



COURTS OF INJUSTICE

SUPPRESSING ACTIVISM THROUGH THE
CRIMINAL JUSTICE SYSTEM IN CAMBODIA

AMNESTY
INTERNATIONAL



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First published in 2017 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: ASA 23/6059/2017

Original language: English

amnesty.org



Cover design and illustration: The cover depicts a 19th Century Khmer court judge through the form of a traditional Khmer shadow puppet play.

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EXECUTIVE SUMMARY

On 27 April 2017, an Investigating Judge extended for a further six months the pre-trial detention of five Cambodian human rights defenders (HRDs) who have already spent a year in detention without trial. The five individuals - current and former staff members of the Cambodian Human Rights and Development Association (ADHOC), the country's oldest human rights organisation - face charges of bribing a witness after they provided legal assistance to a woman who is alleged to have engaged in an affair with Kem Sokha, the current President of the opposition Cambodian National Rescue Party (CNRP).

Lim Mony, one of the detained HRDs, told Amnesty International that she had worked in human rights for 20 years, "neutrally, with no party". She objected to her detention, saying that she had done nothing wrong and was "not involved in any political issue".¹ Sadly for Mony, the Cambodian government regards her independent human rights work as political and this appears to be the cause of her continuing arbitrary detention. The local and international human rights community have mobilised in support of the five HRDs, who have become known as "the ADHOC Five". In April, they were named as finalists for the Martin Ennals Award, an international prize awarded annually in recognition of HRDs who "have shown deep commitment and courage in the face of personal risk". Amnesty International has deemed the ADHOC Five prisoners of conscience, detained for engaging in legitimate human rights work.

The ADHOC Five case is illustrative of the role that the criminal justice system has come to play in Cambodia, where the criminal law often seems to be used to further the political objectives of the government and ruling party. As with all institutions and branches of government, the ruling Cambodian People's Party (CPP) maintains tight control over the judiciary – Dith Munty, the Chief Justice of the Supreme Court and a member of the Supreme Council of Magistracy (which appoints judges), is a member of the CPP's Standing, Permanent and Central Committees.² Although Prime Minister Hun Sen pays lip service to the independence of the judiciary, media consistently report on instances in which his public comments are followed by judges reversing earlier rulings and bringing cases into line with his views. For example, in March 2016 two community activists who had been detained for three nights were released an hour after the Prime Minister took to Facebook to register his disappointment at their detention.³ After years of calls for legal and judicial reform, including measures to reduce political control of the judiciary, in 2014 the National Assembly passed three laws on the judiciary which serve only to further the subordination of the courts to the executive and the ruling party.⁴

1 Interview with Lim Mony, 17 October 2016.

2 Um Sarit, another member of the CPP Central Committee also sits on the Supreme Council of Magistracy. Cambodia's Constitutional Council also includes four members of the CPP Central Committee: Im Chunlim, Chan Rasy, Sam Prumunanea and Im Chunlim

3 Sek Odom and Sonia Kohlbacher, "Women Freed From Prison after Order from Hun Sen", *The Cambodia Daily*, 16 March 2016.

4 The Law on the Organization and Functioning of the Supreme Council of Magistracy, the Law on the Statute of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts on 16 July 2014 were passed by the National Assembly in the absence of the 55 CNRP MPs elect who were boycotting parliament in protest at the 2013 election results.

In February 2017, long time opposition leader Sam Rainsy resigned as President of the CNRP. Having been convicted in a series of politically motivated cases, Rainsy stepped down weeks before an Amended Law on Political Parties was passed by the National Assembly which bars from political party leadership any individual who has a criminal conviction carrying a five year prison sentence or more. The law also provides broad and vague grounds for the dissolution of political parties. Its passage in a vote by 67 CPP National Assembly members that was boycotted by their CNRP colleagues came just under a year after the passage of a Trade Union Law in April 2016. That law was also passed over the objections of CNRP MPs and bars from union leadership any individual who has been convicted of a crime. The two laws come after years of unfounded and fabricated criminal proceedings against political opposition and union activists, as well as human rights activists generally, and hand the CPP licence to exert control over some of the last bodies in the country that have managed until now to resist the domination of the ruling party.

In the previous general election in 2013, the CPP edged victory despite huge gains by the opposition CNRP. In the four years since, the ruling party seems to have embarked on a systematic campaign, using the criminal justice system to harass and intimidate HRDs and political opposition activists, two categories of people that at times seem to be conflated by the CPP as one and the same thing. At the time of writing there are at least 27 HRDs and political activists behind bars in Cambodia, according to local human rights non-governmental organisation (NGO) Cambodian League for the Promotion and Defense of Human Rights (LICADHO).⁵ They include NGO staff, CNRP officials, a political commentator and a well-known community activist. These cases are the most prominent examples of harassment through the criminal justice system, but they only account for a fraction of the total number of cases since the last general election involving prosecutorial or judicial action against HRDs and political opposition activists. Amnesty International has identified more than 200 such cases through its research.

This report illustrates the wider picture of harassment where the government has used the criminal justice system to intimidate and punish HRDs and political activists. Cases of some of the 27 detained/imprisoned HRDs and political activists are analysed, particularly how these cases have had a wider impact on the work of a broader range of political and human rights actors.

In addition, the report looks at the mechanics of harassment through the criminal justice system, highlighting the roles of different actors within the system in harassing, intimidating and punishing HRDs and political opposition activists and the procedural tactics that they rely upon. This is shown through the use of unsubstantiated criminal charges, exemplified failures to comply with international fair trial standards, and how the arrests, trials and convictions have been timed to coincide with important political events, and how convictions and the threat of imprisonment have been used by the ruling party as leverage in political negotiations with the CNRP. As the arrests of political opposition activists are steadily increasing in the lead up to the commune and national elections, a large proportion of the country's HRD and political activist communities are already subject to various forms of criminal proceedings and live with the threat of immediate imprisonment.

⁵ See, The Cambodian League for Promotion and Defense of Human Rights (LICADHO), *Cambodia's Political Prisoners*, available at http://www.licadho-cambodia.org/political_prisoners/.

CAMBODIAN CRIMINAL PROCEDURES

In order to provide a nuanced understanding of the nature of harassment of HRDs and political opposition through the criminal justice system, it is necessary first to provide an overview of the system itself. This section describes the hybrid civil-common law legal system in Cambodia by setting out its procedural underpinnings and analyses the constitutional and international human rights principles that apply to Cambodia by being a party to specific international human rights treaties. Police, prosecutors and investigating judges play integral roles in the system of harassment of HRDs and political opposition. The section provides a guide on their roles and the provisions of the Cambodian Code of Criminal Procedure (CCP) that they rely upon to execute these roles.

THE WOMEN OF THE LAKE

The small network of HRDs from Phnom Penh's Boeung Kak Lake, an area of the capital that has been the scene of the country's most notorious land conflict, are arguably the most recognised community of activists in Cambodia today. Their experiences over the past ten years provide an important illustrative example of how the criminal justice system has been used in an apparent attempt to dismantle a tightly knit nucleus of activists and to limit their activism. It sets out how community members have faced dozens of criminal cases and focuses specifically on efforts to silence and isolate the most prominent activist within the community and arguably in all of Cambodia, Tep Vanny.

THE CNRP "INSURRECTIONISTS"

In July 2014, a demonstration by the CNRP ended in clashes with security forces and the arrests of opposition National Assembly members. This section examines how the very public investigation into those events has been used by the government and the ruling party to gain leverage over the CNRP in various political negotiations that have taken place between the two parties to this day. At the time of writing, 14 CNRP officials and supporters are in jail on unsubstantiated insurrection charges in connection with this demonstration. The procedural history of that case and the violations of the rights of these men and other CNRP officials, including seven National Assembly members, who have been tangled up in the case is highlighted.

THE ADHOC FIVE

One of the most prominent cases of 2016 involved the politicisation of an alleged extra-marital affair by then CNRP Deputy President Kem Sokha, who has since become President of the Party. After phone calls between Sokha and the woman he was allegedly engaging in an affair with became public, he and other members of his party were hit with a series of trumped up criminal charges. The incident was also used to target the country's human rights community. Four men and one woman - current and former members of staff of the ADHOC - the country's oldest human rights organisation, have spent over a year in pre-trial detention on bribery charges. Amnesty International visited these five prisoners of conscience in jail. This section outlines their experiences and examines the role of the criminal justice system in expanding this case in an apparent effort to bring about a chilling effect amongst the country's human rights community.

THE UNION SIX

In Cambodia, union members and labour activists are the most routinely targeted within the activist community through the criminal justice system. This section examines how the leaders of Cambodia's most prominent non-government aligned labour unions have had their activities curtailed by being placed under judicial supervision for charges linked to a series of strikes and demonstrations in 2013 and 2014, which ended in a violent crackdown by authorities. In the years since, no efforts have been made to bring the officials responsible for the violence to justice but the union movement has been restricted in its activities through the increased imposition of judicial supervision on union leaders.

RECOMMENDATIONS

Since the last general election in July 2013, the Cambodian criminal justice system seems to have been systematically targeting HRDs and political opposition activists. The government and the ruling party, through their control of the criminal justice system, must immediately end this system of abuse. In the final chapter, Amnesty International provides a series of recommendations to the government and ruling party. These include the following:

- Stop using the legal system to target HRDs and opposition political activists with trumped up and/or unsubstantiated criminal charges;
- Respect the independence of the judiciary (and other relevant institutions);
- Immediately drop all existing criminal cases against HRDs and peaceful political opposition activists;
- Fully implement provisions of the CCP which accord with Cambodia's obligations under international human rights law, including ensuring that cases are not held open or dormant indefinitely, to be reopened at any time at the government's whim.

METHODOLOGY

The report is written on the basis of six months of research and interviews with HRDs and political opposition activists; their families and lawyers; unions and NGOs, who have all been victims of harassment through the criminal justice system. It sets out in detail four of the most prominent cases in recent years of such harassment. Amnesty International interviewed dozens of those affected by these cases including a detained community activist and members of her community who between them have faced dozens of criminal cases; the head of the CNRP; detained NGO staff and their families; the family of one detained political activist; and union activists who are currently under judicial supervision. In addition to the narratives tracing the geneses of the cases, tables outlining the details of criminal actions arising from or related to the case under discussion are provided in Appendix.

Published separately online⁶ alongside this report is a table providing a breakdown of all criminal proceedings in which Amnesty International understands that prosecutorial or judicial action has been taken against political and human rights activists in Cambodia since the last general election in 2013. There are a number of factors which make it impossible to offer a conclusive picture of harassment using the criminal justice system in the country. Cases are often initiated by a prosecutor following a complaint received by a victim or submitted by judicial police officers without any legal basis and sometimes without the knowledge of the accused. In violation of the CCP, cases are rarely closed and often remain in states of limbo for years without any steps being taken to investigate or prosecute. The statute of limitations for a felony in Cambodia is 15 years and a felony case could plausibly remain in existence for that entire period. Rather than seeking to gather information about every case opened within the last 15 years, Amnesty International has collected information on cases that were opened in or have had investigative, prosecutorial or other measures since the last general election in July 2013. This information was collected from victims, NGOs, unions, lawyers and the media.

Amnesty International visited the Phnom Penh Court of First Instance to request access to information on criminal proceedings but was told to approach the Ministry of Foreign Affairs to request that they seek permission from the Ministry of Justice for access to this information. A letter to the Ministry of Foreign Affairs did not receive any response.

⁶ For the breakdown of criminal proceedings, see <https://www.amnesty.org/en/documents/asa23/6330/2017/en/>

1. CAMBODIAN CRIMINAL PROCEDURES



The Cambodian legal system is a hybrid system, derivative of Cambodian customs, the civil legal system inherited from colonial France and principles of common law⁷. The Constitution of the Kingdom of Cambodia states that the country's judiciary is to be independent (Art. 128), and that judicial power shall not be granted to the legislative or executive branches (Art. 130).

The role of the prosecutor is to consider written complaints submitted either by victims or by officers of the judicial police.⁸ Upon receiving a complaint, a prosecutor has the choice to either initiate proceedings or to "file the case without processing" (CCP, Arts. 40 and 41). To inform his/her decision, a prosecutor may conduct preliminary investigations.

Whereas Article 41 of the CCP provides that a decision to file without processing must be made and conveyed to the plaintiff within two months from the date of registration of the complaint, this requirement is systematically overlooked in cases involving HRDs and political opposition activists. The prosecution and judiciary maintain control over individuals by keeping cases open against them without necessarily taking steps to investigate or prosecute. According to Amnesty International's findings, Article 41 decisions to file without processing are rare. Prosecutors often summon suspects for questioning as part of their preliminary investigations but take no further action either to proceed with, or to close the case, leaving the individual questioned in a state of uncertainty.⁹

It is for the prosecutor to decide whether or not to conduct criminal proceedings. In cases of felonies, a judicial investigation is mandatory, yet it is optional in cases of misdemeanours.¹⁰ The judicial investigation is based on an introductory submission by the prosecutor to the investigating judge.¹¹ When a case is initiated against an individual it may remain as a means to control his/her behaviour for years, as timelines for the statute of limitations are started anew by any act of prosecution or investigation.¹² The fear of the resumption in the investigation and prosecution of previously dormant cases related to events that took place years previously is not an abstract one. Rather, Amnesty International has found examples of cases that have been resumed after years without any apparent steps being taken to investigate or prosecute in the intervening period.¹³ At the conclusion of the judicial investigation, the CCP requires that a case is either closed through a non-suit order or sent to

7 Kong Phallack, "Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform," in, Hor Peng, Kong Phallack and Jörg Menzel (eds.), *Introduction to Cambodian Law* (Phnom Penh: Konrad-Adenauer-Stiftung, 2012), pp. 5-22, at p. 7.

8 CCP, Article 40. Judicial police perform functions in support of the judicial body. They include police of at least lieutenant rank as well as others, including military police, provincial and municipal governors and deputy governors. See CCP, Articles 56 and 60.

9 For example, the questioning on 14 January 2014 by a prosecutor of Phnom Penh Court of First Instance of opposition leaders Sam Rainsy and Kem Sokha, and Rung Chhun, who was a labour confederation leader at the time, see Rachel Vandenbrink, "Cambodia Opposition Leaders Slam Summons as 'Politically Motivated'", *Radio Free Asia*, 14 January 2014.

10 CCP Articles 43-49. In cases of petty offences, proceedings are conducted through citations to appear before the Court of First Instance.

11 CCP, Articles 44 and 124.

12 CCP Article 11.

13 See for example the convictions of Tep Vanny in "The Women of the Lake". Since her arrest last August, Vanny has had three old cases resurrected against her, dating back to 2011, 2012 and 2013 respectively. She has since been convicted in two of these. These cases involve seven other members of the Boeung Kak community.

trial via an indictment.¹⁴ As with orders to hold a file without processing, non-suit orders in cases of HRDs and political opposition activists are extremely rare.

The CCP provides for an accelerated inquiry in the event of a “flagrant felony or misdemeanour”, one where the person is caught in or immediately after the commission of a crime.¹⁵ Judicial police have seven days from the commission of the crime to investigate such offences, at the end of which they must forward the case to a prosecutor.¹⁶ In the general election in 2013, the CPP lost its two-thirds majority in the National Assembly and thus its capability of voting to remove immunity against specific opposition MPs. Various actors in the criminal justice system, including prosecutors and judges have interpreted the law on parliamentary immunity to conclude that it does not apply in cases of in *flagrante delicto*, allowing the prosecution of opposition MPs in cases involving allegedly flagrant offences.¹⁷

During investigation, the CCP provides that, as a rule, charged persons should remain at liberty.¹⁸ While this presumption is observed in some cases involving HRDs and opposition activists, in cases where pre-trial detention is ordered, it is usually done so arbitrarily, and in the absence of any of the legal reasons outlined in CCP Article 205 for which pre-trial detention may be legitimately used.¹⁹ According to LICADHO there are at the time of writing, nine HRDs and political opposition activists in pre-trial detention awaiting trial.²⁰ In most cases, judicial supervision is a preferable non-custodial alternative to pre-trial detention. Under CCP Article 223, an investigating judge may place a charged person under judicial supervision, and impose restrictions on his/her liberty such as restricting him/her to a specific territorial area or precluding him/her from travelling to certain places or meeting certain people. In recent years, judicial supervision has been used at times in combination with trumped up charges to restrict the legitimate exercise of human rights, for example by preventing union activity.²¹

THE “BLACK MONDAY” CAMPAIGN AND THUMB-PRINTING OF PLEDGES FOLLOWING ARREST



A range of procedural actions provided for in the CCP are used by the various actors in the criminal justice system in their harassment of HRDs and political opposition activists. Authorities also rely on means of intimidation that have no basis in the CCP. There is a phenomenon of arresting and briefly detaining individuals, often for no longer than a few hours, and releasing them on condition that they sign or thumb-print documents where they pledge to refrain from specific acts (such as leading or participating in demonstrations). This practice has no basis in Cambodian law. Moreover, the imposition of conditions on the exercise of internationally and constitutionally protected human rights (such as the right to freedom of expression and peaceful assembly) in these circumstances is in violation of those rights. The practice has become particularly frequent in the context of demonstrations. Since the arrest in April 2016 of the five human rights defenders who are current or former staff of the ADHOC, civil

14 CCP, Article 127. A non-suit order should be issued in the event that the facts do not constitute a crime; the perpetrators have not been identified; or there is insufficient evidence to convict the charged person.

15 CCP, Article 86.

16 CCP Article 106.

17 For an analysis of the use of parliamentary immunity and its removal in Cambodia, see *ASEAN Parliamentarians for Human Rights (APHR)*, “Death Knell for Democracy – Attacks on Lawmakers and the Threat to Cambodia’s Institutions”, 20 March 2017, (Death Knell for Democracy) available at <http://aseanmp.org/publications/>.

18 CCP, Article 203.

19 The reasons outlined in CCP Article 205 include preventing harassment of witnesses, collusion between charged persons and accomplices, and preserving evidence. The continuing provisional detention of the ADHOC Five is examined at p.19.

20 See, LICADHO, *Cambodia’s Political Prisoners*, available at http://www.licadho-cambodia.org/political_prisoners/.

21 See for example the Union Six case, p.23.

society groups have held weekly public events every Monday calling for their release, as well as that of community activist Tep Vanny who was arrested at a similar event herself in August 2016. The arrest and brief detention of Black Monday campaign participants has become routine.

In compliance with international human rights law, a criminal defendant in Cambodia has the right to be presumed innocent until proven guilty.²² The requirement that the accused be presumed innocent means that the burden of proving the charge rests on the prosecution. A court may not convict unless guilt has proven beyond reasonable doubt. Where such a doubt exists, an accused must be acquitted.²³ Where cases involving HRDs and political opposition activists go to trial, these guarantees are routinely pushed aside with defendants found guilty on the basis of flimsy or non-existing evidence. Convictions appear to follow as a matter of course, with acquittals almost unheard of.

In instances where local and international pressure has been applied through campaigns to highlight charges and proceedings against HRDs and political opposition activists that were obviously in violation of fair trial rights standards, courts have at times handed down convictions, but released individuals on suspended sentences.²⁴ While alternatives to custodial sentences are often welcomed²⁵, individuals should not be charged or tried for the exercise of basic human rights in the first place. All proceedings should be conducted in accordance with fair trial rights and standards. The softening of a custodial sentence through its suspension is no substitute for a full acquittal where inadequate evidence has been presented to support a conviction and other fair trial rights have been abused or ignored. Suspended sentences maintain the threat of imprisonment, as the suspension of sentence may be revoked if the individual is convicted and sentenced for a new misdemeanour or felony offence within five years.²⁶

The fine and compensation orders that often accompany prison sentences of convicted HRDs and political opposition activists are routinely not enforced. This is consistent with the clear pattern of criminal proceedings being used primarily as a means to intimidate the subject of proceedings rather than to punish criminal acts on his/her part. Instead of enforcing a fine and/or compensation orders which will bring closure to cases, the threat of enforcement remains as a means of intimidating the convicted person and potentially restricting his/her activities. Significantly, failure to pay fines and compensation can result in imprisonment for up to two years ensuring that the threat of prison exists even in cases involving crimes that do not themselves carry a custodial sentence.²⁷

The political nature of the criminal prosecutions of HRDs and political opposition activists in Cambodia is clearly established through the fact that cases are routinely resolved through political negotiations between the CPP and CNRP. These negotiations usually involve a broader set of discussions with the liberty of detained activists being only one agenda item. At the conclusion of negotiations, groups of HRDs and political opposition activists are often released by way of bail, suspended sentences or Royal Pardon, or some combination of the three. For example, in April 2015, 19 HRDs were released after negotiations between the two parties; 10 land activists who had been convicted in November 2014 were given pardons by King Norodom Sihamoni at the request of Prime Minister, whereas the others were released on bail.

22 Universal Declaration of Human Rights, Article 11(1); ICCPR, Article 14(2). See also, Constitution of the Kingdom of Cambodia, which provides in Article 38 that an "accused shall be considered innocent until the court has judged finally on the case".

23 Article 38(6) of the Constitution, provides that "[a]ny case of doubt shall be resolved in favour of the accused".

24 See for example, the May 2014 convictions and suspended sentences of HRDs Vorn Pao, Theng Savoeun, Chan Puthisak and Sokun Sambath Piseth and six garment factory workers arrested at a peaceful demonstration on 2 January 2014. See, the Community Legal Education Center (CLEC) and LICADHO, *Phnom Penh Court Orders Conviction with Suspended Sentences for 25 Workers and Activists*, 30 May 2014, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=344>.

25 See for instance United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Adopted by UN General Assembly Resolution A/RES/45/110, 14 December 1990.

26 Criminal Code, Article 109.

27 CCP, Articles 523-526.

THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND AN INDEPENDENT JUDICIARY

International human rights treaties and other instruments have emphasised the unique role that courts and other actors in the criminal justice system have in safeguarding human rights, and the necessity of ensuring their independence in order to fulfil this role.

Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) state that,

"No one shall be subjected to arbitrary arrest [or] detention."

Article 9(3) of the ICCPR further provides that,

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody ..."

Article 10 of the UDHR states that,

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

A similar provision is made in Article 14(1) of the ICCPR, to which Cambodia is a state party:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

In 1993, the Vienna Declaration and Program of Action stated that,

"The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development."²⁸

The Human Rights Committee, the UN body charged with overseeing the implementation of the ICCPR, has stated, in a General Comment on Article 14, that "The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception."²⁹

28 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 27.

29 Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 19.

The preamble to the UN Basic Principles on the Independence of the Judiciary³⁰ note the profound responsibility that Judges are charged with, having the ultimate decision over life, freedoms, rights, duties and property of citizens. In this respect, Article 2 of the Basic Principles states that,

"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

Article 4 of the Basic Principles further states that "[t]here shall not be any inappropriate or unwarranted interference with the judicial process ..."

The UN Declaration on Human Rights Defenders (UNDHRD)³¹ recognises that human rights defenders, including NGOs and other relevant groups and individuals, have an important role to play in raising public awareness about human rights, stating at Article 12(1),

"Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms."

The UNDHRD further recognises that HRDs should be free to carry out their legitimate and important work without fear of intimidation or punishment, including through the criminal justice system, stating in Article 12(2),

"The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration."

The Special Rapporteur on the situation of human rights defenders has noted with concern that preliminary investigations may be used in some countries to intimidate, silence or otherwise deter human rights defenders from carrying out their legitimate activities to promote human rights.³² This contravenes international standards relating to the role of prosecutors, notably Articles 13 and 14 of the Guidelines on the Role of Prosecutors,³³ which state that prosecutors should perform their duties in an impartial and non-discriminatory manner and that they are not to initiate or continue prosecution, or make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

30 Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 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.

31 UN General Assembly resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999.

32 Report of Special Rapporteur on the situation of human rights defenders (A/67/292), 10 August 2012, para. 80.

33 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

2. THE WOMEN OF THE LAKE



It is just over 10 years since then Phnom Penh governor Kep Chuktema signed a 10 year lease with Shukaku Inc. – a company connected to CPP Senator Lao Meng Khin. The agreement for the development of an area of 133 hectares, including and surrounding what was once Boeung Kak Lake – brought into being what has been described as “Cambodia’s most notorious land dispute”.³⁴ The intervening years have been a painful and tumultuous time for the people of a community that was once home to as many as 20,000 people. That period has seen the lake filled with sand;³⁵ thousands of families moving from the community;³⁶ physical attacks on community members by security forces;³⁷ the incommunicado detention of one activist;³⁸ and, tragically, the suicide of another.³⁹

The group of a dozen or so activists, almost entirely women, who have led the community’s resistance against the development of the area have come to represent peaceful resistance to human rights violations in Cambodia. Over the course of the last decade, they have demonstrated to their compatriots and the wider world what a handful of brave people can achieve in the face of a seemingly all-powerful adversary. In this case, a well-connected company with all the apparatus of the state at its disposal. In response to a violent and protracted eviction, the “Women of the Lake” have led a campaign of peaceful resistance that has received global attention. In so doing, they have been the focus of extensive media coverage, including countless articles, and a documentary film.⁴⁰ Beginning with demonstrations in their community and outside the nearby office of the Phnom Penh Municipality, they have expanded their activities to demonstrate all around the country in solidarity with other communities affected by land evictions and have established themselves as a totem of peaceful activism against injustice all throughout Cambodia.

34 Ananth Baliga and Khouth Sophak Chakrya, “Boeung Kak: A Disastrous Decade”, *The Phnom Penh Post*, 3 February 2017.

35 Kim Yuthana and Shane Worrell, “Minister praises Boeung Kak fill-in”, *The Phnom Penh Post*, 27 February 2013.

36 The Cambodian Center for Human Rights (CCHR), *Case Study Series: Boeung Kak*, October 2011, available at [http://cchrcambodia.org/admin/media/factsheet/factsheet/english/CCHR%20Case%20Study%20Fact%20Sheet%20-%20Boeung%20Kak%20\(ENG\).pdf](http://cchrcambodia.org/admin/media/factsheet/factsheet/english/CCHR%20Case%20Study%20Fact%20Sheet%20-%20Boeung%20Kak%20(ENG).pdf)

37 See for example, LICADHO, *Boeung Kak Lake Activist Savagely Beaten by Mob of Police Officers during Forced Eviction*, 17 September 2011, available at <http://www.licadho-cambodia.org/video.php?perm=25>; and Amnesty International, Human Rights Watch and The International Commission of Jurists, *Cambodia: Drop Farcical Investigation of Human Rights Defenders*, (Index ASA 23/5630/2017), 7 February 2017.

38 See, CCHR, *Amicus Brief regarding Mr. Vorn Pao and Seven Others – Criminal Case #936 Submission to the Court of Appeal*, 5 January 2016, available at http://cchrcambodia.org/admin/media/analysis/analysis/english/2016_02_08_CCHR_Amicus_Brief_Yak_Jing_Vorn_Pao_and_7%20others_ENG.pdf.

39 Licadho, *Pushed to the Edge: The Death of a Boeung Kak Lake Activist*, 24 November 2011, available at <http://www.licadho-cambodia.org/video.php?perm=27>;

40 See for example, Katherine Brickell, “Cambodia’s women activists are redefining the housewife”, *The Guardian*, 2 April 2013; “The Boeung Kak 13”, *The Economist*, 27 June 2012; and Mech Dara and Ben Woods, “Tep Vanny – From Boeng Kak Protester to Globe-Trotting Advocate”, *The Cambodia Daily*, 8 October 2013. The documentary film *A Cambodian Spring*, directed by Chris Kelly, premiered in May 2017. See <http://acambodianspring.com>.

As a result, the community has become a regular target for criticism by government officials, including the Prime Minister. Throughout 2016 and into 2017, members of the community have been prominent in “Black Monday” protests that have been described by the Prime Minister as being part of a “colour revolution” that aims to overthrow the government.⁴¹ In 2016 alone, there were at least 10 arrests of Boeung Kake Lake community members at “Black Monday” events. In a number of cases, those arrested were released after thumb-printing documents in which they pledged not to take part in future demonstrations.

The prominence and visibility of the Boeung Kak Lake community has been countered by a sustained campaign of harassment and intimidation at the centre of which lies the criminal justice system. Members of the community have faced just about every trick in Cambodia’s harassment playbook. As it stands, almost every prominent member of the core group of activists is subject to criminal proceedings in one form or another, whether they are in jail, at liberty pending trial or under suspended sentences. Amnesty International calculates that since 2011 a total of 42 criminal cases against Boeung Kak Lake activists have proceeded to trial or are under investigation. With the exception of the convictions that were handed down to nine Boeung Kak Lake community members in November 2014, who were subsequently pardoned by King Sihamoni,⁴² these cases remain active today and may continue to be used by authorities to moderate the behaviour of the community, or at least attempt to.

In the context of any discussion of harassment using the criminal justice system in Cambodia, the experience of Tep Vanny – the Boeung Kak activist who has been subject to most criminal cases as per the table annexed to this report – warrants specific attention. Since the last general election in 2013, Vanny has been arrested at least five times.⁴³ The harassment of Vanny is commensurate to her profile – she is arguably Cambodia’s most recognisable activist – and her refusal to bend to the authorities’ will is a testament to her strength and perseverance. Vanny has taken part in and led countless demonstrations, receiving an international award in recognition of her human rights work and becoming a symbol of peaceful resistance in the country.⁴⁴ Since her most recent arrest in August 2016, Vanny has been a prisoner of conscience for a third extended period of time. In the months since that arrest, she has been convicted in three criminal cases and faces charges in one more. The cases against Vanny are important for the current discussion as they highlight the lengths to which the authorities will go to use, bend and break the rules of criminal procedure to imprison activists and underscore the unwillingness or inability of the courts’ to uphold the internationally protected fair trial rights of HRDs.

Vanny was arrested on 15 August 2016 during a peaceful “Black Monday” demonstration together with fellow Boeung Kak activist Bov Sophea.⁴⁵ The two were charged with “Incitement to Commit a Felony” under Articles 494 and 495 of the Criminal Code after taking part in a “cursing ceremony” where they cursed mannequins representing corrupt officials. After outlining their defence against this charge during the 90 minute trial hearing on 22 August, they were convicted of a different charge – “Insult” under Article 502 of the Criminal Code. They were sentenced to six days’ imprisonment. The prosecution failed to provide evidence of incitement and the change in charge was not announced until the judge read his verdict, violating their right under the ICCPR to be informed of the nature and cause of the charge against them and to have adequate time and facilities for the preparation of their defence.⁴⁶

41 Kuch Naren and Alex Willems, “Prime Minister Bans Color-Coordinated Demonstrations”, *The Cambodia Daily*, 11 May 2016; and “Monday Turn Black Again in Cambodia as Protests Restart”, *Radio Free Asia*, 9 January 2017.

42 LICADHO, “10 Boeung Kak Lake activists freed following royal pardon, more releases expected”, 11 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=122>.

43 In 2014 she was detained four times; twice in January, once in August, and once in November, when she was arrested with six other women from Boeung Kak lake and sentenced the following day to obstructing traffic under the Traffic Law and given a year in prison. They were released in April 2015 after being pardoned by the King. Vanny’s arrest in August 2016 was her fifth since the last general election and tenth since 2011.

44 Khouth Sophak Chakrya and Shane Worrell, “Activist abroad: Tep Vanny wins human rights award”, *The Phnom Penh Post*, 29 March 2013.

45 *Amnesty International*, “Two Human Rights Defenders on Trial”, Urgent Action (Index: ASA 23/4683/2016), 18 August 2016.

46 Articles 14(3)(a) and (b) of the ICCPR. For further information on the proceedings, see *International Federation for Human Rights (FIDH)*, “Cambodia: Sentencing of Ms. Tep Vanny and Ms. Bov Sophea”, 28 August 2016.

VANNY

**WAS ARRESTED
ON 15 AUGUST 2016**

**DURING A PEACEFUL “BLACK MONDAY”
DEMONSTRATION TOGETHER WITH FELLOW
BOEUNG KAK ACTIVIST BOV SOPHEA.**



The following month, in a separate case, Vanny was convicted of “Insult” and “Obstruction of a Public Official with Aggravating Circumstances” under Articles 502 and 504 of the Criminal Code together with fellow Boeung Kak Lake activists Heng Mom, Kong Chantha and Bo Chhorvy.⁴⁷ The four were given six-month prison sentences.⁴⁸ The convictions arose from a land demonstration in 2011 that took place outside the office of the Phnom Penh Municipality. The proceedings in the case raised serious concerns. Significantly, the case against the four had lain dormant since 2012, violating the right under international human rights law of every person facing criminal charges “to be tried without undue delay.”⁴⁹ In addition, the testimony of witnesses who were not present during the hearings was read onto the record, denying the accused the right to examine, or have examined, the witnesses against them, as provided for in Article 14(3)(e) of the ICCPR. Evidence adduced by the prosecution was limited while defence requests to show video evidence were denied. Finally, charging and convicting individuals for criticism of officials is inconsistent with international human rights law and standards.⁵⁰

Vanny’s most recent conviction also arises from a case that lay dormant for a number of years only to be resurrected by the authorities following her arrest in August 2016. In February 2017, she was convicted of “Intentional Violence with Aggravating Circumstances” under Article 218 of the Criminal Code in connection with a peaceful demonstration that took place near the Prime Minister’s house in 2013, which was violently dispersed by police and para-police. The initial trial hearing, which took place on 3 February 2017, was adjourned after Vanny became agitated upon learning that one of the two complainants against her was Hor Hoeun, a Daun Penh para-police officer who she claimed had committed acts of violence against Boeung Kak activists in the past.⁵¹ Failing to bring order to proceedings, the presiding judge adjourned the hearing saying that he was feeling unwell. Vanny was convicted when the proceedings – in which no credible inculpatory evidence was presented – resumed at a hearing on 23 February.⁵² She was given a two and a half year prison sentence which will see her in prison beyond the 2018 National Election.

In a further case, Vanny and five other Boeung Kak Lake activists face charges of “Making Death Threats” and “Public Insult” under Articles 233 and 307 of the Criminal Code. The charge arises from a complaint filed by a former member of the Boeung Kak Lake activist group and was revived in late 2016 despite the complainant having sought to withdraw her complaint.⁵³

47 LICADHO, “Land activists convicted, sentenced for 2011 protest”, 19 September 2016, available at <http://www.licadho-cambodia.org/flashnews.php?perm=192>.

48 While Vanny is in prison, the other three remain at liberty pending a final decision in the case.

49 ICCPR, Article 14(3)(c).

50 See for instance Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, paras. 21-5, 38.

51 Note, para-police are auxiliary security forces used in tandem with local police, gendarmerie and other competent forces at demonstrations. For more on their role and history, see Amnesty International, *Taking to the Streets – Freedom of Peaceful Assembly in Cambodia* (Index: ASA 23/1506/2015), June 2015, p. 52-53.

52 For an analysis of the procedure, see FIDH, *Cambodia: Sentencing of land rights defender Ms. Tep Vanny*, 27 February 2017, available at <https://www.fidh.org/en/issues/human-rights-defenders/cambodia-sentencing-of-land-rights-defender-ms-tep-vanny>.

53 77-year-old Nget Khun, who is one of the charged persons, was interviewed by an investigating judge in November 2016. See, Sek Odom, “Boeung Kak Granny Denies Making Threat”, *The Cambodia Daily*, 4 November 2016.

In contrast to the treatment of Vanny, various criminal complaints that have been filed by Boeung Kak Lake activists against violent actions, including by para-police officers, have not led to any charges. Bov Srey Sras who miscarried in 2012 after being beaten by a para-police officer filed a complaint in July that year.⁵⁴ Despite an abundance of witnesses and having photographs of the incident, her complaint was filed without processing under CCP Article 41. A more recent example is the case of Boeung Kak Lake activist Chan Puthisak and human rights monitor Am Sam Ath, who works for LICADHO. The pair were beaten by para-police at a demonstration on 10 October 2016. They filed criminal complaints later the same day but no suspects have been summoned for questioning. Instead, the pair have themselves been summoned for questioning on suspicion of committing an offence after two para-police who claim to have been injured during the event filed a complaint on 4 November 2016.⁵⁵ The episode is illustrative of the role of the prosecution and judiciary in intimidating HRDs and protecting the security forces that are used to suppress them.

Vanny is a prisoner of conscience; a human rights defender jailed solely for her activism who has neither used violence nor advocated violence or hatred. Her convictions are baseless and were delivered following proceedings that failed to uphold her fair trial rights as provided in international and Cambodian law. The cases against her and her fellow Boeung Kak activists are clear examples of harassment through the criminal justice system which Amnesty International is concerned may be intended to intimidate them into silence. Vanny's recent convictions establish that old cases against HRDs may be resurrected to harass and bully HRDs.

In interview with Amnesty International in October 2016, Boeung Kak Lake activists reflected that the courts were being used to violate their freedom of expression. Stating that separating Vanny from the rest of the group and imprisoning her alone was a new tactic aimed at sowing distrust among the core activist group, they expressed their opinion that Vanny would only be released when there is a political deal; "there has to be a compromise and international pressure. When the political tension decreases, the releases of activists follow".⁵⁶

A list table of cases against Boeung Kak Lake activists can be found at Appendix, 1.1 of this report.

54 See, Amnesty International, *Taking to the Streets*.

55 See, Amnesty International, Human Rights Watch, and the International Commission of Jurists, *Cambodia: Drop Farical Investigation of Human Rights Defenders*, 7 February 2017, available at <https://www.amnesty.org/en/documents/asa23/5630/2017/en/>.

56 Chan Puthisak. Amnesty International interview with Boeung Kak Lake community, 12 October 2016.



3. THE CNRP “INSURRECTIONISTS”

On 21 July 2015, 11 CNRP officials and activists were convicted of leading and/or participating in an “insurrection,” receiving prison sentences of between seven and 20 years.⁵⁷ The charges arose from an opposition demonstration on 15 July 2014 that resulted in clashes between security forces and demonstrators. Forty-one members of the Daun Penh “para-police” sustained injuries that required medical treatment, while six demonstrators also required medical attention. The 11 convictions – and three others that followed in June 2016 – were the result of one of the most politically charged criminal investigations Cambodia has seen.⁵⁸

Under Article 456 of the Criminal Code, an “insurrectionary movement” consists of “any collective violence liable to endanger the institutions of [Cambodia] or violate the integrity of the national territory”. Under Article 457, there are seven ways in which an individual may participate in an insurrectionary movement which include “occupying with force or by deceit any building or installation”; and “usurping a lawful authority”.

The demonstration on 15 July 2014 called for the “liberation” of Phnom Penh’s Freedom Park; an area of the city that is designated for demonstrations. At the time the Park was closed to the public following a ban on demonstrations that was announced by the Ministry of Interior in January 2014. The demonstration ended in violent clashes between security forces and demonstrators. There is no evidence that the opposition planned violence ahead of the 15 July 2014 event; to the contrary, there is substantial evidence that CNRP parliamentarians in attendance repeatedly told their supporters to conduct themselves peacefully and videos available online indicate that the violence that did take place was in fact initiated by security forces.⁵⁹

The convictions against the 11 CNRP officials and activists on 21 July 2015 were unsupported by evidence against them.⁶⁰ None of the 38 para-police witnesses in the case identified any of the defendants as having engaged in any violence. One defendant, Sam Kimheng, admitted during proceedings that he struck a para-police officer in self-defence while another, Ke Khim, admitted to picking up a rock in self-defence but stated that he did not use it. This evidence was not referred to in the judgement and the 11 appear to have been convicted for simply having been present when the violence occurred. The proceedings lacked basic

57 Amnesty International, *Opposition Members Convicted in Unfair Trial*, (ASA 23/2173/2015), 29 July 2015, available at <https://www.amnesty.org/download/Documents/ASA2321732015ENGLISH.pdf>.

58 UN OHCHR raised concerns about the proceedings, noting that “no evidence [was] presented in open court to prove that the defendants directly committed any acts of violence” and observing the “perception of governmental interference in [the] case”. See Spokespersons for UN OHCHR, Rupert Colville and Ravina Shamdasani, 24 July 2015.

59 See for example the video published by *Radio Free Asia Khmer* on 15 July 2014, available at <https://www.youtube.com/watch?v=FtNtl2eHXlo>.

60 For an analysis of the trial proceedings and judgement, see Human Rights Watch, *Cambodia: Quash Case Against 11 Opposition Activists*, 14 March 2016, available at <https://www.hrw.org/news/2016/03/14/cambodia-quash-case-against-11-opposition-activists>.

procedural safeguards, with the verdict being delivered after 15 minutes of deliberation and in the absence of eight of the nine defence lawyers, who had boycotted the hearing on that day without knowing that closing arguments would be invited and a verdict delivered. The defendants' request for a delay was denied. The proceedings violated the ICCPR, in particular Articles 14(3)(b), which guarantees adequate time and facilities to prepare a defence; and 14(3)(d) which guarantees the right to legal representation, as well as the CCP.

In the absence of evidence supporting the convictions, it is necessary to examine contemporaneous political events to discern whether extraneous factors may have influenced the decision making process in the case.⁶¹ The case against the 11 arose from a judicial investigation against nine named CNRP members – seven MPs and two of the 11, Oeur Narith and Meach Sovannara – and two “unidentified” individuals.⁶² The following year, the “unidentified” catch-all was extended by the investigating judge to include 15 others, 12 of whom have been convicted on insurrection charges. Examining the very public investigation alongside political events taking place in the country, there seems to be a pattern of cause and effect with extensions in the investigation coinciding with significant political events and the case being repeatedly used by the ruling CPP as a means to gain leverage over the CNRP in political negotiations.

The demonstration on 15 July 2014 took place during a protracted political impasse between the CPP and CNRP in which the latter had refused to take up its seats in the National Assembly for nearly one year.⁶³ On 22 July, a few days after the demonstration, negotiations took place between the two parties to find a comprehensive settlement to the political crisis in the country.⁶⁴ Later that same day, seven CNRP MPs and a party official who had been arrested and investigated following the violence were released. Their freedom came as part of a political deal which also brought an end to the year-long CNRP boycott of the National Assembly and provided for the creation of a new National Election Committee (NEC) which would include members from both parties.⁶⁵

In August, steps were taken to give effect to the political deal. At the same time, the investigating judge expanded the scope of his criminal investigation, possibly seeking to maintain pressure on the CNRP. On 01 August, the day it was announced that the two parties would meet to discuss the constitutional amendment required to establish the new NEC, the investigating judge summoned the eight CNRP officials arrested following the 15 July demonstration for questioning later that month along with CNRP Vice-President Kem Sokha.⁶⁶ The two parties continued to disagree on the details of the constitutional amendment and with the CNRP yet to take its seats in the National Assembly, the investigating judge also ordered the arrest of three CNRP activists – Khin Chamroeun, San Kimheng and Neang Sokun – each of whom was accused of involvement in the alleged “insurrection”.⁶⁷ In the days that followed, the CNRP gave in to the demands of the CPP, agreeing to the terms of the constitutional amendment proposed by the ruling party and ending its boycott of the National Assembly, being formally sworn in by King Norodom Sihamoni on 5 August. The next day, Freedom Park was reopened to the public.⁶⁸

61 LICADHO have laid out contemporary political events alongside developments in the case in LICADHO, *Freedom Park Violence, CNRP Arrests, and Political Deal: Time of Events July-November 2014*, December 2014, (LICADHO Timeline) available at <http://www.licadho-cambodia.org/reports.php?perm=201>.

62 CCHR, *CCHR calls for the immediate and unconditional release of opposition leaders and for an end to violence*, 16 July 2014, available at http://cchrcambodia.org/media/files/press_release/506_ccftiauroolafaetve_en.pdf.

63 Hul Reaksmey and Lauren Crothers, “CPP Lawmakers Return to Work as CNRP Boycott Continues”, *The Cambodia Daily*, 2 April 2014.

64 LICADHO Timeline, p. 5.

65 *Ibid*, p. 6.

66 Joshua Lipes, “Cambodia Court Summons Opposition Politicians Over Park Clash”, *Radio Free Asia*, 1 August 2014, available at <http://www.rfa.org/english/news/cambodia/subpoena-08012014162017.html>.

67 Parameswaran Ponnudurai, “Three Cambodian Opposition Leaders Held Over Freedom Park Protests”, *Radio Free Asia*, 2 August 2014, available at <http://www.rfa.org/english/news/cambodia/court-08022014213824.html>.

68 LICADHO Timeline, p. 8.

THE DEMONSTRATION ON 15 JULY 2014 CALLED FOR THE

“LIBERATION” OF PHNOM PENH’S FREEDOM PARK

THE DEMONSTRATION ENDED IN VIOLENT CLASHES BETWEEN SECURITY FORCES AND DEMONSTRATORS



With the CNRP back in the National Assembly, a series of sessions were scheduled for August to give effect to further points of the 22 July political deal. With the seven MPs who were arrested following the violence at Freedom Park now enjoying parliamentary immunity, the investigating judge switched the focus of his investigation to lower ranking officials of the opposition. Along with Oeur Narith, the CNRP official arrested in July, five other party officials – Meach Sovannara, San Seihek, Tep Narin, Ouk Pich Samnang and An Batham – were summoned for questioning.⁶⁹

Later in the year, with the two parties at loggerheads in negotiations on the draft law to reform the NEC, further arrests were ordered in relation to the 15 July 2014 demonstration. On 29 September and 24 October respectively, a CNRP district council member, Sum Puthy, and party grassroots activist, Ouk Pich Samnang, were arrested and charged with participating in an insurrectionary movement, and other offences. On 11 November, the day after a breakdown in talks between the two parties, Meach Sovannara, the CNRP’s media chief, and Ke Khim, a party supporter, were arrested and detained. Two days later, Tep Narin, a CNRP youth member, was also arrested. All three were charged with participating in an insurrectionary movement.⁷⁰ The arrests coincided with those of 14 others, who included land activists from Boeung Kak Lake and politically active monks, leading to a civil society campaign calling for the government to “Free the 19”.⁷¹

In April 2015, the 19 were freed after negotiations between the two parties saw the conclusion of two new laws to regulate the conduct and oversight of elections – the Law on the Election of Members of the National Assembly and the Law on the NEC – and an agreement on the composition of the NEC.⁷² The release of the 19 was announced a day after the National Assembly voted in the new members of the NEC. While 10 land activists received royal pardons, the five CNRP activists were released on bail along with three monks and one land activist. The laws that were concluded following negotiations by the two parties were roundly criticised by civil society on the grounds that they would limit freedom of expression around elections.⁷³

The fact that the five opposition activists were bailed, rather than pardoned, was significant. With charges pending them against them, it remained a possibility that the case would be resumed at a time of political convenience for the executive and ruling party. This is precisely what happened. On 21 July,

69 *Ibid*, p. 9.

70 *Ibid*, p. 11-13

71 See, in Amnesty International, *Taking to the Streets*.

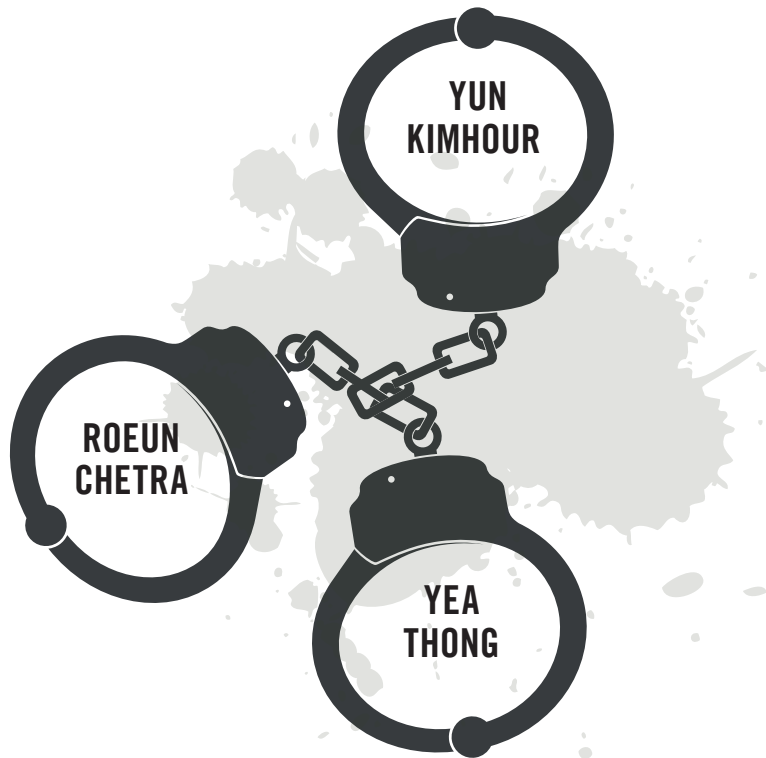
72 LICADHO, *Five CNRP and three defrocked monks released following political negotiations*, 13 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=123>.

73 See for example, Human Rights Watch, *Cambodia: Proposed Election Laws Violate Rights*, 16 March 2015, available at <https://www.hrw.org/news/2015/03/16/cambodia-proposed-election-laws-violate-rights>.

the five were among 11 CNRP activists that were convicted on insurrection charges following a hasty hearing. The convictions came two days after the CNRP had led as many as 2,500 supporters to the Cambodia-Viet Nam border protesting alleged Vietnamese encroachment on Cambodian territory with the acquiescence of the government.⁷⁴ CNRP President Sam Rainsy observed that the convictions were a message to the opposition to end its border campaign.⁷⁵ As noted by LICADHO, it appeared to be no coincidence that two of the three activists who received 20-year jail sentences had been part of the rally at the border two days previously.⁷⁶

In August 2015, more than 12 months after the events in question, the investigating judge issued an arrest warrant for five individuals. The resumption of proceedings came only a day after the Prime Minister had called for more arrests in the case on 3 August 2015.⁷⁷ Three of the five individuals, CNRP activists Yun Kimhour, Roewn Chetra and Yea Thong, were arrested and a year later the three were convicted and sentenced to seven years in prison.⁷⁸ They remain in prison together with the 11 other so-called “insurrectionists”.

A list table of cases arising from the Freedom Park violence of 15 July 2014 can be found at Appendix, 2.1, of this report.



74 Alex Willemyns and Mech Dara, “Despite Obstacles, CNRP Activists Reach Border”, *The Cambodia Daily*, 20 July 2015.

75 Alex Willemyns and Aun Chhengpor, “Jailings Linked to Border Campaign, Rainsy Says”, *The Cambodia Daily*, 27 July 2015.

76 LICADHO, *LICADHO condemns the conviction and sentencing of 11 CNRP officials and supporters*, 21 July 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=389>.

77 Buth Reaksmey Kongkea, Meas Sokchea and Shaun Turton, “CNRP activists jailed”, *The Phnom Penh Post*, 6 August 2015.

78 Niem Chheng, “CNRP activists given seven-year terms over protest-turned-violent”, *The Phnom Penh Post*, 14 June 2016.

4. THE ADHOC FIVE



In February 2016, an audio recording of a phone call between a man who appeared to be CNRP Deputy President Kem Sokha and a woman he appeared to be having an affair with was posted on Facebook.⁷⁹ A few days later, on 02 March, further audio recordings (allegedly between the two) were shared online.⁸⁰ The calls set off a complicated chain of events that dominated public life in Cambodia for a period of months. Caught up in the ensuing political scandal and multiple criminal complaints and court cases were five HRDs who provided legal assistance to the woman at the centre of the scandal, a woman named Khom Chandaraty, and nicknamed “Srey Mom”.

A few days after she had been summoned for questioning by the Phnom Penh Municipal Court, a letter signed by Srey Mom was published online in which she accused staff from local human rights organisation ADHOC, a staff member of the UN OHCHR office, the president of women’s rights NGO Silaka, an election official and a local official of the CNRP of putting pressure on her to lie to the authorities and deny her affair with Kem Sokha.⁸¹

Srey Mom’s criminal complaint led to the arrest of five individuals referred to in this report as “The ADHOC Five”. They are Lim Mony, Nay Vanda, Yi Sok San and brothers Ny Chakrya and Ny Sokha. Four of the five are staff of ADHOC, the country’s oldest human rights organisation.⁸² The fifth, Ny Chakrya, was formerly the head of ADHOC’s Human Rights and Legal Aid Section but left that position in January 2016 to take up a position as a Deputy Secretary-General of the NEC.⁸³ They were arrested in April 2016 following ADHOC’s provision of legal assistance to Srey Mom after her alleged affair with Kem Sokha had become public.⁸⁴ It was alleged that by providing Srey Mom with a small amount of money to cover food and transport costs they had engaged in bribery. The provision of financial aid in such circumstances to cover the cost of victims’ attending meetings with lawyers and questioning by judicial authorities is standard practice among human rights groups in Cambodia.⁸⁵

79 Bun Sengkong, “Recordings hint at CNRP deputy leader Sokha’s infidelity”, *The Phnom Penh Post*, 2 March 2016..

80 Bun Sengkong and Daniel de Carteret, “New audio of purported Sokha affair released”, *The Phnom Penh Post*, 3 March 2016.

81 See UN Working Group on arbitrary Detention, Opinion No. 45/2016 concerning Ny Sokha, Nay Vanda, Yi Soksan, Lim Mony and Ny Chakrya (Cambodia), UN Doc. A/HRC/WGAD/2016/45, 17 January 2017, (WGADADHOC Five Opinion), para. 11, available at http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session77/A-HRC-WGAD-2016-45_en.pdf.

82 See #FreeThe5KH civil society campaign, <https://freethe5kh.net/>.

83 Kuch Naren, “Tep Nytha Reappointed To NEC Post”, *The Cambodia Daily*, 16 January 2016.

84 Ben Sokhean and Alex Willemyns, “UN, Adhoc Staff Charged Over Sex Scandal”, *The Cambodia Daily*, 3 May 2016.

85 WGAD ADHOC Five Opinion, paras. 10-14. See also, the statement by 59 Cambodian civil society organisations, “Civil Society Condemns Charging of Human Rights Defenders”, 2 May 2016, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=404>.

The Five were initially investigated by the country's Anti-Corruption Unit (ACU). After two days of questioning by the ACU, the four ADHOC staff were charged with bribing a witness under Article 548 of the Criminal Code, with Ny Chakrya charged as an accomplice. They were arrested and sent to pre-trial detention.⁸⁶

In December 2016, Kem Sokha met Prime Minister Hun Sen at the National Assembly. Speaking to media later in the day, Minister of Interior Sar Kheng said that as a result of the meeting, the ADHOC Five, who had been detained since April 2016, would be released by the end of that month.⁸⁷ In January 2017 however, with further meetings between the two parties scheduled, the five remained in detention. From exile, Sam Rainsy claimed that their continued detention resulted from Kem Sokha's refusal to give in to a CPP request to release a statement pledging to expel from the CNRP any members who insulted the family of the Prime Minister.⁸⁸ According to Rainsy, the CPP had requested the statement as a pre-condition for the release of the ADHOC Five, with the aim of ensuring his removal from the CNRP.

While the CPP denied requesting the publication of the statement, the issue of the release of the ADHOC Five was quietly removed from the agenda in talks between the two parties that followed.⁸⁹ With the political détente that led to the pardon of Kem Sokha and another CNRP official seemingly broken, the ADHOC Five entered their second year in provisional detention in late April. Their case has had a "chilling effect" in Cambodia over the last year, with a palpable decrease in the willingness of civil society to speak out against human rights violations.⁹⁰

The case against the Five is clearly politically motivated. They were swept up in the political maelstrom of the Kem Sokha affair; arrested on false charges and subjected to a series of other violations. Shortly after their arrests, Amnesty International designated the Five as prisoners of conscience.⁹¹ In January 2017, the UN Working Group on Arbitrary Detention (WGAD) issued an opinion analysing the procedural history of the case.⁹² In finding their detention to be arbitrary on the grounds that it resulted from the exercise of their rights under the Universal Declaration of Human Rights and the ICCPR and due to the non-observance of the international norms relating to the right to a fair trial, the WGAD concluded, amongst other things, that:

- the Five were discriminated against on the basis of their status as HRDs;
- there is a reliable body of information supporting the conclusion that they were arrested to deter ADHOC and its staff from carrying out their functions as HRDs and from exercising their rights and freedoms; and that
- they have been the victims of violations of a broad spectrum of their fair trial rights, including their rights to be presumed innocence, to equality before the courts, and to legal counsel.⁹³

Echoing calls consistently made by civil society groups, including Amnesty International, since the arrests, the WGAD called on the authorities to release the Five immediately and to accord them an enforceable right to compensation in accordance with their ICCPR rights. Sadly, the call has remained unheeded. The Five remain in detention despite being arrested in relation to a non-violent offence and notwithstanding the principle of the CCP that charged persons generally remain at liberty pending trial.⁹⁴

86 WGAD ADHOC Five Opinion, paras. 10-15.

87 Meas Sokchea, "A 'resolution' to release", *The Phnom Penh Post*, 8 December 2016.

88 Michael Dickison and Khy Sovuthy, "Leaked Letter Purports to Show CPP's Bid to Divide CNRP", *The Cambodia Daily*, 9 January 2017.

89 Ben Sokhean, "Adhoc Prisoner Talks Left Off Upcoming Meeting Agenda", *The Cambodia Daily*, 16 January 2017.

90 Taing Vida, "Parties to talk, but no date set", *The Khmer Times*, 16 January 2017.

91 Colin Meyn, "Amnesty Mobilizes for Adhoc Five", *The Cambodia Daily*, 25 May 2016.

92 See WGAD ADHOC Five Opinion, available at http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session77/A-HRC-WGAD-2016-45_en.pdf.

93 WGAD ADHOC Five Opinion, paras. 39-53.

94 CCP, Article 203.

THE CASE AGAINST THE FIVE IS CLEARLY

POLITICALLY MOTIVATED



**THEY WERE SWEEPED UP IN THE POLITICAL MAELSTROM OF THE KEM SOKHA AFFAIR;
ARRESTED ON FALSE CHARGES AND SUBJECTED TO A SERIES OF OTHER VIOLATIONS.**

In an effort to give their extended pre-trial detention a sheen of legitimacy, the courts have engaged in a procedural trope; repeatedly reviewing and extending their pre-trial detention, but in fact only underlining the sheer arbitrariness of their detention.⁹⁵

The story of the ADHOC Five is not limited to Lim Mony, Nay Vanda, Ny Chakrya, Ny Sokha and Yi Sok San. Their names have become a clarion call for Cambodia civil society, who have initiated a campaign, “The Black Monday” campaign, to demand their release and the release of Boeung Kak Lake activist Tep Vanny. Those taking part in the campaign have faced significant challenges, most notably in the form of routine arrests, and have been roundly condemned by leaders of the CPP, including the Prime Minister, for leading what they deem to be a “colour revolution” seeking to topple the government.⁹⁶ All the while, the investigation into the case has been used by the authorities as a means to intimidate HRDs and civil society organisations and to reduce the space within which they operate, including through summons for questioning and public threats of additional arrests.

From the outset, the investigation in the case involved more than the Five who were eventually arrested. Two other members of civil society – ADHOC colleague Try Chhuon and Thida Khus, the head of women’s rights NGO Silaka – were questioned along with the Five but were released without charge.⁹⁷ The ACU also summoned Soen Sally, a staff member at the UN Office of the High Commissioner for Human Rights (OHCHR) in Cambodia, for questioning. He did not attend questioning at the ACU as he enjoys diplomatic immunity, being a UN staff member. Sally was nonetheless charged in absentia as an accomplice to bribery under Articles 29 and 548 of the Criminal Code.⁹⁸

The action against Sally came amidst a protracted disagreement between the Cambodian government and UN OHCHR on the content of the Memorandum of Understanding (MoU) outlining the mandate of the latter in Cambodia.⁹⁹ As the previous MoU had lapsed in December 2015, ACU Chairman Om Yentieng said that Sally had no immunity and could be arrested, incorrectly citing the MoU as the source of immunity for UN OHCHR staff.¹⁰⁰ Days later Prime Minister Hun Sen, speaking at a public event, said that UN staff and NGO workers could not rely on any immunity where they had committed a crime.¹⁰¹ In a series of events characteristic of a government that relies on public threats as a means to intimidate HRDs, a Ministry of Interior spokesperson continued to threaten to arrest Sally two weeks

95 CCP Article 205 provides for pre-trial detention as an exception to the general rule of liberty ahead of trial where it is needed to stop reoccurrence of the offence; prevent harassment of witnesses or victims; preserve evidence; guarantee the presence of charged persons in proceedings against them; to maintain their security; or to preserve public order. The pre-trial detention of the Five has been analysed by CCHR. See, CCHR, *Legal Analysis of Pre-trial Detention of Mr. Ny Sokha, Mr. Yi Soksan, Mr. Nay Vanda, Ms. Lim Mony and Mr. Ny Chakrya*, November 2016, available at http://cchrcambodia.org/index_old.php?title=Legal-Analysis-of-the-Pre-trial-Detention-of-Mr-Ny-Sokha-Mr-Yi-Soksan-Mr-Nay-Vanda-Ms-Lim-Mony-and-Mr-Ny-Chakrya&url=media/media.php&p=analysis_detail.php&anid=79&id=5.

96 Kuch Naren and Alex Willems, “Prime Minister Bans Color-Coordinated Demonstrations”, *The Cambodia Daily*, 11 May 2016.

97 Frontline Human Rights Defenders, *Case History: ADHOC*, available at <https://www.frontlinedefenders.org/en/case/case-history-adhoc>.

98 Frontline Human Rights Defenders, *Case History: ADHOC*, available at <https://www.frontlinedefenders.org/en/case/case-history-adhoc>.

99 See for example, Shaun Turton, “MoU with UN stalled by government”, *The Phnom Penh Post*, 20 September 2016.

100 The source of Sally’s immunity is the Convention on the Privileges and Immunities of the UN, New York, 13 February 1946, which entered into force on 17 September 1946. Cambodia acceded to the Convention on 6 November 1963.

101 Lay Samean, Meas Sokchea and Sean Turton, “ACU keeps the heat on as PM dismisses UN’s claims to immunity”, *The Phnom Penh Post*, 2 May 2016.

after the Ministry of Foreign Affairs had requested that the authorities cease legal proceedings against him on the basis of his immunity.¹⁰² A year on, while Sally has not been arrested, the charges against him remain, notwithstanding his immunity and the request by the Ministry of Foreign Affairs.

Similarly, the ACU used the case as a vehicle to publicly threaten civil society activists. In particular, ACU Chairman Om Yentieng has, according to the media, publicly threatened the expansion of the investigation to include more suspects, stating that the ACU is monitoring other unnamed persons with a view to arresting them and openly threatening to arrest ADHOC President and founder Thun Saray. In a comment that underlines that the forces driving the investigation are not based on law and evidence but appear to be political, Yentieng reportedly stated to Saray at a public event that he would “keep the case small” and “send only the first batch of evidence to the court”. However, if Saray and his colleagues “fight back”, Yentieng stated that the ACU “will send the second and we also have a third”.¹⁰³

Saray founded ADHOC shortly after the signing of the Paris Peace Agreements.¹⁰⁴ He told Amnesty International that he made the decision to launch the organisation while in prison for 17 months in 1990-1991.¹⁰⁵ During this time, Saray was the victim of torture, shackled day and night in a dark cell for a period of two months. Shortly after the arrests of his colleagues in 2016 Saray left Cambodia for Canada.¹⁰⁶ He has stated since that he left the country as a result of what he described as “direct threats” of arrest. He was summoned for questioning as a witness in the case by Phnom Penh Municipal Court in October but did not appear. He told Amnesty International that despite the fact that he is officially being treated as a witness in the case, in reality he is viewed as a suspect. Two ADHOC colleagues who were questioned as witnesses in the case, Eang Kimly and Chan Sokunthea, told Saray that the investigators questioning focused on his role in the case, rather than that of any of the suspects.¹⁰⁷

Phnom Penh Municipal Court has also summoned Pa Nguon Teang, the Executive Director of the Cambodian Center for Independent Media (CCIM) and Director of the popular Voice of Democracy (VOD) radio station. In August 2016, Teang was questioned by an investigating judge.¹⁰⁸ As in the case of Saray, Teang says that despite being summoned as a witness, the line of questioning indicated that he was being treated as a suspect. The questions put to him focused specifically on whether he had any contact with Kem Sokha during the period that the latter was allegedly engaging in the affair with Srey Mom.¹⁰⁹ Teang said that investigators made comments to indicate that they were aware of the activities he engages in on a day-to-day basis, which he interpreted as an attempt on their part to intimidate him. At the conclusion of the questioning, Teang was told that he could be summoned again, another comment which he deemed to have been a threat. In seemingly contradictory comments to media after Teang’s questioning, a court spokesperson said that he could not provide any information on the status or direction of the investigation but that Teang could be summoned again in the future.¹¹⁰

102 See, Mech Dara and Shaun Turton, “Foreign Ministry says UN worker has immunity”, *The Phnom Penh Post*, 9 May 2016; and Mech Dara and Shaun Turton, “Cops still after UN staffer”, *The Phnom Penh Post*, 12 May 2016.

103 Mech Dara, “Rights group staffers, NEC official detained by ACU over Chandaraty case”, *The Phnom Penh Post*, 29 April 2016.

104 ADHOC, *ADHOC’s Background*, available at <http://www.adhoc-cambodia.org/adhocs-background/>.

105 Interview with Thun Saray, 3 April 2017.

106 Ananth Baliga and Touch Sokha, “Fear of arrest drove Adhoc chief abroad”, *The Phnom Penh Post*, 27 October 2016.

107 Interview with Thun Saray, 3 April 2017.

108 Khuon Narim, “Independent Media Advocate Questioned on Sokha Case”, *The Cambodia Daily*, 19 August 2016.

109 Interview with Pa Nguon Teang, 23 March 2017.

110 Khuon Narim, “Independent Media Advocate Questioned on Sokha Case”, *The Cambodia Daily*, 19 August 2016.

The attempts by government officials to use the case of the ADHOC Five to instil fear among the human rights community in Cambodia has not focused solely on individuals. Shortly after the arrests of the Five, two pro-government NGOs – the Cambodian Federation for Human Rights and Development (CFHRAD) and the Association of Youth for State Reform (AYFSR) – issued statements on 23 April 2016 calling for the government to take action against ADHOC under the country’s new Law on Associations and Non-Governmental Organisations (LANGO).¹¹¹ The statements accused ADHOC of violating the “political neutrality” requirement contained in Article 24 of the LANGO. Under Article 30 of the law, which was passed in 2015 over the widespread objections of Cambodian and international human rights groups, organisations that violate the principle of political neutrality may be de-registered by the Ministry of Interior.

Later that month, when human rights group LICADHO posted a list of “political prisoners” in Cambodia which included the ADHOC Five on its website, the Ministry of Justice said that the organisation was in violation of the Article 24 requirement of political neutrality and could face consequences, including de-registration, under Article 30. Two Ministry spokespersons said separately that LICADHO could be shut down. One of the spokespersons, reportedly added that the organization would also have “to respond to any criminal offences”, raising the spectre of criminal action against individuals in addition to the organization itself.¹¹²

In an interview with Amnesty International in Correctional Centre 2 on the edge of Phnom Penh, Lim Mony said that she had worked in human rights for 20 years, “neutrally, with no party”.¹¹³ She objected to her detention, saying that she had done nothing wrong and was “not involved in any political issue”. Sadly for Mony, the Cambodian government regards her independent human rights work as political and this appears to be the cause of her continuing arbitrary detention. At the time of writing, she and the other members of the ADHOC Five remain in detention with no date set for their trial.

A list table of cases against HRDs arising from and related to the ADHOC Five investigation can be found at Appendix 3.1 of this report.

111 Mech Dara and Shaun Turton, “LANGO looming in Adhoc rearview”, *The Phnom Penh Post*, 3 May 2016.

112 Khuon Narim and George Wright, “Rights Group Warned Over ‘Political Prisoners’ Page”, *The Cambodia Daily*, 20 May 2016..

113 Interview with Lim Mony, 17 October 2016.



5. THE UNION SIX

In September 2014, the leaders of six of Cambodia’s most prominent non-government aligned unions and confederations were charged with committing intentional violence and other offences during labour demonstrations that culminated in a violent crackdown by authorities in January of that year.¹¹⁴ The leaders are Ath Thorn of the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), Chea Mony of the Free Trade Union of Workers of the Kingdom of Cambodia (FTU), Morm Nhim of the National Independent Federation Textile Union of Cambodia (NIFTUC), Pau Sina of the Collective Union of Movement of Workers (CUMW), Rung Chhun of the Cambodian Confederation of Unions (CCU), and Yang Sophorn of the Cambodian Alliance of Trade Unions (CATU).

The demonstrations, which took place from 25 December 2013 until the crackdown on 3 January 2014, were concerted actions by garment workers in factories in and around Phnom Penh calling for an increase in the minimum wage to \$160 USD a month. On 2 January 2014, soldiers from Cambodia’s 911 Brigade beat up workers demonstrating outside Yakjin factory on the outskirts of Phnom Penh. The following day, police and military police fired live ammunition at demonstrators who had been engaged for hours in pitched battles with security forces at Veng Sreng Boulevard, an area on the edge of Phnom Penh that is home to a concentration of garment factories and their thousands of workers. Four men were shot dead, a 16-year old boy disappeared and dozens of workers were injured by live ammunition. Over the course of two days, 19 workers and four human rights activists who were taking part in the demonstrations were arrested. They were held in secret detention for a week and eventually tried and convicted of intentional violence before being released on suspended sentences in May 2014.¹¹⁵

In the months that followed the violence at Veng Sreng, no efforts were made to investigate the conduct of the security forces, despite the deaths and injuries caused, and the authorities similarly failed to take appropriate measures to investigate the disappearance of Kem Saphath, the 16-year old boy who went missing on 3 January.¹¹⁶ The authorities moved to deflect widespread calls for justice and accountability for the violence of 2 and 3 January and close the book on events without a full and proper accounting for what had taken place.

114 See, “Joint Legal Analysis of the draft Law on Unions of Enterprises”, *LICADHO and the Community Legal Education Center (CLEC)*, 18 September 2014, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=359>. The charges against the six were of Intentional Acts of Violence with Aggravating Circumstances, Criminal Code Article 218; Intentional Property Damage with Aggravating Circumstances, Criminal Code Article 411; Threatening to Cause Damage or Destruction, Criminal Code Article 424; and Blocking Public Traffic, Traffic Law Article 78. The charges together carry a maximum punishment of 14 years imprisonment. Amnesty International interviewed five of the six, Ath Thorn, Chea Mony, Rung Chhun, Pau Sina, and Yang Sophorn, and Morm Nhim’s son, Roth Minea, in October and November 2016.

115 The violence at Yakjin and Veng Sreng on 2-3 January 2014 is described at length in Amnesty International, *Taking to the Streets*.

116 See, Mech Dara, “Police Blame Family for Stalled Probe Into Lost Boy”, *The Cambodia Daily*, 2 September 2015.

That is until the issue of the minimum wage for garment workers came up again in September 2014. As preparations were under way for a new campaign by workers calling for an increase to the monthly minimum wage, Phnom Penh Municipal Court summoned and charged five of the six union leaders with intentional violence as a result of a complaint filed by the Garment Manufacturers of Cambodia on behalf of 170 of its member factories.¹¹⁷ The sixth, NIFTUC leader Morm Nhim, was not charged or put under judicial supervision as she left Cambodia, going to live in the USA.

The timing of the charges, days before the minimum wage campaign was set to get under way, left little doubt as to its underlying motivation and came as soldiers from military brigades 70 and 99, and the army's artillery unit, were placed along Veng Sreng Boulevard and inside an industrial park in the area.¹¹⁸ The charges were laid only a few days before a recommendation was due from the Labour Advisory Committee (LAC) – the tri-partite government, employer and union body that votes on year wage increases – on 05 October.¹¹⁹

The five leaders were placed under judicial supervision, under Article 223 of the CPC, which sets out conditions that an investigating judge may place on a charged person in the period he/she is under investigation. The conditions imposed on the five included prohibiting them from meeting other union leaders, joining or leading strikes, and traveling to Veng Sreng where efforts were underway to campaign for an increase to the minimum wage under the watch of the military. The judicial supervision orders also required the five to report monthly to the police.

The minimum wage campaign that followed was muted by the standards of previous years. Whereas in 2013, workers went on strike and took part in demonstrations for a week, activities in 2014 mostly involved demonstrations during lunch breaks and on Sundays.¹²⁰ It is also noteworthy that the target of the campaign in 2014 shifted from the government to the international brands who purchase large amounts of garments from Cambodian factories and to international embassies,¹²¹ and that the members of unions whose leaders were facing legal action did not take part in demonstrations as they had in previous years.¹²² In November 2014, the LAC recommended a minimum wage of \$123 USD, well below the \$177 USD that the muted campaign had called for. The recommendation by the LAC was accepted and the minimum wage was increased to \$128 USD after the Prime Minister announced an additional \$5 USD increase.¹²³

A year and a half elapsed following the charging of the five union leaders, with little apparent progress in the case. Throughout that period, they remained under judicial supervision, barred from meeting other union leaders, leading demonstrations or visiting Veng Sreng. This was until April 2016 when Rung Chhun, who had left the union movement in 2015 to take up a role as one of the four CNRP appointees to the NEC, received a letter informing him that the investigation into his case had concluded and that he would face a trial.¹²⁴ On taking up the position with the NEC the previous year, Chhun had said that in a departure from how NEC members had executed their functions in the past, he would be outspoken in the role, “speak[ing] out in the national interest”.¹²⁵

117 See, Khuon Narim, “Union Boss Put Under Court Supervision”, *The Cambodia Daily*, 13 September 2014; Mech Dara, “Second Union Leader Under Court Supervision”, *The Cambodia Daily*, 16 September 2014; Mech Dara, “Court Places More Restriction on Union Leader”, *The Cambodia Daily*, 19 September 2014; and Mech Dara, “Court Places Two More Union Heads Under Supervision”, *The Cambodia Daily*, 01 November 2014.

118 *Ibid.*

119 Sean Teehan and Sen David, “Wage decision delayed”, *The Phnom Penh Post*, 7 October 2014.

120 Mech Dara and Zsombor Peter, “Garment Workers March for Higher Wages”, *The Cambodia Daily*, 13 October 2014.

121 Sean Teehan, Mom Kunthear and Taing Vida, “A brand new strategy”, *The Phnom Penh Post*, 18 September 2014.

122 CCAWDU for example, one of the most active unions in Cambodia, did not take part in a Sunday protest on 12 October 2014 explaining that they were “too busy with other work to rally its members for the event”. See, Mech Dara and Zsombor Peter, “Garment Workers March for Higher Wages”, *The Cambodia Daily*, 13 October 2014.

123 Sean Teehan and Mom Kunthear, “Minister adds \$5 to garment wage”, 12 November 2014.

124 Lay Samean and Shaun Turton, “Old Veng Sreng case revived for NEC member”, *The Phnom Penh Post*, 19 May 2016.

125 Meas Sokchea and Daniel Pye, “Rong Chhun ready to scrap”, *The Phnom Penh Post*, 13 April 2015.

THE TRADE UNION LAW GIVES THE AUTHORITIES TOTAL CONTROL OVER THE LABOUR MOVEMENT.

ARTICLE 20

Bars from union leadership any individual who has been convicted of a criminal offence

ARTICLE 29

Provides for the dissolution of unions whose leaders are found guilty of offences.

Significantly, Chhun was the only one of the five Veng Sreng charged persons to receive this letter. Under the NEC Law, members forfeit their positions in the event of a criminal conviction that carries a prison sentence.¹²⁶ If Chhun were to be convicted, imprisoned and lose his position on the NEC, the CNRP would have the right to nominate his replacement but their nomination would require the support of a majority of the CPP-controlled National Assembly.¹²⁷ In an interview with Amnesty International, two of the other charged persons in the case, Pau Sina and Chea Mony, said that the letter was a clear warning to Chhun against agitating about the arrest of Ny Chakrya, one of the ADHOC Five and NEC member. In the words of Chea Mony: “If Rung Chhun makes noise at the NEC, we will see the same thing. We will suffer the same fate as Ny Chakrya.”¹²⁸ A year has passed since Chhun received the letter and efforts to bring him to trial appear to have fizzled out.

In the two and a half years since the five were placed under judicial supervision, there has been a notable reduction in industrial action by garment workers.¹²⁹ In that period, there were further negotiations about and increases of the minimum wage,¹³⁰ and a new Law on Trade Unions was adopted which, much like the LANGO, had been on the legislative agenda in the past only to be sidelined due to the objections of those it sought to regulate.¹³¹ In April 2016, in a vote split along party lines, the CPP members of the National Assembly passed a bill on trade unions which places severe restrictions on the right to freedom of association and contravenes the ILO Conventions ratified by Cambodia.¹³² Para-police forcibly dispersed a group of dozens of labour activists who had gathered outside parliament to protest the passage of the law.¹³³

The Trade Union Law gives the authorities total control over the labour movement. Article 20 bars from union leadership any individual who has been convicted of a criminal offence while Article 29 provides for the dissolution of unions whose leaders are found guilty of offences. These provisions provide the authorities with licence to remove any union leader whose actions displease them and to shut down the organisations they led, through trumped up charges followed by convictions from a compliant judiciary. This is in de facto violation of the rights of union leaders, existing and prospective, not to mention the rights of the people that they represent. With its control of the criminal justice system and after years of

126 Law on the Organisation and Functioning of the NEC, Article 9.

127 Law on the Organisation and Functioning of the NEC, Article 11.

128 Interview with Chea Mony, 7 April 2017.

129 Zsombor Peter, “Garment Factories Report Major Drop in Strikes”, *The Cambodia Daily*, 12 January 2015.

130 See Mech Dara, “Garment Sector Minimum Wage Raised to \$140”, *The Cambodia Daily*, 9 October 2015.

131 See, “ILO’ statement on Trade Unions law in Cambodia, *International Labour Organization*, 4 April 2016.

132 For instance Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

133 Kuch Naren and Khuon Narim, “Violence as Assembly Passes Trade Union Law”, *The Cambodia Daily*, 5 April 2016.

initiating criminal proceedings against union leaders and activists, these provisions will likely be used to give effect to the state's, and therefore the ruling party's, domination of employee representation.

In a country where leading and working for a union that is not government-aligned seemingly invites criminal prosecution, the provision carries such weight as to shift the entire balance of the labour movement, wresting control from workers and handing it over to the government.

In this case, the authorities used the threat of criminal prosecution against union leaders to temper their actions in the lead-up to negotiations on the minimum wage and during a campaign by workers calling for an increase. The prosecution of the six was announced as the campaign was beginning and the questioning of the five who remained in the country was straddled across the two-week period before a decision on the wage increase was due. The imposition of judicial supervision placed legally enforceable, however unjustified, restrictions on the ability of the leaders to continue to represent their members and appears to have influenced the conduct of union activities around the minimum wage campaign. Through Articles 20 and 29, the Trade Union Law has significantly strengthened the hand of the authorities in their continued efforts to control union leaders using the criminal justice system. By dangling criminal prosecution in their faces, the authorities can continue to discourage union leaders from initiating industrial action and organising demonstrations but with the added threat that criminal conviction will result in the removal of leaders, the end of their careers as workers' representatives and the dissolution of their unions.

CONCLUSION

Since the last general election in July 2013, the Cambodian criminal justice system seems to have been systematically targeting HRDs and political opposition activists: there are at least 27 in jail and hundreds of others are subject to criminal proceedings and the constant threat of arrest, trial and imprisonment. HRDs and political opposition activists are targeted by the executive and ruling party through the criminal justice system on the basis of their political beliefs, activities, however peaceful, and/or due to their status as HRDs. Their human rights, in particular to freedom from arbitrary detention (ICCPR Article 9(1)); to a fair trial, including the right to be presumed innocent, the right to have adequate time and facilities to prepare their case, and the right to be tried without undue delay (ICCPR Article 14) and to equal protection of the law (ICCPR Article 26) are violated. Criminal proceedings against these people are initiated, held and at times continued indefinitely for political reasons.

On 9 April 2017, an opposition official who was set to run for the CNRP in the forthcoming commune elections was arrested in the latest indication that the use of the criminal justice system as a means to restrict the opposition party and others, such as HRDs, is likely only to increase in the lead up to commune and general elections.¹³⁴ The system of harassment through the prosecution and judiciary that is being implemented in Cambodia is complicated, involving a wide range of actors and an even broader set of procedural tools. Some of these tools in and of themselves are in accordance with international human rights law and standards and others are not. While the mechanics of harassment are complicated, the steps required to end the abuse of the criminal justice system is not.

¹³⁴ Aun Pheap, "Land Dispute Leads to SRP Commune Councilor's Arrest", *The Cambodia Daily*, 1 April 2017.

RECOMMENDATIONS

Amnesty International provides the following recommendations to the Cambodian authorities:

- Stop using the legal system to target HRDs and opposition political activists with trumped up and/or unsubstantiated criminal charges or for acts not internationally recognised as offences such as peaceful dissent;
- Respect the independence of the judiciary (and other relevant institutions);
- Immediately drop all existing criminal cases against HRDs and peaceful political opposition activists;
- End the use of pre-trial detention in the absence of circumstances clearly justifying its use and subject to appeal;
- End the arbitrary use of judicial supervision as a means to restrict the work of HRDs and union activities;
- Fully implement provisions of the CCP which accord with Cambodia's obligations under international human rights law, including ensuring that cases are not held open or dormant indefinitely, to be reopened at any time at the government's whim;
- Uphold the standard and burden of proof required by international human rights law as well as Cambodian law and resolve cases of doubt in the favour of defendants;
- Withdraw the provisions of recently passed laws, including the Amended Law on Political Parties, the Trade Union Law and LANGO, which, either directly or de facto violate the human right to freedom of association;
- Initiate a real program of legal and judicial reform that seeks to bring into existence an independent and impartial prosecution and court system capable of upholding the fair trial rights of all people.

APPENDIX

1.1 CASES AGAINST BOEUNG KAK LAKE ACTIVISTS

NAME	CHARGE / ALLEGATION	STATUS
Tep Vanny; Heng Mom; Kong Chantha; and Bo Chhorvy	Insult, (Article 502 of the Criminal Code (CC)); Obstruction of Public official with Aggravating Circumstances (CC Art. 504).	Convicted 19/09/2016 on both counts and sentenced to six months' imprisonment. Tep Vanny is in prison while the others remain at liberty pending a final ruling.
Tep Vanny; Bov Sophea	Insult, CC Art. 502.	Convicted on 22/08/2016, sentenced to six days' imprisonment and a fine. The sentence has been served but the fine has not been enforced. They were initially charged with Incitement to Commit a Felony under CC Articles 494 and 495 but the charge was changed to 502 during the delivery of the verdict without prior warning.
Tep Vanny	Intentional violence with aggravating circumstances, CC Art. 218	Convicted 23/02/2017 and sentenced to 2.5 years' imprisonment.
Tep Vanny; Nget Khun; Heng Mom; Cheang Leap; Tol Sreyrov; Kong Chantha	Making Death Threats, CC Art. 233; Public Insult, CC Art. 307.	Relates to a charge by a fellow Boeung Kake Lake community member dating back to 2012. The complainant has sought to withdraw her complaint but the case was revived in late 2016.
Chan Puthisak (with LICADHO monitor Am Sam Ath)	Instigating Intentional Violence, CC Arts. 27, 217.	Interviewed by prosecutor, 8/02/2017.
Tep Vanny; Nget Khun; Song Srey Leap; Kong Chantha; Phan Chhunreth; Po Chory; Nong Sreng	Obstructing Traffic, Traffic Law Art. 78.	Convicted 11/11/2014 and sentenced to 1 year's imprisonment and a fine. Pardoned 11/04/2015.
Heng Pich; Im Srey Touch; (with fellow community activist from Thmor Kuol Phoung Sopheap)	Obstruction of Public Officials with Aggravating Circumstances, CC Art. 504	Convicted 12/11/2014, sentenced to 1 year's imprisonment and a fine. Pardoned 11/04/2015.

1.1 CASES AGAINST BOEUNG KAK LAKE ACTIVISTS (CONTINUED)

NAME	CHARGE / ALLEGATION	STATUS
Chan Puthisak (with nine others arrested at Yakjin on 2/01/2015)	Intentional damage to Property with Aggravating Circumstances, CC Art. 411; Instigating international Acts of Violence with Aggravating Circumstances, CC Arts. 28 and 218.	Convicted 30/05/2014 after arrest on 2/01/2014. Sentenced to 4.5 years' imprisonment and fine but released on 30/05/2014 with remainder of sentence suspended.
Tep Vanny; Nget Khun; Kong Chantha; Srong Srey Leap; Tho Davy; Chan Navy; Ngoun Kimlang; Pao Saopea; Cheng Leap; Soung Samai; Phan Chan Reth; Heng Mom and Toul Srey Pov.	Obstruction of Public Official with Aggravating Circumstances, CC Art. 504; Illegally Occupying Land, Land Law Arts. 34 and 259.	Convicted 24/05/2012 and sentenced to 2.5 years' imprisonment. Conviction upheld by Appeal Court on 25/06/2014 but sentence reduced to one month and three days, the amount of time already served.
Yorm Bopha, Lous Sakhon, Yorm Kanlong, Yorm Sith	Intentional Violence with Aggravating Circumstances, CC Art. 218	Convicted 27/12/2012 and sentenced to 3 years' imprisonment and a compensation order. Lous Sakhon's sentence was suspended; Yorm Kanlong and Yorm Sith were convicted <i>in absentia</i> . Yorm Bopha served 14 months, arrested on 4/09/2012 and was released on bail on 22/11/2013. On 14/06/2013, the Appeal Court changed her conviction to instigating violence and suspended one year of her sentence. Her original conviction was upheld but the part of her sentence that was not served was suspended.
Tim Sakmony	False Declaration, CC Art. 633	Convicted 26/12/2012 after arrest on 5/09/2012. Sentenced to 6 months' imprisonment but released with remainder of sentence suspended.

2.1 CASES ARISING FROM THE FREEDOM PARK VIOLENCE OF 15 JULY 2014

NAME	CHARGE / ALLEGATION	STATUS
Oeur Narith, official of CNRP Public Affairs Department	Participating and Leading an Insurrectionary Movement, CC Arts. 457 and 459	Arrested 14/07/2014, released on bail 22/07/2014. Re-arrested and convicted on both charges on 21/07/2015, sentenced to 20 years' imprisonment. Currently in prison.
Meach Sovannara, CNRP national election candidate for Banteay Meanchey	Participating and Leading an Insurrectionary Movement, CC Arts. 457 and 459	Arrested 11/11/2014, released on bail 13/04/2015. Re-arrested and convicted on both charges on 21/07/2015, sentenced to 20 years' imprisonment. Currently in prison.
Khin Chamreun, CNRP Chief of Phnom Penh Youth Movement	Participating and Leading an Insurrectionary Movement, CC Arts. 457 and 459	Arrested 2/08/2014, released under judicial supervision on 22/08/2014. Re-arrested and convicted on both charges on 21/07/2015, sentenced to 20 years' imprisonment. Currently in prison.
San Kimheng, CNRP district youth leader	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 2/08/2014, released under judicial supervision on 22/08/2014. Re-arrested 21/07/2015. Convicted on 21/07/2015 and sentenced to 7 years' imprisonment. Currently in prison.
Neang Sokun, CNRP district youth leader	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 2/08/2014, released under judicial supervision on 22/08/2014. Re-arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.
Sum Puthy, CNRP district councillor	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 29/09/2014, released on bail 13/04/2015. Re-arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.
Ouk Pich Samnang, CNRP activist	Participating in an Insurrectionary Movement, CC Art. 457 Intentional violence with aggravating Circumstances, CC Art. 218; obstruction of public officials with aggravating Circumstances, CC Art. 504	Arrested 24/10/2014, released on bail 13/04/2015. Re-arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. In second case, convicted on 10/09/2015 and sentenced to 2.5 years' imprisonment with fines and compensation. Upheld by Appeal Court 20/07/2016. Currently in prison.
Ke Khim, CNRP supporter	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 11/11/2014, released on bail 13/04/2015. Re-arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.

2.1 CASES ARISING FROM THE FREEDOM PARK VIOLENCE OF 15 JULY 2014 (CONTINUED)

NAME	CHARGE / ALLEGATION	STATUS
Tep Narin, CNRP youth member	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 13/11/2014, released on bail 13/04/2015. Re-arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.
San Seihak, CNRP youth member	Participating in an Insurrectionary Movement, CC Art. 457	Arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.
An Bathan, CNRP youth member	Participating in an Insurrectionary Movement, CC Art. 457	Arrested and convicted on 21/07/2015, sentenced to 7 years' imprisonment. Currently in prison.
Yun Kimhour, CNRP youth member; and Roeun Chetra, CNRP youth member	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 4/08/2015, convicted on 13/06/2016, sentenced to 7 years' imprisonment. Currently in jail.
Yea Thong, CNRP youth member	Participating in an Insurrectionary Movement, CC Art. 457	Arrested 4/08/2015, convicted on 13/06/2016, sentenced to 7 years' imprisonment. Currently in prison.
Mu Schua, CNRP MP; Men Sothavarin, CNRP MP; Keo Phirum, CNRP MP; Ho Vann, CNRP MP; Real Camerin, CNRP MP; Long Ry, CNRP MP; Nuth Rumduol, CNRP MP	Instigating Aggravated, Intentional Violence, CC Arts. 28 and 218; Incitement to Commit a Felony, CC Art. 495; Leading Insurrectional Movement, CC Article 459	Arrested between 15/07/2014 and 17/07/2014, released on 22/07/2014. The case was separated on 28/11/2014 from those subsequently convicted. The MPs remain at liberty with parliamentary immunity.
Kem Sokha	Questioned by prosecutor in relation to responsibilities as CNRP leader in relation to Freedom Park violence on 15/07/2014	Questioned by Investigating Judge 25/07/2014 but did not answer second summons on 11/08/2014 on grounds that he had parliamentary immunity.
Unknown	Two others named in arrest warrant on 5/08/2015 along with Yea Thong, Roeun Chetra and Yun Kimhour	

3.1 CASES AGAINST HRDS ARISING FROM AND RELATED TO ADHOC FIVE INVESTIGATION

NAME	CHARGE / ALLEGATION	STATUS
Lim Mony, Senior Investigation, ADHOC Women and Children's Rights Section; Nay Vanda, Deputy Head of ADHOC Human Rights Section; Ny Sokha, Head of Human Rights Section; Yi Soksan, ADHOC Senior Investigator	Bribery of a Witness, CC Arts. 548	Pre-trial detention since arrested 28/04/2016.
Ny Chakrya, National Election Committee Deputy Secretary-General	Accomplice to Bribery of a Witness, CC Arts. 29 and 548 Defamation, CC Art. 305; Malicious Denunciation, CC Art. 311; Publication of Commentaries Intended to Unlawfully Coerce Judicial Authorities, CC Art. 522	Pre-trial detention since arrested 28/04/2016. Convicted in second case on 28/9/2016 and sentenced to six months' imprisonment and a fine. Upheld by Appeal Court on 14/12/2016.
Soen Sally, Human Rights Program Associate, UNOHCHR Cambodia	Accomplice to Bribery of a Witness, CC Arts. 29 and 548	Judicial investigation opened 3/05/2016 <i>in absentia</i> . Protected by diplomatic immunity as UN staff.
Thida Khus, Executive Director SILAKA	Suspect	Questioned by Anti-Corruption Unit (ACU) 28/04/2016. No charge.
Try Chhuon, ADHOC Lawyer	Suspect	Questioned by ACU 27/04/2016. No charge.
Pa Nguon Teang, CCIM Executive Director and Director of Voice of Democracy radio	Witness	Questioned by Investigating Judge 18/08/2016
Thun Saray, ADHOC President	Witness	Summoned for questioning Investigating Judge on 24/10/2016 but did not appear
Eang Kimly, ADHOC Provincial Coordinator for Prey Veng	Witness	Questioned by Investigating Judge 26/07/2016

3.1 CASES AGAINST HRDS ARISING FROM AND RELATED TO ADHOC FIVE INVESTIGATION (CONTINUED)


NAME	CHARGE / ALLEGATION	STATUS
Chan Sokunthea, Head of Women's and Children's Rights Section, ADHOC	Witness	Questioned by Investigating Judge 23/08/2016
Pen Sinav, Acting Deputy of the Human Rights Section, ADHOC	Witness	Questioned by Investigating Judge 7/02//2017



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COURTS OF INJUSTICE

SUPPRESSING ACTIVISM THROUGH THE CRIMINAL JUSTICE SYSTEM IN CAMBODIA

Human rights defenders and political opposition activists are under attack in Cambodia. In the four years since the national election in July 2013, the country's government and the ruling Cambodian People's Party have used the criminal justice system to target activists and restrict the space they operate within. Using a wide range of legal and judicial tools, the authorities have brought about a situation whereby a large proportion of the country's political opposition and human rights community live under the threat of immediate imprisonment. Courts of Injustice – Suppressing Activism through the Criminal Justice System in Cambodia sets out how criminal cases are being opened against activists for peaceful activities and how these cases are used as a means to intimidate activists from refraining from wholeheartedly fulfilling their important roles. In the context of the coming commune and national elections, the situation is likely only to get worse. The report calls on the Cambodian government and ruling party to bring about an end to the politicization of the criminal justice system and to immediately end its use as a tool of suppression of activism.

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MAY 2017

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