

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE: AL
KHM 4/2014:

3 July 2014

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning the recent approval by the Cambodian Senate of three draft laws on judicial reform that would confer excessive powers to the Minister of Justice over the judiciary, thereby jeopardizing judicial independence.

According to the information received:

On 22 and 23 May 2014, the National Assembly of Cambodia passed three draft laws, namely the 'Law on the Organization and Conduct of the Supreme Council of the Magistracy', the 'Law on the Statute of the Magistracy' and the 'Law on the Organization of the Courts', aimed at reforming the judiciary in the country.

The draft laws were then sent to the Senate, where they were passed on 12 June 2014 and subsequently forwarded to the Cambodian Constitutional Council for an analysis of their constitutionality.

It is reported that the draft 'Law on the Organization and Conduct of the Supreme Council of the Magistracy' would allow for the Supreme Council of the Magistracy – the organ responsible for overseeing the judiciary particularly in matters of appointment and in disciplinary actions – to be chaired by the Minister of Justice and to have half of its members appointed by the government. Supposedly, the law would also allow for the Minister of Justice to authorize the budget of the Supreme Council of the Magistracy.

In relation to the 'Law on the Organization of the Courts', it is alleged that the draft law would empower the Minister of Justice to control the budgets of all courts, promote judges and prosecutors and place judges and prosecutors under

the central administration of the Minister, thereby consolidating the executive's control over the judiciary. Reportedly, the law would also enable the Minister of Justice to control the administrative body of the courts at all levels and to supervise all administrative affairs of all courts and tribunals. Additionally, the law would supposedly allow the Minister of Justice to issue 'legal instruments' and 'other guidelines' to ensure the administrative management of the courts at all levels; to assign inspections of the courts whenever necessary; and to transfer jurisdiction over a case from one court of first instance to another.

Regarding the 'Law on the Statute of the Magistracy', it is reported that the draft would place all judges and prosecutors under 'the central administrative framework of the Ministry of Justice' and allow that judges and prosecutors 'be appointed to function at the Ministry of Justice'. Furthermore, the draft would allegedly give excessive powers to the Minister of Justice as it would enable him to determine the number of judges and prosecutors to be selected, organize the provision of professional trainings to judges and prosecutors who take the entrance examination and determine the form and process of the entrance examination for judges and prosecutors. Allegedly, the law would additionally demand that judges and prosecutors on duty at any adjudicating court who wish to 'publish, or request to broadcast' 'any text or written note as well as other comments in relation to their work' obtain prior authorization from the Supreme Council of Magistracy (in the case of judges) or from the Minister of Justice (in the case of prosecutors).

The three draft laws would reportedly put the Minister of Justice at the center of all key decision-making processes of the judiciary and the Supreme Council of the Magistracy, thus jeopardizing the principle of separation of powers and the independence of the judiciary.

The allegations, if confirmed, would reveal a context of increasing and serious interferences in the independence of the judiciary by the executive and legislative branches of power. Concern is expressed that the three draft laws on judicial reform could undermine the principle of separation of powers and violate the fundamental principles of judicial independence, established in international human rights instruments ratified by Cambodia and enshrined in articles 51 and 128 of its Constitution.

In connection to 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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would 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 provide detailed information on the content of the three draft laws on judicial reform and indicate how these laws respect international principles and standards on the independence of the judiciary.

I would appreciate a response within 60 days.

While waiting for your Excellency's response, I would like to appeal to your Excellency's Government to take all necessary measures to guarantee the separation of powers and the independence of the judiciary in Cambodia and to ensure that judges and prosecutors are able to perform their professional functions without improper interferences, pressures or threats.

I am intending to publicly express my concerns in the near future as I am of the view that the information I have received is sufficiently reliable to indicate a matter warranting immediate attention. I will indicate that I have been in contact with your Excellency's Government to clarify the issue/s in question.

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 my highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principles 1 to 7 which promote and protect the independence of the judiciary.

In addition, I would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee where the Committee underscored that the independence and impartiality of a tribunal is “an absolute right that is not subject to any exception” and that “States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.” The Human Rights Committee further established that “[A] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.” (CCPR/C/GC/32, para. 19)

Finally, I would like to draw your Excellency's Government attention to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), which reaffirm, among other, that “judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial”, and that “[A] judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.”