

# **Cambodia freedom of expression and the point of no return**

## **Cambodian Center for Human Rights and Article 19**

The Cambodian Center for Human Rights (CCHR) and ARTICLE 19 are concerned about the deteriorating freedom of expression situation in Cambodia and urge the Cambodian government to take immediate action to remedy the situation and comply with its international obligations to promote and protect freedom of expression and freedom of association for all.

The situation of freedom of expression in Cambodia has been worsening steadily in recent months, with space to speak openly, share opinions, and protest peacefully, shrinking. A September 2010 joint report on the state of freedom of expression in Cambodia, "Cambodia Gagged: Democracy at Risk?" released by CCHR and ARTICLE 19, with 15 other NGOs and unions, details a crackdown on freedom of expression conducted by the government since the last general election in 2008.<sup>1</sup>

The primary tool of oppression throughout the crackdown has been the courts, with criminal charges levelled against parliamentarians, journalists and human rights defenders who speak out in criticism of the government and the ruling Cambodian People's Party (CPP). In recent months, parliament has joined the courts to increase suppression. A new Penal Code, which came into force in December 2010, contains a number of excessive restrictions on freedom of expression, while pending laws that will regulate NGOs and unions respectively are evidence of a legislative agenda to limit freedom of association and, with it, the right to freedom of expression. Recent criminal cases against human rights defenders and ordinary citizens in response to the expression of opinions critical of the government indicate the likely ends to which these laws will be put in the hands of a corrupt and politically controlled judiciary.

CCHR and ARTICLE 19 have repeatedly raised concerns about the deteriorating situation for freedom of expression in Cambodia. In July 2009, CCHR President Ou Virak was quoted in The Phnom Penh Post describing "cycles of freedom" characterized by peaks and troughs in the extent to which the Cambodian people are allowed to voice their opinions and to challenge the government, warning that at some stage the country could reach a point of no return when "there are enough mechanisms to silence just about anybody".<sup>2</sup>

This statement outlines the latest setbacks for the freedom of expression in Cambodia, and raises the question as to whether these new and forthcoming laws will finally push Cambodia to the point of no return.

## **Rule by law**

The Cambodian Constitution commits the country to the principles of the rule of law.<sup>3</sup> The right to freedom of expression is guaranteed to all Cambodian citizens as per article 41 of the Constitution and article 19 of the International Covenant on Civil and Political Rights, which was ratified by Cambodia in May 1992. In its "Rectangular Strategy"<sup>4</sup>, the socio-economic policy agenda of the Political Platform of the government, and its "Strategy on Legal and Judicial Reform"<sup>5</sup>, the government outlines its own commitment to the rule of law. Under the rule of law, the law is pre-eminent and can serve as a check against the abuse of power. The rule of law should be distinguished from the practice of rule by law, a system under which the law serves as a tool of oppression for those in power.<sup>6</sup> Recent and forthcoming

legislation are clear signs that the rule of law is waning in Cambodia and that the government is ruling by law to protect the interests of a small political and economic elite at the expense of the right to freedom of expression of all people and the freedom of those who exercise that right to speak out in criticism of the government, the CPP and their allies.

In December 2010, Cambodia's new Penal Code came into force. The Penal Code has been criticised by human rights groups, including CCHR 7 and ARTICLE 19 8, as another weapon in the arsenal of the government and the CPP in their ongoing efforts to silence those who dare to speak out against policies, actions and omissions. 9 The Penal Code maintains the criminal offence of defamation notwithstanding promises from Prime Minister Hun Sen in February 2006 that the crime would be removed from the statute books. 10 Moreover, the Penal Code further extends the scope of defamation to criminalize comments that are held to undermine the honour or reputation of institutions. Article 502 provides for the imprisonment of individuals whose words, gestures, writing, sketches or objects are held to undermine the dignity of a civil servant or "citizen entrusted with public mandate by an election in office", while article 523 criminalizes any criticism of court decisions which are said to "cause turmoil" or "endanger Cambodian institutions". These provisions clearly prove that one of the primary objectives of the Penal Code is to ensure that those in power are shielded from criticism while those who are not in power must think very carefully before voicing an opinion that runs counter to that of the government or the ruling party. In the words of Khieu Kanharith, the Minister of Information, "Before, using the argument of "freedom of expression" and opposition party status, some people could insult anybody or any institution. This is not the case now". 11

Two forthcoming laws, the Law on Associations and Non-Governmental Organisations (the "NGO Law") and the Law on Trade Unions ("Union Law"), as they are currently formulated, threaten to deal a fatal blow to the right to freedom of association in the Kingdom and, with it, the right to freedom of expression of all. The draft NGO Law contains a number of vague and problematic provisions, including a requirement of compulsory registration for all NGOs before they are allowed to "operate any activity" and imposes burdensome, overly-bureaucratic registration requirements. It is feared that

the vague provisions of the NGO Law may provide for arbitrary and selective denial of registration applications, resulting in the criminalisation and/or closure of NGOs and other associations, with the law silent on any appeal process if a registration application is rejected. 12 Similarly, the Union Law imposes onerous registration processes and reporting obligations on groups of employees. The registration requirements in both laws will mean that if groups fail to register, then their activities and the very fact of forming an association will be deemed illegal. 13 Moreover, the process of drafting of these laws was problematic and did not allow for proper input and consultations of civil society. For example, the Draft NGO Law was made available for review by civil society at the end of 2010. Interested parties were given less than a month to review the draft before a single day's consultation with the RGC.

By legislating in this way, the government is making it much harder for community groups, NGOs and unions to gather, thereby severely restricting their freedom and independence. Government discretion, the lack of a right to appeal (in the draft NGO Law) and criminal sanctions ensure vagueness in the laws and draconian punishments for their contravention. The striking resemblances between the two laws suggest a legislative agenda to ultimately curtail the right to freedom of association. As unions, NGOs and associations are platforms through which people can have their voices heard, such a legislative agenda aims to suppress freedom of expression.

## Rule by fear

The passage of the Penal Code and the drafts of the NGO and Unions Laws strongly indicate that the government is ramping up its efforts to police the opinions of its citizens by providing the courts with additional bases to intimidate and imprison.

Concerns that the new Penal Code would leave human rights activists and others who question the actions of the economic or political elite at even greater peril were realized soon after its coming into force. On 25 January 2011, Sam Chankea, a provincial coordinator of a human rights organization, the Cambodian Human Rights and Development Association, was found guilty of defamation under article 63 of the previous Criminal Law and article 305 of the new Penal Code, for comments which he made on Radio Free Asia in 2009 regarding KDC International, a firm run by the wife of the Minister for Industry, Mines and Energy, which is involved in a long standing land dispute in Kampong Chhnang province. 14 In response to the verdict, 28 NGOs released a joint statement in which they noted that the verdict would have a chilling effect on other human rights defenders who may be “increasingly fearful of expression [of] their opinions”. 15 On 17 January, the Kampong Chhang Provincial Court convicted a villager, Reach Seima, of defamation in connection with the same case; he was ordered to pay USD 1,475 in fines and compensation to the firm. 16

Recent incidents of threats and intimidation against journalists are equally concerning. On 14 January 2011, Sovan Philong, a photographer from The Phnom Penh Post, was prevented from taking photographs of a stand-off between Boeung Kak lake residents and the police. Boeung Kak lake homes are being destroyed to make way for a development project endorsed by Shukaku Inc, the development firm owned by CPP Senator Lao Meng Khin. Mr Sovan was manhandled and briefly detained, and his camera equipment was seized despite the fact that he was wearing his official identification, which was issued by the Ministry of Information. 17 Soon after the incident, the Overseas Press Club of Cambodia issued a statement condemning these police actions, calling on the authorities “to ensure that members of the press are not obstructed while doing their jobs, and that they are not unjustly accused, harassed or arrested for going about their professional duties”. 18 Days later however, the government's Anticorruption Unit (ACU) confiscated tape recorders from journalists present at a press conference on the orders of ACU head, Om Yinteng, who is also the head of the government's human rights committee, after a reporter from The Cambodia Daily asked him about a shelved inquiry by the Federal Bureau of Investigation into a grenade attack on an opposition rally in 1997 that killed 16 people, including one American citizen. In response to this incident, the Committee to Protect Journalists stated, “Despite its legal commitments to uphold press freedom, Prime Minister Hun Sen's government continues to use strong-armed tactics against the media.” 19

The September 2010 joint report “Cambodia Gagged: Democracy at Risk?”, noted that the crackdown on freedom of expression primarily targeted Cambodia's “pillars of democracy”, prominent individuals such as opposition parliamentarians, journalists and human rights activists whose work and activism was viewed as subversive by the government. Incidents in recent weeks suggest that the crackdown is no longer limited to these categories of people and has been extended to all who speak out in criticism of the government. On 17 December 2010, a week after the new Penal Code came into force, Seng Kunnaka, an employee of the UN World Food Program in Cambodia, was arrested on charges of

incitement under article 495 after sharing an article from KIMedia with co-workers. Article 495 of the Penal Code defines incitement as an action that directly provokes the commission of a crime or an act that creates “serious turmoil in society” through public speech, writings, drawings, or audiovisual telecommunications that are shared with, exposed to, or intended for the public. Seng Kunnaka was arrested after he shared a web article from KI-Media with two co-workers. Whilst the precise content of the article is unknown, KI-Media is a news website known to be critical of the government. Seng Kunnaka was arrested, charged and sentenced within a three day period, what Human Rights Watch condemned as a profound setback for freedom of expression in the Kingdom. 20 On 26 January 2011, a Kampong Cham man, Ly Leang, was arrested without a warrant after he sent a request to CCHR for a public forum to discuss an ongoing land dispute between hundreds of villagers and a businessman. Ly Leang was released on bail the following day after 200 villagers blocked a road in protest at his arrest. 21 On 31 January 2011, The Phnom Penh Post 22 and The Cambodia Daily 23 carried stories relating to two separate incidents of arrests following the distribution of leaflets which were reported to contain stinging criticisms of government members and of perceived loss of Cambodian land to Vietnam. These arrests and convictions reflect the deep-seated paranoia within the government and demonstrate the lengths to which the authorities will go to stifle any expression of disapproval or dissent by ordinary people.

## **The point of no return**

Freedom of expression in Cambodia is at a crisis point. In a recent speech, Prime Minister Hun Sen outlined his intention “to make the opposition group die” 24 and pledged to arrest an unnamed critic whose recent comments in relation to civic unrest in Tunisia he deemed to amount to an attempt to foment a popular revolution in Cambodia. 25 Since the conviction of Seng Kunnaka, there have been regular problems accessing KI-Media through certain ISP providers in the country. 26 While officials have denied blocking KI, government spokespersons have gone on record saying that the website ought to be blocked, suggesting that censorship of the internet will soon become a reality in Cambodia. 27

In the short time that the new Penal Code has been in force, fears concerning the draconian measures contained in it have been realized. In view of the cases outlined above and with additional stringent regulations on the freedom of NGOs, associations and unions looming, the question of whether Cambodia has reached the point of return—insofar as freedom of expression is concerned—needs to be considered.

CCHR and ARTICLE 19 call on the government to reconfirm its commitment to the rule of law rather than to rule by law, and to act immediately to restore the right to freedom of expression of all. To this end, the government must consult openly and constructively with NGOs and unions with regard to the content of the current draft laws. Moreover, the government should heed recent calls by NGOs for a constitutional review of the defamation provisions contained in the Penal Code as well as other provisions which threaten to undermine freedom of expression. In addition, we call on the international community to address the deteriorating situation in Cambodia and to demand the Cambodian Government to comply with its international obligations to promote and protect freedom of expression and freedom of association for all.

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1 Available at [http://www.cchrcambodia.org/English/add\\_report/reports/joint\\_report\\_on\\_foex.10sept.eng.pdf](http://www.cchrcambodia.org/English/add_report/reports/joint_report_on_foex.10sept.eng.pdf) and at [http://sithi.org/temp.php?url=media\\_view.php&mid=2906&publication=1&](http://sithi.org/temp.php?url=media_view.php&mid=2906&publication=1&)

2 Government campaign turns back clock on press freedom", The Phnom Penh Post, 30 July 2009.

3 The Preamble of the Constitution seeks out its objective to "restore Cambodia into an "Island of Peace" based on a multi-party democratic regime guaranteeing human rights and the respect of law". Article 31 guarantees equality of the law to all Khmer citizens and states that Cambodia recognizes and respects human rights standards as set out in the international conventions and treaties. Article 51 states that "[a]ll power belongs to the people" and is exercised "through the National Assembly, the Senate, the Royal Government and the Judiciary". Article 51 provides for the separation of powers between the legislature, executive and judiciary.

4 See Rectangular Strategy for Growth, Employment, Equity and Efficiency, Phase 11", Address by Samdech Akka Moha Sena Padei Techo Hun Sen, Prime Minister of the Kingdom of Cambodia" delivered at the First Cabinet meeting of the Fourth Legislature of the National Assembly at the Office of the Council of Ministers, Phnom Penh, 26 September 2008, available at <http://www.shec.gov.kh/policies/rectangularstrategy.html>

5 See Plan of Action for Implementing the Legal and Judicial Reform Strategy", The Council for Legal and Judicial Reform Adopted by the RGC at the Plenary Session on 29 April 2005, available at <http://www.cljr.gov.kh/eng/library/doc/03-Action.Plan.Program.En.pdf>

6 On the Rule of Law: History, Politics, Theory", Tamanaha, B. Z. (Cambridge University Press, Cambridge, 2004), p. 3.

7 Penal Code – Freedom of Expression in Jeopardy", CCHR, 16 October 2009, available at [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr%20press%20release%20-%20the%20penal%20code%20-%20freedom%20of%20expression%20in%20jeopardy%28101609\\_1255751514%29.pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr%20press%20release%20-%20the%20penal%20code%20-%20freedom%20of%20expression%20in%20jeopardy%28101609_1255751514%29.pdf). See also "New Penal Code a Setback for Freedom of Expression Issues", Cambodian League for the Promotion and Defense of Human Rights (LICADHO),

Press Release, 9 December 2010, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=233>

8 Comment on the Draft Cambodian Penal Code, ARTICLE 19, September 2009, available at <http://www.article19.org/pdfs/analysis/cambodia-comment-on-the-draft-penal-code.pdf>.

9 See for example, “New Penal Code a Setback for Freedom of Expression Issues”, Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Press Release, 9 December 2010, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=233>

10 See for example <http://en.rsf.org/cambodia-prime-minister-promises-to-07-03-2006,16180.html>.

11 Cambodia: New Penal Code Undercuts Free Speech, Human Rights Watch, 23 December 2010, available at <http://www.hrw.org/en/news/2010/12/22/cambodia-new-penal-code-undercuts-free-speech>.

12 For more on the Draft NGO Law see “Key concerns and recommendations concerning the draft law on Associations and Non-Governmental Organizations”, CCHR, 24 December 2010, available at [http://www.cchrcambodia.org/English/add\\_report/reports/2010\\_12\\_24\\_ngo\\_law\\_eng.pdf](http://www.cchrcambodia.org/English/add_report/reports/2010_12_24_ngo_law_eng.pdf); “CCHR's Proposed Changes and Recommendations to the Draft Law on Associations and Non-Governmental Organizations”, CCHR, 9 January 2011, available at [http://www.cchrcambodia.org/English/add\\_report/reports/amended\\_draft\\_ngo\\_law\\_eng.pdf](http://www.cchrcambodia.org/English/add_report/reports/amended_draft_ngo_law_eng.pdf); and “Guidance Note to CCHR's Proposed Changes and Recommendations to the Draft Law on Associations and Non-governmental Organizations”, CCHR, 9 January 2011, available at [http://www.cchrcambodia.org/English/add\\_report/reports/guidance\\_note\\_en.pdf](http://www.cchrcambodia.org/English/add_report/reports/guidance_note_en.pdf).

13 For more see “Freedom of Association under Fire”, CCHR Press Release, 23 January 2011, available at [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr\\_press\\_eng.pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr_press_eng.pdf).

14 See for example Cambodia: Conviction of Sam Chankea is an Attack on Freedom 1111 of Expression, ARTICLE 19 and CCHR, 25 January 2011, available at <http://www.article19.org/pdfs/press/cambodiaconviction-of-sam-chankea-is-an-attack-on-freedom-of-expression.pdf>; and World Organization Against Torture, “Cambodia: Judicial Harassment Against Mr. Sam Chankea”, 18 January 2011, available at: <http://www.omct.org/human-rights-defenders/urgent-interventions/cambodia/2011/01/d21039/>.

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