

**Fact Sheet:** Case Study Series: Impunity in Banteay Meanchey

**Timeline:** November 2011 to present



**Snapshot:** This case – whereby someone faces the full force of the law for doing his job and defending the rights of a young woman who is allegedly the victim of sexual harassment – shows that the judicial system of the Kingdom of Cambodia (“Cambodia”) is being abused, serving only to protect the interests of the powerful and well-connected rather than to provide justice and remedies to those in need. The Cambodian judicial system is currently not fit for purpose.

### Introduction

This fact sheet provides an overview of the issue of impunity that seems to pervade all corners of contemporary Cambodia. It focuses on one case in Banteay Meanchey province, and analyses the possible repercussions of such a corrupt application of the law. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

### Case background

On 9 February 2012, Soum Chankea, Banteay Meanchey Provincial Co-ordinator for the Cambodian Human Rights and Development Association (“ADHOC”), was summonsed by the Prosecutor’s office in Sisophon, following a complaint lodged by Oum Socheath, head of the Banteay Meanchey branch of the Cambodia Mine Action Centre (“CMAC”) and Co-ordinator of the joint United Nations Development Program and CMAC mine clearance program. Soum Chankea’s summons follows ADHOC’s intervention in response to a complaint by a 25-year-old waitress alleging sexual harassment, molestation and gender-based violence against Oum Socheath and another man, Pong Piseth, on 4 and 9 November 2011, respectively. Oum Socheath filed the complaint against Soum Chankea in November 2011 after he helped the woman to file a sexual harassment suit against the two men and urged the police and the Prosecutor’s office to take action and investigate the case. On 12 March 2012, Soum Chankea was initially questioned on a charge of slanderous denunciation under Article 311 of the Penal Code; however, the court then began asking him questions relating to allegedly coercing or inciting the woman to file the sexual harassment complaint. No charge has yet been brought and no indication given as to what the charge will be, if any.

### Follow the law

Under Article 311 of the Penal Code, a person is guilty of slanderous defamation if he or she “denounces a fact that is known to be incorrect and it is so knowingly to result in criminal or disciplinary sanctions constitutes a slanderous denunciation...” (emphasis added). Aside from the fact that all Soum Chankea did was to provide legal advice, the fact remains that whatever is said must be known to be incorrect for the charge to be brought. For Soum Chankea to know that the fact was incorrect, the fact must have been incorrect in the first place. Only a court of law has the authority to determine this. Before any counter-claim from Oum Socheath can be successful, the woman’s claims must be examined in a court of law. For if he were found guilty, then any claim of slanderous defamation would be seen in the harsh light of day for what it really is: a spurious claim that wastes the courts’ time and fails to deliver justice. CCHR assumes that no charge of incitement will be brought, as only incitement to commit a crime or to cause social unrest are crimes. In fact, under Article 527 of the Penal Code, it is a criminal offense to incite a victim not to file a complaint.

ADHOC was not breaking any law by providing the woman with legal assistance prior to any claim that she may have brought. In fact, under Article 1 of the Declaration on Human Rights Defenders, adopted by the United Nations General Assembly in 1998, “*everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels*”. Soum Chankea was just doing his job, and is protected and supported by international human rights principles.

### **Impunity alive and well in Cambodia**

Instead of protecting their people and investigating allegations of human rights violations, Cambodian authorities continue to place undue restrictions on the activities of human rights defenders through the ready use of criminal charges – ADHOC reports that this is the third time in recent months that its staff have been threatened with charges of defamation or incitement following human rights education and advocacy activities. The state’s priorities in any such case are clearly to suppress any expression of fact or opinion that damages its interests or those of its affiliates. In order to preserve its all-pervasive patronage network, the Royal Government of Cambodia and its local authority underlings need to keep their power base on side. In fact, allegations surfaced that the Prime Minister’s younger brother, Hun San, signed a letter asking the Prosecutor to drop investigations into Oum Socheath. The authorities have allegedly not taken any action to investigate the woman’s allegations.

The main problem with such cases – leaving aside for the moment the rights of the victims and those of any who try to help them – is that they encourage impunity. Any well-connected local authority representative, businessman or minister now knows that if he wants to sexually abuse or harass a young woman, he can – with impunity. In fact, according to ADHOC, the young woman’s alleged abuser made threatening phone calls, telling her “*she didn’t have the power to go against him*”. In such cases, victims will either be too scared to say anything when confronted with the menace of sexual harassment – the woman had to change her phone number and even worried for her safety after the abusive phone calls – knowing that the judicial system will not come to their defense, or it will be proactively used against them, and more innocent Cambodian lives will be ruined. And those brave men and women who commit themselves to the defense of human rights will think twice before getting involved in such cases again in the future, a key component of government strategy.

### **Conclusion**

This case highlights many uncomfortable home truths: the depths to which the Cambodian judiciary, so easily and readily abused, has sunk; the counter-intuitive fact that weak and vulnerable people and human rights defenders are silenced and punished for highlighting wrongdoings rather than being protected and rewarded; the degree to which impunity prevails, with the powerful and well-connected feeling increasingly empowered to do whatever they like, at whatever cost to those who stand in their way; and the extent to which the powers-that-be will go to protect their support base.

**For more details, please contact Ou Virak on tel: +855 (0) 1240 4051 or e-mail: [ouvirak@cchrcambodia.org](mailto:ouvirak@cchrcambodia.org) or Robert Finch on tel: +855 (0) 7880 9960 or e-mail: [robert.finch@cchrcambodia.org](mailto:robert.finch@cchrcambodia.org).**

