Joint Civil Society Submission to the UN Human Rights Committee in relation to its follow-up procedure on Cambodia

Actions taken by the State Party to implement the Committee’s recommendations on freedom of expression and association (para. 21, CCPR/C/KHM/CO/2)

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Executive Summary:

As a result of the second review by the UN Human Rights Committee (“the Committee”) of Cambodia’s implementation of the International Covenant on Civil and Political Rights (“ICCPR”) in March 2015, a number of recommendations were issued to the State Party. One of the recommendations selected by the Committee for its follow-up procedure deals with the freedom of expression and association (para. 21, CCPR/C/KHM/CO/2), on which Cambodia is obliged to report back to the Committee within a year (by March 2016). However, the State follow-up report was not submitted by the requested deadline, and is yet to be received. Indeed, since March 2015 the Cambodian authorities have taken new actions contrary to the Committee’s recommendations and the situation regarding freedom of expression, association and peaceful assembly has further deteriorated.

This submission aims to highlight these negative developments in the context of the follow-up procedure of the Committee. However, the actions of the authorities - including the enactment of the repressive Law on Association and Non-Governmental Organisations (“LANGO”) - can be seen as a part of the Royal Government of Cambodia’s (“RGC”) broader and increasingly harsh crackdown on critical voices. In making this submission, the undersigned NGOs request the Committee to strongly urge the State Party to implement the Committee’s recommendations in order to fully comply with its obligations under the Covenant, and to submit its follow-up report without further delay.

In the past few months, in an apparently politically motivated act, a number of individuals have been summoned by the authorities, and subsequently arrested, indicted and placed in pre-trial detention1 in relation to the Anti-Corruption Unit’s (ACU) investigation into an alleged affair between acting opposition leader, Mr Kem Sokha,2 and Ms. Khom Chandaraty (also known by the alias Srey Mom).

The investigation has led to the arrest and charging of four senior staff members from one of Cambodia’s leading national human rights NGOs, the Cambodian Human Rights and Development Association (ADHOC), as well as a member of the National Election Committee (and former ADHOC staff member), and a UN official. Furthermore, on 3 May 2016, Acting President of the opposition Cambodian National Rescue Party (CNRP), Mr Kem Sokha, was summoned for questioning on charges of criminal defamation, along with two other CNRP parliamentarians, Mr Pin Ratana and Mr Tok Vanchan, for questioning in relation to charges of prostitution. Also in relation to this case, the ruling Cambodia People’s Party (“CPP”) has filed a criminal defamation complaint against prominent political analyst Mr Ou Virak for commenting on the case and expressing his opinion that the case was politically motivated.

1 The detailed timeline of the events is outlined in the Annex.
2 Cambodian names are commonly expressed with family name first followed by their given name. In this submission the convention is observed when writing Cambodian names.
Implementation of the Committee’s recommendations:

The RGC has not only failed to implement the recommendations issued by the Committee but, in the 15 months since the Committee’s report, has taken actions that further restrict the fundamental freedoms of expression and association.

The Committee’s recommendation on freedom of expression and association first recalled to Cambodia the overarching legal obligations to which, as a State Party to the ICCPR, it is subject under Articles 19 and 22 of the Covenant, with the clear implication that that these obligations were currently not being fully fulfilled:

“The State party should ensure that everyone can freely exercise his or her right to freedom of expression and association, in accordance with articles 19 and 22 of the Covenant and the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression.” (para. 21, CCPR/C/KHM/CO/2)

In the context of this general recommendation, the Committee made four further sub-recommendations for implementation by Cambodia, setting out specific actions that should be taken to ensure Cambodia’s compliance with its obligations under the Covenant. While presumably not exhaustive, these specific recommendations can be considered to highlight issues that the Committee judges to be of particular urgency or significance in the particular context of the State Party.

1. “Take immediate action to investigate complaints of killings, and provide effective protection to journalists, human rights defenders and other civil society actors, who are subjected to intimidation and attacks due to their professional activities” (para. 21 (a), CCPR/C/KHM/CO/2)

Impunity for those who issue threats, harass, attack, or even murder journalists, human rights defenders and other civil society actors continues to remain a grave problem in Cambodia. The RGC has continued to fail to take adequate action to ensure such crimes are appropriately investigated and the perpetrators brought to justice. Such impunity creates a chilling effect on the exercise of freedom of expression and association in Cambodia, as civil society actors carry out their activities subject to a continuing threat of intimidation and personal violence.

A. Failure to address outstanding issues from the March 2015 report

As a journalist in Cambodia, highlighting wrongdoing on the part of the government and private sector has frequently been a matter of life and death; 13 journalists have been killed for their work since 1994, with the most recent case occurring in October 2014. The failure to adequately prevent and investigate such murders not only constitutes a threat to freedom of expression in Cambodia, but puts the State Party in breach of its obligations under Article 6 ICCPR, which guarantees each individual the inherent right to life.

Despite the recommendation of the Committee, the RGC has failed to take action to investigate such attacks. In May 2014, Lay Samean, a reporter from Voice of Democracy, was beaten and left unconscious in the street upon attempting to take photographs of security guards chasing a monk at a rally held by opposition party supporters at Phnom Penh’s Freedom Park. He sustained head injuries and a broken cheekbone, necessitating his travel to Bangkok for surgery, costing US$30,000. His vision has been permanently affected. CCIM filed a lawsuit for damages against the officials responsible for the security guards, requesting compensation for medical expenses, but the Phnom

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3 An interactive map containing profiles of each of the journalists who have lost their lives is available via CCHR’s human rights portal, www.sithi.org.
Penh Municipal Court dismissed the case without any explanation. No other criminal investigation by police or the judiciary has been conducted, despite widespread condemnation.

B. New developments

In addition, since March 2015 there have been new incidents of harassment and violence against journalists and other civil society actors, for which no perpetrators have yet been held accountable. On 6 August 2015, two reporters from Voice of Democracy (“VOD”), an entity of the Cambodian Center for Independent Media (“CCIM”), were attacked by Daun Penh district security guards in Phnom Penh. They were reporting on Boeung Kak community members that were demonstrating in front of the City Hall with regard to land rights. The reporters were harassed and threatened with having their equipment seized while trying to interview demonstrators.

On 26 October 2015, two opposition lawmakers were dragged from their cars and viciously beaten as they attempted to exit the National Assembly compound during a protest demanding the removal of deputy opposition leader Kem Sokha as the Assembly’s vice president. Three members of Prime Minister Hun Sen’s personal bodyguard unit were found guilty of aggravated intentional violence but were handed suspended sentences that will see them released in less than six months. The trial was widely considered to be a cover-up by the ruling authorities, with the real perpetrators of the attacks remaining unaccountable.

One section of civil society that has been subjected to increasing intimidation and attacks since March 2015, with the tolerance or even apparent complicity of the authorities, is the trade union and labour movement in Cambodia. The right to form and join trade unions is explicitly included under the right to freedom of association in Article 22 ICCPR. Yet late 2015 and 2016 has seen an escalating crackdown on trade unions, marked by a series of incidents demonstrating the authorities’ tacit support for the use of violence against legitimate demonstrators and the suppression of independent trade unions.

One particularly egregious incident was the brutal attack on employees of Capitol Tours during a protest, the perpetrators of which have yet to be held accountable. During the period leading up to 8 December 2015, Capitol Tours dismissed 45 employees after they supported and attempted to form a union. The dismissed bus drivers and other activists have since sustained a prolonged protest against Capitol Tours. On 06 February 2016, at approximately 9.40am around 50 of the protestors were violently attacked by a mob of tuk-tuk drivers – understood to be associated with the notorious Cambodia for Confederation Development Association (“CCDA”). CCDA has a history of demonstrating against civil society groups at the request of City Hall and businesses in return for lucrative contracts. The horrific attack, which left at least 14 people injured, including protesting bus drivers, one human rights monitor and one police officer, was captured in video footage by human rights monitors, and shows the tuk-tuk drivers attacking the protestors with sticks, metal bars and hammers and a knuckleduster. During the attack the police failed to take any meaningful action to intervene and there are even suggestions that some police officers actually participated in the violence. While victims of the attack have been arrested, the real perpetrators have been allowed to enjoy total impunity.

Similar violent attacks on groups of workers exercising their right to protest took place on 1 February 2016 at the Star Light Apparel factory in Kandal province, when protesters were attacked by security guards and groups of armed thugs; and on 12 January 2016 at the Agile Sweater Factory in Kampong Speu, when individuals associated with the Collective Union Free Khmer Worker, which is closely aligned with the Agile Sweater Factory, are reported to have attacked the protestors with sticks and metal pipes. These incidents clearly demonstrate the abject failure of the RGC to implement the Committee’s recommendation to provide effective protection for civil society actors and investigate the intimidation and attacks to which they are subject as a result of their activities.
2. “Refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deferring or discouraging them from freely expressing their opinions”, (para. 21 (b), CCPR/C/KHM/CO/2)

A. Failure to address outstanding issues from the March 2015 report

The use of threats of arrest, charge or imprisonment against prominent opposition leaders is a well-documented tactic utilised by the RGC, with the case of Mr Sam Rainsy, President of the opposition Cambodia National Rescue Party, being the most publicised. Mr Sam Rainsy is currently voluntarily residing in France following the issuing of a warrant for his arrest on 13 November 2015, in spite of the Royal Pardon granted to Mr Rainsy by the King in 2013 regarding criminal defamation charges and resulting prison sentences.

Other investigations or prosecutions of civil society actors that were ongoing at the time of the Committee’s report have also continued to be pursued by the RGC, contrary to the Committee’s recommendation. For example, Spanish activist Alex Gonzalez-Davidson, the founder of the environmental group, Mother Nature, has since been forced to leave the country, in what appears to be an attempt to put a stop to his environmental and human rights activism in the Areng Valley, after immigration officials declined to renew his visa.

A further example concerns the 11 opposition activists arrested between July and November 2014 for allegedly instigating or involvement in violence linked to a demonstration at Freedom Park in Phnom Penh on 15 July 2014 to support a CNRP rally calling for an end to the ban on public gatherings in the park. The peaceful protest escalated into violence with clashes occurring between Daun Penh district’s security guards and protestors taking part in the violence. On 21 July 2015, the 11 activists affiliated were sentenced to lengthy jail terms, ranging between 7 and 20 years. No credible evidence supporting the claim that the defendants had planned an “insurrection,” or that any of the 11 had themselves committed acts of violence, was produced during the trial.

B. New developments

Since the Committee’s recommendations were issued, RGC has increasingly engaged in new incidents of intimidation of human rights defenders and civil society actors, most recently through the arrest and detention of current and former ADHOC staff members in relation to the Kem Sokha case. The RGC have argued that they are pursuing a legitimate case against ADHOC staff for allegedly bribing the material witness to lie during a judicial investigation. However, the disproportionate involvement of not only the government’s Anti-Corruption Unit (ACU), but also the Anti-Terrorism Unit, in the investigation of a case that involves an opposition politician’s alleged extramarital affairs would strongly point to an ulterior political motive. Arrests and detention have been carried out not only in violation of the provisions of ICCPR but also of several key provisions in domestic law.4

i) Prosecution of human rights activists for bribery offenses

Four senior ADHOC staff members, Mr Ny Sokha, Mr Yi Soksan, Mr Nay Vanda, and Ms Lim Mony, were indicted on 2 May 2016 with the crime of bribing a witness.5 Deputy secretary-general of the National Election Committee (NEC) (and former ADHOC staff member), Mr Ny Chakrya as well as an officer of the UN Office of the High Commissioner for Human Rights (OHCHR), Mr Soen Saly were indicted as accomplices to the same crime. Since the indictments were brought, Om Yentieng, head of the ACU, has suggested that the basis for the indictments was ADHOC’s provision of assistance to Ms. Chandaraty to relocate, rather than merely the provision of $204 financial assistance.

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5 Criminal Code of Cambodia (2009) article 548
All except Soen Saly have been officially detained since 28 April at 8pm – and unofficially held and questioned for 1-2 days, respectively, prior to the official detention – and subjected to gruelling interrogation. Prime Minister Hun Sen recently dismissed the idea that Soen Saly enjoyed immunity as an official of the UN, leading to concerns that he may also face arrest in violation of the privileges and immunities he enjoys under international law.  

In addition to violating the activists’ fundamental right to freedom of expression and association, with which this submission is particularly concerned, their arrest, detention and prosecution also appear to constitute violations of a number of other human rights protected under the Covenant and Cambodian domestic law.

**Violation of the right to liberty**

Three staff members of ADHOC were initially summoned to the ACU on Wednesday 27 April 2016 and interrogated for a prolonged period of time. The three were eventually released to go home at around 11pm on the same day. The following day, the three staff members questioned the previous day were summoned back at 8 am to resume interrogation. Two additional summons for two further human rights activists were also issued. The five activists were then placed in continued detention until the morning of Monday, 2 May 2016, when they were indicted.

For those who were summoned on 27 April 2016, this was a detention of more than 120 hours, which is a clear contravention of the *Code of Criminal Procedure*, where judicial police are only permitted to detain any interested person in custody for a maximum of 48 hours. The ACU contended that the five were not ‘officially’ detained until 8 pm on 28 April 2016; however, the RGC breached their obligation under both domestic law and the ICCPR by not informing the five detainees of this fact at the time, as well as not informing them of the reason for their arrest or the exact charge against them until several days later.

If there is any “evidence showing the detained person is guilty”, the judicial police (in this case the ACU) must seek specific permission from the Royal Prosecutor to authorise an extension of the detention up to 24 hours. In this regard, the ACU argued that the Royal Prosecutor granted the extension in the afternoon of 30 April 2016, which was within the first 48 hours time frame. However, the *Code of Criminal Procedure* specifically states that the duration of police custody “shall commence from the time when the detained person arrives at the police or military police office,” not merely from the beginning of the “official” detention. Thus, Ny Sokha, one of the five, was in effective detention from 27 April, 9.00am, as he was interrogated in the premise of ACU for about 14 hours that day, Yi Soksan was interrogated the first day for about 9 hours as he was summoned at 2.00pm, and Nay Vanda was questioned for 8 hours as he was summoned at 3.00pm. All were summoned to return the next day at 8.00am. However, even if we adopt a stricter interpretation of article 96 of the *Criminal Code of Procedure*, and consider detention starting only with the beginning of the “official” detention at 8pm on 28 April 2016, Ny Sokha was still in detention for almost 60 hours before the extension was granted and the others only for a few hours less. Finally, the Royal

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6 On 9 May 2016 the Cambodian Ministry of Foreign Affairs issued a statement requesting the “Cambodian competent authorities” to stop the legal procedure against Soen Saly, noting correctly that he enjoys immunity under the 1946 Convention on the Privileges and Immunities of the United Nations: Shaun Turton and Mech Dara, ‘Foreign Ministry says UN worker has immunity,’ Phnom Penh Post (9 May 2016) http://bit.ly/1SXtZoK

7 *Criminal Code of Procedure*, article 96.

8 E.g. *Criminal Code of Procedure*, article 97 “when a person is placed in police custody, the judicial officer shall immediately notify their decision and the reasons to the detainee”

9 Ibid.

10 Ibid.
Prosecutor failed to give any explanation as to the legal basis for granting such “exceptional measure”.

The Code of Criminal Procedure states that a charged person “shall remain at liberty” unless there are exceptional reasons to place them in “provisional detention”. Similarly, Article 9(3) ICCPR provides that “it shall not be the general rule that persons awaiting trial shall be detained in custody.” The legal team representing the five is currently preparing the request for bail. However, given the RGC’s lacklustre track record of granting bail to human rights activists, this seems unlikely to be granted. As a tactic to ensure activists are unable to continue their work, lengthy pre-trial detention is often utilised by the RGC. For example, three young activists from civil society organization Mother Nature were arrested and detained in August 2015 after refusing to appear for questioning in relation to their alleged involvement in peaceful, non-violent protests against sand dredging in Koh Kong province. At the time of writing they have spent nine months already in pre-trial detention, and a date for their trial has yet to be set. Other cases have human rights activists being detained in pre-trial detention between six and twelve months. Thus, there is a legitimate concern that the detained activists in this case will suffer a similar fate. It is worth noting that the Code of Criminal Procedure allows for the investigating judge to place someone in provisional detention for up to 18 months, which would appear to violate article 9(3) of the ICCPR, which provides that persons arrested or detained on a criminal charge “shall be entitled to trial within a reasonable time or to release.”

Violations of the right to a fair trial

While in police detention, a detainee may request to speak to a lawyer or any other person not involved in the offence ‘after a period of twenty-four hours’. This provision has been criticised by civil society, as submitted in their NGO reports for the 2nd review of Cambodia by the Committee, on the ground that it is usually interpreted by the RGC to mean that detainees are only allowed to have access to a lawyer after 24 hours in police custody. Indeed, the Committee also raised concerns and made recommendations in this regard in its Concluding Observations on Cambodia.

In the case of the five former and current ADHOC staff, the detainees were not offered any chance to speak with anyone from outside until 8pm on 29 April 2016, almost 36 hours after some of them had been initially detained. The ACU stated that all five detainees “chose” to see their families instead of their lawyers; however it is alleged by at least one detainee that he had demanded to see his lawyer but was told that the lawyer was not available to meet him. The five did not have any access to their lawyers until the afternoon of 30 April 2016.

When the five were finally indicted on 2 May 2016 with the serious offence of “Bribing a Witness” under article 548 of the Criminal Code of Cambodia, an offence that carries a maximum sentence of ten years in prison, the exact nature and grounds for that indictment remained unclear. The only “evidence” relied on by the Prosecutor was the sole statement made by Ms Chandaraty in her open letter of 22 April 2016, in which she accused ADHOC, the deputy secretary general of the NEC, a prominent women’s rights defender, and the UN staff member of having convinced her to lie.

In any case, reliance on a single, unconfirmed witness statement as the sole basis for serious criminal charges would appear problematic. Given that Ms Chandaraty has already admitted to lying to an investigator during questioning and her revised statement incriminating the five was only made after

11 Ibid.
12 Code of Criminal Procedure article 203.
13 Code of Criminal Procedure article 208, two extensions of six months on top of the original permissible six months detention is allowed.
14 Criminal Code of Procedure, article 98.
15 Ibid.
16 CCPR/C/KHM/CO/2, para. 17
the investigator threatened her with further criminal proceedings, the complete reliance on that statement by the authority is highly questionable. The Prosecutor seems to place no weight at all on contrary evidence produced by ADHOC, including a 17-minute video released by ADHOC where Ms Chandaraty repeatedly denies the affair when she was first interviewed by ADHOC, on top of other corroborating statements by the five arrested activists.\(^\text{17}\) The irregular nature of these individuals’ arrest and indictment strongly suggests a political motivation by the RGC to intimidate, harass, and silence civil society actors whom they perceive to be in alliance with the opposition party.

Finally, the manner in which the accused persons have been treated by the government agencies clearly indicates that they are already presumed to be guilty before trial, violating their right to be presumed innocent until proven guilty protected under Article 14(2) ICCPR. Indeed, it appears that the prosecutions are part of a politically motivated attempt to intimidate civil society actors and the political opposition, rather than a genuine process to determine criminal responsibility. In a speech given by Prime Minister Hun Sen in the morning of 10 May 2016, he offered to negotiate with the King for a reduced sentence on behalf of the arrested activists after their conviction – which has not yet taken place. This is a clear indication that the Prime Minister himself has “sealed the fate” of the five activists by expressing a belief that they will be convicted and the only “grace” they will receive is in the form of a reduced sentence through the ‘Royal Pardon’ mechanism.

ii) Prosecutions of Kem Sokha and Ou Virak

With regard to Mr Kem Sokha, who was summoned by the Phnom Penh Municipal Court to answer questions relating to a criminal defamation complaint filed by a celebrity who found fame via social media in the political maelstrom of 2014, the triviality of the alleged act suggests that the RGC continues to utilise any possible provisions of the Criminal Code to continue to both prosecute and harass activists as well as members of the political opposition.

On 11 May 2016, Mr Kem Sokha, invoking the parliamentary immunity enjoyed by National Assembly members under Article 80 of the Constitution, declined to answer a summons by the Phnom Penh Municipal Court to appear in order to answer questions relating to the defamation complaint against him. The authorities have continued to threaten to arrest and pursue charges against Kem Sokha, with Parliament voting unanimously (in the absence of opposition representatives who boycotted the vote) on 31 May 2016 to continue the case in spite of the immunity enjoyed by national assembly members under Article 80 of the Constitution.

At 9 am on 12 May, Mr Ou Virak appeared at the Phnom Penh Municipal Court to answer questions relating to his defamation charge filed by the ruling Cambodia People’s Party (CPP). During the questioning, Mr Ou Virak made a submission to the investigating judge to dismiss the complaint due to lack of credible evidence being presented in court. The Prosecutor failed to show that the audio recording being relied on in their case against Mr Ou Virak was obtained legally. However, the Investigating Judge ruled the court would continue to proceed with the case against Mr Ou Virak.\(^\text{18}\)

Similar to the scant evidence relied on by the RGC in the case against the five current and former ADHOC staff, here it would appear that the judiciary has been put under pressure by the ruling CPP to proceed with the case against Mr Ou Virak. Due to the non-custodial nature of the punishment for the crime of defamation, Mr Ou Virak could not be detained following his questioning. However, the threat of further criminal charges being brought against Mr Ou Virak remains, with one prominent government spokesman recently suggesting that Mr Ou Virak was in fact the mastermind of the “Black Monday” protests, while characterising the campaign as an “urban revolution”.\(^\text{19}\)

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\(^{17}\) For a more complete analysis, see Eric Arbizo, ‘Is the evidence there in the Adhoc Case?’ Phnom Penh Post, 12 May 2016, \[https://t.co/QUjwGf6FKU\]. Both article 38 of the Cambodian Constitution as well as articles 351 and 357 of the Code of Criminal Procedure set the standard of proof in criminal cases in Cambodia ‘beyond reasonable doubt’.

\(^{18}\) Phnom Penh Post, Ou Virak Requests Court to Drop Case, 13 May 2016, http://bit.ly/1TelLaG.

\(^{19}\) Phnom Penh Post, PMs Speech Offers Hope to Detained, 11 May 2016, http://bit.ly/1Yufb1b
iii) Arrest and detention of protesters

The political crackdown escalated further on Monday 8 May 2016 as civil society groups organised a peaceful gathering in front of the prison where four of the five activists were held, while wearing black clothes to symbolise the ‘dark period’ they believe Cambodia is in, calling the continuing campaign ‘Black Monday’. The demonstrators were met by armed police about 2 km outside the prison grounds which resulted in eight human rights activists being detained for the unauthorised wearing of black clothing. Those arrested included Ee Sarom, executive director of housing rights group Sahmakum Teang Tnaut (STT), and Thav Kimsan, deputy director of advocacy for prominent human rights NGO LICADHO, as well as two LICADHO foreign consultants. Four of the activists were not even present at the demonstration site at the time of their arrest; one activist was arrested near the Borei Keila urban housing area while the other two were arrested near the Boeung Kak Lake development area. Both areas are subject to intense and prolonged land dispute between residents, commercial developers and corrupt officials. These arrests took place in areas more than 10 km away from the demonstration site and the activists were simply observed by local police to be wearing black clothing. Although the eight detained persons were all subsequently released in the evening of the same day, this should be viewed as a gross breach of the activists’ fundamental human rights to freedom of expression and assembly and freedom from arbitrary detention, as well as part of a broader campaign by the RGC to intimidate and harass those critical of the government.

On 12 May, Prime Minister Hun Sen took an opportunity in one of his official appearances to make another offer of a ‘Royal Pardon’ to the arrested activists in exchange for civil society groups stopping their demonstration activities. In addition to tending to suggest that the prosecutions are a politically motivated attempt to intimidate and limit the activities of civil society actors, this ‘offer’ also violates the accused activists’ right to a fair trial, especially the right to be presumed to be innocent until found guilty by a competent court of law, as protected by both the ICCPR and Cambodia’s Constitution. In order for a Royal Pardon to take effect, the recipients of such pardon must have already been convicted of a crime. In this case, the Prime Minister of Cambodia appears to have already assumed the accused activists’ guilt and is offering a possible ‘Royal Pardon’, which is normally exercised at the sole discretion of the King, in an attempt to silence further protests.

More arrests took place on the following Monday 16 May 2016, when police apprehended five land rights activists in Phnom Penh and they were only released after thumb-printing an agreement not to gather in public or dress in black on Mondays. Most recently, on Monday 6 June 2016, seven people were arrested for attempting to demonstrate against the arrests and continued detention of the activists. They were released the same evening.

There is no possible legal ground under both international and domestic law that would give a government the legitimacy to control what colour clothes its citizens can and cannot wear on any particular day. As such, the arrests appear to amount to an unjustified restriction on the activists’ right to freedom of expression, and a further example of the politically motivated judicial harassment of civil society actors.

3. “Consider decriminalising defamation and bring any other relevant provisions of the Criminal Code into line with article 19 of the Covenant” (para. 21 (c), CCPR/C/KHM/CO/2)

Human rights instruments do not prohibit defamation laws, however, if not carefully applied, laws such as these can violate the right to freedom of expression. Unfortunately in Cambodia the Criminal Code...
Code, including the crime of defamation, continues to be employed abusively to intimidate and silence critical voices (see section 2.ii. above).

Since the Committee issued this recommendation, no moves have been made to consider decriminalising defamation, and the offense continues to be regularly employed by the government against those who express opposition. Articles 305 and 307 of the current Penal Code, adopted in 2010, outline the definitions of public defamation and public insult, respectively. Under both articles, the commission of an offence merely requires that the defamation or insult be made “in writing or sketches by any means whatsoever,” and for it to be “circulated in public or exposed to the sight of the public.” The latter half of the clause implies that individuals may be prosecuted for private conversations that may end up being later made public without the individual’s consent.

In addition to the crime of defamation, a number of other provisions of the Criminal Code constitute unjustified, disproportionate restrictions on the right to freedom of expression, in clear violation not only of Article 19 ICCPR, but also of Article 41 of Cambodia’s Constitution. A charge under Article 495, “Incitement to Commit a Crime” does not on its face require a crime to actually take place as a result of the incitement in question – merely that the act creates “turmoil in society.” Article 496, on “Incitement to Discrimination,” follows the same pattern. Both articles carry with them the supplementary punishment of suspension of “certain” unspecified “civil rights.” The vagueness of this drafting gives both the judiciary and executive branches of government much leeway in what civil rights the y can take away – which could potentially include the right to vote.

Article 502 broadly criminalizes contempt, and applies to “the use of words, gestures, writings, sketches or objects which undermine the dignity of a person...” The elements of the crime are vague and highly subjective – taken to the extreme, the practical effect of the provision is to criminalize all acts which hurt the feelings of public officials. Article 523 clashes almost directly with Article 39 of the Constitution as it criminalizes the criticism of a judicial act or decision. This has the effect of severely limiting the ability of the public to comment negatively on any decision by the government, hindering the right to freedom of expression, and free participation in political debate and discussion, which is a keystone of democratic society.

As for the crime of defamation, there have been no moves either initiated or announced by the RGC to implement the Committee’s recommendation to review these provisions and bring them in line with Cambodia’s obligations under the Covenant.

4. “Review its current and pending legislation, including the draft laws on cybercrimes and on associations and non-governmental organisations, to avoid the use of vague terminology and overbroad restrictions, to ensure that any restrictions on the exercise of freedom of expression and association comply with the strict requirements of articles 19 and 22 of the ICCPR” (para. 21 (d), CCPR/C/KHM/CO/2)

i) Law on Associations and Non-Government Organisations (“LANGO”)

The LANGO was promulgated in August 2015, with the final text retaining the vague terminology and overbroad restrictions about which the Committee had expressed concern in its recommendation. On 13 July 2015, the National Assembly adopted the draft LANGO with minor amendments, despite the boycott of the session by the opposition and the widespread call to halt the legislative process and hold meaningful consultations with all relevant actors, or reject the law. The LANGO was approved by the Senate on 24 July 2015 without any further discussion and finally promulgated by the King on 12 August 2015.

The text contains deeply worrisome provisions with regard to the imposition of mandatory registration, as well as onerous registration requirements, reporting obligations, and broad and vague grounds for denial of registration and deregistration. The LANGO raises serious concerns not
only with regard to national entities, but also with regard to foreign associations and NGOs wishing to operate in Cambodia. The new LANGO prescribes mandatory registration for all associations and NGOs, not only in order to be recognized as a legal entity, but to conduct any activity whatsoever. Prohibiting unregistered entities from conducting any activity is inconsistent with the right to freedom of association under international human rights law. Cambodian associations and NGOs must register with the Ministry of Interior ("MOI"), while foreign entities must discuss and agree on all projects with an unspecified public authority, before submitting a request to enter into a memorandum of understanding with the Ministry of Foreign Affairs and International Cooperation ("MOFAIC"). These provisions allow the authorities to exercise highly invasive powers over the activities of civil society organizations ("CSOs"). Furthermore, the text of the law is sufficiently vague to cause significant confusion regarding its application to community-based organizations ("CBOs") and other informal popular movements.

Following the arrest of the five activists, persistent rumours and suggestions made by various RGC agencies have surfaced that the LANGO may be utilised by the RGC to punish and shut down any civil society groups that continue to be outspoken and not “maintain their political neutrality” as required by the LANGO.22 The LANGO and the political neutrality provision has long been criticised by civil society groups and the UN Office of the High Commissioner for Human Rights as something that could be arbitrarily used by the government to deny registration or shut down NGOs on the supposed basis that they jeopardize national security, national unity, cultures, tradition, and custom of the Cambodian national society.23 This broad and vaguely drafted provision is open for abuse by authorities seeking a purported legal basis to restrict the activities of NGOs.

The subjective nature of the “politically neutral” provision in the LANGO severely limits the formation and activity of civil society and grassroots organisations, as well as Cambodian citizens’ right to freedom of expression and association, while it does nothing to combat money laundering, terrorism and other crimes - the stated objective of the LANGO. Instead, this has allowed government-aligned NGOs and government agencies, including the government’s Cambodian Human Rights Committee, to attack and threaten Cambodian NGOs with closure and further arrests.24

Article 24 of the LANGO also requires, under threat of de-registration, neutrality vis-à-vis political parties for all foreign associations and NGOs, as well as for domestic NGOs. This vague provision, which does not apply to domestic associations, leaves space for serious violations of freedom of association by authorities in order to silence dissent and criticism. Temporary suspension and deletion of CSOs from the register due to non-compliance with reporting requirements carries further risks of abuse. The suspension or deletion of CSOs for actions contrary to the statute equates to an unnecessary interference in issues internal to CSOs. Finally, in a deeply concerning provision, Article 30 states that the MoI must delete from the list of registered organizations domestic associations and NGOs conducting activities adversely affecting public security, peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society, leaving room for the arbitrary deletion of CSOs. Similar provisions apply to foreign associations and NGOs according to the provisions contained in Article 34 and Article 35. Significant administrative sanctions are also imposed on associations and NGOs that conduct activities without registration or continue their activities despite suspension/deletion.

ii) Draft Cybercrime law

In late May 2015, the Minister of Posts and Telecommunications announced that the Cybercrime Law was still under consideration, and that the law would include criminal sanctions for "people with bad intentions" who “criticize the government”. The RGC has refused to publicly release an official version of the draft, and the last version seen by civil society is a leaked draft dating from autumn 2015. The highly controversial draft law contains several provisions, which, if passed, could severely restrict freedom of expression online, and are likely to result in self-censorship and, contrary to the recommendation, contain overly broad and vague terminology. The comments by the Minister of Posts and Telecommunications suggest that these provisions, if adopted, would likely be employed in a manner that would unacceptably restrict the exercise of freedom of expression.

Of particular concern is Article 28, which prohibits publications on a number of vaguely defined grounds and provides for heavy prison sentences and fines. Some of the most problematic provisions seek to prohibit content deemed to "generate insecurity, instability and political incohesiveness" (Article 28(3)) or "deemed damaging to the moral and cultural values of the society," including "manipulation, defamation, and slanders" (Article 28(5)(c)). Article 28(4), which prohibits content “undermining the integrity of any governmental agencies,” could hinder the ability of civil society to monitor the RGC’s activities – a crucial role in an emerging democracy – as well as serve to silence activists and political opposition. Moreover, Article 35 includes “dissolution” as an accessory penalty for legal entities – which would include civil society organizations – that commit offenses under Articles 21 to 32, and places an improper restriction on freedom of expression. Finally, the proposed inclusion of predominantly high-ranking members of the government in the National Anti-Cybercrime Committee (the “NACC”), as outlined in Article 6, will not lead to the creation of an independent review institution for internet usage.

In response to the outrage expressed over the release of the first draft, a second Cybercrime Draft Law was leaked to certain NGOs from the Ministry of Interior in September and October 2015. The second draft is very clearly a “working draft.” Indeed, some articles are copied directly from the Council of Europe’s Convention on Cybercrime, and at least one article – Article 25 – references article numbers that do not correspond to articles in the Draft, but rather to articles in the first draft Cybercrime Law, which has led to questions regarding the reliability of the document. Moreover, this method of leaking both drafts to selected organizations is no replacement for an open and consultative legislative process, which takes the concerns of the general public and civil society into account in a transparent manner. Although the second leaked draft removed some of the most troubling provisions contained in the first draft - such as the creation of the NACC – it nonetheless contains new provisions which also threaten digital rights. Article 27 allows for the dissolution of legal entities – including NGOs – on the basis of the ‘cybercrimes’ of individuals affiliated with the organizations. Additionally, the draft confers overly broad and intrusive powers upon police and investigators to search and seize the property of those suspected of ‘cybercrimes’, with a complete lack of judicial oversight and procedural safeguards, threatening the right to privacy and the right to freedom of expression. The individual crimes enumerated in the draft very broadly defined, and would give significant scope to the RGC to implement the law abusively against its perceived opponents, in violation of national and international human rights guarantees. For example, Article 13(1) criminalizes obtaining data that “…are considered to be confidential and which are specifically protected against unauthorized access…” There is no intent element; a person may be imprisoned for receiving an email containing such data, even if that email was sent by mistake or the receiver did not know that he did not have permission to view it. Finally, most of the crimes enumerated in the second draft are duplicative, and can already be punished under the criminal code, calling into question the need for a Cybercrime Law at all.

**iii) New Trade Union Law**

The process leading to adoption of this law by the National Assembly on 4 April 2016 was characterized by a worrying lack of transparency and absence of adequate consultation with stakeholders. First proposed in 2011, a new draft of the law was released in October 2014, when civil
society and international actors expressed serious concerns about a number of the law’s provisions. Since then, no updated draft was made available to the public, with only limited statements from the Ministry of Labour in September 2015 providing information on further proposed revisions, thus limiting the ability of stakeholders to participate in the democratic process or comment meaningfully on the new provisions.

As adopted, the Trade Union Law is not consistent with the requirements of Cambodian domestic law, nor with Cambodia’s obligations under international law, in particular the right to freedom of association, including the right to form and be a member of trade unions, as protected by Article 22 ICCPR.

While mandatory registration requirements will not necessarily violate the right to freedom of association, such requirements should not constitute an essential condition for a union to function, due to the risk of restriction and control by the authorities. Under the TUL, registration is necessary in order for a union or employer association to function: otherwise it is unable to enjoy the rights and benefits provided for in the law (Article 11), or to have legal personality, and will be “considered to be illegal” (Article 14). This restriction is exacerbated by the onerous nature of the registration process, and the opaque procedures for approval or rejection of applications by the Ministry of Labor. It is submitted that such onerous, mandatory registration requirements as a prerequisite for a union to function are not necessary in a democratic society.

In order to maintain its registration – and thus continue to function - a union or employer association must comply with a variety of burdensome reporting requirements (Article 17), including the annual provision of financial statements and activity reports, based on the union’s financial records, detailing all income and its sources; expenditure; activities; and number of members; and the updating of any of the information required for registration (with the exception of changes in membership) within 15 days of any change. If these requirements are not complied with, the Ministry of Labor may apply to the Labor Court for revocation of the union’s registration (Article 18 and 19). Onerous reporting obligations of this nature not only distract resources from the pursuit of the union’s primary, legitimate function of promoting and protecting the labor rights and interests of its members, but also creates potential for abuse, as failure to comply may be claimed as justification for revocation of a union’s registration and its consequent inability to function lawfully.

Even if a union or employer association successfully complies with the registration and reporting requirements above, it is possible for a union to be dissolved by the Labor Court under Article 29 TUL. This provision has the potential to seriously infringe the right to freedom of association, by defining the potential grounds for dissolution in excessively vague and ambiguous terms that could easily be manipulated to cover a wide range of legitimate union activity, or to intimidate and harass union leaders. In particular, Article 29 provides that a union may be dissolved on the grounds that:

- establishment or activities of the union contravene the law or the objectives of the union or as stated in the statutes;
- leaders, managers and those responsible for the administration were found of committing a serious misconduct or an offense in the capacity of the union or the employer association

Dissolution is the most severe sanction possible for a union, amounting to a complete restriction of its members’ right to freedom of association. It is submitted that neither of these grounds meet the test set out in the ICCPR which requires that any restriction must be necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. Such broadly worded provisions are open for abuse, and could be used to threaten, harass, or illegitimately restrict the operation of unions.

Finally, perhaps the most troubling provision is contained in Article 65(f), which provides that it is unlawful for a union “to agitate for purely political purposes or for their personal ambitions or committing acts of violence at the workplace and other places.” The consequences of such unlawful activity is not explained, but it is clear that such a broad, ambiguously-drafted provision constitutes a
serious threat to the ability of unions and their members to exercise their right to freedom of association. The subjective and vague terms “purely political purposes” and “personal ambitions” provide considerable scope for authorities to characterise a union’s activity as unlawful, leading presumably to revocation of registration, dissolution, prosecution of its leaders, or all three. Even applied in good faith, it is clear that these cannot constitute necessary, and therefore permissible, restrictions on the right to freedom of association in a democratic society. Unions have long been legitimate centres of political activity; indeed their key objectives of protecting and promoting the rights of workers will inevitably entail engagement with political issues, institutions and processes. Similarly, regardless of the moral or social merits of “personal ambitions” it cannot seriously be argued that they constitute a threat to national security, public order or the rights of others, such as would justify the restriction of individuals’ rights to freedom of association under the ICCPR.

Actions required by the Royal Cambodian Government

The RGC should fully implement all recommendations of the Committee, especially those selected for the follow-up procedure (para. 21, CCPR/C/KHM/CO/2), and further ensure the comprehensive implementation of its obligations under the ICCPR as well as protection and promotion of human rights in general, in particular by taking the following actions:

- Submit Cambodia’s follow-up report to the Committee without further delay;
- Refrain from pursuing politically-motivated arrests, investigations and/or prosecutions of civil society actors, and ensure the immediate release of any such individuals presently detained;
- Take urgent measures to ensure the judiciary and law-enforcement officials, including the police, prosecutors and judges, comply with international human rights standards and the domestic procedural law that has been adopted to safeguard the rights of any accused person;
- Allow the judiciary to independently investigate the evidence that has been put by the police and ensure that any evidence against the accused is made known to the accused and their lawyer.
- Ensure that the law on defamation, insult, disinformation and incitement is publicly clarified so it can be properly debated and strong qualifying exceptions are identified in these offences to ensure that they comply with article 19 of the ICCPR;
- Consider de-criminalising the crime of defamation and further following the lead of other jurisdictions in barring government agencies and companies from being able to mount a civil defamation lawsuit. Alternatively, ensure strong qualifying exceptions are introduced to existing defamation laws to protect journalists and speeches that are made in the public interest.
- Given the fact that the RGC proceeded to enact the LANGO and Trade Union Law without any further reviews and consultations with civil society organisations, contrary to the recommendation of the Committee, urgently review both laws with comprehensive inputs from civil society actors and incorporate these comments into the revision of the laws, to ensure their consistency with domestic and international human rights standards;
- Ensure adequate consultation with civil society on the draft Cybercrime law and ensure that its provisions comply with all relevant human rights standards, in particular articles 19 and 22 ICCPR.
Annex: Background and Timeline of Events

Background

The case against the six human rights defenders arose after ADHOC provided assistance to Ms. Chandaraty when she and her family approached the organization for support. At the time, Ms. Chandaraty was under investigation by the Ministry of Interior’s anti-terrorism department, which was attempting to clarify the authenticity of leaked audio recordings which appeared to evidence an affair between her and the Acting President of the opposition Cambodia National Rescue Party, Mr. Kem Sokha. The aforementioned governmental department began investigating the affair after Thy Sovantha, a CPP activist who is mentioned in an unfavourable light in the audio recordings, filed a complaint against Ms. Chandaraty, accusing her of defamation. Despite the apparent lack of terrorist activity, the Ministry of Interior’s anti-terrorism department began to investigate the case; the improper use of this body has not yet been explained, although it is worth noting that this department falls under the authority of Lt. Gen Dy Vichea, a member of the CPP Central Committee and Prime Minister Hun Sen’s son-in-law. Initially denying the affair, Ms. Chandaraty was then accused of prostitution and false testimony. After nearly a month of denying the alleged affair, on 19 April 2016, Ms. Chandaraty admitted to being Kem Sokha’s mistress whilst being questioned at Phnom Penh Municipal Court.

Ms. Chandaraty then proceeded to release an open letter on 22 April 2016 and threaten to file a complaint against ADHOC and UN staff as well as a prominent women’s rights defender. She accused them of convincing her to deny her involvement in the affair. This led to the summoning of seven civil society workers and one National Election Committee (“NEC”) official on 24 April 2016. In response, ADHOC released a 17-minute video of their first meeting with Ms. Chandaraty, in which she appealed for their help and denied having the affair. Ms. Chandaraty’s allegation, therefore, has aroused suspicions that she may have been subject to pressure to make the accusations. ADHOC is an independent, non-partisan NGO that works to strengthen the capacity of ordinary citizens to claim their rights and to assist victims of human rights abuses in their quest for justice. One of Cambodia’s most prominent human rights organizations, ADHOC has assisted thousands of victims of human rights violations since its inception in 1991.

On 2 May 2016, the four ADHOC staff members were indicted with “bribery of a witness,” which is punishable by imprisonment of five to ten years. Mr. Ny Chakrya and Mr. Saly Soen were indicted as accomplices, which carries the same penalty. The bribery charge is believed to stem from ADHOC’s decision to grant Ms. Chandaraty US$204 material assistance, an assistance that is granted frequently to victims of human rights violations that become clients of ADHOC as well as government officials who attend workshops organised by ADHOC, although recent statements by the head of the ACU have suggested that the charges are instead based on ADHOC’s assistance to Ms. Chadaraty to relocate. The financial assistance intends to cover certain expenses such as transportation to court or ADHOC’s office in order to meet with lawyers and investigators as well as accommodation, food and other basic needs. This legitimate expenditure of a small sum of money to cover basic expenses of a client is now grotesquely being portrayed by the ACU as bribery and corruption. This type of financial support is typical to human rights work and an essential part of ensuring adequate support for victims.

Cambodia’s ACU was established in 2010 in accordance with the Law on Anti-Corruption. Led by chairman Mr. Om Yentieng, a former senior advisor to Prime Minister Hun Sen, the ACU is tasked with tackling Cambodia’s widespread corruption through means of education, prevention and law enforcement. While widespread institutional corruption remains a major issue in Cambodia – Transparency International scored Cambodia with a low 21 out of 100 in its 2015 Corruption Perceptions Index - it seems remarkable that the ACU is investigating a US$204 ‘bribe’ to a witness in...
an investigation of a crime that would attract a maximum penalty of 10,000 Riel and one to six days imprisonment.25

Other elements further support the notion that standard procedures in this case are not being followed. Journalists have effectively been barred from entering the courthouse to report on the proceedings as of 2 May 2016, when the Phnom Penh Municipal Court enacted a new policy denying photographers and videographers entry to the court, and requiring reporters to apply for permission from the court administrative department to enter. That this decision has been made in specific relation to this case is clear – even before the policy had come into effect, reporters had been barred from proceedings related to the case, but permitted to attend other hearings.

These events have not taken place in a vacuum, but rather as part of a wider effort by the government to crackdown against critical voices. In the past year alone, more than 20 critics of the government have been imprisoned. Following the breakdown in 2015 of the short-lived “culture of dialogue” between the ruling and opposition parties, the RGC has made a concerted effort to limit freedom of expression, assembly and association across Cambodia, and in particular suppress the activities of civil society organizations. As part of this crackdown, a number of repressive laws have been adopted, such as the Trade Union Law and the Law on Associations and Non-Governmental Organizations (LANGO). Among other repressive measures, the LANGO requires NGOs to adhere to the principle of strict “political neutrality” or else face dissolution. Following the charging of the ADHOC staff, pro-government NGOs immediately called for the application of LANGO to ADHOC, in what may be an orchestrated move aimed at dismantling the organization. It is clear from recent events that in the run up to the commune and national elections in 2017 and 2018 respectively, the RGC is intending to create a climate of fear to silence its opposition.

Timeline of events

On 29 February 2016, audio recordings of a phone conversation allegedly between Kem Sokha and Ms. Chandaraty were posted on Ms. Chandaraty’s Facebook profile page, which at the time she claimed had been hacked. In the leaked recording, a female voice states that Thy Sovantha had had an earlier affair with Kem Sokha, and he had bought her a car. On 2 March 2016, Thy Sovantha filed a complaint against Ms. Chandaraty, accusing her of defamation. In relation to the leaked phone recordings, on 7 March Ms. Chandaraty was called before the Ministry of Interior’s Anti-Terrorism Unit for questioning, however she failed to appear.

In the morning of 9 March, Ms. Chandaraty’s family approached ADHOC in Phnom Penh to request assistance for Ms. Chandaraty. During the afternoon of that same day, Ms. Chandaraty came to the ADHOC office in person to request assistance. During this meeting, she informed ADHOC that she felt frightened, believed she was being watched at her house by the authorities, and her life was in danger. Based on the apparent threat to her life and privacy, ADHOC deemed this case to be within its mandate, and therefore offered Ms. Chandaraty assistance. Following the meeting, ADHOC staff accompanied her back home to ensure her safety.

On 11 March 2016, Ms. Chandaraty appeared for questioning before the Ministry of Interior’s Anti-Terrorism Unit, in relation to accusations by the Anti-Terrorism Unit that Ms. Chandaraty was engaged in prostitution, based on an investigation into the leaked audio recording. During the questioning, Ms. Chandaraty denied any relationship with Kem Sokha; denied that it was her voice in the audio recordings; and denied knowing Thy Sovantha. On 18 March, the Phnom Penh Municipal Court issued Ms. Chandaraty with a summons to appear for questioning on 8 April based on

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25 Law on Suppression of Human Trafficking and Sexual Exploitation (2008) article 24, ‘Soliciting’. The relevant RGC authorities involved in this case never disclosed publically the exact criminal charge(s) they were investigating. Further, the threat made by the authorities to charge Ms Chandaraty with ‘Prostitution’ crime does not exist under the Cambodia Criminal Code. This is the closest crime under existing laws.
allegations that she provided false testimony to the Ministry of Interior’s Anti-Terrorism Unit, and of having engaged in prostitution.

On 5 April, Ms. Chandaraty requested material assistance from ADHOC – as per ADHOC’s policy, Ms. Chandaraty was requested to put the request in writing, which she did on 7 April. On 8 April, ADHOC provided Ms. Chandaraty with US$204 to cover costs while she was defending the legal action against her, including travel to the court and ADHOC’s office. The financial support given was standard practice. At this time, ADHOC had not yet assigned her a lawyer; due to appear before the Phnom Penh Municipal Court that day, Ms. Chandaraty requested for the hearing to be postponed.

On 18 April, Ms. Chandaraty came to ADHOC’s Phnom Penh office to meet with her assigned lawyer, Ms. Try Chhoun.

On 19 April, Ms. Chandaraty declared to the Phnom Penh Municipal Court that she had a relationship with Kem Sokha. Her lawyer, Try Chhoun, was present in court at this time, but was not aware of the reason as to why Ms. Chandaraty had changed her story. The court then released a statement reclassifying Ms. Chandaraty as a “key individual providing information”.

On 21 April, ADHOC reached out to Ms. Chandaraty and her family to inquire about why she had changed her story, so ADHOC could better understand her situation. During a telephone conversation with Ms. Chandaraty, ADHOC reassessed Ms. Chandaraty’s situation, to ascertain whether she was still eligible for legal assistance now her situation had changed. ADHOC determined her status to be of a “witness” and no longer of an accused person. Ms. Chandaraty told ADHOC during this conversation that she no longer required assistance, and understood if ADHOC stopped providing assistance to her.

On 22 April, ADHOC issued a statement declaring they were no longer providing any assistance to Ms. Chandaraty as she was no longer “in serious danger.” The statement affirmed that considering the drastic change of her story, contrary to what she had told ADHOC before, ADHOC no longer saw the need to assist her. The statement also made clear that as ADHOC was not representing her with regards to the defamation case (which as a civil suit is outside of ADHOC’s mandate), there was no need to continue any assistance. On the same day, Ms. Chandaraty released an open letter in which she accused ADHOC, OHCHR, and SILAKA of having convinced her to lie and deny her relationship with Kem Sokha.

In the letter she also accused Mr. Seang Chet, opposition commune chief of Srak sub district, Kampong Cham province, of trying to give her family US$500 to convince her to lie about the affair sent from Kem Sokha.

The following day, on 23 April, both the Ministry of Women’s Affairs and the Ministry of Justice released statements referring to Ms. Chandaraty’s open letter. In its statement, the Ministry of Women’s Affairs offered Ms. Chandaraty legal assistance, and called for legal action against those who had allegedly violated the law in this case, in order to “strengthen the Rechtsstaat”. The statement made by the Ministry of Justice condemned the civil society organizations accused by Ms. Chandaratat of convincing her to lie, and called for legal action to be taken.

On 24 April, in response to Ms. Chandaraty’s accusations, ADHOC released a 17-minute video of their first meeting with Ms. Chandaraty, in which she appealed for their help and denied having the affair. On that same day, Ms. Chandaraty filed a complaint against Kem Sokha demanding US$300,000 in damages. Also on 24 April, Mr. Chet, the commune chief of Srak sub district, was questioned and detained for 48 hours at the ACU.

On 25 April, the ACU issued a letter summoning ADHOC lawyer Try Chhoun, ADHOC Head of Monitoring Ny Sokha, ADHOC Senior Investigator Yi Soksan, ADHOC Deputy Head of Monitoring Nay Vanda, and OHCHR Fundamental Rights Department Officer Saly Soen, to appear for questioning on 27 April. Mr. Soen is implicated as he had advised Ms. Chandaraty as the victim of a human rights violation. Further, the letter summoned NEC Deputy Secretary General (and former senior ADHOC
employee) Ny Chakrya, SILAKA Director Thyda Kus, and ADHOC Senior Investigator of Women’s and Children’s Rights Program Lim Mony, to appear on 28 April. The summons made reference to Articles 25 and 26 of the Anti-Corruption Law, which provides investigative and special investigative powers to the ACU (allowing the ACU to hold persons for up to 48 hours), in addition to Article 111 of the Code of Criminal Procedure of the Kingdom of Cambodia (the “Criminal Procedure Code”), which refers to preliminary inquiry powers by judicial police.

On the same day, 25 April, CPP spokesperson Sok Eysan filed a criminal complaint to the Phnom Penh Municipal Court against political analyst and former CCHR President Mr. Ou Virak, accusing him of defamation under Article 305 of the Criminal Code, and demanding damages of 400 million riel, or US$100,000. The previous day, on 24 April, Mr. Virak had commented on the case on Radio Free Asia, questioning the legality of the recorded tapes and suggesting the investigations may have political motivations.

On 26 April, ADHOC organized a press conference, during which the organization clarified its mandate, i.e. to assist human rights victims, and reiterated they had acted in accordance with this mandate throughout after Ms. Chandaraty had come to ADHOC to request support. ADHOC affirmed that it is ADHOC’s policy to provide material or social assistance to victims that require funds in order to attend their court hearings. In addition, ADHOC’s President Thun Saray stated that ADHOC would help her again if the issue fell back within its mandate, as ADHOC does not turn away any human rights victims in need. In the press conference ADHOC also made clear that they did not know why Ms. Chandaraty changed her story, nor why she had filed a complaint against ADHOC staff and other colleagues in the field.

On 27 April, Try Chhoun was released after five hours of questioning by the ACU. Ny Sokha, Nay Vanda and Yi Soksan were released later that day at 10:30 pm after several more hours of questioning. Saly Soen, consistent with his immunity as a UN staff member, declined to attend the questioning. Ny Sokha, Nay Vanda and Yi Soksan are ordered to re-appear at 8am the next day.

On 28 April, Ny Chakrya, Yi Soksan and Nay Vanda returned to the ACU for further questioning. Ny Chakrya, Thyda Kus and Lim Mony also appeared at the ACU. Thyda Kus was released after just over 3 hours of questioning. The others were detained overnight at the ACU. The following day, on 29 April, Mr. Om Yientieng requested a meeting with Thun Saray and Kea Sophal, the assigned ADHOC lawyer for the three detainees). During the meeting, Mr. Om Yientieng ominously informed Thun Saray that while he was keeping the case “small” for now, it could be made “bigger”, so he should stay out of the case.

On 29 April, Latt Ky, Head of ADHOC’s Land and Natural Resources Rights Program, held a press conference during which he explained that as the detention of the three ADHOC staff had started at 8 pm on 29 April, according to the law they would have the right to access lawyers at 8 pm that day. At 8 pm, the three detainees were given the choice to access their lawyer or their families (as per Article 98 of the Criminal Procedure Code, which states that detainees can either see their lawyer or any other person not involved in the alleged crime). The detainee’s lawyers had been denied entry to the ACU, so the detainees “chose” to see their families.

In the afternoon of 30 April, the detainees were brought before the Prosecutor of the Phnom Penh Municipal Court for approval of the extension of their detention at the ACU for a further 24 hours. The detainees were finally permitted access to their lawyer at this time. The extension was granted, without reference to reasons, the legal basis, or any other explanation. Following this decision, the detainees were returned to the ACU. On the same day, a second summons to appear for questioning was issued for Saly Soen.

In the morning of 1 May, the Prosecutor of the Phnom Penh Municipal Court questioned Nay Vanda, Yi Soksan and Ny Chakrya, in the presence of their lawyer. Nay Vanda and Yi Soksan were instructed to return in the afternoon for follow-up questions by the Prosecutor. That afternoon, Ny Sokha and
Lim Mony were also questioned by the Prosecutor in the presence of their lawyers. That same day, Prime Minister Hun Sen made a public statement, declaring that Saly Soen would not enjoy immunity.

On 2 May, the Prosecutor formally accused all four ADHOC staff members of bribery of a witness, under Article 548 of the Cambodian Criminal Code. The Prosecutor also formally accused Ny Chakrya and Saly Soen as being accomplices. Following questioning, the Investigating Judge confirmed the charges against all six individuals. Nay Vanda, Yi Soksan, Lim Mony, Ny Chakrya and Ny Sokha were transferred to Prey Sar Prison. In accordance with the privileges and immunities he enjoys under the 1946 Convention on the Privileges and Immunities of the United Nations, legal action against Soen Saly has ceased.