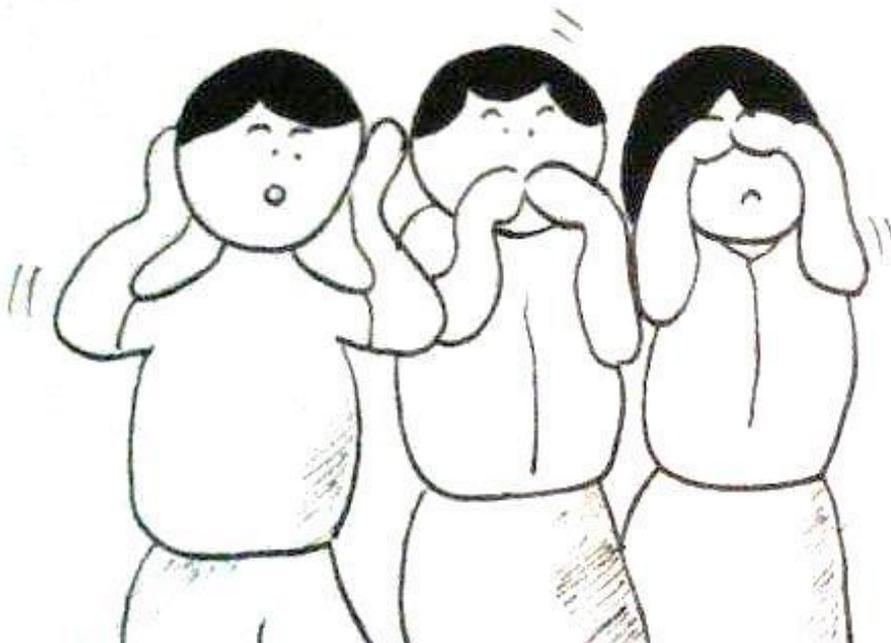




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Cambodian Center for Human Rights

September
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Repression of Expression: The state of free speech in Cambodia



Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This Report entitled *“Repression of Expression: The state of free speech in Cambodia”* (the “Report”) gives a detailed account of the situation of the right to freedom of expression in Cambodia. It illustrates the principle ways in which the right is violated and identifies patterns of violations through a series of examples and case studies. The Report provides concrete recommendations for the improvement of the situation.

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Queries and Feedback

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Definitions & Acronyms

ACSC/APF	ASEAN Civil Society Conference/ASEAN People's Forum
ACU	Anti-Corruption Unit
ADHOC	ADHOC
AHRD	ASEAN Human Rights Declaration
ASEAN	Association of South-East Asian Nations
BAKC	Bar Association of the Kingdom of Cambodia
Cambodia	Kingdom of Cambodia
CATU	Cambodian Alliance of Trade Unions
CCHR	Cambodian Center for Human Rights
CNRP	Cambodian National Rescue Party
COMFREL	Committee for Free and Fair Elections in Cambodia
Constitution	Constitution of the Kingdom of Cambodia, 1993 (as amended)
CPP	Cambodian People's Party
CSO	Civil Society Organization
Demonstration Law	The Law on Peaceful Assembly
ECCC	Extraordinary Chambers in the Courts of Cambodia
Education Law	The Law on Education
HRC	United Nations Human Rights Committee
HRD	Human Rights Defender
HRP	Human Rights Party
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
ISPs	Internet Service Providers
The Khmer Rouge Crimes Denial Law	Law on the Denial of Crimes Committed During Democratic Kampuchea
LANGO	Law on Associations and Non-governmental Organizations
LICADHO	Cambodian League for the Protection and Defense of Human Rights
MOI	Ministry of Interior

MPTC	Ministry of Posts and Telecommunications
NEC	National Election Committee
NGO	Non-Governmental Organization
Penal Code	The Penal Code of the Kingdom of Cambodia 2009
Press Law	Press Law of the Kingdom of Cambodia 1995
Report	This Report entitled " <i>Repression of Expression: The state of free speech in Cambodia</i> "
RFA	Radio Free Asia
RGC	Royal Government of Cambodia
RULE	Royal University of Law and Economics
RUPP	Royal University of Phnom Penh
SMS	Short Message Service
SRP	Sam Rainsy Party
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia 1992
VOA	Voice of America



Executive Summary

Executive Summary

The right to freedom of expression is a cornerstone of any functioning democracy. Without the right to seek and impart information, to hold opinions and to engage in debate, citizens cannot meaningfully participate in the political lives of their nations. Freedom of expression is also an important guarantor of other rights; allowing citizens to express dissatisfaction when their other rights are violated, for example. Since CCHR facilitated the publishing of the 2010 joint report on freedom of expression in Cambodia entitled “*Cambodia Gagged: Democracy at Risk?*”,¹ the situation of free expression in the country has deteriorated. The Cambodian media continues to be heavily censored, as do members of civil society who speak out against restrictive or illegal policies of the Royal Government of Cambodia (the “RGC”). This Report aims to illustrate the situation of freedom of expression, identify patterns of violations of this important right and to provide specific recommendations to the RGC in order to improve the situation.

Chapter 1 (Background) provides a brief introduction before discussing the objectives of the Report, the methodology used for its completion, and freedom of expression in the Cambodian context.

Chapter 2 (Legislative Landscape) discusses protections afforded to freedom of expression under international law, which are applicable in Cambodia, and under Cambodian domestic law. It also outlines restrictions placed by vague Cambodian domestic laws on freedom of expression.

Chapter 3 (Freedom of Expression and “Traditional Media”) describes the situation of traditional forms of media in Cambodia and points out the lack of media regulation and the lack of plurality of ownership, leading to widespread media censorship and irresponsible journalism. It also outlines the targeting of journalists and media outlets when they report independent news.

Chapter 4 (Freedom of Expression and “New Media”) talks about the use of lesser-censored forms of media such as mobile phones and the Internet to spread free and fair information. It highlights the increased use of the Internet amongst Cambodians – journalists, NGOs, students, bloggers - to express dissent and to share independent news and information.

Chapter 5 (Freedom of Expression and Civil Society) provides an overview of civil society in Cambodia and certain obstacles facing groups and individuals who speak out against RGC policies. It outlines two of the main threats against civil society actors – violence and judicial harassment.

Chapter 6 (Other Restrictions) looks at restrictions facing three important groups in Cambodian society – university students, lawyers and opposition politicians.

Chapter 7 (Conclusion and Recommendations) concludes that the situation of freedom of expression in Cambodia is dire and provides concrete recommendations to the RGC in order to bring about positive change.

¹ See <http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=13&id=5>



Background

1 Background

1.1 Introduction

The right to freedom of expression is a fundamental human right, guaranteed under the International Bill of Human Rights.² The United Nations Human Rights Committee (the “HRC”) recognizes freedom of expression as one of the “*indispensable conditions for the development of the human person*”.³ Not only is freedom of expression essential to human development, but it is the foundation of all human rights, being “*a necessary condition for...the promotion and protection of human rights*”.⁴ Freedom of expression is the backbone of inclusive, pluralist democracies – without the right to express views openly and without fear, genuine and effective democratic governance is impossible. The HRC, in recognition of this fact, describes freedom of expression as “*the foundation stone for every free and democratic society*”.⁵ Free expression is also closely related to other democratic rights such as freedom of assembly and association, as recognized under international human rights law.

Freedom of expression includes the right to express unorthodox or controversial views. ARTICLE 19, an international NGO specializing in freedom of expression issues, argues that the right to freedom of expression “*does not just apply to information and ideas generally considered to be useful or correct... It also includes controversial, false or even shocking expression. The mere fact that an idea is disliked or thought to be incorrect does not justify its censorship*”.⁶ Additionally, freedom of expression is not limited to the right to simply express oneself; it also includes the right “*to seek, receive and impart information and ideas through any media and regardless of frontiers*”.⁷ The right to freedom of expression, therefore, necessarily includes the right to access information; this gives rise to the corresponding duty on behalf of national authorities to facilitate access to information and actively disseminate information of key public importance.⁸ Freedom of expression and information are vital for good governance – transparency and accountability. The 2000s witnessed an increasing recognition of this fact, accompanied by a corresponding increase in the number of countries enshrining the right to information in law.⁹

² The International Bill of Human Rights comprises one United Nations General Assembly Resolution and two international human rights treaties; the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, respectively.

³ United Nations Human Rights Committee, ‘General Comment No. 34’ (Adopted at the 102nd session, Geneva, 11 to 29 July 2011), General Remark 2 <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>

⁴ General Comment No. 34, General Remark 3

⁵ General Comment No. 34, General Remark 2

⁶ Article 19, “Key Aspects”,

<<http://www.article19.org/pages/en/key-aspects.html>>

⁷ Universal Declaration of Human Rights (Adopted 10 December 1948, UNGA Res 217 A(III) (UDHR), Article 19

<<http://www.un.org/en/documents/udhr/index.shtml>>

⁸ See CCHR’s Report on Freedom of Information in Cambodia, “Freedom of Information in Cambodia: A right to know or a culture of secrecy” (May 2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=73&id=5>

⁹ UN Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, ‘Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade’ (delivered to the 14th session of the Human Rights Council, Geneva, 25 March 2010)

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.Add.2_en.pdf>

The importance of the right to freedom of expression is also recognized at a regional level. Regional human rights treaties such as the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, all uphold the fundamental right to free expression. Most recently, the Association of South East Asian Nations ("ASEAN") adopted the ASEAN Human Rights Declaration ("AHRD") during the ASEAN Summit 2012, held in Phnom Penh. Cambodia is a member of ASEAN and a signatory of the AHRD, which recognizes the right to freedom of *"opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice"* under Article 23. Although the AHRD is not legally binding on its signatories, it reaffirms rights guaranteed under other human rights treaties and signifies a commitment amongst ASEAN nations, to the protection and promotion of human rights.

1.2 Purpose, Scope & Methodology

Aware of the importance of freedom of expression to Cambodia's fledgling democracy and its importance to the ongoing social, economic and political development of the nation, CCHR has compiled this Report in order to provide an overview of the freedom of expression situation as it developed in Cambodia throughout 2012 and in the first half of 2013. The Report will provide concrete recommendations for the improvement of the situation of free expression in Cambodia and will be used as an advocacy tool to engage with the Cambodian people, national and international organizations, donors, embassies, and of course, with the newly elected RGC.¹⁰

This Report will identify common violations of the right to freedom of expression and will suggest solutions to combat these violations. It is important to note that the Report does not claim to provide an exhaustive account of all such violation; instead, the Report provides examples which best exemplify the general trends in attempting to quash free expression in Cambodia and the possible reasons for these trends.

In order to compile information for this Report, CCHR conducted a number of focus group discussions with Cambodian stakeholders. CCHR also collected important information regarding the freedom of expression situation faced by journalists, bloggers, activists and NGO workers, through four roundtable discussions hosted by CCHR in 2012 and early 2013. CCHR monitored the situation of free expression through compiling cases reported in the media and cases reported directly to CCHR. In addition, CCHR carried out extensive research using a wide variety of sources including national and international NGOs, academic experts, international bodies and national and international media outlets.

1.3 Overview of the Cambodian Context

In 2010, CCHR coordinated a coalition of NGOs, community organizations and unions who published a report entitled, *"Cambodia Gagged: Democracy at Risk?"*¹¹ examining freedom of expression in Cambodia. The 2010 report identified a pattern of erosion of freedom of expression which suggested that the RGC was pursuing a policy *"aimed at creating a de facto one-party state in Cambodia; a*

¹⁰ The National Assembly elections are to take place in July 2013.

¹¹ CCHR and others, "Cambodia Gagged: Democracy at Risk?" (Report) (September 2010).

<http://www.article19.org/data/files/pdfs/publications/cambodia-gagged-democracy-at-risk-.pdf>

society in which laws, systems and actions of the ruling party prevent criticism, ending democracy in the Kingdom and seriously eroding the rights and freedoms of all Cambodians".¹² The 2010 report concluded with a series of recommendations to the RGC, aimed at reversing the worrying trend of human rights violations and encouraging the development of a genuinely pluralist democracy in Cambodia, as guaranteed by the Constitution of the Kingdom of Cambodia (the "Constitution")¹³. Additional recommendations were made to the international community and, notably, the international donor community, encouraging Cambodia's partners to take a stronger stance against human rights abuses and the gradual undermining of the rule of law in Cambodia. Unfortunately, the subsequent three years have not seen the improvements that the authors of the 2010 report had hoped for; freedom of expression in Cambodia continues to be restricted as a matter of political expediency for the ruling Cambodian People's Party (the "CPP"). It is important to note however that although violations of the right to freedom of expression have continued, there has been a tangible change in the attitude of Cambodian people who are no longer afraid to speak out and to demand a shift in the status quo. The 2013 elections have shown that Cambodian people have begun to realize their freedom of expression – through taking to the streets campaigning, through voting for the opposition and through demanding a fair election result. This change can be attributed partially to several factors including for example increased penetration of the internet, the freest form of media in Cambodia, which has allowed for the dissemination of information and debate that had long been stifled. Civil society is also very strong in Cambodia and has encouraged the public to exercise their democratic right to voice their concerns and at the same time, the improvement in infrastructure throughout the country has meant that more people have access to the capital city of Phnom Penh and are now directly witness to the disparity in wealth between Cambodia's elite and the urban and rural poor.¹⁴

This change in attitude and renewed will to speak out is indeed encouraging and will hopefully have a concrete impact on the situation of human rights in Cambodia. Nevertheless, this report documents the overall situation from the beginning of 2012 until the present day (September 2013) and 2012 in particular saw a notable deterioration in the human rights situation in Cambodia. One Cambodian NGO described the climate as *"the country's worst human rights environment in more than a decade"*.¹⁵ Crackdown on political speech and criticism of the RGC intensified dramatically.¹⁶

This Report will demonstrate that freedom of expression continues to be systematically stifled by the RGC. Constraints imposed on the media and on civil society clearly demonstrate that the RGC's does not appreciate for criticism. Journalists have been intimidated, threatened and attacked to promote a culture of self-censorship, where fear of reprisals leads media professionals to avoid reporting on controversial topics. Demonstrations have been suppressed through disproportionate use of force; activists have routinely suffered or been threatened with assault, arrest, detention without trial and fabricated criminal charges in order to restrict their activities. Political opponents have been undermined and in some cases have had their parliamentary immunity revoked, leaving

¹² *ibid* p.2

¹³ The preamble of the Constitution provides "WE, THE PEOPLE OF CAMBODIA...restore Cambodia into an 'Island of Peace' based on multi-party liberal democratic regime guaranteeing human rights and the respect of law..."

¹⁴ The election results were still contested at the time of writing.

¹⁵ LICADHO, "Attacks and Threats against Human Rights Defenders in Cambodia 2010-2012" (Report) (December 2012), p.1. <<http://www.licadho-cambodia.org/reports/files/172LICADHOReportAttacksHRDs2010-2012-Eng.pdf%3E>>

¹⁶ Joshua Lipes, "Officials Slam Rights Report" (29 August 2012), <<http://www.rfa.org/english/news/cambodia/report-08292012184639.html>>

them open to judicial harassment. Several protesters, activists or journalists have lost their lives in unexplained and not fully investigated circumstances. These flagrant abuses of human rights have been facilitated by a legal system which operates at the whim of the RGC; the police and military have operated as a private security force tasked with protecting the interests of officials and wealthy business people with links to the CPP while the judiciary has consistently failed to behave in a manner consistent with its constitutional requirements to *“guarantee and uphold impartiality and guarantee the rights and freedoms of the citizens”*.¹⁷

National Assembly elections were held in Cambodia on 28 July 2013. It is believed that the exceptional crackdown on freedom of expression experienced throughout 2012 and continuing into 2013, has been intended to restrict public criticism and debate through any means necessary, and to protect the dominance of the ruling party in advance of the elections. Fears abound that the CPP’s intention to maintain the status quo has and will continue to lead to an escalation of harassment and violence against opposition voices in the immediate future and that Cambodia’s fledgling democracy will be fatally undermined as a result.

¹⁷ The Constitution of the Kingdom of Cambodia, Art.128



Legislative Landscape

2 Legislative Landscape

The right to freedom of expression is guaranteed under international and Cambodian law. The right to freedom of expression is not absolute; both international law and Cambodian law recognize that in certain extraordinary situations, free expression must be constrained in order to protect other public interests. The circumstances in which, as well as the extent to which, freedom of expression can be limited are also defined under both international and Cambodian law.

This section of the Report will give a short overview of the legislative framework protecting and/or restricting free expression in Cambodia. For more details on the legislative framework please refer to the 2010 Report¹⁸ and CCHR's *Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of case examples*¹⁹ to show how laws are used and abused to stifle dissent in Cambodia.

2.1 International Law

Freedom of expression is recognized, defined and guaranteed under international human rights law. Cambodia has ratified seven of the major United Nations ("UN") international human rights treaties and seeing as Cambodia is a monist legal system, the provisions under these treaties automatically became applicable under Cambodian domestic law on ratification.

Article 19 of the UN Universal Declaration of Human Rights ("UDHR") states that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*²⁰

The UDHR was adopted in 1948 by the UN General Assembly, and provides minimum human rights standards for all member states. Generally speaking, UN General Assembly Resolutions are not directly binding on states, and therefore cannot be relied upon in domestic courts. However, it is believed that the UDHR has acquired the status of customary international law in the 65 years since its adoption.²¹ In addition, a decision by the Constitutional Council of Cambodia from 2007 explicitly states that the provisions of the UDHR and all human rights treaties to which Cambodia is a party, must be applied by Cambodian courts and are therefore part of Cambodian domestic law.²²

¹⁸ CCHR, "Cambodia Gagged: Democracy at Risk?" (Report) (September 2010)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=13&id=5>

¹⁹ CCHR, "Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of case examples" (2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=23&id=5>

²⁰ Universal Declaration of Human Rights (Adopted 10 December 1948, UNGA Res 217 A(III) (UDHR), Article 19

<<http://www.un.org/en/documents/udhr/index.shtml>>

²¹ Antonio Augusto Cancado Trindade, 'Universal Declaration of Human Rights' (2008) 2

<http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr_e.pdf>

²² Decision of the Constitutional Council No.092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts of Cambodia,

<<http://cambodia.ohchr.org/WebDOCs/DocPublications/CCBHR%20Constitution/CCBHR-EN.pdf>>

The International Covenant on Civil and Political Rights (the “ICCPR”), to which Cambodia acceded in 1992, also specifically provides for the right to freedom of expression. Article 19 of the ICCPR reads as follows:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.²³

The right to freedom of expression enshrined in the UDHR and the ICCPR is broad in scope: the HRC, which oversees the implementation of the ICCPR, reaffirmed in 2011 that Article 19 covers not only the full spectrum of kinds of ideas or opinion, but also a broad range of means of dissemination. Essentially, freedom of expression means that any idea or opinion capable of being expressed can be expressed by any means possible.²⁴ However, the right to freedom of expression is not limited to the ability to express ideas and opinions. The freedom to express opinions necessarily requires the ability to access information in order to draw conclusions; to that end, the HRC further recognized that Article 19 encompasses the right to access information held by public bodies.²⁵ In addition, the HRC identified the corresponding duty of public bodies to not only provide information where requested, but to proactively disseminate information of public importance.²⁶

2.1.1 Regional Protections

As mentioned in Chapter 1 above, in November 2012, the heads of state of ASEAN adopted the AHRD, during the ASEAN summit in Phnom Penh.²⁷ The AHRD contains some valuable provisions protecting the free expression of ASEAN citizens such as the protection of the right to freedom of expression and opinion under Article 23, the right to freedom of assembly under Article 24, and the right to participation in the political life of one’s nation under Article 25.²⁸

2.2 Domestic law

The right to freedom of expression is also guaranteed under Cambodian domestic law. Article 31 of the Constitution states that:

Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights...²⁹

As mentioned above under section 2.1, the Cambodian Constitutional Council, which is mandated to defend the Constitution,³⁰ clarified in a 2007 decision, the role of human rights treaties under

²³ International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 19 <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>

²⁴ UN Human Rights Committee, ‘General Comment No. 34’ (Adopted at the 102nd session, Geneva, 11 to 29 July 2011), (General Comment No. 34) General Remarks 11-12, <<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>

²⁵ General Comment No. 34, General Remark 18

²⁶ General Comment No. 34, General Remark 19

²⁷ ASEAN, “Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration” (Press Release) (19 November 2012 <<http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>>

²⁸ ASEAN, “ASEAN Human Rights Declaration” (November 2012) <<http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>>

²⁹ Constitution, Article 31

Cambodian law and their direct applicability before the courts.³¹ The decision states that no law should be applied by the courts in such a way that violates the Constitution or the human rights treaties to which Cambodia is a party. Cambodia is a monist legal system therefore international treaties ratified by Cambodia should be automatically incorporated into domestic law. Article 31 of the Constitution and the Constitutional Council decision of 2007 clear up any ambiguity regarding this fact.

Additionally, the right to freedom of expression is guaranteed separately under Article 41 of the Constitution, which provides:

*Khmer citizens shall have freedom of expression, press, publication and assembly.*³²

The Constitution promotes an environment in which citizens are empowered to exercise their right to freedom of expression and involve themselves in public affairs. Article 35 of the Constitution states that:

*Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. Any suggestion by the people shall be given the full consideration by the grant of the State.*³³

The right to exercise freedom of expression through peaceful protest is also protected by the Constitution. Article 37 grants:

*The right to strike and to non-violent demonstration...*³⁴

2.3 Legal restrictions on freedom of expression

The right to freedom of expression is not absolute and can be subject to restrictions as stipulated under Article 19 of the ICCPR. Nevertheless, these restrictions must be provided by law for the achievement of legitimate aims and must be necessary (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on freedom of expression must be proportionate to the legitimate aim.

At the regional level, the AHRD protects the right to freedom of opinion and expression but also stipulates similar restrictions on the right as are outlined under the ICCPR: that the right may be limited according to law in order to protect the rights of others, national security, public order, public safety, public morality and the “*general welfare of the peoples in a democratic society*”. However, the AHRD ultimately provides less protection and more restrictions on human rights than other international instruments, such as the ICCPR, as it upholds the principle of absolute national sovereignty and defers to cultural and traditional norms of individual nations rather than the

³⁰ Constitution, Article 136

³¹ Constitutional Court of Cambodia, Decision No. 092/003/2007 (10 July 2007).

³² Constitution, Article 41

³³ Constitution, Article 35

³⁴ Constitution, Article 37

universality of human rights. Critics fear that the passing of the AHRD, which is not legally binding, could weaken other international treaties to which ASEAN nations are party.³⁵

In Cambodia, the Constitution may provide significant protection to the right to freedom of expression in theory, however, there are several domestic laws that actively restrict freedom of expression and are therefore unconstitutional and contradictory to Cambodia's obligations under international human rights law. Some of these laws include the Criminal Code 2009 (the "Penal Code"), the Press Law 1995 (the "Press Law"), the draft Law on Associations and Non-governmental Organizations (the "LANGO"), the Draft Trade Union Law, the Anti-Corruption Law and the recently adopted Law on the Denial of Crimes Committed During Democratic Kampuchea (the "Khmer Rouge Crimes Denial Law"). For the purpose of this Report we will not go into detail in relation to all of these laws but will focus on restrictive provisions contained in the Penal Code – the law most regularly used to silence dissent. We will also look at the Khmer Rouge Denial Law as the most recent restrictive law to be adopted by the national assembly. In later sections of the Report we will also briefly discuss several of the other laws mentioned.³⁶ Please see the 2010 report, "*Cambodia Gagged: Democracy at Risk?*" for a more in-depth account of the other restrictive laws.³⁷

2.3.1 Restrictions under the Penal Code

The Penal Code, which came into force in 2010, contains several provisions, which unjustifiably restrict freedom of expression and compromise Cambodia's obligations under international human rights law and under the Constitution. These provisions, usually relating to defamation and incitement, are regularly used as a tool to crack down on free speech by journalists, human rights workers, opposition politicians and human rights defenders. Please see the Table below on page 9 for specific provisions restricting freedom of expression.

In 2006, Prime Minister Hun Sen made a promise to decriminalize defamation in response to pressure from international donors.³⁸ As a result, on 26 May 2006, the National Assembly amended the then criminal code and removed incarceration as a potential penalty for defamation. However, defamation remains a criminal offense in Cambodia to this day, despite the passing of a new criminal code – the Penal Code – in 2009. Although the crime does not carry a custodial sentence, it does carry a fine and non-payment of a fine is punishable by imprisonment under Article 530 of the Cambodian Criminal Procedure Code. The retention of defamation as a criminal offense therefore weighs heavily on the shoulders of Cambodian citizens who speak out against the authorities.

Moreover, the provisions in the Table below that protect the reputations of public officials and authorities in the carrying out of their duties are incompatible with the ICCPR, which enshrines political debate. The Siracusa Principles on the Limitation and Derogation of Provisions in the

³⁵ CCHR, "CCHR Highlights Rashness of Adopting a Below Par ASEAN Human Rights Declaration" (Press Release) (19 November 2012) <http://www.sithi.org/temp.php?url=publication_detail.php&mid=6093>

³⁶ The Press Law will be discussed under Chapter Three and the LANGO will be discussed under Chapter Five.

³⁷ CCHR, "*Cambodia Gagged: Democracy at Risk?*" (Report) (2010) See Chapter Two.

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=13&id=5>

³⁸ CCHR, "Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of case examples" (2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=23&id=5>

International Covenant on Civil and Political Rights,³⁹ adopted by the HRC in 1984, advised that a “a limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticisms”.⁴⁰ More recently, the HRC expressed its concern over laws protecting the honor of public officials, and reaffirmed that criticism of public institutions should not be prevented through legislative measures.⁴¹

Not only does Cambodian law misguidedly allow public officials and bodies to use defamation laws to protect their reputations, it seemingly provides them with more protection than members of the public. Insult of a public official carries a custodial sentence, for example, while insult of a member of the public is punishable only by a fine.⁴²

Table: Provisions restricting Freedom of Expression under the Penal Code		
OFFENSE	ARTICLE	PENALTY
Defamation	Article 305	Fine of 100,000 to 10 million riel
Public insult	Article 307	Fine of 100,000 to 10 million riel
Malicious denunciation	Articles 311 & 312	Imprisonment of 1 month to 1 year, and a fine of 100,000 to 2 million riel
Incitement to commit felony ⁴³	Article 495	Where <u>the incitement was ineffective</u> : imprisonment of 6 months to 2 years, and a fine of 1 million to 4 million riel
Incitement to discriminate	Article 496	Where <u>the incitement was ineffective</u> : imprisonment of 1 year to 3 years and a fine of 2 million to 6 million riel
Insult of public official ⁴⁴	Article 502	Imprisonment of 1 to 6 days and a fine of 1,000 to 100,000 riel
Discrediting judicial decisions	Article 523	Imprisonment of 1 to 6 months and a fine of 100,000 to 1 million riel
False denunciation	Article 524	Imprisonment from one to sixth months and a fine from 100,000

³⁹ UN Commission on Human Rights, “The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights” (Adopted on 28 September 1984, E/CN.4/1984/4), (the Siracusa Principles) <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4672bc122>>

⁴⁰ The Siracusa Principles, Art.37

⁴¹ General Comment 34, para. 38

⁴² Article 307 of the Penal Code

⁴³ **Article 494** of the Penal Code stipulates that all incitement offenses (**Articles 495 and 496**) are punishable when they are committed:

1. “by speeches, of any kind whatsoever, pronounced in a public place or meeting;
2. by writing or picture, of any kind, distributed in public or exposed to the public; or
3. by any audio-visual communication to the public.”

⁴⁴ This Article deals with insult of public officials acting in the name of his/her office.

to judicial authorities		to 1 million riel
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2.3.2 Recent Developments: The Khmer Rouge Crimes Denial Law

Most recently, on 7 June 2013, the National Assembly passed the Khmer Rouge Crimes Denial Law, as mentioned briefly above. The Prime Minister himself suggested the need for a the Khmer Rouge Crimes Denial Law on 27 May 2013 after Kem Sokha, deputy head of the main opposition party, allegedly denied the existence of the notorious Khmer Rouge prison camp Toul Sleng, claiming that the camp’s existence was fabricated by the Vietnamese. Kem Sokha vehemently denies having made these comments. After the Prime Minister suggested the need for a law, the Khmer Rouge Crimes Denial Law was quickly drafted and passed without debate just one week later. The timing of the passage of the law – just seven weeks before the national election to be held on 28 July and directly following alleged comments made by Kem Sokha – has lead to the belief that the law is politically motivated and will be used in the future to silence dissent. Critics of the law, CCHR among them, have raised concerns that such a law is unnecessary in Cambodia where such denial is negligible.⁴⁵ The law also risks impeding education, debate and research surrounding the Khmer Rouge era and could negatively impact progress at the Extraordinary Chambers of the Courts of Cambodia, a UN backed hybrid tribunal, which is currently trying some of the top leaders of the Khmer Rouge for crimes against humanity.

The Khmer Rouge Crimes Denial Law contains only five articles. Those found guilty of denying or refusing to recognize crimes committed during Democratic Kampuchea (Khmer Rouge reign between 1975 and 1979) could face up to two years in prison and \$1000US, according to the law. The fact that the law is not necessary in a democratic society to ensure the respect of the rights or reputations of others or for the protection of national security or of public order (*ordre public*), or of public health or morals, means that it is contrary to Cambodia’s obligations under international human rights law (as stipulated above) and under the Constitution. It should also be noted that the law was passed two days after all of the parliamentarians from the main opposition parties – the Sam Rainsy Party (the “SRP”) and the Human Rights Party (the “HRP”) – were stripped of their parliamentary positions based on a vague provision in the Law on the Election of Members of the National Assembly.⁴⁶ The provision states that when a parliamentarian joins a new party that he/she can be replaced by another candidate within the party that she/he left, up to six months before a national election. In this case the twenty-seven parliamentarians were stripped of their positions, parliamentary immunity and salaries just eight weeks before the election because they had joined

⁴⁵ CCHR, “CCHR expresses grave concern relating to the potential impact of a Khmer Rouge crimes denial law on Freedom of Expression in Cambodia” (Press Release) (6 June 2013)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=391&id=5>

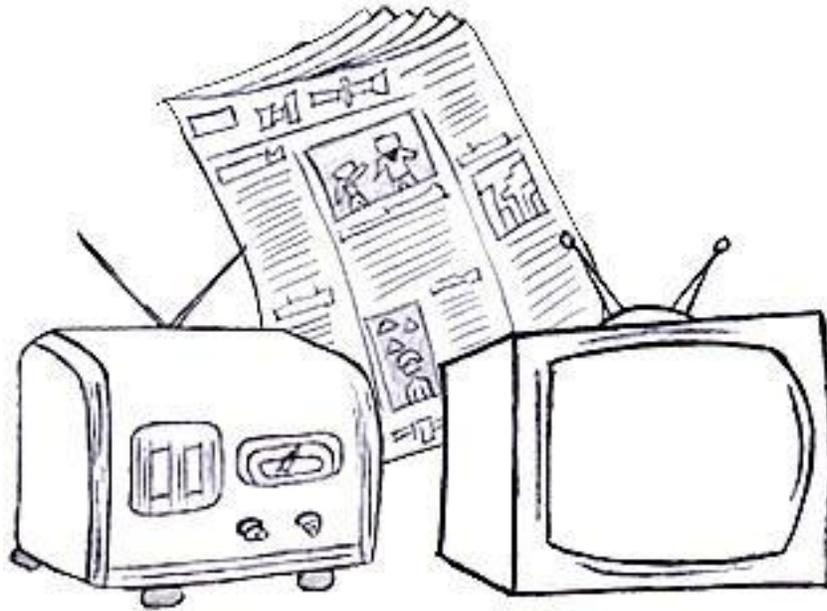
⁴⁶ Phorn Bopha and Colin Beyn, “Opposition leaders stripped of posts, salaries”, *The Cambodia Daily*, 6 June 2013

<<http://www.cambodiadaily.com/?s=opposition+parliamentarians+stripped+posts+salaries&x=0&y=0>>

the Cambodian National Rescue Party (the “CNRP”) – an alignment of their two parties. The law is unclear as to what happens less than six months before an election.⁴⁷

The Khmer Rouge Crimes Denial Law has yet to be passed by the Senate and officially signed into law by the King, however these two legislative stages are generally seen as a formality.

⁴⁷ See Article 120 of the Law on Election of Members of the National Assembly
<[http://www.sithi.org/admin/upload/law/Law%20on%20the%20Election%20of%20the%20Members%20of%20the%20National%20Assembly%20\(1997\)%20with%20first,%20second%20and%20third%20a.pdf](http://www.sithi.org/admin/upload/law/Law%20on%20the%20Election%20of%20the%20Members%20of%20the%20National%20Assembly%20(1997)%20with%20first,%20second%20and%20third%20a.pdf)>



***Freedom of Expression and
“Traditional Media”***

3 Freedom of Expression and “Traditional Media”

3.1 Freedom of the Media in Cambodia

Fully functioning democracy depends upon the ability of citizens to form, hold and share opinions with others. Freedom of the media is essential to this process. “Traditional media,” namely print media, radio and television, are the most established forms of media in Cambodia, but they are also the most heavily censored.⁴⁸

In Cambodia, all media professionals benefit from the general right to freedom of expression of the press as guaranteed under Article 41 of the Constitution. Recognizing both the unique role of and the unique challenges faced by the media, however, the Press Law outlines specific protections of media freedom, stating that:

*This law shall determine a regime for the Press and assure the freedom of press and freedom of publication in conformity with Articles 31 and 41 of the Constitution...*⁴⁹

However, although protections exist under domestic and international law, several domestic laws including the Press Law and the Penal Code, can, in reality, restrict freedom of the press⁵⁰ and while the Press Law sets out to protect journalists in carrying out their profession, it is often disregarded or misused (see Section 3.2).

Despite some protections, therefore, media censorship is rife in Cambodia and media professionals are regularly threatened and harassed. Since 1994, at least 11 journalists have been killed in Cambodia,⁵¹ including the September 2012 murder of Hang Serei Odom (see Case Study 1). The criminal charges leveled against Mam Sonando, one of Cambodia’s most prominent journalists and a vocal critic of the RGC, highlight the severity of the risks facing Cambodian journalists (see Case Study 2).⁵² In 2012, the Committee for Free and Fair Elections in Cambodia (“COMFREL”) warned that the media in Cambodia, “continued to be extensively controlled and dominated by the CPP led

⁴⁸ CCHR, “New Media and the Promotion of Human Rights in Cambodia” (July 2012) <http://www.cchrcambodia.org/admin/media/report/report/english/2012_07_24_New_Media_and_the_Promotion_of_Human_Rights_in_Cambodia_ENG.pdf>

⁴⁹ Press Law, Article 1

⁵⁰ CCHR, “An overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent” (Briefing Note) (30 October 2012).

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=23&id=5>

⁵¹ CCHR and South East Asian Press Alliance, “Case of slain journalist could be first to find justice in Cambodia” (12 September 2012).

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=287&id=5>

⁵² For in-depth analysis of the case against Mam Sonando, see: CCHR, ‘Legal Analysis of the Charging and Sentencing of Cambodian Journalist and Human Rights Defender Mam Sonando (Criminal Case Number 2207)’ (Legal Analysis) (3 March 2013).

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=33&id=5>

RGC, disadvantaging oppositional and dissenting voices and limiting the development of a plural political discourse.”⁵³

International NGO, Freedom House, currently ranks Cambodia’s media as “Not Free”,⁵⁴ while Reporters Without Borders identify Cambodia as a country with “Noticeable Problems”⁵⁵ with regards to media freedom. Similar to the general condition of freedom of expression in Cambodia, freedom of the media has experienced a concerning decline. The 2013 World Press Freedom Index saw Cambodia plummet 26 places to 143rd out of 179 countries,⁵⁶ marking Cambodia’s lowest ranking since Reporters Without Borders first began issuing the Press Freedom Index in 2002.⁵⁷ The report accompanying the release of these rankings emphasized that Cambodia’s decline was due to “a policy of censorship orchestrated by an increasingly ruthless information ministry”,⁵⁸ and raised concerns about “deadly attacks and death threats aimed at journalists who exposed government corruption and illegal activities harmful to the environment”.⁵⁹

3.2 Media censorship

A failure to properly regulate the industry and the overwhelming media dominance enjoyed by the ruling CPP means that Cambodian media outlets and professionals are routinely subject to unlawful censorship.

3.2.1 Regulation of the media

An essential component of promoting free media is a well-designed regulatory structure that promotes diversity and safeguards against commercial and ideological monopolies. However, there is no independent regulation of Cambodian media. Newspapers (print media), traditionally the most diverse form of media in Cambodia, are regulated by the RGC. Under the Press Law, for example, the editor of a newspaper must submit an application to the Ministry of Information before publication.⁶⁰ The application must include the personal details and background of the editor.⁶¹ This provision, while presented as a mere formality, is open to abuse; it enables licensing decisions to be motivated by political expediency rather than the promotion of a free and pluralistic media industry.

Ros Sokhet, a freelance journalist controversially convicted of disinformation in 2009 and vocal critic of the RGC’s record on corruption,⁶² was twice denied a press license in 2012. The Ministry of Information bizarrely decided, on the basis of recommendations from the RGC’s Anti-Corruption

⁵³ COMFREL, “Democracy, Elections and Reform in Cambodia: 2012 Annual Report” (March 2013) <http://www.comfrel.org/eng/components/com_mypublications/files/1310702012_report_Cambodian_Democracy_Electi_on_Reform_Final_11_March_2013.pdf>

⁵⁴ Freedom House, “Cambodia”, <<http://www.freedomhouse.org/country/cambodia>>

⁵⁵ Reporters Without Borders, “World Report – Cambodia”, <<http://en.rsf.org/report-cambodia,56.html>>

⁵⁶ Reporters Without Borders, “Press Freedom Index 2013”, <<http://en.rsf.org/press-freedom-index-2013,1054.html>>

⁵⁷ Peter Zsombor, “Censorship Rising as Cambodia Slips Down Press Freedom Index”, *The Cambodia Daily* (1 February 2013) <<http://www.cambodiadaily.com/archive/censorship-rising-as-cambodia-slips-down-press-freedom-index-8973/>>

⁵⁸ Reporters Without Borders, “World Press Freedom Index 2013” (January 2013) p. 11 <http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf>

⁵⁹ *ibid*

⁶⁰ Press Law, Article 8

⁶¹ Press Law, Article 9

⁶² Prak Chan Thul, “Journalist Charged, Jailed for Disinformation” *The Cambodia Daily* (30 October 2009). <<http://www.cambodiadaily.com/news/journalist-charged-jailed-for-disinformation-1464/>>

Unit (the “ACU”),⁶³ that the use of the word “Corruption” in two proposed titles would encourage a belief that the paper was linked with the ACU.⁶⁴ Ros Sokhet was eventually granted a license in June because he had agreed to change the title of the publication to “*Khmer Nation*”.⁶⁵ However, the timing of the decision (the license was eventually granted less than a week after the national commune elections) raises concerns that the Ministry of Information had been seeking to prevent Ros Sokhet from publishing in advance of the election, when his paper could highlight not only the RGC’s poor record on tackling corruption but also the alleged complicity of high-ranking CPP members in corrupt business and political activities.

The Ministry of Information is also responsible for the regulation of broadcast media, although there is no legislative guidance as to how this power should be exercised. In practice, the RGC uses its powers to restrain politically sensitive broadcasts through intimidation and censorship, specifically targeting independent news agencies. During the national commune elections in June 2012 for example, the Ministry of Information banned five affiliate FM radio stations from airing programming from Voice of America (“VOA”) and Radio Free Asia (“RFA”), two US government-funded news agencies.⁶⁶ No state-run outlets were placed under a similar embargo, raising concerns about the fairness of the electoral process.⁶⁷ Having expressed their profound disappointment at the decision, reporters from VOA and RFA were summoned to a meeting with the Council of Ministers in October 2012, in which they were told to demonstrate increased “*cooperation*” with the RGC.⁶⁸ Sources who attended the meeting claimed that RGC officials had threatened legal action if the stations did not alter their programming, characterizing it as a “*blatant attempt to discourage objective reporting on the government*”.⁶⁹

On 31 January 2013, the Ministry of Information issued a new regulation instructing radio and television stations to only feature legal commentators assigned by the national Bar Association of the Kingdom of Cambodia (“BAKC”), thereby restricting these media outlets while also restricting the free expression of lawyers in the media.⁷⁰ The Ministry of Information was approached by the BAKC to pass this regulation. According to the Ministry of Information, the regulation is necessary in order to avoid negative consequences of the dissemination of legal information.⁷¹ Therefore, radio and television stations are now required to submit a proposal to the BAKC when they want to interview a

⁶³ Mom Kunthear, “Newspaper Name ‘Confusing’”, *The Phnom Penh Post* (21 February 2012).

<<http://www.phnompenhpost.com/2012022154635/National/newspaper-name-confusing.html>>

⁶⁴ Mom Kunthear, “Third time’s Lucky for a New Paper”, *The Phnom Penh Post* (6 June 2012)

<<http://www.phnompenhpost.com/2012060656615/National/third-times-lucky-for-a-new-paper.html>>

⁶⁵ *ibid*

⁶⁶ “BBG Decries Cambodian Government Cancellation of VOA, RFA Coverage During National Election” *Voice of America* (5 June 2012),

<<http://www.voacambodia.com/content/bbg-decries-cambodian-government-cancellation-of-voa-rfa-coverage-during-national-election-157199245/1358938.html>>

⁶⁷ COMFREL, “Final Assessment and Report on 2012 Commune Council Elections” (October 2012) p. 36,

<http://www.comfrel.org/eng/components/com_mypublications/files/620271Final_Report_Commune_Elections_2012_Final_Final_06_11_2012.pdf>

⁶⁸ Heng Reaksmeay, “Government Summons RFA, VOA for ‘Cooperation’ Talks” *Voice of America* (10 October 2012).

<<http://www.voacambodia.com/content/government-summons-rfa-voa-for-cooperation-talks/1524060.html>>

⁶⁹ “Cambodia ‘threatens’ US-funded radio stations” *Al Jazeera* (11 October 2012).

<<http://www.aljazeera.com/news/asia-pacific/2012/10/20121011619597986.html>>

⁷⁰ CCHR, ADHOC and LICADHO, “The Bar Association of the Kingdom of Cambodia must not Infringe Lawyers’ Free Speech” (Joint Statement) (22 February 2013)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&pid=358&id=5>

⁷¹ Jan Beyer, “New Restrictions for Legal Commentators in Cambodia” *International Press Institute* (13 February 2013),

<<http://www.freemedia.at/home/singleview/article/new-restrictions-for-legal-commentators-in-cambodia.html>>

registered lawyer. Following the proposal, the BAKC will make an assignment based on the topic and the desired broadcast date. Many rights groups expressed alarm at the new regulation as it stifles free expression of lawyers, stunts public information on legal matters and restricts the media. Also, the BAKC is known to have links with the ruling CPP. Thus, it is viewed as another attempt by the RGC to censor the media, as well as legal professionals.⁷²

The lack of independent regulation has therefore resulted in a regulatory system driven by political ambitions rather than the values of diversity and impartiality.

3.2.2 Plurality of ownership

Media pluralism is considered an essential component of the right to freedom of expression, ensuring as it does the publication of a wide range of opinions while avoiding the monopoly of a single agenda over a country's media outlets. However, there is little genuine media pluralism in

Restrictive Provisions Under the Press Law

The Press Law imposes content restrictions in relation to anything which “*may affect the public order by inciting directly one or more persons to commit violence*” (**Article 11**) or which “*may cause harm to the national security and political stability*” (**Article 12**) or which affects “*the good custom of society*” (**Article 14**). These terms remain undefined and are therefore open to abuse. Penalties include financial sanctions and, in the case of **Article 12**, the possibility of suspension of a publication for up to 30 days.

Article 12 states that it does not take into account “*due punishment according to Criminal Law.*” Since the enactment of the Press Law, there has been continual confusion as to which law should be used to prosecute journalists charged with defamation and similar offenses. **Article 20** states that “*any act committed by employers, editors or journalists that violate[s] the criminal law, shall be subjected to punishment according to Criminal Law.*” However, **Article 20** goes on to say that “*no person shall be arrested or subject to criminal charges as the result of the expression of opinion,*” while **Article 21** states that “*all previous provisions related to the press shall be abrogated*”. The **Article 20** exemption together with **Article 21** contradict the first part of **Article 20** and **Article 12**, which allow for criminal prosecution under applicable criminal law.

In addition, the Press Law can make it difficult for journalists to access information. **Article 5** states that the press has rights of access to information in government-held records, **unless the information is deemed to harmful for release**. Article 5(b) states that requests for information must be made in writing and specify clearly what information is sought. The officer “*shall respond in writing to the request in 30 days.*” If the request is denied in whole or part, reasons for such denial shall be indicated in writing.

Cambodia.

While the Press Law provides that no individual or company may own more than two Khmer-language newspapers,⁷³ this provision does little to prevent a media monopoly by an individual or a private company. In addition, it also fails to prevent a media monopoly by a group such as a political party. This lack of monopoly prevention is a significant problem in Cambodia. The ruling CPP wields

⁷² Rachel Vandenbrink, “New Controls for Law Commentators,” *Radio Free Asia* (8 February 2013)

<<http://www.rfa.org/english/news/cambodia/media-02082013174924.html>>

⁷³ The Press Law, Article 17

direct or indirect influence over a great deal of radio, television and print media, with most non-state run media being owned by individuals affiliated with the ruling CPP. A 2011 study by the Royal University of Phnom Penh (the “RUPP”) found that “*some media agencies are state-owned, some are jointly run by governmental bodies and private companies and the others are run by individuals who are allied to the ruling party*”.⁷⁴ A COMFREL report in 2012 confirmed that “*All 11 TV stations/cables and more than 100 radio stations are either owned by the government itself, by a hybrid of government and private, by members of the ruling CPP, or by tycoon allies or family members of the government and CPP*”.⁷⁵ By contrast, only four independent radio stations were identified.⁷⁶

The effects of this prevalence of state-aligned media were seen in the run up to the national commune elections, held in June 2012. COMFREL found that during the election period (18th May – 4th June), the CPP received 7,412 minutes of broadcasting coverage, of which 70 minutes was positive and the remainder was neutral. Comparing this to the two main opposition parties is revealing. The SRP received 5,009 minutes, of which none was positive, 283 minutes was negative and the remainder was neutral. Likewise, the opposition HRP received 5,857 minutes of coverage, of which none was positive, 848 minutes was negative and the remainder was neutral. The CPP was the only party of the 10 parties involved to receive any positive coverage, while the SRP and HRP were the only parties to receive any negative coverage.⁷⁷ This imbalance is striking and raises serious concerns about the fairness of any electoral process in which the media shows such a bias towards one party over others.

Such dominance of the media not only limits the opportunities for opposition media, it enables a damaging culture of institutional censorship at state-aligned media agencies. The RUPP study indicated that “*This restrictive media ownership structure has produced censorship and self-censorship, hindering the flow of information and freedom of speech...the line between news and propaganda is extremely blurred*”.⁷⁸ Examples of independent journalism within state-run media have been swiftly cracked down on with tight editorial control amounting to censorship. In November 2012, for example, “Equity Weekly”, a television program funded by UNDP broadcast on state-run KTV, was suspended by the Ministry of Information after it broadcast a report about controversial economic land concessions.⁷⁹ COMFREL has stated that, as a result of the CPP’s dominance of the national media industry, news broadcasts are “*devoid of much of the real newsworthy content*”.⁸⁰

3.3 Targeting of journalists

Journalists are severely limited by the structural problems inherent in the media industry, as outlined above. In addition, journalists work in an environment of fear, with harassment, criminal

⁷⁴ Department of Media & Communications, Royal University of Phnom Penh, “Cambodian Communication Review 2011” (2011) p. 45,

<http://www.kas.de/wf/doc/kas_6048-1442-1-30.pdf?120228074206>

⁷⁵ ‘Final Assessment and Report on 2012 Commune Council Elections’, 30.

⁷⁶ ‘Final Assessment and Report on 2012 Commune Council Elections’, page 30.

⁷⁷ ‘Final Assessment and Report on 2012 Commune Council Elections’, page 37.

⁷⁸ Department of Media & Communications, Royal University of Phnom Penh, “Cambodian Communication Review 2011” (2011), page 46 <http://www.kas.de/wf/doc/kas_6048-1442-1-30.pdf?120228074206>

⁷⁹ Denise Hruby and Kuch Naren, “TV Program Halted After Government Criticism” *The Cambodia Daily* (9 December 2012). <<http://www.cambodiadaily.com/news/tv-program-halted-after-government-criticism-6502/>>

⁸⁰ ‘Final Assessment and Report on 2012 Commune Council Elections’ 31.

charges and violence being used to intimidate journalists and discourage reporting on controversial, politically charged issues such as land-grabbing, corruption and illegal logging, all of which are major problems in Cambodia today.

3.3.1 Criminal charges against journalists

The use of criminal sanctions to regulate and limit media expression constitutes a clear violation of the right to freedom of expression guaranteed under Cambodian and international law. Nevertheless, 2012 and 2013 saw the continuation of the use of a partial judiciary to punish journalists who report information which could be damaging to the RGC or who publicly criticize and oppose state institutions and policies. In addition, the criminal justice system has been used to intimidate journalists, thereby encouraging a widespread culture of self-censorship, in which journalists deliberately avoid controversial subjects in order to avoid judicial harassment from the authorities.

As discussed above (see Section 3.1) the Press Law guarantees the right of journalists to publish articles that criticize the state. In 2012, however, CCHR documented 10 cases in which legal action was either leveled or threatened against journalists in retaliation for publishing stories that criticized officials or made allegations of corruption. The prosecution and conviction of noted radio journalist Mam Sonando (see Case Study 2) attracted a great deal of national and international attention, with rights groups expressing concern about the case and calling for his release.⁸¹ However, Mam Sonando was by no means been the only journalist targeted in 2012.

In January 2012, Kong Bun Thoen, a reporter for *Meatophum* newspaper, was charged with defamation in Kampong Chhnang after he published an article in November 2011 accusing a local prosecutor of accepting bribes from illegal loggers.⁸² In September 2012, Hang Chamroeun, the editor of *Ponleu Samaki* newspaper, was charged with three counts of defamation after writing to the Phnom Penh Municipal Court and the ACU, alleging that senior officials at the Ministry of Information and the Ministry of the Interior (the "MOI") were implicated in corruption.⁸³ Taing Try, a reporter affiliated with the Khmer Democratic Journalists' Association who had also contributed to *Meatophum* newspaper, was arrested in December on unspecified charges.⁸⁴ Associates of Taing Try, who had recently exposed a timber smuggling group and reported their activities to the local police, claimed that he had been arrested "*because he had witnessed illegal timber smuggling and reported it to the authorities*".⁸⁵

Examples such as the above emphasize the heavy-handed approach taken by the authorities in responding to allegations of wrongdoing and are demonstrative of the RGC's intolerance for criticism. This practice of judicial crackdown seems to amount to a *de facto* criminalization of dissent in clear violation of the Press Law, the Constitution, the UDHR and the ICCPR. This policy not only

⁸¹ LICADHO, "Release Mam Sonando, Owner of Cambodia's Oldest Independent Radio Station" (Press Release) (16 July 2012). <<http://www.licadho-cambodia.org/pressrelease.php?perm=287>>

⁸² Sen David, "Legal dispute: Journalist accused of defamation" *The Phnom Penh Post* (10 January 2012). <<http://www.phnompenhpost.com/2012011053857/National/legal-dispute-journalist-accused-of-defamation.html>>

⁸³ Coalition for Integrity and Social Accountability, "Newspaper Publisher Charged with Defamation" (10 September 2012). <http://saatsaam.info/en/index.php?option=com_content&task=view&id=1860>

⁸⁴ "Logging Reporter Arrested" *Radio Free Asia* (10 December 2012). <<http://www.rfa.org/english/news/cambodia/reporter-12102012174729.html>>

⁸⁵ *ibid*

isolates and marginalizes the journalists in question but more generally discourages independent, impartial journalism central to democracy, while encouraging widespread self-censorship.

3.3.2 Violence against journalists

Violence can *never* be justified as a method of regulating expression; it constitutes a clear breach of the right to freedom of expression enjoyed by journalists, as well as the right, expressly guaranteed by the UDHR,⁸⁶ the ICCPR⁸⁷ and the Constitution,⁸⁸ to security of the person. In Cambodia, however, 2012 and 2013 witnessed several incidents of violence against journalists, as well as reports of journalists fearing imminent violence against them. Notably, violence seems to have been embraced as a tactic to be used against journalists who investigate illegal logging and links between loggers and individuals connected with the ruling CPP.

Most prominently, Hang Serei Oudom, a reporter for *Virakchum Khmer Daily* newspaper, was found dead on 12 September 2012 (see Case Study 1) in Ratanakkiri province, where he had been investigating illegal logging. Following Hang Serei Oudom's murder, it was reported that Ek Sokunthy, a reporter with *Ta Prom* newspaper in Ratanakkiri province who was also investigating illegal logging, received a thinly-veiled warning from officials, who asked him "*Did you hear about the death? Do you want to follow? Do you want to continue your career here?*"⁸⁹ Later in September, Ek Sokunthy was assaulted at his home by three men, including an armed former police officer.⁹⁰ He was beaten with wooden sticks and a pistol, suffering injuries to the head and body. It was also suggested that his wife had been physically assaulted during the attack.⁹¹ These cases indicate the existence in Ratanakkiri province of an illegal logging operation that has used, and will likely continue to use, intimidation and violence to prevent public exposure through the media. In addition, the perfunctory nature of the investigations into these attacks suggests that the logging operation wields significant influence, direct or indirect, over local authorities, courts and law enforcement.

Cambodian journalists are now placed in a weak position, where adherence to professional ethics of independence and impartiality puts them in danger. In March 2012, for example, Thet Sambath, a journalist and film-maker whose documentaries about the Khmer Rouge challenge the accepted version of history propagated by the RGC, expressed his fear that his life was in danger as a result of his work.⁹² Thet Sambath claimed that he had been harassed, chased and attacked by uniformed and plain clothed RGC agents, often while in isolated rural areas, and that the RGC's intention was to make him the victim of a kidnapping, robbery or car accident.

Unfortunately, very few instances of violent attacks against journalists result in a serious criminal investigation, further contributing to a culture of fear. Vichey Anon, a reporter for RFA, was found

⁸⁶ Article 3 of the UDHR

⁸⁷ Article 9 of the ICCPR

⁸⁸ Constitution, Article 38

⁸⁹ Chhay Channyda, 'Another journalist targeted over illegal logging' *The Phnom Penh Post* (27 September 2012).

<<http://www.phnompenhpost.com/2012092758943/National/another-journalist-targeted-over-illegal-logging.html>>

⁹⁰ International Federation of Journalists, "Journalist Attacked in Cambodia" (Press Release) (2 October 2012).

<<http://asiapacific.ifj.org/en/articles/journalist-attacked-in-cambodia>>

⁹¹ United Press International, 'Reporter beaten for story on logging' (27 September 2012).

<http://www.upi.com/Top_News/World-News/2012/09/27/Reporter-beaten-for-story-on-logging/UPI-10921348760342/>

⁹² 'Journalist seeking truth about Khmer Rouge 'fears for his life'' *The Guardian*, (25 March 2012).

<<http://www.guardian.co.uk/world/2012/mar/25/journalist-khmer-rouge-fears-life?newsfeed=true>>

unconscious on the road between Kratie province and Stung Treng province on 10 December.⁹³ The day before, he had written an article about the arrest of Taing Try (see Section 3.3.1 above), including allegations from a third party that a powerful local businessman (named only as “Eourn”) was conducting an illegal logging operation in the area.⁹⁴ The timing of Vichey Anon’s injury raises serious concerns that he was not the victim of a random traffic accident, but instead was deliberately targeted in retaliation for his article the day before. CCHR called for an investigation into the incident,⁹⁵ but to date no investigation has been conducted.

Notably, the fact that such attacks may have been committed by a private individual or entity does not absolve the state of responsibility. The HRC has confirmed that a state may be in violation of its obligations by “*permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities*”.⁹⁶ The RGC’s ongoing failure to diligently investigate these incidents and the resultant prevalence of violence against journalists, therefore, constitute a violation of Cambodia’s international legal obligation to protect the right to freedom of expression.

Case Study 1 – Hang Serei Oudom



Hang Serei Oudom appears in the center of the photograph, assisting authorities with their investigation into illegal logging in Ratanakkiri province. (Photo courtesy of ADHOC)

Hang Serei Oudom, a journalist for *Vorakchun Khmer Daily* in Ratanakkiri province, was found dead on 11 September 2012; his body was discovered in the trunk of his abandoned car. He had been missing since he left his home alone on the evening of 9 September. Police reported that he had been the victim of a brutal assault, having suffered several blows to the head with an axe. They confirmed immediately that the journalist’s death was not the result of a random robbery, as the victim’s possessions were not taken.⁹⁷

The 44-year old journalist was known for reporting on illegal logging. Although identifying Cambodia as a country with high forest cover, the Food and Agriculture Organization of the UN estimated that total forest cover in Cambodia had been reduced from 73% in 1990 to just 57% in 2010,⁹⁸ a worryingly high rate of deterioration. Hang Serei Oudom’s most recent article, published on 6

⁹³ IFEX, ‘Call for investigation into Cambodian journalist’s arrest’.

<http://www.ifex.org/cambodia/2012/12/21/illegal_logging/>

⁹⁴ ‘Logging Reporter Arrested’ *Radio Free Asia* (10 December 2012) <<http://www.rfa.org/english/news/cambodia/reporter-12102012174729.html>>

⁹⁵ CCHR, ‘CCHR expresses its concerns regarding journalists’ safety and press freedom in Cambodia’ (Press Release) (19 December 2012) <http://www.cchrcambodia.org/media/files/press_release/333_211ce_en.pdf>

⁹⁶ UN Human Rights Committee, ‘General Comment No. 31’ (adopted at the 80th session, Geneva, 26 May 2004), General Remark 8.

<<http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f>>

⁹⁷ Suy Se, “Cambodian journalist found murdered” *Agence France-Presse* (12 September 2012)

<<http://www.google.com/hostednews/afp/article/ALeqM5jkFxytH9dcOA0JGrh5iYB4uO5FRQ?docId=CNG.b113259f79b40609a846e192725c90fb.331>>

⁹⁸ FAO, “*Global Forest Resources Assessment 2010*” (Rome, 2010). See Annex 3, Tables 2 and 3.

<<http://www.fao.org/docrep/013/i1757e/i1757e.pdf>>

September, accused the son of a local military police commander of being complicit in illegal logging in the area.⁹⁹

On 13 September 2012, local military officer An Bunheng and his wife, who owned the restaurant where Hang Serei Oudom was last seen alive, were arrested on suspicion of his murder, following the discovery of the journalists' shoes near An Bunheng's establishment.¹⁰⁰ The two suspects were formally charged on 19 September.¹⁰¹ The investigation into Hang Serei Oudom's death was summarily concluded on the 21 November 2012.¹⁰² According to Hok Phalla, lawyer of the journalist's family, witnesses had claimed that other suspects were involved in the murder,¹⁰³ but the court declined to arrest any further suspects. The court also refused to examine the link between Hang Serei Oudom's investigation into illegal logging and his death, or consider the possibility that An Bunheng was acting under orders. In April 2013, investigation into the case was reopened as the investigating judge at Ratanakkiri provincial court expressed the belief that not all the evidence had been gathered. On 28 August 2013 the only two suspects in the case were acquitted when the judges cited that there was a lack of sufficient evidence to warrant a conviction. Concerns were raised by NGOs that claimed that important evidence was disregarded or even tampered with by the court.¹⁰⁴ Hang Serei Oudom was the eleventh journalist to be murdered in Cambodia since 1994 and he is now the eleventh journalist whose murder has been met with impunity by the authorities.

Case Study 2 – Mam Sonando



Mam Sonando, the 71-year old President of the Democratic Association and Director of independent Beehive Radio, was arrested at his home on 15 July 2012.¹⁰⁵ He was charged under six separate articles of the Penal Code, the two most serious offenses pertaining to insurrection and incitement to take up arms. The charges connected him with an alleged secessionist movement in Pro Ma village, Kratie province, where an ongoing land dispute between villagers

⁹⁹ Suy Se (Agence France-Presse), "Cambodian journalist found murdered" (12 September 2012).

<<http://www.google.com/hostednews/afp/article/ALeqM5jkFxytH9dcOA0JGrh5iYB4uO5FRQ?docId=CNG.b113259f79b40609a846e192725c90fb.331>>

¹⁰⁰ Sok Ratha, "Suspects Nabbed in Reporter's Death" *Radio Free Asia* (13 September 2012)

<http://www.rfa.org/english/news/cambodia/suspects-09132012140842.html?searchterm=hang_serei_oudom>

¹⁰¹ Sok Ratha, "Charges Filed in Reporter's Death" *Radio Free Asia* (19 September 2012)

<http://www.rfa.org/english/news/cambodia/charges-09192012133043.html?searchterm=hang_serei_oudom>

¹⁰² Sok Ratha, "Newsmen's Murder Probe Disputed" *Radio Free Asia* (21 November 2012)

<http://www.rfa.org/english/news/cambodia/probe-11212012162541.html?searchterm=hang_serei_oudom>

¹⁰³ *ibid*

¹⁰⁴ CCHR, "Freedom of Expression/Human Rights Defenders Alert – Ratanakkiri Provincial Court finds two accused not guilty in the case of murdered reporter" (28 August 2013)

<http://cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=41&id=5>

¹⁰⁵ Human Rights Watch, 'Cambodia: After US, ASEAN Leave, Media Critic Jailed' (News Release) (17 July 2012).

<<http://www.hrw.org/news/2012/07/17/cambodia-after-us-asean-leave-media-critic-jailed>>

and agro-development company Casotim Inc. had erupted into violence.¹⁰⁶

It is widely believed that Mam Sonando's conviction was politically-motivated. On 22 June, Beehive Radio had broadcast from the International Criminal Court in the Netherlands, during which Mam Sonando reported that a complaint had been submitted to the ICC accusing Prime Minister Hun Sen and the RGC of complicity in crimes against humanity in relation to land rights violations. Only four days later, Prime Minister Hun Sen publicly called for Mam Sonando's arrest.¹⁰⁷ In addition, Mam Sonando is the Director of one of very few independent radio stations in Cambodia and is not afraid to criticize the RGC. He had been arrested on two previous occasions for exercising his right to free expression. In addition, although it became clear during Mam Sonando's trial that there was no concrete evidence to convict him, he was handed down a sentence of twenty years imprisonment.¹⁰⁸ Rights groups condemned Mam Sonando's conviction, with Amnesty International calling him a prisoner of conscience.¹⁰⁹ Mam Sonando appealed his conviction and on appeal, his charge was changed to a lesser charge under the Forestry Law. As a result, Mam Sonando's sentence was reduced to five years, with the remainder of his sentence suspended. He was released from prison on the 15 March, eight months after he was first incarcerated.¹¹⁰ Despite his release, the guilty verdict against him stands and he remains under judicial supervision.

¹⁰⁶ May Titthara and David Boyle, 'Teenage girl gunned down by security forces in eviction' *The Phnom Penh Post* (17 May 2012). <<http://www.phnompenhpost.com/2012051756224/National/girl-killed-in-eviction.html>>

¹⁰⁷ International Federation for Human Rights, 'Cambodia: Independent radio station Director sentenced to 20 years in prison' (2 October 2012).

<<http://www.unhcr.org/refworld/country,,IFHR,,KHM,,5073cbf55,0.html>>

¹⁰⁸ 'Cambodian broadcaster Mam Sonando sentenced to 20 years' *The Asian Correspondent* (2 October 2012).

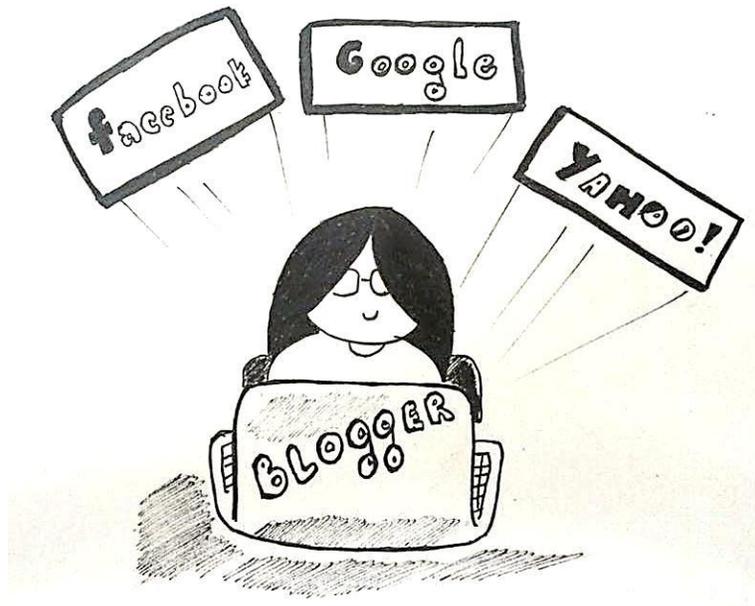
<<http://asiancorrespondent.com/90234/cambodian-broadcaster-mam-sonando-sentenced-to-20-years/>>

¹⁰⁹ Amnesty International, "Cambodia: Baseless conviction of government critic reflects shrinking space for free speech" (Press Release) (1 October 2012).

<<http://www.amnesty.org/en/for-media/press-releases/cambodia-baseless-conviction-government-critic-reflects-shrinking-space-fre>>

¹¹⁰ Lawyers' Rights Watch Canada, "Cambodia: Mam Sonando Released" (Press Release) (22 March 2013).

<<http://www.lrwc.org/mam-sonando-released/>>



***Freedom of Expression and “New
Media”***

4 Freedom of Expression and “New Media”

4.1 Freedom of new media in Cambodia

Despite the heavy restrictions placed on Cambodian print media, radio and television; new forms of 21st century media have the potential to break traditional barriers and open new frontiers for freedom of expression. New Media - defined as the digitalization of information - remains relatively independent and free of the RGC’s control¹¹¹ and ICT (Information and Communication Technology) has been described as Cambodia’s “*new digital democracy*.”¹¹² With the use of mobile phones or via the Internet, users can now exchange information and ideas instantaneously. New media has empowered Cambodian citizens to access information, express themselves, and participate in public debate more than ever.¹¹³

The same rights granted to traditional media under Cambodian law should also apply to new forms of media. Article 19 of the UDHR and ICCPR uphold the right to freedom of expression through any medium. Article 19 of the ICCPR specifies that everyone has the “*freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.*”¹¹⁴ The rights to free expression via new media were further clarified when the UN Human Rights Council adopted a new resolution on the promotion, protection and enjoyment of human rights on the Internet. During its twentieth session on 6 July 2012, the Human Rights Council asserted that people were entitled to the same human rights, regardless of whether they were on the Internet or offline. The Resolution states that “*the exercise of human rights, in particular the right to freedom of expression, on the Internet is an issue of increasing interest and importance as the rapid pace of technological development enables individuals all over the world to use new information and communications technologies.*”¹¹⁵

While the RGC has failed on numerous accounts to adhere to its legal obligations to ensure freedom of expression in relation to traditional media (see section 3.2), expression via new media has been largely free up until now. Although in December 2010 an employee of the UN World Food Programme in Phnom Penh was convicted of incitement for printing material from an anti-

¹¹¹ CCHR, ‘World Press Freedom Day-21st Century Media: New Frontiers and old Barriers for Freedom of Expression in Cambodia’ (2011) 1

<http://www.cchrcambodia.org/admin/media/analysis/analysis/english/CCHR_Briefing_Note.pdf>

¹¹² Sopheap Chak, ‘Digital democracy emerging in Cambodia’ (Sopheapfocus, 11 November 2011)

<<http://sopheapfocus.com/index.php/2009/11/digital-democracy-emerging-in-cambodia/>>

¹¹³ The United Nations, ‘On Press Freedom Day, Consider Cambodia’s Digital Divide’ (3 May 2011)

<http://www.un.org.kh/index.php?option=com_content&view=article&id=446:on-press-freedom-day-consider-cambodias-digital-divide&catid=47:features&Itemid=88>

¹¹⁴ International Covenant on Civil and Political Rights (Adopted 16 December 1966 entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19 <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en>

¹¹⁵ Human Rights Council, ‘The promotion, protection and enjoyment of human rights on the Internet’ (A/HRC/20/L.13, 29 June 2012)

<<http://www.regeringen.se/content/1/c6/19/64/51/6999c512.pdf>>

government website and distributing it amongst colleagues;¹¹⁶ there have been no direct prosecutions for expression via mobile phone or Internet thus far. Nevertheless, as access to new media is increasing, evidence of moves towards censorship can be seen.

4.2 Mobile phone and Internet access in Cambodia

Cambodia was the first country in the world to have more mobile telephones than landline telephones.¹¹⁷ Mobile phones have become an easy and affordable way for people in Cambodia to communicate, with some being purchased for as little as five dollars.¹¹⁸ By the end of 2012, the Ministry of Posts and Telecommunications (“MPTC”) reported that the number of mobile phone subscriptions had reached more than 20 million. With a national population of about 15 million, this amounts to an average of 1.3 mobile phone subscriptions per person.¹¹⁹ Thus, almost 100 percent of the population was believed to have a mobile phone, with 40 percent of users owning a smart phone.¹²⁰ The 2013 national survey results conducted by the International Republican Institute found that 58 percent of respondents owned a mobile phone.¹²¹

In contrast to Cambodia’s widespread mobile phone access, the country has one of the lowest Internet penetration rates in Southeast Asia. However, the number of Cambodian *netizens* is quickly growing. In December 2012, the MPTC estimated a total of 2.7 million Internet users in Cambodia, accounting for 17 percent of the population.¹²² While the accuracy of the estimation is debatable, there is no doubt that the recent growth of technologically advanced Internet Service Providers (“ISP’s”) has made Internet much more affordable for consumers. According to the sales manager of Cambodian ISP, OpenNet, homeowners can now obtain a high-speed Internet subscription starting at \$12 per month. This price would have been impossible to acquire in 2011, when World Bank data indicated that only 3.1% of Cambodia’s population had Internet access. In addition, there are many alternatives for those who do not own a personal computer. The city of Phnom Penh boasts over 300 Internet cafes and the increased use of technological devices such as smart phones and tablets offer a wealth of new Internet access methods.¹²³

¹¹⁶ CCHR, “Leaflet Distribution” (Facsheet: Fundamental Freedoms Series) (August 2011)

<http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/Fundamental_Freedom_Fact_Sheet_3_Leaflets_ENG.pdf>

¹¹⁷ CCHR, “New Media and the Promotion of Human Rights in Cambodia” (July 2012) 9

<http://www.cchrcambodia.org/admin/media/report/report/english/2012_07_24_New_Media_and_the_Promotion_of_Human_Rights_in_Cambodia_ENG.pdf>

¹¹⁸ Terry McCoy, ‘Cambodia: Mobile-Phone Silliness’ (*Global Post*, 22 January 2011)

<<http://www.globalpost.com/dispatch/asia/110120/cambodia-mobile>>

¹¹⁹ Anne Renzenbrink, ‘Investment Options for Cambodian Telcos’ *The Phnom Penh Post* (20 February 2013).

<<http://www.phnompenhpost.com/2013022061463/Business/investment-options-for-cambodian-telcos.html>>

¹²⁰ Sothearith Im, ‘Social Media Changing Cambodia’s Digital Landscape’ (*Voice of America*, 25 December 2012) <

<http://www.voacambodia.com/content/cambodia-social-media-changing-cambodian-information-landscape/1571656.html%5C>>

¹²¹ International Republican Institute, ‘Survey of Cambodian Public Opinion’ (12 January – 2 February 2013) 39.

<<http://www.iri.org/sites/default/files/Cambodian%20Poll%209%20Final%20PUBLIC.pdf>>

¹²² Trade and Investment Promotion Unit, ‘Land-lines, Mobile phones and Internet Established’ *Royal Embassy of Cambodia* (London, 2013)

<http://www.cambodianembassy.org.uk/index_main.php?lang=&kc=0&mcat=0&menu=0&k=0&menu1=0&menu2=&menu3=&link=0&link1=0&issue=1&locate=&page=&topic=Telecoms&topic_cat=Business&readmore=3>

¹²³ Suy Helmkhemra ‘Cheap Data, Better Tech Putting More Cambodians Online’ *Voice of America* (20 March 2013) <

<http://www.voacambodia.com/content/cheap-data-better-tech-putting-more-cambodians-online/1624617.html>>

4.3 Using new media as a tool to protect and promote human rights

The use of new media has become an increasingly valuable way to protect and promote human rights in Cambodia. Mobile phone and Internet technology has created an arena for open discussion and criticism of the RGC and the status quo that would not be possible in the form of print media, radio or television. This section provides examples of how new information and communication technologies have been utilized to achieve social activism.

4.3.1 Mobile Phones

Short Message Service (“SMS”) has become a popular method of communication in Cambodia. Due to the affordability of mobile phones, text-messaging technology is even used by citizens living in Cambodia’s most remote and poor areas. Therefore, the use of SMS is an indispensable human rights advocacy tool. In the words of Cambodian blogger, Sopheap Chak, mobile technology has great capacity to “mobilize people for human rights activism and social causes through SMS text messaging.”¹²⁴

Mobile phones can also promote and protect human rights through the capturing of photos and videos. This activity has become increasingly prevalent amongst members of Cambodian society. In early March 2013, citizens used their mobile phones to film and photograph a brutal hit and run crash that claimed the lives of three children. The evidence went viral and resulted in the quick conviction of a 23-year-old medical student, daughter of the Kandal Hospital deputy chief.¹²⁵ Cambodians with ties to the RGC have frequently avoided punishment for criminal acts.¹²⁶ However, new media is forcing higher levels of political accountability.

Venerable Loun Sovath, a Buddhist monk, has utilized these mobile phone applications to successfully document human rights violations throughout Cambodia. One such incident occurred in 2009 when local authorities forcefully evicted villagers from their land in Siem Reap province. Venerable Sovath took a video on his mobile phone of police shooting at the defenseless villagers and proceeded by submitting the footage to a local human rights NGO. Known as the “multimedia monk”, Venerable Loun Sovath became the first Cambodian to be honored with the Martin Ennals Award for Human Rights Defenders in 2012.¹²⁷

4.3.2 The Internet

The Internet provides users with a wealth of free knowledge and resources. Many of the traditional print media news providers have also established websites. For example, notable uncensored newspapers such as *The Cambodia Daily*, *Moneaksekar Khmer* and *The Phnom Penh Post* all have detailed websites where articles and videos can be accessed for free. The majority of Cambodia’s population is rural and newspaper distribution is primarily limited to city centers. With growing access to the Internet, more of the traditional print media’s limited audience can be reached. In

¹²⁴ Sopheap Chak, ‘Mobile Technology Gives Cambodians a Voice’ (Sopheapfocus, 22 April 2010) <<http://sopheapfocus.com/index.php/2010/04/mobile-technology-gives-cambodians-a-voice/>>

¹²⁵ KS Chakrya and Claire Slattery, ‘Hit-and-run kills 3’ *The Phnom Penh Post* (4 March 2013) <<http://www.phnompenhpost.com/2013030461729/National/hit-and-run-kills-3.html>>

¹²⁶ Faine Greenwood, ‘As the Internet Raises Civic Voices in Cambodia, a Struggle Brews over Net Control’ *Mobile Democracy Media* (27 March 2013) <<http://techpresident.com/news/wegov/23659/internet-civic-voices-cambodia-struggle-net-control>>

¹²⁷ LICADHO, ‘Venerable Loun Sovath Wins Martin Ennals Award for Human Rights Defenders’ (Press Release) (2 October 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=292>>

addition, the same phenomenon is also true of radio. Stations such as *Beehive*, *Voice of Democracy*, *Voice of Civil Society*, can also be listened to online.

Blogging

A blog is like an online diary where individuals can post anything from accounts of their daily experiences to more political or academic commentary on various topics and issues.¹²⁸ Blogs come in many shapes and forms but are basically websites that are updated regularly by the individual blogger. Blogging has become an easy and affordable way for Cambodia's youth to express thoughts that would normally be censored in traditional spheres. Websites such as www.blogger.com and www.wordpress.com allow people to create their own blogs free of charge. In 2007, the newspaper *The Cambodia Daily* estimated that Cambodia had a total of 250 blogs. However, given the large increase of Internet access, it is safe to assume the current number of blogs is substantially higher.¹²⁹ Highlighting the prevalence of Cambodia's bloggers was the country's hosting of the 2012 BlogFest Asia in Siem Reap. BlogFest Asia is a festival held for bloggers throughout the region to discuss their experience of blogging, ideas, different technology etc.¹³⁰ Many Cambodian bloggers, known as "cloggers", use blogging to exercise freedoms that are traditionally restricted by the RGC.

Although there are different types of blogs that can be used for political advocacy, crisis blogging and online petitions are the most common style used when writing about specific causes. In Cambodia, the most renowned crisis blog is the "Save Boeung Kak" blog, which is maintained by a private individual. The blog itself provides updates on developments at Boeng Kak Lake in Phnom Penh, which in recent years has been the site of numerous forced evictions. It also encourages visitors to sign a petition, which demands both compensation for the victims of the evictions as well as a halt to the continuous land violations. In addition to crisis blogs, online petitions are also a frequently used as a means of tackling human rights violations and are particularly successful at attracting attention from the online community. Examples of petitions which have been set up for a specific cause include the following: "Stop Suppression of Speech in Cambodia" (which was established in response to the controversial conviction of politician Mu Sochua); "Cambodian Survivors Seek Justice"; and "Mistreatment of Three Teachers that Reported Corruption in Kroul Kol High School". In addition to these, there is also the petition on Change.org, which was set up by the Prey Lang direct action group. Although there is a well-established blogging scene in Cambodia, few NGOs use blogs to promote their campaigns, instead using general websites. This could be a potential new area for development.

Facebook

As of April 2013, Cambodia had 752,820 monthly active Facebook users.¹³¹ According to estimates from social media marketing and advertising agency Social Media Plus, Cambodia is averaging 1,100 new Facebook subscriptions per day.¹³² However, these figures also include foreigners in Cambodia, Cambodians abroad, Cambodians who have more than one Facebook account, which is common,

¹²⁸ See hosting website for more details, <https://www.blogger.com/tour_start.g>

¹²⁹ CCHR, 'New Media and the Promotion of Human Rights in Cambodia' (Report) (July 2012) 17

¹³⁰ Lisa Kim, 'Bloggers Discuss Internet Freedom at 2012 BlogFest in Cambodia' (14 November 2012) <<http://2012.blogfest.asia/>>

¹³¹ Social Bakers, <<http://www.socialbakers.com/facebook-statistics/cambodia>> figure correct as of 25 April 2013

¹³² Daniel de Carteret, 'Cambodia business embraces Facebook advertising' (*The Phnom Penh Post*, 12 February 2013) <<http://www.phnompenhpost.com/2013021261301/Business/cambodia-business-embraces-facebook-advertising.html>>

and groups/organizations who have established Facebook accounts.¹³³ While Facebook is primarily used for socialization, it is also becoming popular as a means of social advocacy. Human rights and media organizations use Facebook as a way to disseminate information freely and many have established Facebook pages of their own. Furthermore, in preparation for the July 2013 parliamentary elections, opposition parties relied heavily on Facebook to spread their political message. While the ruling CPP dominates traditional media outlets, new media provides members of the political opposition with a necessary voice.¹³⁴ As Internet access in Cambodia continues to spread, this type of campaign strategy will become increasingly powerful.

Twitter

Twitter, like Facebook, is another social media site used by individuals to share information and discuss ideas. Communication takes place through the exchange of quick messages known as 'Tweets', which have 140 characters or less. In a phone-centric country such as Cambodia, Twitter is an ideal mode for communicating and the increase in its use by Cambodians is likely to increase over the next few years. Although there are no statistics available on the exact number of Twitter users in Cambodia,¹³⁵ evidence suggests that pages for news agencies receive significantly more followers than sites for NGOs e.g. VOA News has 26,418 followers whereas most NGOs have between 50 to 500 followers.

Although in comparison to Facebook, Twitter has a very small membership group, it has already been used by the Cambodians to "tweet" on various significant events, including the stampede on the Koh Pich Bridge during the 2010 Water Festival¹³⁶ and the results of the 2013 national elections. Many human rights organizations in Cambodia also use Twitter to disseminate important information to the public. In addition, Twitter has been used as a medium of diplomacy in order to sooth tensions relating to the border dispute between Cambodia and Thailand.¹³⁷ Tweets have been sent by individuals, signaling a desire for peace; for example in 2011, the Thai Foreign Minister tweeted his longing for peace between the two countries.¹³⁸

4.4 Censorship of New Media

Due to the RGC's heavy restrictions on traditional media, there are concerns that regulations on mobile phone use and the Internet will soon follow. Thus far, Cambodia's new media remains relatively free compared to the censorship enacted by its neighbors - Thailand, Laos and Vietnam.¹³⁹ However, the RGC has made several notable attempts over the past several years to extend control.

¹³³ Pich Samnang, 'Social Media Here More Social Than Political' (*Voice of America*, 24 February 2011)
<<http://www.voacambodia.com/content/social-media-here-more-social-than-political-researcher-116817728/1356907.html>>

¹³⁴ 'The Opposition Using Facebook to Undermine the Government' (*Cambodia Herald*, 24 April 2013)
<<http://www.thecambodiaherald.com/cambodia/detail/1?page=13&token=Nzk5NGQ1YTU0OTI>>

¹³⁵ Digital Media in Cambodia (Singapore Management University)
<https://wiki.smu.edu.sg/digitalmediaasia/Digital_Media_in_Cambodia#Twitter>

¹³⁶ CCHR, 'New Media and the Promotion of Human Rights in Cambodia' (Report) (July 2012)
<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=79&id=5>

¹³⁷ Kremena Krumova, "'Thai-Cambodia Conflict Does Not End at the Border'" (*Epoch Times*, 12 May 2011)
<http://www.cchrcambodia.org/media/files/news/227_tccdneatbwet_en.pdf>

¹³⁸ CCHR, 'New Media and the Promotion of Human Rights in Cambodia' (Report) (July 2012)
<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=79&id=5>

¹³⁹ Aim Sinpeng, 'Internet Freedom in Southeast Asia' (*Global Voices*, 9 March 2012)
<<http://advocacy.globalvoicesonline.org/2012/03/09/internet-freedom-in-southeast-asia/>>

In November 2012, the RGC issued a circular demanding the closure of all Internet cafés within 500 meters of an educational facility. According to mapping carried out by the Cambodian League for the Promotion and Defense of Human Rights (“LICADHO”), the regulation’s implementation would result in the closure of almost all existing Internet cafés.¹⁴⁰ In addition, the circular banned minors from entering cafes and warned of potential dangers associated with telecommunications such as “*illegal drug trafficking, human trafficking, pornography, and other immoral acts.*”¹⁴¹ If Internet café owners failed to comply with the circular, the RGC threatened to close them by force. However, the proposed ban was reversed on 21 December 2012 due to popular outcry.¹⁴²

Most recently, authorities targeted an individual act of online expression on Facebook and threatened the individual involved with charges of defamation, marking the first case of its kind in Cambodia. On 23 February 2013, Phnom Penh municipal police accused teacher Phel Phearun of defamation after he posted details of an incident involving the police on his Facebook account (see Case Study 3).

4.4.1 Proposed Cyber Crimes Law

One of the most pressing concerns for the future of new media censorship is the RGC’s intention to adopt the country’s first ever Cyber Crimes Law. The plan to adopt the law was announced in May 2012 and the law is currently being drafted by the National Information and Communications Technology Authority, the Council of Ministers, the National Bank of Cambodia and the Ministries of Commerce and Telecommunications. However, it is unclear when or if the draft will be made public before its adoption and what kinds of provisions it will contain. Due to heavy restrictions on print media, radio and television, many human rights advocates fear the proposed Cyber Crimes Law will extend RGC censorship to the Internet.¹⁴³

Cambodian Council of Ministers spokesperson Phay Siphon has assured the skeptics that the sole purpose of the Cyber Crimes Law is to protect Cambodia’s online users from hacking and data destruction, and that the RGC will be relying on the European Union’s cyber law for guidance.¹⁴⁴ However, opinions voiced by Deputy Prime Minister Sok An appear to contradict those of Phay Siphon. According to an article posted on the RGC’s Press and Quick Reaction’s Unit website, Sok An indicated that the Cyber Crimes Law was necessary to prevent the spread of false information. Specific reference was given to a recent chain of text-messages that had been used to share information regarding a violent fight between supporters of the CPP and SRP. Sok An insisted the story was fallacious and declared, “*People use modern technology to spread false information, so we need a law to regulate them.*”¹⁴⁵

¹⁴⁰ Kounila Keo, ‘Cambodia Bans Internet Cafes Near Schools’ (*Global Voices*, 19 December 2012) <<http://globalvoicesonline.org/2012/12/19/cambodia-bans-internet-cafes-near-schools/>>

¹⁴¹ Mong Palatino, ‘Cambodia’s “War” on Internet Cafes, (*The Diplomat*, 27 December 2012) <<http://thediplomat.com/asean-beat/2012/12/27/cambodias-war-on-internet-cafes/>>

¹⁴² Urban Voices, ‘Save the Internet Cafes Campaign’ (December 2012) <<https://urbanvoicecambodia.net/save-the-internet-cafes-campaign/?lang=en>>

¹⁴³ Theara Khoun, ‘Internet Users Fear Online Suppression With Draft of Cyber Law’ (*Voice of America*, 1 December 2012) <<http://www.voacambodia.com/content/internet-users-fear-online-suppression-with-draft-of-cyber-law/1556142.html>>

¹⁴⁴ Faine Greenwood, ‘As the Internet Raises Civic Voices in Cambodia, a Struggle Brews Over Net Control’ (*Personal Democracy Media*, 27 March 2013) <<http://techpresident.com/news/wegov/23659/internet-civic-voices-cambodia-struggle-net-control>>

¹⁴⁵ CCHR, ‘Cambodian Government is Drafting the First Ever Cyber Law’ (Media Alert) (24 May 2012) <www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=21&id=5>

Nevertheless, even if the new Cyber Crimes Law cracks down on new media, the ability of the RGC to effectively censor mobile phones and Internet is doubtful. Wide sweeping censorship requires substantial finances and human resources - necessities the RGC currently lacks. It is hoped that the RGC will not prioritize its limited resources towards new media oppression. In addition, Cambodian citizens have become increasingly tech savvy. For example, after it was blocked, KI-Media was able to create a mirror site on Wordpress, which allows users to access BlogSpot during blockages.¹⁴⁶ While the RGC has demonstrated a clear desire to censor new media, the sophisticated ability to do so will not be realized in the near future.

Case Study 3 - Phel Phearun



In January 2013, Phnom Penh municipal police alleged that a Facebook post made public by Phel Phearun constituted defamation. On 24 January 2013, Phel Phearun had been driving his new motorbike when he was stopped by two police officers near Moha Montrey pagoda in central Phnom Penh. Phel Phearun had not yet purchased a license plate, and the police asked Phel Phearun to provide proof that he legally owned the bike. Phel Phearun produced the necessary legal documents at the police station, but the police still decided to impound his motorbike until the next morning. Phel Phearun proceeded by expressing his frustration with the police on his public Facebook account.¹⁴⁷ His posting included a picture of the police letter saying that they had impounded the motorbike with a caption, “*Watch out for the procedures of Chamkar Mon District Police.*”¹⁴⁸ In addition, the Facebook post also asked readers whether they thought police procedures could be improved in such cases, in order to make the situation simpler for law abiding citizens such as Phel Phearun. On 26 January, news website *Sabay* published an article about Phel Phearun’s case. The news quickly spread online and the following month, police summoned Phel Phearun to the police station for questioning regarding a potential defamation complaint.¹⁴⁹ The police decided on 19 March to not pursue the charge based on a promise made by Phel Phearun that he would not engage in similar activity in the future.¹⁵⁰

¹⁴⁶ CCHR, ‘New Media and the Promotion of Human Rights in Cambodia’ (Report) (July 2012) 35

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=79&id=5>

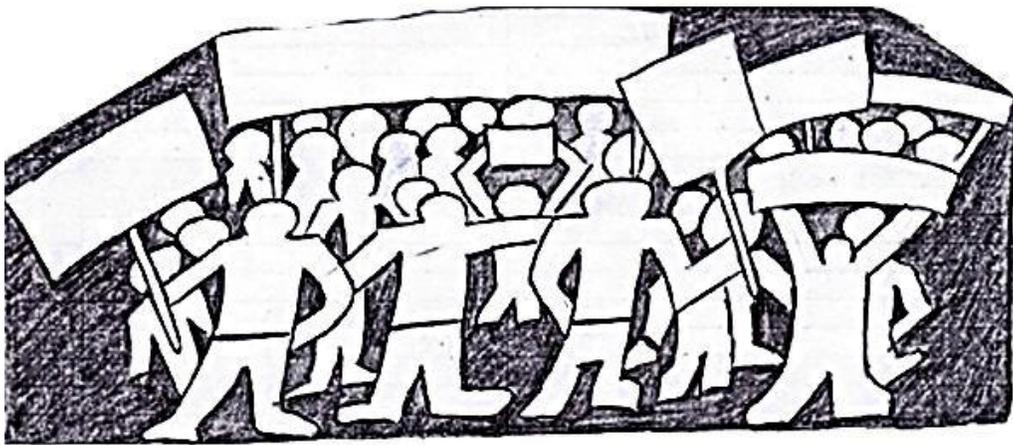
¹⁴⁷ CCHR, ‘Phel Phearun Accused of Defamation over a Facebook Post’ (Factsheet: Case Study) (March 2013)

<www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2013_03_06_Phel_Phearun_Factsheet_ENG.pdf>

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Cambodian Center for Independent Media, ‘Charges on Defamation Case Against Facebook User Dropped’ (Press Release) (19 March 2013)



***Freedom of Expression and Civil
Society***

5 Freedom of Expression and Civil Society

The UN defines civil society as “*the associations of citizens (outside their families, friends and businesses) entered into voluntarily to advance their interests, ideas and ideologies. The term does not include profit-making activity (the private sector) or governing (the public sector)*”.¹⁵¹ Civil society includes a wide range of civil society organizations (“CSOs”), including NGOs, trade unions and religious groups, as well as individual activists.

5.1 Cambodian civil society

The Constitution creates the opportunity for citizens to take an active role in Cambodian society and the democratic process. The right to active involvement in the political, economic, social and cultural life of the nation,¹⁵² the rights to freedom of expression and assembly¹⁵³ and the right to freedom of association¹⁵⁴ are all vital for an independent civil society to flourish. As of March 2012 there were 3,492 registered CSOs in Cambodia, including both local and international organizations.¹⁵⁵ The Asian Development Bank noted that the RGC had shown admirable willingness to engage with civil society on service delivery, “*particularly in the agriculture, education, and health sectors.*”¹⁵⁶ However, the RGC’s tendency has been to view CSOs and activists involved in advocating for political or legal reform as political opponents.

The UN Development Program highlighted this concern in a 2010 report on Cambodian civil society, in which it was argued that the civil society-state relationship “*turns into an oppositional one when civil society plays its roles of advocacy and watchdog.*”¹⁵⁷ This “*oppositional*” relationship has had troubling consequences for CSOs and activists. They are forced to confront an environment in which public criticism of RGC policies is construed - not as a legitimate exercise of the right to free speech and an invitation to constructive dialogue, but as an attack against the state.

5.1.1 The LANGO

The LANGO contains broad and vague provisions that could be used to arbitrarily deny registration or close NGOs or associations, and it requires all associations and NGOs to register before they are permitted to conduct any activities in Cambodia. Furthermore, the registration process lacks safeguards and transparency.¹⁵⁸ Prime Minister Hun Sen suspended the LANGO in December 2011

¹⁵¹ Panel of Eminent Persons on United Nations-Civil Society Relations, ‘We, the Peoples: Civil Society, the United Nations and Global Governance’ (58th Session, 7 June 2004) UN Doc A/58/817

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/376/41/PDF/N0437641.pdf?OpenElement>>

¹⁵² Constitution, Article 35.

¹⁵³ Constitution, Article 41.

¹⁵⁴ Constitution, Article 42.

¹⁵⁵ Cooperation Committee of Cambodia, ‘CSO Contributions to the Development of Cambodia’ (March 2012)

<<http://www.ccc-cambodia.org/downloads/publication/CCC-CSO%20Contributions%20Report.pdf>>

¹⁵⁶ Asian Development Bank, ‘Civil Society Briefs: Cambodia’ (November 2011) 3

<<http://www.adb.org/sites/default/files/csb-caam.pdf>>

¹⁵⁷ Carlo Merla, ‘Civil Society Empowerment and Democratic Governance in Cambodia’ (October 2010) 20

<<http://www.un.org.kh/undp/knowledge/publications/civil-society-empowerment-and-democratic-governance-in-cambodia>>

¹⁵⁸ CCHR, ‘Draft Law on Associations and Non Governmental Organizations’ (Factsheet) (May 2011)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=1&id=5>

after national and international outcry, however it has not been permanently abandoned and may well return to the legislative agenda after the new RGC is sworn in. Despite the fact that it has been shelved, the draft law's existence continues to pose a serious threat to the freedom of association and freedom of expression of Cambodia's civil society.

5.2 Disruption of CSO activities

Although CSOs are relatively free to operate in Cambodia, there were several cases of significant crackdown on CSO activities in 2012 and 2013, restricting freedom of expression, association and assembly.

In March 2012, during the five-day ASEAN summit held in Phnom Penh, local authorities applied pressure to a local business (the Lucky Star Hotel) in order to disrupt four workshops, organized as part of the ASEAN Civil Society Conference/ASEAN People's Forum (the "ACSC/APF").¹⁵⁹ The workshops had been planned to focus on politically sensitive topics such as land conflicts, forced evictions and environmental issues. Due to the interference of the RGC, the CSOs involved were forced to find alternative venues at the last minute, resulting in some of the workshops being cancelled. Later in the year, ACSC/APF events on 14-16 November, timed to coincide with another ASEAN summit, were again disrupted as the local authorities convinced two venue owners to withdraw their facilities.¹⁶⁰ Additionally, the owner of the venue for the opening ceremony of the ASEAN Grassroots People's Assembly on 13 November forced the event to be concluded prematurely by refusing to serve food or drinks to the participants and cutting off the electricity supply to the venue.

In 2012, local authorities in several provinces attempted to prevent CCHR from hosting community forums and meetings. A forum, which was planned to be held in Preah Vihear province on 13 July 2012, had to be cancelled at short notice when the authorities claimed that CCHR did not possess a valid letter of permission in order to host such an event.¹⁶¹ The legal requirement for a permission letter for public forums of this kind was eliminated by the Law on Peaceful Assembly (the "Demonstration Law"), and therefore should no longer be used as grounds to prevent public events. Nonetheless, local authorities continue to claim the need for a permission letter in order to disrupt CSO activities.

On 27 July 2012, CCHR endured additional political interference when a joint training session on land rights, conducted with the Cambodian Human Rights and Development Organization ("ADHOC"), was disrupted in Ratanakiri province. At 8:20am, local authorities - including police officers and the Deputy Commune Chief - informed CCHR and ADHOC that they had failed to obtain permission for the workshop. Due to the lack of legal justification behind the claims of the authorities, CCHR and ADHOC staff members continued to proceed with the session. However, the situation quickly

¹⁵⁹ CCHR, 'CCHR deplores the curtailment of fundamental freedoms and the silencing of civil society during the ASEAN summit' (Press Release) (1 April 2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=237&id=5>

¹⁶⁰ CCHR, 'Cambodian authorities disrupt two Civil Society events planned in parallel with the ASEAN Summit and threaten to arrest any protesters during the visit of President of the United States, Barack Obama' (Freedom of Expression Alert) (14 November 2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=34&id=5>

¹⁶¹ 'Preah Vihear Authority Does Not Allow CCHR to Organize Public Forum' *Voice of Democracy* (11 July 2012)

<<http://www.vodhotnews.com/km/news/flash-news/78-news-flash/7907-prash-vihear-authority-dont-cchr-make-forum>>

escalated when one of the police officers returned with an M-16 assault rifle. Due to safety concerns, the training session was forced to come to an abrupt end.¹⁶² Some months later, on 24 September, the governor of Lomphat district, Ratanakiri province tried to prevent CCHR from holding a public forum in his district, once again claiming that CCHR did not have a valid permission letter, despite the lack of need for permission according to the Demonstration Law.¹⁶³

Based on interviews carried out by CCHR with Cambodian union leaders representing workers from a variety of professions - including garment workers, farmers, domestic workers, informal workers and food services industry workers - their right to peaceful assembly is rarely respected by authorities. All of the interviewees asserted that whenever their unions or associations notified the authorities about their plans to peacefully protest or demonstrate, their letters are rejected. According to the Cambodian Labor Law 1997 (the "Labor Law"), workers must notify the Ministry of Labor seven days prior to a strike. However, according to interviewees, the authorities constantly reject the notifications because they claim unions and associations have not obtained a letter of permission. Under the Labor Law, there is no need to request permission from the authorities, it is merely required that prior notice is given and that workers attempt to negotiate the issue with stakeholders before striking.¹⁶⁴

Only a small percentage of requests to demonstrate are approved and even after approval, the authorities regularly require that groups alter their plans. For example, during International Teachers' Day, the Cambodian Confederation Union – a national trade union established in 2006 - planned to have 700 to 800 participants march from Freedom Park to the Ministries of Education and Labor. However, at the last minute, authorities banned the participants from marching and only 10 to 20 representatives were permitted to march on their behalf.

Most of CCHR's interviewees were also accustomed to facing threats. Many accounted instances where they had received a direct threat by phone or in writing, which caused them to fear for their safety. However, the union leaders were not discouraged by these threats and were determined to continue their work.

These attempts by the authorities to disrupt Cambodian CSOs constitute a clear violation of the right to freedom of expression and assembly, with the RGC exercising illegitimate control over civil society activities. Additionally, the deliberate disruption of public forums and workshops conducted by CSOs and legitimate peaceful demonstrations by unions and associations, are clearly in breach of the rights to freedom of association and assembly, with the RGC attempting to prevent public gatherings at which they fear they will be criticized.

5.3 Judicial harassment of civil society actors

The courts are regularly misused as a tool to silence NGO workers and human rights activists. The following are a number of recent seminal cases:

¹⁶² ADHOC, CCHR, 'Continued Disruption of Community Empowerment Activities Organized by Human Rights Groups' (Joint Statement) (27 July 2012) <<http://www.adhoc-cambodia.org/wp-content/uploads/2012/07/Joint-Statement-ADHOC-CCHR-Disruption-of-Community-Empowerment-Activities.pdf>>

¹⁶³ 'Ratanakiri's Commune Chief Accused of Violation of Citizens' Freedom of Expression' *Radio Free Asia*, (24 September 2012) <http://www.rfa.org/khmer/indepth/commune_chief_violated_political_rights-09242012041756.html>

¹⁶⁴ Articles 320 and 324 of the Labor Law,

- In February 2012, NGO worker Soum Chankea was summoned to Banteay Meanchey provincial court for questioning on defamation charges.¹⁶⁵ In November 2011, Soum Chankea had helped a waitress to file and pursue complaints of sexual harassment against Oum Socheath and his friend Pong Piseth. Oum Socheath – an employee of the Cambodian Mine Action Centre – threatened that he and Pong Piseth were protected by powerful individuals and filed a counter defamation complaint against Soum Chankea. Hun San, younger brother of Prime Minister Hun Sen, intervened in the case against Oum Socheath and wrote a letter to the prosecutor requesting that the sexual harassment case against him be dropped.¹⁶⁶ As a result, authorities took no action to investigate the sexual harassment charges and focus was shifted towards Oum Socheath’s defamation complaint.¹⁶⁷ Despite the lack of evidence that any defamation had occurred, the defamation charge hung over Soum Chankea’s head until 8 May when it was finally dropped.¹⁶⁸
- On 24 August 2012, ADHOC senior investigator Chan Soveth was summonsed for questioning by the Phnom Penh Municipal Court after providing humanitarian aid to a land rights activist. According to authorities, the land rights activist was guilty of participating in a secessionist plot in Kratie province. Chan Soveth had been unaware that the activist was wanted by the police.¹⁶⁹ Nonetheless, charges were not dropped against Chan Soveth until 8 February 2013 and the lengthy court proceedings significantly impeded Chan Soveth’s human rights work.¹⁷⁰ Subsequently, a CPP commune chief in Pursat province filed a lawsuit against Chan Soveth on 26 April 2013 for incitement and disinformation. The lawsuit is believed to be linked to a land dispute in Pursat province between local villagers and prominent CPP businessman Try Pheap. Chan Soveth and ADHOC have previously held workshops in the province to inform local villagers of their legal land rights.¹⁷¹ Court officials are currently reviewing the case.¹⁷²
- Housing rights activist Yorm Bopha is a representative of the well-known Boeng Kak community of Phnom Penh - victims of a long-standing land dispute with a powerful and well-connected company, Shukaku Inc. Yorm Bopha came to the forefront of her community’s struggle in 2012 when she worked tirelessly for the release of 13 of her fellow activists who had been imprisoned on bogus charges. Yorm Bopha was regularly threatened by police who told her that she “*would be next*” to be arrested. On 4 September she was

¹⁶⁵ Cassandra Yeap, ‘Complaint Aid Results in Summonsed Staffer’ *The Phnom Penh Post* (13 February 2012)

<<http://www.phnompenhpost.com/2012022354683/National/complaint-aid-results-in-summonsed-staffer.html>>

¹⁶⁶ Frontline Defenders, ‘Cambodia: Human Rights Defender Mr Soum Chankea Summonsed for Questioning Following Criminal Complaint’ (24 February 2012) <<http://www.frontlinedefenders.org/node/17524>>

¹⁶⁷ ADHOC, ‘Soum Chankea still faces legal proceedings following ADHOC’s intervention in a case involving a well-connected official’ (13 March 2012) <<http://www.adhoc-cambodia.org/?p=1455>>

¹⁶⁸ Observatory for the Protection of Human Rights Defenders, ‘Cambodia: Withdrawal of Charges Against Mr. Soum Chankea’ (5 June 2012) <<http://www.omct.org/human-rights-defenders/urgentinterventions/cambodia/2012/06/d21819/>>

¹⁶⁹ Sok Khemara, ‘Case Against Rights Worker Viewed as intimidation’ *Voice of America* (26 December 2012) <<http://www.voacambodia.com/content/case-against-rights-workers-viewed-as-intimidation/1573791.html>>

¹⁷⁰ Kuch Naren, ‘Court Drops Charge Against Prominent Human Rights Worker’ *The Cambodia Daily* (11 February 2013) <<http://www.cambodiadaily.com/archive/court-drops-charge-against-prominent-human-rights-worker-dropped-9806/>>

¹⁷¹ Khy Sovuthy, ‘Court Summons Adhoc’s Chan Soveth for Incitement, Disinformation’ *The Cambodia Daily* (29 April 2013) <<http://www.cambodiadaily.com/archive/court-summons-adhocs-chan-soveth-for-incitement-disinformation-20464/>>

¹⁷² Sok Khemara, ‘Rights Worker Sued on Behalf of Powerful Businessman’ *Voice of America* (30 May 2013) <<http://www.voacambodia.com/content/rights-worker-sued-on-behalf-of-powerful-businessman/1656434.html>>

arrested and charged alongside her husband with “*intentional violence with aggravating circumstances*”. The charges against her were related to an assault on two motorbike taxi drivers near her house on 7 August 2012, which the Prosecution claimed that Yorm Bopha had orchestrated. It became apparent during her trial on 26 and 27 December 2012 that there was absolutely no evidence to warrant a conviction. Nevertheless, Yorm Bopha and her husband were found guilty and Yorm Bopha was sentenced to three years in prison while her husband, having his sentence suspended, was allowed to return home. Yorm Bopha filed for appeal in January 2013 and the Court of Appeal upheld the charges against her on 14 June 2013 but reduced her sentence to two years.¹⁷³

- On 1 October 2012, three human rights workers were summoned to appear before Ratanakkiri Provincial Court on charges of incitement.¹⁷⁴ Summonses were issued for CCHR President Ou Virak, ADHOC provincial coordinator Pen Bonnar and ADHOC investigator Chhay Thy. Although the summons contained no concrete information as to the substance of the charges, they are believed to be based on a complaint made by CPP commune chief Kith Chem, who alleged that in 2009, the three incited members of an ethnic minority group to violently protest against agro-business company D.M. Group. The land conflict, located in Lumphat district, Ratanakkiri province, saw villagers intimidated and threatened and legal charges brought against 10 community representatives.

5.4 Violence against civil society actors

2012 saw an increase in the use of violence as a tool to regulate civil society and limit freedom of expression. Violence is a legitimate risk for members of civil society, especially grassroots activists who regularly participate in peaceful demonstrations that are violently disrupted by the authorities. Between November 2011 and December 2012, there were at least nine cases of police and military opening fire on demonstrators – mostly unionists and land rights activists.¹⁷⁵ The threat of violence is also used regularly by authorities to silence activists and NGO workers. The following are just several examples of violent intimidation of civil society actors:

- On 11 July 2012, Rong Panha, a member of the Cambodian Alliance of Trade Unions (“CATU”), was brutally beaten by police during a peaceful demonstration in Phnom Penh. The demonstrators were employees of Tai Nan factory and had travelled from Kandal province to demand higher wages. Rong Panha was a member of the group of 20 CATU workers who marched from the protest in Freedom Park to deliver a petition to Prime Minister Hun Sen at Wat Botum. Following the delivery of the petition, the police surrounded Rong Panha and repeatedly beat him on the head with batons. When Rong Panha finally emerged, his face was covered in blood. He was then arrested by police and released later that evening.¹⁷⁶

¹⁷³ CCHR, “Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha” (June 2013) <http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=35&id=5>

¹⁷⁴ CCHR, ‘CCHR President Ou Virak will face questions at Ratanakiri Court on Monday 8 October 2012’ (Press Release) (4 October 2012) <http://www.cchrcambodia.org/media/files/press_release/296_210o_en.pdf>

¹⁷⁵ LICADHO, ‘Human Rights 2012: The Year in Review’ (Full Report) (February 2013) 3 <<http://www.licadho-cambodia.org/reports/files/176LICADHOREportHumanRightsReview2012English.pdf>>

¹⁷⁶ CCHR, ‘Violent Response to Workers Protest’ (Factsheet) (July 2012) <http://www.ifex.org/cambodia/2012/07/23/cambodia_cchr_factsheet_workers_protest.pdf>

- On 23 December 2012, trade union representative Chhim Sam On was assaulted by an armed man as he walked alone near the factory where he works.¹⁷⁷ Having previously heard that he was in danger of being murdered in retaliation for his public union activities, Chhim Sam On believed that his assailant, who attacked him with brass knuckles and a meat cleaver, had been hired by the Xing Chang Xing garment factory. The authorities, however, declined to instigate even a cursory investigation of the attack.
- On 15 March 2013, police attacked protestors from the Boeng Kak Lake community while they gathered in a public park near the house of Prime Minister Hun Sen. The protestors were rallying for the release of imprisoned Boeng Kak land rights activist Yorm Bopha (mentioned in section 5.3 above). At least 60 military police forcefully pushed the protestors away from the prime minister's villa. Five of the protesters sustained serious injury and three arrests were made. One of the protestors was nearly strangled to death by a security guard, while Yorm Bopha's husband, Lous Sokorn, lost his front teeth and acquired several deep flesh wounds.¹⁷⁸ On 29 May 2013 a group of around 100 Boeng Kak, Borei Keila and Thmor Kol community members gathered at Phnom Penh City Hall to request a meeting between five of their representatives and the new Phnom Penh governor who had failed to honor his commitment to solve land disputes in their areas. When the governor refused to meet with community representatives, the group proceeded to block the road in protest. This resulted in the use of disproportionate force by law enforcement when police ordered that water canons of three fire trucks be used to blast the protesters, forcing them to disperse. Three protesters were left unconscious and 20 were injured.¹⁷⁹

Case Study 4 – Chut Wutty



On 26 April 2012, noted Cambodian environmental activist Chut Wutty was fatally shot in Koh Kong province by military police while photographing illegal logging.¹⁸⁰ Chut Wutty was escorting two journalists when his vehicle was stopped by military police, who ordered him to hand over the memory card from his camera; he refused to do so, and was then shot dead. A military policeman, In Rattana, was also killed by gunfire in the incident. The two journalists were detained, later overhearing military police discussing killing them

¹⁷⁷ Mom Kunthear and Stephanie Ip, 'Union Leader Attacked With Brass Knuckles and Cleaver' *The Phnom Penh Post* (25 December 2012)

<<http://phnompenhpost.com/2012122560452/National/union-leader-attacked-with-brass-knuckles-and-cleaver.html>>

¹⁷⁸ LICADHO, 'Police Beat Boeung Kak Protesters, Leaving Five Injured' (13 March 2013)

<<http://www.licadho-cambodia.org/pressrelease.php?perm=304>>

¹⁷⁹ CCHR, 'In the Wake of More Protests, CCHR Calls on City Hall to Resolve Long-Standing Land Conflicts in Phnom Penh' (Press Release) (31 May 2013)

<http://docs.google.com/a/cchrcambodia.org/gview?url=http://www.cchrcambodia.org/media/files/press_release/389_203ce_en.pdf&chrome=true>

¹⁸⁰ May Titthara and David Boyle, 'Environmental Activist Chut Wutty Shot Dead' *Phnom Penh Post* (27 April 2012)

<<http://www.phnompenhpost.com/2012042655803/National/environmental-activist-chut-wutty-shot-dead.html>>

in order to cover up the incident.¹⁸¹ Fortunately, both were later freed.

Official explanations of the incident were confused at best. MOI spokesman Khieu Sopheak claimed that military police had told him that Chut Wutty had fired first, instigating the incident.¹⁸² Military police spokesman Kheng Tito claimed that Chut Wutty had been armed, but that it was impossible to say whether Chut Wutty had fired his weapon and, if so, who had fired first.¹⁸³ Kheng Tito did, however, claim that In Rattana “was doing his duty”.¹⁸⁴ Deputy provincial police chief Sin Sen claimed that In Rattana shot Chut Wutty and then killed himself.¹⁸⁵ A LICADHO investigator concluded that In Rattana had opened fire when Chut Wutty tried to drive away, killing the environmentalist, and that In Rattana had been struck and killed by ricocheting bullets fired from his own weapon.¹⁸⁶

The investigation into the events of 26 April was deeply flawed. The court failed to consider any hard evidence whatsoever, instead relying on contradictory and ambiguous statements from witnesses, many of whom were inexplicably not present to be cross-examined.¹⁸⁷ The court also failed to consider the role of the Timber Green Logging Co. in the incident, despite the earlier admission by Kheng Tito that police had accosted Chut Wutty at their request.¹⁸⁸ In a trial lasting just 90 minutes, a provincial court concluded that In Rattana had been killed by an accidental discharge of his own weapon during a struggle with Rann Boroath, a private security guard employed by Timber Green Logging Co. who tried to disarm In Rattana.¹⁸⁹ The court’s investigation assumed, despite the lack of evidence and the absence of any clear motive, that In Rattana had killed Chut Wutty before Rann Boroath had intervened. Rann Boroath was therefore found to be acting in self-defense, and given a two-year sentence, three quarters of which was suspended. With the presumed murderer dead, a separate investigation specifically focusing on the killing of Chut Wutty was abandoned.

¹⁸¹ Olesia Plokhii, ‘Murders in the Forest’ *Reuters* (20 September 2012)

<<http://blogs.reuters.com/great-debate/2012/09/20/murders-in-the-forest/>>

¹⁸² Saing Soenthith and Abby Seiff, ‘Chut Wutty, Prominent Environmental Activist, Shot Dead in Koh Kong’ *Cambodia Daily* (26 April 2012)

<<http://www.cambodiadaily.com/news/chut-wutty-prominent-environmental-activist-shot-dead-in-koh-kong-1816/>>

¹⁸³ May Titthara and David Boyle, ‘Environmental Activist Chut Wutty Shot Dead’ *The Phnom Penh Post* (27 April 2012)

¹⁸⁴ ‘Cambodian Police Shoot Dead Leading Anti-logging Campaigner’ (*The Guardian*, 26 April 2012)

<http://www.guardian.co.uk/world/2012/apr/26/cambodia-police-shoot-dead-antilogging-activist>

¹⁸⁵ Saing Soenthith and Abby Seiff, ‘Chut Wutty, Prominent Environmental Activist, Shot Dead in Koh Kong’ *The Cambodia Daily* (26 April 2012)

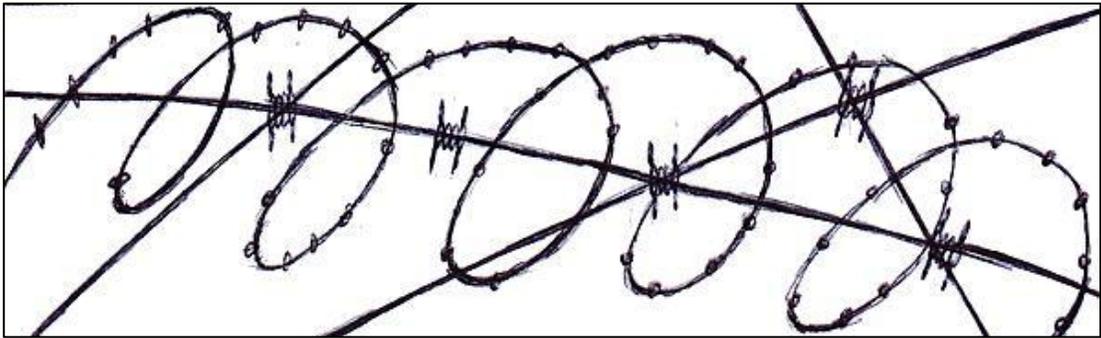
¹⁸⁶ May Titthara and David Boyle, ‘Environmental Activist Chut Wutty Shot Dead’ *The Phnom Penh Post* (27 April 2012)

¹⁸⁷ LICADHO, ‘Conclusion of two cases related to Chut Wutty slaying leaves more questions than answers’ (Press Release) (22 October 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=293>>

¹⁸⁸ May Titthara and David Boyle, ‘Environmental Activist Chut Wutty Shot Dead’ *The Phnom Penh Post* (27 April 2012)

¹⁸⁹ Rachel Vandenbrink, ‘Abrupt End to Murder Trial’ *Radio Free Asia* (4 October 2012).

<<http://www.rfa.org/english/news/cambodia/chut-wutty-10042012160930.html>>



***Further Restriction on Freedom of
Expression***

6 Further Restrictions on Freedom of Expression

This Chapter will briefly discuss restrictions faced by other members of Cambodian society – namely students, professors, lawyers and opposition politicians.

6.1 Academic Freedom of Expression

Today's Cambodian high school and university students are tomorrow's Cambodian leaders. Education is key in shaping young minds and opening them up to diverse ideas, opinions and debate. It is extremely important then that young Cambodian minds are not stunted by censorship within the education system.

From a purely legal perspective, academic freedom of expression in Cambodia is in good health. Article 66 of the Constitution states that the education system “*shall guarantee the principles of educational freedom.*”¹⁹⁰ In addition, Article 18 of the Law on Education (the “Education Law”) provides that education shall “*promote the scientific, technical, cultural and social researches in order to achieve capacity, knowledge, skill, morality, inventive and creative ideas and enterprise spirit to the development of the country.*”¹⁹¹ Furthermore, Article 35 of the Education Law affords students the right to “*free expression of their academic views*” and the right to “*freedom of study.*”¹⁹²

Academic freedom is also protected under international law. Article 26(2) of the UDHR protects the right to academic and educational freedom while Article 13 of the International Covenant on Economic Social and Cultural Rights (the “ICESCR”) upholds the right to education. The Committee on Economic Social and Cultural Rights, which oversees the implementation of the ICESCR, in its General Comment 13 states that “*the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.*”¹⁹³ The ICESCR, like other conventions that Cambodia has ratified, and the UDHR, has been incorporated into Cambodian domestic law.¹⁹⁴

Nonetheless, the dominance over political and public life exercised by the ruling CPP means that *de facto* censorship impacts on many areas and academic freedom is no exception. This was recognized as long as five years ago by Education International - a global representative organization of teachers and education employees. In their report, “Protecting and Defending Academic Freedom,” Cambodia was categorized as “CATEGORY 2: No Formal Restrictions, but Situation Different in Practice”.¹⁹⁵

¹⁹⁰ Constitution, Article 66

¹⁹¹ Law on Education, Article 18

¹⁹² Law on Education, Article 35

¹⁹³ Committee on Economic, Cultural and Social Rights, ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ (21st Session, 8 December 1999) <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4538838c22>>

¹⁹⁴ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007).

¹⁹⁵ Education International, ‘International Higher Education and Research Conference: Session 2-Protecting and Defending Academic Freedom’ (November 2007) 7
<<http://download.eiie.org/docs/IRISDocuments/Education/Higher%20Education%20and%20Research/Higher%20Education%20Policy%20Papers/2008-00037-01-E.pdf>>

A prime example illustrating academic censorship in Cambodia is the lack of general knowledge amongst Cambodian youth regarding the Khmer Rouge. In 2010, Jones Dickens of Cambodia's Genocide Education Project Team - an education program funded by the Documentation Center of Cambodia - reached the disheartening conclusion that "*many Cambodian students today believe the claims against the Khmer Rouge are either blown out of proportion in terms of their severity or are all together false.*"¹⁹⁶ The lack of education regarding the Khmer Rouge era could be attributed to the presence of former Khmer Rouge members within the current RGC. The Ministry of Education did not approve the first Khmer Rouge history textbook for public school use until 2009¹⁹⁷ and it is unclear whether the textbook is being widely used.

6.1.1 Academic Censorship in Higher Education

This section provides a brief examination of the current situation of free expression in Cambodian institutions of higher education, based on findings compiled from two focus group discussions organized by CCHR on 31 March 2013 and 6 April 2013 - which provided a valuable insight into the censorship practiced within Cambodia's universities. The majority of focus group participants were either students from the RUPP, Cambodia's oldest and largest university, or students attending the Royal University of Law and Economics ("RULE").

The students' experiences paint a dismal picture of freedom of expression in Cambodian higher education. Research and discussion of political and social issues are heavily restricted within the above universities. For example, one of the students reported that she was not permitted to discuss Boeng Kak or Borei Keila land disputes in a presentation because the topics pertained to the RGC. Other students also voiced similar complaints and added that universities had also banned students from choosing specific thesis topics (see Case Study).

Conversations amongst classmates are also subject to censorship. After discussing transparency in Cambodia's fuel sector with a friend, one of the focus group participants said that he was called to the head office to meet with the university rector. During the meeting, the student was informed that his behavior had violated the school's internal policy. According to the student, the university employs fellow classmates to monitor discussions, paying them up to 20,000 Riels per month.

As a result, self-censorship is common among students and teachers. A focus group participant recalled how a professor in her university's psychology department had been fired several years before for discussing political issues and encouraging free speech in the classroom. Thus, professors and students are in constant fear of countering the status quo. After letting a negative comment slip regarding the King Father, a RUPP student reported that his professor begged the students not to tell. It was also brought to the attention of CCHR that many professors do not allow students to record classroom lectures because they are worried that the recordings may be misconstrued and used as ammunition against them.

Furthermore, students noted that they practiced self-censorship to protect their social status. When university student associations organize seminars and debates, students are only invited to attend if they are supporters of the ruling CPP. There is a clear social stigma against supporters of opposition

¹⁹⁶ UNESCO, 'Education and Fragility in Cambodia' (2011) <<http://unesdoc.unesco.org/images/0021/002110/211049e.pdf>>

¹⁹⁷ Guy De Launey, "Textbook Sheds Light on Khmer Rouge Era" *BBC News* (10 November 2009) <<http://news.bbc.co.uk/2/hi/asia-pacific/8350313.stm>>

parties. Moreover, participants also voiced concern that classmates with ties to the RGC were capable of using their political influence to compromise future careers.

6.1.2 Political Infiltration

On 21 May 2013, UN Special Rapporteur for Human Rights in Cambodia Surya Subedi received a harsh reception by university students during a public lecture at the Cambodian Mekong University in Phnom Penh. Following Professor Subedi's speech on international investment law, students misused the questions and answers session to criticize the results of Subedi's reports on Cambodia's human rights record. According to a student who gave his name as Roth, the reports contained *"about a million bad things that relate to elections, land and property. The result is that you agree with the small group that we call the opposition party. I don't have any questions for you because I'm so disappointed in you."*¹⁹⁸ The other five students who spoke also echoed similar sentiments. Chea Chheng, a student of public administration attending RULE, informed Professor Subedi that his presence in Cambodia was not needed *"because in Cambodia, compared with other countries, the human rights situation is much better."*¹⁹⁹

This disturbing event demonstrates how the RGC abuses academic space to impart political views. The students attending Professor Subedi's lecture were well organized and it is widely believed that they had been instructed to stage a political stunt. For example, student Chea Chheng is a leading member of the Union of Youth Federation of Cambodia - a youth organization run by the son of Prime Minister Hun Sen.²⁰⁰ The CPP is a vocal critic of the UN's special envoy for human rights. Prime Minister Hun Sen has publicly warned Professor Subedi that he must *"learn about sovereignty"*²⁰¹ while Cambodia's top human rights official, Om Yentieng, has likened Subedi's reports to *"an arrow [aimed at Cambodia], shedding blood."*²⁰²

Case Study 5 - The Banned List

In March 2012, the Cambodia Herald reported that RULE had issued a list of 14 banned thesis topics to its fourth-year law students.²⁰³ RULE is a public university, operated and supervised by the Ministry of Education, Youth and Sport. Vice Rector (now Rector) Luy Channa denied that the decision was a result of government pressure and claimed that the move was an attempt to encourage originality, saying that *"The topics are repeated over and over so that's why the department made the announcement"*.²⁰⁴ Nevertheless, several of the topics relate to issues for which the government has recently attracted a great deal of public criticism and opposition, such as land and labor disputes. In addition, students are also prohibited from writing about the Cambodian

¹⁹⁸ Kevin Ponniah, "Students Ambush Subedi", *The Phnom Penh Post* (22 May 2013).

<<http://www.phnompenhpost.com/2013052265781/National/students-ambush-subedi.html>>

¹⁹⁹ Simon Lewis, "Students Protest at UN Envoy's University Lecture", *The Cambodia Daily* (22 May 2013)

<<http://www.cambodiadaily.com/news/students-protest-at-un-envoys-university-lecture-25855/>>

²⁰⁰ Kuch Naren and Simon Lewis, "Subedi Protest Linked to CPP-Aligned Youth Group" *The Cambodia Daily* (23 May 2013)

<<http://www.cambodiadaily.com/news/subedi-protest-linked-to-cpp-aligned-youth-group-26156/>>

²⁰¹ Kong Sothnarith, "UN Rights Envoy Spurned by Hun Sen and Top Officials" *Voice Of America* (15 December 2012).

<<http://www.voacambodia.com/content/un-rights-envoy-spurned-by-hun-sen-and-top-officials/1565130.html>>

²⁰² Richard Finey, "Cambodian Official Rejects UN Request for Update on Rights," *Radio Free Asia* (22 May 2013)

<<http://www.rfa.org/english/news/cambodia/subedi-05222013184712.html>>

²⁰³ "University bans students from writing about Cambodia Securities Exchange, 13 other topics" *The Cambodia Herald* (6 March 2012)

<<http://www.thecambodiaherald.com/cambodia/detail/1?page=13&token=YjBmN2YxYzAzODI2NmU4NjhiNDkODQyMTYyYTVk>>

²⁰⁴ Ibid

Red Cross, which is headed by the wife of Prime Minister Hun Sen.²⁰⁵ It is also suspected that there were economic motives behind the selection of the banned topics. Several of the banned topics concerned Cambodia's newly-trading stock exchange, giving rise to concerns that RULE was trying to prevent publication of any research or information which might hurt investor confidence and reduce the benefits of a large-scale stock market flotation.²⁰⁶ Thus, these restrictions could be interpreted as an attempt to further insulate the government from criticism and suggests ulterior motives on the part of RULE. However, regardless of its motives, the policy constituted a clear violation of both academic freedom and freedom of expression. As such, it was unlawful under both Cambodian and international law.

6.2 Targeting of Legal Professionals

Lawyers who represent human rights defenders or clients who are involved in freedom of expression related cases are often themselves targeted with threats, intimidation and sometimes even legal charges for defending these clients. As a result, many Cambodian lawyers are too fearful to represent clients in high profile human rights cases. The fact that the BAKC is extremely politicized means that lawyers also face being disbarred when they speak out on certain cases/issues.

Choung Chou Ngy, a prominent human rights and opposition lawyer, was charged under Article 565 of the Penal Code on 29 December 2011 for allegedly helping his client to escape Kandal provincial prison. This charge was brought in response to the release of Choung Chou Ngy's client, Mr. Meas Peng, deputy chief of Banteay Dek commune in Kandal province's Kien Svay district, from prison on 23 September 2011. According to the Kandal provincial court, Choung Chou Ngy's actions in helping his client to be released from prison were not in accordance with the laws of his profession, and they in fact constituted helping his client to escape – a penal offense. Choung Chou Ngy argued he was only following the law by defending his client and, if he had made a mistake, only the BAKC had the remit to punish a lawyer's professional mistakes. Considering Choung Chou Ngy had in the past represented a number of high profile clients (including Sam Rainsy) and that in this case his client was involved in a land dispute, the charges against him are widely seen as an example of judicial intimidation of legal professionals.²⁰⁷ Choung Chou Ngy was called to Kandal provincial court, where he was questioned on 5 March 2012, and released on judicial supervision.

As noted in Chapter 3 above, on 8 February 2013, the BAKC announced it would be more rigorous in implementing an internal rule to regulate how lawyers interact with the media. The rule will prevent lawyers from advocating on their cases or criticizing verdicts through the media. Criminal charges could ensue if this rule is broken.²⁰⁸ This seriously impacts on press freedom but also the free expression of legal professionals.²⁰⁹

²⁰⁵ Say Mony, "Ban Limits Research Potential for Future: Academic" VOA (15 March 2012)

<<http://www.voacambodia.com/content/ban-limits-research-potential-for-future-academic-142817495/1358203.html>>

²⁰⁶ A. Galliano, "Cambodia's First IPO Nears" *The Bangkok Post* (19 March 2012)

<<http://www.bangkokpost.com/business/economics/284959/cambodia-first-ipo-nears%3E>>

²⁰⁷ CCHR 'Judicial intimidation of a lawyer representing an opposition party activist' (Media Alert) (1st March 2012)

< http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=11&id=5>

²⁰⁸ Abby Seif and Chhay Channyda, 'Silence is golden: Bar' *The Phnom Penh Post* (11 February 2012) 1

²⁰⁹ Note that the International Commission of Jurists (the "ICJ") intervened to urge the BAKC to ensure that the new internal regulations would not impact negatively on the free expression of legal professionals. In February 2012 they sent an open letter to the President of the BAKC, asking for clarification of the provisions in the internal rules dictating how

6.3 Censorship of the Opposition

The CPP is determined to hold onto power in Cambodia and therefore the free expression of opposition politicians is often stifled. In criticizing the ruling party, opposition politicians and parliamentarians often face threats and intimidation as well as obstruction to their work. Internal parliamentary regulations can also greatly hinder the ability of minority party parliamentarians to speak freely. For example, one National Assembly rule requires parliamentarians to sit in conglomerates of ten in order to have the right to speak before the Assembly. Minority parties find it difficult to achieve such numbers, and are therefore excluded from debate. As seen above, freedom of expression for opposition parties is especially stifled during election campaigns due to restricted access to the media and disproportionate positive media coverage of the CPP. The fact that independent media outlets are prevented from broadcasting in the run up to elections (as discussed above in Chapter 3) is also extremely problematic.

In the run up to the national elections held on 28 July 2013, several restrictions and obstacles to the freedom of expression of the opposition once again manifested. As was seen in the run up to the commune elections, access to mass media by opposition parties is extremely limited and therefore opposition politicians do not have nearly the same opportunities as members of the leading party to spread their message. For example, on the morning of 20 May 2013 the Cambodian National Rescue Party (the “CNRP”), which is the country’s main opposition party formed in 2012 when the Sam Rainsy Party and the Human Rights Party joined forces, held a mass demonstration in Phnom Penh’s Freedom Park to call for reforms to the National Election Committee (“NEC”). Approximately 3,000 party supporters attended and marched through the city to the European Union Delegation where acting leader Kem Sokha met with the EU ambassador. According to research carried out by journalists at *The Cambodia Daily*, the demonstration was mysteriously absent from the majority of news reported that day and the next day.²¹⁰ According to one reporter working for a Khmer language newspaper, he had written an article about the demonstration, which was uploaded onto the newspaper’s website but then mysteriously removed not long after. Several news outlets express fear of reporting news that is not pro-leading party whereas others are steadfast in their bias towards the leading party and refuse to give coverage to the opposition.²¹¹

In addition to obstruction of their free expression in parliament and during election campaigns, opposition parliamentarians face the threat of losing their parliamentary immunity when they criticize actions or policies of the RGC. The repealing of parliamentary immunity leaves opposition parliamentarians vulnerable to criminal charges, especially relating to defamation, disinformation and incitement, for merely carrying out their work and exercising their free speech. Article 80 of the Constitution ensures that parliamentarians are allowed to openly express their opinions under

lawyers interact with the media: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/FINAL_Cambodia_bar-association-letter_version21February2013.pdf>

They then met with the BAKC in July 2013 to discuss the internal rules and the Secretary General ensured them that no lawyer would be prevented from or punished for speaking to the media. As a follow up, the ICJ issued this open letter with recommendations: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/08/Final_Cambodia-Bar-Letter_23August20131.pdf>

²¹⁰ Kuch Naren and Lauren Crothers, “News of Opposition Met with Media Blackout”, *The Cambodia Daily* (22 May 2013)

<<http://www.cambodiadaily.com/news/news-of-the-opposition-met-with-media-blackout-25858/>>

²¹¹ *ibid*

office, providing some protection. However, the National Assembly, which was two-thirds CPP up until the 28 July election, could revoke this protection for minority party members through a vote.

In 2009, opposition parliamentarians Mu Sochua and Ho Vann, both of the Sam Rainsy Party, had their parliamentary immunity revoked in order to clear the way for lawsuits against them.²¹² Prime Minister Hun Sen countersued Mu Sochua for defamation when she attempted to file a lawsuit against him for making derogatory remarks about her in a speech. Ho Vann had his immunity lifted in order to make way for a complaint against him by a group of military officers, relating to criminal defamation, disinformation and incitement. Ho Vann was acquitted in September 2009, however Mu Sochua was found guilty of defamation and required to pay a fine. When she refused to pay, the prescribed amount was deducted from her parliamentary salary. Mu Sochua finally had her parliamentary immunity restored, after much campaigning, on 3 August 2012. However, another complaint now hangs over her in relation to her alleged involvement in the escape of land rights activists from a detention centre in Phnom Penh, where they were being held without charge, on 12 January 2012.²¹³ The detainees, all women and children, were rounded up after protesting against forced evictions in the Borei Keila area of Phnom Penh. While Mu Sochua was visiting the detention centre to call for the release of the protesters, they escaped over the walls.

The opposition leader, Sam Rainsy, was until recently in self-imposed exile as a result of criminal convictions on charges of incitement and disinformation. The charges against Sam Rainsy would have seen him face twelve years in prison upon his return to Cambodia,²¹⁴ however, he was granted a Royal pardon on 12 July 2013, at the behest of the Prime Minister, shortly before the election on 28 July.²¹⁵ Before any pardon was negotiated, Sam Rainsy had decided to return to the country regardless. It is believed that as a result, the Prime Minister bowed to international pressure for a free and fair election, and green lighted the pardon. Nevertheless, Sam Rainsy was struck off the voter registry by the NEC in November 2012, citing that his criminal convictions made him ineligible to run for election.²¹⁶ Therefore Sam Rainsy was not allowed to directly participate, either as voter or candidate, in the 2013 national elections.²¹⁷

Shortly prior to the election, on 5 June 2013, the National Assembly's twelve-member permanent committee decided to strip members of the opposition, who had been elected as SRP and HRP representatives, of their parliamentary status (including immunity and salaries) for breaking an

²¹² Cambodian NGOs, "Joint NGO Statement on Lifting Mu Sochua's and Ho Vann's Parliamentary Immunity: Democracy in Freefall" (2009)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=66&id=5>

²¹³ CCHR, "Outspoken Opposition Lawmaker Facing Charges of Defamation and Incitement" (Media alert) (February 2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=14&id=5>

²¹⁴ CCHR, "Analysis of the Legal Grounds for Conviction and the Fairness of the Judicial Proceedings in the Criminal Cases Against Sam Rainsy" (Re-release in November 2012)

<http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=24&id=5>

²¹⁵ BBC news, "Opposition Leader Sam Rainsy Returns to Cambodia" (19 July 2013) <<http://www.bbc.co.uk/news/world-asia-23358326>>

²¹⁶ VOA, "Opposition leader Struck From Eligible Voter List" (6 November 2012)

<<http://www.voacambodia.com/content/opposition-leaser-struck-from-eligible-voter-list/1539744.html>>

²¹⁷ Even so, the opposition CNRP made considerable gains, with the unofficial count currently at 68 seats to the CPP and 55 to the CNRP. Following numerous reports of election irregularities however, the CNRP are claiming victory with 63 out of 123 seats and have thus far failed to accept a CPP win. It remains to be seen what the outcome or solution will be to this current deadlock but according to the Constitution, Cambodia's National Assembly must sit within sixty days of the election.

internal regulation banning members of parliament from being part of two political parties at the same time. As a result, twenty-seven opposition parliamentarians were forced to stand down just seven weeks before the national elections. This of course had an impact on the ability of the opposition to campaign without salaries and without the protection of parliamentary immunity.



Conclusion and Recommendations

7 Conclusion and Recommendations

7.1 Conclusions

Despite protections under national and international law, the situation of freedom of expression in Cambodia remains dire and many Cambodian domestic laws actively restrict free speech. In addition to legislation that directly restrict free expression, the authorities have begun to use other laws to silence dissent such as the bogus charges of assault leveled against activist Yorm Bopha, the vague provisions of the Law on the Election of Members to the National Assembly used to strip opposition parties of their seats in parliament, as well as provisions of the Penal Code relating to national security. This appears to be a new tactic used by the authorities to stifle opposition through less obvious means. Although Cambodian people have increasingly begun to exercise their right to free speech, especially in relation to politics surrounding the 2013 national election, 2012 and early 2013 have seen the situation of free expression deteriorate. Such deterioration is widely attributed to the national elections held on 28 July 2013, as well as the commune council elections, which were held in June 2012. In the run up to elections the RGC tightened its grip on free expression and censorship of the media, civil society and Cambodian citizens in general, notably heightened. Independent media outlets often face threats and disruption during campaigning periods and many outlets either refuse to give coverage to the opposition parties or are fearful of doing so. Journalists are also targeted; for example the high profile conviction of independent radio owner, journalist and RGC critic, Mam Sonando, who was jailed in 2012, is believed to have been a political case.

The Internet is a promising means of relatively free dissemination of information in Cambodia and Cambodian citizens are using the Internet more and more for political discussion, debate and social activism. Although the Internet is currently free compared to other forms of media, there have been some attempts by the authorities to censor political content and fears abound that the proposed Cyber Crimes Law will not only be used to legitimately regulate the Internet but also to restrict free expression online.

Cambodia boasts a vibrant and diverse civil society. However, individuals or organizations working on or commenting on controversial and politically charged issues are regularly targeted by the RGC in attempt to stifle dissent. As seen above in Chapter 5, threats, violence, intimidation and judicial harassment are common ways in which the authorities attempt to silence civil society actors. Instead of engaging with CSOs, the authorities claim that CSOs that criticize RGC policies must be aligned with opposition parties. Freedom of expression of civil society actors is regularly suppressed, along with related freedoms of assembly and association. The authorities have become increasingly heavy handed with protesters and the LANGO, which will likely be reintroduced onto the legislative agenda once a new government is formed, threatens to severely restrict the activities of CSOs.

It is not just members of civil society who are targeted in this manner, but other members of Cambodian society often find themselves censored or at risk of harassment when they speak out. Three important groups are identified above – Cambodian university students, lawyers and opposition politicians.

7.2 Recommendations

Considering the current situation of freedom of expression in Cambodia, CCHR makes the following recommendations to the newly elected RGC. Some recommendations are short-term, to be implemented before Cambodia's review by the UN Human Rights Council in early 2014, while some are on a medium or long-term basis:

7.2.1 *General*

- Amend the provisions in the Penal Code (outlined in the Table above, Chapter 2) that restrict freedom of expression or that could potentially be used to illegitimately restrict freedom of expression, through clarifying vague terminology (short-term);
- Decriminalize defamation under Article 305 of the Penal Code (short-term); and
- Decriminalize insult of public officials under Article 502 of the Penal Code and discrediting of judicial decisions under Article 523, as both are incompatible with the ICCPR and therefore with the Constitution (short-term);
- Ensure transparency in relation to public information, improving access to information through the adoption of a comprehensive law and/or access to information policy. This will require meticulous archiving of information, transparent procedure for requesting information and appealing any decisions not to provide information, as well as the proactive provision of information by RGC ministries and departments via their websites and spokespeople (medium-term).

7.2.2 *Concerning the Media*

- Amend the Press Law to ensure that it upholds press freedom as stipulated by the Constitution (short-term);
- Ensure that legal cases involving journalists refer to the Press Law and not to the more restrictive Penal Code (short/medium/long-term);
- Commit to independent regulation of traditional media, with no bias towards the leading party, when it comes to licensing and freedom to operate, in order to bring about a pluralistic media environment and to promote professionalism and impartiality amongst journalists and other media professionals (medium/long-term);
- Ensure that cases of harassment against journalists are duly investigated and that perpetrators are brought to justice (short/medium/long-term);
- Media outlets should be allowed to disseminate free and fair information in the run up to elections and should not be restricted in reporting on activities or opinions of any political party (medium-term);
- Journalists must not face criminal charges or imprisonment for reporting on politically sensitive issues (short/medium/long-term);
- Threats, harassment and violence against journalists should be investigated and punished (short/medium/long-term);
- Actively promote and look to increase Internet access and the use of the Internet as a means of spreading independent news and sparking debate (medium-term); and
- Ensure that the Cyber Crimes Law, if passed, firstly takes civil society input into account and secondly, does not contain any provisions or vague terms, which could be used to stifle

freedom of expression online. The UN Human Rights Council resolution on Internet freedoms should also be considered when drafting (short/medium-term).

7.2.3 Concerning Civil Society

- Establish an independent National Human Rights Institution, in accordance with the Paris Principles, in order to protect the role of civil society in Cambodia and to provide a means of complaint for civil society actors who have had their rights to freedom of expression, association and/or assembly violated (medium/long-term);
- Provide education to the authorities to ensure that they are aware of the provisions of the Demonstration Law and that they do not continue to request letters of permissions from civil society organizations that are not necessary under the law (medium-term);
- Engage with civil society organizations through public forums, workshops and meetings, in order to hear about issues faced and to make a strong effort to combat these issues (short/medium/long-term);
- Refrain from attempting to silence civil society via the court system (short/medium/long-term);
- If the LANGO returns to the legislative agenda, carry out civil society consultations and incorporate civil society recommendations into the draft law (short/medium-term); and
- Make a strong commitment to thoroughly investigate violence or intimidation carried out against civil society actors, and to bring perpetrators to justice (short-term).

7.2.4 Other

- Invest in the education of Cambodian youth, ensuring that universities are environments for free exchange of information and opinion, which allow youth to flourish, forming their own opinions (long-term);
- The BAKC must be an independent institution (medium-term);
- Reverse the Ministry of Information regulation, which was requested by the BAKC itself, requiring legal professionals to seek permission before speaking in the media (short-term);
- In order to allow for legitimate democratic elections, opposition parties must be given equal and fair access to the media, rather than being censored or unfairly represented on state television, radio and in pro-CPP newspapers (short/medium-term);
- Amend the Law on the Election of Members of the National Assembly in order to clear up vague provisions about the removal of parliamentarians during the six months before a national election (short-term);
- Repeal the Khmer Rouge Crimes Denial Law, which is completely unnecessary in Cambodia and an affront to freedom of expression (short-term); and
- Ratify the First Optional Protocol of the ICCPR, which would allow individuals or groups to file complaints to the Human Rights Committee in cases where their rights protected under the treaty (including the rights to freedom of expression) have been violated at the hands of the State (short-term).

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“[The EU] considers a free and lively civil society to be an essential partner in the governance of any country, the same importance also goes to the space for discussions and debates where parties can speak and operate freely. Today civil society in Cambodia – including human rights defenders - remains vibrant and plays an active role in many aspects affecting the everyday life of the citizens of this country. This is one of the most democratic aspects of Cambodia which the EU would like to see strengthened.”

H.E Jean-François Cautain

**Ambassador of the European Union to the
Kingdom of Cambodia**