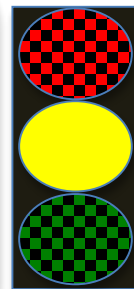


Fact Sheet: The Law on the Press 1995 (the “Press Law”)

Law’s Current Status: In force

CCHR Classification: YELLOW

Snapshot: The Cambodian Center for Human Rights (“CCHR”) has classified the Press Law yellow on the basis that it contains a number of positive provisions which, in theory, afford vital protection to those working in the media, yet some of its provisions are either vague, undefined or contradictory, and should therefore be reviewed and amended. First and foremost, any references to criminal law should be clarified for the benefit of the courts.



Introduction

This factsheet provides an overview of the Press Law’s key provisions in light of the right to freedom of expression and the courts’ use of this legislation. The Press Law was promulgated in 1995 amid concerns that it would be used to silence legitimate critical commentary of the policies and actions of the Royal Government of Cambodia (the “RGC”). The Press Law has a wide scope of application, applying not only to journalists but also to newspaper owners, editors and publishers working within the media. However, it has no extra-territorial application, *i.e.*, it only covers media published or distributed within the Kingdom of Cambodia (“Cambodia”). CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

The Press Law: freedom of expression?

The right to freedom of expression is guaranteed under Cambodian law, by virtue of Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”) and Article 31, which incorporates the Universal Declaration of Human Rights (the “UDHR”) and International Covenant on Civil and Political Rights (the “ICCPR”) into domestic law (as confirmed by a decision of the Constitutional Council dated 10 July 2007). Article 19 of both the UDHR and the ICCPR (ratified by Cambodia in 1992) provide for a universal right to freedom of expression. While it is not an absolute right, CCHR deems that any restrictions must fall within the strict parameters of Article 20 of the ICCPR.

The Press Law explicitly guarantees freedom of expression for the press as it “*determines the regime of the Press and assures freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the Constitution*” (**Article 1**). Furthermore, **Article 3** provides for the right to freedom from pre-publication censorship (**Article 3**). Publication of official information may not be penalized if such publication is fully true or an accurate summary of the truth (**Article 4**). However, the Press Law imposes content restrictions in relation to anything which “*may affect the public order by inciting directly one or more persons to commit violence*” (**Article 11**) or which “*may cause harm to the national security and political stability*” (**Article 12**) or which affects “*the good custom of society*” (**Article 14**). These terms remain undefined and are therefore potentially problematic because they involve financial sanctions and, in the case of **Article 12**, the possibility of the Ministries of Information and Interior suspending publications for up to 30 days, without any recourse to appeal. **Article 12** also states that it does not take into account “*due punishment according to Criminal Law*”. Since the enactment of the Press Law, there has been continual confusion as to which law should be used to prosecute journalists charged with defamation. **Article 20** states that “*any act committed by employers, editors or journalists that violate[s] the criminal law, shall be subjected to punishment according to Criminal Law.*” “Criminal law” refers to the United Nations Transitional Authority in

Cambodia Criminal Code (the “UNTAC Code”) and – since its coming into force in December 2010 – the 2009 Penal Code (it is assumed that, despite the possibility of fines, the term “criminal law” does not refer to the Press Law itself, partly due to the context and partly due to the rationale for and objectives of the Press Law, which were to remove those working in the media from the clutches of criminal defamation law, thereby promoting freedom of expression and a free press). However, **Article 20** goes on to say that “no person shall be arrested or subject to criminal charges as the result of the expression of opinions”, while **Article 21** states that “all previous provisions related to the press shall be abrogated”, both a clear indication that Article 63 of the UNTAC Code (defamation and libel) – which mentions journalists, publishers and editors – should no longer apply to the media, whatever legal procedures the courts follow in reality (please see below). The **Article 20** exemption and **Article 21** contradict the first part of **Article 20** and **Article 12**, which allow for criminal prosecution under applicable criminal law. Furthermore, while **Article 20** might provide some protection, no indication or guidance is given as to what would constitute the expression of an opinion as opposed to an act of defamation or libel, which means that the effectiveness and reliability of this carve-out is unfortunately compromised due to the loose drafting of the provision.

In the case of *Mong Rethy & Ors v Keo Sothea (April 2002)*, an editor of an opposition-affiliated newspaper was charged with defamation under Article 63 of the UNTAC Code, but successfully argued that that article had been superseded by **Article 10** of the Press Law. Despite the court’s acceptance of this argument, the issue as to which law should be applied in defamation suits against the print media remains unresolved – journalists continue to be prosecuted for defamatory offenses under the UNTAC Code. It remains to be seen what the recent clarification offered by the 2009 Penal Code (Articles 306, 308 and 497) – namely that certain offenses, including defamation and insult when perpetrated by the media, and incitement when perpetrated by the print media, should be prosecuted under the Press Law – will mean as regards the application of the Press Law. Furthermore, in *Mong Rethy*, Phnom Penh Municipal Court held that Keo Sothea could only face civil defamation charges (available under **Article 10**); however, journalists and editors continue to be hit with criminal rather than civil sanctions, in contradiction of this decision.

Conclusion

The Press Law contains a number of positive provisions which, in theory, afford vital protection to those in the media; however, there are too many vague provisions that actively threaten the right to freedom of expression, which need reviewing and amending, so that the legislation can do its best to protect and promote a free media, as hoped and anticipated in the mid-1990s. First and foremost, there should be no recourse to “criminal law” under the Press Law, and the current contradictions and ambiguities need to be resolved and the courts given a clear steer as to which law they should be applying. Furthermore, in light of the right to freedom of expression enshrined under domestic and international law, there should be no criminal sanctions for defamation and other related offenses – a criticism that applies equally to the 2009 Penal Code. For there are real fears – given the current climate – that the RGC will continue to sidestep the Press Law in its ongoing campaign to harass and intimidate the media, silence opposition voices and stifle democratic space in Cambodia, in violation of its commitments to freedom of expression under domestic and international law.

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