Briefing Note: an overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent

Introduction

This Briefing Note sets out the right to freedom of expression as protected under Cambodian law, provides an overview of all applicable legal provisions that relate to defamation or otherwise impact upon the right to freedom of expression in the Kingdom of Cambodia ("Cambodia"), and discusses several recent case examples in which these provisions have been used as a tool to silence critics of the Royal Government of Cambodia (the "RGC") and its policies. This Briefing Note is intended as a legal guide for the benefit of all human rights defenders ("HRDs") – including journalists, human rights activists, non-governmental organization ("NGO") workers, lawyers and politicians – as well as, more widely, an exercise to raise awareness as to how the right to freedom of expression is protected in theory and abused in practice in contemporary Cambodia.

The right to freedom of expression

The Human Rights Committee, monitor of the International Covenant on Civil and Political Rights (the "ICCPR"), states that "*freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.*"[1]

The right to freedom of expression is guaranteed under Cambodian law. Article 41 of the Constitution of the Kingdom of Cambodia (the "Constitution") states that all citizens shall have freedom of expression. Article 31 states that Cambodia shall recognize and respect the Universal Declaration of Human Rights (the "UDHR") and the covenants and conventions related to human rights, which includes the ICCPR. Furthermore, the ICCPR is directly incorporated into Cambodian domestic law by virtue of being ratified by Cambodia in 1992, with such incorporation confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that "*international conventions that Cambodia has recognized*" form part of Cambodian law.[2] Article 19 of each of the UDHR and the ICCPR provide for the right to freedom of expression of everyone. In addition, Article 35 of the Constitution provides that all Khmer citizens shall have the right to participate actively in the political life of the nation.

[1] Human Rights Committee, General Comment No. 34, 102nd session, Geneva, 11-29 July 2011 (CCPR/C/GC/34), General Remark 3.

[2] Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

Decriminalizing defamation?

In the lead-up to a "Consultative Group" meeting to discuss aid contributions with international donors held in March 2006,[3] Prime Minister Hun Sen made a promise to the international community to decriminalize defamation.[4] As a result, on 26 May 2006, the National Assembly amended Cambodia's existing criminal code, removing incarceration as a penalty for defamation. While undoubtedly a step in the right direction, the removal of incarceration does not equate to decriminalization.[5] More than six years have now passed, and defamation remains a criminal offense punishable by significant fines. Indeed, the offense was included in a new criminal code which came into force in December 2010 – the 2009 Penal Code of the Kingdom of Cambodia (the "Penal Code") – the RGC apparently eschewing an obvious opportunity to deliver upon the Prime Minister's previous promise. Furthermore, non-payment of a fine is still an offense punishable by a prison sentence under Article 525 of the Cambodian Criminal Procedure Code (the "CCPC"). The terms of imprisonment for non-payment of a fine are set out in Article 530 of the CCPC, and range from ten days' to two years' imprisonment, depending on the amount of the fine. For non-payment of a fine of between five million and one riel,[6] and ten million riel – the latter being the maximum fine for defamation – the penalty is six months' imprisonment. The removal of the prison sentence for a defamatory offense does not, therefore, remove the possibility of going to prison for a period of six months as a result of such an offense.

Defamation legislation

The pieces of legislation most relevant to the offenses associated with freedom of expression in Cambodia are: (i) the Penal Code; (ii) the 1992 Provisions Relating to the Judiciary and Criminal Law and Procedure in Cambodia During the Transitional Period (the "UNTAC Code"); and (iii) the 1995 Law on the Regime of the Press (the "Press Law"). The relevant provisions of these laws are outlined in the three sections below.

1. The Penal Code

As stated above, the Penal Code came into force in December 2010. The Penal Code has been criticized by human rights groups, including the Cambodian Center for Human Rights ("CCHR")[7] and ARTICLE 19,[8] as another weapon in the arsenal of the RGC and the governing Cambodian

[3] LICADHO, "Briefing Paper: Attacks and Threats Against Human Rights Defenders in Cambodia", December 2006, page 4, available at: http://www.licadho-cambodia.org/reports/files/98LICADHOPaperHumanRightsDefender2006.pdf.

[4] Yun Samean, "Hun Sen: Defamation Should Be Decriminalized", *The Cambodia Daily*, 15 February 2006; "Prime Minister Promises to Decriminalise Defamation", *Reporters Without Borders*, 7 March 2006, available at: http://en.rsf.org/cambodia-prime-minister-promises-to-07-03-2006,16180.html.

[5] The removal of incarceration for defamation is largely attributable to the advocacy and campaigning of the Alliance for Freedom of Expression in Cambodia ("AFEC") which was founded and led by Ou Virak, CCHR President.

[6] There are approximately 4,000 Cambodian riel to the US dollar.

[7] CCHR, "Penal Code – Freedom of Expression in Jeopardy", 16 October 2009, available at: http://www.cchrcambodia.org/admin/media/press_release/press_release/english/2009-10-16.pdf.

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

People's Party (the "CPP") – in their ongoing campaign to silence those who dare to speak out against their policies, acts and omissions. The Penal Code retains the criminal offense of defamation – notwithstanding, as mentioned above, the promises made by Prime Minister Hun Sen in February 2006 that the crime would be removed from the statute books.

In fact, the Penal Code further extends the scope of defamation beyond natural persons – to criminalize comments that are held to undermine the honor or reputation of institutions. Defamation is accompanied by a plethora of other offenses in the Penal Code which erode the right to freedom of expression. **Article 502** provides for the imprisonment of individuals whose words, gestures, written documents, pictures or objects are held to undermine the dignity of a public official or "*holder of public elected office*", while **Article 523** criminalizes any criticism of court decisions which is said to be aimed at "*disturbing public order*" or "*endangering an institution*" of Cambodia. Such provisions are contrary to international standards which recognize the importance of open criticism of government and public authorities in a democracy, and restrict any entitlement of public bodies to bring defamation actions.[9] For example, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights state 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.*"[10] Furthermore, Article 39 of the Constitution provides a clear right to denounce a breach of the law, be it through the media or other commentary, when it states that "*Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties*."

As **Articles 502** and **523** of the Penal Code would seem to impinge upon the rights enshrined in Article 39 of the Constitution, it can be argued that these provisions are unconstitutional. The repressive provisions of the Penal Code suggest that one of its primary objectives is to ensure that those in power are shielded from criticism, while those who are not must think very carefully before voicing opinions that run counter to those of the RGC and/or the CPP. In the words of Khieu Kanharith, the Minister of Information, commenting on the passage of the Penal Code: *"Before using the argument of 'freedom of expression' and opposition party status, some people could insult anybody or any institution. This is not the case now"*.[11]

Article 12 of the Penal Code establishes that the scope of the Penal Code is Cambodia – "*the territory of the Kingdom of Cambodia includes its corresponding air and maritime space.*"

[9] ARTICLE 19, "Briefing Note on International and Comparative Defamation Standards", February 2004, pages 6-7, available at: http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf.

[10] United Nations ("UN") Commission on Human Rights, "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights", 28 September 1984, E/CN.4/1985/4, available at: http://www.unhcr.org/refworld/docid/4672bc122.html.

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

However, **Article 17** states that the Penal Code is applicable to "any *person who, in the territory of the Kingdom of Cambodia, instigates or is an accomplice to a felony or misdemeanour committed abroad, if the following two conditions are fulfilled:*

1. *The offence is punishable under both the Cambodian law and the foreign law; and*
2. *The fact that the offence was committed is established by final judgment of a foreign court.*"

In other words, if an organization or individual is successfully prosecuted for instigating or facilitating an offense overseas that is also a felony[12] or misdemeanor[13] offense in Cambodia, such instigator or accomplice may be prosecuted in Cambodia under the Penal Code. With regards to freedom of expression crimes, charges cannot be brought for defamation (**Article 306**), public insult (**Article 307**) or insult of a public official (**Article 502**), as they are classified only as "petty offences".[14] However, as stated above, charges can be brought where the alleged offense amounts to a "misdemeanour", including malicious denunciation (**Articles 311** and **312**), incitement to commit felonies or discrimination (**Articles 495** and **496**), or any of the offenses relating to judicial decisions and investigations (**Articles 522** to **524**).

Article 19 of the Penal Code provides that a Cambodian citizen can be penalized and prosecuted under the Penal Code if he or she commits a misdemeanor offense in a foreign country, where that offense is also an offense punishable under the national law of that country. Acts of malicious denunciation, incitement to commit felonies or discrimination, or any of the offenses relating to judicial decisions and investigations, as misdemeanor offenses, fall within this category. Furthermore, **Article 22** states that Cambodian criminal law is applicable to any offense committed outside Cambodia, if the offense in question qualifies either as an infringement against the security of Cambodia, an offense against Cambodian diplomatic or consular agents or premises, or a counterfeit of the national seal or bank notes.

Article 42 of the Penal Code indicates that where expressly provided by law and/or statutory instruments, legal entities may be held criminally liable for offenses committed on their behalf by their organs or representatives. The criminal responsibility of the legal entity does not exclude the criminal responsibility of natural persons for the same acts. This provision is particularly relevant to advocacy NGOs, newspapers and political parties, as individuals accused of an offense can also be held liable, regardless of any charges brought against the legal entity itself. **Article 18** of the Penal Code provides that *"the characterization of an offence committed*

[12] A felony is a serious offense with a penalty of imprisonment for a period greater than five years (**Article 46**). None of the defamation offenses in itself constitutes a felony.
[13] A misdemeanor is defined as an offense for which the maximum prison sentence is more than six days but less than five years (**Article 47**).
[14] A petty offense is an offense for which the maximum imprisonment allowable is six days or less, or an offense that is punishable solely by a fine (**Article 48**).

by a legal entity as a felony, misdemeanour or petty offence is determined by the penalty incurred by a natural person."

The Penal Code establishes a "carve-out" with regards to the application of criminal sanctions in cases when the media are charged with certain defamatory offenses. **Articles 306**, **308** and **497** of the Penal Code stipulate that defamation and public insult, when perpetrated by the media, and incitement, when perpetrated by the print media, should be prosecuted under the Press Law, including any civil penalties available under the Press Law; however, it remains to be seen how such provisions will be applied in practice (please see the section on the Press Law below).

The key provisions in the Penal Code that relate to defamation and similar offenses are set out in the table below:

Criminal penalties applicable under the Penal Code			
OFFENSE	**ARTICLE**	**PENALTY**	**DEFENSE**
Defamation	**Article 305**	Fine of 100,000 to 10 million riel	**Articles 35** and **36** of the Penal Code provide for "necessity" and "force or constraint" defenses to all defamatory offenses under the Penal Code. The application of both these defenses is severely limited. **NB:** This defense is unlikely to be applicable to defamation, incitement or insult charges unless circumstances arise in which such acts are committed under physical or mental duress. A
Public insult	**Article 307**	Fine 100,000 to 10 million riel	
Additional penalties for defamation and insult	**Article 310**	• Publication of the sentencing decision on the courts' public notice board; • Publication of the sentencing decision in the print media; and • Broadcasting of the sentencing decision by any means of audio-visual communications for a period of up to 8 days.	
Malicious denunciation	**Articles 311** & **312** Additional penalties at **Article 313**	Imprisonment of 1 month to 1 year, and a fine of 100,000 to 2 million riel **Additional penalties:** • Publication of the sentencing decision on the courts' public notice board for a period of not more than 2 months; • Publication of the sentencing decision in the print media; • Broadcasting the sentencing decision by any means of audio-visual communications for a period of not more than 8 days; and • In cases where the subject matter of	

		the malicious denunciation has led to criminal prosecution, the action which constitutes the offense shall be suspended until the trial has been concluded. **NB:** The limitation period under **Article 312** restricts the period in which this offense can be prosecuted to 1 year after the criminal action.	defamation offense perpetrated without any external influence is within the control of the person committing it and, as such, would not amount to an act committed under force or constraint.
Incitement to commit felony[15]	**Article 495**	Applies to cases where there was direct incitement to commit a felony or to disturb social security, <u>where the incitement was ineffective</u>: imprisonment of 6 months to 2 years, and a fine of 1 million to 4 million riel. **NB:** There is no penalty provision in the Penal Code for cases <u>where the incitement was effective</u>.	
Incitement to discriminate	**Article 496**	Incitement to discriminate, <u>where the incitement was ineffective</u>: imprisonment of 1 year to 3 years and a fine of 2 million to 6 million riel. **NB:** There is no penalty provision in the Penal Code for cases <u>where the incitement was effective</u>.	
Additional penalties for incitement offenses	**Article 498**	• Deprivation of certain civil rights definitively or for a period of not more than 5 years;[16] • Prohibition against possessing or carrying a weapon, explosive or	

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

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

[16] The civil rights that may be deprived are identified at **Article 55**. They include the rights to: vote; stand for election; work in public office; be designated as an expert, arbitrator or judicially-appointed official; receive all official decorations and honors; and testify under oath in court. They do <u>not</u> include fundamental freedoms such as the right to freedom of expression, *etc.*

		ammunition for a period of not more than 5 years; • Publication of the sentencing decision on the courts' public notice board for a period of not more than 2 months; • Publication of the sentencing decision in the print media; and • Broadcasting of the sentencing decision by any means of audio-visual communications for a period of not more than 8 days.	
Insult (addressed to a public official or holder of publicly elected office acting in the discharge or on the occasion of his or her office)[17]	**Article 502** Additional penalties at **Article 507**	Imprisonment of 1 to 6 days and a fine of 1,000 to 100,000 riel. **Additional penalties** • Prohibition against possessing or carrying a weapon, explosive or ammunition for a period of not more than 5 years; • Publication of the sentencing decision on the courts' public notice board for a period of not more than 2 months; • Publication of the sentencing decision in the print media; and • Broadcasting of the sentencing decision by any means of audio-visual communications for a period of not more than 8 days.	
Publication of commentary intended to unlawfully coerce judicial authorities	**Article 522**	Imprisonment of 1 to 6 months and a fine of 100,000 to 1 million riel **NB: Article 525** stipulates that an attempt to commit the offenses listed in **Articles 522-524** will be punishable by the same	

[17] "*The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of [the ICCPR]. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the [Human Rights] Committee expresses concern regarding laws on such matters as […], disrespect for authority, […], defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.*" (Human Rights Committee, General Comment No. 34, 102nd session, Geneva, 11-29 July 2011 (CCPR/C/GC/34), General Remark 38).

		penalties.	
Discrediting judicial decisions	**Article 523**		
False denunciation to judicial authorities	**Article 524**		
Additional penalties for **Articles 522-524**	**Article 526**	• Deprivation of certain civil rights definitively or for a period of not more than 5 years;[18] • Prohibition against pursuing a profession if the crimes are committed in the course of, or during the occasion of, pursuing this profession; the prohibition applies definitively or for the period of not more than 5 years;[19] • Confiscation of any instruments, materials or any objects which have been used to commit the offense or were intended to commit the offense;[20] • Prohibition against possessing or carrying a weapon, explosive or ammunition definitively or for a period not more than 5 years; • Publication of the sentencing decision for a period of not more than 2 months; • Publication of the sentencing decision in the print media; and • Broadcasting of the sentencing decision by all means of audio-visual communications for a period of not more than 8 days.	

[18] Please refer to footnote 16 above.

[19] Please note that **Article 56** provides that such a prohibition does not apply to elected office or union stewardship, nor in the case of press offenses.

[20] Please note that **Article 62** provides that confiscation may also apply to items or funds that are the subject of, or result from, the offense. It may even apply to "*utensils, materials and furnishings in the premises in which the offence was committed*". Please note that the confiscation cannot be prescribed if it would affect the rights of third parties.

Civil penalty provisions applicable under the Penal Code			
There are no provisions for civil penalties applicable under the Penal Code. Damages or compensation are subjectively decided by the judge, supposedly based upon the amount of damage, in monetary terms, which the victim has suffered to their honor or dignity. The process for initiating a civil action is set out by **Article 309** of the Penal Code.[21]			

2. The UNTAC Code

During its tenure of Cambodia in 1991 to 1993, the United Nations Transitional Authority in Cambodia (the "UNTAC") regime initiated its own penal code, which the Supreme National Council (the "SNC"), with Prince (and soon to be King)[22] Sihanouk as its chairman, then adopted. The enactment of the Penal Code in December 2010, however, has meant that many of the UNTAC Code provisions have since been superseded, although CCHR presumes that they continue to apply insofar as: (i) an offense in the UNTAC Code is not replicated in the Penal Code; or (ii) at the time of any offense, the provisions of the Penal Code had not yet entered into force.

In relation to (i) above, in the absence of any explicit language in the Penal Code, it is presumed that if a person commits a crime that is/was an offense under the UNTAC Code but is not mentioned (or paraphrased or otherwise covered) in the Penal Code, then in theory that person can be prosecuted under the UNTAC Code, since the offense/provision in question will not have been repealed since the UNTAC Code itself has never been repealed. This argument is based on the principle of legality, which holds that unless a law is expressly repealed,[23] or it is impliedly repealed by virtue of conflicting and more recent legislation, then it is still good law.

As for (ii) above, Article 671 of the Penal Code stipulates that cases should be reviewed on the basis of the criminal code that was in force at the time of any alleged offense, namely the UNTAC Code (in this case). Furthermore, Article 5 of the Penal Code states that "*the judge can neither broaden his/her sphere of application nor proceed doing so by means of analogy*". This second point is clear then: no one can be tried for an offense that did not exist at the time that he/she is alleged to have committed it.

[21] **Article 309** provides that charges involving defamation or insult of a member of the RGC, a public civil servant or any citizen who is assigned to perform a public mission or public mandate must be filed by the person concerned or by the head of the institute concerned. When a private individual is insulted or defamed, the charge must be filed by that person. In each instance, the referral of the case for adjudication is made directly by the claimant by stating his or her residence in a province or municipality where the court receives the complaint. The court will then notify the accused and the prosecutor. However, if the defamation or insult is based on the claimant's origin, ethnicity, race, nationality or religion, the prosecutor may automatically file the charge.

[22] A title that he had previously held decades earlier.

[23] As anticipated by Article 9 of the Penal Code, which states that "*The new provisions which abolish an offence are immediately applicable. The acts committed before their effective date can no longer be prosecuted.*"

By way of example, the crime of "disinformation" – a provision from the UNTAC Code previously used regularly by the RGC to silence opposition voices (please see, for example, the case of Sam Rainsy below) – continues to apply despite its not being included in the Penal Code, because it has not been expressly repealed. However, some cases have seen a misapplication of the law: on 14 July 2011, the Appeal Court of Cambodia upheld a two-year prison sentence for Cambodian League for the Promotion and Defense of Human Rights ("LICADHO") employee Leang Sokchouen, but changed the charge on appeal from disinformation under **Article 62** of the UNTAC Code – the original sentence handed down by Takeo Provincial Court in August 2010 (before the Penal Code came into force) – to incitement under Article 495 of the Penal Code.[24] Convicting an individual of an offense that was not in force when the act in question allegedly occurred conflicts with the principle of legality – in breach of Articles 5 and 671 of the Penal Code – as well as breaching the defendant's right to know the nature and the cause of charges against him or her.[25] Given that the Penal Code is now in force, (ii) above will become less relevant as time goes on, although the case of Leang Sokchoeun shows that the courts have been known to apply the law incorrectly in order to enforce the RGC's crackdown on freedom of expression in Cambodia. This case is the second instance in which a charge of disinformation under the UNTAC Code has been changed to a charge of incitement under the Penal Code – the other case being that of Moeung Sonn, the president of the Khmer Civilization Foundation.

Article 10 of the Penal Code, however, legitimizes the retrospective application of the Penal Code's sentencing provisions where the maximum penalty provided for in the Penal Code is less severe than that provided for in the UNTAC Code for the same offense. The effect of this article is that the courts may use the Penal Code's provisions to sentence people for crimes committed before the Penal Code's provisions entered into force for charges brought under the UNTAC Code, but only where the Penal Code's maximum penalty is less onerous or draconian than the one that applies under the UNTAC Code and only when the offenses under the two pieces of legislation are the same or equivalent, *e.g.*, incitement. Instances where (ii) above applies must therefore be treated with a certain level of caution, in case the law is misapplied.

The UNTAC Code provides no clarification or provision in relation to jurisdictional scope, although it is clear from the context that it was intended to serve as an interim criminal code during the UNTAC period, before elections were to take place and, at some stage, new and long-lasting criminal legislation enacted.

The key provisions in the UNTAC Code that relate to defamation and similar offenses are set out in the table below:

[24] For more information, please see the 14 July 2011 press statement by LICADHO titled "Appeal Court Upholds Groundless Conviction of LICADHO Staff".
[25] Article 14(3) of the ICCPR.

Criminal penalties applicable under the UNTAC Code			
OFFENSE	**ARTICLE**	**PENALTY**	**DEFENSE**
Incitement leading to the commission of a felony	**Article 59**	• Imprisonment – length is variable depending on the type of felony committed; or • Fine – the amount will be dependent on the type of felony committed.	There are no applicable defenses provided for expressly under the UNTAC Code
Incitement <u>not</u> leading to a felony	**Article 60**	Imprisonment of 1 to 5 years	
Incitement to discrimination	**Article 61**	• Imprisonment of 1 month to 1 year; or • Fine of between 1 million and 10 million riel	
Disinformation	**Article 62**	• Imprisonment of 6 months to 3 years; • Fine of 1 million to 10 million riel; or • Both	
Defamation and libel	**Article 63**	For defamation committed via the means listed in **Article 59**:[26] • Fine of 1 million to 10 million riel; or • Publication of the court's sentencing decision at specified locations and publishing it in newspaper(s) at the expense of the convicted (up to 10 million riel).	
Civil penalty provisions applicable under the UNTAC Code			
Article 27(1) of the UNTAC Code allows victims or their beneficiaries to bring a civil action in a criminal case during the preliminary investigation or the sentencing hearing, in order to claim damages and costs against the defendant, co-defendant or accomplice(s) to the offense. **Article 27(2)** renders parties found guilty of the offense and their accomplices jointly liable for reparations or compensation in accordance with the			

[26] Including: speech, shouts or threats made in a public place or meeting; writings, publications, drawings, engravings, paintings, emblems, films or any other mode of writing; speech; film that is sold, distributed, offered for sale or displayed in a public place or meeting; signs or posters displayed in public; or by any other means of audiovisual communication.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Those found guilty of a criminal offense under any of the UNTAC Code provisions are therefore liable for civil damages too. **Articles 61** and **63** provide for additional civil liabilities, as listed below.			
Incitement to discrimination	**Article 61**	Employer, printer, publisher, or publishing or distribution company are jointly liable for payment of damages, which may be awarded to the victim(s) **NB:** Any association established pursuant to approval by the SNC, may intervene and bring a civil action against the party accused of the acts covered by this article by registering a complaint with the competent prosecutor and by petitioning the court to intervene.	There are no applicable defenses under the UNTAC Code
Defamation and libel	**Article 63**		

3. The Press Law

The Human Rights Committee states that "*a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other [ICCPR] rights. It constitutes one of the cornerstones of a democratic society.*"[27]

The Press Law was promulgated in 1995 amid concerns that certain of its articles would be used to silence legitimate critical commentary of the RGC's domestic and international policies and politics.[28] Both NGOs and the press have further criticized the Press Law on the basis that it adds additional constraints to expression when voiced or published by journalists.[29] Any such additional restrictions are incompatible with the provisions of Article 19 of the ICCPR, and may constitute a breach of a journalist's, editor's or employee's right to freedom of expression – a fundamental freedom to which all other members of society are equally entitled under domestic and international law (please see the section on "The right to freedom of expression" above).

[27] Human Rights Committee, General Comment No. 34, 102nd session, Geneva, 11-29 July 2011 (CCPR/C/GC/34), General Remark 13.
[28] Sahadi, Jeanne, "High-level CPJ mission gains access to Vietnam and Cambodia", Committee to Protect Journalists, 1996, available at: http://cpj.org/reports/1996/10/viet.php; also available at: http://www.cpj.org/attacks96/countries/asia/cambodiahrhs.html.
[29] ARTICLE 19, *Memorandum on The Cambodian Law on the Press*, October 2004, page 5, available at: http://www.article19.org/data/files/pdfs/analysis/cambodia-press-law-oct-2004.pdf.

The Press Law explicitly guarantees freedom of expression for the press as it "*determines the regime of the Press and assures freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the Constitution*" (**Article 1**). Furthermore, **Article 3** provides for the right to freedom from pre-publication censorship (**Article 3**). Publication of official information may not be penalized if such publication is fully true or an accurate summary of the truth (**Article 4**). However, the Press Law imposes content restrictions in relation to anything which "*may affect the public order by inciting directly one or more persons to commit violence*" (**Article 11**) or which "*may cause harm to the national security and political stability*" (**Article 12**) or which affects "*the good custom of society*" (**Article 14**). These terms remain undefined and are therefore potentially problematic because they are open to abuse and involve financial sanctions and, in the case of **Article 12**, the possibility of the Ministries of Information and Interior suspending publications for up to 30 days, without any recourse to appeal.

Article 12 also states that it does not take into account "*due punishment according to Criminal Law*". Since the enactment of the Press Law, there has been continual confusion as to which law should be used to prosecute journalists charged with defamation and similar offenses. **Article 20** states that "*any act committed by employers, editors or journalists that violate[s] the criminal law, shall be subjected to punishment according to Criminal Law.*" "Criminal law" refers to the UNTAC Code and – since its coming into force in December 2010 – the Penal Code.[30] However, **Article 20** goes on to say that "*no person shall be arrested or subject to criminal charges as the result of the expression of opinions*", while **Article 21** states that "*all previous provisions related to the press shall be abrogated*", both a clear indication that Article 63 of the UNTAC Code (defamation and libel) – which mentions journalists, publishers and editors – should no longer apply to the media, whatever legal procedures the courts follow in reality (please see below). The **Article 20** exemption together with **Article 21** contradict the first part of **Article 20** and **Article 12**, which allow for criminal prosecution under applicable criminal law. Furthermore, while **Article 20** might provide some protection, no indication or guidance is given as to what would constitute the expression of an opinion as opposed to an act of defamation or libel, which means that the effectiveness and reliability of this carve-out is unfortunately compromised due to the loose drafting of the provision.

In the case of *Mong Rethy & Ors v Keo Sothea (April 2002)*, an editor of an opposition-affiliated newspaper was charged with defamation under Article 63 of the UNTAC Code, but successfully argued that that article had been superseded by **Article 10** of the Press Law. Despite the court's acceptance of this argument, the issue as to which law should be applied in defamation suits against the print media remains unresolved, as journalists continue to be prosecuted for defamatory offenses under the UNTAC Code. It remains to be seen what the recent clarification

[30] It is assumed that, despite the possibility of fines, the term "criminal law" does not refer to the Press Law itself, partly due to the context and partly due to the rationale for, and objectives of, the Press Law, which were to remove those working in the media from the clutches of criminal defamation law, thereby promoting freedom of expression and a free press.

offered by the Penal Code with regard to offenses by the media will mean as regards the application of the Press Law. Furthermore, in *Mong Rethy*, Phnom Penh Municipal Court held that Keo Sothea could only face civil defamation charges (available under **Article 10**); however, journalists and editors continue to be hit with criminal rather than civil sanctions, in contradiction of this decision.

The Press Law contains a number of positive provisions which, in theory, afford vital protection to those in the media; however, there are too many vague provisions that actively threaten the right to freedom of expression, which need reviewing and amending, so that the legislation can do its best to protect and promote a free media, as hoped and anticipated in the mid-1990s. First and foremost, there should be no recourse to "criminal law" under the Press Law, and the current contradictions and ambiguities need to be resolved and the courts given a clear steer as to which law they should be applying. Furthermore, in light of the universal right to freedom of expression, there should be no criminal sanctions for defamation and other related offenses – a criticism that applies equally to the Penal Code. For there are real fears – given the current climate – that the RGC will continue to sidestep the Press Law in its ongoing campaign to harass and intimidate the media, silence opposition voices, and stifle democratic space in Cambodia, in violation of its commitments to freedom of expression under domestic and international law.

The Press Law contains no provisions relating to extra-territorial jurisdiction, and is therefore only applicable to Cambodian media published – or otherwise distributed – within Cambodia. As stated in the introduction to the section on the Penal Code above, the Penal Code (Articles 306, 308 and 497) stipulates that certain offenses, including defamation and insult when perpetrated by the media, and incitement when perpetrated by the print media, should be prosecuted under the Press Law.

The key provisions in the Press Law that relate to defamation are set out in the table below:

Criminal penalties applicable under the Press Law			
OFFENSE	**ARTICLE**	**PENALTIES**	**DEFENSE**
Defamation, libel or humiliation which harms the honor of a person	**Article 10**	Fine of 1 million to 5 million riel	**Article 20** of the Press Law provides that: "*Any act committed by employers, editors or journalists that violated the criminal law, shall be subjected to punishment according to Criminal Law. But nevertheless, no person shall be arrested or subject to criminal charges as* [a] *result of* [the] *expression of*
Incitement to commit violence	**Article 11**	Fine of 1 million to 5 million riel	
Publication of information affecting national security and political stability	**Article 12**	The employer, editor or author of the article may be fined between 5 million to 15 million riel	

		The Ministries of Information and Interior have the right to immediately confiscate the offending press publication. The Ministry of Information also has the right to suspend the publication for a maximum of 30 days and refer the case to court.	*opinion.*" While this prohibition provides some protection, the Press Law provides no indication or guidance as to what would constitute the expression of an opinion versus an act of defamation or libel. For this reason, this defense is by no means a complete defense, and is unlikely, in and of itself, to prevent successful prosecution; however, it is the only defense available under the Press Law.
Publication or reproduction of false information which humiliates national institutions	**Article 13**	Fine of 2 million to 10 million riel	
Publication of items that affect the good customs of society	**Article 14**	Fine of 1 million to 5 million riel	
Civil penalty provisions applicable under the Press Law			
Defamation and libel from false claims made in the media which harm people's honor and dignity	**Article 10**	• Publish a retraction; • Pay compensation; • Both; or • Publication of the court's sentencing decision in the print media at the expense of convicted party (cost must not exceed 1 million riel)	Please see above (defenses against criminal provisions)
Incitement to commit violence	**Article 11**	Victims have the right to bring a civil suit – no specific penalties listed. **NB:** Any article claimed to be inciting people to commit	

		violence may not be used by the courts as grounds for an accusation if it is more than 3 months old.	

Defamation used as a legislative tool by the RGC and the courts

The continued use of defamation actions and lawsuits for similar offenses appears representative of a trend to use Cambodia's courts as tools of oppression to silence critics of the RGC and its policies. This approach is evidenced by the following series of case examples, which, unfortunately, is by no means exhaustive:

1. **Mu Sochua** – A leading Sam Rainsy Party ("SRP") opposition parliamentarian was successfully prosecuted for defamation by Prime Minister Hun Sen, after having her parliamentary immunity controversially lifted. On 27 April 2009 Mu Sochua filed a lawsuit against the Prime Minister alleging defamation under Article 63 of the UNTAC Code in response to a speech given by Hun Sen in which he referred to an unnamed female opposition parliamentarian – Mu Sochua was easily identifiable in the context of the statement – as "*cheung klang*", a derogatory term that implies that someone is a gangster and/or especially when used in reference to a woman, a prostitute.[31] Article 63 of the UNTAC Code stipulates that "*the allegation or imputation is punishable, even if it refers to a person who is not explicitly named but whose identity is made evident from the defamatory speech, shout, threat, writing, printing, sign, poster, or audiovisual dissemination*."[32]

   After Hun Sen refused to retract his comments, Mu Sochua filed a lawsuit seeking 500 riel in symbolic compensation. The Prime Minister responded by filing a countersuit claiming that Mu Sochua had defamed him with comments that alleged that the derogatory language of the Prime Minister affected all Khmer women. A defamation suit was also threatened against Mu Sochua's lawyer, forcing him to drop the case and thus depriving her of her choice in legal representation. On 10 June 2009 the Phnom Penh Municipal Court dismissed the case against the Prime Minister, saying that it was groundless. Prosecutor Hing Bun Chea explained in a three-page statement that, since the Prime Minister's comments did not refer to Mu Sochua by name, and the Prime Minister did not intend to insult any individual with his comments, the lawsuit was not valid.[33] Such reasoning is a clear misapplication of Article 63 of the UNTAC Code as argued above.

[31] Radio Australia, "Opposition MP to sue Hun Sen for defamation", Radio interview between Robert Carmichael and Mu Sochua, 24 April 2009, available at: http://www.radioaustralia.net.au/connectasia/stories/200904/s2551808.htm.
[32] Emphasis added.
[33] CCHR, "Legal Analysis: The Case of The Kingdom of Cambodia V. Mu Sochua", May 2010, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=11&id=5.

The court moved ahead with the Prime Minister's countersuit. Mu Sochua's trial directly (and indirectly) involved a number of judges who were in a position to influence the judicial process and who had clear links to the Prime Minister and his party, the CPP. Mu Sochua was eventually found guilty of defamation and fined 16.5 million riel in fines and compensation. She refused to pay, saying that she would rather be imprisoned. This outcome was avoided when the sum owed was instead taken from her salary for her role as a member of the National Assembly. It would appear from CCHR's review of the CCPC and the UNTAC Code, that this step – presumably designed to avoid national and international condemnation – was taken without any apparent legal basis. In any event, it was not sanctioned by the courts. [34]

2. **Kevin Doyle and Noun Vannrith** – The editor-in-chief of *The Cambodia Daily* and one of the newspaper's journalists, respectively, were found guilty of defamation in 2009 and fined US$1,000 each. They were convicted of defamation under Article 10 of the Press Law for publishing an article referring to criticisms – attributed to SRP National Assembly member Ho Vann – against military officers in relation to the value of certificates awarded to the Cambodian army by a Vietnamese military school.[35] Ho Vann argued that he had been misquoted and that *The Cambodia Daily* had issued a clarification. Ho Vann was in fact found not guilty, but the journalists were convicted of defamation, in spite of their clarification.

3. **Sam Rainsy** – The eponymous head of the SRP and the newly merged National Salvation Party was convicted on 27 January 2010 for incitement to discrimination and on 23 September 2010 for disinformation (among other charges), both under the UNTAC Code. The events behind these charges centered upon Sam Rainsy's uprooting of border posts on 25 October 2009 in protest against alleged incursions by Vietnamese authorities. Sam Rainsy was sentenced to a total of 12 years' imprisonment – and millions of riel in fines and "compensation to the state" – although he remains in exile in France.[36]

4. **Seng Kunnaka** – An employee of the United Nations Food Program in Phnom Penh was arrested on 17 December 2010 by the Russei Keo district police and accused of sharing with his co-workers leaflets that he had printed from KI-Media – an anti-government website. Barely two days later, on the morning of 19 December 2010 – a Sunday and

[34] Meas Sokchea, "Sochua fine to be docked from pay", *The Phnom Penh Post,* 12 August 2010, available at: http://www.phnompenhpost.com/index.php/2010081241186/National-news/sochua-fine-to-be-docked-from-pay.html.
[35] Meas Sokchea and James O'Toole, "City court should spare daily staffers: Ho Vann", *The Phnom Penh Post*, 24 September 2009, available at: http://khmernz.blogspot.com/2009/09/city-court-should-spare-daily-staffers.html.
[36] For more information, please see CCHR's "Analysis of the Legal Grounds for Conviction and the Fairness of the Judicial Proceedings in the Criminal Cases Against Sam Rainsy", 22 February 2011, available at: http://www.cchrcambodia.org/index.php?url=media/media.php&p=analysis_detail.php&anid=1&id=5.

non-working day for the court – Seng Kunnaka was found guilty by the Phnom Penh Municipal Court of incitement to commit a felony under Article 495 of the Penal Code. He was sentenced to six months' imprisonment and fined 1 million riel (approximately 188 euros or US$246).[37] The conviction of Seng Kunnaka indicates that the RGC is ready to start punishing those who use the internet to share views contrary to those of the RGC. As with its punishment of those who express opinions through traditional media, it is assumed that this conviction was intended much less in retribution than as a deterrent – a message to all Cambodians as to the potential cost of using the internet to express views that conflict with those of the RGC.[38] Human Rights Watch condemned the decision in this case as a profound setback for freedom of expression in Cambodia.[39]

5. **Sam Chankea** – On 25 January 2011, Sam Chankea, a provincial co-ordinator of a human rights organization, the Cambodian Human Rights and Development Association, was found guilty of defamation under Article 63 of the UNTAC Code and Article 305 of the Penal Code for comments which he made on Radio Free Asia in 2009 regarding KDC International, a firm run by the wife of the Minister for Industry, Mines and Energy, which is involved in a long-standing land dispute in Kampong Chhnang province. Sam Chankea was ordered to pay a fine of one million riel as well as three million riel in compensation to the company.[40] This case demonstrates the risk attached to exercising the constitutional right to freedom of expression, particularly when criticizing the RGC or members of the elite. Furthermore, the Penal Code – or the threat of its sanctions – is proving itself to be the principal means by which the freedom of expression of all Cambodians is being stifled.

6. **Hin Piseth** – In March 2011, a motorcycle taxi driver was found guilty of incitement to discrimination by Phnom Penh Municipal Court for distributing anti-government leaflets and was sentenced to one and a half years in prison and fined US$750. Hin Piseth claimed that he picked up a female passenger who distributed the leaflets – which made, in the words of *The Cambodia Daily* – "*unfavorable comparison between [RGC] leaders and a race from another country*" – without his knowledge. As CCHR President Ou Virak commented in his reaction to this conviction: "*by imprisoning Hin Piseth, it seems the government wants to set a new precedent by imposing an obligation on all*

[37] International Federation for Human Rights (FIDH), "Cambodia: Assault on Freedom of Expression continues with conviction of UN staff", 23 December 2010, available at: http://www.fidh.org/Cambodia-Assault-on-freedom-of-expression.
[38] Human Rights Watch, "Cambodia: New Penal Code Undercuts Free Speech", 23 December 2010, available at: http://www.hrw.org/en/news/2010/12/22/cambodia-new-penal-code-undercuts-free-speech.
[39] *Ibid*.
[40] The Cambodian Center for Human Rights (CCHR) and Article 19, "Cambodia: Conviction of Sam Chankea is an Attack on Freedom of Expression", Press Release, 25 January 2011, available at: http://www.article19.org/data/files/pdfs/press/cambodia-conviction-of-sam-chankea-is-an-attack-on-freedom-of-expression.pdf.

citizens to not only refrain from speaking their minds but to ensure they don't associate, even unwittingly, with those who do." [41]

7. **13 Boeung Kak Women** – On 24 May 2012, 13 female representatives of the evicted communities at Boeung Kak were arrested, sentenced and imprisoned over the course of the day. The 13 women – Chan Navy, Chheng Leap, Heng Mom, Kong Chantha, Nget Khun, Nguon Kimleang, Phann Chhunreth, Pov Sophea, Song Sreyleap, Soung Sakmai, Tep Vanny, Tho Davy and Tol Sreypov – were convicted under Article 504 of the Penal Code 2009 (Aggravating Circumstances (Obstruction of Public Official)) and Article 34 of the Land Law 2001 (Illegal Occupation of Land). All 13 women were sentenced to two years and six months in prison, with five having six months of their sentences suspended, and a 72-year-old having a year-and-a-half of her sentence suspended. The charges relate to the women's peaceful protest at Boeung Kak on 22 May 2012.[42] On 27 June 2012, the Appeal Court reduced the sentences of the 13 women to one month and three days – the time served since their arrest – and they were released later that day. However, while the women were allowed home, injustice prevails for as long as the convictions against these women remain.[43]

8. **Loun Savath –** Human rights defender and monk, Venerable Loun Savath, was detained for about ten hours by the authorities on 24 May 2012. Loun Savath was physically manhandled and forced into a car before being driven away from the Phnom Penh Municipal Court shortly after he had been taking photos of people protesting against the arrest of the 13 Boeung Kak women.[44] Later, Loun Savath said that he had been forced to comply under duress and thumbprint an agreement in the presence of monastic authorities. Judge Duch Kim Sorn requested that the Minister of Justice Ang Vong Vathana conduct an investigation on charges of incitement. Loun Savath was threatened with being defrocked if he did not stay away from protests in future. A year earlier, Supreme Patriarch Nun Nget had banned Loun Savath from all pagodas in Phnom Penh by virtue of his record of human rights and community activism.[45]

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[41] The Cambodian Center for Human Rights (CCHR), "Conviction of moto driver sheds light on government paranoia", Comment to Media, 18 March 2011, available at: http://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=press_detail.php&prid=153&id=3.

[42] CCHR, "Legal Analysis of the Charging and Sentencing of 13 Boeung Kak Community Representatives on 24 May 2012", 11 June 2012, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=19&id=5.

[43] CCHR Press Release, "Release of Boeung Kak lake activists overshadowed by failure to achieve justice and further violence against peaceful demonstrators", 27 June 2012, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=260&id=5.

[44] Khouth Sophak Chakrya, "Activist monk Loun Savath detained", *The Phnom Penh Post,* 24 May 2012, available at: http://www.phnompenhpost.com/index.php/2012052456374/National-news/activist-monk-loun-savath-detained.html.

[45] May Titthara, "Agreement forced, Loun Savath says", *The Phnom Penh Post,* 28 May 2012, available at: http://www.phnompenhpost.com/index.php/2012052856419/National-news/agreement-forced-monk-says.html.

9. **Mam Sonando –** On 1 October 2012, Mam Sonando, the Director of independent Beehive Radio and President of the Democrat Association, was sentenced to 20 years' imprisonment and a fine of ten million riel, on charges of instigating an alleged secessionist movement in Kratie province in May 2012 and inciting people to take up arms against the state authority, under Articles 28, 456, 457, 464, 504 and 609 of the Cambodian Penal Code.[46] He was arrested on 15 July 2012. This is not the first time that Mam Sonando has been imprisoned on politically-motivated charges: in 2003, he was sentenced to two weeks in prison following the broadcast of a telephone call made to Beehive Radio, which the RGC considered to be incitement to commit crimes and to discriminate, under the UNTAC Code. Mam Sonando was then imprisoned for three months in 2005 on charges of defamation and incitement under the UNTAC Code, following an interview with France-based expert Sean Peng Se, which criticized Prime Minister Hun Sen's involvement in territorial concessions made to Vietnam.[47]

   Mam Sonando's sentencing is in connection with a report that was broadcast on Beehive Radio, discussing the communication brought to the Office of the Prosecutor of the International Criminal Court by the head of the Khmer People Power Movement, Suon Serey Rath, alleging the RGC's involvement in crimes against humanity as a result of forced land evictions.[48] However, after the death of a 14-year-old girl during protests at Pro Ma village, Kratie province, against the forced eviction of some 1,000 families, police arrested a number of individuals who they said were secessionists seeking to gain independence from Cambodia. The RGC claimed that the so-called secessionists had been plotting with the Democrat Association, led by Mam Sonando. Evidence for these claims have yet to be produced in court. Mam Sonando's only involvement in the Kratie incident was to report the violent eviction on Beehive Radio.[49] His case encapsulates the lack of respect for human rights and fundamental freedoms by the RGC, the shrinking space for freedom of expression, and the misuse of the judiciary to silence dissent. Mam Sonando has filed for appeal but as yet no date has been set.

10. **Chan Soveth –** On 9 August 2012, the Phnom Penh Municipal Court summoned Chan Soveth, senior investigator at the Cambodian Human Rights and Development Association ("ADHOC") to appear before the court on 24 August 2012, to answer charges of "providing assistance to the perpetrator" of a "crime", under Article 544 of

[46] CCHR Briefing Note, "The Case of Human Rights Defender Mam Sonando", August 2012, available at: http://www.ifex.org/cambodia/2012/08/03/cambodia_cchr_mamsonando.pdf and CCHR Press Release, "CCHR Slams Guilty Verdict for Mam Sonando as a Travesty of Justice and an Embarrassment to Cambodia's Reputation", 1 October 2012, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=293&id=5.
[47] CCHR Briefing Note, "The Case of Human Rights Defender Mam Sonando", August 2012, available at: http://www.ifex.org/cambodia/2012/08/03/cambodia_cchr_mamsonando.pdf.
[48] Ibid.
[49] CCHR Press Release, "Arrest of Mam Sonando a shameful attempt to muddy the waters over Kratie land conflict", 15 July 2012, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=265&id=5.

the Penal Code. The charges faced by Chan Soveth carry a potential sentence of one to three years' imprisonment.[50] They followed a speech made by Prime Minister Hun Sen on 1 August 2012 accusing an unidentified "human rights worker" of assisting criminals. It is believed that the human rights worker referred to was Chan Soveth and that the accusation against him is based on his human rights work with a land rights activist from Kratie province. The land rights activist in question was allegedly involved in the same secessionist movement, attempting to establish a state within a state, in Pro Ma village, Kratie province – the site of a 15,000-hectare land concession – mentioned above with regard to Mam Sonando. Evidence of a secessionist movement in Kratie has yet to be produced. The case of Chan Soveth is part of the growing judicial harassment that ADHOC and other human rights organizations and workers are facing everyday.[51] The summons represents yet another threat to hinder and harass human rights activists for exercising their lawful right to freedom of expression in Cambodia.

Conclusion

The legitimate exercise of free expression – whether by a parliamentarian, a reporter or just an ordinary citizen – should never be penalized by law. Freedom of expression is a pillar of democracy: it ensures the sanctity of the voice of the people, and is a societal safeguard against abuses of power and corruption by the state, which is fundamental to a fully functional democratic society. Creating an environment of self-censorship, in which reporters and parliamentarians are afraid to voice their opinions for fear of being sued or otherwise targeted, only eliminates society's access to information. In a 2010 briefing paper co-authored by CCHR, it was stated that "*freedom of expression has continued to be seriously undermined […], opposition parliamentarians' parliamentary immunity has been lifted to allow for politically motivated criminal charges of defamation, disinformation and incitement […] and the 'criminalization' of certain opinion has meant that the people have been denied their voice.*"[52] This snapshot remains a disturbingly accurate summary of the current situation as regards freedom of expression in Cambodia. If anything, the situation has deteriorated still further, as can be gleaned from the cases set out above. Defamation and similar offenses under the UNTAC Code have been used to silence legitimate dissent by parliamentary opposition, while civilians have also been penalized – under both the UNTAC Code and the Penal Code – for acts that fail to meet any level of criminality, and without either a fair trial or sufficient evidence to convict them. Such cases highlight the Cambodian judiciary's lack of independence and emphasize a

[50] World Organization Against Torture, "Cambodia: Judicial harassment of Mr. Chan Soveth", 16 August 2012 (KHM004/0812/OBS075), available at: http://www.omct.org/human-rights-defenders/urgent-interventions/cambodia/2012/08/d21898/.

[51] CCHR HRD Alert, "NGO worker summonsed by Phnom Penh Municipal Court", 15 August 2012, available at: http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=24&id=5.

[52] Action for Environment and Communities *et al*, "Cambodia Gagged: Democracy at Risk? Report on Freedom of Expression in Cambodia", 14 September 2010, page 1, available at: http://www.cchrcambodia.org/admin/media/report/report/english/2010-09-14-%20Briefing%20Paper%20on%20Freedom%20of%20Expression%20in%20Cambodia-EN.pdf.

political willingness on the part of the RGC to manipulate the law and the courts to crush any form of dissent.

Civil society and the general public have been sent a clear message – opposition will not be tolerated and criticism will be punished. Regardless of what laws are in force, no dissenter or activist – or anyone who assists them – is safe from being prosecuted for expressing a legitimate opinion. Prime Minister Hun Sen may have failed to live up to his promise to decriminalize defamation, but he has certainly followed up on his 2005 warning to his critics: "*be careful with the language of 'dictatorial regime'. Be careful, (or) one day legal action will be used.*"[53]

It is clear then that the trend as regards freedom of expression in Cambodia is towards "rule by law" rather than observance of the "rule of law" (the principle that no one is above the law). While 2012 has seen the return of violence as a live weapon in the state's armoury – in terms of silencing Cambodian voices – an increased sophistication in government policy has placed the judiciary in the role of enforcer. With the veil of legitimacy provided by laws tailor-made to curb the criticism and diffuse the international condemnation that the use of murder and violence generally attracts, the RGC is working diligently – through the judiciary and the legislature – to create and enforce a culture of fear and silence in Cambodia.

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The Cambodian Center for Human Rights (CCHR)
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Phnom Penh
Kingdom of Cambodia

Notes on CCHR

CCHR, founded in 2002, is a leading non-aligned, independent, NGO that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in Cambodia.

CCHR is a member of IFEX, the International Freedom of Expression Exchange.

The Cambodian Human Rights Portal www.sithi.org is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms.

[53] Quote by Prime Minister Hun Sen (emphasis added), as quoted in "Not a dictatorial regime", *AFP*, 5 August 2009.