



## **Clooney Foundation for Justice Statement on the Anniversary of the Arrest of Two Former Radio Free Asia Journalists Tried for Espionage in Cambodia**

*The following statement can be attributed to a New York-based spokesperson for the Clooney Foundation for Justice:*

November 13, 2019, New York – “Tomorrow marks the two-year anniversary of the arrest of former Radio Free Asia (RFA) journalists Uon Chhin and Yeang Sothearin on espionage charges. The Clooney Foundation for Justice’s TrialWatch initiative has been monitoring their trial in Cambodia, which had been expected to conclude on October 3, 2019. Instead, the Court issued a preliminary judgment ordering a re-investigation of the case, with no timetable. The Clooney Foundation for Justice calls upon the authorities to withdraw the espionage charges or for the trial to be brought to a prompt conclusion through the appeal process currently underway.

It has been two years without resolution for Chhin and Sothearin. Despite the holding of two substantive hearings, at which four witnesses were heard, and the entry into the record of seven statements by other witnesses who were examined during the pre-trial investigation, no evidence to support any of the elements of the crime of espionage has been produced to date. This raises questions regarding respect for the presumption of innocence under international law and suggests that the defendants may have been targeted simply for their association with RFA -- a possibility borne out by earlier [threats from the Ministry of Interior to treat anyone who worked for RFA after the closure of the RFA office in Cambodia as a spy](#).

Rather, the prosecution relied on suspicion and innuendo, alleging that equipment one defendant asserted was for a karaoke studio must instead have been used for broadcasting sensitive information because if “he [the defendant] had already opened a studio for three months, why didn’t he apply for a permit from a competent ministry? This also means that he is hiding his actions from the authorities.” The Court likewise suggested that RFA, which is a private non-profit corporation engaged in journalism, should count as a foreign country for purposes of Cambodia’s espionage law. Meanwhile, the defendants remain in legal limbo and subject to bail conditions.

As the defense argued during their closing arguments, “the facts used [to] charge, arrest and detect [the defendants] . . . [are] like catching shade and grabbing the air.” Nor does the re-investigation appear likely to yield evidence to support the espionage charge. The indefinite continuation of this case will only exacerbate this trial’s chilling effect on freedom of expression in Cambodia.”

*The following information is for background purposes only:*

The defendants had reported on land and social issues for Radio Free Asia (RFA), which is funded by the United States Agency for Global Media based on appropriations from the U.S. Congress. After RFA closed its offices in Cambodia because the “[government’s relentless crackdown on independent voices . . . made it impossible to keep the bureau open](#),” the defendants continued to send RFA a limited amount of publicly-available information, including videos of a protest before the Cambodian Supreme Court and of a Cambodian Ministry of Information press conference (regarding the closure of the RFA offices). Before the closure of the RFA office, one of the defendants also transferred a package to the U.S. Embassy at his supervisor’s request, the contents of which were characterized by the Court in its preliminary judgment as including a hard disk.

Article 445 of the 2009 Criminal Code of Cambodia defines espionage as “[[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](#).” But at trial, there was no evidence presented to establish how sharing public information, or transferring a hard disk (the contents of which the defendant who allegedly transferred it to the U.S. Embassy disclaimed knowing), could have affected Cambodia’s security.

Rather, the prosecution relied heavily on the fact that one defendant had procured equipment that could allegedly have been used for broadcasting (including potentially some equipment being left behind by RFA). The defendant claimed instead that the equipment in question was for a karaoke business. The prosecution argued that the defendant’s failure to apply for a karaoke license was significant proof that the defendants had sought to commit espionage.

Likewise, with respect to the alleged transfer of the hard disk, the Court stated in its preliminary judgment that “these activities are not activities that should be done by a journalist who has a duty to collect and broadcast information,” appearing to suggest that the defendant who allegedly delivered the disk at his supervisor’s request should have investigated and broadcast its contents and that his failure to do so was evidence of espionage. Moreover, to the extent the alleged transfer was important to the Court’s reasoning, it is not clear why it was only glancingly covered at trial.

The Court’s October 3 preliminary judgment requests both further investigation of the equipment and the hard drive. It is not clear why these investigations could not have been completed during the two years since the defendants were arrested – indeed, the Court’s inquiries relating to the equipment during trial were very limited – nor why matters such as the source of the equipment should be dispositive (given that no evidence of broadcast use was ever adduced). Meanwhile, only senior police officers were called as witnesses (rather than those who actually conducted the investigation) and one of them had a younger officer whispering in his ear for much of his testimony.

Further, whatever the form of the equipment, the authorities’ theory regarding the “foreign state” to which the defendants allegedly were broadcasting sensitive information was unclear at trial

and does not seem to be a focus of the re-investigation. Despite being prompted by defense counsel, the prosecution did not seek to elicit information regarding any “foreign state” to which the defendants were broadcasting information. And the presiding judge did not follow up on this line of questioning and, indeed, did not ask any questions that would have clarified the basis of the espionage charge. Rather, in the preliminary judgment, the Court simply refers to “RFA in the US.” As defense counsel asserted during closing argument, the cumulative effect of this lack of clarity regarding a key element of the charge resulted in “accusations without borders.” Indeed, the trial monitors reported that the judges simply appeared suspicious of the defendants, asking repeatedly why they would provide any information to RFA after the closure of the RFA office.

As to the pornography charge, the Court’s decision to close the proceedings concerning that charge, ostensibly to protect the defendants’ privacy, makes it difficult to assess the strength of the evidence.

A full report by a TrialWatch expert assessing the fairness of the defendants’ trial under international human rights law will be released soon and made available at <http://www.trialwatch.com>.

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**About The Clooney Foundation for Justice’s TrialWatch initiative:**

The Clooney Foundation for Justice’s TrialWatch initiative monitors criminal prosecutions of vulnerable persons around the world, including journalists. This proceeding was monitored by the American Bar Association Center for Human Rights as part of the TrialWatch initiative.