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

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Submitted by Cambodian Center for Human Rights (CCHR)
In cooperation with the Centre for Civil and Political Rights (CCPR Centre)

Executive Summary:
As a result of the second review of Cambodia by the UN Human Rights Committee (the Committee) on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in March 2015, a number of recommendations were issued to the State party. One of the recommendations selected by the Committee for its follow-up procedure deals with the freedom of expression and association (para. 21, CCPR/C/KHM/CO/2), which Cambodia is obliged to implement and report back to the Committee within a year (by March 2016). However, the State follow-up report has not been submitted yet after the requested deadline, but the authorities in Cambodia have actually taken actions contrary to the Committee’s recommendation and the situation on freedom of expression, association and peaceful assembly has further deteriorated. In this context, this submission aims to highlight these negative developments in relation to the follow-up procedure of the Committee, while the actions of the authorities including the enactment of the Law on Association and Non-Governmental Organisations (LANGO) can be seen as a part of the Royal Government of Cambodia’s (RGC) increasingly harsh crackdown on critical voices. In making this submission, the undersigned NGOs request the Committee to urgently urge the State Party to submit its follow-up report and to take sincere efforts to implement the Committee’s recommendation.

In the past few months, in a rather politically motivated act, a number of individuals have been summoned by the authorities, and subsequently arrested, charged and placed in pre-trial detention in relation to the Anti-Corruption Unit’s (ACU) investigation into an alleged affair between acting opposition leader, Mr Kem Sokha, and Ms. Khom Chandaraty (also known by the alias Srey Mom). The investigation has led to the arrest and charging of four senior staff members from one of the leading national human rights NGOs, the Cambodian Human Rights and Development Association (ADHOC) – Mr Ny Sokha, Mr Yi Soksan, Mr Nay Vanda, and Ms. Lim Mony on 02 May 2016 for the crime of bribing a witness. Deputy secretary-general of the National Election Committee (NEC) (and former ADHOC staff member), Mr Ny Chakrya as well as an officer of the UN Office of the High Commissioner for Human Rights (OHCHR), Mr Soen Sally were charged as accomplices to the same crime. All except Soen Sally had been officially detained since 28 April at 8pm – and unofficially held and questioned for 1-2 days, respectively, prior to the official detention – and subjected to gruelling interrogation. Prime Minister Hun Sen recently dismissed the idea that Soen Sally enjoyed diplomatic immunity as a representative of the UN and many feel he will also soon be arrested. Further, on 3 May 2016, Acting President of the opposition Cambodian National Rescue Party (CNRP) Mr Kem Sokha was summoned for questioning on charges of criminal defamation, along with two other CNRP parliamentarians, Mr Pin Ratana and Mr Tok Vanchan, for questioning in

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1 The detailed timeline of the events is outlined in the Annex.
2 Cambodian names are commonly expressed with family name first followed by their given name. In this submission the convention is observed when writing Cambodian names.
3 Criminal Code of Cambodia (2009) article 548
relation to charges of prostitution. Also in relation to this case, the ruling Cambodia People’s Party (CPP) has filed a criminal defamation complaint against prominent political analyst Mr Ou Virak for commenting on the case and expressing his opinion that the case was politically motivated.

Negative Developments in relation to the Committee’s recommendation:

The Royal Government of Cambodia (RGC) has not only failed to implement the recommendations issued by the Committee, but have taken actions that further restrict fundamental freedoms of expression, association and peaceful assembly.

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

Not only has RGC not taken any action to independently investigate existing claim of intimidation and attacks against civil society actors and opposition lawmakers, RGC has increased its intimidation tactic with the latest arrest and detention of the current and former ADHOC staffs in relation to the Kem Sokha case. The RGC have argued that they are pursuing a legitimate case against ADHOC staffs allegedly bribing the material witness to lie during a judicial investigation. However, the disproportionate involvement of not only the ACU but also the Anti-Terrorism Unit in the investigation of a case that involves a politician’s alleged extramarital affairs would strongly point to an ulterior political motive. Arrests and detention have been carried out not only in violation of the provisions of ICCPR but also of several key provisions in the domestic law.4

Three staff members of ADHOC were initially summoned to the ACU on Wednesday, 27 April 2016 and interrogated for prolong period of time. The three were eventually released to go home at around 11pm on the same day. The following day, the three staff members questioned the previous day were summoned back at 8 am to resume interrogation, as well as two additional summons were issued. The five activists were then placed in continued detention until the morning of Monday, 2 May 2016, when they were charged in the afternoon. For those who were summoned on 27 April, this was a detention of more than 120 hours, which is a clear contravention of the Code of Criminal Procedure, where judicial police are only permitted to detain any interested person in custody for a maximum of 48 hours.5 The ACU contended that the five were not ‘officially’ detained until 8 pm on 28 April; however, the RGC breached their obligation under both domestic law and the ICCPR by not informing the five detainees of this fact at the time, as well as not informing them of the reason for their arrest or the exact charge against them until several days later.6

If there is any “evidence showing the detained person is guilty”, the judicial police (in this case the ACU) must seek specific permission from the Royal Prosecutor to authorise an extension of the detention up to 24 hours.7 In this regard, the ACU argued that the Royal Prosecutor granted the extension in the afternoon of 30 April, which was within the first 48 hours time frame. However, the Code of Criminal Procedure specifically states that the duration of police custody “shall commence from the time when the detained person arrives at the police or military police office”.8 Thus, Ny Sokha, one of the five, was in effective detention since 27 April, 9.00am, as he was “interrogated” in the premise of ACU for about 14 hours that day, Yi Soksan was interrogated the first day for about 9 hours as he was summoned at 2.00pm, and Nay Vanda was questioned for 8 hours as he was summoned at 3.00pm. All were summoned to return the next day at 8.00am. However, even adopting a stricter interpretation of article 96 of the Criminal Code of Procedure, Ny Sokha was in detention for almost 60 hours before the extension was granted and the others only for a few hours less. Finally,

5 Criminal Code of Procedure, article 96.
6 E.g. Criminal Code of Procedure, article 97 “when a person is placed in police custody, the judicial officer shall immediately notify their decision and the reasons to the detainee”
7 Ibid.
8 Ibid
the Royal Prosecutor did not give any explanation as to the legal basis for granting such “exceptional measure”.*

While in police detention, a detainee may request to speak to a lawyer or any other person not involved in the offence ‘after a period of twenty-four hours’.10 This provision has been criticised by the civil society, as submitted in their NGO reports for the 2nd review of Cambodia by the Committee, that it is usually interpreted by the RGC as that detainees are only allowed to have access to a lawyer after 24 hours in police custody.11 As a matter of fact, the Committee also raised concern and made recommendation in this regard in its Concluding Observations on Cambodia,12 although not selected for its follow-up procedure. In the case of the five former and current ADHOC staff, the detainees were not offered any chance to speak with anyone from outside until 8 pm on 29 April, almost 36 hours after some of their initial detention. The ACU stated that all five detainees “chose” to see their families instead of their lawyers; however it is alleged by at least one detainee that he had demanded to see his lawyer but was told that the lawyer was not available to meet him. The five did not have any access to their lawyers until the afternoon of 30 April.

When the five were finally charged on 2 May with the very serious offence of “Bribing a Witness” under article 548 of the Criminal Code of Cambodia, an offence that carries a maximum sentence of ten years in prison; the exact nature and cause of that charge remain unclear, as the only “evidence” relied on by the Prosecutor was the sole statement made by Ms Chandaraty in her open letter she published on 22 April when she accused ADHOC, the deputy secretary general of the NEC, a prominent women’s rights defenders and the UN staffer of having convinced her to lie. Given that Ms Chandaraty has already admitted to lying to investigator during questioning and her revised statement incriminating the five were only made after the investigator threatened her with further criminal proceedings against her, the complete reliance on that statement by the authority is highly questionable. The Prosecutor seems to place no weight at all to ADHOC’s own evidence, including a 17-minute video released by ADHOC where Ms Chandaraty repeatedly denies the affair when she was first interviewed by ADHOC on top of other corroborating statements by the five arrested activists.13 How the five have been treated and charged indicates the political motivation by the RGC to intimidate, harass, persecute and silence civil society actors who they perceive to be in alliance with the opposition party.

The Code of Criminal Procedure, states that a charged person “shall remain at liberty” unless there are exceptional reasons to place them in “provisional detention”.14 The legal team representing the five is currently preparing the request for bail. However, given the RGC’s track record of granting human rights activists bail, this seems unlikely to be granted. As a tactic to ensure activists are unable to continue their work, lengthy pre-trial detention is often utilised by the RGC. For example, three young activists from civil society organization Mother Nature were arrested and detained in August 2015 after refusing to appear for questioning in relation to their alleged involvement in peaceful, non-violent protests against sand dredging in Koh Kong province. They have spent nine months already in pre-trial detention, and a date for their trial has yet to be set. Other cases have human rights activists being detained in pre-trial detention between six and twelve months. Thus, there is a legitimate concern that the detained activists in this case will suffer a similar fate. It is worth noting that the

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9 Ibid.
10 Criminal Code of Procedure, article 98.
11 Ibid.
12 CCPR/C/KHM/CO/2, para. 17
13 For a more complete analysis, see Eric Arbizo, ‘Is the evidence there in the Adhoc Case?’ Phnom Penh Post, 12 May 2016, https://t.co/QYJwGf6FKU. Both article 38 of the Cambodian Constitution as well as articles 351 and 357 of the Code of Criminal Procedure set the standard of proof in criminal cases in Cambodia ‘beyond reasonable doubt’.
14 Code of Criminal Procedure article 203.
Code of Criminal Procedure allows for the investigating judge to place someone in provisional detention for up to 18 months,\(^\text{15}\) which contravenes article 9 of the ICCPR.

Finally, the manner in which the accused persons have been treated by the government agencies clearly indicates that they are already presumed to be guilty before trial, violating their right to be presumed innocent until proved guilty protected under Article 14 (2) of ICCPR. In a speech given by the Prime Minister, Hun Sen in the morning of 10 May 2016, he “offered” to negotiate with the King for a reduced sentence on behalf of the arrested activists after their conviction. This is a clear indication that the Prime Minister himself has “sealed the fate” of the five activists by expressing a belief that they will be convicted and the only “grace” they will receive is in the form of a reduced sentence through the ‘Royal Pardon’ mechanism.

The political crackdown reached a new low on Monday 8 May 2016 as civil society groups organised peaceful gathering in front of the prison where four of the five activists were held while wearing black clothes to symbolise the ‘dark period’ Cambodia is in right now, calling the continuing campaign ‘Black Monday’. The demonstrators were met by armed police about 2 km outside the prison ground and resulted in eight human rights activists detained for the unauthorised wearing of black clothing.\(^\text{16}\) In a most questionable manner, four of the activists were even arrested in places nowhere near the demonstration site, one activist was arrested near the Borei Keila urban housing area while the other two were arrested near the Boeung Kak Lake development area. Both areas are subject to intense and prolong land dispute between residents, commercial developers and corrupt officials. These arrests took place in areas more than 10 km away from the demonstration site and the activists were simply spotted by local police to be wearing black clothing. Although the eight detained persons were all subsequently released in the evening of the same day, this is a gross breach of their fundamental human rights and freedoms by the RGC.

On 12 May, Prime Minister Hun Sen took an opportunity in one of his official appearances to make another offer of a ‘Royal Pardon’ to the arrested activists in exchange of civil society groups to stop their demonstration activity.\(^\text{17}\) Putting aside the ethical question over such an offer, and the despicable attempt to threaten civil society actors into submission, this ‘offer’ also offend the most fundamental of these accused activists’ fair trial right to be presumed to be innocent until found guilty by a competent court of law found in both the ICCPR and Cambodia’s Constitution. In order for a Royal Pardon to take effect, the recipients of such pardon must have already been convicted of a crime. In this case, the Prime Minister of Cambodia have already assumed the accused activists’ guilt and is offering a possible ‘Royal Pardon’, which is normally exercised at the sole discretion of the King, in an attempt to silence further protests.

More arrests took place on the following Monday 16 May 2016, police apprehended five land rights activists in Phnom Penh and they were only released after thumb-printing an agreement not to gather in public or dress in black on Mondays. There is no possible legal ground under both international and domestic law that would give a government the legitimacy to control what colour clothes its citizens can and cannot wear on any particular day.

“Refrain from prosecuting journalists, human rights defenders and other civil society actors as a means of deferring or discouraging them from freely expressing their opinions”, “Consider decriminalising defamation and bring any other relevant provisions of the Criminal Code into line with article 19 of the Covenant” (para. 21 (b) and (e), CCPR/C/KHM/CO/2)

The charging of political analyst Mr Ou Virak for expressing his opinion on this case clearly shows that the RGC has failed to address the concerns and implement the recommendations of the Committee. Similarly, regarding the case of Mr Kem Sokha who was summoned by the Phnom Penh

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\(^{15}\) Code of Criminal Procedure article 208, two extensions of six months on top of the original permissible six months detention is allowed.
Municipal Court to answer questions relating to a criminal defamation complaint filed by a blogger on Facebook, the triviality of the alleged act also indicates that the RGC continues to utilise any possible provisions of the Criminal Code to continue to prosecute activists as well as members of the political opposition.

On Wednesday, 11 May, Mr Kem Sokha ignored his summons by the Phnom Penh Municipal Court to appear in court to answer questions relating to the defamation complaint against him, while at 9 am on Thursday, 12 May, Mr Ou Virak appeared at the Phnom Penh Municipal Court to answer questions relating to his defamation charge filed by the ruling Cambodia People’s Party (CPP). During the question, Mr Ou Virak made a submission to the investigating judge to dismiss the complaint due to lack of credible evidence being presented in court. The Prosecutor failed to show that the audio recording being relied on in their case against Mr Ou Virak was obtained legally. However, the Investigating Judge ruled the court would continue to proceed with the case against Mr Ou Virak. The LANGO and the political neutrality provision has long been criticised by civil society and grassroots or shut down NGO groups and the UN as something that are found to jeopardize national security, national unity, cultures, tradition, and custom of the Cambodian national society. Instead this has allowed government to deny registration by the government to deny registration by the LANGO may be utilised by the RGC to punish and shut down any civil society groups that co-continue to be outspoken and not “maintain their political neutrality” as required by the LANGO.

Following the arrest of the five activists, persistent rumours and suggestions made by various RGC agencies have surfaced that the recently passed Law on Associations and Non-Government Organisations (LANGO) may be utilised by the RGC to punish and shut down any civil society groups that continue to be outspoken and not “maintain their political neutrality” as required by the LANGO. The LANGO and the political neutrality provision has long been criticised by civil society and the UN as something that could be arbitrarily used by the government to deny registration or shut down NGOs that are found to jeopardize national security, national unity, cultures, tradition, and custom of the Cambodian national society. This definition is vague and is open for the RGC to interpret it in a way that will suit their need. The LANGO gives the RGC the air of “legal legitimacy” to harass and shut down NGOs operating in opposition to their autocratic rules.

The “politically neutral” provision in the LANGO severely limits the formation and activity of civil society and grassroots organisations, as well as Cambodian citizens’ right to freedom of expression and association, while it does nothing to combat money laundering, terrorism and other crimes as the stated objective of LANGO. Instead, this has allowed government-aligned NGOs and government agencies, including the Cambodian Human Rights Committee, an institution that has been conceded by Prime Minister Hun Sen to conform to the Paris Principles, therefore cannot be held to be a

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18 Phnom Penh Post, Ou Virak Requests Court to Drop Case, 13 May 2016, http://bit.ly/1TelLaG.
19 Phnom Penh Post, PMs Speech Offers Hope to Detained, 11 May 2016, http://bit.ly/1Yufb1b
20 Law on Associations and Non-Government Organisations (2014).
National Human Rights Institution, to attack and threaten Cambodian NGOs with closure and further arrests.\textsuperscript{22}

**Actions required by the Royal Cambodian Government**

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

- Take urgent measures to ensure the judiciary and law-enforcement officials, including the police, prosecutors and judges follow the domestic procedural law that has been adopted to safeguard the rights of any accused person;
- Allow its own judiciary to independently investigate the evidence that has been put by the police;
- Ensure that any evidence against the accused is made known to the accused and their lawyer.
- Ensure that the law on defamation, insult, disinformation and incitement is publicly clarified so it can be properly debated and strong qualifying exceptions are identified in these offences to ensure that they comply with article 19 of the ICCPR;
- Consider de-criminalising the crime of defamation all together and further following the lead of other jurisdiction in barring government agencies and companies from being able to mount a civil defamation lawsuit, alternatively, ensure strong qualifying exceptions are introduced to existing defamation laws to protect journalists and speeches that are made in the public interest.
- Given the fact that the RGC proceeded to enact the LANGO without any further reviews and consultations with civil society organisations, contrary to the recommendation of the Committee, urgently review LANGO with comprehensive inputs from civil society actors and incorporate these comments into the revision of the law, while guaranteeing that any law on associations must guarantee fundamental freedom and should be administrative in purpose and not serve to allow the RGC additional mechanisms to shut down organisations that dare criticise the government.

Annex: Background and Timeline of Events

Background

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

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

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

Cambodia’s ACU was established in 2010 in accordance with the Law on Anti-Corruption. Led by chairman Mr. Om Yentieng, a former senior advisor to Prime Minister Hun Sen, the ACU is tasked with tackling Cambodia’s widespread corruption through means of education, prevention and law enforcement. While widespread institutional corruption remains a major issue in Cambodia – Transparency International scored Cambodia with a low 21 out of 100 in its 2015 Corruption Perceptions Index - it seems remarkable that the ACU is investigating a US$ 204 ‘bribe’ to a witness in an investigation of a crime that would attract a maximum penalty of 10,000 Riel and one to six days imprisonment. 23

23 Law on Suppression of Human Trafficking and Sexual Exploitation (2008) article 24, ‘Soliciting’. The relevant RGC authorities involved in this case never disclosed publically the exact criminal charge(s) they were investigating. Further, the threat made by the authorities to charge Ms Chandaraty with ‘Prostitution’ crime does not exist under the Cambodia Criminal Code. This is the closest crime under existing laws.
Other elements further support the notion that standard procedures in this case are not being followed. Journalists have effectively been barred from entering the courthouse to report on the proceedings as of 2 May 2016, when the Phnom Penh Municipal Court enacted a new policy denying photographers and videographers entry to the court, and requiring reporters to apply for permission from the court administrative department to enter. That this decision has been made in specific relation to this case is clear – even before the policy had come into effect, reporters had been barred from proceedings related to the case, but permitted to attend other hearings.

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

**Timeline of events**

On 29 February 2016, audio recordings of a phone conversation allegedly between Kem Sokha and Ms. Chandaraty were posted on Ms. Chandaraty’s Facebook profile page, which at the time she claimed had been hacked. In the leaked recording, a female voice states that Thy Sovantha had had an earlier affair with Kem Sokha, and he had bought her a car. On 2 March 2016, Thy Sovantha filed a complaint against Ms. Chandaraty, accusing her of defamation. In relation to the leaked phone recordings, on 07 March Ms. Chandaraty was called before the Ministry of Interior’s Anti-Terrorism Unit for questioning, however she failed to appear.

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

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

On 5 April, Ms. Chandaraty requested material assistance from ADHOC – as per ADHOC’s policy, Ms. Chandaraty was made to put the request in writing, which she did on 7 April. On 8 April, ADHOC provided Ms. Chandaraty with US$ 204 to cover costs while she was embroiled in the legal action against her, including travel to the court and ADHOC’s office. The financial support given was standard practice. At this time, ADHOC had not yet assigned her a lawyer; due to appear before the Phnom Penh Municipal Court that day, Ms. Chandaraty requested for the hearing to be postponed. On 18 April, Ms. Chandaraty came to ADHOC’s Phnom Penh office to meet with her assigned lawyer, Ms. Try Chhoun.
On 19 April, Ms. Chandaraty declared to the Phnom Penh Municipal Court that she had a relationship with Kem Sokha. Her lawyer, Try Chhoun, was present in court at this time, but was not aware of the reason as to why Ms. Chandaraty had changed her story. The court then released a statement reclassifying Ms. Chandaraty as a “key individual providing information”.

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

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

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

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

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

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

On the same day, 25 April, CPP spokesperson Sok Eysan filed a criminal complaint to the Phnom Penh Municipal Court against political analyst and former CCHR President Mr. Ou Virak, accusing him of defamation under Article 305 of the Criminal Code, and demanding damages of 400 million riel, or US$ 100,000. The previous day, on 24 April, Mr. Virak had commented on the case on Radio Free Asia, questioning the legality of the recorded tapes and suggesting the investigations may have political motivations.
On 26 April, ADHOC organized a press conference, during which the organization clarified its mandate, i.e. to assist human rights victims, and reiterated they had acted in accordance with this mandate throughout after Ms. Chandaraty had come to ADHOC to request support. ADHOC affirmed that it is ADHOC’s policy to provide material or social assistance to victims that require funds in order to attend their court hearings. In addition, ADHOC’s President Thun Saray stated that ADHOC would help her again if the issue fell back within its mandate, as ADHOC does not turn away any human rights victims in need. In the press conference ADHOC also made clear that they did not know why Ms. Chandaraty changed her story, nor why she had filed a complaint against ADHOC staff and other colleagues in the field.

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

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

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

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

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

On 2 May, the Prosecutor formally accused all four ADHOC staff members of bribery of a witness, under Article 548 of the Cambodian Criminal Code. The Prosecutor also formally accused Ny Chakrya and Sally Soen as being accomplices. Following questioning, the Investigating Judge confirmed the charges against all six individuals. Nay Vanda, Yi Soksan, Lim Mony, Ny Chakrya and Ny Sokha were transferred to three different Prey Sar Prison. Sally Soen remains at large, however in contradiction to Prime Minister Hun Sen’s declaration made on 1 May, the Ministry of Foreign Affairs and International Cooperation have since requested that legal action against him be stopped and immunity to be applied.