

**JOINT SUBMISSION BY NON-GOVERNMENTAL ORGANIZATIONS ON FREEDOM OF
EXPRESSION AND ASSEMBLY FOR THE UNIVERSAL PERIODIC REVIEW OF
CAMBODIA'S FULFILMENT OF ITS HUMAN RIGHTS OBLIGATIONS AND
COMMITMENTS**

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Pursuant to United Nations (UN) Human Rights Council resolution 5/1, which provides for the participation of civil society in the Universal Periodic Review (UPR) process, we - a coalition of non-governmental organizations (NGOs)¹, coordinated by the Alliance for Freedom of Expression in Cambodia (AFEC) and assisted by the Asian Legal Resource Centre (ALRC) - make this **joint submission on freedom of expression and assembly in Cambodia** to the Office of the High Commissioner for Human Rights (OHCHR) in Geneva for inclusion in its summary of stakeholder information.
2. Cambodia has a variety of human rights obligations in respect of the rights to freedom of expression and assembly. The Royal Government of Cambodia (the “Government”) has engaged with some international human rights mechanisms but not with others, whilst the current national human rights infrastructure is seriously flawed. The last four years have seen **freedom of expression and assembly seriously undermined** with opinion restricted, parliamentarians silenced, the media controlled, access to information blocked, and assembly and public demonstration prevented. The Government has breached its international and constitutional human rights obligations, and has relied on national legislation which itself breaches these obligations. Our recommendations for improving respect for freedom of expression and assembly include ratification of the First Protocol of the International Covenant on Civil and Political Rights; the establishment of an independent national human rights body; and a series of legislative reforms. We conclude by underlining the need for capacity building and technical assistance to help the Government implement our recommendations and respect freedom of expression and assembly.

II. UPR METHODOLOGY AND CONSULTATION PROCESS

3. To prepare this submission we have engaged with urban and rural communities; shared and analyzed data documented through monitoring, research, and investigation; and met regularly to discuss the content. We will form a **UPR Working Group** to encourage understanding of the UPR process; lobby the international community to support our recommendations; engage with the government to advocate for and monitor the implementation of our recommendations; and prepare for the next UPR of Cambodia's human rights record.
4. **The Government has not taken seriously the intended-collaborative spirit of the UPR**, having so far failed to engage with NGOs as part of the UPR process. We recognize that capacity

¹ The coalition includes: Advocacy and Policy Institution (API); Asian Legal Resource Centre (ALRC); Cambodian Human Rights and Development Association (ADHOC); Cambodian Association for Protection for Journalists (CAPJ); Cambodian Center for Human Rights (CCHR); Cambodian Center for Independent Media (CCIM); Cambodian Center for the Protection of Children's Rights (CCPCR); Cambodian Independent Teachers Association (CITA); Cambodian Independent Civil Servants Association (CICA); Cambodian League for the Protection and Defence of Human Rights (LICADHO); Center for Social Development (CSD); Center for Civil and Political Rights (CCPR); Coalition of Cambodian Apparel W.D.U. (C-CAWDU); Committee for Free and Fair Elections in Cambodia (COMFREL); Community Legal Education Center (CLEC); Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC); Independent Democratic of Informal Economic Association (IDEA); International Federation of Human Rights (FIDH); Khmer Kampuchea Krom Human Rights Association (KKKHRA); Khmer Youth Association (KYA); Legal Aid of Cambodia (LAC); Neutral & Impartial Committee for Free and Fair Election in Cambodia (NECFEC); People Center for Development and Peace (PDP-Center); Project Against Domestic Violence (PADV); Southeast Asian Press Alliance (SEAPA); and Star Kampuchea. See Annex I for the addresses of these NGOs.

shortcomings are relevant, but urge the Government to engage with civil society to ensure a worthwhile UPR. We have sent copies of this submission to the Government.²

III.BACKGROUND AND FRAMEWORK

5. Cambodia has only recently emerged from a twenty-year civil war that followed the brutal Khmer Rouge regime. **Freedom of expression and assembly are not only important for individual dignity; we need these rights to participate in decision-making, accountability and democracy as we work to rebuild our country.** Cambodians cannot take part in decision-making if they are not able to express their views freely, do not have free access to information, and cannot assemble together to address issues of common concern and attempt to influence the Government.

A. Scope of international obligations

6. As a UN Member State, Cambodia is obliged under the **UN Charter** to promote universal respect for, and observance of, human rights. The Charter proclaims that the inherent dignity and the equal and inalienable rights of all humans is the foundation of freedom, justice and peace in the world.
7. Article 15 of the 1991 **Agreement on a Comprehensive Political Settlement of the Cambodia Conflict** (the “Paris Peace Accord”), provides that “*All persons in Cambodia ... shall enjoy the rights and freedoms embodied in the **Universal Declaration of Human Rights (UDHR)** and other relevant international human rights instruments.*” The UDHR was adopted by the UN General Assembly and provides for human rights standards accepted by all member states. Article 19 proclaims: “*the right to freedom of opinion and expression; this rights include freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*” Article 20 protects the right to freedom of assembly. Much of the UDHR is regarded as having acquired legal force as customary international law³ and it is binding on Cambodia as part of its Constitution (see paragraph 11 below).
8. The “*other international human rights instruments*” to which the Paris Peace Accord refers include the **International Covenant on Civil and Political Rights (ICCPR)**, to which Cambodia acceded in 1992. The ICCPR is legally binding and expands on the UDHR. Article 19 provides: “*Everyone shall have the right to hold opinions without interference ... Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers ...*” It provides for restrictions on these rights however: “*For respect of the rights or reputations of others ... For the protection of national security or of public order, or of public health or morals.*” Article 21 asserts: “*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*”
9. Further guidance on interpreting ICCPR Article 19 can be found in the authoritative statements and declarations made by the **UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**. The Special Rapporteur has sought to clarify the precise nature of the right to freedom of expression. Importantly, the UN Special Rapporteur endorsed in his 1996 report⁴ the **Johannesburg Principles on National Security, Freedom of Expression and Access to Information** (1996) (the “Johannesburg Principles”) - a set of principles that limit the scope of the restrictions on freedom of expression.

² We have sent copies to the Human Rights and Complaints Reception Committees of the National Assembly and the Senate, and to the Government’s Cambodian Human Rights Committee.

³ ‘Memorandum on the Cambodian Law on the Press’, Article 19, London, October 2004. See Annex II to this submission.

⁴ Report of the Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/45, Economic and Social Council, 22 March 1996.

10. **International jurisprudence** in the courts of the three regional human rights instruments (in Europe, Africa and the Americas) has also emphasized the overriding importance of freedom of expression and assembly, resulting in a **narrow interpretation of the scope of restrictions and sanctions**.

B. Constitutional and legislative framework

11. The **Constitution of the Kingdom of Cambodia** (the “Constitution”) provides in Article 31: *“Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights ...”* Article 41 provides: *“Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and other national security. The regime of the media shall be determined by law.”* Article 37 provides for the *“right to strike and to non-violent demonstration.”* According to a decision of the Cambodian Constitutional Council dated 10 July 2007, **all human rights instruments to which Cambodia has adhered form part of the Constitution**.

C. Institutional and human rights infrastructure

12. As a state party to the ICCPR, Cambodia must report to the treaty body with oversight of this Covenant – the Human Rights Committee (HRC). Cambodia’s second report has been due since 31 July 2002. We note that Cambodia signed the **First Optional Protocol to the ICCPR** on September 27, 2004; however, Cambodia has not ratified it and it is not therefore legally binding.
13. We are pleased that Cambodia hosts a **country office for the OHCHR**, which plays an important role in monitoring human rights. Cambodia has benefited also from the mandate of the **Special Representative of the Secretary General for human rights in Cambodia**, which has regularly made independent assessments of and recommendations for improving the human rights situation. Unfortunately, this mandate has now been changed to the **weaker Special Rapporteur mandate**.
14. In Cambodia, the **Constitutional Council** is the supreme body through which citizens should be able to challenge the constitutionality of laws, regulations and state decisions that affect their constitutional rights. The procedures involved in making such challenges, however, prevent citizens from accessing the Council. A citizen who wishes to make a complaint has to either get the King, the Prime Minister, the President of the Senate, the President of the National Assembly, one tenth of Cambodia’s MPs or one quarter of its Senators to request that the Council adjudicate the case. Further, the Constitutional Council is not independent from the Government.⁵
15. Articles 147 to 149 of the Constitution provides for an annual **National Congress** - an institution of direct democracy whereby Cambodians can meet their rulers *“to be directly informed of various matters of national interest”* and *“to raise issues and make proposals for the state authorities to address.”* Unfortunately the National Congress has never been convened, and on 4 March 2009, Prime Minister Hun Sen said that it should be removed from the Constitution.
16. Three other state institutions have a role in protecting human rights. The National Assembly and the Senate each have a **Human Rights and Complaints Reception Committee**, and the Government has its own **Cambodian Human Rights Committee**. These bodies are able to conduct investigations, but have failed in providing protection and redress to victims or in bringing perpetrators to justice. They are widely regarded as being politically controlled.⁶ In September 2006,

⁵ ‘CAMBODIA: The authorities must ratify the First Protocol to the ICCPR now’, Asian Human Rights Commission (AHRC), 22 March 2006.

⁶ *Ibid.*

Prime Minister Hun Sen announced plans to create a new **National Human Rights Commission (NHRC)** to be “*based on the Paris Principles*.” The Paris Principles relate to the status and functioning of independent national institutions for the protection and promotion of human rights.⁷ Cambodia currently has **no national action plan** or policy for protecting and promoting human rights.

17. It has been widely reported that the **Cambodian courts suffer from incompetence, corruption and political control**.⁸ Unfortunately, similar allegations now mar the Extraordinary Chambers in the Courts of Cambodia (ECCC).
18. Cambodia has **a thriving civil society** that is supported by international donors and has attracted wide praise. However, NGOs face continuing harassment from the Government, as reflected in this report. Further, they face new Government attempts to control them through a planned **NGO Law**. The draft **NGO Law** gives the Government control over NGOs’ finances, provides for complex registration rules, and outlaws “political” aims.

IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

19. The Government should be praised for signing and ratifying a variety of international human rights treaties. However, the last four years (and the years preceding this) have been marked by the **Government’s failure to cooperate properly with human rights mechanisms and a restriction of human rights including freedom of expression and assembly**.

A. Cooperation with human rights mechanisms

20. Cambodia has not provided its second report to the HRC and has also failed to submit certain periodic reports to other treaty bodies. We do note however that the Government is working with the OHCHR to improve this situation. Despite signing the First Optional Protocol to the ICCPR on September 27, 2004, Cambodia has not yet ratified it. Further, whilst Cambodia continues to host a country office for the OHCHR, **the Government’s treatment of the Special Rapporteur of the Secretary General for human rights in Cambodia, Yash Ghai, was alarming**. The Government has also given international NGOs short shrift.
21. Regionally, Article 14 of the ASEAN Charter calls for the creation of an **ASEAN human rights body** that will protect and promote human rights and fundamental freedoms. In this regard, **we welcome Cambodia’s involvement** in related negotiations and engagement with civil society.
22. At a national level, the Government controls the three existing human rights bodies. However, we are **hopeful that Prime Minister Hun Sen’s promises to create a NHRC will be fulfilled in 2009**. Whilst the Government is planning to push through a **worrying NGO Law**, we recognize that there has been increasing engagement with NGOs and hope that the space for this continues to grow.

B. Implementation of international human rights obligations

23. **During the last four years freedom of expression and assembly in Cambodia have been consistently restricted, in breach of Cambodia’s human rights obligations**. These violations have been supported by certain provisions of national law that breach international standards.

⁷ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris in October 1991.

⁸ ‘Human Rights in Cambodia: The Charade of Justice Report, 2007’, LICADHO, Phnom Penh, 2007.

1. Opinion restricted

24. Cambodians do not enjoy the freedom to express opinions that conflict with those of the Government. The **Government has used the full force of the criminal law** on incitement, defamation and disinformation to restrict opinions being expressed on sensitive issues including territorial borders, corruption land grabbing and other sensitive issues.

- From October to December 2005, at the behest of the Government, **eight well-respected human rights advocates were arrested and detained for disinformation, defamation and/or incitement**. Mam Sonando, owner and Director of the independent Beehive Radio station, was arrested and detained for broadcasting an interview with an activist who criticized the Cambodia-Vietnam border treaty. Rong Chhun, President of the Cambodian Independent Teachers Association, was arrested and detained in connection with a press statement that related also to the border treaty. Men Nath, President of the Cambodian Independent Civil Servants Association, and Ear Channa, Deputy Secretary General of the Student Movement for Democracy, also signed the statement and then fled to Thailand. They now live in Europe. Kem Sokha, then President of the Cambodian Center for Human Rights, was arrested and detained in connection with a banner displayed at International Human Rights Day celebrations that included small hand-written comments by villagers; one such comment criticized Prime Minister Hun Sen and referred to land being lost to Vietnam. Yeng Virak, Executive Director of the Community Legal Education Center, and Pa Ngoun Teang, a Deputy Director of the Cambodian Center for Human Rights, were arrested on the same day and for the same reason. After local and international pressure, the men were eventually released on bail.
- In September 2006, Teang Narith, a lecturer at the Sihanouk Raj Buddhist University in Phnom Penh, was **dismissed for writing a book that criticized the Government**. He was then arrested and charged with disinformation, and found guilty and **sentenced to jail for over two years** and fined. He was released and is considered to suffer from mental illness.
- A **report by Global Witness** that alleged involvement of senior officials and their relatives in illegal logging was **banned** in June 2007.
- In 2009, the national judges at the ECCC threatened to take legal action against Nuon Chea's defence lawyers Michiel Pestman and Andrew Ianuzzi after they had asked for the national courts to investigate corruption allegations at the ECCC. **Even at the hybrid international criminal court, lawyers were discouraged from expressing opinions unfavourable to the status quo.**

25. The cases above are a few of many examples of the **Government restricting freedom of expression** in breach of UDHR and ICCPR Article 19, and Articles 31 and 41 of the Constitution.

26. Further, the **law used or impliedly threatened in these cases - criminal defamation and disinformation - is itself in breach of international and constitutional human rights obligations**. Article 62 of the UNTAC Law provides for **criminal disinformation**: *"The director or other party responsible for a publication or other means of communication who took the decision to publish, distribute or reproduce by any means information which is false, fabricated, falsified or untruthfully attributed to a third person and did so in bad faith and with malicious intent, provided that the publication, distribution or production has disturbed or is likely to disturb the public peace, shall be liable to a punishment of six months to three years in prison, a fine of up to ten million Riels, or both."* Article 63 of the UNTAC Law concerns **criminal defamation**: *"Defamation or libel made by one of the means listed in article 59 shall be punished by imprisonment of eight days to one year"*. These laws were created in 1992 for the transitional period under UN administration when there was ongoing civil war in Cambodia. They have since been used to prevent and punish criticism of those in power. They breach international freedom of expression standards and have created a climate of fear. In their joint declarations in 1999, 2000 and again in 2002, the three special international mandates for promoting freedom of expression – the UN Special Rapporteur,

the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression – called on states to repeal their criminal defamation laws.⁹ In its observations on Mexico's periodic report, the HRC stated that it "*deplores the existence of the offence of 'defamation of the state'*" and called for its abolition.

27. Further to international and local pressure, on 21 April 2006 **the Government removed the custodial sentence for defamation**. On 13 August 2007, Prime Minister Hun Sen stated that the Government had decided to eliminate defamation charges from the criminal code. This has not yet happened, whilst disinformation remains a criminal offence.

2. Parliamentarians silenced

28. Parliamentarians too have found their freedom of expression restricted. The **Government has used the criminal law and amendments to the internal rules of parliament** to render representatives of the people fearful to debate and make laws and **undermine democracy**. Indeed, the number of parliamentarians speaking in parliament has decreased over the last four years.¹⁰

- On 3 February 2005 Sam Rainsy, the leader of the opposition Sam Rainsy Party (SRP), went into self-imposed exile citing fear of arrest after the National Assembly voted to remove his parliamentary immunity and that of SRP MPs Chea Poch and Cheam Channy. On the same day, Cheam Channy was arrested and detained in the Cambodian Military Prison. **Rainsy faced multiple criminal defamation charges** after accusing the ruling Cambodian People's Party (CPP) of corruption in the formation of the then-coalition government. He had also accused Prime Minister Hun Sen of involvement in the murder of the SRP-affiliated trade union leader Chea Vichea. **Rainsy was tried in absentia, and sentenced to 18 months in prison** and fined. The US Embassy in Cambodia said it was "*deeply concerned*" that the Government was trying to "*silence the opposition*".¹¹ On 5 February 2006, Rainsy received a Royal Pardon from King Sihamoni at Prime Minister Hun Sen's request.
- In September 2008, when the new parliament was sworn in, the CPP used its overwhelming dominance to force through the adoption of new internal rules for parliament. According to Articles 48 and 55 of these rules, MPs must be seated in groups, each of which is composed of at least ten members with a leader and a deputy-leader. MPs from parties with less than ten seats must join a group with other MPs. An MP cannot speak in parliament unless he or she is a member of a group, makes a request to speak through the group leader, and gets permission from the National Assembly's Chairman. **These rules have prevented the three Human Rights Party (HRP) MPs from speaking in parliament**, as they have not joined a group because they want to retain their independence from other parties.

29. The cases of Sam Rainsy and Cheam Channy again evidence breach of the UDHR and ICCPR Article 19, and of Articles 31 and 41 of the Constitution. As set out above, the criminal defamation law used is itself in breach of international obligations and is unconstitutional. Further, Article 77 of the Constitution provides: "*The deputies in the National Assembly shall represent the entire Cambodian people ...*". **The new internal rules followed in the National Assembly deny MPs the right to freedom of expression and prevent them from representing Cambodians.**

3. Media controlled

30. **Journalists, editors and other media persons have been subjected to assault, threats, and lawsuits for criminal defamation and/or disinformation.** Reporting on sensitive subjects is a risky business.

⁹ 'Briefing Note on International and Comparative Defamation Standards, Article 19, London, February 2004.

¹⁰ 'Parliamentary Watch Report', CSD, 2007.

¹¹ 'Cambodia opposition calls on king', BBC News, 4 February 2005.

- In November 2007, the Ministry of Interior and Ministry of Information confiscated from newsstands copies of the Free Press Magazine that included articles and cartoons critical of the retired King Norodom Sihanouk and Prime Minister Hun Sen. **The publisher was ordered to close**, and the editor, Lim Piseth, was summoned to the Ministry of Interior. Lim Piseth then received text message and telephone threats from January to April 2008, and AK47 bullets were thrown into his garden. He fled abroad in May 2008.
- In May 2008, the Ministry of Information **shut down Angkor Ratha Radio station and withheld its license after it had sold its airtime to four political parties**. This action reflects the Government's wider efforts to limit the radio frequencies available for use by radio stations sympathetic to opposition parties and human rights NGOs.
- In June 2008, Dam Sith, an editor of the opposition *Monaksekar Khmer* newspaper, was **arrested for criminal disinformation for reporting the opposition leader's remarks** that two government ministers had been affiliated with the Khmer Rouge. The case was closed once Dam Sith apologized for his "mistake".
- Most notoriously, in early July 2008 **journalist Khim Sambo of the Monaksekar Khmer newspaper was shot dead with his son** in Phnom Penh. No arrests have been made.
- On 24 January 2009, the **violent eviction of the Phnom Penh Dey Krahorm** community also saw **law enforcement personnel preventing journalists from reporting on the case**.
- In 2009, we have also seen concerning moves to **limit freedom of expression on the internet**. Reportedly, the Government blocked the Global Witness and Reahu websites.

31. We again highlight UDHR and ICCPR Article 19, and Articles 31 and 41 of the Constitution. The freedom of expression of journalists and others has been severely restricted. These **violations have also breached the Cambodian Press Law 1995**, which contains a positive guarantee of freedom of expression. Article 1 specifies: *"This law shall determine a regime for the Press and assure the freedom of press and freedom of publication in conformity with Articles 31 and 41 of the Constitution..."* However, **the Press Law itself is deeply flawed** as it contains various provisions for control of the press. In its Concluding Observations of 1999, the HRC criticized the Press Law for being incompatible with ICCPR Article 19. We attach to this submission a detailed analysis of the Press Law by the international NGO Article 19.¹² Despite these observations and criticisms, in its recent worrying report the Ministry of Information stated that it plans to strengthen its controls on publishing and broadcasting and extend the Press Law to the internet.¹³

4. Access to information blocked

32. **Access to information – an important element of freedom of expression – is severely restricted** in Cambodia. The Government's decision-making process is shrouded in secrecy, and private interests violently block investigative reporters.

- On 24 December 2007, **military personnel confiscated a report** made by Voice of Democracy reporter Sou Visal on alleged injuries and killings relating to the destruction of Buddhist statues at Niroth Pagoda. Threatening him, the military personnel took Sou Visal's voice recorder and camera and returned them after deleting the data.
- On 30 January 2008, **two journalists** from *Khmer Mchas Srok* and *Sralagn Khmer* newspapers were **prevented from reporting a land dispute** between three families and the Phanimex Company at Andong Sangkat Prek Pra, Khan Meanchey, Phnom Penh. The armed men hired to guard the land threatened the journalists with a gun and warned them not to take photographs.
- In July 2008, the **Government delayed releasing inflation figures** seemingly to avoid adverse publicity during the general election.

¹² Article 19, *op. cit.*

¹³ 'Ministry To Tighten Broadcast Control', VOA Khmer, Pich Samnang, Phnom Penh, 20 March 2009.

- Whilst the national courts have failed to investigate corruption allegations at the ECCC, the UN has failed to share the results of its investigations into these allegations. **The UN is blocking access to information that could affect the trials' fairness** and in doing so is signaling that corruption can be tolerated, with impunity overriding accountability.
33. The Government and those close to it have restricted access to information in breach of the UDHR and ICCPR Article 19, and of Articles 31 and 41 of the Constitution. It is hoped that the **Freedom of Information Policy Framework**, drafted with US assistance, will help turn this tide of restriction.

5. Assembly and public demonstrations prevented

34. According to Adhoc, of 155 non-violent demonstrations and strikes in 2008 - linked mainly to land and labour disputes - at least 108 were suppressed¹⁴. The **Government has severely restricted assembly and public demonstration**, and this restriction has often been **marked with excessive force**.
- **Events surrounding the murder of trade union leader Chea Vichea** provide a good microcosm of the restrictions on freedom of expression and assembly in Cambodia. It has been alleged that Chea Vichea was killed for his perceived opposition to the Government. As set out above, Sam Rainsy was convicted for his opinions on this case. In September 2006, the **police violently dispersed a peaceful protest** against the conviction of Chea Vichea's alleged killers. Heng Pov, the police official in charge of investigating the murder and who now alleges that it was ordered by the then National Police Commissioner Hok Lundy, is now serving a 76-year prison sentence for a wide range of crimes. Hok Lundy recently died in a helicopter crash.
 - A **strike by female workers** at the Fortune Garment Woolen Knitting Company in Kandal on 29 November 2007 was **brutally repressed** by a large group of police armed with electric batons and tear gas. Several of the women were injured.
 - In December 2007, the **police dispersed with excessive force a peaceful demonstration by Khmer Krom monks** in front of the Embassy of Vietnam. Two monks were seriously injured.
 - On 19 December 2007, **police and military personnel armed with electric batons and water hoses dispersed a peaceful march by 160 indigenous minority protesters** in Labanseak Commune, Banlung district, Ratanakiri. The local authority had not granted 'permission' for the march. The police questioned the march organizer and a human rights activist, and also illegally searched the house of another activist.
 - From January to October 2008, the Cambodian Center for Human Rights organized **48 public forums of which nine were disrupted and two banned**. The local authorities banned the two forums (in Takeo and Kampong Chhnang) because they wanted to keep "good order" for the general election period.
35. The cases above are a few of countless examples of the Government restricting freedom of assembly in breach of the UDHR Article 20 and ICCPR Article 21, and of Articles 31, 37 and 41 of the Constitution.
36. In repressing freedom of assembly, the **Government often relies on the 1991 Law on Demonstration** that prohibits demonstrations that affect "*public tranquility, order or security*". Further, **local authorities misinterpret the law** and rely on a Ministry of Interior declaration that requires demonstration organizers to receive permission to demonstrate. The 1991 Law on Demonstration was unsuccessfully challenged in the Constitutional Council. A new law is now being drafted that in many respects is worse than the 1991 law because it is self-contradictory,

¹⁴ 'Human Rights Situation 2008', Adhoc, Phnom Penh, January 2009.

expressly requires demonstration organizers to receive permission to demonstrate, and makes organizers responsible for any damage caused by demonstration participants.

V. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

37. We recognize the Government's stated intentions to continue to negotiate for the creation of an **ASEAN Human Rights body**, and its **promises to create the NHRC and to decriminalize defamation**. We are also hopeful about a new freedom of information law. We believe that space is opening up for further engagement between the Government and NGOs.
38. However, we are concerned with the **Government's failure to engage with the international community and the weaknesses of the international community** in demanding improvements in the protection of human rights. There are **no independent mechanisms that act as a check on the Government's power**, so further violations of freedom of expression and assembly remain almost certain. We are also concerned about the Government's approach to the internet and its plans to restrict its use.

VI. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS: OUR RECOMMENDATIONS

39. During the last four years, **Cambodians have suffered from frequent and regular violations of their rights to freedom of expression and assembly**. In order to improve this situation we urge the Government to properly respect these freedoms and to implement the following **recommendations**:

International

- i. Ratify the First Optional Protocol of the ICCPR to enable Cambodians to submit complaints to the HRC relating to violations of their freedom to expression and assembly, and other human rights.
- ii. Work with civil society to cooperate with the UN treaty bodies - in particular the HRC - and to satisfy Cambodia's reporting obligations. Submit the second report to the HRC, due since 2002.
- iii. Invite the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to visit and assess the situation in Cambodia, and to make recommendations for improving freedom of expression.
- iv. Cooperate fully with the new Special Rapporteur for human rights in Cambodia.
- v. Engage properly with the UPR process, by consulting with all stakeholders.

Regional

- vi. Work with other ASEAN member states to create an ASEAN Human Rights body in 2009.

National

- vii. Establish an independent NHRC in 2009, in keeping with the Paris Principles.
- viii. Publicly endorse the Johannesburg Principles and work with NGOs to formulate a freedom of expression and assembly strategy as part of a wider human rights action plan.

- ix. Decriminalize disinformation and defamation in the course of reforming the criminal law.
- x. Invite experts including the international NGO Article 19 and the United Nations Educational, Scientific and Cultural Organization (UNESCO) to assess and recommend amendments to the 1995 Press Law and 1991 Law on Demonstrations. Implement these newly amended laws.
- xi. Draft and implement a new Freedom of Information Law, in accordance with the freedom of information policy framework.
- xii. Ensure that any new NGO Law respects NGOs' freedom of expression and association.
- xiii. Amend parliament's internal rules to remove the grouping requirements and enable MPs to speak freely and represent their constituents.
- xiv. Provide more radio frequencies for use by broadcasters sympathetic to the opposition political parties and civil society.
- xv. Provide training to the judiciary, law enforcement personnel and local authorities on the importance of applying accepted freedom of expression and assembly principles.
- xvi. Reform the judiciary to make it truly independent. Specific recommendations for reform of the judiciary are beyond the scope of this submission, but we reference LICADHO's excellent report on this issue.¹⁵

VII. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

40. The need for capacity building and technical assistance is made obvious in the above recommendations and is **required to empower the Government** to work with NGOs to engage further with UN mechanisms, set up an independent NHRC, reform flawed legislation, and provide training. Civil society would also benefit from further capacity building and technical assistance to make us more effective in promoting and protecting freedom of expression, assembly and other human rights.

13 April, 2009

¹⁵ LICADHO. *Op. cit.*

ANNEX I: NGO COALITION

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ANNEX II: ARTICLE 19 MEMORANDUM ON THE CAMBODIAN LAW ON THE PRESS

[Please see attached memorandum in the following pages.]



MEMORANDUM

on

the Cambodian Law on the Press

by

ARTICLE 19

Global Campaign for Free Expression

London

October 2004

I. Introduction

This Memorandum analyses the existing Cambodian Law on the Press (Press Law, or Law) for compliance with international law and standards. The analysis has been requested by our partner organisation, ADHOC and is based on the published UN English version of the law.

Generally, ARTICLE 19 notes that, frequently, press laws are vehicles by which governments attempt to over-regulate and control – improperly and impermissibly from the point of view of the international law of freedom of expression – what newspapers and other periodicals may say, and who may practice journalism. Such improper controls may take such forms as broad and vague content restrictions directly applied to the press; registration requirements on newspapers and accreditation requirements on journalists, both of which may be open to serious abuse; and obligatory codes of conduct for journalists which potentially turn “independent” journalist associations into arms of government.

At the same time, a good press law can, instead of *regulating and constraining* the press, work to *ensure genuine press freedom*. A good press law should, for instance, prohibit prior censorship, protect the confidentiality of sources, protect the independence of journalists’ associations and ensure access for the press to the workings of government and to the judicial process. It should *not* contain any press-specific content restrictions, although it might provide for the rights of correction and

reply.

The Press Law does contain some very positive provisions, including a guarantee of the “freedom of the press and freedom of publication”, consistent with constitutional protections (Article 1); a categorical assurance that the confidentiality of sources is protected (Article 2); a prohibition on “pre-publication censorship” (Article 3); and a guarantee that no person shall face criminal liability for the expression of opinions (Article 20).

On the other hand, the Press Law contains various provisions which are plainly intended to regulate, or to control, the press. For example, various articles contain broad and vaguely-worded content restrictions which have the potential for restricting expression which should be protected; individual journalists are effectively (albeit indirectly) subjected to a wide and troubling range of obligations, particularly relating to content; and there is a registration requirement applicable to all media, with enforcement powers in the Ministries of Information and the Interior, which may subject the press to arbitrary denials of the right to publish or to equally arbitrary shutdowns.

Recent events in the country bear out both the positive and the negative aspects of the Press Law. On the one hand, a significant amount of information critical of government and government officials is actually published by press outlets, usually without governmental interference or resistance. On the other hand, we note that the Press Law has been used to fetter legitimate publication activity. For example, Article 12 power (discussed below) has been exercised to suspend the operation of some newspapers for 30 days, based on critical comments made in some articles relating to high government officials; government officials, including judges, have brought defamation lawsuits based on investigative and other reports; and in some cases journalists have been detained and questioned about their sources.

In Section III of this Memorandum, we describe in detail and analyse those provisions of the Press Law which, in our view, need to be amended or repealed altogether. Section II outlines the guarantee of freedom of expression in international law and in the Constitution of the Kingdom of Cambodia

II. International Law and Standards

II.A The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR) guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.¹

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.

¹ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

The *International Covenant on Civil and Political Rights* (ICCPR),² ratified by Cambodia in 1992, imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Freedom of expression is also protected in all three regional human rights instruments, at Article 10 of the *European Convention on Human Rights* (ECHR),³ Article 13 of the *American Convention on Human Rights*⁴ and Article 9 of the *African Charter on Human and Peoples' Rights*.⁵ Although not directly binding on Cambodia, judgments and decisions issued by courts under these regional mechanisms offer an authoritative interpretation of freedom of expression principles in various different contexts.

II.B Freedom of Expression and the Media

The guarantee of freedom of expression applies with particular force to the media, including the press. As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.⁶

The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law”.⁷ It has said:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.⁸

The Inter-American Court of Human Rights has similarly explained: “It is the mass media that make the exercise of freedom of expression a reality”.⁹

² UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

³ Adopted 4 November 1950, in force 3 September 1953.

⁴ Adopted 22 November 1969, in force 18 July 1978.

⁵ Adopted 26 June 1981, in force 21 October 1986.

⁶ UN Human Rights Committee General Comment 25, issued 12 July 1996.

⁷ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

⁸ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

⁹ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

II.C Restrictions on Freedom of Expression

International law and most national constitutions recognise that expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

A similar formulation can be found in the European and Inter-American regional human rights instruments.¹⁰

The UN Human Rights Committee has explained that Article 19(3) of the ICCPR creates a three-part test which must be satisfied as a condition of justifying any restriction on freedom of expression. First, the interference must be provided for by law. As the European Court of Human Rights has explained with respect to the ECHR's substantially identical provision, a restriction meets this standard only where the law in question is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct".¹¹

Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression.

Finally, the restriction must be *necessary* to secure one of those aims. As the European Court has explained, again in the context of substantially similar language in Article 10 of the ECHR, the requirement of necessity means that even where restrictions seek to protect a legitimate interest, the government must demonstrate that there is a "pressing social need" for the measures; moreover, the restriction must be proportionate to the legitimate aim pursued and the reasons given to justify it must be relevant and sufficient.¹²

II.D Constitutional Provisions

Article 31 of the Cambodian Constitution provides that Cambodia "shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of human Rights [and] the covenants and conventions related to human rights...." Additionally, Article 41 of the Constitution provides that all citizens have "freedom of expression, *press, publication* and assembly" [emphases supplied]. That article goes on to provide: "No-one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security".

¹⁰ The African Charter employs a rather different formulation.

¹¹ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

¹² *Ibid.*, para. 62. These standards have been reiterated in a large number of cases.

III. Analysis of the Press Law

The Press Law contains a number of provisions of specific relevance to the press which, with modifications suggested below, may well be retained in the Press Law. However, other provisions, for instance those relating to access to official information or to restrictions on content (except as pertains to a right of retraction or reply) do not have anything specifically to do with the press and, ideally, should be repealed. The danger of including such provisions in a media-specific law is that they give the misleading, and sometimes false, impression that it is appropriate to treat the press, and journalists in particular, differently from other citizens with regard to what they may say or request, from whom and so on. Yet, as the Constitution itself makes clear, the right to freedom of expression and the press is a right which applies to every citizen without distinction.

We turn now to an analysis of the Press Law's specific provisions.

III.A Content Restrictions

Article 11 prohibits the publication of "anything that may affect public order by directly inciting one or more persons to commit violence". "Victims" of such publications are given the right to bring civil suits with respect to the offending material. The article goes on to instruct the court to "examine the relationship between the inciting article and the act". The limitations period for an action under this article is three months.

Article 12 prohibits the press from publishing or reproducing "any information that may affect national security and political stability". In addition to possible criminal penalties (not specified by this article), the "employer, editor or author" may be fined between 1m and 5m riels (between USD260 and USD1300). Moreover, the Ministries of Information and the Interior are accorded the right to confiscate the "offending issues of the press" and also to "suspend the publication for a maximum of 30 days and transfer the case to the court" (we will refer to this latter as the suspension provision).

Article 13 prohibits the publication or reproduction of "false information that humiliates or contempts [sic] national institutions". Fines of between 2m and 10m riels are provided for.

Article 14 prohibits the publication of "anything that affects the good customs of society". The article goes on to provide "primary" examples, including "curse words", words "directly describing sexual acts", "[d]rawings or photographs depicting human genitalia, or naked pictures, unless published for educational purposes", and "degrading pictures that compare particular human being[s] to animals". Fines for violating these prohibitions are provided for, ranging from 1m to 5m riels.

Article 15 prohibits the publication, except where there is permission from the court, of any information which would make possible the identification of (a) parties in a civil suit relating to marriage, paternity, divorce or child custody; (b) any youth under the age of 18 involved in a civil or criminal suit; or (c) a woman who is a victim or rape or molestation.

Finally, Article 16 prohibits the publication of any false advertisement, defined as any

commercial advertisement which “exaggerates the quality or value of a product [or] service and leads to consumer confusion”. However, press outlets do not have “legal responsibility” for the publication of these advertisements unless they continue to publish them after having received “written warnings” from a court or competent ministry.

Analysis

Our primary concern with all of these provisions is that, fundamentally, there is simply no reason why the Press Law should contain *any content restrictions at all* with respect to the press.¹³ Some restrictions on what may be expressed are permissible under the international law of freedom of expression, provided they comply with the three-part test described in Section II above. However, nothing in the legitimate aims recognised in the three-part test, or in the necessity analysis required under that test, has any exclusive application to the press. In particular, the restrictions contained in the Press Law have no *particular* application to the press; as a result, they should, to the extent that they are legitimate (see below), be contained in laws of general application to all citizens. As we have already argued, imposing specific content restrictions on the press may give the false impression that the free expression rights of the press are somehow different, and perhaps somewhat less fundamental, than those of others. To the extent that these restrictions duplicate laws of general application, they create a regime of double standards, which may well give rise to confusion, with the authorities seeking to apply the more stringent standard to the press.

Further to this general recommendation, we are of the view that a number of the content restrictions in the Press Law would be objectionable even were they to be placed in a law of general application. Our concerns with these specific restrictions is outline below.

Article 12, in restricting any publication or reproduction of information which “may affect” national security and political stability”, legitimates the restriction of a vast amount of expression which is in fact protected by international law. Indeed, at least in translation, this does not even require a risk of a negative impact.¹⁴ More importantly, the term ‘may affect’ does not apply only where a publication *actually* affects national security, or where it has a significant *probability* of doing so. It applies whenever a publication *might* affect national security and political stability. A vast range of statements *might* have some (negative) effect on national security and political stability: some particularly sensitive reader, for instance, could be angered at a (true) allegation regarding a public official and *might* try to take some violent steps against such official. But remote possibilities of this sort simply cannot justify restrictions on the press.¹⁵

¹³ Rules relating to retraction and reply are rather different in nature; if consistent with international standards, these provide for a special remedy against the media, as opposed to establishing different standards of liability.

¹⁴ The term ‘impact’ does not imply that any effect is harmful; a positive contribution would also impact on national security.

¹⁵ To argue, as some might, that Article 12 is not currently being employed in this way, and that political and other criticism by the press is generally tolerated, does little to remedy this problem. The term ‘may affect’ is inherently weak and this might be taken advantage of to discourage or prohibit press reporting which is critical of the authorities. It is precisely this sort of possibility which renders an overbroad law unjustifiable.

In addition, It is unclear what the term “political stability” means. At least in translation, the article requires an impact on *both* national security *and* political stability, which would appear to be a narrower concept than national security alone. However, it is possible that, in practice, the ‘and’ will be treated as an ‘or’, so that an impact on either of these concepts could be a basis for applying this article. If so, it may be noted that the term political stability is vague and therefore subject to potentially very broad interpretation, contrary to international law. For example, certain officials in a position to administer and enforce Article 12 may make the judgment that “political stability” requires the maintenance in power of the incumbent government and on that basis might attempt to employ Article 12 improperly to stifle publications critical of that government.

For Article 12 to comply with the necessity prong of the three-part test, it must require a much closer nexus or link between the impugned publication and the risk of harm to national security and political stability. In particular, publication must pose a serious risk of imminent and substantial prejudice to national security and political stability before it may permissibly be restricted.

Article 12 may be contrasted with Article 11 in this regard. While Article 11 also uses the term ‘may affect’ in relation to public order, it then appears to go on to require that this result has been brought about by a direct incitement to violence. It would appear that the article contemplates actual violence occurring. This view is strengthened by the article’s admonition to the court to examine the “relationship” between the inciting article and the act”, which strongly implies that the article contemplates the actual *occurrence of an act of public disorder*.

The suspension provision of Article 12 is also deeply problematical. As we understand the reference to ‘publication’, it would appear that this provision permits the Ministries of Information and the Interior not only to seize a particular issue containing offending material but also effectively to suspend entirely the *press outlet itself* for a period of 30 days. We are of the view that granting the power to political authorities such as ministries to seize newspapers is highly problematical, particularly on such open grounds as those stipulated in Article 12. Such power is likely to be abused for political ends.

The power to suspend a publication is far more draconian and unwarranted. It appears to contradict Article 3, which prohibits pre-publication censorship. International law also allows for such censorship only in the very most limited circumstances – probably never for newspapers – and only where there are clear judicial controls on it. It is one thing to act, after the fact, to restrict the publication of material which is manifestly illegal; it is quite another to *punish* the publication of illegal material by suspending a whole publication, thereby preventing publication of *other* material which may have no relation whatever to the problematic material.

Article 14 is seriously problematic as well. Like Article 12, it uses the term ‘affect’, although not, apparently, qualified by ‘may’, and we recommend that this be replaced by language which implies a more direct connection to the envisaged harm, such as poses a serious risk of substantial and immediate harm.

Equally importantly is the use of the term ‘good customs’ in Article 14. The list of examples provided after this term is not exhaustive and so any content which “affects the good customs of society” may be punished. Thus, the legitimacy of this restriction hinges on whether or not the term ‘good customs’ has a clear meaning.

No definition of ‘good customs’ is provided. It is possible that the term is meant to coincide with the term ‘morality’ and the article is intended to be in the service of the legitimate aim of protecting public morals. Although public morals are recognised as a grounds for restrictions on freedom of expression,¹⁶ it is not adequately precise for a particular legal restriction to meet the standard of necessity as required under international law. Regardless, the article leaves wide scope of discretion to government officials to interpret this term. As a result, it could be abused and applied to promote allegiance to the incumbent government as a necessary part of such good customs. It could be understood as requiring Cambodian society to be insular, so that information about what is happening elsewhere in the world might negatively affect “good customs”. As always, when such wide discretion is left in the hands of officials in a matter relating to restrictions on press content, the predictable results are chill and censorship.

Even the list of ‘primary’ examples are problematical. The term ‘curse words’ is undefined and may be interpreted to include merely coarse words, words which are important to use in a wide range of press contexts where the importation of local flavour is vital to the story or report being published. Equally, even so-called genuine ‘curse words’ have a role to play and their employment should hardly be the object of national legislation. Equally, the restriction relating to “degrading” pictures comparing human beings to animals is unacceptably vague. The term ‘degrading’ is, again, undefined, leaving it open to officials effectively to censor a wide range of material which should be protected; a political cartoon in a weekly magazine having birds or fish speak in the Khmer tongue might be an example.

Finally, Article 13 is similarly problematical. First, it is increasingly being recognised that national institutions simply do not have reputations and therefore cannot be humiliated or otherwise dishonoured. Even if they do have reputations, there are very good reasons why these should not be protected by law. We have already noted the fundamental role of the press as “watchdog” for the public, particularly with respect to government. This necessarily entails that it be free to investigate and to comment critically on government institutions. Officials may well see such critical comment as humiliating or dishonouring of national institutions, and subject to restriction on that basis. We recommend, therefore, that this article be removed in its entirety from national legislation.

Article 15 establishes a presumption that the identification of certain parties to court cases is prohibited, which the courts may override. While we acknowledge that privacy in these matters is of substantial importance, we also believe that there are circumstances in which the public interest in the identification of some such persons – for example, potentially a case of divorce or marriage proceedings involving high level public officials or politicians – is considerable. A provision allowing for the

¹⁶ As already indicated, Article 19(3) does provide that the protection of public morals is a legitimate aim in the context of restrictions on freedom of expression.

identification of such persons when the public interest so demands would therefore be welcome.

It is unclear why Article 16 been included in the Press Law, given that it relates primarily to advertisers and presumably to the materials commercial entities themselves publish; for the most part, press outlets are protected from legal liability for the printing of this class of “false” advertisements. We also note that “advertisers” enjoy significant protections under the international law of freedom of expression for their commercial expression. Given this, we are concerned that the definition of “false advertisement” – in particular, the phrase “leads to consumer confusion” – is hardly precise and may be employed in a way that inappropriately curbs that right.

Recommendations:

- Ideally, all of the content restrictions provided for in Articles 11 to 16 of the Press Law should be repealed.
- Article 12 should be amended to provide that restrictions on the publication or reproduction of information relating to national security and political stability are permissible only if such publication or reproduction would, or would be likely to, pose an immediate and substantial risk of serious prejudice to national security and political stability.
- The suspension provision of Article 12 should be repealed.
- Article 13 should be repealed.
- Article 14 should also be repealed. In the event that it is retained, however, (1) the term ‘good customs’ should be defined in an appropriately narrow and clear manner; (2) liability should not ensue unless the impugned expression would, or would be likely to, substantially prejudice public morals; and (3) any specific categories under this article should be redrafted so as to ensure their compliance with the necessity prong of the three-part test.
- Article 15 should be amended to provide for a public interest override.
- Article 16 should be repealed from the Press Law; if retained, it should apply only to advertising material which poses a clear and serious risk of harm to consumers.

III.B Responsibilities of Journalists

Articles 6 and 7 govern the “responsibilities” of journalists. Article 6 recognises the right of journalists to establish independent associations and it goes on to prescribe certain features of such associations, including that they must adopt by-laws consistent with national law and that the “head” of any such association must be elected by a “democratic process”.

Article 7 requires all journalists’ associations to establish codes of ethics. In 11 subarticles, Article 7 goes on to set out certain principles which each such code must establish as binding on every journalist. Among such principles are that journalists must: “make fair commentaries or criticism consistent with a sense of justice”; retract any information “that is imprecise and leads to a misunderstanding”; “[s]trictly respect Khmer grammar in writing articles”; and not publish obscene or graphically violent materials. Additionally, the code must provide that it is a grave professional abuse to plagiarise, fraudulently misinterpret, defame or accept bribes.

Analysis

There are various substantial difficulties with this article. Perhaps most fundamental among them is the considerable tension between the article's commitment to the *independence* of the journalist associations and the fact that the article imposes sufficiently many substantial obligations on these associations to render them, to a considerable degree, instruments of government regulation.

This tension is reflected most dramatically in the prescriptions in Article 7 for the codes of ethics. In fact, the independence of journalists' associations ought to be reflected first and foremost in their being accorded complete freedom to regulate journalists in the way they see fit, including in relation to the development of codes of conduct, disciplinary mechanisms and so on. They are the professionals, after all, and they are best placed to make the detailed judgements about how journalism should be practiced.

In sharp contrast to this, Article 7 provides detailed and, in many cases, substantively inappropriate, prescriptions for all codes of ethics. We address just two of the more serious examples. First, associations are to ensure that fair commentaries are to be made "consistent with a sense of justice". It is entirely unclear what this prescription means. It might be read as requiring, for example, that all commentaries be even-handed. It is, however, perfectly legitimate for journalists to take partisan positions and to publish partisan opinions. Is it also unclear whose "sense of justice" is to be complied with. It is possible that some associations, out of fear for the consequences of doing otherwise, will interpret this provision to require journalists to conform to the government's views on justice, thereby preventing the media from performing its watchdog role and being critical of government.

Second, the codes must ensure that there is strict respect for Khmer grammar. Surely, however, the matter of style is quintessentially something to be left to independent editorial decision rather than being regulated by central government. Indeed, there are all sorts of reasons for deviating, from time to time, from the dictates of strict grammar: for rhetorical effect, to reflect spoken rather than written language, to capture local colour and nuance, and so on. While it is to be expected that the codes will take some position on the appropriate use of language, they must be entitled to have a flexibility which is quite absent from Article 7.

The tension is also reflected in the part of Article 6 requiring the head of a journalists' association to be elected democratically and to be a member of the Board of Directors. Independence also applies to the manner in which such bodies elect or otherwise appoint their executive.

Recommendation:

- Article 7 and the part of Article 6 that prescribes how journalists' associations are to be governed should be repealed.

III.C Right of Retraction/Reply

Article 10 provides for rights of retraction and reply, in the event that "any person believes that any article or text, even if the meaning of the article or text is implied, or any picture, drawing or photograph of any press is false and harms his or her honor or dignity". A retraction or reply must be published within seven days or in the

following issue. In addition, it must be published on the same page and in the same type size as the objectionable material.

This same article specifies that any person asserting a right of retraction or reply may, at the same time, bring a suit in defamation, libel or humiliation. In the event that a person brings a civil suit in defamation, a court may order the press to publish a retraction, pay compensation or both.

Courts may, in addition to the orders and awards just mentioned, impose fines of between 1m and 5m riels and may order the publication of its decision at the expense of the defendant (not to exceed 1m riels).

Finally, this same article provides: “In the case of a public figure, any false allegation or imputation which the journalist publishes or reproduces with malicious intent against such public figures is libel and is prohibited”.

Analysis

We note that Article 10 contains provisions relating to both defamation and the rights of retraction and reply. In our view, defamation provisions, like the other content restrictions already discussed, have nothing specifically to do with the press, and should find their place (if anywhere) in a law of general application. It is, subject to their being in accordance with international law, appropriate to deal with the rights of retraction and reply in media-specific legislation as these remedies are peculiarly tailored to the media.

We note one positive feature of this article. Apparently in recognition of the fact that public figures should recognise that they may be subject to scrutiny and critical comment by the press, the article imposes a “malicious intent” requirement for libel of public figures so that a journalist cannot be found to have libelled a public figure by publishing false information or allegations about him or her unless it can be shown that the journalist actually intended to harm the public figure by so publishing. This provision, therefore, protects journalists – so far as libel charges go – from liability for publishing information about public figures which, though untrue, was published in good faith.

Article 10 contains two distinct remedies: a right to demand a retraction (which we assume is analogous to the more commonly known right of correction) and a right to demand a reply. We note that a right of retraction is far less intrusive than a right of response inasmuch as the former merely involves retracting and correcting mistaken allegations while the latter requires a media outlet to provide a platform for the complainant.

We note that, in part because it constitutes a substantial interference with editorial independence, a right of reply is a highly disputed area of media law. In the United States, at least as regards the print media, it is seen as unconstitutional on the grounds that it represents an interference with editorial independence.¹⁷ In Europe, in contrast, the right of reply is the subject of a resolution of the Committee of Ministers of the

¹⁷ See *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

Council of Europe.¹⁸ In many Western European democracies, the right of reply is provided for by law and these laws are effective to a varying extent.

Advocates of media freedom, including ARTICLE 19, generally suggest that a right of reply should be voluntary rather than prescribed by law. In any case, certain conditions should apply:

- The reply should only be in response to statements which are false or misleading and which breach a legal right of the claimant; it should not be permitted to be used to comment on opinions that the reader or viewer doesn't like.
- It should receive similar prominence to the original article or broadcast.
- It should be proportionate in length to the original article or broadcast.
- It should be restricted to addressing the incorrect or misleading facts in the original text and not be taken as an opportunity to introduce new issues or comment on correct facts.
- The press should not be required to carry a reply which is abusive or illegal, or whose publication would constitute a punishable offence, or where it would be considered contrary to the legally protected interests of third parties.¹⁹

The conditions for application of the rights of retraction and reply both meet the first condition above, but they are both triggered where a person merely *believes* that a published text is false and harms his or her honour or dignity. It is unclear from this article when, if ever, a press outlet may refuse to issue a retraction or grant a reply. Readers have particular sensibilities and may believe, on very flimsy evidence or with no evidence at all, that certain published articles contain false and defamatory information about them. It would hardly be appropriate for such unfounded beliefs to form the basis, under this article, for an entitlement to a refutation or reply. Rather, the article should make it clear that these rights are triggered only where the material is in fact false and defamatory of the complainant. If the press outlet believes this is not the case, they may refuse the claimed right, subject to appeal to the courts.

Second, the conditions on the right of reply set out above are not reflected in Article 10. In particular, it is not required to be proportionate to the original article, to be restricted to redressing the incorrect or misleading facts or to be legal in nature.

Third, the rules regarding the rights of retraction and reply, as well as the other remedies for defamation, should respect the principle that sanctions for breach of a rule restricting freedom of expression should always be strictly proportionate. A right of retraction is far less intrusive than a right of reply so, whenever the former is sufficient to remedy any harm done, no right of reply should arise.

Furthermore, Article 10 explicitly provides for the further sanctions/remedies of compensation and fines. The Press Law should recognise a hierarchy of intrusiveness

¹⁸ Resolution (74) 26 on the right of reply, adopted on 2 July 1974. See also the Advisory Opinion of the Inter American Court of Human Rights, *Enforceability of the Right to Reply or Correction*, 7 HRLJ 238 (1986).

¹⁹ See Resolution (74) 26 of Council of Europe, Committee of Ministers, "On the Right of Reply – Position of the Individual in Relation to the Press" (CoE Resolution), Appendix at para. 4. It should also be noted emerging international practice rules out granting a right of reply to State and other public authorities. See para. 4(i) of this Resolution.

among these sanctions/remedies, whereby a retraction is the least intrusive remedy, followed by a reply, compensation and then a fine. The sanction/remedy applied should be the least intrusive remedy which redresses the harm done. If a retraction is sufficient, no other remedy should be applied, and so on. Fines, a form of punitive remedy, should be applied, if at all, only in the very most egregious situations.

Recommendations:

- The defamation and libel provisions of Article 10 should be repealed and provided for, as necessary, in a law of general application.
- Article 10 should specify that a right of retraction or reply is available only where the publication complained of was in fact false and dishonoured the complainant.
- Conditions should be placed on replies, in accordance with standards articulated above.
- Article 10 should provide that, where a retraction would redress the harm complained of, it should be the favoured remedy. The article should generally establish a hierarchy of remedies, along the lines indicated in the text.

III.D Registration Regime

Article 8 provides: “Before distribution of the press, the employer or editor shall submit an application to the Ministry of Information in order to identify itself”. Failure to comply with this “formality” prior to publication results in a fine of between 500,000 and 1m riels; repeated violations may result in fines of double that amount.

Article 9 provides that the “formality” described in Article 8 “shall *primarily* consist of” the provision of identifying the press outlet, the names and address of the employer or editor and of the printing house, and a “certification of criminal record”. Changes in any of this information must, outside of exceptional circumstances, be submitted to the Ministry of Information five days in advance.

Analysis

We are informed that these provisions in fact constitute a registration regime; that the press is obligated to register only one time with the Ministry of Information; that the process is indeed a mere “formality” in the sense that applications which meet the conditions specified are approved; and that the procedure is not onerous for the press. Moreover, we are informed that the Ministry has the power to revoke registrations under certain conditions and that, while on occasion it has used such power, such instances are rare.

These facts are positive but they do not allay our concerns with the registration regime, at least as it is set out in principle in the Press Law. In the first place, our view is that registration regimes for the print media are not necessary and that they may be abused by government as a means of controlling the press. While registration regimes may be quite neutral on their face, and may indeed seem quite benign, even the best systems may be abused by regimes intent on constraining press freedom. As a result, our primary recommendation is that the registration system be abolished.

While we acknowledge that the Press Law’s registration regime is not at present being abused, it is important to recognise that its *terms* create the *possibility* for abuse.

While it is a possibility not presently being exploited, the fact remains that it might be exploited in the future unless certain changes are made. Our comments below provide an alternative to our main recommendation – that the registration system be abolished – in an attempt to ensure that, should it be retained, it is as immune as possible from abuse.

First, we note that Article 8 does not explicitly say that newspapers need only register once and that Article 9 does not make it clear that changes in the information required for initial registration do not trigger a new registration requirement.

Second, Article 9 sets out merely information that is “primarily” required in the registration process, thereby leaving it open to officials in the Ministry of Information to require yet more information as a condition of their granting registration requests. There is nothing in Article 9 which would prevent officials from requiring, quite unreasonably and unjustifiably, information about the proposed content or proposed target audience of the applicant press outlet. If such information were required, there is little in Articles 8 and 9 which would prevent officials from denying registration if they disapprove of the outlet’s proposed content.

Third, the meaning of the requirement to provide a certification of criminal record is unclear, at least in translation. It could mean that the editor-in-chief, or perhaps the publisher, must provide proof that he or she does not have a criminal record. Perhaps the requirement, however, is that all employees must not have criminal records. Regardless, the implication is that at least some persons in the applicant press outlet must prove they do not have a criminal record as a condition for registration. This is inappropriate. Everyone, including those with criminal records, enjoy the right to freedom of expression. While these rights may be subject to certain restrictions during imprisonment, a rule absolutely barring anyone from starting a newspaper cannot be justified. Former prisoners, once free, should enjoy the same freedom of expression rights in relation to starting newspapers as anyone else. Accordingly, the mere existence of a criminal record amongst the ownership or employees of a press outlet should have no bearing whatsoever on its eligibility for registration.

Finally, the Press Law is silent on the matter of revoking registration, which may be interpreted by the Ministry as a license to do so. Our view is that revocation of registration for a print media outlet is never legitimate. Fines and compensation awards for breach of laws of general application, as well as the application of the criminal law to individual officers of the outlet, are sufficient to redress any harm. We note, in this regard, the following observation of the UN Human Rights Committee in respect of Cambodia:

The Committee is ... concerned at the Press Laws which impose license requirements and prohibit publications which, inter alia, cause harm to political stability or which insult national institutions. These broadly defined offences are incompatible with the restrictions permissible under paragraph 3 of article 19 of the covenant.²⁰

²⁰ These comments were part of the Human Rights Committee’s Concluding Observations on Cambodia as part of its regular reporting. See UN Doc. CCPR/C/79/Add.108, 27 July 1999, para. 18.

Recommendations:

- Ideally, Articles 8 and 9 should be repealed.
- Assuming that these articles are retained, the following rules should apply:
 - It should be clear that newspapers need only register once and changes of information, while they may be required to be communicated, do not constitute re-registration.
 - The information required to be submitted pursuant to Article 9 should not be allowed to be added to.
 - The Ministry of Information should be *required* to grant registration requests once the requisite information has been submitted.
 - The Press Law should make it clear that, once granted, registration may not be revoked unless the print media outlet effectively ceases to exist.

III.E Freedom of Information

Article 5 creates a highly abbreviated access to information regime, specifically for the press. Article 5(A) recognises the “right of access to information in government-held records”, subject to a number exceptions, including where release of requested information would cause “harm” to national security or relations with other countries, would invade the “rights of individuals”, would expose commercial or financial documents, would affect the right of any person to a fair trial, or would interfere with public officials carrying out their duties.²¹

Article 5(B) provides that information requests should be in writing and should specify clearly which information is requested. Responses must be provided within 30 days and denials must be accompanied by reasons.

Analysis

The right to access information held by public bodies is a right held by everyone, not just members of the media. As a result, freedom of information should be governed by a dedicated law, which secures to everyone the right of access to information. At present, however, Cambodia does not have a general freedom of information law, although we understand that the authorities have made a commitment to pass one in the near future. Our primary recommendation is that Cambodia enact a full-fledged freedom of information law which guarantees the right of access to all, which sets out in detail the procedure by which such information may be accessed (including provisions ensuring that the access procedure is affordable), which provides for a fair, speedy and inexpensive appeals process (preferably in which an information commissioner is created and plays a pivotal role), which places a clear duty on public bodies to publish a wide range of information of public interest, and which provides protection for whistleblowers.²²

Until such time as a law of general application is adopted, and because of the vital importance of the press having access to information held by public authorities to perform its role of informing the public about matters of public importance, we believe that the access provisions of the Press Law should remain in effect. In that

²¹ Our translation reads: “Danger to public officials carrying out the law or their duties.”

²² For details on the general provisions which such a law should contain, subject, of course, to the contextual needs of the country, see ARTICLE 19’s *A Model Freedom of Information Law*, Available at: <http://www.article19.org/docimages/1112.htm>.

light, and repeating that the Press Law is not the place for the creation of a full-fledged freedom of information regime, we point out two fundamental areas in which the Press Law's freedom of information protection for the press could be improved.

First, the exceptions are generally in line with international standards – because they generally serve legitimate aims, including national security – and the law generally requires disclosure unless this would pose a risk of *harm* to the protected interests. However, no explicit consideration is given to the public interest. In our view, even where the release of information would in fact harm a legitimate interest, it should still be released absent a showing that the harm would outweigh the public interest in release of the information. This might be the case, for example, where information which was private in nature also exposed corruption within government.

Second, at present, Article 5 provides for no recourse in the event that an information request is denied. As a result, all that a government official need do if he or she wishes to hide certain information from public view, regardless of the public interest in its release, is to deny requests for it and to specify the “reasons for the denial”. This is not enough to avoid potential abuse. Instead, the Press Law should provide for a right of appeal, preferably to an independent administrative entity such as an Ombudsman. Appeals to such a body should be swift and cheap, in view of the fact that information sought by the press is so often a highly perishable commodity.

Recommendations:

- A full-fledged freedom of information law, with provisions along the lines of those in ARTICLE 19's *A Model Freedom of Information Law*, should be enacted.
- Until such enactment, the provisions of Article 5 of the Press Law should be bolstered, at a minimum, by the addition of:
 - a requirement to release requested information when the public interest so requires; and
 - a right of appeal, preferably first to an independent administrative body, and, in any event, to the courts.

III.F Competition

Articles 17 and 18 relate to Khmer language newspapers. Article 17 provides: “No natural or fictitious person may own or possess more than two Khmer language newspapers in the Kingdom of Cambodia”. Article 18 provides that the total foreign ownership of any Khmer language newspapers published in the country cannot exceed 20 percent, although an existing foreign-owned newspaper will not lose its right to publish solely due to a reduction of the number of Khmer language newspapers.

Analysis

Both articles are problematic. With regard to Article 17, there is no good reason, at least in principle, for such a broad ban on the number of Khmer language newspapers a particular natural or fictitious person may own. While measures to prevent the domination of the newspaper sector by a particular individual or a small number of individuals may be legitimate, this restriction is too draconian and may actually serve to limit the availability of Khmer language publications. It would, for example, prevent

one individual from owning two small city weeklies, operating in different cities, a situation which cannot be compared to an individual owning two national dailies.

As a general matter there should be no blanket restrictions on press ownership based on citizenship. It may be appropriate to impose certain restrictions on foreign ownership of *broadcast* media based, among other things, on the desire for local control over this public resource, although even here it would not be appropriate to impose a blanket restriction on foreign ownership. Article 18 does not impose such a blanket restriction but does seriously limit the participation of foreigners in the local media market. It may be noted that the guarantee of freedom of expression applies regardless of frontiers and that foreign investment and participation in local media can often bring much needed capital and expertise.

Recommendation:

- Consideration should be given to amending Articles 17 and 18 so that they are far less draconian in nature.

III.G Publication of Official Information

Article 4 provides: “The publication of official information ... may not be penalised if such publication is fully true or an accurate summary of the truth”. Following this general rule, the article defines the term “official information” to include information relating to statements, meetings and reports from the National Assembly, and from the executive branch, and “all aspects of the judicial process”, with some exceptions which are generally unproblematic.

Analysis

We assume that the requirement that the publication be “fully true or an accurate summary of the truth” is met if the publication is an accurate quotation or report of what was in the statement, meeting, report, or so on. In the event, of course, that Article 4 only protects from liability the publication of *true* official information, its protections would be far too narrow. Journalists should be able to further distribute official information of the sort listed in Article 4, even if the original information is inaccurate.

Assuming that our reading of the truth requirement is correct, we believe that this provision is positive. However, it does not go far enough. In particular, there is no reason to restrict the protection of journalists with respect to their publishing official information, to official information from the National Assembly, executive and courts. The proceedings, for example, of local government bodies, and the statements of local government officials, are also of some public interest, at least to the local population, and the immunity for journalists should also cover these bodies. Furthermore, the immunity does not apply to any court processes where the matter is still under investigation by the courts. This would appear to exclude witness statements, statements by lawyers, etc., all of which may be of public interest and, outside of a specific gag order by the court, should normally be reported.

Recommendations:

- The definition of “official information” in Article 4 should be expanded to include pertinent materials from local government bodies and officials.
- Court information should still be protected even where the matter is under

investigation, absent a specific court gag order prohibiting publication.