

Cambodia: Resisting State's encroachment of democratic space

Political situation

The democratic space in Cambodia in 2010 remained narrow as the Hun Sen administration continued to maintain its grip on power, using laws and the courts to silence critics, whether in the media, civil society, or parliament.

Cases against opposition politicians carried over from 2009 were concluded in 2010, finding opposition leader Sam Rainsy getting a 10-year prison term for disinformation, and the defamation conviction against his party colleague Mu Sochua upheld by the Supreme Court.

The passage of the revised penal code in December did not bode well as its critics claimed that nine of the code's provisions threatened free expression. A bill regulating local and foreign non-government organizations was also filed in December, containing regulations that are expected to discourage people from forming associations and placing more bureaucratic red tape on existing NGOs.

Revised laws and pending bills

Expectations for more democratic space heightened because the revised penal code, passed by parliament in 2009 and took effect on 10 December 2010, provides that the Press Law should supersede the earlier United Nations Transitional Authority in Cambodia (UNTAC) law and the charge of disinformation was dropped from its list. However, critics said the code has nine provisions that pose a threat to freedom of expression, some of them carrying not only fines but prison terms as well.

The nine provisions are:

- Art. 305 Public Defamation – fine of 100,000 to 10 million riels (USD25-USD2,487)
- Art. 307 Public Insult - fine of 100,000 to 10 million riels (USD25-USD2,487)
- Art. 311 Slandorous Denunciation – imprisonment of 1 month to 1 year; fine of 100,000 to 2 million riels (USD25-USD497)
- Art. 495 Incitement to Commit a Crime – imprisonment of 6 months to 2 years; fine of 1 million-4 million riels (USD248-USD995) (incitement not leading to a crime); imprisonment of 2-5 years and fine of 4-10 million riels (USD995-USD2,487) (incitement leading to crime)
- Art. 496 Incitement to Discrimination – imprisonment of 1-3 years; fine of 2-6 million riels (USD497-USD1,492)
- Art. 501 Contempt – imprisonment of 1-6 days; fine of 1,000 to 100,000 riels (USD0.25-USD25)
- Art. 522 Publication of Comments Intended to Influence a Court – imprisonment of 1-6 months; fine of 100,000-1 million riels (USD25-USD248)
- Art. 523 Discrediting a Judicial Decision – imprisonment of 1-6 months; fine of 100,000-1 million riels (USD25-USD248)
- Art. 524 False Denunciation to Judicial Authority – imprisonment of 1-6 months; fine of 100,000 to 1 million riels (USD25-USD248)

The new provisions were enforced just a week after their introduction when police arrested Seng Kunnaka, a staff of the United Nations World Food Programme on 17 December after he was accused of sharing with his co-workers leaflets he had sourced

from online news blog KI-media. The blog is known for carrying articles critical of the Hun Sen administration.

Two days later, on 19 December, Seng Kunnaka was found guilty by a Phnom Penh court of incitement to commit a crime under Art. 495 of the revised penal code. He was sentenced to six months imprisonment and was fined 1 million riels or USD248.

NGO bill

On the other hand, the legislative bill on NGOs, "Law on Associations and Non-Governmental Organizations", also raised concerns among civil society groups.

Representatives of local and foreign NGOs said that the bill aims "to control rather than strengthen civil society; to remove civil rights; and to hinder the Cambodian democratic process".

The government announced the bill in December 2010, adding that it will conduct a consultation with NGOs on 10 January 2011 before parliament deliberates on the draft law.

The NGOs issued a statement saying that while they "recognize the need for a law regulating non-governmental entities...[it] must be balanced to ensure the freedom of its citizens to engage in law-abiding activities without undue restrictions or burdens".

Some provisions of the law, according to the group, caused concerns that "informal groups of people will be banned from collective activities unless they are registered formally under the law, limiting democratic and grassroots activism."

One of the NGOs, the Cambodian Centre for Human Rights (CCHR), noted in its report that the proposed law would make it harder for groups of people to form NGOs due to "onerous requirements" in the registration process.

This, the group said, will pose serious challenges to small and provincial organizations.

The NGOs also said that a provision "effectively denies foreign nationals the right to participate as founders in either associations or domestic NGOs as well as the right of Cambodian nationals to participate when registering an international NGO".

CCHR observed that some of the bill's provisions were "intrusive", as they allowed the government to require NGOs to submit annual reports, including financial reports to the authorities.

Crackdown in parliament

Although Hun Sen's party already controls 90 out of the 123 seats in parliament, the premier still sought to ensure his grip of the legislature. The crackdown against opposition legislators, which started in 2009, continued with the Supreme Court upholding a lower court's guilty verdict against Mu Sochua, who had been convicted of defamation in August 2009.

The case stemmed from Sochua's filing of defamation against PM Hun Sen early in 2009. The premier's allies in parliament moved to strip the legislator of her immunity, paving the way for Hun Sen to file his own defamation case against her.

Mu Sochua's defamation suit against the premier was quashed by the lower court, even as the Appeal Court upheld the verdict against her. In November, she filed an appeal with the Supreme Court.

Though her case carried no prison term, she was fined 16.5 million riels (or USD4,100).

The CCHR released on 1 June 2010 a legal analysis of the case, stating that the lower courts "had failed to uphold Mu Sochua's right to a fair trial and ignored her right to freedom of expression, which is guaranteed by the Constitution".

Political observers said Mu Sochua's case is a test case for the Cambodian judiciary.

"It will be a crushing defeat for freedom of speech if the result goes against Mu Sochua," Hang Chhaya, executive director of the Khmer Institute for Democracy, said a day before the Supreme Court's decision.

Indeed, a few months later, her colleague Sam Rainsy was himself convicted of spreading disinformation. Rainsy was sentenced to 10 years imprisonment. The case stemmed from Rainsy's distribution of maps showing Cambodia's border with Vietnam being moved in favor of the latter. The opposition leader was in self-imposed exile in France when the verdict was handed down.

Disinformation

Meanwhile, an NGO worker was sentenced to two years in prison and a 2 million riels fine (USD497) on charges of disinformation.

Cambodian police arrested Leang Sokchouen on 29 May 2010, on charges of involvement in the production and distribution of anti-government leaflets in Takeo province in January. He was held incommunicado for over 33 hours, despite numerous requests by his family and lawyer to visit him.

A Radio Free Asia (RFA) reporter was charged with disinformation for broadcasting a report on a dispute between a Cham Muslim community leader and members of his mosque.

RFA reporter Sok Serey, along with two activists from the CCHR and two representatives of the mosque, were charged based on Sok Serey's October 2008 news broadcast alleging that community leader Rim Math misspent 10 million riels (USD2,487) that had been allocated for a local community project.

Release

Two journalists were released from prison in 2010. The first was Hang Chakra, editor of the Khmer opposition daily "Machas Srok" convicted of disinformation, who was granted a royal pardon during the Khmer New Year in April 2010. Chakra said his lungs, eyes and bladder problems got worse since he was imprisoned in June 2009.

On the other hand, Ros Sokhet was ordered released by the Appeal Court on 28 October 2010, almost a year after he was arrested, also on disinformation charges.

Although presiding judge Pol Sam Oeun upheld the lower court's conviction, the journalist's original two-year prison term was cut in half.

Looking forward

Communications remain a vital tool in any attempt to balance power in Cambodia. At present, the ruling political party is pervasive in all levels of government—whether in the national or local levels. Its power is hardly checked by a weakened legislative opposition and a cooperative court whose judges are senior party members.

Print media do not enjoy much reach outside of the capital. Radio and television remain potent tools but they are heavily reliant on advertising for sustenance, and with advertisers vulnerable to government influence or pressure, broadcasting can only enjoy so much democratic space.

The relatively affordable cost of SMS provides Cambodians with an alternative means of communication.

The Internet remains out of reach of average Cambodians, but the government apparently is not taking chances. The Cambodian Association for the Protection of Journalists (CAPJ) said that the government is planning to pass a cybercrime law soon.

The government continues to exert its influence in every facet of Cambodian society. The executive department controls both the legislative and judicial branches of government. With the State's use of legal mechanisms to lend an air of legitimacy to its attempts to gain total control, it remains to be seen if local media and civil society can still put up a stiff resistance in 2011, if only to be able to exercise their freedom of expression in the country.

This report was prepared with the assistance of the Cambodian Association for the Protection of Journalists (CAPJ).
