

Mandates of 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 defenders

REFERENCE: AL
KHM 3/2015:

10 August 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of judicial harassment of human rights defender Mr. Ny Chakrya.

Mr. Ny Chakrya is the Head of the Human Rights and Legal Aid Section of the Cambodian Human Rights and Development Association (ADHOC).

ADHOC is a non-governmental human rights organization, founded in 1991. It provides legal assistance to victims of human rights violations, including victims of land disputes, monitors human rights violations in Cambodia, and engages in human rights advocacy through press statements, the organization of and participation in conferences, and the publication of thematic reports on the situation of human rights in Cambodia.

According to the information received:

On 3 January 2015, two individuals involved in a land dispute in Chup Romdeng village in Svay Leu district, Siem Reap province, were arrested and detained on charges of inciting a group to intrude upon and destroy private property belonging to an agricultural development company operating in the area. This followed an order made by the Deputy Prosecutor and Investigating Judge of Siem Reap Provincial Court. Both individuals were receiving legal assistance from ADHOC.

On 12 May 2015, Mr. Ny Chakrya criticised the arbitrary arrest and detention of the two individuals from Chup Romdeng during a press conference organized by the ADHOC office in Siem Reap.

On 15 May 2015, the Prosecution Office of the Siem Reap Provincial Court made a statement threatening to prosecute Mr. Chakrya. The statement alleged that he had jeopardised the effective functioning of judicial institutions and the ongoing proceedings in respect to the land dispute in Chup Romdeng village.

On 20 May 2015, Mr. Chakrya filed a complaint with the Disciplinary Council of the Supreme Council of Magistracy against the Siem Reap Provincial Court Deputy Prosecutor and Investigating Judge. In the complaint, he claimed that the proceedings against the two residents of Cup Romdeng village were not conducted in accordance with fair trial standards.

On 29 May 2015, the Investigating Judge and the Deputy Prosecutor of the Siem Reap Provincial Court submitted a complaint against Mr. Chakrya. In the complaint, Mr. Chakrya was accused of “public defamation”, “acts of slanderous denunciation”, and “publication of commentaries to put pressure on the judiciary”, under Articles 305, 311 and 522 of the Cambodian Criminal Code.

On 1 July 2015, Mr. Chakrya received a summons to appear before the Deputy Prosecutor of the Phnom Penh Municipal Court at 8:30 a.m. on 13 July 2015.

On 13 July 2015, Mr. Chakrya appeared before the Phnom Penh Municipal Court for a preliminary hearing concerning the allegations made in the complaint against him.

On 18 July 2015, the Deputy Prosecutor of the Phnom Penh Municipal Court passed the evidence in the case of Mr. Chakrya to the Investigating Judge of the Phnom Penh Municipal Court. The Investigating Judge shall now review the existing evidence against Mr. Chakrya to decide whether the charges against him will be formalised. If Mr. Chakrya is formally charged, he faces potential accumulated fines of up to 13,000,000 Riels (approx. 3,197 USD) and one and half years’ imprisonment.

Concern is expressed that the judicial procedures against Mr. Chakrya are related to his legitimate and peaceful work providing legal assistance in Cambodia. We also express concern that this may be an attempt to dissuade Mr. Chakrya from continuing his work in cases concerning land rights and, more broadly, to quell criticism and deter individuals from exercising their legitimate right to freedom of association in Cambodia.

Further concern is expressed regarding the use of criminal proceedings against Mr. Chakrya under defamation charges for reporting on and expressing dissenting opinions to public institutions. Such proceedings could represent a form of intimidation and harassment and impose undue restrictions on the legitimate enjoyment of the right to freedom of expression and opinion and the right to seek, impart and receive information in Cambodia. In particular, we wish to remind your Excellency that any restrictions to the

exercise of the right freedom of expression, including on the grounds of defamation, must be provided by law and necessary and proportionate.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

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

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate how the aforementioned judicial procedures against Mr. Chakrya are compatible with international human rights norms and standards.
3. Please further indicate what measures have been, or will be, taken to ensure that human rights defenders in Cambodia are able to carry out their legitimate work in a safe and enabling environment without fear of prosecution or acts of intimidation and harassment of any sort.
4. Please also indicate what measures have been, or will be, taken to guarantee the exercise of the rights to freedom of association and freedom of opinion and expression in Cambodia.

We would appreciate receiving a response within 60 days.

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

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights, ratified by Cambodia on 26 May 1992, which guarantees the right to freedom of expression and the right to freedom of association.

We would also like to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We further refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion." The General Comment further establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

In addition, we would like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;

article 9, paragraph 3, point c), which provides for the right to provide legal assistance in defending human rights and fundamental freedoms.

In this connection, we would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).

Moreover, we would like to draw your Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which “reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the [right] to freedom of... association are in accordance with their obligations under international human rights law”.