

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL KHM 1/2023
(Please use this reference in your reply)

20 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 51/8 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of woman human rights defender Chhim Sithar upon her return to Cambodia.

Chhim Sithar, 34, is a woman human rights defender and the president of the Labor Rights Supported Union of Khmer Employees of NagaWorld (LRSU), an internal trade union created by staff of the large casino and hotel complex called NagaWorld. She has been an employee of this company since 2007, and in 2009 she joined with other workers in actively demanding the rights and better working conditions for the workers. She was elected the Union Vice President in 2012 and then elected as the President of NagaWorld Union in 2014.

According to the information received:

In December 2021, thousands of NagaWorld employees walked off their jobs demanding higher wages and the reinstatement of eight jailed union leaders and nearly 370 others they said were unjustly fired from the casino in the wake of disruption caused by the COVID-19 pandemic. Cambodian authorities said the strike was illegal and threatened public security¹. On 3 January 2022, Ms. Chhim was charged with 'incitement to commit a felony' under articles 494 and 495 of the Criminal Code. She was violently arrested on 4 January 2022, being dragged by her neck and pulled into a car by undercover police while trying to join a strike in Phnom Penh. She spent 72 days in pre-trial detention before being released on bail in March 2022.

Around 10.30 a.m. on 26 November 2022, Chhim Sithar was detained by immigration police at the Phnom Penh International Airport for violating bail conditions that allegedly prohibited her from leaving the country. Ms. Chhim had been on a 12-day trip to Australia to attend an International Trade Union Confederation (ITUC) World Conference where she had met with other labour leaders and during which time a Human Rights Watch report was published that featured her speaking out against the Cambodian government's repressive tactics². Previous to her trip to Australia, she had left the country to travel to Thailand on two occasions without issue. Neither Ms. Chhim nor her lawyers were informed of any judicial supervision or probation conditions, such as

¹ [US calls for the release of Cambodian labor activist Chhim Sithar | CNN](#)

² [Only "Instant Noodle" Unions Survive: Union Busting in Cambodia's Garment and Tourism Sectors | HRW](#)

travel restrictions upon her release, as is required by Cambodian law. They reportedly requested a review of the file to see if it included bail conditions, but the court allegedly denied the request in violation of the Code of Criminal Procedure. Ms. Chhim's lawyer was not allowed to accompany her during questioning.

Ms. Chhim is being held at Correctional Centre 2 at Phnom Penh Women's Prison. The detention facilities are reportedly extremely overcrowded, with access to and the quality of necessities such as food, water, hygiene supplies, medical care, daylight and fresh air being determined on a prisoner's capacity to pay bribes to prison staff.³

Without wishing to prejudge the accuracy of the above-mentioned allegation, we would like to express our concerns about the Cambodian authorities' repeated interference with the exercise of workers' rights by detaining union leaders and workers protesting the wrongful termination of NagaWorld employees. It is also concerning that charges brought against Chhim Sithar have not been dropped and that they appear to have been motivated because of her leadership of the LRSU and their ongoing strike actions against NagaWorld. The allegations that the conditions of bail were reportedly never provided to the woman human rights defender, and that she was previously allowed to leave the country freely indicate that the arrest of Ms. Chhim appears to be related to her ongoing work, exercising her right to freedom of speech and to freedom of association and peaceful assembly while in Cambodia and Australia, and may be part of an attempt to intimidate NagaWorld employees from continuing their strike.

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

We are issuing this appeal in order to safeguard the rights of Ms. Chhim from irreparable harm and without prejudicing any eventual legal determination.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the factual and legal grounds for the arrest of Chhim Sithar, and whether an arrest warrant was presented. Please also clarify whether she was fully notified of her bail conditions and whether those contained a travel ban, and if her legal counsel was allowed to examine the relevant file. If that was not the case, please explain why and how these measures are compatible with international human rights norms and standards as stated, inter alia, in the UDHR and the ICCPR.

³ [Annual report of the United Nations Secretary-General- A/HRC/51/63](#)

3. Please provide information on whether all detainees have access to family members and legal counsel.
4. Please explain what measures have been taken to ensure that all human rights defenders in Cambodia, including union leaders, can carry out their peaceful and legitimate activities without fear of judicial harassment, or other restrictions.
5. Please provide information on what action has been taken by the authorities, including the police, to protect the human rights and fundamental freedoms of the participants in these and other peaceful strikes.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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 the International Covenant on Civil and Political Rights (ICCPR), acceded by Cambodia on 26 May 1992, in particular articles 3 (a), 9, 14, 19, 21 and 22. In this connection, we would like to refer to article 3 (a) which affirms that States must undertake measures to provide effective remedies to any person, whose rights or freedoms are violated by others, including by perpetrators acting in an official capacity; and to article 21 which states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".

We would like to recall article 22, which protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights) (see also ICCPR, art. 26).

We would also like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary, proportionate and non-discriminatory. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. In her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

In particular, article 9 of the ICCPR provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary

Detention and General Comment No. 35,⁴ any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, may be arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it 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. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

We would like to remind you that the legitimate role of human rights defenders is recognised by international law and referred to 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 articles 1 and 2 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 3, which provides that all domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

⁴ CCPR/C/GC/35, para. 17.

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.