

STUDY ON DEFAMATION CASE IN CAMBODIAN PRESS LAW

By

Lyrattanak Tram

THESIS

Submitted to
KDI School of Public Policy and Management
in partial fulfillment of the requirements
for the degree of

MASTER OF PUBLIC POLICY

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Supervisor Dong-Young KIM

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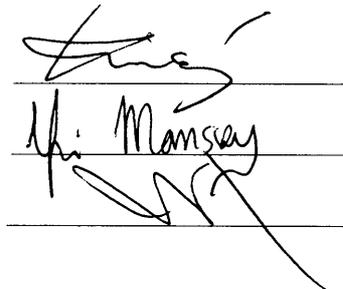
MASTER OF PUBLIC POLICY

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The image shows three handwritten signatures in black ink, each written over a horizontal line. The first signature is for Professor Dong Young KIM, the second for Professor Yuri Mansury, and the third for Professor Woo Hyun Won. The signatures are stylized and cursive.

Approval as of November 24, 2008

ABSTRACT

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By

Lyrattanak Tram

Since Cambodia emerges as a new democratic country amongst other ASEAN nations, the question is whether the professionalism of Journalism has been upheld. This is not to compare her with developed nations, where democracy and freedom of expression are part of their peoples' daily living. In 2007, Cambodia ranks 85th out of 167 countries in terms of the freedom of the press, moving up over 20 places in two years, according to Reporters Without Borders. However, when cases are brought to courts regarding media, over 80 percent are charges against reporters for defamation. The study points out the significance of freedom of expression, especially amongst reporters in order to inform public audience, and any form of censorship should be abolished as well as better law to guarantee journalists' rights be well formulated.

Acknowledgement

I would like to give my sincere thanks to Professor Kim Dong Young who has extensively helped me in editing and giving great comments on my thesis. Furthermore, I would also like to thank my friends and colleagues who give enormous support to help me work hard on it.

Secondly, my thank would go to my dearest friends and colleagues who have strenuously helped me in collected necessary information in order to have vast resources and do better paper as I have achieved.

Importantly, I would like to sincerely thank my beloved parents who are the foundation of who I've become. Their love, encouragement and caring have been a helpful driving force to my thesis.

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I. Introduction

What motivated me to study this?

One morning, picking up newspaper and not for the first time seeing media persons being charged, injured or sometimes killed without any felon brought before justice, I feel nausea and want to cry for righteousness. With background from Media school in Cambodia, it becomes my heart and bond that I enjoy the study of journalism. I have broadened my education to Public Policy, which I enjoy so much since I learn more about how tough discussion could be before decisions are made. I decided to combine these two fields of study and come up with my thesis topic.

What is the hypothesis of this research?

Cambodian Press Law, enacted since 1995, has negative impacts on freedom of expression. In other words, the government is not observing the law but abuse it by using it as a seal to accuse journalists who stand up against it or its allies.

What are the research methods?

I collected extensive information regarding reporters being alleged for defamation. I also talked relevant people regarding both the issue and the media situations in Cambodia. From that I gained broader knowledge of the subject and the situation, which would help me write this paper better. It is important to set criteria for defamation cases to be considered as abusive or normal

What kind of questions I tried to answer?

- What is the definition of media, freedom of expression or press freedom?
- What is the status quo of international and domestic media?
- Is the government observing the existing Press Law?
- If not, what can be done to improve the situation?

What are the purposes of this research?

The purpose of this study is to abolish as much existing censorship—all forms of censorships including self-censorship— to make a better and healthier Cambodian democracy, which is full of free media and a world where anyone can express his or her idea freely.

What is the scope of this research?

This is to cover nation-wide. However, since most of the cases occur in the city, the heart of broadcasting, politics, population and economics, it seems that the scope of the study is merely focused around the capital of Phnom Penh. But this study would well represent what happens in Cambodian media –defamation cases are usually brought to the Phnom Penh Municipal Court.

For this purpose, the following chapter will deeply address the principle of Cambodian Press Law; together it will analyze those provisions along with the actual cases. I will go through the Law from article to article, examining their meanings and intentions thoroughly. Specifically on defamation case, I will point out all reported real cases, which have been charged against media personnel, with the outcomes of the cases. Subsequently, external pressure from various civil society groups, such as foreign embassies, local and international Non-Governmental Organizations (NGOs), media institutions, and donors, on the Government to respect Human Rights, abide by international laws, and reform the existing Press Law as well as endorsing as many and detail relevant laws as possible so that journalists can enjoy their professionalism liberally. Next to last, I will present detailed recommendations for both the government and the media side, to come up with a healthier democratic environment for the nation. The final chapter is the conclusion which summarizes this whole study paper.

II. Media Regulation and Freedom of the Press

Access to information is indispensable to the betterment of democracy for two distinctive reasons. Firstly, it guarantees that citizens are equipped to make responsible, informed choices instead of acting out of ignorance. Second of all, information serves a “checking function” by ensuring that elected representatives uphold their oath of office and carry out the wishes of those who elected them¹. In some societies, an antagonistic relationship between media and government represents a vital and healthy element of fully functioning democracies. In post-conflict or ethnically homogenous societies such a controversial, tension-ridden relationship may be inappropriate, but the role of the press to disseminate information as a way of mediating between the state and all facets of civil society remains critical.

The term “press freedom” was traditionally used to refer to the freedom of newspapers “the printed press” to gather and report information without interference. Its use was unquestioned until new forms of communication media, initially radio, then television, emerged and begun to assume a place equally important, if not more important, than newspapers. Overtime, the term “press freedom” has ceased to refer strictly to the liberty of newspapers to publish, and is often used as a generic term referring to freedom of different types of communication media to publish information without hindrance. It is now commonplace to speak of “media freedom” as opposed to “press freedom” because the former term is more encompassing. Thus, for the purpose of this submission, the terms “media freedom” and “press freedom” will be used interchangeably.² Consequently, the concept of freedom of speech is often

¹ The Role of Media in Democracy: A Strategic Approach

² Media of Southern Africa, *Press (Media) in Zambia: Is it realistic?*, 17 March 2006

covered by the same laws as freedom of the press, thereby giving equal treatment to media and individuals.

A Good media law defined by Eric Johnson³ from Internews incorporates eight major aspects as follows:

- Level playing field: All media (private, governmental, domestic, and foreign) should operate under the same rules, with no special preferential treatment or subsidy for any outlet at all.
- Registration: It should not be compulsory but if required, that should be for monitoring purposes only and with no condition –Just form filling work and handing in and it should never be withdrawn or seized.
- Libel: As long as the media believes the information is confirmed true, in good faith, it should feel free to disseminate that information. Public figures are held at a higher standard of scrutiny or three-part test before (defamation) complaint.
- Content: Other than the law narrowly defining what is forbidden (presumably pornography, incitement to violence, or affecting national security), everything is allowable to be published.
- Intellectual Property: Owners of the rights should be the only determinant of how the property can be used.
- Licensing: The public, not the ministry of communications or and media, owns the frequencies, which should be licensed by an autonomous commission, without discrimination.

³ Democracy dialogue, Technical Notes from USAID's Global Center for Democracy and Governance, July 1998

- Access to Information: Government agencies must respond fully and in a timely manner to requests for information from the media.
- Ownership and Taxation: Promotion to the growth of private media should be encouraged (Value added tax exemptions is an example).

Initially, this chapter will introduce the interrelation between Cambodian domestic press law and the international instrument in this matter.

1. International Media and press law

In principle, people should have the right to express themselves in writing or in any other way of expression of personal opinion or creativity which consider as freedom of press.

Precisely, Cambodia is bound by its obligation to comply with international human rights treaties and conventions to which it is a signatory. The Cambodian Constitution requires Cambodia to recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights and other international covenants.

The Universal Declaration of Human Rights states:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers"⁴.

The International Covenant on Civil and Political Rights (ICCPR)⁵, 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:

⁴ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

⁵ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976

- *Everyone shall have the right to freedom of opinion*
- *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)⁶, Article 13 of the American Convention on Human Rights⁷ and Article 9 of the African Charter on Human and Peoples' Rights.⁸ 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.

Besides legal definitions, some non-governmental organizations use other criteria to judge the level of press freedom around the world:

- Reporters Without Borders (RWB) takes into account the number of media personnel being attacked (murdered, expelled or harassed) and the existence of a state monopoly on media –censorship and self-censorship– and the overall independence of media in addition to the challenges foreign reporters may face. RWB publishes annual ranking of countries for assessment of Press Freedom.⁹
- The Committee to Protect Journalists (CPJ) utilizes the devices of journalism to assist journalists by tracking press freedom issues through independent research, fact-finding missions, and primary field contacts in its network countries around the world. CPJ

⁶ Adopted 4 November 1950, in force 3 September 1953

⁷ Adopted 22 November 1969, in force 18 July 1978

⁸ Adopted 26 June 1981, in force 21 October 1986

⁹ World Wide Press Freedom Index, Reporters Without Borders Ranking index

shares information on breaking cases with other press freedom organizations worldwide through the International Freedom of Expression Exchange, a global e-mail network. CPJ also tracks journalist deaths and detentions. CPJ staff applies strict criteria for each case; researchers independently investigate and verify the circumstances behind each death or imprisonment. Death and imprisonment database is available.¹⁰

- Freedom House likewise studies the more general political and economic environments – also focusing on the democracy– of each nation in order to determine whether relationships of dependence exist that are limited in practice, in comparison with the level of press freedom in theory. It relates the concept of independence of the press to press freedom.¹¹

2. Domestic regulation

The Cambodian Constitution requires the creation of a press law that reflects the spirits of the international laws on press freedom and freedom of expression. As a result, the Cambodian National Assembly passed the “Law on the Regime of the Press” on July 18, 1995, after about a year of drafting and revisions.

Though some provisions in the Press Law correspond to democratic media law principles, media professionals and human rights groups have criticized that the law did not fully meet international standards.

¹⁰ CPJ, from Jan 1992 till June 2008, 693 killed. More on www.cpj.org

¹¹ See more at www.freedomhouse.org

III. Cambodian Press Law

The press is regulated by the Cambodian Press Law, which does contain some very positive provisions, including a guarantee of the “freedom of the press and freedom of publication”; a categorical assurance that the confidentiality of sources is protected; a prohibition on “pre-publication censorship”; and a guarantee that no person shall face criminal liability for the expression of opinions. However, despite these positive aspects, the Press Law contains various provisions which are intended or can be interpreted so as 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.

The very important noteworthy benchmark in recent media history is the Decriminalization of defamation law in May 2006 due to the external pressure from local and international civil society as well as the willingness of the Government to compromise in order to achieve a nourishing democratization.¹²

1. Overview on Press Law

Practically, Cambodia Press Law is facing several problems. A major concern for the media is the ambiguity of many provisions in the press law, including the content restrictions, responsibilities of journalists, right of retraction/reply, registration regime, freedom of

¹² Freedom House, see detail at www.freedomhouse.org/template.cm?page=251&year=2007

information, competition, and publication of official information. In addition, the prohibition to publish information that causes harm to national security, political stability and relations with other countries is also a main concern.

As a result, although such provisions are legitimate under democratic media law principles, the fact that these terms are not clearly defined can give the government the excuse to target any critical publications.

Moreover, in the incident that there are contradictions within different provisions in the press law, what the media and the government should do is to weigh between the possible harm caused by the publication of the information and the public's right to know and the freedom to publish. If press freedom and public interest outweighs the possible harm, the press shouldn't be denied its freedom to publish. Regrettably, the government and the court did not seem to rule in favor of the public's right to know and the freedom of the press when the media and journalists were prosecuted in the past.

In this sense, the following section will specifically analyze the actual Press Law with reference of the factual cases happened in the last decade.

2. Analysis on Cambodian Press Law

ARTICLE 19 stressed the attempt that governments make in order to control freedom of expression¹³. There are 21 Articles in Cambodian Press Law. The 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

¹³ ARTICLE 19, *Memorandum on Cambodian Law on the Press*, October 2004

editorial censorship” (Article 3); and a guarantee that no person shall face criminal liability for the expression of opinions (Article 20).

However, the overall pictures of Press Law incorporate several flaws, such as ambiguous language and other means to hinder publications that seem harmful to the Nation. The wide range of forms of restriction may be applied to the press, such as complex registration and accreditation procedures for media outlets and journalists. Sometimes independent media body can become the hand of the government.

Below I would raise certain articles from the Press Law and tactically put forward analysis, mostly made by experienced specialists in the field. Not all articles will be presented here and order the article is not of significance due to time constraint and the main focus of the study being on defamation issues and articles worth reforming.

a/ Right of Retraction or 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 1 Million and 5 Million Riels¹⁴ and may order the publication of its decision at the expense of the defendant (not to exceed 1 Million 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”.

It is noteworthy that Article 10 contains provisions relating to both defamation and the rights of retraction and reply. Memorandum suggests that defamation provisions have nothing specifically to do with the press, and should find their place in a law of general application.

There is one positive feature of this article. Apparently in recognition of the fact that public figures should recognize 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 libeled 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 is analogous to the more commonly known right of correction) and a right to demand a reply. 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. As 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

¹⁴ The approximate exchange rate at time was 1USD=4000Riels

least in regards to print media, it is seen as unconstitutional on the grounds that it represents an interference with editorial independence.¹⁵ In Europe, in contrast, the right of reply is the subject of a resolution of the Committee of Ministers of the Council of Europe.¹⁶ 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.¹⁷

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

¹⁵ See *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

¹⁶ 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).

¹⁷ 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.

is false and harms his or her honor 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 recognize a hierarchy of intrusiveness 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.

b/ 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”.

Article 13 prohibits the publication or reproduction of “false information that humiliates or disrespect national institutions”. Fines of between 2 Million and 10 Million 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”, “drawings 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 1 Million to 5 Million 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 of 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

The 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.¹⁸ Some restrictions on what may be expressed are permissible under the international law of freedom of expression, provided they comply with the three-part test¹⁹ described in Section II above. However, nothing in the legitimate aims recognized 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, be contained in laws of general application to all citizens. As 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

¹⁸ 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.

¹⁹ See Balancing Test, the requirement that relevant evidence be excluded if its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” In other words, if a particular piece of evidence is more prejudicial than it is probative, it will not be allowed in as evidence.

give rise to confusion, with the authorities seeking to apply the more stringent standard to the press.

Further to this general recommendation, it is believed 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.

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.²⁰ 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.²¹

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

²⁰ The term ‘impact’ does not imply that any effect is harmful; a positive contribution would also impact on national security.

²¹ 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.

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 one understands 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. 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 it is recommended 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 recognized as a ground for restrictions on freedom of expression²², 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

²² 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.

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 flavor 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 recognized that national institutions simply do not have reputations and therefore cannot be humiliated or otherwise dishonored. Even if they do have reputations, there are very good reasons why these should not be protected by law. As 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 dishonoring of national institutions, and subject to restriction on that basis. It is recommended, 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. Despite the importance of privacy in these matters, it is believed 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 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 its 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. It can also be noted that “advertisers” enjoy significant protections under the international law of freedom of expression for their commercial expression. Given this, it is a concern 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.

c/ 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 1 Million 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

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, 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 the concerns with the registration regime, at least as it is set out in principle in the Press Law. In the first place, it is viewed 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, the primary recommendation is that the registration system be abolished.

While the Press Law’s registration regime is not at present being abused, it is important to recognize 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. The comments below provide an alternative to the 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, 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. The overall 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. 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.*²³

d/ Freedom of Information

Article 5 creates a highly abbreviated access to information regime, specifically for the press. Article 5(A) recognizes 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.²⁴

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

²³ 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.

²⁴ The translation reads: “Danger to public officials carrying out the law or their duties.”

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 it is understood that the authorities have made a commitment to pass one in the near future. The 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.²⁵

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, the access provisions of the Press Law should remain in effect. In that light, and repeating that the Press Law is not the place for the creation of a fullfledged freedom of information regime, it is important to 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

²⁵ 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>.

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.

e/ 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.

f/ 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

It is safe to 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 the reading of the truth requirement is correct, one can 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.

IV. Negative Impacts

1. Relevant articles to defamation and Disinformation

In this chapter, I brought up four articles (Article 10, Article 11, Article 12 and Article 13) from the Press Law which are closely related to issue of defamation, disinformation, or incitement.

Article 10 provides for rights of retraction and reply, which must be published within seven days or in the following issue. The person asserting a right of retraction or reply may bring a suit in defamation, libel or humiliation. In case the person brings a civil suit in defamation, a court may order the press to publish a retraction, pay compensation or both. Finally, 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.

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 can bring civil suits to the court.

Article 12 ban the press from publishing or reproducing any information that may affect national security and political stability. 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 (maximum of 30 days) and transfer the case to the court.

Article 13 prohibits the publication or reproduction of false information that humiliates or disrespect national institutions.

2. Examples of the media being charged and suspended

According to the available data, it's worth noting that most of the journalists sued with defamation or false information were from the non-CPP or opposition-affiliated newspapers²⁶. They were also the target of the Government.

Table 1.1 of Newspapers and their affiliations:

PUBLICATION	OWNER	PERCEIVED POLITICAL BIAS
Akrei Yeakthor	▪ Sgoun Nimol ¹²¹	CPP
Black and White	▪ Chin Chanmony	Neutral / CPP ¹²²
Chakroaval Daily	▪ Keo Sophoan, businessman	CPP
Deum Ampil	▪ Soy Sopheap, also works for CTN	CPP
Khmer Amatak	▪ Bun Tha, advisor to Norodom Ranariddh	Norodom Ranariddh Party
Khmer Machah Srok	▪ Slonh Luy	Sam Rainsy Party
Khmer Mekong	▪ Tia Then, Secretary of State, Ministry of Education	FUNCINPEC
Mekong Cambodia	▪ Kong Youthear	FUNCINPEC
Moneakseka Khmer	▪ Dam Sith, Deputy Secretary General of the Sam Rainsy Party	Sam Rainsy Party
Samleng Youvachoun Khmer	▪ Keo Sothear	Norodom Ranariddh Party
Sna Day Khmeng Wat	▪ Samphan Narith	CPP
Sralang Khmer	▪ Thach Keth	CPP
Rasmei Angkor	▪ In Chan Syvutha	CPP
Teashanak Khmer	▪ Sovan Sokha	Opposition

Newspaper	Perceived Political Bias
Antarakum	Neutral
Cheat sachak	Fickle
Cochinchina	Fickle
Nokor Santepheap	Neutral
Chivet Kon Khmer	CPP
Khemarak Cheat	Fickle
Meakea thmey	Fickle
Sochivathor	Neutral/ CPP
Kohsantepheap	Neutral/ CPP
Yuvachun Khmer	Rannaridh/CPP
Damneng Pelprek	Fly by night
Udom Katte Khmer	Opposition
Kampuchea Thgnai Nis	Fly by night

²⁶ According to the table, and journalist report, 29 out of 36 defamation cases were charged against non-CPP, ruling party, newspaper.

Table 1.2 of Radio station and their affiliation:

STATION	FREQ. (MHZ)	OWNER/MANAGER	PERCEIVED POLITICAL BIAS
AM Radio Station			
National Radio	AM 918	▪ State-owned national broadcaster	CPP
FM Radio Stations			
Sweet FM 88	FM 88	▪ Eng Setha Mouly (a relative of former Minister of Information Ieng Mouly) or Hun Sen/ CPP. ¹⁰⁵	CPP
New Life Voice FM (Christian Station)	FM 89.5	▪ Taing Vek Houng	Neutral in content
FM 90	FM 90	▪ FUNCINPEC	FUNCINPEC
Ta Prohm FM	FM 90.5	▪ Originally reportedly licensed to FUNCINPEC MP Ear Limsour. ¹⁰⁶	FUNCINPEC
RFI relay station	FM 92	Radio France International	Neutral
FM 93.5	FM 93.5	▪ Former BLDP-aligned station ▪ Current ownership uncertain but believed to be partisan to SRP	SRP
Bayon FM	FM 95	▪ Reportedly owned (along with Bayon TV) by Prime Minister Hun Sen's family ▪ Its general director is his daughter, Hun Mana	CPP
National FM	FM 96	▪ State-owned.	CPP
Apsara FM	FM 97	▪ Refuses to reveal ownership; widely believed to be CPP-owned ▪ Run by Sok Eysan, a CPP central committee member.	CPP
Love-FM (Pop music Station)	FM 97.5	▪ Co-owned by the Phnom Penh Municipality and KCS Cambodia.	Neutral in Content
Military FM	FM 98	▪ Co-owned by Ministry of Defense and a Thai company. ▪ Run by Anucha Vacharat Tangkar.	CPP
FM 99	FM 99	▪ General director is Kim Boeurn ▪ Ownership unclear ¹⁰⁷	CPP
Family FM (Christian Station)	FM 99.5	▪ Far East Broadcasting Company Cambodia.	Neutral in Content
BBC relay station	FM 100	▪ British Broadcasting Corporation	Neutral
ABC relay station	FM 101.5	▪ Australian Broadcasting Corporation	Neutral
Women's Media FM	FM 102	▪ Owned/run by the NGO WMC	Neutral
Phnom Penh FM	FM 103	▪ Co-owned by the Phnom Penh Municipal Service of Information and KCS Cambodia.	CPP
Sovanna Phum FM	FM 104	▪ Unknown	SRP
Beehive FM	FM 105	▪ Mam Sonando	Neutral
South East Asia FM	FM 106	▪ Kao Kim Hourn, CPP Secretary of State	CPP
Khmer Radio	FM 107	▪ Khun Haing, FUNCINPEC Minister of Cults and Religions ▪ Run by Khun Elena	FUNCINPEC/ CPP

The following section lists, as exhaustively as possible and dated back as far as 1994 just before the Press Law was passed, reported defamation cases which have been filed against media personnel, most of whom were from perceived opposition newspapers. The papers are not so much favorable for the government and the officials as most of the formers often report the darker side of the latter.

As the defamation and disinformation is not defined in the press law, it is still a big concern for journalists to do their job. According to the survey conducted by Lichado in 2007²⁷, journalist respondents considers legal action taken against them as the second most concern after physical attack: 65% of correspondents replied they were afraid of being physically attacked and 62% feared legal action. This figure implies high level of apprehension among journalists, which gives them second thought of any rapports they are after, especially the politically sensitive ones.

The following section shows as many as possible cases of media persons being sued, harassed, injured, and murdered without many felons being brought before justice. Most of the cases are provided by Club of Cambodian Journalists (CCJ), Lichado, Committee to Protect Journalists, and Cambodian Journalism Review. The cases dated back as far as 1994, just right after the first National Election since the liberation from Pol Pot Regime and the end of Communism in Cambodia. It was a year before the Press Law was also amended.

²⁷ Licadho survey 2007, Reading between the line, May 2008 Report

Report of journalists being charged with defamations or disinformation

June 11, 1994: Chhou Chormongkul, Editor of Antarakum News, died in an accident suspected to be an attempted murder.

September 7, 1994: Nguon Chan, Editor of Damnoeng Pelprek News, was arrested for publishing an article upsetting a powerful person.

September 11, 1994: Nun Chan, Editor of Samleng Yuvachun Newspaper, was shot dead near Wat Phnom.

December 8, 1994: Sao Chandara, reporter from Kohsantepheap Newspaper, was shot dead in Kampong Cham Province, after writing articles criticizing unregulated timber exports from the province to Vietnam. CPP General Sat Soeun was indicted for the murder but acquitted by Kompong Cham provincial court. Soeun was later demoted for his alleged participation in the illegal timber industry by the newly elected CPP government in 1998.

1995: the office of the opposition newspaper Sereipheap Thmei News was attacked by a group of angry villagers from Kraingyov commune following a critical report published by the newspaper of the Hun Sen Development Zone. In the attack, newspaper equipment was destroyed and staff members were beaten. Afterwards, then Second Prime Minister Hun Sen publicly defended the right of the villagers to launch such an attack, which symbolized the way in which rural allegiances, consolidated through the sponsoring of development projects more or less explicitly tied to political loyalty, could be mobilized to isolate and intimidate urban dissenters²⁸.

1995-1996: Chan Ratana and Hen Vipheak were sentenced to jail terms on charges of disinformation, after publishing articles critical of the government but were eventually pardoned by the King.

²⁸ See more at "Cambodia's Eco-politic transition" from www.googlebook.com

February 1996: a FUNCINPEC radio disc jockey, Ek Mongkul, was seriously injured in an assassination attempt, a few days after reading articles about alleged Vietnamese encroachment into Khmer territory.

March 18, 1996: Thun Bunly, publisher of the pro Sam Raingsy Party newspaper Udomkatté Khmer, was shot dead near former Chinese Hospital, allegedly after publishing articles insulting a CPP general.

June 30, 1997: Chan Mony, reporter from Kampuchea Thngay Nis Newspaper, injured in a grenade attack in front of National Assembly.

July 30, 1997: Chet Duongdaravuth, reporter from Neak Proyuth Newspaper, died in a grenade attack in front of National Assembly.

June 8, 1998: Thong Uypang, Editor of Kohsantepheap Newspaper, was shot and injured by an anonymous gunman. There had been a grenade thrown at his house on October 17, 1997, but he escaped the attack.

November 23, 2000: Bun Chanto, reporter from Samleng Yuvachun Khmer Newspaper, was arrested for involving in a gun fire.

November 23, 2000: Thou Dara, reporter from Pesakachun Newspaper, was arrested for involving in a gun fire.

March 18, 2001: Bun Tha, Editor of Khmer Amatak Newspaper was arrested for defamation and libel.

March 20, 2001: Khmer Amatak Newspaper was sued by an official from FUNCINPEC Party for posting untrue story, but later been negotiated to drop the law suit.

October 20, 2001: Samleng Yuvachun Newspaper was sued by Oknha Mong Rithy for defamation after this newspaper published an article “Cadre 44 protects Mong Rithy to log.”

Later, the paper was asked to pay 30 Million Riel to Oknha²⁹ and another 20 Million Riel to Cadre Unit 3 as compensation.

August 6, 2002: Keo Sothea, producer of Samleng Yuvachun Newspaper was sued by former Phnom Penh Governor Chea Sophara, for defamation and was called for clarification at the Municipal court on August 22 after the newspaper published an article on June 5, 2002 titled, “Hun Sen build a mechanism for wealthy retirement.” It was later silent under conciliation.

January 30, 2003: Mam Sonando, owner of Beehive Radio FM 105 was arrested for airing untrue information and inducing riots against Thai Embassy on January 29. He was released on February 11, 2003.

January 31, 2003: In Chansivatha, editor of Raksmeay Angkor Newspaper, was arrested by military police and sent to the municipal court for spreading untrue information and inducing riots against Thai Embassy on January 29. He was released on February 11.

October 10, 2003: The Cambodia Daily Newspaper was sued by Svay Sitha, official from Council of Ministers of defamation after the newspaper published an article titled, “Svay Sitha is the advisor of Samdech Hun Sen.” But the Municipal Court on April 8, 2004 ordered the newspaper to pay Svay Sitha 10 Million Riels in compensation. The newspaper appealed.

November 4, 2003: The ruling Cambodian People’s Party (CPP) filed a claim against the President of the National Assembly and leader of the FUNCINPEC Party, Norodom Ranariddh, alleging that Ranariddh made defamatory statements relating to Prime Minister Hun Sen’s involvement in the killing of royalist radio broadcaster, Chuor Chetarith. This claim was made at the height of tensions which developed between the CPP and FUNCINPEC after national elections in July 2003 resulted in a political deadlock. The CPP withdrew the claim in February

²⁹ Address given to businessmen for contributing to the government.

2004 as the two parties progressed in their negotiations with regard to the formation of a new government.

February 15, 2004: Cheat Sachak Newspaper was sued by Teang Sareum for defamation after the newspaper published “Mrs. Teang Sareum, wife of Oknha Mao Nhorn who is Rominh village chief of Koh Andeth District, Takeo.” The case was resolved when the newspaper published a correctional issue.

February 28, 2004: Dum Hak, officer of Royal Government Arm Force, sued Udom Kate Khmer Newspaper for defamation after the article, “Sar Kheng admitted drug reached to countryside,” which related to him. On August 5, the municipal court ordered the newspaper to pay compensation of 7 Million Riels to Dum Hak and 3 Million to government, as well as issue correction to the article. The editor in chief appealed.

April 8, 2004: Editor of *The Cambodia Daily*, Matt Reed, was found to have defamed Under-Secretary of State at the Council of Ministers, Svay Sitha, by publishing a story which implicated Sitha's wife in a 1999 acid attack on singer Tat Marina. Strangely, however, Sitha did not sue the *Daily* on the basis that its claims regarding his wife were defamatory. Rather, he claimed that the paper's statement that he was a “former advisor to [Prime Minister] Hun Sen” was incorrect and harmful to his work and honor.³⁰ The court upheld this claim under Article 10 of the Press Law, ordering Reed to pay USD 1,250 in fines plus an additional USD 2,500 to Sitha in compensation. (When contacted by the authors of this report, Mr Reed refused to comment on the case.)

April 9, 2004: A reporter, Mr Teng Mara, of the *Cochinchine* newspaper in Siem Reap was arrested on charges of defamation. The editor of the paper, Mr Yan Sidara, was reported as saying that the journalist was arrested because he had misspelled the name of a vendor

³⁰ C Sokha, “Editor Fined for Defamation,” *Phnom Penh Post*, Phnom Penh, 2004.

mentioned in one of his stories. The story in question related to a dispute between a local police chief (Kab Sa Om) and vendors in a market. Sidara was also quoted as saying that the charges were exaggerated because the paper had angered powerful officials.³¹

April 26, 2004: Meakea Thmey Newspaper was sued by Senator Vann Matt for defamation after the article, “H.E. Matt Ly died from blood pressure or emotional heat disease?”

May 5, 2004: Celebrity Meng Keopechta sued Samay Themy Magazine for defamation after the article, “Meng Keopechta and the triangle love.”

July 12, 2004: The Cambodia Daily was sued by Om Yinteang for defamation after the article from the Cambodia Daily titled, “Om Yinteang’s wife has connection with log purchase.”

August 9, 2004: Nokor Santepheap was sued by Heng Chantha, head of Battambang Police station, for defamation after the article titled, “Heng Chantha used 60,000 USD to buy Banteay Meanchey Governor seat.” This was later negotiated.

August 20, 2004: a Managing Director of Kampuchea Thmey Newspaper was sued by Mrs. Kunthea Borey, Head of Samdech Chea Sim’s Cabinet. The hearing was delayed with no reason (to be check if on defamation).

October 14, 2004: Kampuchea Thnay Nis Newspaper was sued by Mrs. Chea Ratha, Secretary of State of Water Resource and Meteorology for defamation. The complaint was still suspended.

May 10, 2005: Khlang Huot, Ruessey Keo Governor and Tep Veasna, the deputy governor, sued Chiveth Koun Khmer Newspaper for defamation after an article titled, “Klang Hout and former Karaoke performer Tep Veasna could make the reputation of FUNCINPEC party in Ruessey Keo District.” The complaint was withdrawn after the negotiation.

³¹ S Soenthith, “Cambodian Journalist Arrested for Defamation,” *The Cambodia Daily*, Phnom Penh, 19 April 2004.

July 13, 2005: The Supreme Court tried the case of a Malaysian Director of Sam Linh logging company, Ham Chin Tong, who filed a law suit against former Editor in Chief of the Cambodia Daily for defamation and a compensation of 5 Million Dollar. The Supreme Court decided to return the case to the Municipal Court. Before the case reached the Supreme Court, the Municipal and Appeal Court already decided to withdraw the charge against the editor in chief.

October 17, 2005: Phnom Penh Municipal Court called producer of Kampuchea Thnay Nis to appear in front of the court regarding defamation case on deputy head of Cham Yeam Intervention Police office in Koh Kong Province after the newspaper published an article titled, “Detaining the owner of Chhay Hour 2 for human trafficking and keeping illegal weapons.” The article contained conspiracy of Mr. Chin Sovann issuing VIP pass for Por Ly to go into Thailand through Cham Yeam Channel. Two officers were involved in the story.

October 11, 2005: Mam Sonando, producer of Beehive Radio was jailed for defamation. The Court used his interview with Mr. Sean Pengser regarding border issue between Cambodia and Vietnam, which was aired on the radio on Sep 20. But he was on bail on January 17, 2006.

October 15, 2005: Union president Rong Chhun of the Cambodian Independent Teachers Association was arrested on defamation charges after he co-signed a press statement critical of the Cambodian-Vietnamese border treaty. The Prime Minister accused him of defamation on the basis of a statement he made on 11 October regarding the Cambodian-Vietnamese border treaty.³²

³² On 11 October 2005, the Cambodian Watchdog Council issued a press statement critical of the border treaty. In addition to Rong Chhun, Ear Channa, deputy secretary general of the Student Movement for Democracy, Man Nath, president of the Cambodian Independent Civil Servants Association, and Chea Mony, president of the Free Trade Union of Workers of the Kingdom of Cambodia, all signed the statement, and were subsequently charged with both defamation and incitement. The UN Special Representative for Human Rights in Cambodia noted that the statement did not contain any references to any acts that could be construed as amounting to a criminal offence.

December 31, 2005: Kem Sokha, President of Cambodian Center for Human Rights (CCHR), and Yeng Virak, Executive Director of Community Legal Education Center, were arrested and jailed for defaming the government.³³ Four days later, Pa Nguon Teang, Deputy Director of CCHR, was also arrested on charges of defamation. Ironically, these three jailings stemmed from a government-approved celebration on 10 December, to mark the 57th anniversary of International Human Rights Day. The celebration by some 10,000 participants brought union workers, civil society organizations, and other members of the public together to promote human rights in Cambodia. During this event, CCHR displayed a banner which contained numerous handwritten statements from citizens, some of which were allegedly critical of the government. Kem Sokha was arrested in his capacity as the head of the offending organization, while Yeng Virak was arrested for his role as one of the event's organizers. Kem Sokha's Voice of Democracy radio program has been one of the very few sources of uncensored information in the country for some time. Along with his widespread popularity, his organization has been a target of government harassment in the past.³⁴

March 17, 2006: Khemrak Cheat Newspaper Editor in Chief, Phal Dam, was called to elaborate on the Mrs. Pech Dara's complaint of defamation after the newspaper published an article, "How is the woman named Pech Dara aka Ann related to Mr. Hou Hour, Clerk of Phnom Penh Court?" The case was yet decided.

June 17, 2006: Sochivathoam Newspaper was sued by Heng Chamroeurn, Director of Social Affairs, Youth and Veterans Department in Banteaymeanchey, for defamation. The case was dropped after negotiation.

³³ On 11 January 2006, Yeng Virak was temporarily released from prison. Kem Sokha, Pa Nguon Teang, Mam Sonando and Rong Chhun were released on 17 January 2006. Defamation charges are pending.

³⁴ E.g., In September 2004, while monitoring a village demonstration, a CCHR staff member was pulled aside by police officers, who proceeded to destroy his film and confiscate his tape recorder, cellular phone, camera, wallet, and bag.

June 23, 2006: Srolanh Khmer Newspaper was sued by Oknha Hun To for defamation after the newspaper published an article saying he grabbed people and state land.

July 25, 2006: Manaseka Khmer Newspaper was sued by Government Lawyer after the publishing of an article titled, “Mr. Sok An makes CPP reputation go down because of corruption issue.”

September 15, 2006: PP Court tried a case with Manaseka Khmer Newspaper and ordered the newspaper to pay 10 Million Riel in compensation to plaintiff and another 8 Million Riel for publishing untrue information.

June 16, 2006 Khmerak Cheat Newspaper was called to elaborate on the defamation case of Mr. Pech Dara. The legal aspect is still going on.

February 06, 2007 Srolanh Khmer Newspaper was sued for reporting the untruth news after an article titled, “Municiple judge: Touch Narong slapped Chiv Keng.” The complaint has not been tried.

February 14, 2007: Yuvachun Khmer Newspaper, was sued by Sihanouk Ville governor for defamation after an article titled, “Say Hak is living happily over the Sihanouk Ville citizen criticism”.

April 12, 2007: the representative of the former King Norodom Sihanouk and the Queen sued the Srolanh Khmer Newspaper for defamation after an article titled, “Monich is a Vietnamese lady who shouldn’t be considered as the mother queen or grand mother queen for the Cambodian people,” which was issued in March 15-16. The Ministry of Information ordered the Srolanh Khmer Newspaper to elaborate on the issue.

April 21, 2007: Sochivathor Newspaper was sued by Mr. Seng Lon, Director of Banon Company, for publishing untruth information and defamation after an article titled, “Manager of

Orrusey Market is doing trick by making cake without flour. Everybody knows which causes chaos but is then quiet,” issued on April 09.

June 2007: Somleng Yuvachun Khmer Newspaper was sued by Oknha Nhek Bunchhay, general Secretary of Funcinpic Party for defamation after an article about the drug investigation in Kompong Speu Province.

July 18, 2007: Srolanh Khmer Newspaper was sued by Mr. Sao Rany, Deputy General Secretary of Norodom Ranarith Party, for defamation after an article, “The daughter of Mr. Sao Rany warns the Samdech Krom Preah that if you don’t listen to my father I will disclose the secret love affair.”

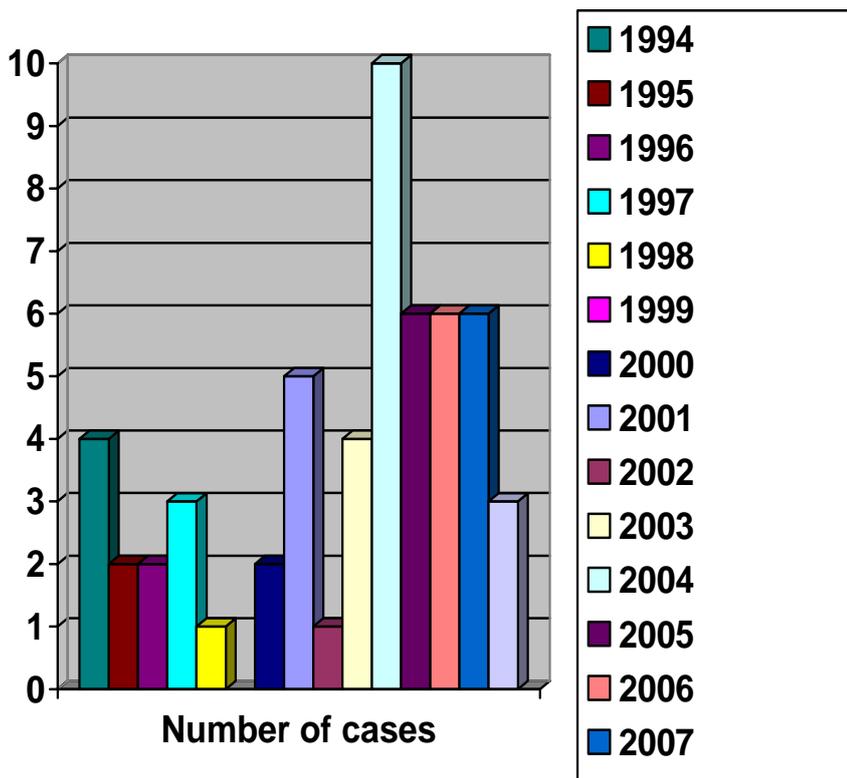
Early 2008: Soy Sopheap, CTN reporter, was sued by Mr. Eng Chhay Eang, SRP’s General Secretary, for defamation after CTN broadcast an interview of Mr. Soy Sopheap with an old lady that saw Mr. Eng Chhay Eang entering a casino.

April 22, 2008: Manaseka Khmer Newspaper was sued by DPM Hor Namhong for defamation and publishing untrue information after April 18’s article titled, “Sam Rainsy: Former advisor and secretary to Pol Pot and who was Chief of Boeng Trabek Prison is holding a Vice Prime Minister and Deputy Prime Minister.” Mr. Dam Seth, the newspaper director, went to explain before PP court on June 5 but was later arrested on June 8, 2008.

June 08, 2008: Mr. Dam Sith, Director of Manaseka Khmer Newspaper was arrested and given to the court by the Phnom Penh Deputy Police Chief. He was temporary detained and sued for the defamation, untruth publishing and insulting by H.E. Mr. Hor Namhong, Deputy Prime Minister, Minister of Ministry of Foreign Affairs and International Cooperation. But Mr. Dam Sithy was temporary released outside the jail after receiving a letter from Samdech Hun Sen in June 15.

Table and Chart 1.3 of number of cases charged against media personnel from 1994 to first half of 2008:

Year	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08*
Cases	4	2	2	3	1	0	2	3	1	4	10	6	6	6	3



3. Case study

Below are two case studies I personally chose. The criteria are that they represent most defaming cases and have big impact on society. The first case study describes a charge placed by Hor Namhong, Minister of Foreign Affairs and International Cooperation, on an opposition newspaper editor, Dam Sith, for defaming the former. The second case depicts accusation made on key activists regarding border treaty that the government signed with Vietnam, about which Mam Sonando, a radio owner, interviewed Sean Pengse, director of France-based Committee for

Border Defense by telephone. Comments made by Sonando involved Prime Minister Hun Sen's cause for the loss of Cambodia's territory and the selling of Khmer land to Vietnam by planning to sign the controversial Supplement Border Treaty.

Case Study #1: Dam Sith and Hor Namhong

*Court Mulls Bail for Opposition Editor*³⁵
By Heng Reaksmey, VOA Khmer
Original report from Phnom Penh
09 June 2008

Phnom Penh Municipal Court is considering a request from the government that a jailed opposition newspaper editor be released on bail, officials said Monday.

Minister of Information Khieu Kanharith said Monday the ministry sent an official letter to Phnom Penh Municipal Court Monday morning requesting the courts release on bail Dam Sith, the editor of Moneasekar Khmer, a daily newspaper aligned with the opposition Sam Rainsy Party.

Dam Sith, a parliamentary candidate for July's election for Phnom Penh, was arrested Sunday and charged with defamation and disinformation for publishing an article that quoted Sam Rainsy implicating Foreign Minister Hor Namhong with the Khmer Rouge regime.

Hor Namhong has denied in the past any involvement with the regime during his time as a prisoner at the Boeung Trabek camp in Phnom Penh, which operated between 1975 and 1979.

Dam Sith is currently being held in the capital's Prey Sar prison.

Lao Mong Hay, a researcher at the Hong Kong-based Asian Human Rights Commission, said the arrest was a violation of press law, and he appealed to the courts to drop the charges against him. Dam Sith had only quoted the words of Sam Rainsy, Lao Mong Hay said.

Phnom Penh Judge Chhay Kong said Monday he had received the ministry letter this morning and was considering a release on bail.

Dam Sith's attorney, Choung Choungy, said Monday he was surprised that the ministry had sent a letter to the court and said his client was clear of any wrongdoing. He had only quoted from Sam Rainsy's speech, the attorney said.

³⁵ Heng Reaksmey's Article from Voice of America website, see <http://www.voanews.com/Khmer/archive/2008-06/080609-editor.cfm>

June 08, 2008: Mr. Dam Sith, Director of Manaseka Khmer Newspaper was arrested and given to the court by the Phnom Penh Deputy Police Chief. He was temporary detained and sued for the defamation, untruth publishing and insulting by H.E. Mr. Hor Namhong, Deputy Prime Minister, Minister of Ministry of Foreign Affairs and International Cooperation. But Mr. Dam Sithy was temporary released outside the jail after receiving a letter from Samdech Hun Sen in June 15, 2008.

Dam Sith is the most common example of defamation and disinformation case. The work of journalist, even there is press law, is not covered by only the press law. And usually, when it comes to lawsuit, the journalist is usually charged with not only defamation case but disinformation, which includes imprisonment.

Dam Sith was arrested on Sunday June 8, 2008 and was charged with defamation and disinformation after he published an article on April 18, 2008³⁶ in which Sam Rainsy was quoted accusing Cambodian Foreign Minister Hor Namhong for involving in KR regime, as Pol Pot's assistance and secretary and the Beong Trabek Prison Chief. The arrest was viewed and critiqued by the public and civil society as a threat to freedom of expression and freedom of press in the country. The arrest also played a role as a warning to individuals who dare openly criticize the government.

However, later on June 9, the Ministry of Information sent an official letter to Phnom Penh Municipality Court requesting the court to release Dam Sith on bail. This attempt could be interpreted as an attempt by the government to build good image for itself in which they tried to show their commitment to protect Cambodian freedom of expression. But this was done after the government issued some kind of warning arrest.

³⁶ Dam Sith allegedly wrote that Hor Namhong was running an interrogating camp, Tuol Svay Prey School, rather than a prisoner. See more in Moneaksekar Khmer's article on April 18, 2008.

Definition of Disinformation is not clear. There's no article mentioning clearly who should be responsible between the person who quoted the other or the one who has been quoted, especially when the case involved knowledgeable, reliable and creditable source. If the comment was made by a Motorcycle taxi driver, the source; hence, become unreliable and the reporter will have to do more verification over the statement.

If we compare Soy Sopheap's case, of which he was sued by Eng Chhay Eang, and Dam Sith's case, when the latter was sued for quoting an opposition leader Sam Rainsy. It was unfair that Dam Sith was arrested for quoting Sam Rainsy because he's from opposition party but Soy Sopheap was not arrested when he was sued by Eng Chhay Eang for defamation even his quote is only from an old lady, an unreliable source. This was said to be because Soy Sopheap was a pro-government. Early 2008, Soy Sopheap, CTN reporter was sued by Mr Eng Chhay Eang, SRP's General Secretary, for defamation after CTN broadcast an his interview with an old lady that saw Mr. Eng Chhay Eang entering a casino. There was no action taken against Soy Sopheap, anyway.

It is ironic that defamation was decriminalized but disinformation case still results in imprisonment. Some would argue that there has been no change to the new amendment of the law after all. Freedom of expression is still restrictive. However, it is a fact that professionalism in media work is still lacking. As a result, it offers a chance for the government to find any loophole to get hold of journalists, especially those against the leading party (CPP). If we read the whole article that Dam Sith wrote; he used only one source which was the opposition leader Sam Rainsy uttering his whole story alone. And if Dam Sith had tried to contact Foreign Minister Hor Nam Hong for verifying the statement, the risk would have been minimized as the

statement that Sam Rainsy had made was very critical to the government. Professionally, Dam Sith failed to keep balance among the sources.

For Dam Sith case in which he quoted Sam Rainsy's speech alleging H.E. Hor Namhong of being Beoung Trabek Prison Chief, it is doubted why he was sued but not Sam Rainsy who made the comment. Additionally, if the press law is applied Moneak Sekha Khmer Newspaper should make it correction in its newspaper before any arrestment should make. But Moneak Sekha Khmer received no appeal from H.E. Hor Namhong related to the article.

At present, there is no Law of Freedom of Information or there is no provision in The Press Law regarding issues of misinformation and defamation. There should be clear definition and sanction on the case. There is also some argument whether to use press law or UNTAC Criminal Law when dealing with journalist of defamation and disinformation case.

Case Study #2: Cambodian-Vietnam Border Treaty

*Mr. Mam Sonando Was Indicted by Phnom Penh Court*³⁷
Khemara Sok
Phnom Penh, Cambodia
10/10/2005

Mam Sonando

The Phnom Penh court subpoenas Mr. Mam Sonando, director of Beehive Radio FM 105 Monday on charges of criticizing Prime Minister Hun Sen on the loss and selling of Cambodia's territory to the Vietnamese, based on reliable Phnom Penh court's source close to the government and government officials' allegations.

Mr. Mam Sonando is a staunch attacker of the government, and last week he interviewed Mr. Sean Pengse, director of France-based Committee for Border Defense by telephone. Mr. Mam's comments involve Mr. Hun Sen's cause for the loss of Cambodia's territory and the selling of Khmer land to Vietnam by planning to sign the controversial Supplement Border Treaty with Vietnam.

According to the news source close to Phnom Penh court, Phnom Penh court's prosecutor, Mr. Ouk Savuth, issues an arrest warrant for Mr. Mam Sonando, and Mr. Sean Pengse, on charges of a libel suit. Mr. Ouk Savuth cannot be reached for comment. Mr. Khiev Kanharith, government spokesman and Minister of Information, alleges that the subpoena calls for Mr. Mam Sonando to appear in court for clarification on his interview with Mr. Sean Pengse charging the government for selling Cambodia's territory without first checking with the government's source or asking the government's lawyer.

Mr. Mam Sonando said that he has not seen the subpoena yet, that he will not run away, and that he will appear in court. The Human Rights Organizations' officials said that they will monitor this situation closely, and that Mr. Mam Sonando is staying at an disclosed safe place. They also said that this immediate summon is illegal, and that he should be asked to clarify first.

Prime Minister Hun Sen threatens to file suit against those who defame the government involving border issues. Mr. Sean Pengse steps down from his post as director of the Committee for Border Defense because of Mr. Hun Sen's visit to Vietnam to sign the Additional Border Treaty to the 1985 Border Treaty with Vietnam, which prompts reactions from the civil

³⁷ Sok Khmera's Article on Voice of America's website, see <http://www.voanews.com/Khmer/archive/2005-10/2005-10-10-voa1.cfm>

societies, and Organizations for Border Defense's officials, who do not want to see Cambodia losing her territories.

Political analysts told VOA Monday that they are worried that the government's measures to summon Mr. Mam Sonando will diminish the influence and slow the speed of the high officials', and the politicians' comments on Cambodia's territorial integrity, who love Cambodia and her land.

Mr. Mam Sonando said that Tuesday morning, he will go to his Beehive Radio FM 105 station to wait for the subpoena for the arrest warrant. He also said that, he defends Prime Minister Hun Sen in his interview with Mr. Sean Pengse against allegations that he sells Cambodia territory to Vietnam, but if the government does not like his comments, he can change them.

December 31, 2005: Kem Sokha, President of Cambodian Center for Human Rights (CCHR), and Yeng Virak, Executive Director of Community Legal Education Center, were arrested and jailed for defaming the government.³⁸ Four days later, Pa Nguon Teang, Deputy Director of CCHR, was also arrested on charges of defamation. Ironically, these three jailings stemmed from a government-approved celebration on 10 December, to mark the 57th anniversary of International Human Rights Day. The celebration by some 10,000 participants brought union workers, civil society organizations, and other members of the public together to promote human rights in Cambodia. During this event, CCHR displayed a banner which contained numerous handwritten statements from citizens, some of which were allegedly critical of the government. Kem Sokha was arrested in his capacity as the head of the offending organization, while Yeng Virak was arrested for his role as one of the event's organizers. Kem Sokha's Voice of Democracy radio program has been one of the very few sources of uncensored

³⁸ On 11 January 2006, Yeng Virak was temporarily released from prison. Kem Sokha, Pa Nguon Teang, Mam Sonando and Rong Chhun were released on 17 January 2006. Defamation charges are pending.

information in the country for some time. Along with his widespread popularity, his organization has been a target of government harassment in the past.³⁹

One similar case also happened in 2005 as Mr. Mam Sonando, Director of Beehive Radio, was sued by the Prime Minister Hun Sen for broadcasting an interview with Sean Pengse, Director of the Paris-based Committee for Border Defense, in which it implicated the Prime Minister's responsibility for the loss of Cambodian land to Vietnam. Sean Pengse was also charged but is believed to be in France after his resignation from the Committee for Border Defense following the Prime Minister's trip to Vietnam to sign the border treaty.

Mam Sonando was arrested and put in jail after the accusation. Mam Sonando failed to interview the Prime Minister, however; he claimed that he planned to conduct another interview with the Prime Minister to follow up Sean Pengse's critical statement after the Prime Minister's trip to Vietnam.

On top of the Prime Minister's lawsuit; Kim San, Assembly Secretary General lodged another complaint against Mam Sonando for defaming the National Assembly concerning border issues. However, he did not lodge the complaint on behalf of Prince Ranariddh who was then the head of National Assembly as he did not consult with members of the Assembly in lodging the complaint. Kim San said that being the Secretary General, he could lodge a complaint on behalf of the National Assembly. Kim San was from leading party in the government (CPP) and therefore it is not doubtful that his complaint serves party's purpose more than protecting National Assembly's reputation. The later accusation was said to double the suppression on Mam Sonando.

³⁹ E.g., In September 2004, while monitoring a village demonstration, a CCHR staff member was pulled aside by police officers, who proceeded to destroy his film and confiscate his tape recorder, cellular phone, camera, wallet, and bag.

Sean Pengse's affiliation with government to trap Mam Sonando was somehow doubtful. So far, the National Assembly has not put charge against Sonando. Sean Pengse also resigned from his post and escaped safely. It looked like it had been arranged to silent any outspoken journalists against the government.

The law has often been used by the government to crack down on the opposition voice or any other institution it perceives as anti-the government. During the period in which defamation was considered as the criminal act in UNTAC criminal law, the RGC had arrested many outspoken people who accused the government of offering land to Vietnam by signing the border treaty with the Vietnamese government. Prime Minister Hun Sen warned that he would arrest anyone who ill spoke of the treaty.

However, when the defamation case in UNTAC Criminal Act was amended in May 2006 which decriminalizes the provision; the government and the national assembly failed to amend the article on disinformation which still includes imprisonment. Hence, the plaintiff, when file complaint against journalist, always accuse the journalist with both defamation and disinformation.

V. External Pressure on the Government

With all those government's actions against media institutions or personnel, it has not been ignored by various stakeholders, both local and international voices. Internationally, donors and various organizations jointly work to pressure the government. At the same time, locally, many embassies and Non-Governmental Organizations (NGOs) regularly condemn any negative deeds that the government undertakes. One of the most active and respectful local NGOs is Cambodia League for the Promotion And Defense of Human Rights (LICADHO), which strenuously urges the government through its public relation work such as press releases, joint statements with other NGOs calling for changes in government's attitude. Below are few examples of their work.

FIDH, LICADHO and ADHOC on May 28, 2007 called on the Human Rights Council to renew the mandate of the Special Representative and to adopt a resolution on the situation of human rights in Cambodia, requesting the authorities to guarantee the fundamental freedoms enshrined in the Constitution and the international human rights instruments applicable in Cambodia, including the right to freedom of expression.⁴⁰

Alliance for Freedom of Expression in Cambodia (AFEC) on October 12, 2006 demands for abolishing Article 62 UNTAC law on criminal disinformation. The network of 28 Cambodian civil society organizations holds that this legal provision contradicts the Cambodian Constitution and the international human rights law by imposing unjustifiable restrictions to the human right to Freedom of Expression. In the view of AFEC, there are other and much more adequate legal ways how to protect public peace than a law against disinformation. The AFEC is convinced that

⁴⁰ Expression of Deep concern on Human Rights in Cambodia, see detail at <http://www.licadho.org/press/files/153JointPRUNHRC07.pdf>

the mere publication of false statement of facts should not be criminalized at all. In an open society there are many mechanisms that finally lead to the revelation of truth.⁴¹

Article 62 UNTAC law reads as follows: “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 that 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 reproduction 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 one Million to ten Million Riels or both.”

On February 1, 2006, the Alliance for Freedom of Expression in Cambodia (AFEC), a coalition of 27 member organizations, would like to express its deepest gratitude to all individuals, local and international NGOs, embassies, governments and international institutions who joined the recent struggle for Freedom of Expression in Cambodia. This timely and vehement support has constituted an effective influence on the Royal Government of Cambodia that led to the release on bail of five arrested individuals: journalist and radio manager Mam Sonando, unionist Rong Chhun and the NGO leaders Kem Sokha, Yeng Virak and Pa Nguon Teang. AFEC regrets that the right to Freedom of Expression of civil rights activists has been violated. Therefore, AFEC welcomes that the Government withdraws its complaints against the above-mentioned persons, and urges that similar complaints against other individuals in Cambodia and abroad, namely Ear Channa, Men Nath, Chea Mony, Prince Sisowath Thomico, and Say Bory⁴² are also withdrawn. AFEC further hopes that all criminal defamation charges will be dropped speedily by the Phnom Penh Municipal Court.⁴³

⁴¹ AFEC Demands for abolishing Article 62 UNTAC, see detail at <http://www.licadho.org/press/files/129AFECPRDisinformationUNTAC6206.pdf>

⁴² Some of these people went into hiding or self-exile due death threat or unfair charges.

⁴³ AFEC Calls to end all criminal defamation cases, see detail at <http://www.licadho.org/press/files/108AFECPREndDefamation06.pdf>

The US Embassy in Phnom Penh, usually as the severe human rights violation case occurs, also on January 4, 2006 condemned the Cambodian Government's action against human rights activists as quoted:

“We condemn the arrest of two prominent human rights activists, Mr. Kem Sokha, President of the Cambodian Center for Human Rights, and Mr. Yeng Virak, Director of the Community Legal Education Center on criminal defamation charges. This is the latest in a series of arrests and lawsuits targeting critics of the Cambodian Government and the cumulative effect of which is to call into question the Cambodian Government's commitment to democracy and human rights. Our Embassy immediately raised this issue with senior officials in the Cambodian Government and we voiced our strong objections to these arrests and we urged the Cambodian Government to reverse the erosion of freedom and democracy.”⁴⁴

On March 29, 2007, the Cambodian Human Rights Action Committee (CHRAC), the Committee for Free and Fair Elections in Cambodia (COMFREL), the Cambodian Committee of Women (CAMBOW), the Alliance for Freedom of Expression in Cambodia (AFEC) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) are deeply concerned about the threat made by the Royal Government of Cambodia (RGC) to expel the Open Society Justice Initiative (OSJI), an international organization, from the country or to revoke staff visas. Even it was not directly linked with freedom of expression in the Press Law, but by making this threat the government risks giving the impression to an international audience that the government would continue its action in other sectors of Cambodia. The organizations condemned any decisions and actions made by RGC to limit freedom of expression in Cambodia.⁴⁵

⁴⁴ US Embassy in Phnom Penh Press Release, detail at http://cambodia.usembassy.gov/pr_010406.html

⁴⁵ Civil Society calls for respect for Freedom of Expression in Cambodia, see detail at <http://www.licadho.org/press/files/153JointPRUNHRC07.pdf>

January 12 , 2006, a joint statement made by as many 38 local NGOs and 38 international civil society to urge for the release of five human rights activists arrested on December 31, 2005 for defaming the government. It has been one of the biggest pressures on the government due to the large number of civil society group members and participants.⁴⁶

⁴⁶ Joint Statement of the arrest of human rights activists, detail at <http://www.licadho.org/press/files/104JointStatementDetentionActivists06.pdf>

VI. Recommendation

For the development of a general prosperity and democratic society especially in the matter of freedom of expression on press which is an exclusive right people may obtain, a free and independent printed media is a safeguard for egalitarianism. Therefore, there is need for the government and media community to speedily implement press law reforms as well as enforce it vigorously.

Recommendations for Article 4:

- 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.

Recommendations for Article 5:

- 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.

Recommendations for Article 8 and Article 9:

- 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.

For Article 10, recommendation includes:

- 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 dishonored 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 favored remedy. The article should generally establish a hierarchy of remedies, along the lines indicated in the text.

Recommendation for Article 11 to 16

- 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 ensure 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.

Recommendation for Article 17 and Article 18:

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

1. To the Government and Parliament

- The Press Law should be amended to repeal and/or review provisions that are overly broad and vague in order to bring the Law into conformity with international standards.
- All restrictions to content provided for in the Press Law should be repealed.
- National Security concerns must not be used to unduly restrict media reporting.
- The legal framework for broadcasting should be established through the development of comprehensive, progressive licensing and content regulation systems that are consistent with international standards.

- Resources should be allocated to expand access to the internet to the general population.
- Defamation laws should be reviewed to bring them into conformity with international standards. In particular, the discrepancy between the Press Law and the UNTAC Criminal Law should be clarified.
- Criminal disinformation should be abolished;
- Non-monetary remedies should, wherever possible, be prioritized over pecuniary awards.
- A fixed ceiling for non-material harm for defamation should be established, to be awarded in only the most serious of cases.
- The judiciary should apply freedom of expression principles when interpreting the UNTAC Criminal Law, or other future Penal Codes.
- Priority should be given to the adoption of a freedom of information law
- The Archives Law should be repealed or amended to bring it into conformity with international standards.
- A systematic program of training and awareness raising activities for public officials should be implemented immediately to tackle the culture of secrecy.
- Officials should not harass, threaten or otherwise interfere with the media or journalists for exercising their right to freedom of expression. Where such measures do take place, the authorities should immediately act to counter them.
- Officials, public figures and the community should demonstrate tolerance of criticism and the exercise of the right to freedom of expression by journalists and the media.

2. To the Media Community and Media Outlets

- Each media outlet should consider strengthening internal processes and standards with a view to reinforcing good journalistic practices and avoiding legal problems. Measures

could include establishing an internal complaints system, strengthening editorial control and providing training in journalism.

- Members of the media should seek to become more engaged in media law development by, for instance, trying to influence the adoption and/or repeal of laws, as well as their interpretation by the judiciary.
- The media should call for the adoption of a more precise legal framework for broadcasting, which is consistent with international standards.
- The media should call for the abolishment of criminal disinformation.
- Public support for the adoption of a freedom of information act should be built by raising the awareness of the importance of the right to information through a more active media campaign;
- The media should call for the repeal of the Archives Law, or for it to be amended to bring it into conformity with international standards.
- The media should develop and abide by professional codes of ethics.

VII. Conclusion

Cambodian Press has gone through several regimes. Statistic from Reporter Without Borders' rankings shows the current one being an improvement if compared to the past and surrounding countries in the region, particularly due to a good course Cambodia is taking towards a healthy democratic nation that namely would facilitate private and free media growth. The number of registered print media outlets does analogize that argument with a figure of over 200, but publications from merely 20 were regularly circulated.

Cambodia's Press Law specifically forbids pre-publication censorship, which is respected by government authorities. But the Ministry of Information has the power to suspend the publications which publish information harmful to national security and political stability. This provision has often been misused to silence dissent or punish libelous reporting; in most cases, there hasn't been the slightest suggestion of any threat to "national security" and the vagueness of the term "political stability" could be said to cover anything remotely political published by a newspaper.⁴⁷

When it comes to defamation, Cambodia's notoriously corrupt and biased court system leaves journalists with little real protection, especially when charges are brought by senior government officials. Laws covering defamation, disinformation and incitement are also used maliciously to silence voices of dissent. These criminal code laws are used rather than the civil code Press Law, a practice condemned by legal experts and international press freedom organizations.

In October 2005, a controversial border treaty between Cambodia and Vietnam led to Beehive radio owner Mam Sonando being charged with defamation (and later with disinformation and incitement). The charges, based on complaints made by the government and

⁴⁷ Reading between the lines: How politics, money and fear control Cambodia's media, Licadho's report, May 2008

National Assembly, followed the broadcasting of a telephone interview conducted by Sonando of an activist in France who criticized the treaty. At no point during the interview did Sonando criticize the treaty and he even challenged some points raised by the activist. Sonando - along with four civil society leaders who were prosecuted on similar charges related to the border issue – was eventually released. But the detentions showed how Cambodia’s laws could be misused against those who dared to criticize the government.⁴⁸

With the pressure from civil society upon the government, there have been changes of decriminalizing defamation provision, release of human rights activists, and some other improved attitudes towards media and human rights people. As a result, Cambodian media environment has picked up, together with a continued decline in harassment and attacks on the press. From there, let us hope the trend is keeping its pace forward.

⁴⁸ Reading between the lines: How politics, money and fear control Cambodia’s media, Licadho’s report, May 2008

APPENDICES

Appendix A: Translation⁴⁹ of Law on the Regime of the Press, adopted by the National Assembly on July 18 , 1995

CHAPTER 1

Rights and Freedom of Press

Article 1:

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 of the Kingdom of Cambodia.

Article 2:

The Press has rights to maintain the confidentiality of its sources.

Article 3:

To maintain independence of the Press, pre-publication censorship shall be prohibited.

Article 4:

Publication of official information such as statements, meetings, meeting minutes or reports etc. may not be penalized if such publication is fully true or an accurate summary of the truth.

Official information covered by this Article refers to:

1. statements, meetings, meeting minutes or reports of the National Assembly including its committee and commissions, except if the National Assembly has a secret meeting as stipulated in

Article 88 of the Constitution of the Kingdom of Cambodia;
2. statements, meetings, meeting minutes or reports of the Executive branch, including statements of the Ministers and other officials.
3. all aspects of the legal process, including judicial proceedings, except those proceedings:
 - o closed to the public by court order;
 - o regulated by

Article 16 of this law, relating to privacy in legal proceedings;

⁴⁹ The translation was trusted by various local and international organizations. See more at www.cjrenglish.wordpress.com

- dossier of cases still under investigation of the court;

Article 5:

A. Generally

The Press has rights of access to information in government held records, except for any information that causes:

- harm to national security;
- harm to relations with other countries;
- invasion of the privacy rights of individuals, including personal files of officials, medical files, and confidential official files and materials;
- expose trade secrets, confidential financial information obtained from any individual or legal entity, and information related to the regulation and supervision of financial institutions;
- affect the rights of any person to a fair trial;
- danger to public officials carrying out the law or their duties.

B. Request for Information

Requests for information shall be made in writing and specify clearly of the information which is requested to the institutions.

Competent official who governs such institution shall respond in writing to the request within 30 days. If the request is denied in whole or in part, reasons for such denial shall be indicated clearly in writing.

CHAPTER 2

PRESS RESPONSIBILITY

Article 6:

Journalists have rights to establish Press Association(s). Such Press Association(s) shall be independent. Each Press Association shall respectively adopt its Statute (bylaws) by agreement from the members through vote, which does not contradict with the laws in vigor. Leaders of the Press Association shall be elected through democratic process to be members of the Board of Directors.

Article 7:

Each Press Association shall establish a code of ethics for internal application in its association. The Press has obligation to comply with the code of ethics, which should primarily include necessary principles as follows:

1. Respect for truth and for the rights of the public to the truth.
2. Journalists shall fairly publish information and commentary and make fair criticisms consistent with justice.
3. Journalists shall report only in accordance with facts that they know the origin. Journalists shall not suppress essential information or falsify documents.
4. Use only fair methods to obtain news, photographs and documents.
5. Do the utmost to rectify any published information which is found imprecise and which may lead to misunderstanding.
6. Shall avoid publishing any information which incites and causes to have discrimination as on the basis of race, color, sex, language, belief, religion, opinion or political tendency, national or social origin, resources, or other status.
7. Shall respect the rights to privacy of the individual.
8. shall respect very strictly the grammar rule of the Khmer language, when writing articles.
9. Publication of obscene texts and posters and graphically violent materials is prohibited.
10. Violation of the rights of individual to a fair trial as provided for in the Constitution of the Kingdom of Cambodia, shall be prohibited.
11. Journalist shall regard as grave professional abuses, the following:
 - - plagiarism;
 - misrepresentation, such as writing to imply a meaning which creates unjust suspicion among readers, individuals or any group or party;
 - calumny, defamation, unfounded humiliation;
 - acceptance of a bribe in any form or attempt to blackmail in consideration of either publication or suppression of any information.

Article 8:

Before distribution, the press, employer or editor shall file an application with the Ministry of Information in order to identify itself. A receipt shall be issued to the press by this Ministry after receiving the whole file.

In case of director of publication is a member of the National Assembly or any institution which has immunity, that Press shall appoint a co-director of publication.

Employer or editor who publishes without respecting this procedure before hand, shall be penalized to pay fine from 500,000 to 1,500,000 Riels. In case if not giving up the offense, shall be penalized to pay in double the above original amount of fine.

Article 9:

The formality which shall be completed by the employer or editor, shall primarily consist of:

- identity of the Press,
- names and addresses of the employer and editor;
- name and address of the printing house;

- certification of individual past criminal record of the employer and editor;

Any change of above information shall notify the Ministry of Information 5 days in advance, except for the case of force majeure.

Article 10:

If any person who 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/her honor or dignity, that person has the right to demand a retraction from or the right to reply to the publisher of the statement and the rights to sue on charge of defamation, libel, or humiliation which harmed to his/her honor or dignity. A retraction or response shall be published within seven (7) days or in the next issue after receiving a demand of retraction or reply.

In the case of a public figure, all purports or false allegations which the journalist takes to publish itself or reproduces out of the truth, with malicious intent against such public figure, is such a libel which is prohibited by the law.

If following a complaint of the Plaintiff of the civil action the court found out that any publication is false, it then may order the press:

- to publish a retraction,
- to pay a compensation, or
- to publish a retraction and pay a compensation.

A retraction that the press has obligation to publish it, shall be on the same page and with the same size of typescripts with which of the text which is believed to have affected the honor or dignity of the person (who demands).

Additionally, the court may penalize to pay fine from 1,000,000 Riels to 5,000,000 Riels.

Moreover, in case when a judgment is made on any act as stated in above paragraph, the court may order to post its decision at specific locations which will be indicated by the court at the expense which shall be born by the accused person; and the court may publish this judgment in article of one or more newspapers also at the costs of the accused person, which its maximum should not be exceeded 1,000,000 Riels.

In all cases, the owner, the editor and journalist shall be jointly liable for payment of damages to the victims.

Article 11:

The press shall not publish anything which may affect the public order by inciting directly one or more persons to commit violence.

Any act of abuse to what stated above shall be penalized to pay fine from 1,000,000 to 5,000,000 Riels.

The person victimized of the act stated above, shall have rights to consider himself/herself as plaintiff of the civil action and file a civil suit in court.

For every case, the court shall examine on the direct relationship between the inciting article and such act. Any article of more than three (3) months old may not be used by the court as ground for accusation.

Article 12:

The press shall not publish or reproduce any information that may cause harm to the National Security and Political Stability.

Employer, editor and journalists shall be penalized to pay fine from 5,000,000 Riels to 15,000,000 Riels, without yet taking into account of due punishment according to Criminal Law.

The Ministries of Information and of Interior shall have rights to confiscate immediately the offending issue of the press.

Moreover, the Ministry of Interior may also have rights to suspend the publication for a period which shall not exceed thirty (30) days and to forward all dossiers to the court.

Article 13:

The press shall not publish or reproduce false information that may lead to humiliation that effects the national organs. Such kind of publication shall be penalized to pay fine 2,000,000 Riels to 5,000,000 Riels.

Article 14:

The press shall not publish anything that may effect to the good custom of society, primarily:

- curse words that are indecent such as Ah, Meung, etc..
- words describing explicitly of sexual acts,
- drawing or photographs depicting human genitalia or naked pictures. Except for those publications for educational purposes.
- pictures of degrading which compare particular human being to animals,

Violation of this above article shall be penalized to pay fine from 1,000,000 to 5,000,000 Riels.

Article 15:

Unless there is permission from the court, the press may not publish information, photographs or drawings that may make it possible for the readers to identify and know the name of:

1. parties in any civil suit involving paternity, marriage, divorce or child custody;
2. youth under the age of 18 in any civil or criminal suit; or
3. a woman who is a victim of molestation or rape.

If concerned person or custodian has agreed in writing, the press may publish this information, except only when such publication may effect the investigation of the court.

Any individual whose rights under this Article are violated by the press, may file a civil action in court for damages.

Article 16:

A commercial advertisement may be considered as false if it exaggerates the quality or value of a product or service and leads to confusion by consumers.

Such kind of advertisement shall be prohibited, but the press organ which published such advertisement is not the one to be responsible before the law, except only when the press organ still continues to publish the advertisement after having received written warning from the court or competent Ministry to cease such advertisement.

In the contrary, the advertiser shall be the person to be responsible in front of the law and court after there is a complaint from any person or consumer's association whose interests have been harmed by such advertisement.

False advertisement shall be penalized to pay fine from 1,000,000 Riels and 5,000,000 Riels.

CHAPTER 3

COMPETITION

Article 17:

Any person, even though real or legal person, may not be owner or possessor of more than two (2) Khmer language newspapers in the Kingdom of Cambodia.

Article 18:

The total number of all Khmer language newspapers owned/possessed by foreigners shall not exceed 20 percent of the total of all Khmer language newspapers that are actually being published in the Kingdom of Cambodia.

Once the newspapers owned/possessed by foreigners have been authorized to publish, may not be closed because of the decreasing of total number of Khmer language newspapers.

CHAPTER 4

DEPOSIT

Article 19:

Employers or editors shall deposit every issue of their newspapers, three (3) copies with the National Library and six (6) other copies with the Ministry of Information. This above deposit shall be proceeded within 15 days if printed in Phnom Penh and within 45 days if printed elsewhere, from the date of their publication.

If failed to deposit on time, the National Library and Ministry of Information shall claim to employer or editor, for the copies that have not yet been received.

Violation of this provision, the ministry of information may impose to pay transactional fine from 30,000 Riels to 500,000 Riels.

CHAPTER 5

FINAL PROVISIONS

Article 20:

Any act committed by employers, editors of journalists that violated the Criminal Law, shall be subjected to punishment according to Criminal Law. But nevertheless, no person shall be arrested or subject to criminal charges as result of expression of opinion.

Article 21:

All previous provisions related to the press shall be abrogated.

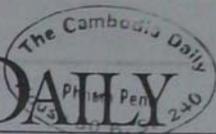
This law is passed by the National Assembly of the Kingdom of Cambodia on July 18, 1995 during the 4th session of the First Legislature.

The President of the National Assembly

Appendix B: Defamation issue in Press Law and UNTAC Law

Issue	Law	Restriction	Sanction
Defamation and Libel	Press Law, Article 10	<p>If a person believes that an article, text, picture, drawing or photograph is false, or that it expressly or implicitly harms their honor or dignity, they may demand a retraction or right of reply and may sue.</p> <p>Public figures: Publication with malicious intent of false allegation or imputation about a public figure is libel.</p> <p>If the court finds that the publication is false, it may order a remedy.</p>	<p>Publication of a retraction or a right of reply; or both a retraction and compensation. In addition the court may impose a fine of between USD 250 and 1,250.</p>
Defamation and Libel	UNTAC, Article 63	<p>A bad faith allegation or imputation of a fact which harms a person's honor is defamation: Art 63(1)</p> <p>Public figures: any insult, contemptuous remark or abusive language which does not claim to impute fact is libel: Art 63(2)</p> <p>Defamatory or libelous acts published by means of public declarations, writing, publication, drawings, paintings, films or any other mode of writing, speech or film that is communicated to the public are punishable.</p> <p>Liability for damages is shared by employer, printer, publisher, distribution company.</p>	A fine of USD 250 to 2,500
Disinformation	UNTAC, Article 62	<p>The party responsible for the publication or communication, by any means, of information which is false, fabricated or untruthfully attributed to a third person in bad faith and with malicious intent, provided that the publication has disturbed, or is likely to disturb, the public peace.</p>	<p>Imprisonment: 6 months to 3 years; or fine: up to USD 750; or Both.</p>

Appendix C: Article on Sonando's arrest on October 11, 2005 from the Cambodia Daily (Well respected English daily newspaper)



The CAMBODIA DAILY

Volume 32 Issue 81 Wednesday, October 12, 2005 1,200 riel

Aid Begins To Reach Some Quake Victims

BY SADAQAT JAN
THE ASSOCIATED PRESS

MUZAFFARABAD, Pakistan - As trucks of aid arrived in the ruined capital of Pakistan-ruled Kashmir Tuesday, victims scuffled for badly needed food and blankets three days after the devastating earthquake that flattened whole communities, killed tens of thousands and left millions homeless.

The government's official death toll remained at slightly more than 20,000, but a senior army official close to the rescue operations said that "according to our assessment, the death toll is between 35,000 to 40,000 people."

Most of the dead were in the Himalayan region of Kashmir, said the official, who requested anonymity as he wasn't authorized to comment to journalists about it. The estimate tallied with those of local officials.

With winter just six weeks away, the UN said 2.5 million people in the worst-hit areas near the mountainous Pakistan-India border needed shelter.

US military helicopters helped ferry wounded people from the wrecked city of Muzaffarabad, while international rescue teams and searches during the waning days of hope for finding survivors. A French team reportedly rescued 40 children from a buried

Continued on page 10



Lee Berthoume/The Cambodia Daily

Radio Host Is Arrested For Defaming PM

BY PHANN ANA AND LEE BERTHOUME
THE CAMBODIA DAILY

Mam Sonando, owner and director of independent Beehive FM 105 Radio, was arrested Tuesday morning and charged with defamation following a lawsuit lodged on behalf of Prime Minister Hun Sen.

The controversial and outspoken radio show host was detained at Prey Sar prison after police surrounded his Kandal province home Monday night and moved in to arrest him the following morning, officials said.

Court officials said the arrest stemmed from the broadcasting of an interview in which Hun Sen was heavily criticized over border issues and accused of allowing Vietnam to take Cambodian land.

Sean Fenske, the former president of the Paris-based Cambodia's Border Committee, who made the accusations in a Sept 30 interview with Mam Sonando, has also been charged, a court clerk said.

Sean Fenske is believed to be in France.

Both men have been charged with defamation under Article 63 of the UNTAC law—a criminal case—rather than the Press Law, in which defamation is a civil case.

Continued on page 2

Police escort Mam Sonando, owner of Beehive FM 105, from Phnom Penh Municipal Court on Tuesday after he was charged with defamation.

No Victory, But Plenty of Support for the Home Team

BY CHARLES McDERMID AND SAING SOENTHUTH
THE CAMBODIA DAILY

A lively crowd of more than 10,000 gathered Tuesday at Olympic Stadium to watch Cambodia's national team fall 2-0 in a friendly match against defending ASEAN Tiger Cup champions Singapore.

The contest was the first meeting of national sides on Cambodian soil since 2001.

With a live band performing from the top of the grandstands and much flag-furling, foot-stomping enthusiasm, the match was as much spectacle as sporting event.

On hand—amid much drumming, cheering and chanting—was a diverse group of football fans that stretched from saffron-robed monks to Olympic Committee Chairman Prince Norodom Ranariddh.

"The Prince and I agreed that we have never seen such a big crowd for a game organized in Cambodia," said Cambodian Football Federation President Khiek Ravy.

"The crowd had a good time, but they also had high expectations. With more and more people coming to cheer the national team—it's time to start winning," he said.

The loss stretches Cambodia's winless streak in international competition to eleven games, and provided an unfortunate home debut for newly-hired team coach Scot O'Donnell.

Cambodia will travel to Manila to compete in the Southeast Asian Games in only six weeks.

"I am very happy that the crowd is coming back to support the national football team," Prince Ranariddh said directly after the match.

Continued on page 21

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ព័ត៌មានអំពីប្រទេសកម្ពុជា និង ពិភពលោក

**APPENDIX D: Dam Sith's original article that put him in the spot light.
(Front page of Moneaksekar Khmer Newspaper)**



(Continued page)

តបតវិសាលី "ស" បាត្រនៃឆ្នាំ១០០រដូវ និងមាន ប្រជាពលរដ្ឋ ព្រមទាំងសមាជិកគណបក្សសមរង្ស៊ីចូលរួម រាប់ប្រជាពលរដ្ឋគ្រប់គ្នា។

លោក សម រង្ស៊ី ប្រធាន គណបក្សសមរង្ស៊ីបានមានប្រសាសន៍នៅក្នុងបរិវេណវាលពី ឃោតដើម្បីឯកភាពពីថ្ងៃទី១៧ ខែមេសាឡើងវិញនេះថា ជា តិចតួចបំផុតបង្កើន ដើម្បី នធិសកុសលដល់វិញ្ញាណក្ខន្ធ ប្រជាពលរដ្ឋខ្មែរ ដែលត្រូវតែ សម្លាប់ក្នុងរយៈពេលខ្លីក្រហម និងសូមនធិសដល់វិញ្ញាណក្ខន្ធ ពលរដ្ឋខ្មែរទាំងអស់ទៅកាន់សុ ភតិភក្តីកុំឱ្យស្លាប់ទៀត។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍បន្តទៀតថា នៅដើម ឆ្នាំ២០០៨នេះ គឺជាឆ្នាំដែល មានសារៈសំខាន់បំផុត ពីព្រោះ ពួកអតីតមេដឹកនាំជាន់ខ្ពស់នៃ របបខ្មែរក្រហមត្រូវបានគុណា ការទោមប្រកាន់ទោស និងឃុំ ខ្លួនរង់ចាំការកាត់ទោសក្រោម បិទទោមប្រកាន់កម្រិតខ្ពស់ ម្តងម្កាង និងឧក្រិដ្ឋកម្មប្រឆាំង មនុស្សជាតិ។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍បន្តទៀតថា គណ បក្សសមរង្ស៊ីក៏ដូចជាប្រជាពល រដ្ឋខ្មែរទាំងអស់គ្នាបានរួម គ្នាសម្រេចបាននូវសេចក្តីស្រឡាត់ ទោសពួកមេដឹកនាំជាន់ ខ្ពស់នៃរបបខ្មែរក្រហមឱ្យបាន ឆាប់។ លោកបន្តទៀតថា បើ មិនដូច្នោះទេ និទណ្ឌភាពនឹង ក្លាយជាទម្លាប់អ្នកដែលសម្លាប់ ពេទ្យច្រើន ហើយពួកមេដឹកនាំ ខ្មែរក្រហមសម្លាប់ប្រជាពលរដ្ឋ ខ្មែររាប់លាននាក់ត្រូវតែកាត់ ទោស ដើម្បីជាការព្រមានដល់ មេដឹកនាំក្រោយទៀត។

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តែ១លាននាក់ ដែលពួកមេដឹក នាំខ្មែរក្រហមសម្លាប់មនុស្ស រាប់លាននាក់មិនទាន់បានកាត់ ទោសតាមច្បាប់ដឹង"។ បើ គ្មានការកាត់ទោសពួកមេដឹក នាំខ្មែរក្រហមទេនឹងបង្កើត ឱ្យមាននិទណ្ឌភាពនៅកម្ពុជា។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍បន្តទៀតថា មេដឹក នាំប្រទេសកម្ពុជាសព្វថ្ងៃ អ្នក ខ្លះប្រើអំណាចផ្តាច់ការសម្លាប់ គេតាមចិត្ត ទើបគណបក្សសម រង្ស៊ីទាមទារឱ្យកាត់ទោសខ្មែរ ក្រហម ដើម្បីជាគំរូ ព្រមទាំង ដល់អ្នកដែលធ្លាប់តែសម្លាប់គេ ឱ្យដឹងថា ខ្លួនមិនអាចសម្លាប់ គេតាមចិត្តទេ។ លោកបន្ត ទៀតថា ឃាតកសម្លាប់មនុស្ស តែមួយនាក់ក៏ត្រូវមានការនិន្ទា ទោសតាមច្បាប់ដែរ។

លោក សម រង្ស៊ី មានប្រ សាសន៍បន្តទៀតថា ដើម្បី ចៀសវាងកុំឱ្យខ្មែរជំនាន់ក្រោយ រងទុក្ខវេទនា រងអំពើអយុត្តិ ធម៌មកលើអ្នកស្អិតត្រង់ទៀត នោះ ហើយអ្នកប្រព្រឹត្តអំពើ បទឧក្រិដ្ឋចេះតែរួចខ្លួន គឺត្រូវ តែមានការកាត់ទោសពួក មេ ដឹកនាំជាន់ខ្ពស់ នៃរបបខ្មែរ ក្រហមឱ្យបានឆាប់។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍បន្តទៀតថា "ខ្ញុំសម រង្ស៊ី សុំទាមទារសុំអង្វរអង្គការ សហប្រជាជាតិជួយដោះស្រាយ មានការកាត់ទោសមេដឹកនាំ ខ្មែរក្រហមឱ្យបានឆាប់កុំអូស អន្លាយ បើមិនដូច្នោះទេ ពួក មេដឹកនាំខ្មែរក្រហមដែលមាន អាយុ៧០ឆ្នាំជាង ៨០ឆ្នាំជាង ពួកគេនឹងស្លាប់ទៅតាមសក្តានុ ប្បដិសន្ធិ ដោយគ្មានការកាត់ ទោសទាំងអស់"។ លោកបន្ត ទៀតថាឃាតកកាលពីសង្គ្រាម លោកលើកទី២ ពួកណាហ្ស៊ី អាណានិគម ដែលមានមនោគម វិជ្ជាមិនខុសពីខ្មែរក្រហមនោះ ពួកណាហ្ស៊ីបានសម្លាប់ប្រជា ពលរដ្ឋស្អិតត្រង់ប្រមាណ៦លាន នាក់ ហើយត្រូវបានគេតាម

ចាប់យកមកកាត់ទោស ដែល ពួកផ្តាច់ការទាំងនោះមានអាយុ ៧០-៨០ឆ្នាំក៏ដោយ។

លោក សម រង្ស៊ី មានប្រ សាសន៍បន្តទៀតថា ក្នុងនាម ប្រជាពលរដ្ឋខ្មែរទាំង១៤លាន នាក់ លោកទាមទារឱ្យសហ គមន៍អន្តរជាតិជំរុញការកាត់ ទោសមេដឹកនាំខ្មែរក្រហមឱ្យ បានឆាប់ ផ្តល់យុត្តិធម៌ជូនប្រ ជាពលរដ្ឋខ្មែររងគ្រោះ។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍លើកឡើងទៀតថា មន្ត្រីនៃគណបក្សកាន់អំណាច មួយចំនួនចេញមកពីជួរកម្មាភិ បាលខ្មែរក្រហមដូច្នោះគេអត់ ចង់ឱ្យមានការកាត់ទោសខ្មែរ ក្រហមទេ។ លោកបន្តទៀត ថា ប្តីល ពត ម្នាក់ឯងមិនអាច សម្លាប់ មនុស្សប្រមាណជិត ២លាននាក់បានទេ គឺទាល់តែ មានដៃជើងគ្នាបក្សពួកចូល រួម។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍លើកឡើងទៀតថា យ៉ាងហោចណាស់មានទេសរដ្ឋ មន្ត្រីម្នាក់ និងឧបនាយករដ្ឋ មន្ត្រីម្នាក់នៃគណបក្សកំពុងកាន់ អំណាចសព្វថ្ងៃ ដែលធ្លាប់ធ្វើជា លេខា និងទីប្រឹក្សា អ្នកបក ប្រែភាសាឱ្យ ប្តីល ពត។ លោក សម រង្ស៊ី បានមានប្រ សាសន៍ទៀតថា ឥឡូវនេះទី ប្រឹក្សា និងលេខា ប្តីល ពតនោះ គឺលោក គាត ឈន់ ទេស រដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុ និងម្នាក់ទៀត គឺ លោក ហៅ ណាំហង ធ្វើជាឧប នាយករដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួង ការបរទេស និងធ្លាប់ធ្វើជាមេ គុកបឹងត្របែក។ លោកបន្ត ទៀតថា ធ្វើមេគុកបឹងត្របែក មិនមែនបានធ្វើដោយចៃដន្យទេ ទាល់តែខ្មែរក្រហមឱ្យធ្វើជាមេ គុក ទើបធ្វើមេគុកបឹងត្របែក បាន ដែលមេគុកនោះមានអំ ណាចខ្លាំងណាស់ ទើបពួកគេ មិនចង់ឱ្យមានការកាត់ទោស ពួកមេខ្មែរក្រហមទាំងនោះទេ

ដោយខ្លាច ខៀវ សំផន មក ស្បែក ទើបធ្វើឱ្យពួកមេខ្មែរក្រ ហមទាំងនោះស្លាប់ដោយធម្ម ជាតិ បើមិនស្លាប់ដោយធម្ម ជាតិ ចាក់ថ្នាំឱ្យស្លាប់ដូចជា ម៉ាក ជាដើមកុំឱ្យនិយាយការពិត។

លោក សម រង្ស៊ី មានប្រ សាសន៍បន្តទៀតថា ប៉ុន្តែប្រជា ពលរដ្ឋខ្មែរចង់ដឹងការពិតទាំង អស់នៃរបបខ្មែរក្រហមដែល បានសម្លាប់ប្រជាពលរដ្ឋខ្មែរ យ៉ាងរហូលរែបរនេះ។ លោក សម រង្ស៊ី មានប្រសាសន៍ទៀត ថា អតីតគណៈស្រុកប្រធាន កងពលនៃរបបខ្មែរក្រហម ឥឡូវនេះមានងារជា សម្តេច ហើយក៏បដិសេធនា មិនដឹង គិតណា ស្រុកចូលរួមក្នុងការ សម្លាប់ប្រជាពលរដ្ឋខ្មែរក្នុង របបខ្មែរក្រហមនោះដែរ។

លោក សម រង្ស៊ី បានមាន ប្រសាសន៍លើកឡើងទៀតថា ប្រធានកងពលនៅខេត្តកំពង់ ចាមនៃរបបខ្មែរក្រហមម្នាក់ នោះសម្លាប់គេរហូតដល់ខែ កក្កដាឆ្នាំ១៩៧៧ ទើបរត់ទៅ ស្រុកយួននៅពេលដែលបែក ការណ៍ត្រូវអង្គការថ្នាក់ឃើញ ឱ្យចាប់មកផ្តន្ទាទោស ទើបពួក គេរត់ទៅស្រុកយួន បង្ហាញឱ្យ ឃើញថា ពួកគេនោះជាកម្លាំង យួនបង្កប់ក្នុងជួរខ្មែរក្រហម។

កាលពីដើមឆ្នាំ២០០៨ក្នុង មកនេះ សហចៅក្រមស៊ើប អង្កេតនៃសាលាក្តីខ្មែរក្រហម បានចេញដីកាឃុំខ្លួនពួកមេដឹក នាំជាន់ខ្ពស់៥នាក់នៃរបបខ្មែរ ក្រហមពីបទឧក្រិដ្ឋកម្មប្រឆាំង មនុស្សជាតិ និងឧក្រិដ្ឋកម្ម សង្គ្រាមរួមមានមេឃាតក អៀង សារី អតីតឧបនាយករដ្ឋ មន្ត្រី រដ្ឋមន្ត្រីក្រសួងការបរ ទេស, ខៀវ សំផន អតីតប្រ ធានគណៈប្រធានរដ្ឋ-ទូទ ជា អតីតប្រធានរដ្ឋសភា, អៀង ធី វិទូអតីតរដ្ឋមន្ត្រីក្រសួងសុខាភិ បាល និងសង្គមកិច្ច ព្រមទាំង កាំង ហ្គេតអ៊ាវហៅ ខុច អតីត មេគុកទួលស្ទឹង ឬស២១។

Appendix E: Unofficial translation of Dam Sith's article on Foreign Minister Hor Namhong
Moneaksekar Khmer: Friday 18th April 2008

Sam Rainsy Party celebrated a Buddhist ritual to commemorate the spirit of nearly two millions deaths during Khmer Rouge regime on the morning of 17th April 2008 at Choeng Ek killing fields.

Sam Rainsy said that the beginning of year 2008 is very important as Khmer Rouge imminent leaders were charged and arrested for war crime and crime against humanity.

Sam Rainsy said that his party as well as the people of Cambodia as a whole demanded the KR tribunal to try the remaining KR leaders as soon as possible. He continued that the culture of impunity would become a habit in Cambodian society unless the KR leaders are tried as an example for the later leaders otherwise they will deny any of their wrong doings.

Sam Raingsy insisted the United Nations to help speed up the trials of those elderly ill leaders who are now between 70 and 80 years of age nevertheless they will die a natural death without any trials. He raised an example of the pursuit of the Nazist leaders after the World War II where they were brought in for trial even though they were over 80.

He continued stating that some the leading party's officials are stemmed from KR members. Therefore, they do not wish the trial to exist. He also stressed that Pol Pot alone could not kill two millions people. He must have had his accomplices.

He claimed that at least one senior minister and one deputy prime minister of the ruling party were secretary and assistance interpreting for Pol Pot. The former Pol Pot's secretary and assistance was Keat Chhun, senior minister; minister of the ministry of economy and finance and Hor Namhong, deputy prime minister; minister of the ministry of foreign affairs; who used to be the head of Boeng Trabek prison. The claimed past involvement of the senior officials from ruling party by Sam Raingsy brought him a conclusion that they are feared of being unmasked when the trial begins.

However, Sam Raingsy continued that Cambodian people are anxious to seek the truth about the killing during the KR regime. One of the KR cadres is titled as Samdech nowadays. He should not deny not knowing about the killing.

One of the heads of KR brigade in Kampong Cham who kept on killing people until July 1977 ran to Vietnam when he was aware that the Angkar (organization) planned his arrest. It proved that he was Vietnamese's undercover within KR regime.

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