

Submission to the UN Review of Cambodia under the International Convention on Civil and Political Rights

For consideration of the 111th session of the Human Rights Committee in July 2014

Introduction

1. The Cambodian Center for Independent Media (CCIM) welcomes the opportunity to contribute to the second periodic review of the Kingdom of Cambodia's (Cambodia) compliance with the International Covenant on Civil and Political Rights (Covenant). CCIM is Cambodia's only independent, Khmer-language news network, committed to furthering the rights of free expression through media, advocacy and community-level projects. This submission focuses on Cambodia's compliance with the rights to freedom of expression outlined in Article 19 of the Covenant.
2. The human rights situation in Cambodia continues to deteriorate, with freedom of expression becoming an area of particular concern. Since Cambodia's first periodic review, the Royal Government of Cambodia (RGC) has actively stifled critical voices, routinely employing legal and physical threats against journalists. In the last ten years, 12 journalists have been killed in the line of duty, creating a climate of self-censorship among the country's media professionals. Moreover, critical voices are finding it increasingly difficult to be heard due to politically aligned media ownership and a highly regulated licensing process. With more restrictions on freedom of expression on the horizon in the form of a draft Cybercrime Law, the outlook for this freedom remains dim in Cambodia. This submission will examine the following key issues:
 - Legislation restricting the right to freedom of expression
 - Legislation restricting the right to impart information
 - Media independence
 - Threats against journalists
 - Freedom of expression on the Internet

Legislation restricting the right to freedom of expression

3. As acknowledged in the Cambodian State Party Report (para. 161), the Cambodian Constitution enshrines the freedoms of "expression, press, publication and assembly." However, in practice, this right is inconsistently respected, and several Cambodian national laws actively restrict the right to freedom of expression.
4. Cambodia's Penal Code is regularly misused to stifle criticism of the government or of corporations with political connections. Defamation (Article 305) and slanderous denunciation (Article 311) are criminal offenses carrying significant fines — nonpayment of which can result in a prison sentence under Article 525 of the Code of Criminal Procedure of the Kingdom of Cambodia. In January 2011, human rights worker Sam Chankea was found guilty of defamation and ordered to pay a fine after he spoke about a land conflict during a radio interview. Prosecution of reporters or sources who speak their opinions has a chilling effect on Cambodia's media, perpetuating a culture of self-censorship. On February 4, 2014, Duong Solida became the first Cambodian to be sentenced for online defamation after she expressed a critical opinion about a business competitor on popular social networking site Facebook.

5. The Penal Code actively stifles speech critical of government officials with Article 502, which criminalizes insult to a public official acting on behalf of his or her office, and Article 523, which outlaws speech discrediting judicial decisions. Selective enforcement of Articles 305, 311, 502 and 523 of the Penal Code effectively criminalize criticism of the government or anyone who is well connected within the RGC. These provisions fail to comply with Article 19 of the Covenant or with Cambodia's own constitutional guarantee of freedom of expression.
6. Article 495 of the Penal Code, incitement to commit a felony, is frequently used against journalists and other individuals or groups that speak out against human rights violations in Cambodia. In 2012, Radio Free Asia reporter Sok Ratha (also known as Ratha Visal) was charged under Article 495 following his reports on a land dispute in Ratanakiri Province in Northeastern Cambodia. The trumped up charges alleged that Ratha's news coverage had incited an ethnic minority group to violently protest a land grab.

Legislation restricting the right to impart information

7. In addition to the general freedom of expression, the Cambodian constitution specifically enumerates freedom of the press, but goes on to stipulate that, "the regime of media shall be regulated by law" (Article 41). The resulting regulations on Cambodia's press come in the form of a Press Law that drew concerns from the Human Rights Committee during Cambodia's first periodic review, when the Committee found that the law is "incompatible with the restrictions permissible under Paragraph 3 of Article 19 of the Covenant" (para. 18 of the Committee's Concluding Observations). Nonetheless, the Press Law remains firmly in place and unchanged, and it continues to restrict the free expression of journalists in Cambodia.
8. Article 12 of the Press Law prohibits media content that "may cause harm to the national security and political stability." The provision is vague and fails to define what constitutes a threat to "national security" or "political stability." Moreover, concern for "political stability" in and of itself is not a legitimate reason for restricting freedom of expression, according to the restrictions allowed under Paragraph 3 of Article 19 of the Covenant. A breach of Article 12 of the Press Law may result in confiscation of published materials and suspension of publication for up to 30 days without opportunity for appeal. The offense carries a hefty fine of 5 million to 15 million riels, which can be imposed on the editor or author of the offending content, and specifically allows for prosecution under the harsher Penal Code.
9. Article 14 of the Press Law restricts content that affects "the good custom of society." Though this restriction could arguably fall within the permissible restriction on freedom of expression for "morals" (Paragraph 3 of Article 19), the law includes only a few very specific examples of restricted content, leaving the provision vague enough to create potential for arbitrary or uneven enforcement.
10. Although the Penal Code (Articles 306, 308 and 49) dictates that media professionals who commit the crimes of defamation, public insult and incitement must be prosecuted under the Press Law, journalists continue to be threatened with prosecution under the harsher Penal Code, which carries the potential for prison

sentences for crimes that would otherwise receive only monetary fines under the Press Law.

11. The Press Law likewise contains a number of provisions intended to bolster freedom of expression in Cambodia, but which are seldom enforced, including Article 2, which gives journalists the right to protect the confidentiality of their sources. Article 3 of the Press Law prohibits pre-publication censorship, as mentioned in the State Report (para. 162). Likewise, Article 5 grants journalists “the right of access to information in government-held records” but goes on to list a number of vague exceptions to the right, including information that may “harm relations with other countries.” Though Article 5 stipulates that public officials will respond to requests for information within 30 days, it provides no repercussions for officials who fail to reply, resulting in widespread governmental disregard to this right to information.

Media independence

12. Despite the Press Law’s Article 3 provision prohibiting pre-publication censorship, Cambodia continues to be tightly controlled by the RGC through ownership and regulatory means.
13. Broadcast media are subject to the most stringent controls in Cambodia, with all 15 national television stations either owned by the ruling Cambodian People’s Party (CPP) or by powerful individuals aligned with the party, ensuring state control of all television broadcasts.
14. The country’s most popular medium, radio, is controlled by restrictive licensing procedures through the RGC’s Ministry of Information (MOI). Of the 166 radio stations currently licensed through the ministry (State report, para. 164), only three can be considered truly independent: CCIM’s two Sarika FM stations (106.5 FM and 95.5 FM) and Mom Sanando’s Beehive Radio (105 FM). The licensing process for radio lacks transparency, with the MOI citing a shortage of frequencies in recent denials of licensing applications to CCIM and Beehive Radio, but then going on to issue licenses to applicants who applied later.
15. Though ownership of radio frequencies is not as tightly controlled as with television, station owners report tremendous pressure from local authorities to refrain from broadcasting content involving politics or news that could show the RGC in an unfavorable light. In the lead-up to the 2013 National Assembly Elections, CCIM signed contracts with 16 provincial radio stations to broadcast CCIM’s independent Voice of Democracy news programming. Four of those stations later broke their contracts, citing pressure from local authorities to stop the broadcasts.
16. Government control of the media was visibly tightened throughout 2012 and 2013 in the lead-up to the July 2013 National Assembly elections — a move that deprived millions of Cambodians of independent information needed to inform their votes, affecting their rights not only under Article 19 of the Covenant, but also denying their Article 25 rights to political participation.
17. In particular, the National Election Committee issued two directives infringing on local radio stations’ right to impart information in the lead-up to the July 28 elections.

The first directive covered the 30-day period prior to the election, banning the rebroadcasting of foreign entities' Khmer-language radio programming. The second directive banned the broadcasting of commentaries or opinion polls in the five days prior to the election. Both of these bans are in clear violation of Article 19 of the Covenant. Though the ban on foreign-produced radio content was eventually lifted, the ban on commentaries and opinion polls stayed in place through Election Day, stifling citizens' ability to engage in free expression.

Threats against journalists

18. During Cambodia's first periodic review, the Human Rights Committee expressed concern over "violent attacks on and harassment of journalists" and called for the RGC to "take action to protect journalists and to investigate acts of violence and bring the perpetrators to justice," (para. 18). However, the situation remains much the same today, with zero convictions made in the cases of the 12 journalists murdered since 1994. The lack of political will to prosecute acts of violence against journalists has created an environment of impunity, whereby crimes against journalists are committed without fear of reprisal.
19. Heng Serei Oudom was a reporter for the *Virakchun Khmer Daily*, a small newspaper published in Ratanakiri Province. Known for his reports on illegal logging activities and their connections to powerful public officials, Oudom was found bludgeoned to death in the trunk of his car on September 11, 2012. Despite two initial arrests being made in the case, charges against both parties were eventually dropped, and Oudom became the 12th journalist in Cambodia to be murdered with impunity.
20. Journalists in Cambodia are regularly attacked as they pursue their right to free expression. On April 21, 2014, Kung Raiya of the newspaper *Kampuchea Rikreay* was severely beaten by security forces while attempting to cover a politician's speech at Freedom Park in the capital of Phnom Penh. The park, which the state asserts in its report was created by the RGC "to give people, groups, organizations or associations a location to express and demonstrate their wills and opinions," (para. 167), has been off-limits since the Cambodian Ministry of Interior in January imposed a ban on public assembly — in clear violation of Article 21 of the Covenant. The April 21 gathering at Freedom Park was met with a violent crackdown by security forces, which intentionally targeted photojournalists. Raiya, who was taking photos for his newspaper, was only saved from serious injury by his helmet, which itself was broken by the force of the attack. At least four journalists have been attacked by security forces while trying to cover banned assemblies in Freedom Park and elsewhere since January 2014.
21. Other journalists are directly targeted following publication of their reports on politically sensitive issues. In 2013, CCIM's Voice of Democracy reporter Tat Oudom was attacked on one occasion and followed on two separate occasions following the release of a series of his investigative reports into the Cambodian garment industry. One of the followers threatened him, telling him to stop his reporting.

22. Widespread harassment of journalists has instigated an industry-wide practice of self-censorship, whereby media professionals avoid publishing content the RGC or other influential persons may consider offensive or politically sensitive.

Freedom of Expression on the Internet

23. The Internet remains Cambodia's freest medium for expression, and its influence increased in 2013 as unprecedented numbers of Cambodians went online to find independent information not available in the largely government-controlled mainstream media. In particular, social media website Facebook saw a surge in free expression activity from Cambodians during the lead-up to the 2013 elections.
24. Following the hotly disputed 2013 elections and the deadly protests that followed, the country has seen a concerted effort by the RGC to reassert control over this last free frontier for expression in Cambodia. A local Internet Service Provider temporarily blocked Facebook on August 7, 2013, and February 2014 brought the country's first defamation sentencing in relation to a Facebook post.
25. But the most significant threat to freedom of expression on the Internet is the Cybercrime Law, currently being drafted by Cambodia's Ministry of Post and Telecommunications. Though the law has been in the drafting process since at least 2012, the RGC has made no effort to consult with civil society regarding its contents. A copy of the draft Cybercrime Law was leaked to the Article 19 organization in April 2014. Though the leaked draft of the law is not finalized, it reveals the RGC's serious intent to stifle online freedom of expression. Among the more concerning provisions of the draft Cybercrime Law is Article 28, which criminalizes content that is deemed to:
 - "Hinder the sovereignty and integrity of the Kingdom of Cambodia"
 - "Incite or instigate the general population"
 - "Generate insecurity, instability and political cohesiveness"
 - "Undermine the integrity of any governmental agencies (or) ministries"
 - "Damage moral and cultural values"
26. CCIM, along with other members of Cambodian civil society, fear that Article 28 of the draft Cybercrime Law is far too vague and much too wide in scope to be passed in its current state, because it could become yet another tool — like the Penal Code and Press Law — to be used selectively by a politically connected judiciary to silent political dissent.

Conclusions and Recommendations

27. Based on the above observations, CCIM calls on the Cambodian government to ensure its citizens' ability to practice their rights to free expression. In order to do so, the RGC should take the following steps:
28. Amend unconstitutional laws that violate the right to freedom of expression:
 - Review all laws relating to freedom of expression to ensure compliance with the Cambodian constitution and Article 19 of the Covenant. Laws that do not meet these standards should be revised or repealed.
 - Decriminalize defamation by repealing Article 305 of the Penal Code.

- Prevent government bodies from bringing defamation suits.
 - Repeal the offences of undermining the dignity of holders of public office (Article 502 of the Penal Code) and discrediting judicial decisions (Article 523 of the Penal Code).
 - Clarify vague terminology related to the offenses of incitement to commit crimes (Article 495 of the Penal Code) and malicious denunciation (Article 311 of the Penal Code).
29. Curtail legislative efforts to restrict press freedom:
- Repeal portions of the Press Law restricting media content (Article 11, Article 12, Article 13, Article 14 and Article 15).
 - Amend the Press Law's provision on Access to Information (Article 5) to include consequences for public officials who fail to respond to press inquiries and to include a mechanism for press complaints regarding violations of the provisions.
 - Adopt a law to guarantee access to information and conforms to international standards.
 - Allow self-regulation of the media independent of government influence.
30. Promote an independent and pluralistic media environment by ensuring media outlets are free from governmental control or influence:
- Create an independent body to process applications for radio, TV and Internet-provider licenses, considering every broadcasting license application in an independent, transparent and fair manner.
 - Publish public information regarding licensing applications approved and denied as well as a regularly updated list of available radio and TV frequencies and channels.
 - Ensure equal access to the media for all political parties.
 - Guarantee editorial independence of government-owned media outlets.
31. End violence, threats and harassment of journalists and media workers. End impunity for perpetrators:
- Guarantee media professionals the right to a work environment that is free from the threat of violence.
 - Open new, independent investigations into each of the 12 cases of journalists murdered in Cambodia since 1994. Ensure a fair and independent trial for every suspect.
 - Ensure all new cases of violence or harassment of journalists are dealt with speedily, independently and effectively, bringing perpetrators to justice and ending the cycle of impunity.
32. Commit to promoting freedom of expression on the Internet:
- Release the most recent draft of the Cybercrime Law to the public
 - Seek and incorporate civil society input in the drafting of the Cybercrime Law.
 - Ensure the final draft of the Cybercrime Law is free from restrictions on free expression that are not in accordance with international law. Remove Article 28 as it appears in the most recently leaked version of the Cybercrime Law.
 - Refrain from blocking websites except by court order.