

REPORTERS WITHOUT BORDERS (RSF)

Reporters sans frontières

CAMBODIAN CENTER FOR INDEPENDENT MEDIA (CCIM)

UN Human Rights Council Universal Periodic Review

18th session

Written submission by Reporters Without Borders and the Cambodian Center for Independent Media on the state of freedom of expression and access to information in CAMBODIA

A - Overview of the press freedom situation and access to information

Ranked 143rd out of 179 countries in the 2013 World Press Freedom Index of Reporters Without Borders, Cambodia is at its lowest ranking ever. It fell 26 places from 2012 as a result of the events that occurred in 2012 related to freedom of expression and freedom of the press. In most of the cases, the journalists are summoned to Court according to the penal code instead of the press law. Although freedom of the press is guaranteed under the Article 41 of the Cambodian constitution, it is not a reality in Cambodia.

Broadcast media are by far the most popular way through which the majority of Cambodians receive information. All TV stations, most of more than a hundred radio stations and most of the newspapers are controlled by the ruling party, the Cambodian Peoples' Party (CPP) or people with close links to it, which guarantees a governmental control over the media and the access to information. As of 2012, all 11 television stations in Cambodia were either owned by the government or a hybrid of government and private (CPP-allied) ownership. Television is overtaking radio as the primary means through which to communicate with the voting public, and is the most tightly controlled medium in the country. Television content is mostly entertainment driven, and because all of the stations are subject to pre-broadcast vetting of news content, they are virtually identical in their presentation of the news.

As of 2012, Cambodia had 30 newspapers published on a regular basis, although there are approximately 300 registered (according to the Ministry of Information), many of which have at least partisan ownership by a government party and are used as platforms for spreading propaganda and discrediting the opposition. Overall, print media faces less government restriction than broadcast media because of its limited coverage.

As with television, permission to broadcast on radio is granted by the Ministry of Information. Radio is highly regulated in Cambodia but it has greater penetration throughout the country because it is a more accessible and affordable medium for the majority of the population who live in rural areas, especially those with no TV coverage or newspaper distribution. In light of the limited access afforded to opposition political parties on television, radio in Cambodia plays a significant role in providing more equitable and balanced media access for parties other than the CPP.

While high costs and lack of computer access and electricity have meant a relatively low penetration rate for the internet in Cambodia (only 4.4% of the population in 2012), it is still an influential medium which has the potential to grow exponentially as access widens and costs fall. With the introduction of

wireless broadband services, Internet Service Providers (ISPs) have been quick to invest in the Cambodian market, enabling greater high-speed coverage throughout the country. The Internet holds great potential for dramatically changing the media landscape in Cambodia, and to some extent already has. Its increasing influence on the way that news and public opinion is aired is evidenced by the growing number of news websites, blogs and passing social commentary originating from Cambodia that can be found online today. It is a difficult medium to control, though there has been no lacking of trying on the part of the government.

B - Escalation of the threats against press freedom and journalists since 2009.

The main threat against journalists, media workers and press freedom lies in the large collection of law articles that can be used against them as well as a biased justice system. As a result, most of them are afraid to publish any criticism against specific members of the government. Since 2009, the number of cases trying to restrict media freedom has increased. 2012 has been defined as the worse year for freedom of expression and the media.

In 2009, government officials brought a new phase in the politicisation of defamation and disinformation complaints. **Hang Chakra**, the opposition daily *Khmer Machas Srok*

<http://kmsblog.wordpress.com/> editor was jailed for a year after he wrote two articles in April and May 2009 in which he said a Deputy Prime Minister was corrupt. This was a result of an abuse of a law about disinformation that was inherited from the United Nations Transitional Authority in Cambodia (UNTAC). Hang Chakra was released on April 13th, 2010, after he was pardoned by the late King Father Norodom Sihanouk for Khmer New Year.

In a media research published by CCIM on July 2009 and supported by the European Union, the local organization stated that “business and political elites in Cambodia have increasingly turned to the Press Law of 1995 and UNTAC criminal code to sue or intimidate journalists, rather than brute force. Under the press law, misinformation is a criminal offense”.

The new criminal code, which took effect on 10th December 2010, reinforced the already existing restrictions on free expression. For example, article 495 is based on a vague definition of incitement as sharing or exposing the public to speech, writings, drawings or audio-visual telecommunication that could “directly result in a crime being committed” or in “serious social unrest.” Defamation and “affecting the dignity” of others is also punishable under this article. As a result, the World Food Programme employee Seng Kunnaka was sentenced to a six-month jail sentence and a fine of 1 million riels (250 dollars) by a Phnom Penh court on a charge of criminal incitement for printing an article critical of the government and showing it to workmates. He was convicted under article 495 of this code for sharing an article from the popular news blog KI-Media referring to Prime Minister Hun Sen and several other senior politicians as “traitors.” His arrest came just days after the prime minister accused the WFP of wrongly claiming that Cambodia faced the possibility of a food shortage.

2012 became the worse year for freedom of press in the country. On August 9th 2012, Chan Soveth, a Senior investigator at the human rights organization ADHOC, was summoned by Phnom Penh municipal court for allegedly “providing assistance to the perpetrator” of a crime whilst working with land rights activists in Kratie province.

In September 2012, **Mam Sonando**, owner of *Beehive Radio*, was sentenced to 20 years imprisonment for allegedly assisting a secessionist movement in Kratie Province. His arrest on July 15, 2012 came shortly after a news report aired on Beehive Radio detailing a complaint lodged with the International Criminal Court accusing the Cambodian government of committing crimes against humanity. Many international groups and leaders campaigned for his release. Following his appeal in March 2013, his sentence was reduced to 5 years and suspended. He was subsequently released after serving 8 months in prison.

On September 11th, 2012, **Hang Serei Oudom**'s body was found in the trunk of his abandoned car near a cashew nut plantation in Ratanakiri province. Oudom covered environmental issues for *Vorakchun Khmer Daily*. Human rights groups including ADHOC were not satisfied with the investigation, which was twice closed by the investigating judge at Ratanakiri Provincial Court despite strong evidence linking King Seanglao, a local military police official, who was implicated in one of Oudom's articles detailing illegal logging published a few days before the murder occurred.

Mr **Sovannatith**, Reporter Team Leader and Assistant to the *Vorakchun Khmer Daily*'s editor-in-chief, told VOD staff that Mr Oudom was very happy with his work and aware of the risks involved. Mr Sovannatith is sorry for the loss of his colleague but said he is not afraid to continue reporting about illegal logging in Ratanakiri.

In October 2012, RFA reporter **Sok Ratha** was summoned by Ratanakiri Provincial Court for questioning on charges of incitement to commit a crime. The allegations related to incitement of members of an ethnic minority to engage in violent protests against D.M. Group Corporation in 2009.

In December 2012, Mr **Trang Try**, a journalist for the *New Decade Newspaper* and member of the Khmer Democratic Journalist Association, was arrested by order from Kratie Provincial Court on a charge of extortion. He was arrested after he reported illegal logging to the police.

Mr **Vichey Anon**, a *Radio Free Asia* (RFA) journalist, was found unconscious the day after reporting Mr Try's arrest. He was found on the road connecting Kratie and Stung Treng provinces. His condition was attributed to a traffic collision. He remains in a coma.

C - Respect of Cambodia's implementation of the UN recommendations

In December 2009, Cambodia accepted the 91 recommendations made during its first UPR. Reporters Without Borders and CCIM will comment on 5 of them that both organizations are most qualified to comment upon.

- Recommendation 46 (a) from Switzerland: "*Ensure that the freedom of expression and of the press guaranteed in the Constitution are effectively respected*"

On October 1st, 2012, the owner of radio "*Beehive*", **Mam Sonando**, was found guilty of incitement and insurrection and sentenced to 20 years in jail. This use of the penal code is believed to be a political move to silence him and led to the widespread belief that he was targeted because of his activities. He was released in March 2013 but remains under judicial supervision. According to his lawyer, there was no real argument that could have led to his sentencing. His case and above explanations show evidence that freedom of the press is not a reality in Cambodia.

Another one is the censorship of five radio stations by the Ministry of Information to cease their coverage during the Commune elections in June 2012.

- Recommendation 46 (b) from the Czech Republic: "*review its newly adopted penal code with a view to ensuring its compliance with the permissible limitations to freedom of expression as stated in ICCPR*"

In 2010, when the new penal code was adopted, local organisations denounced the fact that freedom of expression and freedom of the press would be reduced. In a press release published a day before its adoption, the Cambodian human rights organisation Licadho warned that "any person who criticizes a judicial act or decision aiming to endanger Cambodian institution can be sentenced to up to six months imprisonment and 1 million riel fine" under article 523 of the Penal code. As such, a newspaper cannot criticize a decision done by a tribunal for example. The organisation identified eight other articles that reduce the rights to freedom of the press. For CCIM, the widespread practice of self-censorship among Cambodian media professionals is born out of a fear of being prosecuted for

criminal offences under the country's penal code for reporting on issues that highlight any controversial activities by the government. This is how the radio Voice of Democracy decided to hire a legal consultation each time it publishes an investigation report.

Since 2009, not only the Penal code has not been amended or reviewed. However, it has been used against Mam Sonando to silence him.

- Recommendation 46 (c) from Israel: *“take effective measures to ensure the freedom of expression and opinion by amending the press law that allows for a broad interpretation of the vague term “humiliation of national institutions” and authorizes censorship, the suspension of publishing and imprisonment under the guise of “national security and political stability”.*

A press law has been adopted in 1995 by the National Assembly. A number of provisions can be seen as positive for, in theory, it should afford vital protection to those working in the media. However, some of its provisions are imposing restrictions on the content. According to the law, the press shall not *“publish anything which may affect public order by directly inciting one or more persons to commit violence”*(article 11), *“publish or reproduce any information which may affect national security and political stability”*(article 12), *“publish or reproduce false information which humiliates or contempt national institutions”* (article 13) and *“anything which affects the good customs of society”* (article 14). None of these notions are explained in the law, which gives the opportunity of a very broad interpretation. As of today, no measure has been taken to amend this law.

Moreover, there has been a full confusion as to which law should be applied when a journalist faces defamation charges. For example, article 20 of the press law 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”*. This reference has not been clarified until today and the adoption of the penal code in 2010 makes it all the more dangerous as stated above and resulted in Hang Chakra's sentence.

- Recommendation 46 (d) from Mexico: *“adopt legislative measures necessary so that journalists are not persecuted while exercising their profession and violations of the limits on freedom of expression are not sanctioned criminally”*

Since 2009, no such attempt has been done to ensure journalists' safety despite the recent attacks on reporters. While the 2010 penal code can protect media professionals from criminal prosecution related to their work, the press law is still vague and lacks clarification related to the use of the Penal code. From 2010 to 2013, the harassment Map¹ published by the Cambodian Center for Human Rights (CCHR), 85 cases of media harassment including arrests, prevention from entering public events, confiscation or damage of their property, criminal charges and violence were recorded.

In 2012, at least three journalists were beaten up because of their activity when covering sensitive issues such as illegal logging. One journalist, Heng Serei Oudom, has been found dead in the trunk of his car on 11 September 2012 after he reported about illegal province in the province of Rattanakiri. As evidenced by the recent case of Radio Beehive station owner Mam Sonando's imprisonment, and the numerous journalist deaths in Cambodia over the years, which have gone uninvestigated and unsolved, the dangers of reporting on public issues such as conservation, land rights and employment conditions are still present. Intimidation and threats from the groups in power and with power are commonplace for owners of independent media stations, journalists and reporters who attempt to report news truthfully and impartially.

¹ http://sithi.org/temp.php?url=jour_case/jour_case.php

While the government has not been able to take any measure to ensure journalists' legal and physical safety, it has received recommendations from the civil society in May 2013 to draft an Access to information law as a guardian for journalism safety.

- Recommendation 47 from Hungary: *“Elaborate an action plan for ensuring free access to the electronic media and for liberalizing the electronic media ownership rules”*

Since 2009, CCIM has been stating that “as Cambodia establishes closer relations with China, a country known for its draconian control of the Internet through its “Great Firewall of China,” there is no doubt that the countries will work together on IT and Internet-related issues”. Until 2011, Cambodia was regarded as a “Digital Democracy” because of its lack of web restrictions, especially in comparison with its regional neighbours. Beginning in 2011, however, the government (through the Ministry of Interior) began to block certain websites, particularly social media sites such as blogspot.com and KI-Media. Recent attempts to censor the Internet in Cambodia include a decree issued by the Ministry of Telecommunications in December 2012 stating that “Internet cafes cannot be located within 500 meters of a school or allow their clients to gamble, porn surf, visit websites selling drugs or commit crimes that threaten national security or “traditions”.

As outlined in CCHR’s new media report², the momentum being gathered by new media such as mobile phones and internet is already ushering in an evolution of the way the media operates in Cambodia, with the hope that it will encourage greater quality independent news reporting and freedom of expression. *“There are a number of independent Cambodian news websites, many of which use video and radio to spread their information, and which are often connected to social media platforms and websites such as Facebook, Twitter and YouTube, through which they also disseminate their news features. Similarly, many Cambodian radio stations use the Internet to disseminate their programs: Channels like VOD, VOA and Voice of Civil Society (run by COMFREL) and others broadcast online.”*

The Press Law of 1995 mandates that the crime of “Defamation” be prosecuted under the civil code. This mandate, however, only applies to print media leaving social media users, as well as radio announcers, technically vulnerable to criminal prosecution. An event occurred in January 2013 that rose concerns about the future of Facebook use in the country. In February 2013, Phel Pearun, a teacher living in Phnom Penh, has been summoned to the police after he published a post on Facebook a month before where he was warning of the police practices in a specific district of the capital. *“After reading the article posted on his Facebook page, the information was written with the intention of defaming the police. It affects my reputation and my organization,”* the deputy police chief told the Cambodia Daily on February 27th³.

Such consideration over online freedom of expression can be dangerous to protect it. There is one new Facebook user every 2 minutes in Cambodia; this rapidly growing sector represents a lot of opportunities for freedom and access to information in the country. According to the Ministry of Posts and Telecommunications, Cambodia had 2.7 million Internet users as of December 2012. That number represents a 60% rise in users over the previous year and 18% of the total population. From 2010-2011, Internet users in Cambodia have increased from 320,000 to over 2 million.

D - Independent journalism at stake

The gagging of independent media by the government and the use of public services and civil servants for party purposes, criticized by electoral observers, is directly responsible for the lack of genuinely democratic balloting as expected by the people. The government and CPP maintain strong

²http://www.cchrcambodia.org/admin/media/report/report/english/2012_07_24_New_Media_and_the_Promotion_of_Human_Rights_in_Cambodia_ENG.pdf

³<http://www.cambodiadaily.com/archive/police-accuse-teacher-of-defamation-over-facebook-post-11780/>

control over the media and do not support freedom of the press in Cambodia. In addition, due to low literacy rates and affordability, only 2 percent of Cambodians, mostly in urban areas, read newspapers, making the captive audience for print media quite small and concentrated. This in turn affects the financial viability of publications which are not politically backed as they struggle to attract commercial funds from advertisers who do not see the value in investing in a medium with limited distributional reach.

As a result of the entrenched political influence over the media in Cambodia radio station owners have developed a tendency to always follow government orders and there is still a culture of fear among journalists. Of the 160 radio stations registered with the Ministry of Information (as of 2013), only three could be considered independent – CCIM's Sarika FM, the Women's Radio and Radio Beehive. However they, Radio Beehive in particular, face frequent government obstruction, harassment and intimidation. Despite being shut down on a number of occasions, and facing repeated restrictions, Radio Beehive has played an important role in paving the way for independent radio in Cambodia, selling airtime to other parties who are unable to obtain licenses to broadcast. In 2013, the media market in Cambodia is still small and developing. The operational costs for radio, as with other mediums, is high and the opportunity to raise funds commercially through advertising is low, making the market for selling advertising airtime highly competitive.

Most Cambodian journalists who have graduated from a media faculty seek jobs with foreign institutions and media outlets which offer higher salaries. As a result, the quality of the content of news reports is still questionable. Moreover, journalists are very often badly paid. This has consequences in the ethics and ability of reporters to stay independent. For example, when press conferences are held by businesses, journalists receive money to attend. Since 2009, efforts are done to improve journalism ethics. The Cambodian Journalists' Council for Ethics (CJCE) was created with the aim to establish a mechanism to contribute in strengthening and promoting the professional ethics and responsibilities of people in the media sector, especially the Cambodian journalists through monitoring and helping them correct their media practices among journalists. Monitor, evaluate, and discuss and publications in newspapers and magazines available and inform individuals or institutions about compliance with the Code of Ethics, receive reports from individuals and journalists about possible violations of the Code of Ethics, propose disciplinary actions for journalists who have been deemed to have violated the Code of Ethics such as informing the associations or institutions to which the journalist is a member of, conduct training for journalists on compliance with the Code of Ethics. At present, the CJCE is actively and independently functioning to promote the journalist code of ethics by monitoring five television stations and eight newspapers.

E - Discrimination in the access to information

Access to information is a fundamental human right and one that is pivotal to the development of Cambodia. The 1993 Cambodian Constitution emphasized the obligation of the government to promote and protect the rights of Cambodian citizens. This right of access to information is further enshrined and expanded upon in the Universal Declaration on Human Rights (UDHR) and the International Covenants of Civil and Political Rights (ICCPR), whose article 19 assures the right of everyone to seek, receive, and impart information and ideas through any media.

Almost 20 years after the adoption of the Cambodian Constitution, free access to information in Cambodia is not yet achieved. There is currently an absence of laws and mechanisms to guarantee such a freedom. There is also the lack of knowledge and participation by the public on the issue. Since early 2000, a number of NGOs and advocates have made a push to improve freedom of information, but the commitment of the government and other policy makers has yet to be made.

The political environment in Cambodia has played, and continues to play a central role in shaping the country's media landscape. Although technically (according to the Constitution and political framework

that was created after the Paris Peace Agreements of 1991) Cambodia is a liberal parliamentary democracy, the party which has ruled for much of the time since - the Cambodian People's Party (CPP) - has established and maintained an authoritarian rule. Access to TV coverage for opposition parties was limited to the Equity News Programme, a joint United Nations Development Programme-National Television of Cambodia project, established to give equitable access to all political parties on the national television channel TVK. This UN-funded program created in 2003 has been permanently halted in November 2012 after it broadcast a feature on government-awarded economic land concessions in Ratanakkiri province's Virachey National Park. On November 11, the hosts of the show were forced to apologize for the feature, after Minister of Environment Mok Mareth had sent a letter to Minister of Information Khieu Kanharith complaining that some images used in the program were archive video footage of forest logging from a different location in Cambodia. The spokesman for the Council of Ministers Phay Siphon said that it was unlikely that TVK would have a similar program. Equity's shows were also one of very few television programs to give airtime to human rights activists and labor unions in the country⁴.

In its 2009 media research, CCIM states that "no ministries employing media relations officers, and few NGOs offering training courses for public relations professionals". In addition, officials rarely hold press conferences, preferring to keep going on in the government secret. While a small progress have been done in terms of institution representation, most journalists are disappointed for in most of the cases, they do not have access to a professional spokesperson.

In addition, Cambodia counts at least a dozen minorities with their own dialects. Even if the presence of indigenous people in Cambodia is small compared to its neighboring countries in Southeast Asia, access to information remains a problem for these minorities, which are discriminated. The eastern provinces of Mondulakiri and Ratanakiri are the most concerned by this problem as their region is very difficult to access for telecommunications. Currently, however, the government has granted a number of permits to local and multi-nationals companies for plantations, mining and mining explorations, and other investments, which up to the present the indigenous groups are the ones who carry the burden of the effects of such investments. Among the most common problems the indigenous groups are facing are the: land alienation, displacements of indigenous groups from their residences in their ancestral domain, prohibition from harvesting non-timber forest products, and victimization from violence the companies resorted to keep the indigenous groups away from the land the companies claimed to have legal permit from the government. As a result of the lack of information, the indigenous communities remain powerless in deciding for their communities' future.

On 23 December 2010, a draft access to information law was submitted to the Cambodian National Assembly by a member of parliament from the opposition Sam Rainsy Party. While there has been pressure on the government to enact the law since the submission, similar drafts have been submitted in the past with no success. However, in response to these efforts, the Ministry of National Assembly and Senate Relation and Inspection (MoNASRI) drafted a policy framework on access to information. To date, the policy framework has been in the hands of this Ministry and has not progressed past the original draft.

F - Lack of transparency and fears about the upcoming 2013 National assembly elections

With regards to the lack of independence of the media and access to information explained above, Reporters Without Borders and CCIM fear the 2013 National Assembly election will not be fair, as shown in the past. In the run up of the commune elections in 2012, an information ministry ban was put on the retransmission by Cambodian stations of *Voice of America* and *Radio Free Asia* programmes on the local elections held throughout Cambodia on 3rd, June. One station was taken off air for a day while another was forced to broadcast musical programming. The Khmer radio station *Voice of Democracy*, operated by CCIM, also had to take down its news broadcasts related to

⁴ <http://www.cambodiadaily.com/archive/un-funded-equity-news-program-scrapped-14805/>

the election on June 3rd. At that time, Chea Sundaneth, executive director of the *Women's Media Centre of Cambodia*, told Reporters Without Borders she had received a request from the ministry on 31 May to stop broadcasting VOA and RFA programmes, as well as those of *Radio France International* and *Radio Australia*, on the organization's radio station. The owner of *Angkor Rattha Radio*, Keo Rattha, said he had received similar instructions.

Equal access to media for all parties was a concern addressed by the Committee for Free and Fair Elections in Cambodia (COMFREL) in their report on the 2012 commune elections, and one that has been raised in the past. According to the political watchdog, the CPP received most of positive broadcast coverage from 18th May 2012 to 4th June 2012, while the main opposition parties received less coverage and all negative. During their monitoring period from 1 September 2011 to 15 January 2012, COMFREL also found that CPP received on average more broadcasting time in all TV stations than any other political party.

G - Law to condemn denial of the Khmer Rouge Genocide

According to several Cambodian journalists, Prime Minister Hun Sen's new law criminalizing denial of the Khmer Rouge genocide is a political move, aimed at the political opponents of the Prime Minister. The bill was drafted within a week and the law passed unanimously during a special session of the country's National Assembly but in the absence of all opposition politicians, who were expelled from parliament after forming a new party, the Cambodia National Rescue party.

This new law mandates a jail term of up to two years and fines of \$1,000 for anyone convicted of denying the 1975-1979 genocide.

Two aspects of the law constitute its key problems: a conflict with the principle of the right to free expression and a lack of proportionality between the offence and penalty.

Combating genocide denial and the hatred it fuels are obviously necessary and praiseworthy goals. But we must stress that they cannot be achieved at the price of violating the constitutional principle of free expression. Turning historical fact into an unassailable dogma imposed by the state opens the door to dangerous excesses. When writing about the historical facts during the 1975-1979 period, how will a journalist, blogger or historian decide when a comment begins to constitute a "denial" that is punishable under this law?

The penalties envisaged by this law are neither necessary nor proportionate. Envisaging a prison sentence for abusing freedom of expression contravenes Cambodian constitution and the country's international obligations.

RECOMMENDATIONS

1. Implement effectively the recommendations accepted in 2009
2. Draft an Access to information law combined with a Freedom of Information law and in consultation with civil society to improve transparency and media professionalism
3. Ensure impunity does not go unpunished and create an independent commission to investigate the case of Heng Serei Oudom as well as journalists' and media workers' attackers.
4. Open the TV and radio market to independent and community broadcaster, including reviewing the attribution process for radio frequencies for community radios to be able to broadcast.
5. Make the draft of the cyber law available to the public and allow civil society to contribute to its elaboration.
6. Abrogate the law criminalizing denial of the Khmer Rouge genocide.

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