (c).

¹⁹ *Id.* at para. 8(b).

²⁰ *Id.* at para. (c).

i. Deprivation of Liberty under Category II: Violation of Articles 18 and 20 of the UDHR, Articles 19 and 22 of the ICCPR, and Article 41 of the Cambodian Constitution

Given that the ICCPR entered into force in Cambodia on 26 August 1992, the deprivation of liberty under Category II will be analyzed in light of the provisions of both the UDHR and the ICCPR, as well as the Cambodian Constitution. As a member of the United Nations and a state party to the U.N. Charter, Cambodia is bound to uphold its commitment to promote and encourage respect for human rights and fundamental freedoms.

The arrest and detention of Uon Chhin and Yeang Sothearin are analyzed under Category II because of its relation to the exercise of Uon and Yeang's right to the freedom of association as guaranteed by Article 20 of the UDHR and Article 22 of the ICCPR, and the exercise of their right to the freedom of expression under Article 18 of the UDHR, Article 19 of the ICCPR, and Article 41 of the Cambodian Constitution.

Article 20 of the UDHR and Article 22 of the ICCPR guarantee the freedom of association with others. Uon and Yeang's arrest, detention, and wrongful charges are based on their former association with RFA – Cambodia. RFA provided a platform in Cambodia for journalists to engage in open and free reporting on pro-democratic activism and human rights issues. The fact that Uon and Yeang's arrest stems from their association with the independent media network within Cambodia is evident from a pattern of coordinated arrests of, and charges against, fellow journalists.²¹ These simultaneous arrests suggest that the Cambodian government aimed to disassemble RFA – Cambodia and other independent media networks, thereby violating the members' right to freedom of association with others.

Article 18 of the UDHR and Article 19 of the ICCPR guarantee the freedom of expression for all; furthermore, Article 41 of the Cambodian Constitution states that "citizens shall have freedom of expression."²² Uon was independently producing videos for weddings and karaoke events. Yeang had not yet found employment following his resignation from RFA. Both had only peacefully "reported on land and social issues, which is not

²¹ See, e.g., *Cambodian Journalist Charged with Incitement Flees Amid Crackdown*, VOICE OF AMERICA (24 Apr. 2018), <https://www.voanews.com/a/cambodian-journalist-charged-with-incitement-flees-amid-crackdown/4363067.html>; *Harassment of Journalists*, *supra* note 8; Say Mony, *Cambodia's Free Press "In Ruins" After Crackdown, Campaigners Say*, VOICE OF AMERICA (24 Feb. 2018), <https://www.voacambodia.com/a/cambodia-free-press-in-ruins-after-crackdown-campaigners-say/4268940.html>.

²² CONSTITUTION art. 41 (2010) (Cambodia).

prohibited by law.”²³ Yet, because of the recent crackdown on independent media such as RFA and Cambodia Daily, false charges of espionage, treason, and incitement are the norm for journalists such as Uon and Yeang. Additionally, Hun Sen’s administration employs the pretext of “owed taxes” and “administrative violations” in disassembling independent media networks. Uon’s and Yeang’s professional reporting resulted in persecution by the Cambodian government. By depriving Uon and Yeang of their freedom of expression, as is necessary in their journalistic duties, the Cambodian government has violated the ICCPR and the UDHR.

Additionally, Uon and Yeang were prosecuted under a criminal code article that is overly broad and vague. Article 445 of the 2009 Cambodian Criminal Code states:

*Article 445: Provision of a Foreign State with Information which Undermines National Defence*²⁴

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 slip which undermine the national defence is punishable by an imprisonment from 7 (seven) years to 15 (fifteen) years.

The article contains ambiguous terms: “easy access” and “undermine the national defence.” The lack of definition for these terms makes it easy for the Cambodian government to freely abuse the law and target journalists and other independent media with this charge. Freedom of expression under this article is threatened because the law does not determine which category of actions would arise to the level of providing “easy access” by a foreign state or “undermin[ing] the national defence.” Accordingly, “easy access” could include something as normally lawful as free reporting on social issues, which could also be labeled as “undermin[ing] the national defence.” The ambiguity of the law makes it possible for the government to apply it to any case arbitrarily.

The government was unable to produce any concrete evidence indicating that Uon and Yeang had engaged in any effort to provide a foreign state with information to “undermine the national defence,” whatever the definition of the phrase might be. Due to a lack of legal support for the charge of espionage, Uon and Yeang’s arrest and detention under Article 445 was arbitrary and violated their freedom of expression

²³ *Cambodia Appeals Court, supra* note 12.

²⁴ 2009 Penal Code of Cambodia, *available at*

https://www.unodc.org/res/cld/document/khm/criminal_code_of_the_kingdom_of_cambodia_html/Cambodia_Criminal-Code-of-the-Kingdom-of-Cambodia-30-Nov-2009-Eng.pdf.

guaranteed under Article 18 of the UDHR, Article 19 of the ICCPR, and Article 41 of the Cambodian Constitution.

ii. *Deprivation of Liberty under Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial in the case of Uon Chhin and Yeang Sothearin is of such Gravity that Their Detention is Rendered Arbitrary*

Uon Chhin and Yeang Sothearin's detention is also arbitrary under Category III since their detention and unsupported charges were in violation or total non-observance, on the part of the government of Cambodia, of the international norms relating to the right to a fair trial. Minimum international standards of due process that can be applied to Uon and Yeang's case, are contained in the UDHR, the ICCPR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),²⁵ and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Principles and Guidelines).²⁶

Specifically, the arbitrariness of Uon and Yeang's deprivation of liberty by the Cambodian courts, is established by the nature of their: (1) arrest, wherein they were not presented with an arrest warrant; (2) denial of legal counsel within twenty-four (24) hours of their detention; and (3) continued unwarranted charges and appeal rejections by the Supreme Court. The latter point will be primarily analyzed within the context of the non-observance of Uon and Yeang's right to a fair and public hearing with the presumption of innocence, under Articles 10 and 11 of the UDHR and Article 14 of the ICCPR.

(1) Lack of Arrest Warrant

Articles 9(2) and 14(3)(a) of the ICCPR enshrine a detainee's right to be informed of the charges against him. Article 9(2) states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." General Comment No. 35 additionally lays out two requirements for the benefit of a person being detained: first, the detainee "shall be informed, at the time of arrest, of the reasons for the arrest," and second, the detainee must be promptly informed

²⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 Dec. 1988 [hereinafter Body of Principles], available at <https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx>.

²⁶ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187, annex (28 March 2013) [hereinafter Principles and Guidelines], available at https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

of any charges against them.²⁷ Furthermore, Article 14(3)(a) states that “everyone shall be entitled to...be informed promptly and in detail...the nature and cause of the charge against him.” Finally, Principles 10 to 13 of the Body of Principles state that those arrested must be informed of the reason of arrest.²⁸

Here, Uon and Yeang were not presented with an arrest warrant or informed of any charges against them at the time of their arrest. They were arbitrarily taken into custody in Uon’s hotel room by the Phnom Penh police and were not informed of the reasons for their arrest at the time of arrest. As such, and without having been presented with an arrest warrant, there is no legal basis for Uon and Yeang’s arrest, and their deprivation of liberty was arbitrary.

(2) Lack of Access to Legal Counsel within 24 Hours

Article 14(3)(d) of the ICCPR states that anyone facing criminal charges has the minimum guarantee “to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” According to Basic Principle 11 of the Body of Principles, a “detained person and his counsel...shall receive prompt and full communication of any order of detention together with the reasons therefore.” Additionally, the Principles and Guidelines affirm the procedural right of a detainee to access legal counsel. Under Principle 3, “States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.”²⁹

During their first period of twenty-four (24) hour detention, Uon and Yeang were held incommunicado at Phnom Penh’s 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 represent and present evidence in their defence. This denial of access to legal counsel supports the arbitrary nature of Uon and Yeang’s deprivation of liberty.

²⁷ General Comment No. 32, Article 9: Liberty and Security of Person, U.N. Human Right Committee, CCPR/C/GC/35 (16 Dec. 2014).

²⁸ *E.g.*, Principle 10, Body of Principles (“Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”).

²⁹ Principles and Guidelines, *supra* note 26, at Principle 3.

(3) Continued Unwarranted Charges and Appeal Rejections

Articles 10 and 11 of the UDHR and Article 14 of the ICCPR enshrine the right to a fair trial and the right to be presumed innocent until proven guilty. Article 10 of the UDHR provides that everyone is entitled to “a fair and public hearing by an independent and impartial tribunal,” while Article 11 states that “no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence.” Under Article 14(2) of the ICCPR, “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law.”³⁰ And Article 14(3)(d) states that anyone facing criminal charges has the minimum guarantee “[t]o be tried in his presence.”

Despite the established international law outlining these requirements, criminal trials and the observance of norms relating to trials in Cambodia repeatedly fail to meet international fair standards. Cambodia is not a democratic country in which the fundamental rights of citizens are respected, or where there is independence and separation of powers. Rather, it is ruled by an authoritarian regime.³¹ Cambodia is a one-party state without electoral competition, as the Cambodian People’s Party occupies all 125 seats in the National Assembly. The government has increasingly cracked down on freedom of association, expression, and civil society activism. The fully authoritarian regime has denied detained individuals the right to a fair trial, as well as immediate access to a defense attorney.

Uon Chhin and Yeang Sothearin’s arrest and continuous detention under wrongful charges were carried out in this context of full authoritarianism, as the state of Cambodia failed to observe minimum international standards of due process guaranteed by the UDHR. Cambodia is required to provide Uon and Yeang a fair hearing before an impartial and independent judicial body. This right to be tried by an impartial and

³⁰ See also Basic Principle 36, Body of Principles (“A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”).

³¹ See STEVEN LEVITSKY & LUCAN WAY, *COMPETITIVE AUTHORITARIANISM HYBRID REGIMES AFTER THE COLD WAR* 6–7 (Cambridge University Press) (2010) (“Full authoritarianism is a regime in which no viable channels exist for opposition to contest legally for executive power. This category includes closed regimes in which national-level democratic institutions do not exist and hegemonic regimes in which formal democratic institutions exist on paper but are reduced to façade status in practice. In hegemonic regimes, elections are so marred by repression, candidate restrictions, and/or fraud that there is no uncertainty about their outcome. Much of the opposition is forced underground and leading critics are often imprisoned or exiled.”).

independent tribunal is absolute and cannot afford any exceptions,³² and the requirement of independence includes the “independence of the judiciary from political interference by the executive branch and legislature.”³³

Having been held in pre-trial detention for nine (9) months, the very act of Uon and Yeang’s continued detention during that time period did not presume them innocent. The investigating judge extended the journalists’ pre-trial detention and repeatedly denied bail requests, citing security concerns as the reason, although Uon and Yeang had already handed in their passports. Furthermore, Uon and Yeang were denied access to certain hearings regarding their case, including the 4 April 2018 hearing, when Judge Phou Povsun announced their continued detention.³⁴

Furthermore, the Supreme Court has rejected Uon and Yeang’s appeals to drop their wrongful and invalid charges altogether. Despite an active investigation into Uon and Yeang’s conduct, the government repeatedly failed to uncover and produce any clear and sufficient evidence against Uon and Yeang to support the criminal charge of either espionage or the production of pornography. Shortly after Uon and Yeang’s arrest, an Interior Ministry spokesman even admitted that the Phnom Penh Municipal Court was “trying to determine what law the pair may have broken” and was “checking to find the crime.”³⁵ Rather, the sole reason for bringing criminal charges against Uon and Yeang was to reproach them for their former association with RFA, as well as their freedom of expression, guaranteed under international law.

Due to the aforementioned reasons, Uon and Yeang’s arrest, detention, and wrongful charges and continued open case lack any basis and violate international legal principles, thereby rendering Uon and Yeang’s detention arbitrary. The violations of aforementioned provisions of international human rights norms give Uon and Yeang’s deprivation of liberty an arbitrary character under Category III.

9. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of

³² See General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, U.N. Human Right Committee, CCPR/C/GC/32 (23 Aug. 2007), para.19; see also, Gonzalez del Rio v. Peru, Communication No. 263/1987 (2 Nov. 1992), para. 5.2. (“The Committee recalls that the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception.”)

³³ *Id.* at para. 19.

³⁴ Khuon Narim, *Detention of RFA Reporters Upheld*, KHMER TIMES (5 Apr. 2018), <https://www.khmertimeskh.com/50299583/detention-of-rfa-reporters-upheld/>.

³⁵ Mech Dara, *Ex-RFA Reporters Detained in Capital*, THE PHNOM PENH POST (16 Nov. 2017), <https://www.phnompenhpost.com/national/ex-rfa-reporters-detained-capital>.

establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

As indicated in 8(c)(ii) above, Cambodia is not a democratic country that ensures the separation of powers and the independence of the judiciary; rather, it is a one-party state, governed by a fully authoritarian regime. Given that Cambodia lacks a just judiciary, its legal system is not an effective way to address grievances fairly. While the process of appealing rulings exists in the Cambodian legal system, the outcome is likely to be highly biased, and would be subject to influence from Hun Sen's administration.

In fact, Cambodia violates its own laws in cases such as Uon's and Yeang's, in which independent journalists are arrested and detained. Here, the manner in which the arrest and detention of Uon and Yeang were conducted was in violation of Articles 97, 98, and 99 of Cambodia's 2007 Criminal Procedure Code³⁶ listed below:

Article 97 – Record of Police Custody

When a person is detained in police custody, judicial police officers shall notify immediately to the detainee indicating the reasons for such a decision. Judicial police officers shall also inform the detainee about the rights provided in Article 98 (Assistance from a Lawyer during Police Custody) of this Code. If necessary, a judiciary police officer may call for an interpreter. The judicial police officer shall write a record of the police custody immediately. The record shall include the following information:

- The name and rank of the judicial police officer who ordered the detention;
- The identification of the detained person;
- The reasons for the detention;
- The starting date and time of the detention;
- The notification of the rights provided for in Article 98 (Assistance from a Lawyer during Police Custody) of this Code;
- Eventually the name of the interpreter.

This record shall be signed or finger-printed by the detainee after she/he has already read it or if the detainee is illiterate, the judicial police officer shall read this record for him or her. If the detainee refuses to sign or affix finger-print on the record, a judicial police officer shall mention it. The record shall be attached to the file.

³⁶ 2007 Criminal Procedure Code of Cambodia, available at <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814242.pdf>.

Article 98 – Assistance of a Lawyer during Police Custody

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.

Article 99 – Assistance of Medical Physicians during Police Custody

A prosecutor or judicial police officer may ask a medical physician to examine a detained person at any time. The medical physician shall verify whether the health condition of the detainee is suitable for detention. If the medical physician finds that the arrested person's health condition is not suitable for detention, the judicial police officer shall immediately notify the prosecutor about it. The medical physician shall issue a health certificate which shall be attached to the file. The judicial police officer shall write down the name of the medical physicians, and the date and time of the examination in the record. The prosecutor may personally visit the site to verify the condition of the detention.

The procedure in which the Uon and Yeang's arrest and detention were carried out are not in line with the relevant articles of Cambodia's Criminal Procedure Code above, evidently showing that the domestic remedies available in Cambodia are ineffective in addressing the case of Uon Chhin and Yeang Sothearin. Their case should be analyzed within the context of a fully authoritarian regime in which there is no independence of the judiciary.

Moreover, the government of Cambodia hindered Uon and Yeang's efforts to appeal their case and repeatedly denied them bail without sufficient grounds to do so. On 26 December 2017, the Court of Appeals upheld an earlier ruling which denied bail. Uon and Yeang's attorney noted that "there are no grounds on which the court should continue to detain [his] clients since, according to legal principles, the accused should be entitled to their freedom."³⁷ On 4 April 2018, shortly after the additional unsubstantiated "production of pornography" charge was added against Uon and Yeang, Judge Phou Povsun announced that the Court of Appeals would continue Uon and Yeang's

³⁷ *Cambodia Appeals Court, supra* note 12.

detention. Neither Uon nor Yeang was present for the decision.³⁸ Their lawyer had appealed based on the fact that Uon and Yeang had obviously been detained at the police station for over forty-eight (48) hours. However, Judge Phou Povsun said that their detention by judicial police was in accordance with Articles 95 and 379 of the Cambodian Criminal Code of Procedure, as Uon was detained for forty-two (42) hours and thirty-five (35) minutes, and Yeang was detained for forty-two (42) hours and five (5) minutes.³⁹

On 19 April 2018, Uon and Yeang were again denied bail based on the grounds that they posed a flight risk and could hinder the judge's inquiry.⁴⁰ Uon and Yeang had already submitted their passports and identifications cards, and family members had provided assurances that they would not leave Cambodia while the case was open. On 21 May 2018, the Municipal Court again extended their pre-trial detention for an additional six (6) months to allow continued investigations.⁴¹ The Supreme Court again denied Uon and Yeang bail on 23 July 2018 because they might affect public order and security during the ongoing case.⁴²

Article 208 of the Cambodian Criminal Procedure Code states that provisional detention of an adult facing a felony charge cannot exceed six (6) months, although the investigating judge may extend the detention for up to two (2) additional periods of six (6) months each, where there are proper and precise reasons for doing so. However, there is often no thought given to mitigating elements, and judges typically merely check off one of the court form boxes with pre-designated reasons, without actually hearing arguments from all relevant parties or appropriately detailing, with evidence, the reasons for a decision of extended pre-trial detention.

Relatedly, Article 9(3) of the ICCPR provides: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." The U.N. Human Rights Committee has ruled that pre-trial detention should only be employed to the extent that it is lawful, reasonable, and necessary, the latter requirement which is narrowly defined as: "to prevent flight, interference with evidence or the recurrence of crime" or "where the person concerned constitutes a clear

³⁸ *Detention of RFA Reporters*, *supra* note 34.

³⁹ *Id.*

⁴⁰ *Cambodia: Release Ex-Radio Free Asia Journalists*, *supra* note 14.

⁴¹ Khy Sovuthy, *Court Extends Detention of Former RFA Reporters*, KHMER TIMES (21 May 2018), <https://www.khmertimeskh.com/50491726/court-extends-detention-of-former-rfa-reporters/>.

⁴² Khy Sovuthy, *Former RFA Reporters Denied Bail*, KHMER TIMES (23 July 2018), <https://www.khmertimeskh.com/50514623/former-rfa-reporters-denied-bail/>.

and serious threat to society which cannot be contained in any other manner.”⁴³ Here, Uon and Yeang evidently posed no such risks, as they had submitted their passports and provided family guarantees that they would not leave Cambodia, and no sufficient evidence against them has been uncovered. Therefore, there was no proper reason for the Uon and Yeang’s continued detention.

Finally, on 17 September 2018, the Supreme Court rejected Uon and Yeang’s appeal to annul their detention on the grounds of improper judicial police procedure, as both had initially been detained for longer than the prescribed forty-eight (48) hours.⁴⁴ It is apparent through these incidents of government interference that Uon and Yeang were unable to properly address their appeal within the Cambodian legal system.

Due to these reasons, HRF concludes that Uon Chhin and Yeang Sothearin exhausted all effective legal options available to them in Cambodia.

10. Urgent Appeal

As discussed earlier, the case of Uon Chhin and Yeang Sothearin is not an isolated incident, given the coordinated efforts of the arrest of other members of the independent media. Their arrest was part of an ongoing systematic crackdown on the freedom of association and expression, as well as civil society and pro-democracy activists throughout the country.

On 14 November 2017, Uon Chhin and Yeang Sothearin – former freelance reporters at Radio Free Asia – Cambodia – were arrested and charged with espionage, which carries up to fifteen (15) years of imprisonment, under Article 445 of Cambodia’s Criminal Code. In March 2018, Uon and Yeang were additionally charged, without evidence, with production of pornography under Cambodia’s Law on the Suppression of Human Trafficking and Sexual Exploitation.

In addition to the case of Uon Chhin and Yeang Sothearin, we request that WGAD take note of the cases of other current and former members of the media and closely monitor the false accusations and unwarranted imprisonment of individuals linked with RFA.

⁴³ “Chapter 5: Human Rights and Arrest, Pre-Trial Detention and Administrative Detention,” in *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, available at <https://www.ohchr.org/Documents/Publications/training9chapter5en.pdf>.

⁴⁴ Khuon Narim, *Supreme Court Rejects RFA Pair’s Complaint*, KHMER TIMES (17 Sept. 2018), <https://www.khmertimeskh.com/50533877/supreme-court-rejects-rfa-pairs-complaint/>.

11. Identity of the persons submitting the case

1. Family name: Park
2. First name(s): Joy
3. Status: Legal Counsel – Asia
4. Address (telephone, e-mail): 350 Fifth Avenue, Suite 4202, New York, NY, 10118
Tel: +1 (212) 246-8486
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5. Please state whether you want your identity to be kept confidential: As stated above, HRF waives its right to confidentiality, but asks for the confidentiality of the victim to be kept.

III. Petition

In accordance with resolution 24/7 of 26 September 2013, HRF hereby submits this individual complaint to the U.N. Working Group on Arbitrary Detention, and respectfully calls on the working group to initiate the procedure involving investigation of individual cases toward reaching an opinion of the WGAD declaring Uon Chhin and Yeang Sothearin's detention to be arbitrary and in violation of international law. Specifically, HRF calls on the WGAD:

- a. To initiate a procedure involving investigation of individual cases, in the case of Uon Chhin and Yeang Sothearin, and send an allegation letter to the State of Cambodia inquiring about their case generally, and specifically about the legal basis for their arrest, detention, and/or the cruel, inhumane, and degrading treatment suffered by Uon and Yeang while in detention;
- b. To issue an opinion declaring the ongoing detention of other former journalists and media personnel to be arbitrary and in violation of international law as a result of both Category II and Category III violations;
- c. To ask the Cambodian government to guarantee that Uon Chhin and Yeang Sothearin will not be further detained without warrant and be subjected to cruel, inhumane, and degrading treatment;

- d. To urge the Cambodian government to drop all remaining charges against Uon Chhin and Yeang Sothearin and dismiss their case, as well as remove additional stipulations requiring them to continue to appear in court while released on bail; and
- e. To ask the Cambodian government to return Uon Chhin and Yeang Sothearin's passports to them and lift their current travel restrictions.

Exhibit 1



Text message from Uon Chhin and Yeang Sothearin's wives to HRF's contact at RFA consenting to this submission.