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ការពារសិទ្ធិមនុស្ស និងអភិវឌ្ឍន៍ទូទៅ

CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION

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STATEMENT

On the Decision to Convict the 3 Adhoc Seniors and 2 Former Staff

The Cambodian Human Rights and Development Association (ADHOC) is deeply sad and disappointed with the decision of the Supreme Court of Cambodia announced this morning, November 18th, 2022. The Supreme Court upheld the ruling of the Court of Appeal (Phnom Penh) No. 62K IV “SS” from May 23rd, 2022 and the sentence of the Phnom Penh Municipal Court No. 730 K6 "Thor" from September 26th, 2018. Three ADHOC staff members and two former ADHOC staff members were charged with bribing witnesses and conspiring to bribe witnesses and sentenced by the Phnom Penh Municipal Court to five (5) years of imprisonment. The Municipal Court held that 14 months and one day shall be served in prison, while the remaining period of the sentence was suspended in accordance with Articles 29 and 548 of the Kingdom of Cambodia Criminal Code.

The Cambodian Human Rights and Development Association (ADHOC) **emphasises that the criminal procedures before the Phnom Penh Municipal Court and the Phnom Penh Court of Appeal do not comply with the requirements of a fair trial, as provided for the International Covenant on Civil and Political Rights (ICCPR).** In addition, the criminal procedures seriously violate Article 38 of the Kingdom of Cambodia Constitution, which establishes the presumption of innocence, *in dubio pro reo*, and the right to defence as fundamental rights of every Khmer citizen. Under Article 419 of the Cambodia Criminal Procedure Code, these violations are grounds for the Cambodian Supreme Court to overrule the decision of the Court of Appeal. **The gross violation of the defendants’ human rights represents a serious threat, trauma, and demoralization to all human rights defenders who tirelessly work to promote human rights in the Kingdom of Cambodia.** Obvious violations of the defendants’ human rights include but are not limited to:

- 1. Distortion of fact:** The decisions of the Phnom Penh Municipal Court and the Phnom Penh Court of Appeal are based on distorted facts that portray the person who sought

ADHOC's legal assistance as a witness. Article 548 of the Criminal Code of the Kingdom of Cambodia establishes to be a crime to, directly or indirectly, give a gift, offer, promise, or interest to a *witness* in order for they do not testify or to provide false testimony. However, Khom Chantarati (also known as Srey Mom) was never summoned to act as a prosecution witness against the defendants. The distortion of facts provided the grounds for charging the defendants. Previous investigations had not found enough evidence.

2. **Insufficient grounds:** The rulings of the Phnom Penh Municipal Court and the Phnom Penh Court of Appeal are based on the testimony of a single witness, whose statements are pure, baseless, irrational, and have no clear source to suggest that the ADHOC's staff bribed any person whatsoever. In addition, both courts have rejected the rebuttals and evidence presented by the defendants without sufficiently substantiating the reasons for doing so. This is a severe violation of the presumption of innocence, which requires any person charged with a criminal offense shall be presumed innocent until proven guilty.
3. **Violation of the right to examine witnesses:** Throughout the investigation and the trial, the Phnom Penh Municipal Court and the Phnom Penh Court of Appeal failed to summon the prosecution witness to produce evidence in the presence of the defendants. As such, the defendants were not given an adequate and proper opportunity to challenge and question the prosecution witness. Despite the defendants' best efforts, no measures were put in place in the course of the ensuing proceedings to remediate this violation of human rights.

The Cambodian Human Rights and Development Association (ADHOC) also emphasises that it considers that all actions taken by its present and former staff were aimed at promoting human rights in Cambodia, especially the right to justice, and are in accordance with ADHOC's mandate. Under international human rights agreements and the Cambodian Constitution, the Royal Government has the formal and binding obligation to respect, protect, and fulfil the human rights of all Khmer citizens. The actions taken by the defendants, as well as by other human rights defenders, are aimed at closing the protective gap left by the Royal Government. As such, Royal Government should never encourage retaliations, charges, and punishments against human rights defenders. Recent crackdowns against human rights defenders vividly demonstrate that Royal Government is seriously violating its human rights obligations under the Cambodia Constitutional and United Nations Declaration on Human Rights Defenders.

The Cambodian Human Rights and Development Association (ADHOC) strongly calls on the Royal Government to comply with its human rights obligations under domestic and international law and to immediately stop using judicial mechanisms to intimidate and prosecute human rights defenders. Instead, the Royal Government must work to establish mechanisms to ensure the effective protection of human rights defenders.

Finally, the Cambodian Human Rights and Development Association (ADHOC) calls on domestic courts at all levels to improve the implementation of the law to ensure the pursuit of true justice for all citizens, regardless of religion, gender, colour, or political party affiliation.

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