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Cambodian Center for Human Rights

OMCT
SOS-Torture Network

**Additional Submission to the Human Rights Committee
in advance of its second review of Cambodia**

19 February 2015

Focusing on Issues 1, 2, 3, 4, 5, 8, 9, 15, 17, 18, 19, 20, 21, 23 and 26

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I. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (Art. 2 ICCPR)

1. No application of the ICCPR in domestic courts

Issue 1. Please provide examples, if any, in which provisions of the Covenant were directly applied or used as an aid to interpret domestic law by the courts. Please provide further information on the human rights training given, inter alia, to judges and law enforcement officials with respect to the provisions of the Covenant (para. 28 of the State party's report).

According to article 31 of the Constitution of the Kingdom of Cambodia (“the Constitution”), as well as the July 2007 decision of the Constitutional Council (Decision No. 092/003/2007), international treaties are part of the national law and courts should take treaty norms into account when interpreting laws and deciding cases. However, CCHR has observed that while the Code of Criminal Procedure of the Kingdom of Cambodia 2007 and the Constitution appear to incorporate the intentions of the Covenant, on a practical level the judicial system does not take into consideration the provisions of any international conventions, and in many cases has not adhered to the provisions of the Covenant. While carrying out daily trial monitoring¹ to record the activities of the Court of Appeal and the extent to which it respects the right to a fair trial, CCHR has observed that domestic courts have rarely invoked the Covenant as an aid to interpret domestic provisions and never applied it directly. In the 340 cases monitored between 1 March 2013 and 31 December 2014 in only one case the judge referred to the ICCPR.

The Second State Report states that the Office of the United Nations High Commissioner for Human Rights in Cambodia (“OHCHR”) has cooperated with the Cambodian Human Rights Committee (“CHRC”) to conduct several consecutive training workshops on civil and political rights with officials from 15 different institutions of the Royal Government of Cambodia (“RGC”), between 18 December 2009 and 16 September 2011. According to the annual reports of the UN Secretary-General on the ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’ submitted to the Human Rights Council, during that time, OHCHR provided only one training course on the ICCPR for CHRC staff and focal points from relevant Ministries to support the drafting by the CHRC of Cambodia’s report under the ICCPR.² The extent to which courts officials, law enforcement personnel and relevant Ministries, such as the Ministry of Interior and the Ministry of Justice, have received specific human rights training is not clear.

The HRC may consider recommending that the RGC:

- *Further engage with OHCHR and CSOs to ensure that judges and law enforcement officials receive specific training of the provisions of the Covenant and its implementation;*

¹ CCHR’s Trial Monitoring Project was set up to monitor criminal trials in Cambodian courts and to assess their adherence to fair trial standards. From its launch in August 2009 to the end of 2012, the Project was focused on the Phnom Penh Capital Court of First Instance, and the Kandal, Banteay Meanchey and Rattanakiri Provincial Courts. Since March 2013, with a view to assess how fair trial rights standards are implemented on a higher level, the Project has started to monitor only the Phnom Penh Court of Appeal. To this scope, the Project has developed a standardized checklist. http://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=TMP&pro_id=8&show=show

² Report of the Secretary-General, Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights, A/HRC/15/47, 16 September 2010.

- *Ratify the First Optional Protocol of the ICCPR, which would allow individuals or groups to file individual complaints to the Human Rights Committee.*

2. Still no independent National Human Rights Institution

Issue 2. Have any measures been adopted to establish an independent national human rights body, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134 of 20 December 1993 (“Paris Principles”).

Despite concerns raised by this Committee in its Concluding Observations on Cambodia’s initial report of July 1999;³ statements of support from Prime Minister Hun Sen in 2006;⁴ Cambodia’s subsequent acceptance of recommendations that it establish a National Human Rights Institution (“NHRI”) in line with the Paris Principles during the first⁵ and second⁶ cycles of the Universal Periodic Review; and a series of consultations with civil society,⁷ the government has not presented a draft law to establish an NHRI that would comply with the Paris Principles.

A number of institutions exist in Cambodia with a mandate to address complaints of human rights violations,⁸ but none has been accredited by the International Coordinating Committee for National Human Rights Institutions. CCHR notes the statement by Professor. Surya P. Subedi, Special Rapporteur on the Situation of Human Rights in Cambodia on concluding his final country visit that the RGC intends to renew its efforts to finalize the law to introduce an independent NHRI, but is unaware of any such measures currently underway.

The HRC may consider recommending that the RGC:

Take immediate steps to establish a National Human Rights Institution in line with the Paris Principles.

³ UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.108, 27 July 1999: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.108&Lang=En.

⁴ ‘Hun Sen declares support for an Independent Human Rights Institution’ *Friedrich-Naumann-Stiftung für die Freiheit*: <http://www.freiheit.org/News/1322c14853i1p/index.html>; See also: ‘A National Human Rights Institution for Cambodia,’ *Working Group for an Asean Human Rights Mechanism*: <http://www.aseanhrmech.org/news/national-human-rights-insitution-for-cambodia.html>.

⁵ ‘Response to Recommendations: Cambodia,’ *UPR Info*: http://www.upr-info.org/sites/default/files/document/cambodia/session_6_-_november_2009/recommendationstocambodia2009.pdf.

⁶ UN Human Rights Council, Addendum to the Report of the Working Group on the Universal Periodic Review, Cambodia: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/26/16/Add.1, 25 June 2014: http://lib.ohchr.org/HRBodies/UPR/Documents/Session18/KH/A_HRC_26_16_Add.1_Cambodia_E.doc

⁷ UN Human Rights Council, Comments received from the Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/27/70/Add.1, 17 September 2014: http://cambodia.ohchr.org/WebDOCs/DocReports/3-SG-RA-Reports/Comments_from_the_Govt_of_Cambodia_to_the_SR_Report-17Sept2014.pdf.

⁸ CCHR, ‘Institutions Series: National Human Rights Bodies in Cambodia’ (2012), http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_03_30_CCHR_Institutions_Series_Factsheet_National_Human_Rights_Bodies_ENG.pdf.

II. NON-DISCRIMINATION AND EQUALITY (arts. 2, para 1; 3; 26 and 27 ICCPR)

1. Decreasing number of women represented in the National Assembly

Issue 3. With regard to the information provided in paragraphs 56 to 60 of the State party's report, please describe the specific measures adopted to promote the effective implementation of legislation and policies aimed at establishing gender equality and ensuring the participation of women in various areas of public life. Please provide detailed information on the differences in the employment rate of men and women, and the gender wage gap. How does the State party plan to overcome the obstacles to women's full participation and advancement in the workplace? Please specify what measures are in place to promote an equal representation of women in decision-making positions, both in public affairs and the private sector. Please also indicate all the measures taken to eliminate gender stereotyping and to strengthen the mainstreaming of gender perspectives in educational curricula and textbooks?

Although the RGC has acceded to the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women, and the Constitution and other domestic law expressly protect citizens against gender-based discrimination, it remains pervasive.⁹ Whilst the RGC has developed national policies aimed at increasing the participation of women in public decision-making bodies, "women in Cambodia remain under-represented in decision-making positions in politics, the public sector, and the judiciary."¹⁰ Despite small increases in female representation in some local level public bodies, such as capital and provincial councils,¹¹ following the most recent National Assembly elections of 28 July 2013, the percentage of women in the National Assembly decreased for the first time in twenty years from 22% to 20,33%. Thus target 3.8 of the Cambodian Millennium Development Goals, to increase the proportion of seats held by women in the National Assembly from 12% in 2003 to 30% by 2015, has not been achieved.¹²

In the June 2012 commune/sangkat council elections, women were elected to 17.79% of council positions (or 2,038 seats),¹³ an increase from 14.64% in the 2007 elections (1,662 seats) and 8.47% in 2002 (954 seats).¹⁴ Despite this increase, the current level of female representation at the commune/sangkat council level is a distance from Cambodian Millennium Development Goals target 3.15 and the Neary Rattanak III target for 2015, which was to increase the proportion of seats at this level to 25%. There have typically been higher percentages of female candidates on alternate candidate lists than on titular candidate lists, with women concentrated at the bottom of the lists, indicating that political parties see women as second choice to men

⁹ Ministry of Women's Affairs Policy Brief, 'Gender Relations and Attitudes: Cambodia Gender Assessment,' December 2014: <https://drive.google.com/a/cchrcambodia.org/file/d/0B4Fifh9WosCGTUFLMnQ0Yms5STg/view>.

¹⁰ Ministry of Women's Affairs, 'Neary Rattanak IV,' December 2014, page 12: http://www.kh.undp.org/content/dam/cambodia/docs/DemoGov/NearyRattanak4/Cambodian%20Gender%20Strategic%20Plan%20-%20Neary%20Rattanak%204_Eng.pdf.

¹¹ Ibid, page 12.

¹² CCHR, 'Politics in the Kingdom: Increasing Female Representation - 2013 National Assembly Elections Supplement - October 2013,' (2013): http://cchrcambodia.org/admin/media/report/report/english/CCHR_BOOKLET_National%20Election%20Assembly%202013_FIN_AL%20ENG.pdf.

¹³ Full data is available at CCHR's human rights web portal, Sithi.org, at: http://sithi.org/temp.php?url=commune/commune_election.php&tab_id=2&lg=.

¹⁴ CCHR, 'Politics in the Kingdom: Increasing Female Representation,' (2013), page 22: http://www.cchrcambodia.org/admin/media/report/report/english/2013_03_28_CCHR_Report_eng.pdf.

when it comes to political leadership. At the national level, women are typically relegated to positions that carry little budgetary and decision-making power.¹⁵

The HRC may consider recommending that the RGC:

- *Adopt a mandatory gender quota of a minimum of 30% to the candidate lists for direct elections, supplemented by a “zipper list” requiring parties to alternate names of female and male candidates on the lists;*
- *Adopt a mandatory reservation of at least one third of Senate seats for women, with the councilors voting on two separate lists, one for men and the other for women candidates;*
- *Introduce comprehensive, stand-alone legislation to address gender-based discrimination, which includes definitions of both direct and indirect gender-based discrimination in accordance with Article 1 of CEDAW, sanctions for perpetrators of discrimination and mechanisms for redress for victims.*

2. Pejorative language against Vietnamese

Issue 4. Please comment on reports that anti-Vietnamese sentiments exist throughout Cambodia and that there have been instances in which these sentiments have been exploited to gain political support. Is the State party planning to develop a national action plan against racial discrimination?

On 12 December 2013, CCHR issued an open letter¹⁶ addressing reports of derogatory and discriminatory language used by Mr. Sam Rainsy, leader of the opposition Cambodia National Rescue Party (“CNRP”), in a speech he delivered in Siem Reap on 10 December 2013. During the rally, Mr. Rainsy discussed Vietnamese immigration to Cambodia, referring to the Vietnamese as “yuon,” a controversial term often considered pejorative, particularly when used to engage in rhetoric against Vietnamese people or Cambodian citizens of Vietnamese origin. Following the publication of this letter, CCHR, and in particular its then President Mr. Ou Virak, received hate messages and threats, including death threats, via email and social media, claiming that the term “yuon” was not pejorative.¹⁷ Members of the CNRP have reportedly continued to defend the use of the term “yuon,” arguing that it is not pejorative,¹⁸ amid growing anti-Vietnamese sentiment in the country.¹⁹

¹⁵ By looking at the separate positions within government, over the last decade the number of female Senior Ministers has decreased from 6.66% in 2003 to 0% in 2013. This is particularly disappointing as this is one of the more senior ranks in government. In 2013, the number of women appointed to positions as Deputy Prime Minister remained the same as in 2008, at 11.11%. It is also apparent that the number of women who are appointed to a ministerial position has remained virtually unchanged since 1998 (from 7.4% to 7.89%). Progress has been made however, in regards to the appointment of women to positions of Secretary of State and Under-Secretary of State, with women appointed to 20.22% of positions in 2013 compared to 8.08% in 2008. Full data available at http://cchrcambodia.org/admin/media/report/report/english/CCHR_BOOKLET_National%20Election%20Assembly%202013_FINAL%20ENG.pdf.

¹⁶ CCHR, ‘Open Letter from CCHR Expressing Grave Concern over Discriminatory Language Reportedly Used by the CNRP,’ (2013): http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=455&id=5.

¹⁷ The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), ‘Cambodia: Virulent campaign and threats against Mr. Ou Virak and CCHR staff,’ 8 January 2014: <http://www.omct.org/human-rights-defenders/urgent-interventions/cambodia/2014/01/d22517/>.

¹⁸ Denise Hruby, ‘Opposition Says CNRP Not Racist, ‘Yuan’ Not Derogatory,’ *Cambodia Daily* (12 April 2014): <https://www.cambodiadaily.com/archives/opposition-says-cnpr%E2%80%88not-racist-yuan-not-derogatory-56484/>.

¹⁹ BBC, ‘Vietnamese ‘targeted’ in Cambodia,’ (3 October 2014): <http://www.bbc.com/news/world-asia-29471222>.

3. Lack of LGBT anti-discrimination legislation on hate crime and employment

Issue 5. Please describe the legislative and/or administrative measures, as well as any recent court decisions, on protection against discrimination on the grounds of sexual orientation or gender identity, including discrimination in employment and accessing healthcare. Please also comment on reports of hate crimes, including sexual violence, and harassment against lesbian, gay, bisexual and transgender (LGBT) persons. Has the State party considered the possibility of recognizing same-sex unions?

Whilst the RGC has not taken specific legislative or administrative measures to protect against discrimination on the grounds of sexual orientation or gender identity, the Ministry of Women Affairs has included the rights of LGBT people in its five-year Strategic Plan for Gender Equality and the Empowerment of Women in Cambodia 2014-2018 (also known by its Khmer title: *Neary Ratanak IV*, meaning ‘precious gem’).²⁰ Furthermore, in 2014 the Ministry of Women Affairs released a policy brief entitled ‘Rights: Vulnerable Groups of Women and Girls,’²¹ focusing specifically on discrimination issues faced by lesbian and bisexual women and transgender people. This is a major landmark in official policy on tackling discrimination of LGBT people. Specifically, the plan includes activities to raise awareness of LGBT people’s equal right to education, and prepare strategies in consultation with LGBT people on ending discrimination against LGBT people in schools, the work place, communities and families.

Despite the above-mentioned positive steps, there is no anti-hate crime or legislation prohibiting discrimination on the grounds of sexual orientation or gender identity in Cambodia.²² Article 31 of the Constitution states that, “Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.” This provides protection against discrimination on the grounds of sexual orientation or gender identity only through the “other status” provision.

Similarly, no legislative or administrative measures have been taken that protect against discrimination in employment.²³ The 1997 Cambodian Labor Law does not explicitly include LGBT as grounds on which discrimination is prohibited, despite anecdotal evidence that many LGBT people find it difficult to find and maintain employment.²⁴

4. Same-sex marriage

Issue 5 [continued]

There is currently no legal recognition of same-sex unions; however, such unions are also not explicitly banned. While Article 6 of the 1989 Law on Marriage and the Family explicitly prohibited same-sex marriage, it was made ineffective by the 2008 Civil Code and the 2011 Law on the Implementation of the Civil Code, which does not prohibit same-sex marriage. However, there has been no indication by the RGC that it will enact legislation to explicitly recognize same-sex unions in the near future.

²⁰ Ministry of Women’s Affairs, ‘Neary Ratanak IV,’ December 2014: http://www.kh.undp.org/content/dam/cambodia/docs/DemoGov/NearyRattanak4/Cambodian%20Gender%20Strategic%20Plan%20-%20Neary%20Rattanak%204_Eng.pdf.

²¹ Ministry of Women’s Affairs, ‘Rights: Vulnerable Groups of Women and Girls,’ (2014): http://www.kh.undp.org/content/dam/cambodia/docs/DemoGov/NearyRattanak4/Neary%20Rattanak%204%20-%20Vulnerable%20Groups%20of%20Women%20and%20Girls_Eng.pdf.

²² CCHR, ‘Rainbow Khmer: From Prejudice to Pride’ (2012): 6 <http://bit.ly/1y6aGPi>.

²³ Ibid, page 22.

²⁴ Ibid, pages 21-22.

Article 45 of the Constitution defines marriage as between a husband and a wife, but fails to define the genders of a husband and a wife. Therefore, there have been reported cases of same-sex couples getting married, and one partner registering as the “husband” and the other as the “wife.” A Ministry of Interior official claimed there was no need to amend the marriage law, as “We do not ban them from marrying...when there is a marriage between a woman and a woman, you can register one as a man and the other as a woman.”²⁵

Nonetheless it remains far more common for same-sex couples to be registered by authorities as ‘partners’ or ‘sisters’ in a Family Book, rather than be issued a marriage licence.²⁶ While this measure does provide some custody and property rights to couples, there are no family rights as there would be in a marriage.

²⁵ UNDP, USAID (2014). Being LGBT in Asia: Cambodia Country Report. Bangkok. Page 28: <http://bit.ly/1y6aXBO>.

²⁶ CCHR, ‘Rainbow Khmer: From Prejudice to Pride’ (2012): 28 <http://bit.ly/1y6aGPi>.

III. RIGHT TO LIFE AND PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTS. 2, PARA.3; 6; 7; 21 ICCPR)

1. Judicial harassment and attacks against journalists, human rights defenders and activists, and a lack of accountability for alleged abuses by private companies

Issue 8. According to the information before the Committee, at least 12 journalists have been murdered in Cambodia in the last twenty years with none of the cases ever going to court. Please comment on the reports that journalists, human rights defenders, trade union and environmental activists, politicians and other critical civil society actors have suffered harassment and violence during the period under review. Please provide information on the measures taken to address such harassment and violence and to protect persons engaged in such activities.

The overall environment for critical voices remains precarious. In October 2014, a journalist in Kratie province became the thirteenth journalist killed in Cambodia since 1994 while attempting to report on illegal logging.²⁷ The individuals suspected in the crime include members of the police and army. Throughout Cambodia, NGO workers, journalists, human rights defenders and other activists continue to be threatened and harassed by both local authorities and powerful private actors because of their work. Judicial harassment, including through the misuse of criminal charges and an abuse of provisional detention, remains a serious concern and a challenge for independent civil society and the political opposition in Cambodia. The situation is aggravated by the high level of corruption and collusion between the authorities and influential individuals or companies.

The following cases illustrate how powerful tycoons can avail themselves of the police and judiciary in order to attend to their interests, and how authorities remain inactive when receiving complaints directed towards influential companies and individuals.

On 2 May 2014, **Lay Samean**, a reporter from Voice of Democracy, an entity of the Cambodian Center for Independent Media (“CCIM”), was beaten and left unconscious in the street upon attempting to take photographs of security guards chasing a monk at a rally held by opposition party supporters at Freedom Park in Phnom Penh.²⁸ He sustained head injuries and a broken cheekbone, necessitating his travel to Bangkok for surgery costing US\$30,000. His vision has been permanently affected. CCIM filed a lawsuit for damages against the officials responsible for the security guards, requesting compensation for medical expenses, but the Phnom Penh Municipal Court dismissed the case without any explanation.²⁹ No other criminal investigation by police or the judiciary has been conducted, despite widespread criticism.

On 9 May 2014, the Project Coordinator of CCHR’s Land Reform Project, **Mr. Sophath Vann**, was intimidated and received death threats from a group of security guards of the powerful Khun Sear Company, while conducting a visit at the site of a long-lasting land dispute located in Sangkat Boeung Kak I, Phnom Penh. A criminal lawsuit was filed against the perpetrators and Mr. Sophath Vann has been summoned twice for interrogation, but no one has been prosecuted yet. In addition, on 20 May 2014, a joint allegation letter was sent by the Special Rapporteur on the situation of human rights in Cambodia together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special

²⁷ Meas Sokchea and Daniel Pye, ‘Journalist killed in Kratie’, The Phnom Penh Post, (13 October 2014), <http://goo.gl/lBtbnj>.

²⁸ CCHR, ‘I will not be intimidated,’ (22 November 2014), http://www.seapa.org/?p=10326#_ftn5.

²⁹ Sen David, ‘CCIM reporter’s case dropped,’ Phnom Penh Post (17 December 2014), <http://www.phnompenhpost.com/national/ccim-reporters-case-dropped>.

Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders. The letter, which expressed concern at the intimidation and threats of violence targeting Mr. Sophath, received no reply.³⁰

On 18 November 2014, **Mr. Ly Srea Kheng and his daughter Ms. Ly Seav Minh** were arrested in the context of a long-lasting land dispute with the Khun Sear Import Export Company after they refused to vacate a plot of land in the Boeung Kak 1 area of Phnom Penh's Tuol Kork district, which they have inhabited since 1982.³¹ The family has suffered death threats, violent attacks and intimidation as a result of the dispute.³² Police arrested Mr Kheng without showing a warrant, in violation of Article 38 of the Constitution, and took him away without giving him time to get properly dressed. According to information received by CCHR's lawyers representing the family, later that evening, a Khun Sear Company representative contacted Mr Kheng's son to continue negotiations over the land, suggesting an abuse of the judicial process to pressure the family. Kheng was bailed on December 5, but bail was denied to his daughter on 5 January, on the vague grounds that it was necessary to prevent the commission of further crimes, prevent the destruction of evidence or threats against witnesses. In addition, Mr. Kheng and his family have attempted in vain to register their land with the authorities. On the other hand, authorities have not taken any actions on the complaint by Mr Kheng on the threats and attacks directed against his family by the Khun Sear security guards.

The HRC may consider recommending that the RGC:

- *Ensure that cases of harassment against journalists, NGO workers, union members and other civil society actors are duly investigated and all perpetrators are brought to justice irrespective of their status;*
- *Ensure that effective remedy to victims is guaranteed by an impartial judiciary;*
- *Respond positively to the request of the Special Rapporteur on the situation of human rights defenders to visit the country (a country visit was requested in 2012).*

2. Excessive use of force by police and security guards during demonstrations

Issue 9. Please comment on reports of excessive use of force during demonstrations and the use of private security guards to respond to protests. What measures has the State party taken to ensure that law enforcement officials act in a manner consistent with articles 6 and 7 of the Covenant? Please also provide information on any investigations and any disciplinary and/or criminal proceedings related to the following cases:

a) The death on 15 September 2013 of Mr. Mao Sok Chan during a demonstration in Phnom Penh;

³⁰ UN Human Rights Council, Communications report of Special Procedures, A/HRC/27/72, 20 August 2014
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_72_Eng%20Fre%20and%20Spa%20only.doc.

³¹ NGO's Joint Statement, 'Arbitrary arrests in Boeung Kak 1' (20 November 2014),
http://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=press_detail.php&pro=LR&pro_id=12&prid=524&id=3.

³² CCHR, 'Land Activist Profile - Ly Srea Kheng: Family Faces Threats and Attacks in Phnom Penh' (2014)
http://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=land_profile_detail.php&profile_id=1&pro=LR&pro_id=12.

- b) *The death on 12 November 2013 of a 49-year-old bystander street vendor, Ms. Heng Sokhon, during clashes between security forces and garment workers demonstrating for a wage increase, the reinstatement of meal breaks and the removal of military police hired by the factory as security;*
- c) *The death on 2-3 January 2014 of four individuals and the alleged enforced disappearance of Khem Sophath, a 16-year-old boy who was seen sustaining a bullet wound to the chest, during further clashes between security forces and garment workers. According to the information before the Committee, a further 38 individuals were hospitalized, 25 of whom having sustained bullet wounds.*

2013 saw an upsurge in the number of demonstrations, with hundreds of thousands of people airing their complaints in public, from garment workers and victims of forced evictions to members of the political opposition. In 2013, CCHR analyzed 25 reported incidents in which the security forces used violence to disperse protests, using electroshock weapons, tear-gas, water cannons, batons and even live ammunition, beating and in several instances shooting demonstrators, leading to the deaths of two people, paralyzing one and injuring at least 16 others.³³ No independent or thorough investigations have been undertaken.³⁴

Ms. Tith Sang, Mr. **Mao Sok Chan's** mother told the Phnom Penh Post in September 2014: "I waited for the result of the authorities' investigation ... but until now, it has been hidden. The gunman has still not been found, while my son is dead. There is still no justice," while Interior Ministry spokesman General Khieu Sopheak stated: "I'm sorry, I don't have any update on that."³⁵

Ms. **Eng Sokhom** (misspelled above Heng Sokhon) was attempting to sell rice from her street stall when violence erupted between SL Garment Factory workers and state security forces during a protest on 12 November 2013. Security forces indiscriminately fired into the crowd, and she was shot and killed. Following the death of Ms. Eng Sokhom, National Police spokesman Kirt Chantarith told the Phnom Penh Post that an investigative committee had been set up to examine why policeman had used guns.³⁶ In October 2014, Ms. Eng Sokhom's daughter, Ms. Vong Vorleak told CCHR, "At that time, we did not file a complaint. My Dad didn't do it because other cases that had filed complaints didn't get results. We want to protect the people who are still alive – we're afraid of bringing the problem to them... the case has been silent, there is no one that cares, it's almost been one year now.... If we try hard to demand justice, they will crackdown and threaten us. That's why I don't make a complaint." CCHR is not aware of any investigation completed by the authorities into this incident.

Frequently in 2013, in central Phnom Penh, the national police were accompanied at demonstrations by Daun Penh district security guards, who have been regularly witnessed, photographed and filmed using excessive use of force by beating and ill-treating demonstrators.³⁷ These security guards are not public officials, they are volunteers receiving only an allowance and taking orders from the relevant District Governor or Commune Chief. As such, there is much concern of the relevant training in policing assemblies that district security guards

³³ CCHR, 'Excessive Use of Force against Demonstrators in 2013 in Cambodia,' (2014): http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2014_01_03_CCHR_Briefing_ENG.pdf.

³⁴ CCHR, 'Impunity in Cambodia' (2014): <http://bit.ly/1rL5f24>; CCHR 'Where is My Justice?' (2014): <http://bit.ly/12iIBYc>; CCHR, 'Excessive Use of Force Against Demonstrators in 2013 in Cambodia' (2014) <http://bit.ly/11GAAMD>.

³⁵ CCHR, 'On the International Day of Democracy, CCHR calls to put an end to impunity,' (2014): http://www.cchrcambodia.org/media/files/press_release/515_201cpidod2%28_en.pdf; See also:

Lauren Crothers, 'One Year On, No Justice for Shooting Victim Mao Sok Chan' *The Cambodia Daily* (16 September 2014) <https://www.cambodiadaily.com/news/one-year-on-no-justice-for-shooting-victim-mao-sok-chan-68085/>.

³⁶ Shane Worrell and Mom Kunthear, 'Police in strike shootings to be investigated,' *Phnom Penh Post*, (13 November 2013): <http://www.phnompenhpost.com/national/police-strike-shootings-be-investigated>.

³⁷ May Titthara, 'Protesters beaten by guards,' *The Phnom Penh Post* (31 October 2013): <http://bit.ly/1kvxaBU>.

undertake, as they clearly lack the appropriate proficiency standards in the use of force. In addition, they are not identifiable, as they do not wear badges, names, or numbers. Their identity is thus largely unknown.

On 2 January 2014, five monks were arrested along with ten union activists and garment workers at Yak Jin factory on the outskirts of Phnom Penh. Police officers were seen beating demonstrators during the arrests.³⁸ On the morning of 3 January 2014, another thirteen people were arrested during a protest on Veng Sreng Boulevard. Following angry responses from the remaining protesters, security forces indiscriminately fired live ammunition into the crowd. **Yean Rithy** (25 years old), **Pheng Kosal**, (22 years old), **Kim Phaleap**, (25 years old), and **Kong Ravy**, (25 years old) were killed,³⁹ and dozens of others were injured. In addition, the whereabouts of **16-year-old Khem Sophat**, who a witness reported having seen shot in the torso, are still unknown.

On 7 January 2014, Brigadier General Kheng Tito reportedly said that any investigation of the 3 January killings would not be into the role of military police, but into the role of the “inciters” who led the protest.⁴⁰ On 10 January 2014, the RGC announced the creation of two commissions headed by Interior Minister Sar Kheng to investigate the damage caused by “anarchic demonstrators,” and how the incidents occurred.⁴¹ Three weeks later, it was announced that the investigations had been completed, but no official results were released.⁴² Given that the Minister of Interior was the head of the commissions, and was investigating forces under his own command, the commissions were neither independent nor transparent. In late January 2014, five unnamed officers were questioned by the prosecutor at the Phnom Penh Court of First Instance about their involvement with the clash, but according to Brigadier General Kheng Tito, none would face charges as they were acting in self-defense.⁴³

On 8 March 2014, authorities prevented a planned public forum on garment industry issues for International Women’s Day from taking place. At 7am police blocked off Freedom Park and side streets leading there; an hour later, helmet-clad Daun Penh district security guards arrived to forcibly break up the crowd that had gathered near the blockade.⁴⁴

Further protests continued in 2014, leading to a number of violent clashes between demonstrators and the security forces, including private security guards.⁴⁵

³⁸ CCHR, ‘Arrest and Charges against Human Rights Defender Vorn Pao, President of IDEA’ (HRD Alert) (3 January 2014), <http://bit.ly/1dMwAD>.

³⁹ Licadho, ‘List of the dead and missing men from January 3, 2014 demonstration’ <http://bit.ly/1kpFgxK>.

⁴⁰ Khuon Narim and Colin Meyn, ‘No Results in Protest Shooting Investigations,’ *The Cambodia Daily*, <http://bit.ly/1dWzbtbk>.

⁴¹ May Titthara, ‘Rights groups critical of gov’t investigations’ *The Phnom Penh Post* (13 January 2014). <http://bit.ly/MKwBXL>.

⁴² Meas Sokchea, ‘All quiet as Veng Sreng probe ends,’ *The Phnom Penh Post*, (5 February 2014): <http://bit.ly/1dE2442>.

⁴³ Buth Reaksmey Kongkea and Daniel Pye, ‘Officers queried on shootings,’ *The Phnom Penh Post*, (27 January 2014): <http://bit.ly/1cyH93f>.

⁴⁴ Mech Dara, ‘Protest Ban Firmly in Place on Women’s Day,’ *The Cambodia Daily*, (10 March 2014): <http://bit.ly/1gf8N9Y>.

⁴⁵ On 26 January 2014, security forces, including private security guards and military police, reportedly beat protestors trying to gather in Freedom Park with truncheons and stunned them with electric cattle prods, after a protestor kicked a security guard in the groin near Naga Bridge. Nine unions and associations had been gathering to demand the release of 23 people detained in early January, and a \$160 minimum wage for all Cambodian workers. The previous week, the government had rejected their application to hold the demonstration. On 27 January 2014, a peaceful rally outside the Ministry of Information, led by Mam Sonando, was violently dispersed at approximately 10am. Hundreds of military police reportedly charged at the crowd, using batons and smoke canisters to disband the rally. Daun Penh district security guards were also involved in the dispersing of the rally using batons. The use of violence reportedly left over 10 people injured. See CCHR Briefing Note, ‘Freedom of Assembly “On Hold,”’ (2014): http://www.cchrcambodia.org/admin/media/analysis/english/CCHR_Briefing_Note-Freedom_of_Assembly_on_hold_ENG.pdf; Sean Teehan and Daniel Quinlan, ‘More violence at freedom Park’ *The Phnom Penh Post*, (26 January 2014): <http://bit.ly/1kflssi>; Khouth Sophak Chakrya & Kevin Ponniah, ‘Rally violently dispersed’ *The Phnom Penh Post*, (28 January 2014): <http://bit.ly/1iF64Jy>. On 8 March 2014, authorities prevented a planned public forum on garment industry issues for International Women’s Day from taking place. At 7am police blocked off Freedom Park and side streets leading there; an hour later, helmet-clad Daun Penh district security guards

3. Police and Daun Penh district security guards act with complete impunity

Issue 9 [continued]

It is clear from the above, that the RGC has not taken any measures to ensure that law enforcement officials act in a manner consistent with Articles 6 and 7 of the Covenant. Quite the contrary: Prime Minister Hun Sen praised the handling of the protests in 2013⁴⁶ and the Minister of Interior Sar Kheng announced that approximately 3,100 police officers would receive bonuses of \$17.50 in gratitude for suppressing protests.⁴⁷ In August 2014, Phnom Penh Governor Pa Socheatvong rewarded approximately 1000 military police officials for their “perfect” service over the previous year by distributing a total of \$30,000.⁴⁸

Neither the cases mentioned under issue 8 and 9, nor other similar incidents led to any meaningful investigations, let alone to any convictions. In fact, the CCHR does not know of any police officer or security guard who was convicted for the use of torture or ill-treatment. This stands in stark contrast with the hundreds of reports that bear witness to police brutality. Police officers as well as the Daun Penh district security guards thus operate with complete impunity. In addition, torture victims and their lawyers are reluctant in bringing torture allegations to the prosecutor or before a court because any police officer who is not charged or convicted can bring a criminal defamation case against the alleged torture victim or his or her lawyer. Hence an alleged torture victim and his or her lawyer potentially face a criminal conviction and a fine.

The HRC may consider recommending that the RGC:

- *Only deploy military personnel in matters of grave national security and cease involving district security guards in the policing of demonstrations;*
- *Ensure that all law enforcement officials involved in the policing of demonstrations, adhere to the UN Basic Principles on the Use of Force and Firearms and the Code of Conduct for Law Enforcement Officials, and are fully trained on these and other relevant human rights law and standards;*
- *Ensure prompt, thorough, and effective investigations and prosecutions of alleged perpetrators by independent and impartial bodies, into all reports of excessive use of force by law enforcement officials and private security guards involved in the policing of demonstrations and make the results public.*
- *Refrain from deploying private security guards in the policing of demonstrations.*

arrived to forcibly break up the crowd that had gathered near the blockade. See *ibid*, CCHR; Mech Dara, ‘Protest Ban Firmly in Place on Women’s Day,’ *The Cambodia Daily*, (10 March 2014): <http://bit.ly/1gf8N9Y>.

IV. RIGHT TO FAIR TRIAL, EQUALITY BEFORE THE LAW, REMEDIES AND ADMINISTRATION OF JUSTICE (Arts 7, 14 and 26 ICCPR)

1. Unlawful interference of the government in the Extraordinary Chambers in the Courts of Cambodia

Issue 15. Further to the information provided in paragraph 74 of the State party's periodic report, please comment on reports of the government's alleged obstruction, non-cooperation and interference in the Extraordinary Chambers in the Courts of Cambodia.

For several years, the government has obstructed, failed to cooperate and interfered in the functioning of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") through opposition to Cases 003 and 004, stalling, removal of funding and other obstructions.

The RGC has openly and repeatedly stated its opposition to cases 003 and 004, and publically expressed its desire to see the ECCC shuttered after the current round of proceedings.⁴⁹ Cases 003 and 004 involve mid-ranking Khmer Rouge cadre who are current members of the Cambodian government, and senior government officials have asserted that prosecuting them could destabilize the country.⁵⁰ In April 2011, initial investigations into the two cases were closed. They were reopened in February 2012 by Reserve International Co-Investigating Judge Laurent Kasper-Ansermet, without approval from the Cambodian side of the court. As a result, the ECCC's budget did not allocate resources and time for the two cases.⁵¹

In March 2012, Judge Kasper-Ansermet resigned from the ECCC, citing an inability to "properly and freely perform his duties" due to political interference. His Cambodian counterpart Judge You Bunleng had actively opposed cases 003 and 004, which Judge Kasper-Ansermet claims has led to "a dysfunctional situation within the ECCC." Judge You Bunleng opposed Judge Kasper-Ansermet's authority to act in his capacity as Reserve International Co-Investigating Judge prior to his arrival in Cambodia and, in particular, following the Supreme Council of Magistracy's ("SCM") refusal to confirm his appointment as International Co-Investigating Judge. This was a breach of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea (the "Agreement") which requires the SCM to appoint the UN nominated judge.⁵² This effectively stonewalled Judge Kasper-Ansermet's efforts to undertake the necessary investigative or judicial action in cases 003 and 004.⁵³ A memo provided by Judge Kasper-Ansermet cited that Cambodian counterparts did not respond to official questions, refused to release documents in case files, and denied access to translators and the official court seal. Judge Blunk of Germany, Kasper-Ansermet's predecessor had previously resigned on 31 October 2011, after stating similar concerns to Kasper-Ansermet's.

⁴⁹ CCHR, 'Severance of Proceedings in Case 002 at the Extraordinary Chambers in the Courts of Cambodia' (October 2013) <http://bit.ly/1tHe7pn>.

⁵⁰ James O'Toole, 'Judges give KRT update,' Phnom Penh Post, 2://www.phnompenhpost.com/national/judges February 2011, <http://give-krt-update>.

⁵¹ Extraordinary Chambers in the Courts of Cambodia, Proposed Budget for 2012-2013, (17 February 2012), <http://www.eccc.gov.kh/sites/default/files/ECCC%20Budget%202012-2013.pdf>.

⁵² CCHR, 'RGC must respect ECCC Agreement or risk undermining the entire tribunal,' (23 January 2012), <http://bit.ly/1rSH6qt>

⁵³ CCHR, 'Fact Sheet - The Extraordinary Chambers in the Courts of Cambodia,' (July 2012), <http://bit.ly/12kzp6F>.

The RGC has also at times refused to cover its financial responsibility to the national side of the court, thereby breaching the initial agreement establishing the ECCC. Its failure to pay the Cambodian staff is an example of stalling tactics and obstruction to undermine efforts to bring former Khmer Rouge leaders to justice.⁵⁴

The HRC may consider recommending that the RGC:

- *Ensures that concrete efforts are taken to pursue Cases 003 and 004 and to conduct a full investigation into allegations of political interference;*
- *Meets its legal obligations and fully fund the salaries of the ECCC's national staff without delay.*

2. Complete lack of judicial independence

Issue 17. Please provide information on the legislative and practical measures taken to guarantee the independence and impartiality of the judiciary. In this regard, please indicate the content of the following draft legislation: the Law on the Organization and Functioning of the Courts; the Law on the Supreme Council of Magistracy; and, the Law on the Status of Judges and Prosecutors. Information before the Committee alleges shortcomings in judicial institutions in the State party, due, in particular to lack of personnel and financial resources. What measures are in place to resolve that situation?

Despite Article 128 of the Constitution enshrining judicial independence and the recent adoption of the Law on the Organization and Functioning of the Courts, the Law on the Supreme Council of Magistracy, and the Law on the Status of Judges and Prosecutors, measures to guarantee the independence and impartiality of the judiciary are still lacking. There are indicators of undue influence of the executive over the functioning of the judiciary, undermining its independence and allowing it to be used as a political tool. Politically motivated cases are regularly brought before the courts, targeting opposition politicians, land-rights activists and human rights defenders. In contrast, impunity reigns for those in positions of power.

The three afore-mentioned laws that were speedily passed in July 2014 further entrenched the executive's control over the judiciary. The Law on the organization and functioning of the supreme council of the magistracy (the "Magistracy Council Law") outlines the functioning of the Supreme Council of Magistracy (the "SCM"). Article 1 of the Magistracy Council Law states that it will assist the King with ensuring the independence of the judiciary as stated in the Constitution. According to Article 18 of the Magistracy Council Law, the SCM will have the power to decide and propose to the King the appointment, transfer, secondment, leave of absence, delineation of duties and termination of office of a judge and disciplinary action against judges and prosecutors. As such, the SCM is a key body to ensure the independence of the judiciary. However, according to Article 4, the Minister of Justice is automatically a member of the SCM, and moreover, will have the prerogative to appoint another member of the Council. Article 4 further allows members of the National Assembly and the Senate to vote to appoint a member. Furthermore, the Magistracy Council Law places the SCM's budget and its general secretariat under the central administration of the Ministry of Justice, according to Articles 8 and 15.

The Law on the Statute of Judges and Prosecutors gives the Ministry of Justice power to influence the promotion and career progress of judges and prosecutors. The Promotion and Career Progress Commission (the "Commission"), established by Article 33, determines the career progress of judges and prosecutors. Comprised of eight members, its chairman is the Secretary of State of the Ministry of Justice, whose

⁵⁴ CCHR, 'RGC must respect ECCC Agreement or risk undermining the entire tribunal,' (23 January 2012), <http://bit.ly/1rSH6qt>.

parameters of authority are not defined. This threatens the independence of judges, who can be manipulated by the executive's role in their career progress.⁵⁵

The Law on the Organization and Function of the Courts determines the organization, jurisdiction, functioning and financing of all tribunals and prosecution offices. Rather than the SCM overseeing the administration and management of the tribunals, Article 11 confers these powers to the Ministry of Justice. Article 79 also determines that the courts' budget is allocated from the Ministry of Justice's budget, which determines where and how the budget is allocated between the courts.⁵⁶

In its final report to the Human Rights Council in September 2014, also the Special Rapporteur on the situation of human rights in Cambodia reiterated his concerns over the three laws as they "contain certain provisions that are detrimental to the principle of the separation of powers."⁵⁷ The Committee against Torture had expressed similar broad concerns on the independence of the judiciary in its concluding observations adopted in 2011.⁵⁸

3. Lack of legal training and resources resulting in judgments of poor legal quality

Issue 17 [continued]

The RGC is taking insufficient measures to provide the judiciary with adequate funding, resources and training. For example, the Royal Academy for Judicial Professions, opened in 2003, continues to be tarnished by allegations of bribery and corruption, with judicial appointments going to the highest bidder, rather than the most capable candidate. CCHR's Trial Monitoring Project often monitors cases in which judges announce verdicts with little or no legal reasoning, with the quality of legal argument in court being extremely poor. For instance, in the 74.5% of the cases monitored at the Phnom Penh Court of Appeal between March 2013 and January 2014, the judges failed to state the relevant law applicable to the offense.⁵⁹ Furthermore, the intricacies of legislations are often bypassed and evidence is rarely closely examined, trials are rushed with verdicts often bearing little correlation to the evidence presented; and convictions are routinely based on confessions, even in the absence of any other corroborating evidence. Failures to follow basic legal procedures can also be attributed to a lack of quality legal training. Judges often fail to properly advise defendants of their statutory rights and, when defendants are reminded of their rights, judges routinely fail to give adequate explanations to them. In the fifth reporting period of CCHR's Trial Monitoring Project at the Court of First Instance, from 1 July to 31 December 2013, judges informed and explained the defendants' rights to be legally represented and to remain silent in only 2% of cases. At the Court of Appeal, between 1 March 2013 and 31 January 2014 in only one case out of 204 did the judges explain the right to remain silent; and in only five cases did they explain the right to be legally represented.⁶⁰

Such weaknesses in the judicial and legal sectors are exacerbated by a lack of resources, both in terms of personnel and finances. During dialogue meetings between members of the judiciary and CCHR's trial monitors, judges have stated that defense lawyers are sometimes appointed on the day of trial because there

⁵⁵ *ibid* 8-9.

⁵⁶ *ibid* 9-11.

⁵⁷ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi (15 August 2014), A/HRC/27/70

⁵⁸ UN Committee against Torture, Concluding observations on Cambodia, (20 January 2011), CAT/C/KHM/CO/2, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjlcinYfXfIBAeGV1xgrevjA948RB8JUq8xvITFYWnZJkGmwpl%2bgeByCF5oXYGrXRS%2bX1gICAWZDJRUIMVdbpFENmaaPP4CBTgisOWZewbl>

⁵⁹ Between March 2013 and January 2014, 204 cases were monitored.

⁶⁰ CCHR, 'Judicial Reform,' (October 2014), 5-6 <http://bit.ly/1vzg8t9>.

are simply not enough lawyers to match demand and basic procedures, such as displaying public notices of hearings. The lack of a sufficient numbers of lawyers, particularly defense lawyers, acts as an impediment to accessing justice and also has a negative impact upon the quality of representation if lawyers are not given sufficient time to prepare cases. CCHR is not aware of any action taken by the RGC to remedy shortcomings in funding, resources and training.

The HRC may consider recommending that:

- *The RGC repeal the recently passed Law on Organization and Functioning of the Courts and Prosecutions, the Law on Amendment of the Supreme Council of Magistracy, and the Law on Statute of Judges and Prosecutors; or amends the laws to ensure that:*
 - *Members of the SCM, members of the disciplinary council of the SCM, and members of the Commission of Promotion in Rank and Grade be elected by judges and prosecutors. Candidates for elections should not be affiliated with the legislature and executive and should include non-judges;*
 - *The Ministry of Justice does not have managerial power over the General Department of Judicial Administration; and*
 - *The Ministry of Justice does not manage the finance of trial courts and prosecution offices; instead, it should be the power of the SCM.*
- *Training for the judiciary is improved from the earliest possible stage for lawyers, judges and prosecutors, with a focus on legal arguments, rules of evidence and the principles of fair trial standards. The following recommendations could be implemented:*
 - *The Bar Association of Cambodia should take a more active role in the education of trainee lawyers and also in creating an effective continuing professional development scheme for practicing lawyers;*
 - *Additional financial resources should be channeled into the legal and judicial sectors to ensure that courts have adequate facilities and that there are sufficient numbers of legal aid lawyers; and*
 - *A robust Code of Conduct for judges should be drafted and enforced by the SCM to ensure adequate standards of professionalism within the judiciary.*
- *Invite the SR on the independence of judges and lawyers to visit Cambodia. A country visit was requested in 2006, and a reminder sent the same year, with no reply received.*

4. Forced confessions and lack of alternative means of investigation

Issue 18. Please comment on reports of continuing use of forced confessions as elements of evidence in court proceedings despite the illegality of such practices.

From August 2009 to June 2012, CCHR monitored and reported on fair trial standards at the Phnom Penh, Kandal, Banteay Meanchey and Rattanakiri Courts of First Instance, and at the Court of Appeal from March 2013 to January 2014. Between August 2009 and January 2014, 2,735 trials were monitored. Of these, allegations that threats were made to coerce the accused into confessing the alleged crime were recorded in 119 trials, or 4.4% of monitored trials. Furthermore, in 165 trials, or 6% of monitored trials, the accused or the

defense lawyer suggested that violence or torture were used to coerce the accused into confessing. In fall 2012, some representatives of Banteay Meanchey Court explained that 80% of the accused change their statement at the trial hearing claiming that police obtained their confessions under torture, but fail to present any concrete evidence, and that judges impose lighter sentences if the accused confess.⁶¹ Several representatives of the Phnom Penh Court of First Instance similarly raised the fact that the accused typically fail to present evidence of torture or threats, that confessions can be accepted as evidence and that when an accused claims that he or she was tortured, judges always first cross-examine the judicial police, the alleged perpetrator.⁶²

Hence, a serious risk remains that forced confessions are used in court proceedings. While there are only a relatively small number of cases in which there were allegations of coercion, either psychological or physical, CCHR's trial monitor has observed several instances wherein judges have disregarded them by merely asking the defendant to provide evidence of coercion or questioning why the confession was not challenged at an earlier stage. No thorough investigation or questioning was documented. In addition, judges do not order or foster the gathering of evidence if the accused alleges torture or ill-treatment. In none of the cases the CCHR monitored has a judge asked for or ordered forensic medical evidence, let alone required the relevant police protocol that documents the interrogation.

The HRC may consider recommending that the RGC:

- *Information setting out legal rights and entitlements of defendants is widely disseminated and available from the outset of proceedings;*
- *Allegations of forced confessions are thoroughly investigated ex officio at any stage of the proceeding;*
- *Judges rule the confession as having no evidentiary value should any claim of any type of coercion be substantiated, as provided for by article 38 of the Constitution and article 321 of the Cambodian Code of Criminal Procedure;*
- *Apply alternative investigative means and put less emphasis on confessions.*

⁶¹ This was reported by several judges at an informal and confidential meeting between members of the CCHR and judges of the Ratanakiri and Banteay Meanchey province court (10 – 14 September 2012) and judges of the Phnom Penh court (17 September 2012).

⁶² Ibid.

V. FREEDOMS OF EXPRESSION AND ASSOCIATION AND RIGHT TO PEACEFUL ASSEMBLY (Arts. 19, 21 and 22 ICCPR)

Issue 19. Please comment on how freedom of expression is guaranteed in Cambodia, in particular since the entry into force of the new Criminal Code. Please give details of the changes introduced by the new Criminal Code in respect of defamation, disinformation and incitement. Please also comment on allegations that human rights activists and journalists continue to be subjected to intimidation and harassment, including politically motivated accusations. Please indicate the number of criminal proceedings brought during the period under review against human rights defenders, journalists and other civil society actors for defamation, malicious denunciation and incitement.

Freedom of Expression is purportedly guaranteed in Cambodia. Both domestic laws and international instruments that Cambodia is bound by protect this fundamental right. Yet, the situation of freedom of expression in Cambodia – ranked 139th out of 180 countries in the 2015 World Press Freedom Index of Reporters without Borders – remains dire.

Article 41 of the Constitution of the Kingdom of Cambodia guarantees for all Cambodian citizens the rights to freedom of expression, information and publication within boundaries that would appear reasonable to most analysts.⁶³ Despite this, several other domestic laws clearly contradict both the Constitution and Cambodia's international obligations, thereby creating a tortuous legislative framework that severely undermines the exercise of those fundamental freedoms.

1. **New Criminal Code has widened the scope of criminal defamation while a void of legal protection of freedom of expression persists**

While the 1995 Law on the Regime of the Press (the “**Press Law**”) provides that “*no person shall be arrested or subject to criminal charges as the result of the expression of opinions*”,⁶⁴ unfortunately, when the **new Criminal Code** came into effect on 30 November 2010, replacing the UNTAC Code, it maintained the criminal status of defamation under Article 305. This article defines defamation as follows: “Defamation shall mean any allegation or charge made in bad faith which tends to injure the honor or reputation of a person or an institution.” The Criminal Code widened the scope of defamation so that the defamation of institutions as well as individuals could result in criminal charges, whereas the UNTAC Penal Code had only specified individuals. Article 305 also lowered the threshold at which defamation charges can be instigated. Under the UNTAC Penal Code, an allegation would have to actually harm reputation or honor, while Article 305 states that a charge need only to tend to harm reputation or honor.⁶⁵ Article 306, which provides for cases of ‘defamation through the media’ to be subject to the provisions of the Press Law, is rarely applied.

In addition to Article 305, other articles of the Criminal Code further infringe on freedom of expression, including public insult (Article 307), the questioning of a judicial decision (Article 523), and the insult of a public official (Article 502). Article 502 provides for the imprisonment of individuals whose words, gestures, written

⁶³ See Article 41 of the Constitution: “Khmer citizens shall have freedom of expression of their idea, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security.”

⁶⁴ See Article 20 Press Law.

⁶⁵ CCHR, ‘The criminalization of defamation and freedom of expression in Cambodia,’ (May 2014), http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2014_05_27_CCHR_Briefing_Note_Defamation_in_Cambodia_%28ENG%29.pdf.

documents, pictures or objects are held to undermine the dignity of a public official or “holder of public elected office”, while Article 523 criminalizes any criticism of court decisions which is said to be aimed at “disturbing public order” or “endangering an institution” of Cambodia. Both provisions contradict the principle that public officials, including the judiciary, should legitimately be subject to criticism and political opposition and tolerate higher level of scrutiny than ordinary citizens. These provisions are contrary to Cambodia’s constitutional and international obligations, and have a chilling effect on freedom of expression in the country. Indeed, those provisions can lead to long-term prison sentences and the Royal Government of Cambodia has repeatedly used them as tools to crack down on the exercise of free speech by journalists, political opponents, human rights defenders and other activists.⁶⁶

During the last United Nations Universal Periodic Review (“UPR”) of Cambodia in 2014, the RGC noted those recommendations directly requesting the repeal or amendment of those articles of the Criminal Code.

The government accepted instead UPR recommendations urging Cambodia to establish a **law on access to information** (“A2I”) as an essential component of freedom of opinion and expression. The steps that have been taken towards adopting freedom of information legislation and policy are encouraging, but little tangible progress has been registered so far. In March 2011, in response to increasing demands from international actors for access to information, the RGC established the Press and Quick Reaction Unit (“PQRU”) to relay information to the press on issues relating to military action, diplomacy and national security. However, Cambodia has not adopted any law on access to information yet and the principle of maximum disclosure has yet to be fully embraced, even by ministry spokespersons appointed to share information. This lack of access to adequate and unbiased information severely hinders the formation and dissemination of free opinions.

Freedom of expression encounters another serious obstacle in the 2010 **Anti-Corruption Law**, which fails to provide a legal framework for the physical and legal protection of individuals who blow the whistle on corruption. In fact, Article 41 of the law creates criminal offences for leaking information and for making false complaints of corruption.⁶⁷ It is nevertheless unclear whether an unfounded complaint, rather than a deliberately false one, would constitute an offence under the Law.

Furthermore, **secrecy and lack of transparency** continue to characterize the lawmaking process in Cambodia, with possible serious repercussions on freedom of expression. On 11 December 2014, Council of Ministers spokesman Phay Siphon reportedly stated that the controversial **Cybercrime Law** had been “scrapped,” as it “was not a priority.” CCHR has previously raised concerns regarding the draft law’s potential negative impacts on freedom of expression. Despite the lack of an Access to Information Law, the government has also recently announced its intention to introduce a **State Secrets Law**, but no further information is available yet.

2. Judicial harassment of human rights defenders and land rights activists

Issue 19 [continued]

In February 2012, NGO worker **Soum Chankea** was summoned for questioning relating to a potential charge of slanderous denunciation, an offence punishable by up to one year in prison and up to two million riels fine under Article 311 of the Criminal Code. The potential charge came as a result of a complaint by a powerful and well-connected individual, Oum Socheath, the head of a provincial branch of the Cambodian Mine Action Center. Oum Socheath had been accused of sexual harassment by a waitress and Soum Chankea had assisted

⁶⁶ CCHR, ‘Repression of Expression: The state of free speech in Cambodia,’ (September 2013), <http://bit.ly/1lBgmal>.

⁶⁷ See Anti-Corruption Law at: http://www.sithi.org/temp.php?url=law_detail.php&lg=&id=172.

the waitress in filing a complaint against him. As a result, Oum Socheath filed a counter complaint against Soum Chankea. The Prosecutor eventually dropped the charge on 8 May 2012, but civil society actors are regularly threaten with judicial prosecution.

Article 495 of the Penal Code – incitement to commit a felony – is also regularly abused in order to silence human rights defenders, NGO workers and other individuals/groups that speak out.

In October 2012, **Ou Virak**, former president of CCHR, was summoned for questioning by the Ratanakiri Provincial Court on bogus charges of inciting members of an ethnic minority group to violently protest a land eviction. The complaint dated back to CCHR human rights training activities held in the area in 2009. Two other human rights workers were also summoned on the same charge, as well as a journalist based in Ratanakiri (in the Northeast of Cambodia) who had been reporting on the land conflict, Ratha Visal. Although no charges were pressed in this case, such summons are used to intimidate human rights workers and have thus a chilling effect.

3. Spike of politically motivated arrests and accusations

Issue 19 [continued]

Most recently, November 2014 saw a substantial increase in **judicial harassment and use of the judiciary as a political tool**. A wave of politically motivated arrests and speedy trials increased concerns over the use of courts to impede the legitimate exercise of fundamental rights guaranteed by international human rights law.

On 10 November 2014, seven women from the **Boeung Kak Lake** community were arrested while peacefully protesting for authorities to take action to remedy flooding in their community. The area has suffered flooding problems since 2008, when almost 20,000 people were forcefully evicted and the lake was filled by Shukaku Company, owned by a Cambodian People’s Party Senator. The seven community members were detained overnight, and within 36 hours they had been charged with obstructing public traffic, tried and convicted, receiving a maximum sentence of one year in prison and a US\$500 fine.⁶⁸ A further three women and a monk faced similar treatment the following day, detained while peacefully protesting the arrest of their fellow activists and hastily convicted of obstructing public officials. Whilst granting minor reductions of sentence to the defendants, on 26 January 2015 the Court of Appeal upheld their convictions, which were handed down in proceedings that did not meet international fair trial standards.⁶⁹ While the judiciary has proved zealous in ensuring a harsh treatment to land rights activists and peaceful protesters, no effort was put to solve the underlying dispute.

Within days, **Meach Sovannara, Tep Narin, Ouk Pich Samnang, Sum Puthy and Key Kim** of the CNRP were arrested in connection to the July 2014 violence at Freedom Park in Phnom Penh and charged with insurrection. They remain in detention having repeatedly been denied bail. A CCHR team attended a bail hearing of the forenamed five individuals on 25 December 2014. In the case of Meach Sovannara, bail was denied on the grounds that if released he was likely to engage in protests and threaten public order, whilst bail was denied to Tep Narin and others on the vague basis that they may fail to appear in court if summoned or cause public disorder. All five were denied bail again for the same reasons on 15 January 2015. As noted by the

⁶⁸ CCHR, ‘Boeung Kak Lake Community Members Arrested, Detained and Convicted in 36 Hours,’ (11 November 2014), <http://bit.ly/15M7uOu>.

⁶⁹ NGO’s Joint Statement, ‘Civil Society Groups Condemn the Ongoing Detention of 11 Activists,’ (26 January 2015), http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=533&id=5&lang=eng

Special Rapporteur in a recent statement,⁷⁰ the timing of the arrests in the midst of negotiations on reforming the National Election Committee suggests possible political motives. Interior Ministry spokesperson Khieu Sopheak, also reportedly said to the media that Meach Sovannara would face a shorter jail term if the CNRP collaborated more on the National Election Committee, implicitly demonstrating the political motivation behind the arrest.⁷¹

The HRC may consider recommending that the RGC:

- *The judiciary and executive stop the judicial harassment of human rights defenders, political activists and opposition politicians, and immediately and unconditionally release of those currently detained for politically-motivated charges or convictions that have no basis in law and no place in a liberal democracy;*
- *Implement UPR recommendations to revise the Penal Code in order to bring it into line with international standards and Cambodia's obligations under the ICCPR, including by clarifying vague terminology and decriminalizing 'defamation' under Article 305 of the Penal Code, 'insult of public officials' under Article 502 and 'discrediting of judicial decisions' under Article 523;*
- *Refrain from passing the above-mentioned Cyber Crime and the envisioned State Secrets laws until transparent consultations with civil society have been conducted, and ensure that the drafts are brought into line with international human rights standards, with particular regard to the right to freedom of expression;*
- *Engage as a priority in a transparent legislative process for the adoption of a clear, concrete Access to Information Law, which upholds the right to freedom of expression and access to information;*
- *Refrain from unlawfully applying the Criminal Code in cases of defamation involving journalists but apply the relevant provisions of the Press Law.*
- *Invite the Special Rapporteur on freedom of opinion and expression to visit the country;*
- *Refrain from attempting to silence political dissent and critics via the court system.*

4. Denial of the right to assembly

Issue 20. With reference to the information provided in paragraphs 175 to 199 of the State party's report, please provide further information on legislative and/or administrative restrictions placed upon the right of peaceful assembly, including criteria for prohibiting an assembly, as well as any cases recorded during the reporting period where the holding of an assembly was prohibited, and the reasons invoked. Concerning the information contained in paragraph 167 of the State party's report, please provide further information on the regulations governing the use of "freedom parks". Please also comment on reports that indicate that roadblocks had been set up to prevent access to the Freedom Park in Phnom Penh. Please clarify the legal status of municipal security guards and their role in policing demonstrations. Please also comment on reports that indicate the practice of detaining peaceful demonstrators until they sign or thumbprint a document agreeing to refrain from participating in future demonstrations.

⁷⁰ Statement of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 'Judicial harassment for political purposes must stop,' (18 November 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15303&LangID=E#sthash.ddN96hv9.dpufSpecial>

⁷¹ Chhay Channyda and Meas Sokchea, 'CNRP arrests continue', Phnom Penh Post, 14 November 2014, <http://www.phnompenhpost.com/national/cnrp-arrests-continue>

On 4 January 2014, following the violent crackdown on protests, the Ministry of Interior reportedly stated that there was to be a ban on further demonstrations, assemblies, or marches until “public order and security are restored to their normal state,” clarified by Brigadier General Kheng Tito, spokesman for the National Military Police, as meaning until the opposition CNRP ended its boycott of the National Assembly and took its seats.⁷²

In addition, on 6 February 2014, the Kampong Chhnang Provincial Hall issued a circular on public assembly to political parties, labor unions, NGOs and other associations. The circular instructed that in order to host a public mass assembly, the organizers had to request permission from the provincial authorities seven days in advance, to allow them to determine whether the demonstration was “legitimate.” If permission is not requested, *“the competent authorities will take concrete measures against the rally, and its holder shall be responsible for the face of existing law.”*⁷³ This was in direct contravention of the 2009 Law on Peaceful Assembly, which only requires that protestors give prior notification.⁷⁴

On 25 February 2014, it appeared that Prime Minister Hun Sen was set to lift the ban on assembly, when during a speech in Preah Sihanouk province, he announced, *“Now, I am not requesting to hold demonstrations, but I will not prevent it,”* adding that he *“must guarantee peace for all, as well as guarantee the right to gather for all.”*⁷⁵ The announcement led to much confusion as to whether the ban had been lifted, including amongst government officials. However, further protests were also banned, indicating that in practice the ban remained in place. On 12 March 2014, after Hun Sen’s speech, authorities announced that Freedom Park would remain off limits for protestors indefinitely.⁷⁶ Phnom Penh municipality subsequently rejected several requests to hold public gatherings in Freedom Park by labor unions and associations, as well as the radio station owner Mam Sonando.⁷⁷

On 24 March 2014, City Hall once again refused to authorize a protest planned by Mam Sonando, citing the need to restore public order. Sonando, who has repeatedly asked permission to protest the Ministry of Information’s decision to refuse granting him wider radio coverage and a television license, was informed by Phnom Penh Deputy Governor Khuong Sreng that the demonstration should be postponed. However, he was not given an alternative date when requested. Spokesman Long Dimanche announced that a demonstration could not go ahead until *“the situation and public order are completely back to normal,”* and until investigations into the killings of the protesting garment factory workers that took place in early January had been completed.⁷⁸

5. Intimidation and arbitrary detention to prevent human rights defenders from demonstrating

Issue 20 [continued]

Intimidation and violence has also reportedly been used to prevent rallies from taking place. For instance, a meeting of the opposition CNRP in Troeuy Sla commune in Kandal province was cancelled on 21 January 2014

⁷² CCHR Briefing Note: ‘Cambodia: Freedom of assembly “on hold”,’ (2014: http://sithi.org/CCHR_Briefing_Note-Freedom_of_Assembly_on_hold_ENG.pdf).

⁷³ Ministry of Interior, Circular on public mass rally in Kampong Chhnang province to all political parties, civil society, non-governmental organizations and other associations based in Kampong Chhnang province (6 February 2014).

⁷⁴ CCHR, ‘CCHR Open Letter Regarding the Implementation of the Law on Peaceful Demonstration,’ (2014): http://cchrcambodia.org/media/files/press_release/510_201coltmoidl%28_en.pdf.

⁷⁵ Khy Sovuthy & Colin Meyn, ‘Hun Sen Lifts Protest Ban, Warns of Pro-CPP Rallies,’ *The Cambodia Daily*, (26 February 2014): <http://bit.ly/1heCg46>.

⁷⁶ Mom Kunthear, ‘Freedom Park off-limits: city,’ *The Phnom Penh Post*, (13 March 2014): <http://bit.ly/1cEkgk2>.

⁷⁷ Kuch Naren & Mech Dara, ‘Obfuscation Reigns Over Ban on Demonstration,’ *The Cambodia Daily* (6 March 2014): <http://bit.ly/OPGJjl>.

⁷⁸ Kuch Naren, ‘City Hall Rejects Mam Sonando’s Protest Plan,’ *The Cambodia Daily*, (25 March 2014): <http://bit.ly/1gww7ln>

after several hundreds of Cambodian People's Party ("CPP") supporters and riot and military police armed with tear gas canisters, shields and batons were present at the meeting venue. The meeting was postponed, shortly before CNRP leaders were scheduled to arrive, reportedly to avoid violence, in light of the heavy presence of security forces.⁷⁹ The CNRP had received approval for the meeting from Interior Minister Sar Kheng earlier on 21 January 2014; however, in practice the display of numerous threatening security forces and CPP supporters was a clear dissuasive message aiming at restricting the opposition's right to peaceful assembly. Similar tactics of intimidation were used to prevent meetings with Kem Sokha, Vice President of the CNRP, on 26 January 2014 in Kampong Cham province.⁸⁰

On the morning of January 21, 2014, security forces arrested and took into custody 11 human rights defenders for several hours at Phnom Penh Municipal Police Station. The 11 had attempted to submit petitions to foreign embassies, including those of the US and France, calling for the release of 23 demonstrators who authorities detained in a crackdown on striking garment workers on January 2-3. While it is unclear why the 11 were detained, it is widely believed that they were detained for violating a verbal ban on public gatherings by more than 10 people, which the Cambodian Ministry of Interior issued on January 4. Those arrested on January 21 are as follows: Boeung Kak Lake community human rights defenders Mmes. Tep Vanny, Yorm Bopha, Song Sreyleap, Pan Chunreth, Erm Sreytouch, Bov Sorphea, and Ngoun Kimlang; Cambodian Independent Teachers Association (CITA) President Mr. Rong Chhun; Cambodian Alliance of Trade Unions (CATU) member Ms. Cheang Thida; Housing Rights Task Force (HRTF) member Ms. Long Kim Heang; and rights activist Ms. Choung Sopheap. All 11 were released later in the day after they were forced to sign statements pledging that they would not join, lead or incite 'illegal' activities or protests in the future.⁸¹

Two days earlier, Sok Chhun Oeung, acting President of the Independent Democracy of Informal Economy Association ("IDEA"), was arrested while attempting to hold a vigil for the 23 persons that have been detained since the violent clashes on 2 and 3 January 2014. He was held overnight at the Phnom Penh Municipal Police Station and released around 10:00 am the next morning, only after signing a similar letter.⁸²

This is not the first time the RGC has required HRDs to sign away their rights to future protests. On 21 April 2011, eleven members of the Boeng Kak Lake community were arrested during a peaceful demonstration protesting the destruction of their homes. According to the Phnom Penh Municipal Police Chief Touch Naruth, "The villagers who were arrested were told to sign a contract promising to stop protests that cause public disorder, and to stop using violence and arguing with the police."⁸³

In addition, on 11 July 2013, Rong Panha, a representative of the Cambodian Confederation of Unions ("CCU"), took part in a protest of approximately 500 garment workers from the *Tai Nan* factory in Freedom Park, in central Phnom Penh. The workers gathered to submit a petition, listing their demands, including higher compensation, to Prime Minister Hun Sen. The demonstration resulted in violence after the arrival of several hundred riot police, which led to Mr. Rong Panha being beaten with batons and taken away by a police van to the office of the Phnom Penh Police Commissariat.⁸⁴ Mr. Panha was only released after thumb printing a

⁷⁹ Phann Ana & Aun Pheap, 'CNRP Cancels Meeting as CPP Supporters Turn Out in Force,' *The Cambodia Daily*, (22 January 2014): <http://bit.ly/1m3dvc7>

⁸⁰ May Titthara & Stuart White, 'No talks amid violence: Sokha,' *The Phnom Penh Post*, (28 January 2014): <http://bit.ly/1mrsK1n>

⁸¹ CCHR, FIDH, OMCT, LICADHO 'Cambodia: Harassment, arrest, and detention of human rights defenders continue,' (22 January 2014) <https://www.fidh.org/International-Federation-for-Human-Rights/asia/cambodia/14511-cambodia-harassment-arrest-and-detention-of-human-rights-defenders>

⁸² Khouth Sophak Chakrya and Sean Teehan, 'Union leader released,' *Phnom Penh Post*, (20 January 2014): <http://bit.ly/1coBosf>.

⁸³ Khouth Sophak Chakrya, 'Lake protest turns bloody,' (22 April 2011): <http://bit.ly/LiMLrd>.

⁸⁴ CCHR, 'Violent Response to Workers Protest,' (July 2012) <http://bit.ly/1dKrA7u>.

document stating he instigated the conflict that resulted at the protest and would not take part in future activities such as demonstrations.⁸⁵

On 23 May 2014, **eight union leaders and union members** from the Coalition of the Cambodian Apparel Workers' Democratic Union ("CCAWDU") were arrested in Bati District, Takeo Province, during a garment factory strike at the JSD Textile Co. Ltd Factory. The strikers were calling for improved working conditions. According to CCHR's monitors, the eight were then detained for 48 hours and questioned in relation to possible charges of instigating a felony, threats to cause damage, discrediting a judicial decision and of being instigators. They were all released on bail on 25 May after the President of CCAWDU signed a letter guaranteeing that the eight would not cause trouble at the factory and would present themselves when requested by the Prosecutor. They remain under judicial supervision (article 223 of the Code of Criminal Procedure) for exercising their right to strike.

This practice has a serious negative impact on the work of HRDs as it restricts their ability to promote and protect human rights but also represents a serious threat of arrest hanging above their heads. Article 5 of the UN Declaration on Human Rights Defenders⁸⁶ recognizes the right to peaceful assemblies and the UN Special Rapporteur on the Situation of Human Rights Defenders considers the right to peaceful assembly essential for human rights defenders working locally, nationally and globally to promote and protect human rights. Without enjoyment of this right, HRDs will be restricted in their ability to fulfill their fundamental role of protection and promoting human rights.⁸⁷

In addition, this practice represents a constant threat of arrest for HRDs. As noted by the UN Office of the High Commissioner for Human Rights ("OHCHR"), *"It is common for some State authorities falsely to push defenders into administrative 'illegality' and to use this as the basis for a subsequent arrest, detention and conviction."*⁸⁸

The permanent threat of arrest is in contradiction with the Human Rights Council's resolution on protecting human rights in the context of the right to protest which states that: *"everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protest, without fear of being injured, beaten, arbitrarily arrested and detained, tortured killed or subjected to enforced disappearance."*⁸⁹ In addition, any future arrests made solely based on these letters should be considered arbitrary and unlawful detention.⁹⁰

The HRC may consider recommending that the RGC:

- *Ensure respect for the right to freedom of assembly, and an end to arbitrary or sweeping bans on the holding of public gatherings;*
- *Put an end to the practice of forcing human rights defenders and citizens exercising their fundamental rights to freedom of expression and assembly from signing statements that restrict their rights in order to be released or avoid charges;*

⁸⁵ Sen David, 'Union rep 'forced' to confess,' *Phnom Penh Post*, (13 July 2012): <http://bit.ly/1e40MoS>.

⁸⁶ United Nations 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, (9 December 1998): <http://bit.ly/1fbj99p>.

⁸⁷ United Nations General Assembly, Report by the Special Representative of the Secretary-General on Human Rights Defenders, UN Doc. A/61/312 (5 September 2006), para. 76 and introduction: <http://bit.ly/1fbiANO>.

⁸⁸ OHCHR, 'Human Rights Defenders: Protecting the Right to Defend Human Rights,' (Fact Sheet No. 29): <http://bit.ly/1iFTNUY>.

⁸⁹ Human Rights Council Resolution, 'The promotion and protection of human rights in the context of peaceful protests,' A/HRC/Res/19/35, (18 April 2012): <http://bit.ly/1llo3qn>.

⁹⁰ See Human Rights Committee Draft General Comment No. 35 (Article 9, Liberty and Security of Person), (2013) UN Doc. CCPR/C/107/R.3, para 17; Human Rights Committee, Concluding Observations on Canada, (2006) UN Doc. CCPR/C/CAN/CO/5, para. 20; Human Rights Committee, Concluding Observation on Moldova, (2009) UN Doc. CCPR/C/MDA/CO/2, para. 8. <http://bit.ly/1fbd3S>.

- *Release arbitrary detained human rights defenders including Mmes. Tep Vanny, Yorm Bopha, Song Sreyleap, Pan Chunreth, Erm Sreytouch, Bov Sorphea, and Ngoun Kimlang.*

6. Status of controversial NGO and Union draft laws remains unclear

Issue 21. Please provide information on the suspension of the NGO Sahmakum Teang Tnaut (STT) ordered by the Ministry of Interior for a period of five months in August 2011. Please also supply information on the alleged refusal of the Minister of Labour to register branches of the Free Trade Union in February 2014. In this regard, please indicate the status of the following draft legislation: (1) the draft law on associations and non-governmental organisations (para. 198 of the State party’s report); and, (2) the draft law on trade unions.

On 2 August 2011, the Ministry of Interior issued a letter to local NGO Sahmakum Teang Tnaut (STT), ordering it to "suspend [its] activities" until 31 December 2011, a period of five months. The letter offered no legal basis for the suspension, but simply accused STT of failing to modify its leadership structure and making a revision to its statutes "according to the instruction of a specialized department."⁹¹ The letter offered no further explanation, suggesting that the suspension may have been motivated by a desire to obstruct the organization’s work supporting communities who opposed a government led urban infrastructure development project.⁹² STT did in fact suspend its activities in response to the order, but after December 31 2011, was able to resume its work.

The RGC last released a draft of the Law on Associations and Non-Governmental Organizations (the “LANGO”) in December 2011.⁹³ The draft law contains mandatory and complex registration for all civil society organizations, includes excessive restrictions on foreign NGOs and contains vague terminology that enables the RGC to delay indefinitely or deny the registration of critical NGOs. After widespread objections from civil society regarding potential abuse of the law to target critics and severely curtail freedom of expression, the RGC made a commitment to postpone the LANGO pending further consultation. However in recent months officials of the RGC have made a series of announcements indicating that the law may be adopted in the near future, raising concerns anew that the law may be introduced without any consultation with civil society.⁹⁴

A first draft Law on Trade Unions was introduced by the RGC in 2011 but was shelved after civil society groups and trade unions raised concerns, including that (i) the law would make trade unions highly vulnerable to dissolution and de-registration; (ii) that it provided for burdensome and discriminatory requirements for individuals seeking leadership positions in unions such as having a clean criminal record (particularly worrying given that labor activists are regularly subjected to criminal proceedings); and (iii) that it provided the RGC with

⁹¹ OMCT and Cambodian civil society organisations’ joint statement, ‘Cambodia: Arbitrary suspension of the human rights NGO Sahmakum Teang Tnaut,’ (August 2011): <http://www.omct.org/human-rights-defenders/urgent-interventions/cambodia/2011/08/d21402/>.

⁹² Sebastian Strangio, ‘Cambodian NGOs under the gun,’ *Asia Times*, (20 September 2011): http://www.atimes.com/atimes/Southeast_Asia/MI20Ae02.html.

⁹³ Available at: <http://bit.ly/1oLiLWS>.

⁹⁴ Ven Rathavong, ‘Cambodia Prepares NGO Law,’ *Khmer Times*, (22 January 2015): <http://www.khmertimeskh.com/news/8200/cambodia-prepares-ngo-law/>; see also: Lay, ‘Mr. Vun: NGO will soon be pushed out,’ (11 December 2014): <http://vodhotnews.com/25918>.

too much discretion over decision-making in these areas.⁹⁵ Despite these concerns, the RGC had reportedly vowed to pass the law by the end of 2014,⁹⁶ but it has yet to do so. The current status of the law is unclear.

The HRC may consider recommending that the RGC:

- *Refrain from passing the above-mentioned LANGO and Trade Union Law, and hold genuine consultation with sufficient time for analysis and comments on the draft by relevant stakeholders, including civil society organizations.*

⁹⁵ CCHR, 'Fundamental Freedoms Series: Freedom of Association and Union Membership,' (January 2014): <http://bit.ly/1h4r2zh>.

⁹⁶ Hul Reaksmey and Colin Meyn, 'Government's Trade Union Law May Limit Freedom of Association,' *The Cambodia Daily*, (13 March 2014): <http://bit.ly/1fUlhDq>.

VI. RIGHTS OF THE CHILD (Arts. 7 and 24 ICCPR)

1. Inadequate fair trial rights of children

Issue 23. Please indicate what steps the State party has taken to establish a juvenile justice system in accordance with international standards.

A law on Juvenile Justice was first drafted in 2002, but has yet to be passed. Cambodia hence does not have a separate set of clearly defined laws detailing the rights of children. The Criminal Code and the Code of Criminal Procedure include provisions that guarantee differential treatment for minors. Article 39 of the Criminal code offers a generic outline of protections that should be offered to minors who commit offences, and a loose commitment to “surveillance, education, protection and assistance” of juveniles. However, there is not a specific set of procedural rules for juveniles, and most of the provisions in the Criminal Code and the Code of Criminal Procedure that do refer to minors are too brief and poorly defined to act as a useful guide to those administering juvenile justice. Furthermore, the legal and procedural protections that exist are often not adhered to in practice. The RGC is not taking action to remedy these deficiencies.

There is a lack of understanding among those administering juvenile justice, including judges, that children must be treated differently from adults, and there is a clear need for better training, understanding and resources.⁹⁷ Wide discretion is given to judges under Article 39 of the Criminal Code, which allows judges to “impose a criminal penalty on minors of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.” This allows judges to give a child under the age of 18 the same criminal responsibility as that of an adult. Contributing to this problem is the lack of adequate methods of providing a child’s age, due to internal migration, forced evictions or because local authorities failed to provide adequate registration documents at birth.⁹⁸

Cambodia’s domestic law and procedures, in theory, provide some protection against pre-trial detention for juveniles. Article 212 of the Code of Criminal Procedure expressly bans pre-trial detention for those under the age of 14. While Article 213 of the Code of Criminal Procedure limits pre-trial detention for those between 14 and 18, it does not discourage it. With 87% of juveniles being put in pre-trial detention, Cambodia’s administration of juvenile justice fails to adhere to international law.⁹⁹ Court representatives have stated that reasons for pre-trial detention include the seriousness of the offense, the defendant’s lack of a fixed address, people lying about their age, the risk of further offenses, and insufficient resources to monitor defendants. This suggests that the high rate of pre-trial detention is partially the result of a lack of social and structural resources and support to allow for alternatives to be put in place.¹⁰⁰

CCHR’s trial monitoring data shows that the judiciary fails to uphold juveniles’ right to privacy. Measures to protect the right to privacy were taken in only three of the 219 cases that CCHR monitored.¹⁰¹ Usually, there are no separate courtrooms allocated for cases involving juveniles that would restrict access for members of the public (other than the juvenile’s parents or legal guardians). There is also no practice of using tools such as

⁹⁷ CCHR, ‘Children in the Cambodian criminal justice system,’ (October 2014), <http://bit.ly/1tyeTpq>.

⁹⁸ *ibid* 5.

⁹⁹ *ibid* 5.

¹⁰⁰ This was reported by several judges at an informal and confidential meeting between members of the CCHR and judges of the Ratanakiri and Banteay Meanchey province court (10 – 14 September 2012) and judges of the Phnom Penh court (17 September 2012).

¹⁰¹ *ibid* 7.

video conferencing that could increase the privacy of juveniles. Although such video conferencing systems have been installed in some courtrooms, CCHR's monitoring activities shows that they are almost never used.

Domestic law gives the courts full discretion over the sentencing of juveniles. Although Article 39 of the Criminal Code emphasizes non-custodial sentences for juveniles by stating that minors who commit offenses should be subject to supervision, education, protection and assistance, it also allows for a criminal penalty if "warranted by the circumstances." When courts lack the relevant training and sensitivity in dealing with juveniles, the outcome is that incarceration is imposed in almost all cases. CCHR only has information about one case during its monitoring activities where the judge gave consideration to imposing a non-custodial sentence to a juvenile defendant. In that case, even though the judge sentenced the juvenile to three-years-and-six-months in prison, the judge gave three years probation.¹⁰² These figures are of serious concern and at odds with both international and domestic law.

The data collected may indicate a lack of social and judicial resources and structures to support the court in implementing legislation. Court representatives have explained that the court is willing to impose non-custodial sentences on juvenile defendants, but that it is very challenging to implement due to the lack of supervision measures¹⁰³. Moreover, Youth Rehabilitation Centers, for instance, are under-utilized due to lack of funds and support for juvenile justice programs.

The HRC may consider recommending that:

- *The RGC enact the draft Juvenile Justice Law as a matter of priority. Appropriate guidance should also be developed alongside the law on how to provide different treatment to juveniles, for example on privacy, the use of pre-trial detention and sentencing, and be developed in consultation with law practitioners and civil society;*
- *Pre-trial detention of juveniles only takes place in exceptional circumstances;*
- *Judges and prosecutors undergo specific training regarding issues relating to juvenile justice;*
- *No public access should be permitted to trials involving juveniles and reporting restrictions should be imposed;*
- *All juveniles shall be entitled to have an appropriate adult (parent, guardian or other suitable person over the age of 18) present during police questioning and at every court hearing;*
- *Incarceration of juveniles should be implemented in only the most serious cases, where other forms of sentencing have been exhausted or where imprisonment is required for reasons of public protection; Focus should be placed upon rehabilitation rather than punishment alone.*

¹⁰² *ibid* 8.

¹⁰³ This was reported by several judges at an informal and confidential meeting between members of the CCHR and judges of the Ratanakiri and Banteay Meanchey province court (10 – 14 September 2012) and judges of the Phnom Penh court (17 September 2012).

VII. PARTICIPATION IN PUBLIC AFFAIRS (ART. 25 ICCPR)

1. Lack of independence of the National Election Committee

Issue 26. With reference to the information provided in paragraphs 227 to 240 of the State party's report, please provide detailed information on the mechanisms that exist in the State party to ensure that elections are transparent and fair. According to the Special Rapporteur on the situation of human rights in Cambodia most of his recommendations with regard to electoral reform have not been acted upon. Please comment. Please indicate also whether there have been any investigations or prosecutions in connection with allegations of numerous irregularities, including bias in the election machinery, during the 2013 national elections.

CCHR has documented a number of flaws in electoral processes and institutions in Cambodia, including a lack of independence of the National Election Committee.¹⁰⁴ Following numerous reports of irregularities in the conduct of the 2013 national elections,¹⁰⁵ as noted by the special Rapporteur, the Election Commission investigated a number of complaints but dismissed each one.¹⁰⁶ This is concerning given the National Election Committee's afore-mentioned lack of independence and a low level of faith in the integrity of the National Election Committee among members of the public. In *'Democracy in Cambodia - 2014: A Survey of the Cambodian Electorate'*,¹⁰⁷ the Asia Foundation conducted its third national public opinion poll on democracy in Cambodia. The aim of the survey was to assess attitudes and priorities of the voting public that may contribute to or constrain democratic reforms. When asked about the National Election Committee, only 32% reported being satisfied with its work, and only 25% believed it to be free from the influence of political parties.¹⁰⁸

After nearly one year of political deadlock following the disputed 2013 national election, the CPP, the ruling party, and the CNRP, the opposition party, reached a political deal on 22 July 2014. The CNRP agreed to take their seats in the National Assembly and work with the CPP on some key reforms, including reform of the National Election Committee. The arrest of Meach Sovannara, Tep Narin and other members of the CNRP in the midst of negotiations suggest possible political motives. On November 15, Interior Ministry spokesperson Khieu Sopheak reportedly stated that if the opposition were willing to cooperate more on National Election Committee reform, Meach Sovannara would not face a long jail term.¹⁰⁹

¹⁰⁴ CCHR, 'Strengthening Electoral Processes and Democratic Practices in Cambodia: Report on Forums on Elections and Democratic Space,' (2011): <http://www.cchrcambodia.org/admin/media/report/report/english/2011-07-20-report-eng.pdf>; See also: CCHR, 'Briefing Note: Political and Electoral Reform in Cambodia,' (2013): http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2013_02_11_CCHR%20Briefing%20Note%20Electoral%20and%20Political%20Reform_Eng_u.pdf; CCHR, 'Outcome Report: Workshop for Youth on Electoral Reform,' (2013): http://cchrcambodia.org/admin/media/report/report/english/2014_08_19_CCHR_Outcome_Report_Workshop_for_youth_on_electoral_reform_%28ENG%29.pdf.

¹⁰⁵ Transparency International Cambodia and The Coalition for Integrity and Social Accountability, 'Final Election Observation Report on Cambodia's 2013 National Election,' (September 2013): <http://bit.ly/1oLjGXc>.

¹⁰⁶ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/27/70, (15 August 2014) para 11.

¹⁰⁷ Asia Foundation, *'Democracy in Cambodia - 2014: A Survey of the Cambodian Electorate,'* (2014): <https://asiafoundation.org/resources/pdfs/DemocracyinCambodia2014.pdf>.

¹⁰⁸ *ibid* page 51.

¹⁰⁹ Chhay Channyda and Meas Sokchea, 'CNRP Arrests Continue,' *Phnom Penh Post*, (14 November 2014): <http://www.phnompenhpost.com/national/cnrp-arrests-continue>.

In October 2014, members of the National Assembly voted to amend the constitution to make the National Election Committee a constitutionally mandated body, with implementing legislation currently the subject of negotiations.¹¹⁰

2. Violation of freedom of expression of NGOs during elections

Issue 26 [continued]

In January 2015, Deputy Prime Minister Bin Chhin of the CPP, and Mr Kuoy Bunroeun of the CNRP, reportedly stated that measures banning staff of civil society organizations from giving media interviews or making statements deemed to have “insulted” political parties during election periods, were under consideration to ensure the political neutrality of NGOs.¹¹¹ In response, CCHR joined other Cambodian civil society organizations in calling on the Government and Political Parties to Respect Freedom of Expression,¹¹² citing the Committee’s General Comment No. 34 that in the context of public political debate, the value placed by the ICCPR on uninhibited expression is particularly high, and that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.”¹¹³ The Committee has also affirmed that “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”¹¹⁴ Far from enabling transparent and fair elections, such measures would only serve to stifle public debate, impair citizens’ constitutional right to participate actively in the political life of the nation, and undermine civil society’s legitimate role in holding public authorities to account.

The HRC may consider recommending that:

- *the National Election Committee should be given full independence*
- *the RGC guarantees freedom of expression to civil society organizations at all times including during elections*

¹¹⁰ Heng Reaksmeay, ‘Cambodian Constitution Amended to Strengthen ‘Independent’ Election Body,’ *VOA News*, (1 October 2014): <http://www.voanews.com/content/cambodian-constitution-amended/2469307.html>; See also: IHS Jane’s Intelligence Weekly, ‘Constitutional change to secure election commission’s independence in Cambodia likely to reduce political instability,’ (1 October 2014): <http://www.janes.com/article/43974/constitutional-change-to-secure-election-commission-s-independence-in-cambodia-likely-to-reduce-political-instability>; Kuch Naren, ‘Reformed Election Commission Likely to Be Delayed by Stalled Talks,’ *The Cambodia Daily*, 27 January 2015: <https://www.cambodiadaily.com/news/reformed-election-commission-likely-to-be-delayed-by-stalled-talks-76749/>.

¹¹¹ Kuch Naren, ‘NGOs to Be Restricted During Election Campaigns,’ *Cambodia Daily*, (17 January 2015): <https://www.cambodiadaily.com/news/ngos-to-be-restricted-during-election%E2%80%88campaigns-76343/>.

¹¹² CCHR, ADHOC, Ponlok Khmer, LICADHO, Equitable Cambodia, the Cambodian Center for Independent Media, Indigenous Community Support Organisation and the Cambodian Human Rights Action Committee, ‘Civil Society Organizations Call on the Government and Political Parties to Respect Freedom of Expression,’ (4 February 2014): http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=534&id=5&lang=eng.

¹¹³ UN Human Rights Committee, General Comment No. 34. (12 September 2011) Para 38: <http://bit.ly/1xmySgV>

¹¹⁴ Ibid.

VIII. About the organizations submitting the alternative report

The **Cambodian Center for Human Rights** (“CCHR”), founded in November 2002, is a leading non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in the Kingdom of Cambodia (“Cambodia”).

We empower civil society to claim its rights and drive change; and through detailed research and analysis, we develop innovative policy and advocate for its implementation. CCHR’s vision is of a non-violent Cambodia in which people enjoy their fundamental human rights, are treated equally, empowered to participate in democracy, and share the benefits of Cambodia’s development.

CCHR is a member of the World Organization Against Torture (“OMCT”) SOS-Torture Network; the International Freedom of Expression Exchanges (“IFEX”), the global network for freedom of expression; the Southeast Asian Press Alliance (“SEAPA”); and the World Alliance for Citizen Participation (“CIVICUS”).

CCHR’s Human Rights Sithi Portal www.sithi.org is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms, and the 2013 winner of the Communication for Social Change Award, awarded by the Centre of Communication and Social Change at the University of Queensland in Brisbane, Australia.

The **World Organization against Torture** (“OMCT”) was created in 1985, and is today the main coalition of international non-governmental organizations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organizations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organizations working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT’s International Secretariat provides personalized medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent interventions across the world, in order to protect individuals and to fight against impunity.

Specific programs allow it to provide support to specific categories of vulnerable people, such as women, children and human rights defenders. In the framework of its activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.