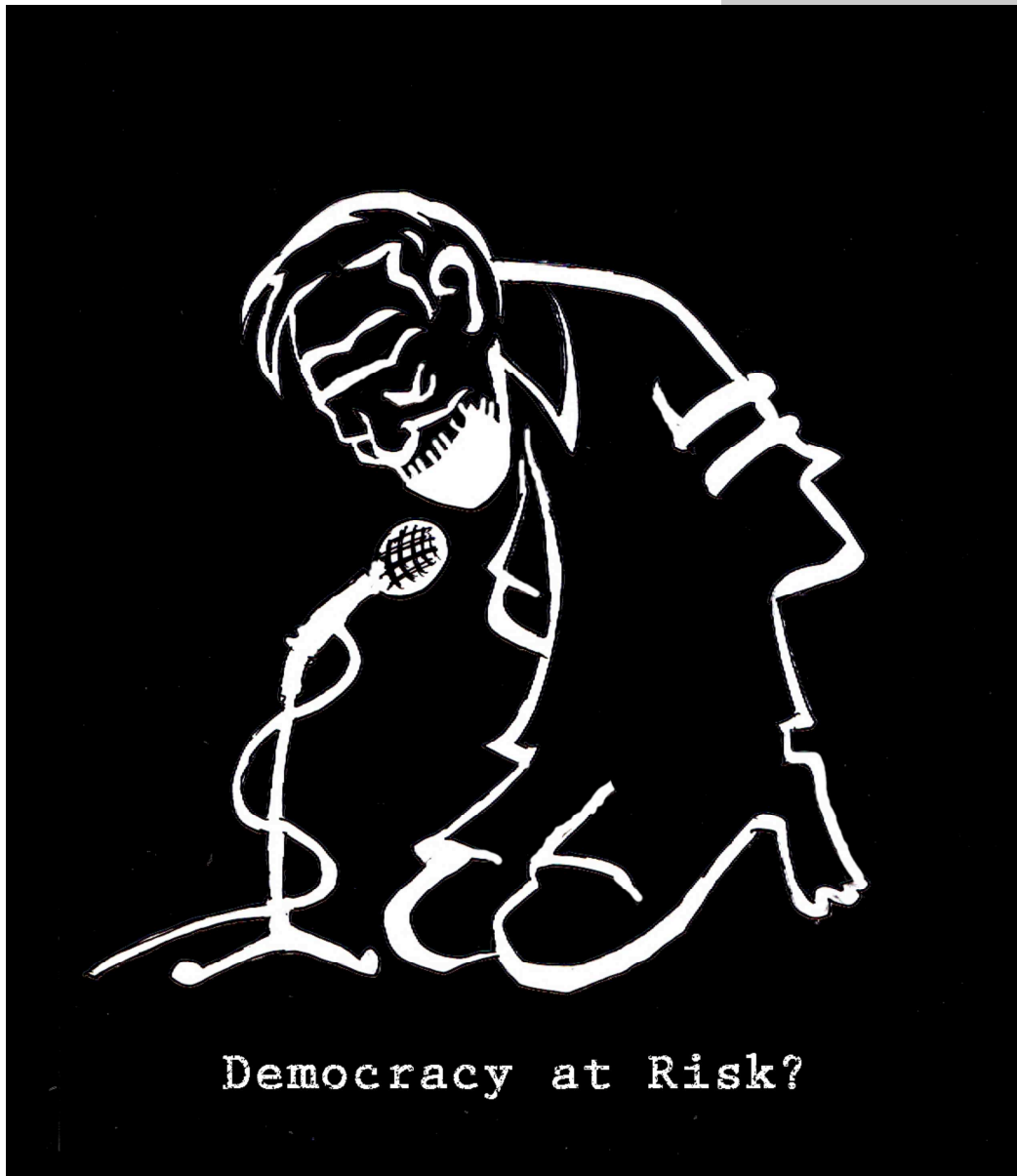


**CAMBODIA GAGGED: DEMOCRACY AT RISK?**  
**Report on Freedom of Expression in Cambodia**



**SEPTEMBER 2010**

***“BE CAREFUL with the language of 'dictatorial regime'. BE CAREFUL, (or) one day legal action will be used...”\****

**- Prime Minister Hun Sen**

\* Quote by Prime Minister Hun Sen (emphasis added), as quoted in “Not a dictatorial regime”, *AFP*, 5 August 2009.

# **Cambodia Gagged: Democracy at Risk?**

## **Report on Freedom of Expression in Cambodia**

### **September 2010**

The following non-governmental organisations, community organisations and unions have come together to issue this joint report on freedom of expression in Cambodia:

Action for Environments and Communities (AEC)  
ARTICLE 19  
Building Community Voices (BCV)  
Cambodian Center for Human Rights (CCHR)  
Cambodian Center for Protection of Childrens' Rights (CCPCR)  
Cambodian Independent Teacher Association (CITA)  
Cambodian Independent Civil Servants Association (CICA)  
Cambodian League for the Protection and Defense of Human Rights (LICADHO)  
Cambodian Tourist Service Workers Federation (CTSWF)  
Center for Labour Rights of Cambodia (CLA-RI)  
Committee for Free and Fair Elections in Cambodia (COMFREL)  
Community Legal Education Center (CLEC)  
Community Peace Building Network (CPN)  
Independent Democracy of Informal Economy Association (IDEA)  
Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA)  
Legal Aid Cambodia (LAC)  
Star Kampuchea

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The Cambodian Center for Human Rights for coordinating the research, drafting and publication of this Report.

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## ACRONYMS / DEFINITIONS

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The following definitions and abbreviations are used in this Report, listed in alphabetic order:

“ACHPR”	African Commission on Human and People’s Rights
“ADHOC”	Cambodian Human Rights and Development Association
“AHRC”	Asian Human Rights Commission
“AICHR”	Asian Intergovernmental Commission on Human Rights
“ASEAN”	Association of South East Asian Nations
“Bar Association”	Cambodian Bar Association
“CCHR”	Cambodian Center for Human Rights
“CCJ”	Club of Cambodian Journalists
“CLEC”	Community Legal Education Center
“Constitution”	Constitution of the Kingdom of Cambodia
“COMFREL”	Committee For Free and Fair Elections in Cambodia
“CPP”	Cambodian People’s Party
“Demonstration Law”	Law on Peaceful Demonstrations, 2009
“ECCC”	Extraordinary Chambers in the Courts of Cambodia
“FUNCINPEC”	United Front for an Independent, Neutral, Peaceful and Cooperative Cambodian
“HRC”	United Nations Human Rights Committee of the International Covenant on Civil and Political Rights
“ICCPR”	International Covenant on Civil and Political Rights, 1966
“Johannesburg Principles”	Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996
“Joint Submission”	Joint submission by non-governmental organisations on Freedom of Expression and Assembly in Cambodia to the United Nations Human Rights Council’s Universal Periodic Review of Cambodia’s human rights record, 2009.
“LICADHO”	Cambodian League for the Protection and Defense of Human Rights
“NGO”	Non-governmental organisation
“OAS”	Organization of American States
“OSCE”	Organisation for Security and Co-operation in Europe
“Paris Peace Agreements”	Agreement on a Comprehensive Political Settlement on the Cambodian Conflict, 1991
“Press Law”	Press Law, 1995
“Report”	Report on Freedom of Expression, 2010
“RGC”	Royal Government of Cambodia
“SCM”	Supreme Council of Magistracy
“SEAPA”	South-East Asian Press Alliance
“SRP”	Sam Rainsy Party
“UDHR”	Universal Declaration of Human Rights
“UN”	United Nations
“UNCT”	United Nations Country Team in Cambodia
“UN OHCHR Cambodia”	United Nations Office of the High Commissioner for Human Rights in Cambodia
“UPR”	Universal Periodic Review
“UN Special Rapporteur for Cambodia”	United Nations Special Rapporteur on the situation of human rights in Cambodia
“UN Special Rapporteur for Freedom of Expression”	United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
“UNTAC Criminal Law”	Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable During the Transitional Period, 1992
“VOA”	Voice of America

## **EXECUTIVE SUMMARY**

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This report (the “Report”) is a joint report compiled by a coalition of non-governmental organisations (“NGOs”), community organisations and unions.

Chapter One (Introduction) of this Report explains the background against which the Report is written and sets out its purpose – to remind the Royal Government of Cambodia (the “RGC”) and the international community of the fundamental importance of freedom of expression as the cornerstone of democracy, and to voice our deep concern that the RGC’s apparent efforts to systematically erode freedom of expression in Cambodia in the last year puts democracy at risk. Since the joint submission on Freedom of Expression and Assembly in Cambodia made by NGOs to the United Nations (“UN”) Human Rights Council’s Universal Periodic Review (the “UPR”) of Cambodia’s human rights record (the “Joint Submission”), we have seen the continued erosion of the right to freedom of expression with the judiciary being used as an organ of repression in silencing dissent and opinion critical of the RGC. This crackdown has targeted the pillars of democracy: parliamentarians, the media, lawyers, human rights activists and the people.

Chapter Two (Background) of this Report outlines the importance of the right to freedom of expression, explains the domestic and international law that protects it, and identifies the judicial and institutional obstacles to its protection in Cambodia.

Chapters Three to Seven of this Report reveal how each of the pillars of democracy have been systematically targeted by the RGC’s crackdown on freedom of expression and consider the implications for democracy in Cambodia. In Chapter Three (Parliamentarians) we posit that the action taken against opposition parliamentarians evidences a Cambodia where the modalities of democracy may be in place but where the legitimate role of the opposition is thwarted by acts of intimidation, harassment and the inappropriate use of the criminal law. Chapter Four (The Media) explores how the crackdown on the media has fostered a climate of fear resulting in self-censorship, depriving the Cambodian citizenry of information, accountability and transparency that are crucial for genuine democratic participation. In examining the violations of the right to freedom of expression of lawyers in Chapter Five (Lawyers), we note how these violations strip lawyers of their role as levellers between the powerful and the less powerful, allowing for human rights violations to go unchallenged and impunity to persist. We ask in Chapter Six (Human Rights Activists), “who will speak on behalf of the marginalised when human rights activists are silenced through intimidation and fear and when the other pillars of democracy are rendered silent also?” Finally, Chapter Seven (the People) examines the impact of the crackdown on freedom of expression for the Cambodian people. It ends by positing that freedom of expression is essential for both stability and change and thus must be protected and encouraged.

The Report concludes with Chapter Eight (Conclusion and Recommendations) in which we make final recommendations for the RGC to protect and promote freedom of expression. It also provides recommendations for ways in which the international community can demand greater accountability from the RGC regarding respect for freedom of expression and other human rights.

## CHAPTER ONE: INTRODUCTION

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*"We as witnesses from Cambodia are here today because we see that democracy in Cambodia is experiencing an alarming freefall, and because we can no longer tolerate a life threatened by fear of being arrested and prosecuted because of our views and opinions. We bring you the high hope of our people who wish to be ruled by law and not by the power of corrupt officials."<sup>1</sup>*

- Mu Sochua, Member of Parliament for the Sam Rainsy Party.

### 1.1 Context

The right to freedom of expression is a fundamental human right; fundamental both in the sense of its central importance to human life and dignity but also because it is the essential underpinning of all human rights – including the right to participate in political life – due to its crosscutting nature as well as its role in ensuring the effective protection of rights. It is a freedom that includes the right to express controversial opinions in public; the mere fact that an idea is unpopular cannot justify preventing a person from expressing it. Freedom of expression is not, however, limited to the right to express oneself. It also includes the right to seek and receive information from others including the right to obtain and read newspapers, to listen to broadcasts, surf the internet, and of course, to participate in discussions, public and private, as a listener. It is increasingly being recognised that the right includes the right to access information held by public authorities. As such, it places a duty on these bodies to both disseminate information of key public importance and to respond to requests for access to publicly held information.

Noting the fundamental importance of the right to freedom of opinion and expression in all aspects of society, particularly as the foundation for democratic society, facilitating progress and development, we, a coalition of NGOs, community organisations and unions<sup>2</sup> have compiled this Report following on from the Joint Submission.<sup>3</sup> We release this Report to voice our despair that the systematic erosion of freedom of expression in Cambodia leaves Cambodia's fledgling democracy at dire risk.

Since the Joint Submission, the situation of freedom of expression in Cambodia has become even more precarious; attacks on political speech and press freedom have intensified as part of a harsh government crackdown on opposition voices and government critics, with the legal system being used as a means of suppressing meaningful political discourse. RGC officials have argued there is no plan to crackdown on opposition voices; rather they are reigning in irresponsible media and those inciting violence.<sup>4</sup> This Report will show that the steady erosion of freedom of expression, however, is in fact affecting everyone. Freedom of expression has continued to be seriously undermined, with the RGC targeting the pillars of Cambodia's democracy: opposition parliamentarians' parliamentary immunity has been lifted to allow for politically motivated criminal charges of defamation, disinformation and incitement to be levelled against them; journalists have been imprisoned or threatened with imprisonment; lawyers have been threatened with

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<sup>1</sup> Mu Sochua, "Cambodian Democracy in Free Fall", Tom Lantos Human Rights Commission Testimony, 10 September 2009, available at: [http://vitalvoicesonline.org/blog/wp-content/uploads/2009/09/mu\\_sochua\\_us\\_house\\_of\\_representatives\\_hearing\\_testimony\\_sep09.pdf](http://vitalvoicesonline.org/blog/wp-content/uploads/2009/09/mu_sochua_us_house_of_representatives_hearing_testimony_sep09.pdf).

<sup>2</sup> The coalition includes: Action for Environments and Communities (AEC), ARTICLE 19, Building Community Voice (BCV), Cambodian Center for Human Rights (CCHR), Cambodian Center for Protection of Children's Rights (CCPCR), Cambodian Independent Teacher Association (CITA), Cambodian Independent Civil Servants Association (CICA), Cambodian League for the Protection and Defence of Human Rights (LICADHO), Cambodian Tourist Service Workers Federation (CTSWF), Center for Labour Rights of Cambodia (CLA-RI), Committee for Free and Fair Elections in Cambodia (COMFREL), Community Legal Education Center (CLEC), Community Peace Building Network (CPN), Independent Democracy of Informal Economy Association (IDEA), Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA) and Legal Aid Cambodia (LAC).

<sup>3</sup> The Joint Submission by Non-Governmental Organisations on Freedom of Expression and Assembly for the Universal Periodic Review of Cambodia's Fulfilment of its Human Rights Obligations and Commitments, 13 April 2009, available at: [http://www.cchrcambodia.org/English/add\\_report/reports/Joint\\_UPR\\_Submission\\_Cambodia\\_ENG.pdf](http://www.cchrcambodia.org/English/add_report/reports/Joint_UPR_Submission_Cambodia_ENG.pdf).

<sup>4</sup> See comment from RGC spokesman, Phay Sihan, in Jared Ferrie, "Justice is on trial, says opposition", *The National*, 17 July 2009, available at: <http://www.thenational.ae/apps/pbcs.dll/article?AID=/20090717/FOREIGN/707169916/1140>.



disbarment; human rights activists have been intimidated, harassed and punished; and the 'criminalisation' of certain opinion has meant that the people have been denied their voice. These actors represent the pillars of democracy because they are vital for accountability, pluralism and direct participation, which are the hallmarks of the liberal, multi-party democracy enshrined in the Constitution of the Kingdom of Cambodia (the "Constitution").<sup>5</sup>

Cambodia's democracy is in free-fall. We fear that the campaign by the RGC against opposition members and critics suggests a policy aimed at creating a *de facto* one-party state in Cambodia; a closed 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.

## 1.2 Methodology

This Report provides an analysis of the situation of freedom of expression in Cambodia since the Joint Submission. Many of the events discussed herein have been widely reported. Therefore, in the course of our research we have used a number of media sources including *The Phnom Penh Post*, *The Cambodia Daily*, *Radio Free Asia* and *Voice of Democracy* and other relevant news websites. In the course of preparing our analysis we examined data collected and compiled by the participating civil society organisations, through our respective monitoring, research, investigation and other fieldwork activities. We have utilised reports from Cambodian and international human rights organisations including the Cambodian Human Rights and Development Association ("ADHOC"), the Cambodian Center for Human Rights ("CCHR"), the Community Legal Education Center ("CLEC"), the Committee for Free and Fair Elections in Cambodia ("COMFREL"), the Cambodian League for the Protection and Defence of Human Rights ("LICADHO"), the South East Asia Press Alliance ("SEAPA"), ARTICLE 19 and Human Rights Watch. We have also used data, information and analysis from the UN Human Rights Committee (the "HRC"), the UN Special Rapporteur on the situation of human rights in Cambodia ("UN Special Rapporteur for Cambodia") and the UN Office of the High Commissioner for Human Rights in Cambodia (the "UN OHCHR Cambodia"). The data provided in the Report draws on the information shared by NGOs, community organisations, unions, international organisations, and other relevant stakeholders, which is publicly available on the Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org).

This Report is not intended to be a comprehensive quantitative report on the situation of freedom of expression in Cambodia, and therefore the cases described are not an exhaustive account of all violations of freedom of expression since the Joint Submission. Rather the cases used are a sample of a broader pattern of violations, with the Report providing a qualitative analysis of the situation of freedom of expression in Cambodia.

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<sup>5</sup> 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...*".

## CHAPTER TWO: BACKGROUND

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### 2.1 The Importance of Freedom of Expression

Freedom of expression has long been viewed as the cornerstone of democracy and fundamental freedoms. At the beginning of 2010, the four 'special international mandates for promoting freedom of expression'<sup>6</sup> confirmed in a joint statement “ *the fundamental importance of freedom of expression – including the principles of diversity and pluralism – both inherently and as an essential tool for the defence of all other rights and as a core element of democracy.*”<sup>7</sup>

Freedom of expression is important for three main reasons. First, it is a key right for ensuring individual dignity. It gives people autonomy to express themselves as they see appropriate and exchange ideas with others so as to obtain a better understanding of themselves and the society around them.<sup>8</sup>

Second, freedom of expression, as noted in the statement of the special international mandates above, is essential to democracy. Without the ability to express their views freely, access information and assemble together to address issues of common concern, people are unable to influence government, participate in decision-making and hold government to account - all of which are vital tenets of democracy.<sup>9</sup> In a nascent democracy such as Cambodia, the exercise of freedom of expression in this regard is crucial as Cambodians work to rebuild the country and shape its future. Without the ability to freely debate and express views or access information, voters are unable to make informed decisions about the best way in which their country should be governed, leaving them isolated from participating in the decision-making process.<sup>10</sup> Freedom of expression also bolsters democracy by providing a tool for accountability. Scrutiny of the government, and the opposition, by the media, civil society actors and citizens is an important mechanism for curtailing corruption and dishonesty. Freedom of expression thus plays an essential role in improving democratic governance and is vital for the progressive development of democracy.

Third, freedom of expression is not only important as a right in itself but it is the fundamental guarantor of all other human rights. Without the space to exercise freedom of expression it becomes increasingly difficult to protect and promote other human rights and bring to light violations of those rights.

**“... the fundamental importance of freedom of expression - both inherently and as an essential tool for the defence of all other rights and as a core element of democracy.” –**

statement from UN Special Rapporteur for Freedom of Opinion and Expression, OSCE Special Rapporteur on Freedom of Media, OAS Special Representative for Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information

<sup>6</sup> The four special international mandates on freedom of expression are the UN Special Rapporteur for the promotion and protection of the Right to Freedom of opinion and expression (“UN Special Rapporteur on Freedom of Expression”), the Organisation for Security and Co-operation in Europe (OSCE) Special Rapporteur for Freedom of Expression, the Organization of American States (OAS) Special Rapporteur For Freedom of Expression, and the African Commission on Human and People’s Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.

<sup>7</sup> UN Special Rapporteur on Freedom of Expression, OSCE Special Rapporteur on Freedom of Media, OAS Special Representative for Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, *Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade*, 3 February 2010, available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.Add.2\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.Add.2_en.pdf).

<sup>8</sup> ARTICLE 19, *Central Asian Pocketbook on Freedom of Expression* (London: ARTICLE 19, October 2006), p. 21, available at: <http://www.article19.org/pdfs/tools/central-asian-pocketbook.pdf>.

<sup>9</sup> *Ibid.*, pp. 21 – 22.

<sup>10</sup> Joint Submission, *supra* note 3, p. 2.

## 2.2 The Law

The right to freedom of opinion and expression is defined and protected under both international and domestic law. Some limitations on the right are permitted. The RGC should be praised for signing and ratifying a variety of international human rights treaties and incorporating human rights into domestic law. However, in spite of these ratifications and incorporations, restrictions on the right to freedom of expression that are incompatible with human rights principles continue to exist.

### 2.2.1 International Law

Article 19 of the Universal Declaration of Human Rights (the “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.*

The UDHR was adopted by the UN General Assembly and provides for human rights standards accepted by all member states of the UN. Generally speaking, UN General Assembly Resolutions, such as the UDHR, are not directly binding on States. However, much of the UDHR is widely regarded as having acquired customary international law status and is therefore widely considered to carry legal force.<sup>11</sup> Furthermore, as will be discussed below, the UDHR has been incorporated into Cambodian law.

The International Covenant on Civil and Political Rights<sup>12</sup> (the “ICCPR”), which Cambodia acceded to in 1992, also contains legal obligations on State Parties to respect freedom of expression. Article 19 contains a guarantee of freedom of expression in terms similar to the UDHR and provides that:

- (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.*

The right to freedom of expression, as provided for in the UDHR and ICCPR, can be exercised through statements or through conduct. It includes the right to make statements of opinion or express ideas, be it through speech, writing or art. The right also encompasses conduct that expresses opinion, for example, the wearing of certain clothes, marching or demonstrating. The right to freedom of expression is not simply the right to say what one knows or to express one’s opinion; it necessarily includes the right to access information in order to effectively exercise the right to “*seek, receive and impart information and ideas*”. As such, it places a duty on public bodies to both disseminate information of key public importance and to respond to requests for access to publicly held information. The right to freedom of expression is thus a right that belongs to the ‘speaker’ and to the ‘listener’ equally.

It is crucial to note that the obligation on the State regarding freedom of expression is not simply a ‘negative’ obligation to withhold from interfering with the right. The HRC, the treaty body that oversees the ICCPR, in its general comments on the ICCPR states that a positive obligation exists on the State to not just refrain from interfering with the right but to take positive steps to ensure that an environment exists to encourage the exercise of free expression.<sup>13</sup>

<sup>11</sup> Antônio Augusto Cançado Trindade, “Universal Declaration of Human Rights”, *United Nations Audiovisual Library of International Law*, 2008 p. 2, available at: [http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr_e.pdf).

<sup>12</sup> UN International Covenant on Civil and Political Rights 1966, available at: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>13</sup> Article 2 of the ICCPR and HRC, *ICCPR General Comment No. 3: Implementation at the National Level* (adopted at thirteenth session, 1981), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/c95ed1e8ef114cbec12563ed00467eb5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/c95ed1e8ef114cbec12563ed00467eb5?Opendocument).

## 2.2.2 Domestic Law

Cambodia's domestic law entrenches the right to freedom of expression both expressly and through the incorporation of the UDHR and ICCPR into the Constitution. Pursuant to Article 31:

*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 ...*<sup>14</sup>

In a decision made by the Cambodian Constitutional Council, the body mandated to safeguard respect for the Constitution,<sup>15</sup> dated 10 July 2007, it was confirmed that all human rights instruments to which Cambodia has acceded form part of the Constitution.<sup>16</sup> It is firmly established through the provisions of the Constitution, read together with the decision of the Constitutional Council, that all organs of the State are bound to comply with these international human rights instruments.

Freedom of expression is additionally and separately guaranteed by Article 41 of the Constitution, which states that:

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

Article 80 of the Constitution expressly protects the right to freedom of expression as exercised by members of the National Assembly. It states:

*No assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his (her) duties.*

*The accusation, arrest, or detention of an assembly member shall be made only with the permission of the National Assembly or by the Standing Committee of the National Assembly between sessions, except in case of flagrante delicto. In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee for a decision.*<sup>17</sup>

Article 35 of the Constitution guarantees Cambodian people the right to speak and participate on issues that affect them, stating 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.*

Moreover, Article 39 gives Cambodians the right to:

*denounce, make complaints, or file claims against any breach of law by the state or social organs or by members of such organs committed during the course of their duties.*

The Constitution also guarantees the exercise of freedom of expression for Cambodian citizens in Article 37 in the form of:

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

Article 2 of the Law on Peaceful Assembly 2009 (the "Demonstration Law") reinforces the guarantee in the Constitution when it states that:

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<sup>14</sup> Article 31 of the Constitution.

<sup>15</sup> Article 136 of the Constitution.

<sup>16</sup> The Constitutional Court of Cambodia, decision no. 092/003/2007.

<sup>17</sup> Article 80(2) and (3) of the Constitution.

*The purpose of [the] law is to assure freedom of expression of Khmer citizens through peaceful assembly...*

The Press Law 1995 (the “Press Law”) also contains a positive guarantee of freedom of expression for the press. Article 1 provides 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...*

Article 20 of the Press Law further provides that:

*No person shall be arrested or subject to criminal charges as a result of expression of opinion.*

### **2.2.3 Permissible Limitations under International Law**

The right to freedom of expression is not absolute. Both the UDHR and the ICCPR provide that the right may be subject to certain specific limitations. The UDHR provides that any restriction on the right can only be determined by law for the purposes of securing due recognition and respect for rights and freedoms of others, or for meeting just requirements of morality, public order and general welfare in a democratic society.<sup>18</sup> The ICCPR provides for similar restrictions:

*19(3)(a) [f]or respect of the rights or reputations of others;  
19(3)(b) [f]or the protection of national security or of public order, or of public health or morals.*

Article 19 of the ICCPR provides that such restrictions must be “*provided for by law and ... [be] necessary.*” Thus, any restriction on freedom of expression must meet a three-part test and be (1) provided for by law, (2) legitimate, and (3) necessary. Restrictions for this purpose can be anything from promulgation of law to a court order to actions implemented by municipal authorities or other public bodies. Any such action must conform to the three-part test, which will be examined in further detail below.

A body of authority has developed consisting of the jurisprudence of international, regional and domestic courts, guidance from international bodies and expert opinions to help clarify the scope of the right to freedom of expression and its restrictions. Further guidance on interpreting the right to freedom of opinion and expression can also be found in the authoritative statements and declarations made by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (“UN Special Rapporteur on Freedom of Expression”). The UN Special Rapporteur on Freedom of Expression for example endorsed in his 1996 report<sup>19</sup> the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (the “Johannesburg Principles”) – a set of principles adopted by legal experts that limit the scope of restrictions on freedom of expression.<sup>20</sup>

It is through this body of authority and guidance that it has been determined that in order for a restriction to be deemed as being “*provided for by law*” - the first part of the restriction test - it is not enough for law simply to be in place restricting the right. The law must be clear so that citizens are able to regulate their conduct.<sup>21</sup> It therefore must not be vaguely worded or the scope of its application unclear; such a lack of clarity is common in Cambodia’s legislation that directly regulates or indirectly impacts upon expression, as will be discussed in further detail in section 2.2.4 of this Report. With regards to the second-part of the restriction test, for a restriction to be

<sup>18</sup> Article 29 of the UDHR.

<sup>19</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (E/CN.4/1996/39), 22 March 1996, para. 154, available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1996.39.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1996.39.En?Opendocument).

<sup>20</sup> Johannesburg Principles on National Security, Freedom of Expression and Access to Information, November 1996, available at: <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>.

<sup>21</sup> *Sunday Times v United Kingdom*, European Court of Human Rights, 26 April 1979, Application No. 6538/74, para. 49. Whilst European law is not directly binding in Cambodia, judgments and jurisprudence of the court can form part of persuasive authority for decisions by the Cambodian courts. For further discussion on the concept of “provided for by law”, please also see ARTICLE 19, supra note 8, pp. 40 – 41.

'legitimate' it must exclusively deal with the legitimate aims found in Article 19(3)(a) and (b). In the opinion of ARTICLE 19, the international NGO on focusing on freedom of expression, the third and final part of the test, necessity, must, on a continuum of useful to indispensable, be placed at the indispensable end where freedom of expression is concerned.<sup>22</sup> The less restrictive measure must always be used, for example choosing retraction rather than closing down a newspaper for defamation. The principle of necessity includes an element of proportionality, so the harm to freedom of expression must not outweigh the benefit to the interest that the limitation is seeking to protect. As noted by the HRC, any restriction "may not put in jeopardy the right itself"<sup>23</sup> or "impair the essence of a Covenant right."<sup>24</sup>

#### **2.2.4 Permissible Limitations under Domestic Law**

As with the international human right instruments, the right to freedom of expression under domestic law is not absolute. Article 41 of the Constitution, which guarantees the right to freedom of expression and free press, provides:

*No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.*

The permitted limitations on the right to freedom of expression provided for in the Constitution must be limited in accordance with international law. The exceptions outlined in Article 41 have formed the legal basis for domestic legislation restricting freedom of expression, including the provisions of the law dealing with defamation, disinformation and incitement, as well as that concerning content restriction and assembly. However, domestic law is peppered with provisions that violate the right to freedom of expression and the permitted restrictions to the right. The overall concern is that the law relating to and affecting freedom of expression in Cambodia is deeply flawed with vague provisions that can be, and are being, used to prevent the realisation of freedom of expression. In the following sections we will consider and analyse the laws that directly and/or indirectly affect freedom of expression in Cambodia.

##### **(i) Defamation, Disinformation and Incitement**

Defamation laws are founded upon the need to preserve and uphold the right to freedom of expression whilst recognising that there is also a need for certain, expressly defined, exceptions to this right – namely the protection of a person's dignity and reputation. Disinformation laws similarly are founded upon protecting dignity and reputation by punishing the deliberate circulation of false information. Incitement laws are there to stop the advocacy of any national, racial or religious hatred, which is intrinsically dangerous to public interest. However, as this Report will show, defamation, disinformation and incitement laws in Cambodia have been abused to prevent and punish criticism of those in power, with little nexus between the expression in question and the risk of harm.

The use of defamation, disinformation and incitement laws highlighted throughout this Report refer to offences found in the Provisions Relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period 1992 (the "UNTAC Criminal Law"). Article 62 provides for criminal disinformation: publication, distribution or reproduction of information which is false, fabricated, falsified or untruly attributed to a third person in bad faith and with malicious intent and is likely to disturb the peace. Article 63 provides for criminal defamation, defined as bad faith allegations or imputations of given facts that harm the honour or reputation of an individual with malicious intent. Articles 59 and 60 provide for criminal incitement, defined as when any person who by speech, writing, publication, signs, posters etc. incites one or more persons to commit a felony or misdemeanour whether or not the felony or misdemeanour is actually committed.

<sup>22</sup> ARTICLE 19, supra note 8, p. 42.

<sup>23</sup> United Nations, Human Rights Committee, *General Comment 10: Freedom of expression (Art. 19)*, 29 June 1983, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument).

<sup>24</sup> United Nations, Human Rights Committee, *General Comment 31: Nature of the Legal Obligation Imposed on State Parties to the Covenant* (CCPR/C/2/Rev.1/Add.13), 26 May 2004, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.21.Rev.1.Add.13.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.21.Rev.1.Add.13.En?Opendocument).

In October 2009, Cambodia passed its new Penal Code to replace the UNTAC Criminal Law; it was drafted with the help of the French government and will come into effect in October 2010. Following a campaign initiated by the Alliance for Freedom of Expression in Cambodia in 2006, Prime Minister Hun Sen removed the custodial sentence for criminal defamation and pledged to completely decriminalise the crime. Whilst we commend the Prime Minister's removal of the custodial sentence in respect of defamation, which is reflected in the Penal Code, we are concerned the commitment is not reflected in the new Anti-Corruption Law, which contains an offence of defamation for a false complaint that is punishable by imprisonment for one to six months.<sup>25</sup> Furthermore, the Penal Code continues the practice of criminalising defamation, disinformation and insult, contrary to the Prime Minister's pledge and international best practice. The criminalisation of defamation, as ARTICLE 19 puts it, "*implies a clear State interest in controlling the activity and imparts a social stigma to it.*"<sup>26</sup> As examples in this Report will show, criminal defamation laws are abused by the political and economic elite as a means of stifling debate and curtailing criticism. As such, many international bodies and the Special Rapporteur for Freedom of Expression<sup>27</sup> have advocated for the removal of criminal sanctions to defamation, particularly "*in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations.*"<sup>28</sup> Whilst the Press Law provides for non-criminal sanctions with regards to the press, there is a need for a regime of non-criminal sanctions with regards to the exercise of expression in other contexts.

Under the new Penal Code it is a crime to make any statement that undermines the honour or reputation of a person or institution (defamation).<sup>29</sup> The Penal Code does not say anything about the truth of the statement or malicious intent. It is also a crime to make a public statement that is an insulting expression, a scornful term or that contains verbal abuse of a person or institution (insult).<sup>30</sup> The Penal Code also makes it a crime - punishable by imprisonment - to make allegations of fact, which are known to be false and which may result in criminal or disciplinary action against an individual (slandorous denunciation).<sup>31</sup> In the interest of open debate and strong democracy it is believed that those in public office should accept a lower degree of immunity from scrutiny.<sup>32</sup> Yet all these articles of the Penal Code relating to freedom of expression fail to differentiate between private individuals and those holding public office. Similarly, the provisions worryingly allow for 'institutions' such as government ministries to claim for defamation. International standards advocate against public bodies bringing defamation actions in recognition of the importance in a democracy of open criticism of government and public authorities.<sup>33</sup> Indeed, the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights,<sup>34</sup> adopted by the HRC on 28 September 1984, provide in principle 37 that 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 criticism.*" In the UNTAC Criminal Law and new Penal Code, the balance between the right to free expression on matters of public interest and protection of individual reputation necessitating restrictions to freedom of expression is disproportionate and "*tilted in favour of immunity from scrutiny on the part of politicians. This imbalance can only restrict democratic debate to the detriment of Cambodian citizens and the development of a pluralist society founded upon openness to scrutiny, discussion and debate.*"<sup>35</sup> The broadness of the provisions that impact on

<sup>25</sup> Article 41 of the Law on Anti-Corruption 2010.

<sup>26</sup> ARTICLE 19, *Defining Defamation: Principles of Freedom of Expression and Protection of Reputation* (London: ARTICLE 19, July 2000), p. 8, available at: <http://www.article19.org/pdfs/standards/definingdefamation.pdf>.

<sup>27</sup> In their joint declarations in 1999, 2000, and 2002, three of the special international mandates for promoting freedom of expression – the UN Special Rapporteur on Freedom of Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – called on states to repeal their criminal defamation laws. See ARTICLE 19, *Briefing Note on International and Comparative Defamation Standards* (London: ARTICLE 19, February 2004), available at: <http://www.article19.org/pdfs/analysis/defamation-standards.pdf>.

<sup>28</sup> ARTICLE 19, *supra* note 26, p. 8.

<sup>29</sup> Article 305 of the Penal Code 2009.

<sup>30</sup> Article 307 of the Penal Code 2009.

<sup>31</sup> Article 311 of the Penal Code 2009.

<sup>32</sup> ARTICLE 19, *supra* note 26 and 27, pp. 6 –7 respectively.

<sup>33</sup> ARTICLE 19, *supra* note 27, p. 7.

<sup>34</sup> UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1984/4)*, 28 September 1984, available at: <http://www.unhcr.org/refworld/docid/4672bc122.html>

<sup>35</sup> CCHR, *Press Release: Penal Code – Freedom of Expression in Jeopardy*, 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\(101609\\_1255751514\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr%20press%20release%20-%20the%20penal%20code%20-%20freedom%20of%20expression%20in%20jeopardy(101609_1255751514).pdf). For

freedom of expression, coupled with an absence of definitions, opens them up to misuse or abuse. More needs to be done by the RGC in the run up to the Penal Code coming into full force and effect to provide the necessary training to the judiciary and guidance notes to facilitate the interpretation and understanding of these provisions, to ensure that the Penal Code is interpreted in line with principles pertaining to freedom of expression. The French government played an integral role in the drafting of the new law and as such must assist in ensuring that the necessary steps are put into place so that the new Penal Code is implemented in line with domestic and international principles. In the absence of any steps taken to do so, there is a real risk, given the level of corruption and lack of independence of the judiciary (as discussed in section 2.3 below), that the provisions will lead to the curtailing of criticism at the will of judges and the political forces that often dictate the verdicts they deliver.

The Press Law gives the right of civil action to any person who believes that they have been subject of a publication that is false and harmful to their reputation.<sup>36</sup> Journalists, however, continue to face criminal defamation charges, despite the provision in Article 20 of the Press Law that no journalist shall be arrested or subject to criminal charges as a result of the expression of opinion. We commend the RGC for addressing this discrepancy in the new Penal Code by providing that public defamation and insult committed by the media is subject to the provisions of the Press Law and is thus a civil rather than criminal matter. We hope that these provisions are in fact adhered to when the Penal Code comes into full force and effect.

## **(ii) Content Restrictions in the Penal Code and Press Law**

Both the Press Law and the new Penal Code place limits on freedom of expression through content restrictions. Whilst content restrictions are extensive and cover a wide range of issues including prior restraint, hate speech, privacy, obscenity regulation, regulation of “false news” and blasphemy, for the purposes of this Report we limit our analysis to restrictions for political stability, national security, and good customs, which have been used prolifically by the RGC in recent times.

An example of a content restriction in the new Penal Code is the restrictions on the publication of commentaries relating to court proceedings. This represents a serious prohibition on freedom of expression and should instead be restricted only to statements intended and likely to undermine the administration of justice.<sup>37</sup>

The Press Law contains restrictions prohibiting the publication of anything that “*may affect*” national security and/or political stability and that “*affects good customs of society*” in Articles 12 and 14 respectively. Both these provisions are vague. “*Political stability*” and “*good customs*” are not defined, with the potential for a very broad interpretation being afforded to both phrases. It has been argued that “*certain officials in a position to administer and enforce Article 12 may make the judgment that ‘political stability’ requires the maintenance in power of the incumbent government and on that basis might attempt to employ Article 12 improperly to stifle publications critical of that government.*”<sup>38</sup> The nexus between the act of publication and its effect on “*national security and political stability*” is also vague. The words “*may affect*” give a wide berth to the application of the restriction. Even the provision prohibiting publication that affects the “*good customs of society*” requires a more direct connection between the actions and a serious risk of substantial harm.<sup>39</sup> The HRC in its Concluding Observations on Cambodia in 1999 criticised the

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further critique on the Penal Code, please also see ARTICLE 19, *Comment on the Draft Cambodian Penal Code*, (London: ARTICLE 19, September 2009), available at: <http://www.article19.org/pdfs/analysis/cambodia-comment-on-the-draft-penal-code.pdf>.

<sup>36</sup> Article 10 of the Press Law.

<sup>37</sup> Article 14 of the ICCPR provides that the media may be excluded from court proceedings “*to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*”

<sup>38</sup> ARTICLE 19, ADHOC and CLEC, *Freedom of Expression and the Media in Cambodia* (London and Cambodia: ARTICLE 19, ADHOC, CLEC, June 2006), p. 61, available at: <http://www.article19.org/pdfs/publications/cambodia-baseline-study.pdf>.

<sup>39</sup> For further analysis on the Press Law see ARTICLE 19, *Memorandum on the Cambodian Law on Press*, October 2004, available at: <http://www.article19.org/pdfs/analysis/cambodia-press-law-oct-2004.pdf>.



Press Law for being incompatible with Article 19 of the ICCPR.<sup>40</sup> Despite these observations and criticisms, the Ministry of Information is said to want to extend the Press Law to apply to publishing and broadcasting over the Internet.<sup>41</sup>

### (iii) Demonstration/Peaceful Assembly

We are concerned that the Demonstration Law passed at the end of 2009 may be implemented in a way that will seriously impinge on Cambodia's national and international human rights obligations. Demonstrations can unfortunately at times lead to violence or disruption of public order and as such some regulation is required. Nevertheless, the balance between upholding people's rights to freedom of speech and assembly, and protection of the public, needs to be maintained. As noted earlier, Article 2 of the Demonstration Law provides that the purpose of the law is to ensure freedom of expression of Cambodian citizens through peaceful demonstration. The provision goes on to say that the right to freedom of expression through peaceful assembly shall not be used to affect the good customs of society, public order or national security. None of these terms are defined. There is a real risk that in the absence of definitions these terms will be used as blanket terms for banning demonstration. The recent ban of a large garment workers forum by the Phnom Penh Municipality, which was approved by the Ministry of Interior on the basis of (groundless) concerns about public order and security, shows how broad terms can be used to prevent Cambodians from peacefully assembling together to voice opinions about issues that directly affect them.<sup>42</sup>

The provisions of the Demonstration Law that have garnered the most attention are those relating to the creation of Freedom Parks in the capital and in each province.<sup>43</sup> Freedom Parks are public spaces where people can gather to hold demonstrations, after providing 12 hours advance notice.<sup>44</sup> Freedom Parks are not to the exclusion of other demonstrations at any public venue.<sup>45</sup> Rather, in the same way as perhaps Speakers Corner in London is used as a place to freely express opinions, Freedom Parks could afford Cambodians an area where their ideas, concerns and opinions can be expressed. However, amid the crackdown on freedom of expression discussed in this Report, there are concerns. By moving demonstrations away from the source of protestors' frustration, there is a fear that voices will be diluted. Furthermore, as the Ministry of Interior calls for Freedom Parks to be created throughout the country, there is concern that these parks will be used to limit people coming to Phnom Penh to protest at the source of their grievance.<sup>46</sup> With Freedom Parks currently being constructed, it remains to be seen how they will be used.

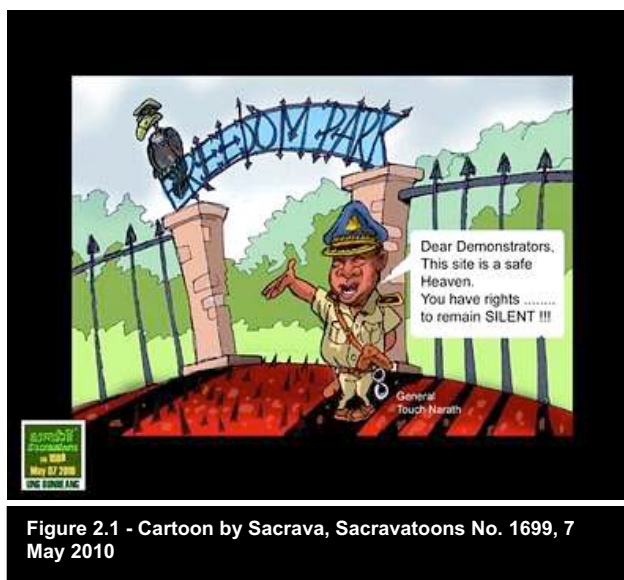


Figure 2.1 - Cartoon by Sacrava, Sacravatoons No. 1699, 7 May 2010

<sup>40</sup> United Nations Human Rights Committee, *Concluding Observations on Cambodia as Part of Its Regular Reporting* (CCPR/C/79/Add.108), 27 July 1999, in particular para. 18, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.108.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.108.En?OpenDocument).

<sup>41</sup> "Ministry To Tighten Broadcast Control", *Voice of America (VOA) Khmer*, 20 March 2009.

<sup>42</sup> Neou Vannarin and Paul Vrieze, "Unions Plan to Hold Garment Workers Forum in City, Despite Ban", *The Cambodia Daily*, 22 July 2010. See also Media Statement by ADHOC, CCHR, CLEC, LICADHO, "Union Workers Gather to Demand For Better Minimum Wage", 25 July 2010, available at: [http://www.sithi.org/admin/upload/media/\[2010-07-27\]Union%20Workers%20Gather%20to%20Demand%20for%20Better%20Minimum%20Wage/ADHOC\\_%20CCHR,%20C LEC,%20LICADHO\\_7\\_25July2010\\_Union%20Workers%20Gather%20to%20Demand%20for%20Better%20Minimum%20Wage.pdf](http://www.sithi.org/admin/upload/media/[2010-07-27]Union%20Workers%20Gather%20to%20Demand%20for%20Better%20Minimum%20Wage/ADHOC_%20CCHR,%20C LEC,%20LICADHO_7_25July2010_Union%20Workers%20Gather%20to%20Demand%20for%20Better%20Minimum%20Wage.pdf).

<sup>43</sup> Article 28 of the Demonstration Law.

<sup>44</sup> Article 14 of the Demonstration Law.

<sup>45</sup> Articles 3, 5 and 14 of the Demonstration Law.

<sup>46</sup> Phorn Bopha and Zsombor Peter "Govt calls for 'Freedom Parks' in Every Province", *The Cambodia Daily*, 5 July 2010.

Whilst there are concerns about Freedom Parks potentially being used as a means of controlling, and consequentially limiting, public demonstration, we have been struck by how the Demonstration Law has in fact been used to limit private meetings. One teacher informed the CCHR that an informal gathering of teachers held at another teacher's private residence outside Phnom Penh was interrupted by police who said that by law they needed permission to hold the 'meeting'. It seems that the police action derived from vague provisions in the Demonstration Law that can be interpreted as providing that all peaceful gatherings, including those held on private property, require 12 hours notice to be given in advance to authorities.<sup>47</sup> The fact that the Demonstration Law is being used to restrict the private gathering of a few teachers shows the danger of including vague provisions in the text and represents a gross violation of privacy and freedom of expression. Moreover, requirements of advance notice and authority from local authorities is equally being used to stop legitimate, peaceful gatherings, with president of the opposition Human Rights Party, Kem Sokha, recently claiming that he struggles to get permission from local authorities to gather together with supporters, even as a member of parliament meeting with his constituents.<sup>48</sup> In the environment of increased restrictions on freedom of expression, there is a real risk that vague terminology will continue to be used to justify restricting private meetings.



Figure 2.2: Peaceful demonstration in Phnom Penh blocked by riot police.

## 2.3 Judicial and Institutional Obstacles

Exacerbating violations of freedom of expression in Cambodia is the fact that laws, which themselves are plagued with onerous restrictions on the right to freedom of expression and vague provisions that are open to abuse, are applied by a judiciary that is widely considered to be under the influence of the executive branch of government.<sup>49</sup>

<sup>47</sup> Articles 3, 4 and 14 of the Demonstration Law.

<sup>48</sup> Men Kimseng, "Minority Opposition Leader Claims Intimidation by the Ruling Party", *VOA Khmer*, 5 August 2010, available at: <http://www1.voanews.com/khmer-english/news/Minority-Opposition-Leader-Claims-Intimidation-by-Ruling-Party-100042444.html>.

<sup>49</sup> Asian Human Rights Commission, *Cambodia: Judicial Independence is the key to reducing defamation lawsuits against critics and upholding freedom of expression*, 16 June 2009, available at: <http://www.ahrchk.net/statements/mainfile.php/2006statements/2095/>.

Although the Constitution guarantees judicial independence in Article 109, this is not the case in practice. Almost all judges and prosecutors are affiliated with the ruling Cambodian People's Party ("CPP")<sup>50</sup> and, according to the Asian Human Rights Commission (the "AHRC"), a number of key members of the judiciary were given important political positions by the CPP.<sup>51</sup> The Supreme Council of Magistracy (the "SCM"), the body constitutionally mandated to assist the King in ensuring the independence of the judiciary and to discipline delinquent judges, is heavily controlled by the executive.<sup>52</sup> In a joint statement in August 2007, the UN Special Rapporteur for Cambodia and the Special Rapporteur on the Independence of Judges and Lawyers expressed concern about the composition of the SCM, stating that the inclusion of government ministers and a member of the ruling party's Permanent Committee does not give comfort that judicial appointments are free of political control.<sup>53</sup> The Cambodian Bar Association (the "Bar Association") also has close ties with the ruling CPP. In 2005, for example, the politically controlled court system overturned the election of an independent candidate as president of the Bar Association and replaced him with a government-backed candidate.<sup>54</sup> As LICADHO have stated, the Bar Association's stance is indicative of a legal system "*compromised by the Cambodian government's interest in controlling the judiciary and undermining the development of rule of law.*"<sup>55</sup>

***"[the legal system is] compromised by the Cambodian government's interest in controlling the judiciary and undermining the development of the rule of law" – LICADHO***

Allegations of endemic corruption continue to cast a shadow over the Cambodian judicial and legal system. Cambodians consider that the judiciary is amongst the most corrupt institutions in the country, where low pay makes judges and members of the legal profession easy targets for bribery by the rich and the powerful.<sup>56</sup> Pressure from the rich and powerful is also seen as dictating the verdicts of cases, with personal ramifications if the judiciary fails to tow the line. It is interesting to note for example that the judge who dismissed the charges against Born Samnang and Sok Sam Oeun for the murder of trade unionist leader Chea Vichea, Judge Hing Thirith, was sacked from the Phnom Penh Court days later and transferred to the distant province of Stung Treng. He was replaced by Thou Mong who reinstated the charges and who was later appointed to the Khmer Rouge Tribunal.<sup>57</sup>

The state of the judiciary is fundamentally important to the situation of freedom of expression in Cambodia because it is the mechanism through which Cambodians ought to be able to uphold human rights. The spate of criminal charges of defamation, disinformation and incitement initiated against members and supporters of the opposition party and others criticising the RGC and other powerful people, as this Report will show, is a testament to how the judiciary can be used as an organ of repression to silence dissent and criticism. There are other national institutions that Cambodians can use but these are equally considered inaccessible and politically controlled. The procedures involved in making a challenge to the Constitutional Council, the body constitutionally mandated to consider challenges to the constitutionality of laws, regulations and state decisions that affect their constitutional rights, place an effective bar on the access to

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> United Nations Press Release, *The United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Rapporteur on the Independence of Judges and Lawyers Express Concern Over Judicial Independence in Cambodia in the Light of Recent Judicial Appointments*, 23 August 2007, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/0/591808C8E3CEF14CC12573400043FE82?opendocument>.

<sup>54</sup> Human Rights Watch, *Cambodia: Drop Charges against Opposition Member and Her Lawyer – Freedom of Speech and Independence of Lawyers Under Fire*, 15 June 2009, available at: <http://www.hrw.org/en/news/2009/06/15/cambodia-drop-charges-against-opposition-mp-and-her-lawyer>.

<sup>55</sup> LICADHO, *Briefing Paper: Restrictions on the Legal Profession by the Bar Association* (Phnom Penh: LICADHO, December 2007), p. 2, available at: <http://www.licadho-cambodia.org/reports/files/114LICADHOPaperCBAThreatIndependentLegalRep07.pdf>.

<sup>56</sup> Freedom House "Countries at a Crossroad", 2006

<http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=112&section=73&ccrpage=31>.

<sup>57</sup> LICADHO, *Human Rights in Cambodia: The Charade of Justice* (Phnom Penh: LICADHO, December 2007), p. 16, available at: <http://www.licadho-cambodia.org/reports/files/113LICADHOReportCharadeJustice07.pdf>.

this mechanism.<sup>58</sup> The Human Rights and Complaints Reception Committee of the National Assembly and Senate and the RGC's own Cambodian Human Rights Committee have failed to provide protection and redress to victims or to bring perpetrators to justice, and are widely regarded as being politically controlled.<sup>59</sup> Prime Minister Hun Sen has publicly committed to the creation of a national human rights institution, which has the potential, if it is correctly established and constituted, of being instrumental in improving the protection and promotion of human rights in Cambodia, including freedom of expression. So far however, it is unclear when such an institution will materialise.

On an international level, Cambodians are unable to have their rights reaffirmed and seek redress for violations through the HRC due to the fact that the RGC has yet to ratify the First Optional Protocol to the ICCPR, which provides for an individual complaint mechanism for violations of the rights contained in the ICCPR. In 2009, the Association of South East Asian Nations ("ASEAN") established the ASEAN Inter-Governmental Commission on Human Rights ("AICHR"), an independent regional human rights mechanism created to promote regional cooperation on the promotion and protection of human rights and fundamental freedoms. The body is however in its infancy and yet to produce any proposals related to its infrastructure. As such it is to be seen, how, if at all, Cambodians will be able to use the AICHR as a means of reaffirming or seeking redress for violations of freedom of expression.

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<sup>58</sup> Citizens have the right to raise the constitutionality of a law with the Constitutional Council but to do so they need to have either the King, the Prime Minister, the President of the Senate, the President of the National Assembly, one fourth of the Senators or one tenth of the National Assembly Members to request that the Council adjudicate a case. The AHRC has argued that the likelihood of a citizen getting the Constitutional Council to affirm his constitutional rights is "*at best very low if these rights in some way go against the interests of the ruling party or those of its powerful members or supporters.*" See AHRC, *Cambodia: The authorities must ratify the First Optional Protocol to the ICCPR Now*, 22 March 2006, available at: [www.ahrchk.net/statements/mainfile.php/2006statements/459/](http://www.ahrchk.net/statements/mainfile.php/2006statements/459/).

<sup>59</sup> Ibid.

## CHAPTER THREE: PARLIAMENTARIANS

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*“It is important for parliament...to enable all of its members to express their views freely and participate fully in the conduct of its business, regardless of which political party they belong to, if it is not to be seen as a mere rubber stamp.... The principles of democracy demand that the majority respects the minority in decision making. The challenge is not only to apply the existing laws but to make the laws themselves more democratic and more conducive to the expression of a plurality of voices and the enjoyment of the rights and freedoms by the people of Cambodia.”<sup>60</sup>*

- Professor Surya P. Subedi, UN Special Rapporteur for Human Rights in Cambodia.

### 3.1 Context

Parliamentarians represent a fundamental pillar of democracy as the elected representatives of the people and are tasked with *“reconciling the conflicting interests and expectations of different groups and communities through the democratic means of dialogue”*,<sup>61</sup> whilst holding government to account. As such, their freedom to express ideas and opinions is vital for the exercise of their duties.

However, intimidation, harassment, threats and legal sanction have been utilised consistently by the RGC to silence legitimate political opposition, and consequently, to undermine democracy. Throughout the last decade, members of the main opposition party, the Sam Rainsy Party (the “SRP”), have been punished for expressing opinion and voicing concern. In February 2005, Sam Rainsy, Chea Poch and Cheam Channy had their parliamentary immunity lifted through a show of hands in the National Assembly so they could face criminal defamation charges after accusing the CPP and Prince Ranariddh (the then chairman of the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (“FUNCINPEC”)) of corruption in the formation of a coalition between the two parties. In August 2006, a statute was introduced that further silenced the voice of opposition, allowing for parliamentary immunity to be removed if a parliamentarian’s comments are deemed to abuse an individual’s dignity, social customs, public order and national security, in contradiction of the Constitution which provides in Article 80 that no assembly member shall be prosecuted, detained or arrested because of opinions expressed whilst exercising his or her duty.<sup>62</sup> The marginalisation of the opposition continued after the 2008 elections. When the new parliament was sworn in, the CPP used its overwhelming majority<sup>63</sup> to force through new internal rules for parliament. Articles 48 and 55 of these rules require MPs to be seated in groups of at least ten members. An MP cannot speak in parliament unless he or she is a member of such a group, makes a request to speak through the group leader and gets permission from the National Assembly’s Chairman. These rules have prevented the three Human Rights Party MPs from speaking in parliament, as they have not joined a group in order, presumably, to retain their independence from other parties.

Whilst Cambodia may appear on its face to be a multi-party democracy because there are a number of political parties, the ability of opposition politicians to freely express opinions and views in the course of their duties and to participate in genuine democratic processes has been, and continues to be, stymied by a variety of tactics employed by the RGC that operate to diminish the

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<sup>60</sup> UN Special Rapporteur for Human Rights in Cambodia, Professor Surya Subedi, in his statement on 26 January 2010, available at: [http://cambodia.ohchr.org/WebDOCs/DocStatements/2010/012010/Statement%20-%20SR\\_26012010E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2010/012010/Statement%20-%20SR_26012010E.pdf)

<sup>61</sup> David Beetham for Inter-Parliamentary Union (IPU), *Parliament and Democracy in the Twenty-First Century: A guide to good practice*, 2006, p. 1.

<sup>62</sup> Article 5 of the Law on the Statute of Parliamentarians. Like most legislation that impacts upon freedom of expression, the law fails to explain what constitutes abuse of “an individual’s dignity, social customs, public order and national security”. For further information, see COMFREL, *Cambodian Democracy, Elections and Reform: 2009 Report*, February 2010, p. 5, available at: <http://www.comfrel.org/images/others/1265785063Comfrel-Cambodia%20Democratic%20Reform%202009-En-Final.pdf>

<sup>63</sup> Following the 2008 elections, the parties represented in the 123 seat National Assembly are: the CPP with 90 seats; the SRP with 26 seats; the Human Rights Party with 3 seats; FUNCINPEC with 2 seats; and the Norodom Ranariddh Party with 2 seats; see COMFREL Report, *ibid.*, p. 8.

role of opposition politicians. Political pluralism has been narrowed by an active policy on the part of the RGC to shrink the space for criticism.

### 3.2 The Use of Criminal Charges to Silence Members of the Opposition

Since the Joint Submission, the RGC has attempted to silence members of the opposition, most notably through the lifting of parliamentary immunity to allow for politically motivated criminal lawsuits. In this time, three SRP parliamentarians have had their parliamentary immunity lifted so they could face criminal charges; SRP leader Sam Rainsy (see case-study below), Mu Sochua and Ho Vann.

***“The lifting of parliamentary immunity, or a threat thereof, for no other valid reasons than to intimidate parliamentarians and stifle political or other debate shows disregard and contempt for open and democratic debate”*** – UN OHCHR Cambodia

Parliamentary immunity is guaranteed under Article 80 of the Constitution and is important to the exercise of free expression by parliamentarians. It is intended to operate so that the legislature can oversee the executive without fear of reprisal, as part of their participation in parliamentary dialogue and debate, and so that parliamentarians are free to express opinions in discharge of their duties as elected representatives of the people. Its purpose is made redundant if it can be taken away at the whim of government officials. As noted by the UN OHCHR Cambodia, *“the lifting of immunity, or a threat thereof, for no other valid reasons than to intimidate parliamentarians and stifle political or other debate shows disregard and contempt for open and democratic debate. It should be considered only in the case of the most serious offences.”*<sup>64</sup>

As noted by COMFREL, in the cases of all three SRP MPs immunity was not lifted for the substance of the claim but rather as a result of orders of the Prime Minister that were followed by the *“heavily partisan”* National Assembly.<sup>65</sup> For example, in reference to Mu Sochua, Prime Minister Hun Sen stated *“[t]o lift Mu Sochua’s parliamentary immunity will be as easy as peeling a boiled banana because [the CPP] has enough votes to do*

*that.”*<sup>66</sup> The lifting of Mu Sochua’s parliamentary immunity allowed the Prime Minister to bring a defamation lawsuit following a similar lawsuit filed by Mu Sochua against the Prime Minister following a speech by the Prime Minister in which he referred to an unnamed woman identifiable as Mu Sochua as *‘cheung klang’*, which translates as ‘strong leg, ‘gangster’ or ‘unruly person’.<sup>67</sup>

During the session in which Mu Sochua’s parliamentary immunity was lifted, emergency rules were applied preventing the public, diplomatic corps, civil society and media from attending the session; the sound system allowing for television coverage was disconnected so that the session could not be broadcasted as usual; Mu Sochua was given no time to defend herself; and the vote proceeded without debate.<sup>68</sup> Such action smacks of the political might of the CPP being used to quash legitimate expression. With regards to Sam Rainsy and Mu Sochua, the law and the legal system were successfully misused to suppress meaningful political discourse.<sup>69</sup> In the case of Mu Sochua, the CCHR has found that the judicial process was *“unfair, marked by inequality before the law, seeing the intimidation of Mu Sochua’s lawyer that left her without legal representation, and taking place in courts effectively controlled by a party to the case, the Prime*

<sup>64</sup> See the UN OHCHR Cambodia, *A Briefing Note on Freedom of Expression, Defamation and Disinformation*, 15 June 2009, p. 1, available at:

[http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/062009/OHCHR%20Briefing%20Note\\_15062009E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/062009/OHCHR%20Briefing%20Note_15062009E.pdf).

<sup>65</sup> COMFREL Report, supra note 62, p. 6.

<sup>66</sup> As reported on Radio Free Asia Website 29 April 2009, retrieved from COMFREL Report, supra note 62, p. 7.

<sup>67</sup> CCHR, *Legal Analysis: Fairness of the Judicial Process Resulting in the Conviction of Elected Representative Mu Sochua*, 13 July 2010, available at: [http://www.cchrcambodia.org/English/add\\_report/reports/cchr\\_analysis.pdf](http://www.cchrcambodia.org/English/add_report/reports/cchr_analysis.pdf).

<sup>68</sup> Inter-parliamentary Union (IPU), *Case No. CMBD/47-Mu Sochua*, Resolution adopted by consensus of the IPU Governing Council at 185 session, Geneva, 21 October 2009, available at: [www.ipu.org/hr-e/185/cmbd47.htm](http://www.ipu.org/hr-e/185/cmbd47.htm).

<sup>69</sup> On 2 June, 2010, the Supreme Court of Cambodia upheld the lower courts verdict that Mu Sochua had defamed Prime Minister Hun Sen, see Mes Sokchea and Brooke Lewis, “Court backs Mu Sochua verdict”, *The Phnom Penh Post*, 3 June 2010.

*Minster and the CPP.*<sup>70</sup> Of the three SRP parliamentarians only Ho Vann was acquitted of all charges.<sup>71</sup> Ho Vann was sued by twenty-two army officers for defamation for comments he allegedly made about the value of degrees they had obtained from a Vietnamese military institute, although the newspaper that published the story later published Ho Vann's corrections. According to Cambodian law, Ho Vann's acquittal meant that he should have had his parliamentary immunity automatically restored. However, it took a further 5 months following his acquittal before his parliamentary immunity was re-instated, illustrating the paradox of Cambodian parliamentary democracy whereby the "lifting of immunity was urgent but the reinstatement came late."<sup>72</sup>

Most significantly, the self-imposed exile of Sam Rainsy in order to avoid imprisonment leaves the opposition with no leader and raises the very real possibility of his preclusion from standing in the 2013 National Assembly elections. Constitutional Council member and political analyst Sonn Soubert has described the new charges against Sam Rainsy as an attempt to remove the opposition leader from the country, comparing the treatment of Sam Rainsy with that of imprisoned Myanmar opposition leader Aung San Suu Kyi.<sup>73</sup> Interestingly, the RGC has been vocal about the need for free and fair elections in Myanmar, with Foreign Affairs Minister Hor Namhong stating in 2009 that the Burmese Junta should allow Suu Kyi in the elections which must be transparent, democratic and fair.<sup>74</sup> Yet precluding Sam Rainsy from running with controversial convictions for incitement, and potentially disinformation, raises similar questions about the credibility of the democratic process in Cambodia, particularly as Prime Minister Hun Sen's comment that Sam Rainsy would not be able to contest the next election (see Case-Study 1 below) indicates the pointed political motivations behind the charges. With their comments in relation to Myanmar in mind, the RGC should practice at home what they are preaching abroad.<sup>75</sup>

#### Case study 1: Sam Rainsy - Opposition Leader in Exile



SRP leader Sam Rainsy's immunity was first lifted in 2005. It was lifted again in February 2009 after a district governor filed a criminal defamation complaint against him for accusing CPP leaders of corruption during the 2008 elections. His immunity was only restored following a payment of a fine by his party. Sam Rainsy's immunity was lifted again in November 2009 following a closed session of the National Assembly. The lifting of his parliamentary immunity meant that he could be prosecuted on charges relating to incitement and destruction of property following an incident in October of the same year in which he joined villagers from Svay Rieng's Chantrea district in symbolically uprooting temporary Cambodian-Vietnamese border markers, which the villagers claimed had been placed illegally by Vietnamese authorities on Cambodian territory. He was convicted in absentia on both charges by Svay Rieng Provincial Court on 27 January 2010 and sentenced to two years in prison in proceedings that were closed to the public, journalists and human rights activists, and where the court refused to consider evidence that defence lawyers for two of the villagers attempted to introduce.<sup>76</sup>

Two villagers tried at the same time as Sam Rainsy, Meas Srey and Prum Chea, were also found guilty of destruction of property. They are currently in jail serving a one-year sentence. The court in March 2010 formally charged Sam Rainsy with spreading disinformation and falsification of public documents following his publication of a series of documents showing border encroachments by Vietnam.<sup>77</sup> On 25 February 2010, the day before the new complaint was filed with the court, Prime Minister Hun Sen was quoted in *The Phnom Penh Post* to the effect that Sam Rainsy would not be able to contest the next national assembly elections in 2013 and that unlike the Royal pardon he received in 2006, "this time the court sentenced [Sam Rainsy] to jail – no pardon this time."<sup>78</sup>

<sup>70</sup> CCHR, *Press Release - Mu Sochua's Unfair Trial Reflective of a Broken Cambodian Judicial System: CCHR releases a legal analysis of the fairness of the judicial process resulting in the conviction of Mu Sochua and calls for a campaign for justice in Cambodia*, 13 July 2010, available at:

[http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr\\_press\\_release\(071310\\_1279005432\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr_press_release(071310_1279005432).pdf).

For further analysis, see CCHR, *Legal Analysis: Fairness of the Judicial Process Resulting in the Conviction of Elected Representative Mu Sochua*, 13 July 2010, available at:

[http://www.cchrcambodia.org/English/add\\_report/reports/cchr\\_analysis.pdf](http://www.cchrcambodia.org/English/add_report/reports/cchr_analysis.pdf). See also Inter-parliamentary Union (IPU), *Case No. CMBD.47 – Mu Sochua*, Resolution adopted unanimously by IPU Governing Council at 186<sup>th</sup> session, Bangkok, 1 April 2010, available at: [www.ipu.org/hr-e/186/cmbd47.htm](http://www.ipu.org/hr-e/186/cmbd47.htm).

<sup>71</sup> Meas Sokchea and James O'Toole, "Court exonerates Ho Vann", *The Phnom Penh Post*, 23 September 2009.

<sup>72</sup> Quote from Ho Vann in, Chhay Channyda, "Assembly reinstates Ho Vann's immunity", *The Phnom Penh Post*, 8 March 2010.

<sup>73</sup> Meas Sokchea and Sebastian Strangio, "Sam Rainsy charges draw criticism", *The Phnom Penh Post*, 1 March 2010.

<sup>74</sup> Cheang Sokha, "Gov't: Release Suu Kyi", *The Phnom Penh Post*, 14 August 2009.

<sup>75</sup> Comment from Rupert Abbott, Director of Development at CCHR, in "Gov't: Release Suu Kyi", *Ibid*.

<sup>76</sup> Human Rights Watch, *Cambodia: Opposition Leader Sam Rainsy's Trial a Farce – Conviction Demonstrates Continuing Persecution of Critics, Political Control of Judiciary*, 21 January 2010, available at: <http://www.hrw.org/en/news/2010/01/28/cambodia-opposition-leader-sam-rainsy-s-trial-farce>.

<sup>77</sup> Vong Sokheng and Sebastian Strangio, "Court formally charges Rainsy", *The Phnom Penh Post*, 15 March 2010.

<sup>78</sup> Meas Sokchea, "PM says that Sam Rainsy will miss 2013 polls", *The Phnom Penh Post*, 25 February 2010. The Law on the Election of Members of the National Assembly provides that a person cannot stand for election if they have a criminal conviction with a prison sentence.

### 3.3 Stifling Political Debate

The RGC's action shows a growing intolerance to any form of criticism. In addition to the actual stripping of immunity, threats of charges of defamation, made real by their use against opposition members, have become a common tactic to restrict democratic dialogue and stifle debate on important national matters in breach of the right to freedom of expression. In June 2009, Nguon Nhel, First Vice President of the National Assembly and a CPP MP, threatened Yim Sovann and other SRP parliamentarians with court proceedings if they continued to assert that "*one powerful man*" controlled the National Assembly.<sup>79</sup> In a similar vein, on 5 August 2009, Prime Minister Hun Sen reacted harshly to opposition members who had criticised his present administration as an autocracy or dictatorship. The premier warned that those critics might face legal action if they repeatedly called the country a dictatorial regime.<sup>80</sup> Perhaps most significant however, was the threat of a defamation suit made by CPP lawmaker Ai Khan against Yim Sovann during the debate on the Penal Code if the latter continued to make comments about the code or the ruling party.<sup>81</sup> Yim Sovann had raised a point made by the UN Special Rapporteur for Cambodia, Professor Subedi, about his concerns for freedom of expression under the new Penal Code and his hope that the criminal offence of defamation be removed from the new code in line with international best practice. Ai Khan's remarks to Yim Sovann – "*I just want to notify his Excellency Yim Sovann: Do not raise a foreigner's ideas for discussion in here*"<sup>82</sup> – go some way in showing the contempt with which certain members of the RGC view criticism by international human rights representatives. This xenophobic statement exhibits a similar disdain for international observers as was levied against Professor Subedi's predecessor Yash Ghai, who resigned from that position following a number of personal remarks against him by members of the RGC.<sup>83</sup>

Open political debate is important in all societies and is an intrinsic part of the democratic process. Furthermore, "*under international law it is not sufficient that political debate on issues of public interest is expressed in strong terms or is perceived as disrespectful of or contrary to Government policy, for limits on the exercise of freedom of expression to be legitimate.*"<sup>84</sup> Thus whilst restrictions on freedom of expression are permitted, stifling political debate solely because the opinion expressed is considered critical or disrespectful is a disproportionate response and in violation of Article 19(3) of the ICCPR and, therefore, the Constitution. As noted by the UN Special Rapporteur for Cambodia, parliament is a chamber for debate on issues of national importance and as such, "*all its members need to be able to express views freely and participate fully in the conduct of business regardless of which political party they belong to.*"<sup>85</sup> The conduct of the RGC however strips parliament of its role as a debating chamber and renders it merely a ceremonial vessel exhibiting only the vestiges of democratic dialogue. Archaic internal debating rules, together with the approach of responding to any unwanted comments with threats of defamation, effectively prevents opposition parties from participating in debates, thus denying them a voice at all. The RGC cannot argue that they support and adhere to democratic principles when their actions preclude open dialogue on important public issues that stand in stark contradiction to the principles of liberal democracy and pluralism enshrined in the Constitution. Indeed, the evidence of recent years suggests that the system of governance in Cambodia is one in which multiple political parties exist but one party controls what can be said.

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<sup>79</sup> Khouth Sophak Chakrya, "SRP Lawmakers threatened with lawsuits over criticism", *The Phnom Penh Post*, 1 July 2009.

<sup>80</sup> "Not a 'dictatorial regime': Hun Sen, a dictator in denial", *AFP*, 5 August 2009.

<sup>81</sup> Neou Vannarin and Bethany Lindsay, "UN removed from criminal code debate", *The Cambodia Daily*, 7 October 2009.

<sup>82</sup> *Ibid.*

<sup>83</sup> Yun Samean and James Welsh, "Hun Sen Reiterates Disdain for UN Rights Envoy", *The Cambodia Daily*, 5 June 2007 and Yun Samean and Fergal Quinn, "Hun Sen Blasts Rights Envoy, Defends Burma", *The Cambodia Daily*, 13 December 2007.

<sup>84</sup> UN OHCHR Cambodia, *A Briefing Note on Freedom of Expression*, supra note 64, p. 1.

<sup>85</sup> Statement by Special Rapporteur on Human Rights in Cambodia, Professor Surya P. Subedi, Phnom Penh, 26 January 2010, p. 2, available at: [http://cambodia.ohchr.org/WebDOCs/DocStatements/2010/012010/Statement%20-%20SR\\_26012010E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2010/012010/Statement%20-%20SR_26012010E.pdf).



### 3.4 The Emergence of a *De facto* One-Party State?

Instead of a burgeoning multi-party democracy in Cambodia, the political environment is one in which opposition MPs are fearful of voicing opinions that are critical of the government. The very people who are supposed to be representing, as elected representatives, the interests and concerns of Cambodians, have been forced to exercise a form of self-censorship to avoid criminal charges. In the aftermath of the lawsuits against opposition members, SRP MP Son Chhay was quoted on radio in Australia on 9 July 2009 saying “[w]e have no alternative. I think we will quiet down for a while. We are not going to raise the issue of corruption. We are not going to speak on land grabbing. We are not going to talk about the corrupt court system.”<sup>86</sup> By being forced to self-censor, open discussion on important issues is absent and new approaches to best address those issues are not shared. Opposition parties’ legitimate role of holding government to account and representing the plurality of voices that make up the Cambodian nation is severely compromised. Government is no longer held to the same level of accountability or scrutiny because important questions are not getting asked. Son Chhay’s statement is a sobering reflection on the brutal effect of the RGC’s action in not only restricting freedom of expression but also restricting progressive democracy. This is hardly the picture of democracy envisaged when the 1991 Agreement on a Comprehensive Political Settlement on the Cambodian Conflict (the “Paris Peace Agreements”) was signed and the Constitution written.

With the continued pursuit of a policy that subordinates and further isolates the opposition, we are very concerned that the actions of the RGC evince Cambodia’s movement towards a *de facto* one party state system; a system whereby there is one dominant party and where laws and practices work to undermine the ability of the opposition to thrive and effectively represent the people. The veil of democracy may remain in Cambodia; elections will take place every five years, opposition representatives will stand and be elected to the National Assembly, which, at least in theory, allows their participation in debates. However, in a climate where the legitimate role of opposition is thwarted by acts of intimidation and harassment that silence the voice of opposition and political dissent, and where legislation denies MPs the right to exercise their right to freedom of expression freely, these trappings of democracy are rendered meaningless. Whilst the opposition must recognise its role and “become less reactionary...and [instead] return to offering alternative policies”,<sup>87</sup> by offering solutions to problems of poverty, the growing gap between the rich and the poor, land grabbing, to name but a few issues that blight the Cambodian societal landscape, it is fundamental that the RGC recognises the importance of democracy, and the vital role of opposition for the continued growth and stability of Cambodia.

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<sup>86</sup> As quoted in Human Rights Watch, *End Assault on Opposition, Critics*, 14 July 2009, available at: <http://www.hrw.org/en/news/2009/07/14/cambodia-end-assault-opposition-critics>.

<sup>87</sup> Quote from Ou Virak, President of the CCHR, in Brendan Brady “Cambodia’s One Party Future”, *The Wall Street Journal*, 17 February 2010.

## CHAPTER FOUR: THE MEDIA

*"In Cambodia, if we look at it from the outside, we see that the freedom of expression, and the freedom of the press as well, almost fully exist... But such freedom is on terms that it is not affecting the power of the country's leaders. And if the expression and writing affect their power, especially in digging into corruption, the destruction of national property, deforestation and so on, that which involves the top leaders, then those who publish the report and those who write such a report will be in trouble."*<sup>88</sup>

- Lem Piseth, former reporter for Radio Free Asia, now living under political asylum in Norway after receiving death threats in 2008 following his reporting of illegal logging in Kompong Thom Province's Prey Lang forest.

### 4.1 Context

Democracy requires a pluralistic media, free to express opinion and free to disseminate information in the public interest. A pluralistic media helps create and open the space for debate by allowing for divergent opinions and points of view to be expressed. A fully independent press is integral for participatory democracy. The media provides the citizenry with access to information. Having information and divergent views in the public arena allows people to exercise informed choice and determine their interests for themselves. The media is equally essential for strengthening democratic government by exercising scrutiny through articles and stories about public affairs and public figures, thus ensuring accountability and transparency that are essential for democratic society.

Despite the importance of a free, pluralistic media for the furthering of democracy, the AHRC has found that in Cambodia the pattern of freedom of press since 1993 has been one of overall decline with spurts of freedom over short periods of time.<sup>89</sup> Restrictions have swung wildly between freedom and repression and as such the press *"cannot be described truly as free."*<sup>90</sup> Since 1993, eleven journalists, most recently Khim Sambo of opposition paper *Moneaksekar Khmer*, have been killed.<sup>91</sup> To date no arrests have been made in relation to the murder of Khim Sambo. Journalists continue to be threatened and harassed, with defamation cases against journalists being used to stifle debate and discussion. Opposition papers have



Figure 4.1: Cartoon by Sacrava, Sacravatoons No. 1690, April 2010

<sup>88</sup> Quote from Lem Piseth, found in Sok Khemera, "Exiled Journalists Worry Over Press Freedom", *VOA Khmer*, 29 April 2010, available at: <http://www1.voanews.com/khmer-english/news/cambodia/Exiled-Journalists-Worry-Over-Press-Freedom-92409764.html>.

<sup>89</sup> Sebastian Strangio and Sam Rith, "Govt campaign turns back the clock on press freedom", *The Phnom Penh Post*, 30 July 2009.

<sup>90</sup> *Ibid.*

<sup>91</sup> CCHR, *Press Release – World Press Freedom Day: Remove the Gag on Cambodian Journalists*, 2 May 2010, available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr%20press%20release-%20world%20press%20freedom%20day-remove%20the%20gag%20on%20cambodian%20journalists%20-%20english%20version\(050310\\_1272873388\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr%20press%20release-%20world%20press%20freedom%20day-remove%20the%20gag%20on%20cambodian%20journalists%20-%20english%20version(050310_1272873388).pdf); and Cambodian Center for Independent Media, *Enhancing Independent Media in Cambodia: An Ethics Perspective*, July 2009, available at: [http://www.ccimcambodia.org/documents/eu\\_research/CCIM%20Media%20Research-Eng.pdf](http://www.ccimcambodia.org/documents/eu_research/CCIM%20Media%20Research-Eng.pdf).

been forced to shut down or have been 'neutralised', such as the *Sranlank Khmer* in 2006.<sup>92</sup> In May 2008 the Ministry of Information closed Angkor Ratha Radio station and withheld its licence after it sold its airtime to four political parties. Essentially, reporting on sensitive or political subjects is a risky business.

## 4.2 Media Ownership and Regulation<sup>93</sup>

On the surface Cambodia appears to have a pluralistic press with a large number of television and radio stations, printed publications and open use of the Internet. Whilst Cambodia may appear to have many different forms of media, this does not satisfy the tenets of pluralism. Rather, pluralism is only truly achieved by having media that is wide-ranging and diverse, that reflects all groups and opinions in society and is accessible by all members of society. In Cambodia, the reality is that the conditions under which those in the media industry are forced to operate make it increasingly more difficult for divergent views to be disseminated.

The CPP and its cronies control broadcasting, with very limited access accorded to opposition party members.<sup>94</sup> The ruling party and its allies dominate TV media. Similarly, radio, which is a particularly effective tool for reaching rural areas in Cambodia, is dominated by stations providing greater airtime to the ruling party, with very little being afforded to opposition and dissenting opinion. There is no broadcasting regulation in Cambodia. Permission to broadcast is granted at the whim of the Ministry of Information; it is thus subjective and has been used as a means of exercising control and constraining the dissemination of politically sensitive information. The CCHR for example unsuccessfully applied for a radio licence in 2003, being told that there were no more frequencies available, and in any event, available frequencies would not be given to the CCHR.<sup>95</sup> With this in mind, it is interesting to note however that TV and radio licenses were still being allocated to CPP affiliated groups or individuals. For example, in 2007 Radio South-East Asia hit airwaves. The station is owned/managed by Kao Kim Hourn, President of the University of Cambodia and CPP Secretary of State.<sup>96</sup> An announcement in 2009 by the Ministry of Information that it will not sell any more radio licences means that those putting forth views and opinions in opposition to the RGC face even greater obstacles securing air-time to impart information or ideas.<sup>97</sup>

The printed press, which has historically been considered the most open form of media in Cambodia, has also seen its ability to disseminate information stifled. A number of Khmer language papers have been forced to close down, most notably the opposition aligned *Moneaksekar Khmer (Khmer Conscience)*, one of Cambodia's oldest and most influential opposition papers. Its editor, Dam Sith, was forced to close the newspaper in July 2009 in order to avoid criminal prosecution for criticism of government officials.<sup>98</sup> The newspaper was subsequently allowed to publish again some six months after it closed.<sup>99</sup> In spite of its reinstatement, there are still only three opposition-aligned papers active in Cambodia to date

<sup>92</sup> Ibid.

<sup>93</sup> For further information see LICADHO, *Restrictions on the Freedom of Expression in Cambodia's Media* (Phnom Penh: LICADHO, May 2009), available at: <http://www.licadho-cambodia.org/reports/files/130LICADHOFreedomofExpressionBriefingPaper2009-Eng.pdf> and *Reading Between the Lines: How Politics, Money and Fear Control Cambodia's Media* (Phnom Penh: LICADHO, May 2008), available at: <http://www.licadho-cambodia.org/reports/files/119LICADHOMediaReport2008.pdf>.

<sup>94</sup> COMFREL, supra note 62, p.12. The COMFREL report also notes that TV stations are owned by the RGC or hybrid RGC and private individuals/companies or by members of the CPP, meaning that they tend to promote the ruling party's agenda.

<sup>95</sup> Statement from former CCHR President Kem Sokha in ARTICLE 19, ADHOC and CLEC, *Freedom of Expression and the Media in Cambodia*, supra note 38, p. 43, available at: <http://www.article19.org/pdfs/publications/cambodia-baseline-study.pdf>.

<sup>96</sup> LICADHO, *Restrictions on the Freedom of Expression in Cambodia's Media*, supra note 93, p. 9.

<sup>97</sup> COMFREL, supra note 62, p. 12.

<sup>98</sup> The newspaper was closed on 10 July 2009. The charges against Dam Sith reportedly related to the content of several articles published between February and May. His offer to close the paper followed a battery of threats of criminal prosecutions for criticism of government officials over the years. See Human Rights Watch, *Cambodia: End Assault on Opposition Critics*, 14 July 2009, available at: <http://www.hrw.org/en/news/2009/07/14/cambodia-end-assault-opposition-critics>

<sup>99</sup> Sam Rith and Sebastian Strangio, "Moneaksekar Khmer set to publish again", *The Phnom Penh Post*, 25 January 2010.

compared to ten in 1993.<sup>100</sup> English language papers have largely been free in their ability to print critical stories perhaps because they are largely read by foreigners and well-educated individuals in Phnom Penh whose political allegiances are clearly established. Nonetheless, they have not been entirely out of the firing line. The *Cambodian Daily* editor Kevin Doyle and reporter Neou Vannarin were charged and convicted of defamation for reporting on Ho Vann's comments mentioned in Chapter Three, despite publishing a correction to the original article.<sup>101</sup>

In addition to the regulation of content, as mentioned in Chapter Two of this Report, the Press Law also regulates the registration of newspapers. A registration requirement means that newspapers need to register with the Ministry of Information. Whilst this is considered to be a formality, the potential of abuse in any regulatory system is there if authorities are intent on constraining the press.<sup>102</sup>

Currently, the internet is possibly the freest form of media in Cambodia with 'clogger' (Cambodian blogger) Chak Sopheap describing the online press as the "*new digital democracy*" in Cambodia.<sup>103</sup> At present there is no regulatory regime that applies to the internet with recent plans to channel all internet traffic through a single state-owned internet hub being scrapped.<sup>104</sup> We commend the RGC for this decision. The freedom given to the exercise of expression and opinion over the internet is fundamental and it is important that the RGC maintains this less repressive stance. However, rumours that the RGC is considering extending the application of the Press Law to the internet and comments from the Minister of Posts and Telecommunications, So Khan, that the practice of monitoring and blocking online content would be entirely consistent with the role of a centralised internet hub, indicate that government officials are not necessarily opposed to restrictive regulation of the internet.<sup>105</sup> So far we have seen implementation of 'regulation' at the whim of government ministries, manifesting itself in the blocking of sites that are viewed as immoral, such as the blocking in early 2010 of the website of the Khmer-American artist Koke Lor which displayed paintings of scantily dressed Khmer folktale figures.<sup>106</sup> There is a fear that this form of control will be implemented in actual regulation to censor the internet more generally, with the government turning to models of internet control that prevail in Vietnam and China, to block access to political content. In February 2009 the Global Witness website was apparently blocked by AngkorNet following its "*Country for Sale*" report that posited that corrupt ruling elites were monopolising the Kingdom's mining and oil industries. Although officials denied any knowledge of the block, the alleged action was seen as an example of the RGC's natural tendency towards censorship when criticised.<sup>107</sup>

#### 4.3 Blocking Access to Information

An inability to access information continues to affect the freedom of press with the ability of journalists to report freely hampered through the use of physical impediments and policy restrictions. For example, during the debate on the Penal Code, the live television feed for journalists was interrupted. Whilst this was blamed on technical difficulties, it is interesting to note that this interruption occurred during debates on sections of the Penal Code that had drawn the most pointed criticism from observers and political opposition.<sup>108</sup> In January 2010, Cambodian soldiers detained eleven reporters who were pursuing a story about illegal logging.<sup>109</sup> One reporter stated that threats to reporters' lives strongly affect freedom of expression and the right to get information because of the power that loggers wield.<sup>110</sup> Indeed, in April there was a spate of reports of journalists being summonsed or held in detention following accusations that they had

<sup>100</sup> Chhay Channyda and James O'Toole, "Risks loom for opposition media", *The Phnom Penh Post*, 20 April 2010.

<sup>101</sup> Sok Serey, "Cambodia Daily's editor-in-chief sentenced for spreading defamation news", *Radio Free Asia*, 22

September 2009, made available through: <http://ki-media.blogspot.com/2009/09/cambodia-dailys-editor-in-chief.html>.

<sup>102</sup> ARTICLE 19, supra note 38, p. 13.

<sup>103</sup> Sopheap Chak, "Digital democracy emerging in Cambodia", published on *UPI Asia online*, 11 November 2009, available at: <http://sopheapfocus.com/index.php/2009/11/digital-democracy-emerging-in-cambodia/>.

<sup>104</sup> Ellie Dyer, "Gov't axes Internet monopoly plan", *The Phnom Penh Post*, 13 April 2010.

<sup>105</sup> Brooke Lewis and Sam Rith, "Ministers differ on Internet Control", *The Phnom Penh Post*, 26 February 2010.

<sup>106</sup> Sen David and Brooke Lewis, "Government panel to target racy images", *The Phnom Penh Post*, 3 February 2010.

<sup>107</sup> Sebastian Strangio, "NGO lashes out at govt censorship", *The Phnom Penh Post*, 10 February 2009.

<sup>108</sup> Neou Vannarin and Bethany Lindsay, "UN removed from criminal code debate", *The Cambodia Daily*, 7 October 2009.

<sup>109</sup> Kim Yuthana and Mom Kunthea, "Reporters Urge Govt Protection", *The Phnom Penh Post*, 4 January 2010.

<sup>110</sup> Comment from journalist Rak Dou in "Reporters Urge Govt Protection", *Ibid*.

attempted to extort money from loggers, sparking further debate on whether the courts were being used to silence reporting on illegal logging.<sup>111</sup>

The difficulties that the press face in accessing information on a range of issues, particularly information held by public bodies, severely restrict freedom of expression. Provisions in the Press Code explicitly provide for access to information in government held records, subject to some caveats,<sup>112</sup> yet journalists tell of being constantly hampered in their efforts to try and obtain information. Without being able to access this information the press is unable to perform its role of informing the public about matters in the public interest. In the Cambodian context this takes on an extra significance. As noted by Raymond Leos; "*experts in conflict resolution often cite inadequate or inaccurate information as potential sources of conflict. Assuming that this is true, one could therefore argue, as many human rights advocates currently do, that in post-conflict societies such as Cambodia, a free flow of information, particularly from public institutions, is vital to the building and maintenance of a stable, functioning democracy and vibrant, informed and engaged citizenry.*"<sup>113</sup>

In addition to restrictions to accessing information, the RGC has attempted to circumvent the reporting of stories that it considers disparaging. In March, the Cambodian Independent Teachers Association for example reported of teachers being summonsed by provisional education officers following interviews they had given to the media in which they voiced concerns about the environment in which they teach and their wages.<sup>114</sup> Such intimidation serves not only to diminish the access of journalists to those who have stories in the public interest, but also the freedom of the teachers themselves to express opinions, in the medium of their choice, on issues that directly affect them. It has also been reported that Minister of Cults and Religions, Dok Narin, stated that the RGC will shortly announce that the media is expected to take better care of how it portrays incidents related to criminal behaviour on the part of monks.<sup>115</sup> Although the RGC and the Buddhist hierarchy might contend that suppression of stories relating to criminal behaviour on the part of monks falls within the "*good traditions of the society*" exception of Article 41 of the Constitution, in reality by passing any measure to suppress the publication of this type of information, the RGC will be applying to the institution of Buddhism the same policy it routinely applies to information considered unfavourable to the government itself: silencing through legislation and the courts.

#### 4.4 The Use of Criminal Sanctions to Shrink the Space for Free Press

In 2009 various government officials and powerful individuals successfully used the criminal-justice system against journalists, publishers and authors who published or broadcasted information that conflicted with their own personal, political or business interests. Such actions necessarily compromise the media's ability to act as a crucial watchdog over the RGC and other powerful actors. The Club of Cambodian Journalists has reported that for the period of 3 May 2009 to 3 May 2010, ten journalists were sued by powerful people and the government, eight more than in 2008, with two being jailed for disinformation; Hang Chakra (see Case-Study 2 below) and Ros Sokhet.<sup>116</sup> Hang Chakra's imprisonment represented the first imprisonment of a journalist since June 2008 when Dam Sith spent a week in jail following legal action brought

<sup>111</sup> For example, Koh Santepheap journalist, Sim Samnang, and journalists Chea Lyheang, Tong Sophon and Thorng Kimhuoth. See Rann Reuy and Cameron Wells, "Extortion Claims raise alarm", *The Phnom Penh Post*, 1 June 2010.

<sup>112</sup> Article 5 of the Press Law recognises the right to access information in government held files. Access can be denied on grounds of harm to national security, harm to relations with other countries, invasion of privacy, exposure of confidential information, disclosure would affect the right to a fair trial or cause danger to public officials.

<sup>113</sup> Raymond, Leos, Professor of Law and Communication Faculty of Communication and Media Arts, Pannasastra University, *Access to information in South East Asia and Cambodia*, pp. 1 – 2.

<sup>114</sup> Phan Seangly, "CITA blasts intimidation of teachers who talk to the media", *The Phnom Penh Post*, 10 March 2010; and Van Roeun, "Union Says Gov't Stifling Teacher's Freedoms", *The Cambodia Daily*, 10 March 2010.

<sup>115</sup> Charlie Lancaster, "Meeting the material world", *Southeast Asia Globe*, 9 April 2010, available at: <http://www.sea-globe.com/cambodia/88-current-affairs/463-meeting-the-material-world>.

<sup>116</sup> "24 journalists arrested and 10 sued in one year in Cambodia", from *Khmerization*, source Kampuchea Thmei, 3 May 2010, available at: <http://ki-media.blogspot.com/2010/05/24-journalists-arrested-and-10-sued-in.html>; Ros Sokhet was convicted on 6 November 2009 for spreading disinformation by sending disparaging text messages to Soy Sopheap, a well known TV anchor man and sentenced to two years in prison. For more details please see Chhay Channyda and Sebastian Strangio, "Rights groups decry jailing of journalist", *The Phnom Penh Post*, 9 November 2009.

against him by foreign minister, Hor Namhong, who accused him of publishing false information.<sup>117</sup>

Journalists received criminal convictions for their reporting despite the fact that Article 20 of the Press Law provides that “[n]o person shall be arrested or subject to criminal charges as a result of expression of opinion.” None of the defamation cases brought against journalists in 2009 invoked the Press Law, which is specifically drafted to cover defamation committed through publication.<sup>118</sup> Instead, the courts invoked the archaic UNTAC Criminal Law, further exhibiting a blatant disregard for the rule of law.<sup>119</sup> Cambodian officials and the courts have seemingly disregarded these legal protections for freedom of expression. The judicial system, as this Report will continue to show, has abdicated its duty to protect and uphold the law. The vast majority of cases brought before the courts have found the courts agreeing with the restrictive interpretation of freedom of expression adopted by the RGC, with the courts exhibiting minimal deference to their constitutional and human rights obligations.

Um Sarin of the Cambodian Association for the Protection of Journalists has worryingly concluded that “[j]udges [are] unable to resist the pressure when legal action comes straight from the government. This becomes a powerful weapon in the hands of corrupt officials who want to fend off press revelations.”<sup>120</sup>

**“Judges [are] unable to resist the pressure when legal action comes straight from the government. This becomes a powerful weapon in the hands of corrupt officials who want to fend off press revelations” – Um Sarin**

The absence of a judicial system that is able to exercise the level of independence needed to uphold the law has further contributed to the difficulties faced by the media to report on matters of importance. As discussed in Chapter Two of this Report, the judiciary in Cambodia is considered to be under executive control. As such, the media has felt unable to rely on a politically controlled judiciary to safeguard their rights and interests. The distrust in the judiciary and its capability and willingness to uphold fundamental human rights led both Dam Sith and Hang Chakra<sup>121</sup> to write letters of apology to the Prime Minister and offer to close their respective newspapers in an attempt to avoid criminal sanction, or, in the case of Hang Chakra, to be pardoned of his criminal conviction. The fact that both men felt compelled to do this shows their lack of faith that the courts would uphold fundamental rights. Dam Sith’s apology letter to Prime Minister Hun Sen poignantly illustrates the point, when he stated that he had “*nothing else to depend on to escape the court charges against me.*”<sup>122</sup> These incidents also reveal the level of control exercised by the RGC, with the government acting as executive, legislature and judiciary, accepting appropriate ‘punishments’ (the closing of *Moneaksekar Khmer* for example) and deciding on who can be pardoned.

<sup>117</sup> Reporters Without Borders, *Cambodia: Prime Minister, You Promised That No More Journalists Would Go To Prison*, February 2010, p. 4, available at: [http://www.rsf.org/IMG/pdf/Report\\_Cambodia\\_RSf.pdf](http://www.rsf.org/IMG/pdf/Report_Cambodia_RSf.pdf).

<sup>118</sup> SEAPA, *Media, opposition party under fire from Cambodia’s strongman*, 23 January 2010, available at: <http://www.seapabkk.org/newdesign/newsdetail.php?No=1205>.

<sup>119</sup> *Ibid.* It remains to be seen whether the use of criminal sanctions against journalists changes with the Penal Code as discussed in section 2.2.3(i) above.

<sup>120</sup> Quoted in Reporters Without Borders, *supra* note 117, p. 4.

<sup>121</sup> On 8 July 2009, it was reported Hang Chakra wrote to Prime Minister Hun Sen stating “*he repeatedly failed to act properly or seriously*” whilst at the helm of the paper and pledged to cease publication if released. For further details see, May Tithara and Sebastian Strangio “Govt approves editor’s release”, *The Phnom Penh Post*, 1 April 2010.

<sup>122</sup> “Dam Sith’s Apology Letter to Hun Sen, Moneaksekar Khmer to stop publication to please Hun Sen”, *Ki-Media*, 9 July 2009, available at: <http://ki-media.blogspot.com/2009/07/dam-siths-apology-letter-to-hun-sen.html>.



#### Case Study 2: Hang Chakra – Fighting for Free Expression

On 26 June 2009 Hang Chakra, editor in chief of the opposition aligned *Khmer Machas Srok* (*Khmer Owners of the Land*) newspaper, was convicted in absentia for criminal disinformation and sentenced to one year in prison and a fine of 9 million riels. His conviction followed a complaint filed by the government in response to a series of articles published between April and May 2009 accusing aides of Senior Deputy Prime Minister Sok An of corruption. The complaint reportedly claimed that the articles could affect political stability because they were about government leaders.<sup>123</sup> Hang Chakra was arrested and taken to Prey Sar prison where he shared a prison cell with 48 other people. Press freedom organisations noted that it was shocking that the government's ministers decided to refer the matter to the courts without first requesting a right of reply in the newspaper.<sup>124</sup> Minister of Information Khieu Kanharith was quoted as saying that whilst the Press Law says that journalists cannot be jailed for opinion, "this is not an opinion. This is an agenda."<sup>125</sup> Speaking to Reporters Without Borders whilst in jail, Hang Chakra said "[my case] reflects the decline in the state of press freedom, which is being pared away to almost nothing in this country. Why wasn't I tried under the press law? And what does this disinformation charge mean? It is unjust and illegal. But I will continue fighting for free expression."<sup>126</sup> This was not the first time Hang Chakra and his paper had come under fire from the RGC. In January 2008, the Phnom Penh Municipal Court questioned him after Minister of Commerce, Cham Prasidh, filed a defamation complaint against him in relation to an article that alleged that the minister had an extramarital affair.<sup>127</sup> In July 2008, opposition defector and government advisor Sok Pheng threatened criminal action following an article that alleged his involvement in corrupt activities.<sup>128</sup> Hang Chakra's release eventually came just before Khmer New Year 2010, three months before he was due to be released.

## 4.5 Gag On Media Stifling Democracy

**"I used to write 100 percent of the truth, but now I've reduced it to about 30 percent." – Tes Vibol**

Excessive use of repressive legislation and a climate of fear, made real by prosecution and criminal sanctions, intimidation, harassment and even death, have acted to prevent open-journalism, ensuring that many media professionals use self-censorship to avoid offending the RGC in any way. Observers have noted that there is an active policy on the part of publishers and editors to cover less sensitive and often less interesting stories "in order to stay out of harm's way."<sup>129</sup> Tes Vibol, publisher of *Khmer Student News*, an independent and self-funded weekly newspaper, was quoted in *The Phnom Penh Post* as saying, "I used to write 100 percent of the truth, but now I've reduced it to about 30 percent."<sup>130</sup>

The creation of an environment that necessitates the use of self-censorship is worrying. Democracy is not just about consent to be governed but also about the citizenry being adequately informed in order to exercise that consent. As such, a free press that is able to distribute a range of information is vital for Cambodians to understand the workings of the administration and to make an informed decision at the next national election. It also represents an important instrument with which the public can hold the government and other powerful actors to account. The creation of a climate in which journalists are forced to use self-censorship denies the public the right to know. It leaves society under-informed and under-resourced, limiting open debate of issues of public importance and stripping the citizenry of its role in democracy.

In spite of the freedom afforded to publication on the Internet and the recent decisions to allow the opposition aligned paper *Moneaksekar Khmer* to publish again and to pardon Hang Chakra, the reality is that freedom of the media is not true freedom when journalists are effectively forced

<sup>123</sup> UN OHCHR Cambodia, supra note 64.

<sup>124</sup> Reporters Without Borders, *Newspaper editor jailed under law bequeathed by UN*, 30 June 2009, available at: <http://en.rsf.org/cambodia-newspaper-editor-jailed-under-law-30-06-2009.33648>.

<sup>125</sup> Phorn Bopha and Bethany Lindsay, "Jailing of Newspaper Editor Earns Wide Criticism", *The Cambodia Daily*, 29 June 2009.

<sup>126</sup> Um Sarin, as quoted in Reporters Without Borders, supra note 117, p. 3.

<sup>127</sup> LICADHO, *News: Cambodian Opposition-affiliated Journalist Jailed for Defamation*, 9 July 2009, available at: <http://www.licadho-cambodia.org/articles/20090709/96/index.html>.

<sup>128</sup> Ibid.

<sup>129</sup> Quote from Moeun Chhean Narridh, Director of the Cambodian Institute for Media Studies, in Ban Tharum, "Soldiers for free speech", *The Phnom Penh Post*, 6 January 2010.

<sup>130</sup> Sebastian Strangio and Sam Rith "Govt campaign turns back the clock on press freedom", *The Phnom Penh Post*, 30 July 2009.

to curb their views. These recent decisions, whilst a welcome step, come against the backdrop of freedom restricted by the 'criminalisation' of certain opinion and fear that a paper or site might be closed down or the publishers or journalists put into prison. It is undeniable that, in these circumstances, the publishers and the editors will always be looking over their shoulders, acutely aware of the fragility of the freedom that permits them to print today.



## CHAPTER FIVE: LAWYERS

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*"In a rule of law system, it is the law that governs society and regulates its conflicting interests. This is what distinguishes it from tyranny..."<sup>131</sup>*

Mr. Christophe Peschoux, United Nations Office of High Commissioner for Human Rights  
Cambodia Representative.

### 5.1 Context

Lawyers play a pivotal role in any democracy. They are key defenders of human rights and the rule of law, standing at the forefront of the fight for democratic principles, advocating adherence to the constitutional values of the nation. Their work in promoting the rule of law is essential to a functioning democracy.

The legal profession and its ability to act autonomously from the influence of the RGC is fundamental for the development of rule of law in Cambodia. Over the years however, the Cambodian legal profession has been plagued by RGC intimidation and moves to silence the legal system and undermine its independence. Lawyers have been intimidated in an effort to prevent them from representing issues that the RGC wants ignored. In 2007, ten lawyers from CLEC and Legal Aid Cambodia representing indigenous villagers in Kong Yu, Ratanakiri, experienced threats to their safety and were accused by Keat Kolney - sister of Minister of Finance and Economics Keat Chhon, who had allegedly grabbed the villagers' land - of inciting the villagers to complain against her.<sup>132</sup> Even the Extraordinary Chambers in the Court of Cambodia (the "ECCC"), the internationalised court mandated to try those allegedly bearing the greatest responsibility for the crimes of the Khmer Rouge, saw defence lawyers being threatened with legal action by national judges following requests made for the national courts to investigate corruption allegations at the ECCC.<sup>133</sup> The crackdown on open criticism, which has continued apace since the Joint Submission, has not left lawyers unscathed.

### 5.2 Threats Against Lawyers Today

The criminal charge of defamation brought against Mu Sochua's legal counsel, Kong Sam Onn, exemplifies the pressure and intimidation exerted on lawyers to stop taking politically charged cases and speaking out in defence of those considered to be a nuisance to the RGC or other powerful people. Kong Sam Onn faced increasing political pressure when he began representing Mu Sochua in April 2009 in her defamation complaint against Prime Minister Hun Sen. This political pressure culminated in charges of defamation, based on remarks he made at a press conference that he would act for Mu Sochua in filing a lawsuit against the premier. These comments were made in defence of his client and in his capacity as a lawyer. Kong Sam Onn was also the subject of a threat of disbarment from the Bar Association. The charge and threat inevitably acted as methods of intimidation and pressure against Kong Sam Onn that resulted in him submitting an apology letter to Hun Sen and joining the CPP in order that the charges against him were dismissed. His career, livelihood and the well being of his family were at risk. The RGC's actions violated the UN Basic Principles on the Role of Lawyers, which provides that lawyers should not be identified with their clients or their clients' causes, and that lawyers perform

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<sup>131</sup> Comments by Christophe Peschoux, head of UN OHCHR in Cambodia, in a speech entitled, "The road to justice is the best path to peace", 10 December 2009, p. 2, available at:

[http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/122009/RemarksRP-HRD\\_10122009E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/122009/RemarksRP-HRD_10122009E.pdf)

<sup>132</sup> LICADHO, *Attacks and Threats Against Human Rights Defenders in Cambodia in 2007* (Phnom Penh: LICADHO, August 2008), p. 20, available at: <http://www.licadho-cambodia.org/reports/files/126LICADHOHumanRightsDefendersReport2007Eng.pdf>.

<sup>133</sup> Joint Submission, supra note 3, p. 5.

their professional functions without intimidation and harassment.<sup>134</sup> Moreover, the RGC's actions violated the constitutional right to freedom of expression, curtailing Kong Sam Onn's right to speak, in this case in defence of, and in order to represent, his client. This case sent a clear message to lawyers in Cambodia that speaking in defence of a person considered a threat or nuisance to government can result in a criminal conviction. Kong Sam Onn would have more than likely faced criminal conviction, fines and disbarment if he had not acquiesced to government harassment. Speaking out about the treatment of Kong Sam Onn, the UN Special Rapporteur on the independence of judges and lawyers stated, "*lawyers play an important role as defenders of human rights and must be free to represent their clients as they see fit, in accordance with professional standards and the rule of law*", he added that he was concerned that recent moves against lawyers in Cambodia seem to indicate a worrying new trend.<sup>135</sup>

The actions of the RGC bear unsettling similarities with those of China and Vietnam. The Chinese government has employed a number of different measures to discourage lawyers from taking sensitive cases such as the use of unlawful detention, disbarment, intimidation and physical abuse.<sup>136</sup> In January 2010, a Vietnamese Court convicted a leading human rights lawyer, Le Cong Dinh, who defended labour rights, democracy activists and bloggers.<sup>137</sup> The behaviour of the RGC shows that it is not ostensibly opposed to following the examples of Beijing and Hanoi in employing tactics of intimidation to stop the legitimate rights and lawful professional conduct of lawyers.

### 5.3 Lawyers' Silenced – The Ramifications for Democracy and the Rule of Law

***Cambodians are deprived of access to justice, allowing for violations of rights to go unchallenged and impunity to persist.***

In the context of the crackdown on freedom of expression, the actions against legal practitioners have the unpalatable effect of stripping lawyers of the essential role they play in democracy. Lawyers in nascent democracies such as Cambodia have the potential of being great "*levellers between the powerful and the less so.*"<sup>138</sup> The tactics employed by the RGC against Kong Sam Onn have the very real possibility of stripping lawyers of this role as levellers, affecting the willingness of other lawyers to represent opposition members or others who file complaints against government officials or other powerful actors. Intimidation is an effective tool in silencing lawyers from their professional commitment in providing legal services against powerful people. For Mu Sochua, the end result was that she was unable to access a qualified lawyer of her choice after Kong Sam Onn resigned from the case. NGOs and others have similarly found it increasingly difficult to find lawyers to take on the cases of human rights activists and those who have had complaints filed against them by government officials or other powerful actors. The difficulties now associated with securing the services of a lawyer and refusals on the part of certain lawyers to act stems from fear of the repercussions that could follow for their safety and their careers in taking on such cases. As a result Cambodians are deprived of access to justice, allowing for violations of rights to go unchallenged and impunity to persist. If lawyers too are targeted for retribution, the concept of protection of human rights is devoid of all meaning and a greater problem prevails with regards to the state of the rule of law in Cambodia as a whole.

<sup>134</sup> United Nations Basic Principles on the Role of Lawyers, adopted by the 8<sup>th</sup> UN Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <http://www2.ohchr.org/english/law/lawyers.htm>.

<sup>135</sup> United Nations, *Press Release – United Nations Expert Concerned at Restrictions on Freedom of Lawyers to Represent Their Clients in Cambodia*, 1 July 2009, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/2E08F1A3021A329DC12575E60034025D?opendocument>.

<sup>136</sup> For more details see United States of America Department of State, Bureau of Democracy, Human Rights and Labor, 2009 *Human Rights Report: China*, 11 March 2010, available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eaop/135989.htm>.

<sup>137</sup> ARTICLE 19, "Vietnam: ARTICLE 19 Condemns Convictions of Pro-Democracy Activists", 20 January 2010, available at: <http://www.article19.org/pdfs/press/vietnam-article-19-condemns-convictions-of-pro-democracy-activists.pdf>.

<sup>138</sup> West Global Issues, *The Role of Lawyers*, p. 2, available at: [http://www.westglobalissues.com/forms/ethics\\_sample.pdf](http://www.westglobalissues.com/forms/ethics_sample.pdf).

The events surrounding the case of Kong Sam Onn show the continued misuse of the criminal justice system by the powerful to silence criticism or opposition and a Bar Association which is not “*allowed to exercise, without external pressure, its responsibilities.*”<sup>139</sup> The misuse of the courts, and the pressure exerted on the judiciary feeds the culture of impunity that is widely prevalent in Cambodia. As former Special Representative of the Secretary General for Human Rights in Cambodia,<sup>140</sup> Yash Ghai, wrote in his 2006 report, “*impunity means that Cambodia’s citizens are not protected by law... With impunity there is no protection of human rights. Impunity is the opposite of accountability and the antithesis of the rule of law.*”<sup>141</sup> Independence of the judiciary “*together with autonomy of the legal profession, is vital to ensure justice and accountability and to protect against abuse of power.*”<sup>142</sup> These principles are essential in a free and democratic society and, further, are essential for rule of law to prevail. The culture of impunity that persists is the basis on which the violations of freedom of expression, and other human rights violations, are invariably committed. It is therefore fundamental for human rights and the prevalence of democratic principles that the legal profession and the legal system are not misused to suppress political discourse and allow impunity to flourish. Instead the legal profession and the legal system must be free to take its rightful place in the democratic fabric of Cambodia as a catalyst for the improvement of society. Unless the legal system is given the opportunity to function in this way, the demise of freedom of expression and democracy highlighted throughout this Report will continue.

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<sup>139</sup> UN Press Release Special Rapporteur for independence of judges and lawyers, supra note 135.

<sup>140</sup> Before 2008, the Cambodia human rights mandate was held by a Special Representative of the Secretary-General for human rights in Cambodia who was appointed by the Secretary General, though reported to the Human Rights Council. After 2008 this changed to a Special Rapporteur who is appointed by the Human Rights Council.

<sup>141</sup> UN Secretary General’s Special Representative for Human Rights in Cambodia, *Report of the Special Representative of the Secretary-General for human rights in Cambodia*, Yash Ghai, A/HRC/4/36, 30 January 2007, p. 13, para. 57, available at: [http://cambodia.ohchr.org/WebDOCs/DocReports/1-SR-SRSG-Reports/SRSG\\_HR\\_CMB30012007E.pdf](http://cambodia.ohchr.org/WebDOCs/DocReports/1-SR-SRSG-Reports/SRSG_HR_CMB30012007E.pdf).

<sup>142</sup> CCHR, *Press Release - The CCHR laments the recent unavoidable actions of Kong Sam Onn: Further evidence of Cambodia’s fragile democracy*, 9 July 2009, available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr\\_kong%20sam%20onn%20press%20release\\_090709\(070809\\_1247111569\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr_kong%20sam%20onn%20press%20release_090709(070809_1247111569).pdf).

## CHAPTER SIX: HUMAN RIGHTS ACTIVISTS

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*"The ability of civil society actors to work freely and safely is another key indicator of a functioning democracy. The professionalism and commitment of non-governmental organizations (NGOs) is a remarkable asset for the development of this country and one that needs to be safeguarded and supported."*<sup>143</sup>

- Louise Arbour, former UN High Commissioner for Human Rights.

### 6.1 Context

Human rights activists play a fundamental role in democratic society by providing a voice for the marginalised. They uncover violations, subject these violations to public scrutiny, press for the accountability of those responsible, seek redress for victims and empower individuals and communities to claim their rights for themselves. For the purposes of this Report the term 'human rights activist' is given a restrictive definition and refers to those people and organisations that work to promote and protect human rights in Cambodia in a non-violent way; namely community representatives, trade union representatives and local and international human rights NGOs.

The arrival of UNTAC in the early 1990s created the space for the re-emergence and re-creation of a civil society following years of extreme violence and civil war. However, over the years the government has consistently dismissed the concerns of human rights activists and has attacked and bullied those who dare to speak out, even banning groups that have been critical of them.<sup>144</sup> Human rights activists have been systematically intimidated in the course of their work; facing assault, threats against their personal safety, legal action, imprisonment and even death. In January 2004, Chea Vichea, founder and president of the Free Trade Union and Workers was shot dead in Phnom Penh. An outspoken activist who was politically affiliated the SRP, his killing has been shrouded in mystery, with allegations of conspiracy abounding and those responsible still at large. In 2005, a number of prominent human rights activists were arrested and detained for alleged disinformation, defamation and incitement. Kem Sokha, then President of the CCHR, Yeng Virak, Executive Director of CLEC, and Pa Ngoun Teang, then Deputy Director of the CCHR, were arrested in connection with a banner displayed at International Human Rights Day celebrations that included small hand-written comments by villagers, one of which criticised Prime Minister Hun Sen and referred to land being lost to Vietnam. All were eventually released on bail after local and international pressure.<sup>145</sup>

### 6.2 Threats Against Human Rights Activists

The democratic space within which human rights activists can operate remains restricted. The RGC has given minimal credence to the contribution that human rights activists make to the functioning of democracy in Cambodia and have instead systematically penalised and punished them for scrutinising government and speaking out about RGC action, policies and law. There has been a tendency to view advocacy that involves any criticism of the government or its policies as 'opposition' and to punish it. The RGC's contempt of such criticism and those who voice it is exemplified by the charges brought against Moeung Sonn, head of the Khmer Civilization Foundation, an NGO with a mandate to protect and promote Khmer culture and heritage. On 15 July 2009, Moeung Sonn was sentenced in absentia to two years imprisonment on charges of disinformation as a result of concerns he raised with regards to the installation of electric lighting at Angkor Wat. Court officials stated that Moeung Sonn's case was somewhat "*difficult to forgive*"

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<sup>143</sup> *Statement by UN High Commissioner for Human Rights Louise Arbour*, 19 May 2006, Phnom Penh, available at: [http://cambodia.ohchr.org/WebDOCs/DocStatements/2006/Statement\\_19052006E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2006/Statement_19052006E.pdf).

<sup>144</sup> In 2005 the international NGO Global Witness was banned from Cambodia as a result of continued criticism of the RGC. See Global Witness, *Press Statement: Hun Sensorship – Global Witness banned from entering Cambodia*, 19 July 2005, available at: [http://www.globalwitness.org/media\\_library\\_detail.php/386/en/hun\\_sensorship\\_global\\_witness\\_banned\\_from\\_entering](http://www.globalwitness.org/media_library_detail.php/386/en/hun_sensorship_global_witness_banned_from_entering).

<sup>145</sup> See the Joint Submission, *supra* note 3, p. 5.

as his comments had greatly embarrassed the government, especially the Minister of the Council of Ministers, Sok An, who had allowed the Sou Ching company to fix the electric lighting, in front of the national and international public.<sup>146</sup> The case of Moeung Sonn shows a disproportionate response to criticism in a bid to save face, with the courts being used to impair the essence of the right to freedom of expression by curtailing the scope for NGOs to engage in debate on issues within their mandate. The lights that were the subject of the comments have since been removed.

The case of Moeung Sonn is just one example of the RGC's prevalent bullying of NGOs and international monitors. Head of the UN OHCHR Cambodia, Christophe Peschoux, recently received a letter from the Ministry of Foreign Affairs, following his criticism of the deportation of two Thai Red Shirt activists, warning him that "*any such activities in the future will lead the [RGC] to make a decision on your presence in Cambodia.*"<sup>147</sup> Similarly, in March 2010, the UN Country Team ("UNCT") head was threatened with expulsion following concerns expressed by UNCT that insufficient time was provided for public consultation and parliamentary debate on the draft of the Anti-Corruption Law.<sup>148</sup> The international NGO Global Witness, based in London, has also recently been subject to bullying following its publication of a report that criticised the alleged sale of dredged sand from Cambodia to Singapore in violation of a ban on sand exports which was publicly announced by Prime Minister Hun Sen. Cambodia's ambassador to the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") wrote in a letter to Global Witness that the organisation suffered "*epilepsy and other mental disabilities.*"<sup>149</sup> The action on the part of the RGC shows its inability to accept constructive criticism, however mild, and the contempt with which comments from human rights monitors in Cambodia are met.

The ability of human rights activists to fulfil their respective mandates has been stymied through the use of threats, intimidation, violence, criminal sanction and other insidious forms of control circumventing the legitimate place of civil society in the democratic functioning of Cambodia. In addition to the growing intolerance of the RGC to even the mildest of criticism, a culture of using force against human rights activists persists. The threat of force was used to stop the CCHR from holding a public forum for residents of Boeung Kak Lake. The Phnom Penh municipal government in June 2009 denied two requests from the CCHR to hold on-site public forums on human rights and development for the residents who faced eviction as a result of a development project. Armed forces were sent to Lazy Fish Guesthouse, the venue for the planned forum, to close it as a consequence of their agreement to rent the premises to the CCHR.<sup>150</sup> ADHOC and LICADHO monitors have been threatened and intimidated by police in violation of their right to freedom of expression to hand over or delete photographs taken legally and in public whilst monitoring a demonstration outside Prime Minister Hun Sen's house in Takhmao relating to a land dispute.<sup>151</sup> Such action not only hinders the legitimate role of civil society but also denies Cambodians the right to participate in society as guaranteed under the Constitution.<sup>152</sup>

<sup>146</sup> "After Moeung Sonn, 3 Newspapers are involved in complaints about drilling into some walls at the Angkor Wat Temple to attach electric bulbs", *The Cambodian Mirror*, 16 July 2009, available at: <http://cambodiamirror.wordpress.com/2009/07/17/after-moeung-sonn-three-newspapers-are-involved-in-complaints-about-drilling-into-some-walls-at-the-angkor-wat-temple-to-attach-electric-bulbs-thursday-16-7-2009/>.

<sup>147</sup> Sam Rith and Sebastian Strangio, "Govt warns UN rights head over criticisms", *The Phnom Penh Post*, 9 July 2010.

<sup>148</sup> Vong Sokheng and Sebastian Strangio, "Govt threatens to expel UN envoy", *The Phnom Penh Post*, 22 March 2010.

<sup>149</sup> Im Sothearith, "Ambassador Withdraws Global Witness Debate Challenge", *Voice of America Khmer*, 24 May 2010, available at: <http://www1.voanews.com/khmer-english/news/Ambassador-Withdraws-Global-Witness-Debate-Challenge-94729759.html>.

<sup>150</sup> CCHR, *Press Release - Authority's Campaign of Intimidation to Prevent Peaceful Forum*, 2 June 2009 available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/Press\\_Release\\_Boeng\\_Kak\\_Lake.pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/Press_Release_Boeng_Kak_Lake.pdf); and AHRG, "Cambodia: The government must ban social control that violates human rights", 8 June 2009, available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/ahrc%20statement%20june%202008.%202009\(060809\\_1244515159\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/ahrc%20statement%20june%202008.%202009(060809_1244515159).pdf). On 4 March, at least 9 indigenous people in Bousra commune, Pech Chreada, Mondulkiri province were summonsed to the Commune Office by Bousra communal chief after they had participated in a public forum held by the CCHR on 25 February on Human Rights and Development. The people in question had expressed their ideas and concerns about the problems they had been confronting related to their land, which they stated was grabbed by a joint French-Khmer company Socfin KCD and Vietnamese Dalat Rubber Company. At his office, the commune chief Keng Gnak chastised the villagers for participating in the forum, threatened them with violence if they continued to protest against the companies and told them they were not to speak with people from outside the village. CCHR Media Alert, "*Villagers Who Participated in CCHR Public Forum Summonsed by Bousra Commune Chief*", 3 March 2010.

<sup>151</sup> Joint NGO statement from CCHR, ADHOC, LICADHO and CLEC, *Media Release: Rights of Monitors Abused and Protestors Blackmailed as Crackdown on Freedom of Expression Continues Unabated*, 3 March 2010, available at: <http://www.sithi.org/admin/upload/media/2010-04->

Police also tore down a screen that a labour union was planning to use to show a documentary about the slain trade unionist leader Chea Vichea. The police justified their action by arguing that the organisers did not have the requisite approval to show the film, with the Minister of Culture and Fine Arts stating that they must approve all films screened in Cambodia.<sup>153</sup> However, whilst the Ministry of Culture may be said to have a role as national review board, many believe this authority was exercised as a pretence for controlling the dissemination of information considered unfavourable to the RGC; namely the question of law enforcement surrounding Chea Vichea's death and allegations that his death was the result of his support for the opposition SRP.



**Figure 6.1: Police tear down screen that union members and protestors were using to show the film 'Who shot Chea Vichea?', May 2010**

### 6.3 Human Rights Activists Silenced by Court Action

In addition to the threats and use of force used to stop the activities of human rights activists, a pattern has been developing whereby human rights activists are silenced by threats channelled through the courts.

Activists, particularly community representatives and leaders whose activism is invariably connected to a land issue, often an eviction, that affects his or her community, are identified and targeted with bogus criminal charges. They are often held in pre-trial detention until after the relevant situation is 'resolved'; in the context of land dispute this resolution is generally the eviction of the community from the land and its transfer from the poor and marginalised to a wealthy and politically connected individual or business. Community representatives are not always tried and are sometimes released from pre-trial detention once the eviction has taken place.



**Figure 6.2: Protestors clash outside Takeo Provincial Court with police, following a protest to stop community representative Ny San from being arrested on groundless disinformation charges, 30 September 2009.**

[06|RIGHTS%20OF%20MONITORS%20ABUSED%20AND%20PROTESTORS%20BLACKMAILED%20AS%20CRACKDOWN%20ON%20FREEDOM%20OF%20EXPRESSION%20CONTINUES%20UNABATED/3%203%202010.pdf](#)

<sup>152</sup> Article 35 of the Constitution provides for the right of all Cambodians to participate in political, economic, social and cultural life of the nation, see section 2.2.2. above.

<sup>153</sup> Meas Sokchea, "Who censored Chea Vichea?", *The Phnom Penh Post*, 7 May 2010.

At least 235 criminal complaints were made against human rights activists in 2009, 147 of whom were arrested and sent to jail.<sup>154</sup> Politically motivated criminal charges of defamation, disinformation and incitement have been used by central and provincial authorities to harass and intimidate human rights activists who are involved in advising and assisting local communities to exercise and defend their rights under the Constitution. Whilst we welcome the acquittals in the case of two community activists in February 2010, Ny San and Seb Sein; two CCHR affiliated activists, Cheab Chiev and Khoem Sarum; and Radio Free Asia Journalist, Sok Serei, on charges of disinformation in relation to a radio interview in 2008 alleging the corruption on the part of local mosque officials in Kampong Youl Village, the case is one of only a handful of valuable examples where the judiciary reached a verdict on the basis of the law and facts of the case.<sup>155</sup> There are rumours however that the acquittal will be appealed by the officials involved.

The general mode of intimidation of human rights activists involves the threat of criminal charges, the imposition of charges, provisional detention, trial and imprisonment. The extent to which these measures are used against an individual often depends on whether and at what point the human rights activist in question undertakes to desist from his activism to protect and promote human rights. In circumstances where an activist does not give up his or her activism, charges are rarely formally dropped and generally left to hang over the activist as a reminder of the cost of activism. With regards to trade unionists for example, in July 2009, 14 unionists who had threatened to strike in protest to lay-offs were summoned to the Phnom Penh Municipal Court to be questioned in reference to accusations of criminal defamation, disinformation and incitement filed by their employer, Naga World. The summons had the requisite effect; two of the unionists immediately resigned from the union and were not questioned by the court prosecutor.<sup>156</sup> The case is still unresolved and the threat of formal charges remains. In a separate case, following a decision by the Provincial Court of Poipet requiring residents illegally inhabiting land to disassemble their houses and leave Kblan Speen Village in Banteay Meanchey Province, authorities arrested Mang Puthy, branch president of IDEA – who went to monitor the verdict, accusing him of inciting destruction of public property.<sup>157</sup> Charges of incitement following the burning down of two make-shift offices belonging to a company involved in the ongoing Omlang Commune land dispute case with CPP Senator Ly Yong Phat were also recently levied against two community representatives despite eyewitnesses saying that the individuals in question were nowhere near the scene. The two were imprisoned for “*their obvious crimes and other basic reasons*”.<sup>158</sup> These cases reflect how the rich and powerful continue to utilise the judicial system as a weapon of intimidation against those who speak out against injustices.

The case against Pen Bonnar, ADHOC provincial coordinator and Chay Thy, ADHOC local activist, in Ratanakiri is a prime example of the misuse of incitement charges as a way of preventing human rights activists from giving advice and information to those facing a human rights violation (see case-study below). The fact that the judiciary has equated advising people about their rights with crimes of incitement displays a worrying misunderstanding of both human rights and democracy.

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<sup>154</sup> ADHOC, *Human Rights Situation Report 2009*, Issue 9, Vol. 9, February 2009, p. 1, available at: [http://www.adhoc-chra.org/gallery/files/Adhoc\\_Situation2009\(en\)%20.pdf](http://www.adhoc-chra.org/gallery/files/Adhoc_Situation2009(en)%20.pdf).

<sup>155</sup> It is worth noting that in the same case, one of the community activists, Ny San, was found guilty of destruction of property and sentenced to five months in jail, four and a half of which he had already spent in provisional detention. The destruction of property charge arose out of a private dispute with a local mosque official who was the subject of the corruption allegations that led to the defamation charges of the five individuals. See CCHR, *Press Release: Freedom of Expression Respected in Important Verdict by the Takeo Provincial Court*, 19 February 2010, available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/cchr%20press%20release%20-%20freedom%20of%20expression%20respected%20in%20important%20verdict%20by%20the%20takeo%20provincial%20court\(021910\\_1266567926\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/cchr%20press%20release%20-%20freedom%20of%20expression%20respected%20in%20important%20verdict%20by%20the%20takeo%20provincial%20court(021910_1266567926).pdf).

<sup>156</sup> CLEC, “Testimony by Tola Moeun: For Tom Lantos Human Rights Commission Hearing”, United States Congress, Washington DC, 10 September 2009.

<sup>157</sup> For further information, please see [http://www.sithi.org/temp.php?url=incident\\_show.php&CID=1347](http://www.sithi.org/temp.php?url=incident_show.php&CID=1347).

<sup>158</sup> Joint NGO Press Release by LICADHO, CCHR and CLEC, *Civil Society Condemns Judicial Tactics Used Against Community Representatives in Kampong Speu*, 25 March 2010, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=220&pagenb=&filter=>.

### Case Study 3: Pen Bonnar – The Isolation of Activists in Cambodia’s Most Remote Province

Pen Bonnar is ADHOC provincial coordinator in Ratanakiri and extremely active in his attempts to tackle the endemic problems of illegal logging and deforestation in Cambodia’s most isolated and remote province. He has been particularly active in protecting the land of the indigenous Tumpuon communities. In November 2007, Pen Bonnar attempted to facilitate the assembly of 221 families to protest against the takeover of an area of land by a private company, the DM Group. During the demonstration, members of the Tumpuon community clashed with armed police outside the Provincial Courthouse. Pen Bonnar asserted that no-one was injured or arrested in the small scuffle outside the Courthouse, which followed a peaceful march of approximately 150 people from nine communes. However, in the months following this incident, Provincial Municipal Judge Thor Saron threatened Pen Bonnar with charges of defamation, disinformation and even inciting terrorism.<sup>159</sup> Pen Bonnar denied the allegations, asserting that while he had encouraged villagers to protest at the courthouse, he had requested they refrain from violence. Nonetheless, Pen Bonnar subsequently left the province of Ratanakiri and relocated to Phnom Penh in August 2009 in order to avoid the incitement charge, though he has since returned to the area. The UN OHCHR Cambodia has demanded an end to the harassment of human rights defenders in the Ratanakiri province and has condemned the use of “*court action to restrict fundamental freedoms of assembly and expression on an issue of public interest*”, namely the numerous unresolved land disputes in the province.<sup>160</sup>

NGOs have also attracted the attention of the judicial system when they have tried to speak out about judicial misconduct. On 18 September 2009, Ratanakiri Provincial Municipal Court called CCHR President Ou Virak as a witness in the Pen Bonnar case. Whilst it was claimed by Judge Thor Saron that he wanted to know what Ou Virak knew about the dispute, he added that it was up to the court prosecutor after questioning to decide if Ou Virak could be charged as a suspect.<sup>161</sup> It is interesting to note that the action followed a complaint lodged by CCHR to His Majesty King Norodom Sihamouني, the constitutionally mandated guarantor of the independence of the judiciary, seeking an investigation by the SCM into misconduct on the part of Judge Thor Saron.<sup>162</sup> Whilst Judge Thor Saron was acquitted of any wrongdoing on 12 November 2009, the intimidation and harassment experienced by Pen Bonnar, Chay Thy and Ou Virak illustrates the measures taken against those who publicly call for an end to injustice and judicial delinquency.

## 6.4 Who Will Speak When Human Rights Activists Are Silenced?

***“[t]oday so many NGOs are too freely speaking and do things without framework. When we have a law we direct them.” – Heng Samrin, President National Assembly***

Human rights activists have been quiet in recent months where political and/or sensitive issues are concerned as a result of the threats and action taken against them. There is a fear that the proposed NGO Law will make it even more difficult for human rights organisations to speak out and, as a result, human rights violations will continue unabated. Whilst the reason given for the draft legislation is to address corruption, crime and terrorism, in the backdrop of the already fragile democratic space that exists in Cambodia we are concerned that the law will attempt to further muzzle human rights activists. Statements by government officials so far give credence

to the view that the law is a way of further subordinating human rights activists. When the law was first mentioned, National Assembly President Heng Samrin stated; “*[t]oday so many NGOs are too freely speaking and do things without framework. When we have a law we direct them.*”<sup>163</sup> More recently Prime Minister Hun Sen stated, “*We respect the local and international NGOs whose activities serve humanity and help the government of Cambodia ... They will not be*

<sup>159</sup> Kuch Naren “Ratanakiri Activists Summoned for Questioning”, *The Cambodia Daily* 31 July 2009 ; Prak Chan Thul “Judges Advises Ratanakiri Adhoc Chief to Leave: A solution ‘done quietly’ is being sought for well known rights worker Pen Bonnar”, *The Cambodia Daily*, 6 August 2009.

<sup>160</sup> UN OHCHR Cambodia Statement, *OHCHR calls for an end to harassment of human rights defenders in Ratanakiri province*, 11 September 2009, available at: [http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/092009/OHCHR%20Statement\\_11092009E.pdf](http://cambodia.ohchr.org/WebDOCs/DocStatements/2009/092009/OHCHR%20Statement_11092009E.pdf).

<sup>161</sup> Prak Chan Thul, “CCHR Director Summoned in Land Dispute Case”, *The Cambodia Daily*, 19 - 20 September 2009. In relation to allegations of misconduct by Judge Thor Saron, *The Cambodian Daily* reported that a grant of land was given to him in return for dropping charges against individuals that arose as a result of the land conflict between the Tumpuon community and DM Group, see Kuch Naren, “R’kiri Judge Requested Land For Cows”, *The Cambodia Daily*, 1 September 2009. See also CCHR and LICADHO, *Press Release – Enough is Enough: Human Rights Groups Demand End to Land Grab, Harassment of Human Rights Defenders and Judicial Misconduct in Ratanakiri*, 23 September 2009.

<sup>162</sup> Ibid.

<sup>163</sup> Kay Kimsong, “Some NGOs see Gov’t Control in Proposed Law”, *The Cambodia Daily*, 16 June 2006.



*threatened by this draft law...but we believe that some NGOs whose activities seem to serve the opposition party will be afraid of it.*<sup>164</sup> These comments make no attempt to hide the fact that the law is targeting those who speak out and criticise the RGC. The implication of such a statement is further heightened by the fact that the last draft made available included onerous registration requirements and precludes NGO participation in “*activities for any political interests.*”<sup>165</sup> These terms are not defined, nor are any examples given of what constitutes “*activities for any political interests*” thus it could easily be deemed to apply to NGOs working on civil and political rights. Such a restriction, if included, would constitute an unacceptable violation of the constitutional right of all Khmer citizens to participate in the “*political, economic, social and cultural life of the nation*”<sup>166</sup> and of the right to freedom of expression and association. Whilst the RGC, as the elected government of the people, is entitled to govern and present laws for the endorsement of the National Assembly, it is fundamental that those laws take into account Cambodia’s international and constitutional obligations.

The potential enactment of a law that further stifles the legitimate role of human rights activists is a dark cloud looming over Cambodian democracy. With a civil society that is already hesitant to speak, fearful of the ramifications of dissent, the NGO Law has the very real potential of silencing civil society. What will happen when there are no human rights activists left because threats, intimidation and harassment have compelled them not to speak out on issues of importance? Who will speak for the people if human rights activists cannot and the other pillars of democracy are silenced also? There is a danger that if the repressive action against human rights activists continues Cambodia could reach a point of no return where there is ultimately no room for activists to speak out on human rights abuses. For the victims of human rights abuses, this silencing of human rights activists has potentially devastating consequences. With human rights activists intimidated, the opportunities to consult with the marginalised are greatly reduced, the support given for legitimate protests wanes, and those whose rights have been violated by officials and other powerful actors are more likely to accept unfair treatment because they feel unable to combat it. The perception of futility of action by ordinary people is compounded when they see human rights activists, including UN agencies, threatened or intimidated. This operates to deter victims from exercising their rights.<sup>167</sup> The violation of the right to freedom of expression of human rights activists provides for other violations of human rights to go unchallenged, allowing officials and other powerful actors to continue to strip Cambodians of their fundamental rights and freedoms.

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<sup>164</sup> Comment from Hun Sen in, Thin Lei Win, “Cambodia’s proposed NGO Law Stirs Suspicion and Concern”, 5 March 2010, available at: [http://www.alertnet.org/db/an\\_art/52132/2010/02/5-155332-1.htm](http://www.alertnet.org/db/an_art/52132/2010/02/5-155332-1.htm).

<sup>165</sup> As noted in the last available draft of the NGO Law (2006) made available to civil society, as found in Annex 1 of LICADHO, *NGO Laws & Crackdowns on Human Rights Defenders: International Lessons for Cambodia* (Phnom Penh; LICADHO, September 2006), available at: <http://www.licadho-cambodia.org/reports/files/88LICADHOBriefingPaperNGOLaw06.pdf>. A new draft of the NGO Law was announced on 6 August 2010, however, at the time of writing this Report, it has yet to be made available to the public.

<sup>166</sup> Article 35 of the Constitution.

<sup>167</sup> LICADHO, *Threats to Human Rights Defenders in Cambodia* (Phnom Penh; LICADHO, December 2004), available at: <http://www.licadho-cambodia.org/reports/files/71HRDPaper2004.pdf>.

## CHAPTER SEVEN: THE PEOPLE

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*"Without the freedom to express ourselves, the government cannot understand our hopes and desires, and the goal of justice becomes an illusion."<sup>168</sup>*

- Sar Mova, President of Cambodian Food Service Workers Federation.

### 7.1 Context

The people are the primary stakeholders in Cambodia and therefore it is vital that space exists where they can voice their opinions and concerns for the country. It is through this dialogue that citizens participate in the development of the nation. The people need to be able to exercise their civic rights, these include the constitutional right to participate actively in the political, economic, social and cultural life of the nation.<sup>169</sup> This can only be done through the exercise of free expression. Yet Cambodians have continued to face obstacles to their right to freedom of expression and their right to participate in democracy. Attempts to hold peaceful protests and demonstrations appealing for justice with respect to social and economic problems have been unjustifiably restricted. People protesting land evictions for example have been subject to police brutality. Teachers, students and workers that have criticised the RGC have been threatened, intimidated and even imprisoned in the exercise of their fundamental right to freedom of expression. The continuous suppression of freedom of expression denies the people the ability to actively participate in democratic society and - in a climate where parliamentarians are marginalised, media self-censored and human rights activists scared into silence – they are left with no peaceful outlets to voice their grievances.

### 7.2 Limiting Freedom of Expression as Part of Individual Dignity

As noted in Chapter Two, freedom of expression is fundamental for individual dignity. It is how people express their interests, their identity. In this regard, freedom of speech is not simply about words said or written, it is about actions and conduct that reflect the individual. Over the last twelve months there have been a number of restrictions on these sorts of forms of expression. The banning of the Miss Landmine 2009 contest in Cambodia is one such example.<sup>170</sup> Miss Landmine Cambodia was organised to highlight and raise awareness about a very serious problem. It also offers members of a marginalised group within Cambodia the chance to exercise their freedom of expression, a freedom that is formulated on the basis of dignity and justice for all. The RGC stated that the competition "*would make a mockery of Cambodian landmine victims*" and undermine their "*dignity and honour*".<sup>171</sup> Such a paternalistic response – regardless of whether or not it was motivated out of a genuine concern for the individuals involved in the competition – is reflective of the attitude of the RGC to the rights of the people: an attitude that says to the people, listen to us because we know best.

Freedom of expression, as it is manifested in how people dress, has also been targeted. There were reports in 2009 of students being forced by the police to cut their hair.<sup>172</sup> In early 2010, a CCHR staff member witnessed culture police in a nightclub asking women dressed in skimpy clothes if they were foreign or Cambodian; those who responded that they were Cambodian were chastised by the police for conduct that the police perceived to as un-Cambodian.

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<sup>168</sup> Sar Mova, President of Cambodian Food Service Workers Foundation, in LICADHO, CFSWF and CLEC, Joint Organisation Press Release, *International Human Rights Day Announcement: We All Need Freedom of Expression and Justice*, 9 December 2009, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=216>.

<sup>169</sup> Article 35 of the Constitution.

<sup>170</sup> Following the RGC's ban, the Miss Landmine Cambodia Contest took place in Norway.

<sup>171</sup> Tom Peck, "Cambodian authorities ban Miss Landmine contest", *The Independent*, 4 August 2009, available at: <http://www.independent.co.uk/news/world/asia/cambodian-authorities-ban-miss-landmine-contest-1766957.html>.

<sup>172</sup> Koh Santepheap, "Police Blotter: Long-haired Pupils Shorn by Police", *The Phnom Penh Post*, 2 June 2009.

These forms of actions fall far below the permitted restrictions in Article 19(3) of the ICCPR or the restrictions of freedom of expression in the Constitution. It is not for the state to determine what constitutes individual dignity. A plural society, which Cambodia is meant to be according to the Constitution, needs to protect the moral autonomy of individuals to go to bars, to have long hair, to participate in beauty pageants and so on. Whilst the attempts to restrict certain types of clothing and the ban on Miss Landmine may be based on the perceived best interests of the girls in question, they have the right to determine their own best interests and the opinions of others should not be imposed upon them in violation of Article 19.

### 7.3 Restricting Freedom of Expression on Matters of Public Interest

A healthy democracy relies on the people's opportunity to freely debate and to question and scrutinise government policy. Without being able to voice their opinions and their concerns, Cambodians are isolated from the decision-making process, are unable to hold their government to account and are prevented from improving Cambodia. Article 51 of the Constitution provides that "[t]he Cambodian people are the master of their country. All powers belong to the people, the people exercise these powers through the National Assembly, the Royal Government and the Judiciary." As such, all Cambodians need to be free to express opinions and ask questions about the exercise of power carried out by the various organs of the State without fear of criminal sanction.

Yet, they are not. Threats and criminal sanctions continue to be levied against those simply exercising their fundamental right to speak about issues that affect their daily lives or which arouse their concerns; issues such as land grabbing, minimum wage, or the state of democracy in Cambodia. In June 2009, Soung Sophorn, a resident of Boeung Kak Lake, was convicted of criminal defamation after he unveiled banners at his home saying "*Absolutely fighting against communist policy*" and "*People Suffer due to Cheap Government and Company.*" He had written the banners as a mark of protest against the granting of a 99-year lease over Boeung Kak Lake by the RGC to private developers, displacing the residents that lived there. Soung Soporn was arrested, charged and sentenced over the course of three days, with his trial taking place on a Saturday, a non-working day for the courts.<sup>173</sup> In January of this year, 600 anti-Vietnamese leaflets were found on the grounds of a high school in Takeo province. The leaflets stated that, "*January 7 is the day that Khmers fell into the iron grip of the communist [Vietnamese] who abused and occupied Cambodia. The communist dictatorship regime of Hun Sen is a puppet of the communist [Vietnamese], since they were installed by the [Vietnamese] when they came to power on January 7, 1979.*"<sup>174</sup> Prime Minister Hun Sen reacted to the distribution of the leaflets with the following retort: "*To the group of leaflet distributors: Be careful, I will arrest you.*"<sup>175</sup>

The reaction to the banners and leaflets proves the point that both these acts were seeking to make; that democratic principles have given way to more autocratic ones when threats or sanctions are used to suppress the freedom of the people to discuss and express opinions about issues of public concern. Indeed the anonymous production of leaflets shows that democratic space is shrinking with fear of persecution and punishment forcing people to speak in the shadows. Responding to criticism of the RGC or its policies with threats or sanctions is an undue restriction on freedom of expression in violation of Articles 19 of the UDHR and ICCPR and Articles 31 and 41 of the Constitution. Moreover, such irrational reactions and policy are at the expense of an important tenet of democracy: dialogue.

<sup>173</sup> CCHR, CLEC, IDEA, KKKHRA, LICADHO, *Joint Media Statement: Freedom of Expression in Cambodia is deteriorating*, 11 June 2009, available at: [http://www.cchrcambodia.org/English/add\\_press\\_release/press\\_release/joint\\_ms\\_foex\\_cambodia\\_deteriorating\\_110609\\_eng\(061109\\_1244713299\).pdf](http://www.cchrcambodia.org/English/add_press_release/press_release/joint_ms_foex_cambodia_deteriorating_110609_eng(061109_1244713299).pdf).

<sup>174</sup> As quoted in, Cheang Sokha, "PM vows to have leaflet gang jailed", *The Phnom Penh Post*, 6 January 2010.

<sup>175</sup> Comment by Hun Sen before an audience of several hundred at the inauguration of a stretch of National Road in Kandal province as quoted in "PM vows to have leaflet gang jailed", *Ibid*.

## 7.4 Freedom of Expression Through Peaceful Assembly

The crackdown on freedom of expression has not been limited to actions to prevent the distribution of written materials but has extended to efforts to curb peaceful protests and demonstrations. In 2009 there were 156 strikes and demonstrations in Cambodia, 71 cases protesting over land conflict, 37 over labour rights and working conditions and 48 related to other matters.<sup>176</sup> Of these 156 strikes, 34 were violently interrupted by the authorities, although strikers and demonstrators did not use or provoke any violence.<sup>177</sup> The demonstrations have related to all sorts of issues in the public interest, from protests demanding compensation from the Thai government in respect of the fighting at Preah Vihear to protests about land reform and illegal economic and social land concessions. Many of the land protests have ended with violence and arrest. On 1 March 2010, villagers from Proka Village in Dangkor District, who are involved in a land dispute with In Samon, the Deputy Secretary General of the Ministry of Interior, attempted to hold a demonstration outside the home of Prime Minister Hun Sen in Takhmao. After confrontations with villagers, the police arrested eight villagers. They were detained and eventually released but only after succumbing to threats by the police of imprisonment if they refused to thumb-print documents withdrawing their complaints about the land.<sup>178</sup>



**Figure 7.1: Over 200 villagers from 24 provinces and towns in Cambodia came to Phnom Penh on 15 June 2010 to deliver a petition to the Prime Minister bearing the thumbprints of some 60,000 people urging him to help resolve countless land, forest and fishery disputes. The group intended to march from Wat Botum to the Prime Minister's house but were blocked by military and municipal police armed with batons, shields, tear gas and pistols. 15 June 2010.**

<sup>176</sup> ADHOC, *Human Rights Situation Report 2009*, supra note 154, p.6.

<sup>177</sup> Ibid.

<sup>178</sup> May Titthara, "Takhmao protest pre-empted: Police detain Dangkor villagers, activists in row over 18 hectares of farmland", *The Phnom Penh Post*, 2 March 2010.

#### **Case Study 4: Kompong Speu - Legitimate Protest Silenced by Police Batons**

Following the arrest and detention of two community representatives, You Thou and Khem Vuthy, in connection with a land dispute involving Phnom Penh Sugar Company, which is owned by CPP Senator Ly Yong Phat, affected villagers drove to Kompong Speu Provincial Court. Villagers drove for hours to stand outside the courthouse in a show of solidarity with the arrested representatives. Police forces (made up of a mixture of criminal and military police) attacked their convoys with batons, disabling one mini-tractor by cutting its drive belt and setting up checkpoints to impede villagers' progress.<sup>179</sup> NGOs monitoring the situation reported that at least 3 villagers were beaten and 7 suffered minor injuries. The actions of the mixed police force represent an unpalatable infringement on freedom of expression and freedom of assembly, denying those affected by the land dispute the opportunity to voice their concerns.



**Figure 7.2: Military police face peaceful protestors in Kompong Speu, March 2010**

Denying ordinary Cambodians the right to express themselves through peaceful demonstration and strikes is to deny them the opportunity to express their grievances and gain access to justice when other forms of resolution, such as court action, may not be available to them, either because of their mistrust of the judiciary or due to financial constraints. The RGC action towards criticism raise two separate, but equally important, points about human rights in Cambodia. These points are well illustrated by reference to a march of Mu Sochua supporters following the Supreme Court hearing upholding her conviction for defaming Prime Minister Hun Sen. As supporters peacefully marched with white candles in the direction of where international donors and the RGC were meeting as part of the Cambodia Development Cooperation Forum meetings, they were met by riot police who blocked their way. The reaction to the march shows the tendency of the RGC to clampdown immediately on protests, no matter how small, no matter how peaceful, in denial of the right to freedom of expression. The march itself however shows that Cambodians have opinions that they want to express and voices that want to be heard which should be protected and promoted. The RGC's reaction to such exercises of expression however is no doubt intended to show the people that if they stand up to the RGC they will fail. Such policies have the potential of entrenching a feeling of exasperation into the Cambodian political and social landscape with regards to peaceful, legitimate expression, which has the potential of manifesting itself in more violent ways.



**Figure 7.3: Mu Sochua supporters' peaceful protest blocked by riot police, 2 June 2010.**

<sup>179</sup> May Titthara and Will Baxter, "Police, Villagers Clash in Kompong Speu", *The Phnom Penh Post*, 26 March 2010.

## 7.5 The Importance of Freedom of Expression for Stability

Undertaking peaceful protests, strikes and demonstrations, and producing and disseminating leaflets is how ordinary Cambodians can advocate for change without resorting to violence. The RGC needs to carefully consider the implications for the future of Cambodia of continuing to pursue a repressive policy towards freedom of expression. After years of bloody conflict, stability is a common goal for Cambodians. It is fundamental that the RGC recognises that concerns that criticisms of the RGC may destabilise Cambodia cannot be met by applying restrictions on expression, opinion and dissent. Rather, suppression has the potential to create the environment for a violent form of change. If the RGC continues to repressively restrict freedom of expression the result may appear to be an apparently stable political environment that is, in reality, merely the absence of audible dissent with anger bubbling under the surface.

The RGC has failed to consider how the exercise of freedom of expression can act as an essential safety valve for both stability and change, allowing people to let off steam where they might otherwise become bent on revolution. As noted by the UN OHCHR in Cambodia, *“experience in other countries shows that limiting freedom of expression, instead of addressing issues and criticism through discussion and reasonable debate...nurtures fear, frustration and anger with a risk of leading to further conflict and violence.”*<sup>180</sup> The importance of freedom of expression and rule of law as a way of balancing unrest is supported in the Johannesburg Principles: *“it is essential if people are not to be compelled to have recourse, as a matter of last resort, to rebellion against tyranny and oppression, that human rights be protected by rule of law.”*<sup>181</sup> There is a real risk that in the nascent democracy of Cambodia the continued suppression of the right to freedom of expression, *“especially in a context where the courts are vulnerable to executive influence”* may force this pressure point and erupt in a way that *“may undermine the efforts of the past... to rebuild a tolerant and pluralistic society in Cambodia.”*<sup>182</sup> It is thus of the most fundamental importance that the right of freedom of expression is properly respected by the RGC and properly protected by the rule of law. This means ensuring the independence, impartiality and transparency of the judiciary and the creation of good, strong laws that are clear, unambiguous and which respect all human rights, including the right of freedom of expression. If the RGC fails to address the situation of freedom of expression and the interrelated issues relating to rule of law and democracy, then we risk seeing Cambodia return to the horrors of its repressive past.

***“...experience in other countries shows that limiting freedom of expression, instead of addressing issues and criticism through discussion and reasonable debate...nurtures fear, frustration and anger with a risk of leading to further conflict and violence” – UN OHCHR Cambodia***

<sup>180</sup> UN OHCHR Cambodia, supra note 64, p. 1.

<sup>181</sup> Preamble of Johannesburg Principles on National Security, Freedom of Expression and Access to Information, November 1996, p. 6, available at: <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>.

<sup>182</sup> UN OHCHR Cambodia, supra note 64, p. 1.

## CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

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### 8.1 Conclusions

This Report has shown that the pillars of democracy in Cambodia – parliamentarians, the media, lawyers, human rights activists and the Cambodian people – are being systematically targeted by the RGC. Tactics of intimidation, harassment, threats and legal charges continue to be used to silence dissenting voices and criticism of governmental policies. As noted in this Report, violations of the right to freedom of expression in Cambodia are not new. However, since the Joint Submission, violations have become more sustained, more entrenched into the political and social climate of Cambodia, thanks in part to the use of the judiciary as an organ of repression. The violations of freedom of expression discussed throughout this Report not only represent the perilous state of freedom of expression in Cambodia but also the perilous state of democracy. We believe that the RGC's disregard for freedom of expression is a grave threat to the democratic development of Cambodia.

There is much that the RGC needs to do to guarantee freedom of expression in Cambodia. The question then is when will it address these points and why has it been delaying? Whilst we applaud the acceptance by the RGC of all 91 recommendations made under the UPR process, we have yet to see any movement towards the substantive changes required to implement the commitments it has made in relation to freedom of expression.<sup>183</sup> There appears to be a lack of political will on the part of the RGC to rectify the situation, with instead a steady deterioration of freedom of expression as a result of policies that appear to purposely target the right. As noted by Yash Ghai, a country coming out of such intense conflict and oppression such as Cambodia needs to build trust between the people and the State. Such trust is built only by respecting the rights of all people.<sup>184</sup> It is therefore paramount for the RGC to recognise the importance of protecting and promoting freedom of expression not simply as a right in itself, but as a fundamental condition to the continued stability and ongoing development of Cambodia.

The international community equally needs to take notice of the backward slide in Cambodia's democratisation and the potential ramifications if freedom of expression continues to be eroded, and must take active steps to combat it. We commend the United States of America (the "United States"), the United Kingdom and the Federal Republic of Germany ("Germany") for speaking out on the situation of human rights in Cambodia.<sup>185</sup> In this regard, it is important to recall that a number of countries<sup>186</sup> undertook in the Paris Peace Agreements to "promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia" and "to prevent the recurrence of human rights abuses."<sup>187</sup> While the RGC may contend that the implementation and protection of human rights in Cambodia is an internal issue,<sup>188</sup> not subject to

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<sup>183</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, 4 January 2010, A/HRC/13/4, pp. 17 - 18 available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A\\_HRC\\_13\\_4\\_KHM\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_13_4_KHM_E.pdf).

<sup>184</sup> Report to the Economic and Social Council, *Report of the Special Representative of the Secretary-General for Human Rights in Cambodia*, Yash Ghai: *Addendum* (E/CN.4/2006/110/Add.1), 8 March 2006, p. 5, available at: [http://cambodia.ohchr.org/WebDOCs/DocReports/1-SR-SRSG-Reports/SRSG\\_HR\\_CMB08032006E.pdf](http://cambodia.ohchr.org/WebDOCs/DocReports/1-SR-SRSG-Reports/SRSG_HR_CMB08032006E.pdf).

<sup>185</sup> For example, in February 2009, the German Ambassador to Cambodia attempted to assist Mu Sochua to gain entry to the Third Cambodian Economic Forum, which was attended by CPP members and international donor organisations, which she was barred from attending. He was unsuccessful and boycotted the forum as well; See Meas Sokchea, "SRP MP Mu Sochua barred from economic forum, German Ambassador boycotted forum: Hun Sen's discrimination policy", *The Phnom Penh Post*, 6 February 2009. The British Ambassador in September 2009 participated in a seminar to celebrating International Day of Democracy, where he talked of the importance of fostering free debate, available at: <http://ukincambodia.fco.gov.uk/en/news/?view=Speech&id=20875445>. The United States of America suspended military shipment of 200 vehicles following the deportation by the RGC of 20 ethnic Uighurs back to the Peoples Republic of China ("China") where they are likely to be ill treated or worse. One day after the deportation, the RGC received US\$1.2 billion of aid from China; See Vong Sokheng and Sebastian Strangio, "Govt unconcerned about US retaliation", *The Phnom Penh Post*, 5 April 2010; Cheang Sokha, "China steps in with lorries", *The Phnom Penh Post*, 3 May 2010; and Brooke Lewis, "US bill targets Kingdom over Uighur Case", *The Phnom Penh Post*, 26 May 2010.

<sup>186</sup> For example, the United States, United Kingdom, France, Japan and Australia.

<sup>187</sup> Article 15(2)(b) of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict 1991.

<sup>188</sup> In April 2010, the RGC complained that some mission heads had behaved like "proconsuls" in giving lessons to the government and in a letter from the Foreign Ministry warned diplomats to "avoid interfering in the internal affairs of the

international 'interference', Cambodia signed the Paris Peace Agreements and, together with eighteen other international signatories and the UN, undertook to protect and promote human rights in Cambodia. This is a legally binding obligation that the RGC, and the other signatories, cannot merely cast aside and ignore. As such, it is incumbent on the international community together with the RGC to take appropriate steps to ensure respect for human rights and work to ensure that violations are addressed and prevented.

For over a decade the international community has provided aid to Cambodia but has remained largely silent as human rights have been violated and democratic space eroded. The international donor community must acknowledge that it is not enough to throw money at problems and hope that the RGC will act in the interest of the people. With "*China's patronage of Cambodia's government*" growing and "*Cambodia looking more like its neighbours*",<sup>189</sup> it is even more important for those providing aid to counter this influence and push for transparency and human rights protection. Former US Ambassador to Cambodia Mr. Mussomeli recently noted, "*one of my favourite Cambodians likes to say he prefers friends who help Cambodia with no strings attached. I like those friends too, but they really don't exist.*"<sup>190</sup> Whilst China's patronage of the RGC grows, this patronage is itself not without conditions. The RGC still needs other foreign aid,<sup>191</sup> trade and investment to develop and effectively govern Cambodia. As such, those countries that value democracy and human rights have the capacity to make a real impact on the human rights situation in Cambodia, by putting genuine conditions on their dealings with Cambodia in order to hold the RGC to its human rights obligations under domestic and international law. We call on the international donor community to not shirk its responsibility, sitting idly by as the situation of civil and political rights deteriorates and democracy flounders in Cambodia. The international community has a duty, moral and legal, to exert the necessary pressure and use their political and financial leverage to ensure that the RGC respects human rights and promotes democracy in Cambodia. As respect for civil and political rights deteriorates in Cambodia it is time for all to stand up, take notice and take action before authoritarian forms of control become normalised and Cambodia is pushed closer to the precipice of instability.

We therefore make the following recommendations to the RGC, listed in reference to the pillars of democracy identified in this Report, and to the international community:

## 8.2 Recommendations to the RGC

### General

- Seriously consider the risk to stability and Cambodia's interests if the RGC fails to protect and promote freedom of expression.
- Ratify the First Optional Protocol of the ICCPR to enable Cambodians to submit complaints to the HRC relating to violations of their freedom of expression and other human rights.
- Invite the UN Special Rapporteur on Freedom of Expression to visit and assess the situation in Cambodia, and to make recommendations for improving protection of the right to freedom of expression.
- Request the Constitutional Council, through the Prime Minister or one-tenth of the members of the National Assembly, to consider the constitutionality of criminalising defamation and disinformation in the Penal Code considering that the Constitutional Council has previously ruled that international law is part of Cambodian law, and that international best practice, including recommendations from the Special Mandates on freedom of expression, say defamation and disinformation should be a civil not a criminal offence.

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*host country*", claiming that Cambodia "*is not a 'banana republic'*", see *KI-Media*, "Hun Sen's regime; Don't call us 'banana republic'...", 28 April 2010.

<sup>189</sup> Brendan Brady "Cambodia's One Party Future", *The Wall Street Journal*, 17 February 2010.

<sup>190</sup> Ian Williamson, "Cambodia-US Relations, Past and Present, Discussed at Symposium", *The Cambodia Daily*, 22 July 2010.

<sup>191</sup> At the 2010 Cambodia Development Cooperation Forum held over 2 - 3 June 2010, international donors pledged a total of US\$1.1 billion in aid. For further details see: Sebastian Strangio and Nguon Savan, "\$1.1 billion pledged in donor aid", *The Phnom Penh Post*, 4 June 2010.



- Reform the law on defamation and disinformation by decriminalising the offences and replacing the law with a new civil law code. As part of this reform, prohibit public bodies of all kinds from bringing defamation actions.
- As per the recommendation of the United Kingdom in the Report of the Working Group of the UPR, also provide clear guidance to judicial officials so that the provisions in the Penal Code are interpreted in line with international standards on freedom of expression,<sup>192</sup> seeking, where appropriate, assistance from the international community and the Special Procedures, particularly the Special Rapporteur on Freedom of Expression, in establishing such guidance.
- Improve access to public information by drafting and implementing a Freedom of Information Law.

### **Parliamentarians**

- “*Re-examine the modalities for lifting parliamentary immunity to ensure that this practice does not contravene the principles of pluralism and freedom of expression*”, as per the recommendations in the Report of the Working Group of the UPR,<sup>193</sup> including reforming the Statute of Parliamentarians so that it is in line with principles of freedom of expression and the provisions enshrined in the Constitution, particularly Article 80, which provides that no assembly member shall be prosecuted, detained or arrested because of opinions expressed whilst exercising his or her duty.
- Amend the parliamentary internal rules to remove the grouping requirements so that MPs can freely speak and represent their constituency without restriction.
- Commit to respecting freedom of expression of opposition parliamentarians and encourage dialogue and debate between the political parties in Cambodia by reprimanding officials who try and to stymie political debate through acts of intimidation or threats of criminal sanction.

### **The Media**

- Review the Press Law with a view to adopting amendments to bring it in line with the right to freedom of expression, including a clarification of the definitions of “*good customs of society*”, “*national security*” and “*political stability*” so that there is a greater nexus between publication and a serious risk of substantial harm.
- Respect principles of freedom of information as legislated for in the Press Law by more readily providing journalists with access to information in government held records.
- Commit to ensuring that journalists and others in the media are not intimidated or threatened whilst exercising their profession and their fundamental right to freedom of expression by reminding all government officials that they cannot sue people for matters of opinion. If government officials are offended by an article or publication, the first point of action must be to make a request for a correction of the facts to the editor or publisher. If the official still wants to pursue legal action, as per the Press Law and the new Penal Code, this must be under civil not criminal law.
- Commit to ensuring effective measures are in place to promptly investigate and punish all reported cases of harassment, threats, violence or other inferences with journalists.
- Improve the access of the opposition political parties and civil society to broadcasting and being heard on television and radio broadcasts by increasing the number of radio frequencies and the number of television and radio broadcasting licences.

### **Lawyers**

- Ensure all lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference.

<sup>192</sup> Recommendation from the United Kingdom in *Report of the Working Group of the Universal Periodic Review*, supra note 183, p. 17, para. 46.

<sup>193</sup> Ibid., Recommendation from France, p.17, para. 48(b).

### **Human Rights Activists**

- As per the recommendations in the Report of the Working Group of the UPR, strengthen efforts to protect freedom of expression of all human rights activists to conduct their work without hindrance or intimidation.<sup>194</sup> This should include providing training to law enforcement personnel and local authorities on the principles of freedom of expression and assembly to ensure that peaceful activities undertaken by human rights activists are not unduly restricted.
- Take immediate steps to investigate and prosecute alleged perpetrators of violence and intimidation against human rights activists.
- Ensure that any new NGO Law respects NGOs' freedom of expression and association, consulting, as appropriate, with civil society organisations and others to ensure that these fundamental rights are adequately protected.

### **The People**

- Ensure that all individuals are allowed to express views freely and openly without fear of arrest, violence and other forms of intimidation. One way this can be achieved is by encouraging government officials to become involved in public forums where Cambodians can freely and peacefully raise and discuss issues that directly concern them, as part of civic participation.
- Take steps to ensure that the Demonstration Law is not used to prevent Cambodians peacefully assembling together to voice opinions by providing guidance to municipal authorities and the Ministry of Interior about meetings held in private and the limited circumstances in which '*good customs of national society*', '*public order*' and '*national security*' can be used to ban a demonstration/peaceful gathering.
- Pursuant to Articles 147 to 149 of the Constitution, provide for an annual National Congress whereby Cambodians can meet their rulers "*to be directly informed of various matters of national interest.*" This could take the form of a 'state of the union' where the RGC comes together before the Cambodian people and explicitly sets out its policy plans for the next year.

## **8.3 Recommendations to the International Community**

- Publicly demand that the RGC fulfil its obligations to protect and promote human rights of Cambodians, urging the RGC to take action to implement the 91 recommendations it accepted as part of the UPR process.
- Adopt a human rights-based approach to aid policy and take a tougher line on linking financial assistance to the RGC demonstrating a real commitment to, and showing tangible improvements in, human rights.
- Maintain funding and technical support to local NGOs and others working towards the realisation of human rights in Cambodia.
- Speak out in support of parliamentarians, the media, lawyers, human rights activists and the Cambodian people who are being persecuted for exercising their fundamental right to freedom of expression. This support can be an invaluable source of strength and confidence for Cambodians who risk so much in their struggle for the fundamental right to freedom of expression and democracy.

Phnom Penh  
September, 2010

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<sup>194</sup> Ibid., Recommendation from Sweden, p. 18, para. 51.

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The fundamental right to freedom of expression is becoming increasingly eroded in the Kingdom of Cambodia ("Cambodia"). Violations of the right have intensified with tactics of intimidation, threats, harassment and spurious legal charges being used as a means of silencing criticism. The Royal Government of Cambodia has breached its constitutional and international human rights obligations, with the legal system being used as a means of suppressing meaningful discourse.

This joint Report examines the situation of freedom of expression in Cambodia over the past twelve months and how the pillars of Cambodia's democracy have been targeted; opposition parliamentarians, the media, lawyers, human rights activists and the people.

