



## **PRESS RELEASE**

PHNOM PENH, Friday 16<sup>th</sup> October 2009

### **PENAL CODE – FREEDOM OF EXPRESSION IN JEOPARDY**

The Cambodian Center for Human Rights (“CCHR”) is concerned at provisions in the Penal Code which jeopardise the constitutionally guaranteed right to freedom of expression and call on the Royal Government of Cambodia (“RGC”) to bring the embryonic code into line with international standards. Recalling that – via Article 31 of the Constitution of the Kingdom of Cambodia – international law is part of Cambodian law, we note the following concerns:

- Inclusion of the crime of Defamation;
- Use of vague terminology, creating ambiguity and the possibility of abuse of the law;
- Excessive penalties and imposition of the same penalty for attempts to commit a crime as for the crime itself;

#### **The continued Criminalisation of Defamation**

Notwithstanding Prime Minister Hun Sen’s 2006 pledge to decriminalise defamation, the offence remains in the Penal Code. Statements by the United Nations (UN) Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) support the view that charges of defamation and disinformation should be brought under civil, not criminal, proceedings. This position was reinforced by the Special Rapporteur for Human Rights in Cambodia, Professor Surya Subedi in his recent address to the UN Human Rights Council in Geneva. Accordingly, **CCHR calls for the removal of the offence of defamation from the Penal Code to bring Cambodian domestic law into conformity with international principles.**

#### **Vague and ambiguous terminology and judicial interpretation**

**CCHR believes that the vague and ambiguous terminology in the Penal Code creates a lack of clarity in the law, leaving it open to judicial interpretation and potential abuse,** for example:

- The Penal Code should differentiate between private persons and those holding public office, bringing it into line with international principles, such that those in public office accept lower immunity from scrutiny, in the interests of open debate and a strong democracy.
- To ensure consistent application and avoid abuse of the law, definitions must be included in the Penal Code itself, rather than training judges to use explanatory notes on each article as suggested by Secretary of State at the Ministry of Justice Hy Sophea.
- Crimes concerning national security should include a public interest override, criminalising only those acts carried out with the intention of undermining national security.
- A standardised system of classification for information of a national security character should be established to remove uncertainty over what the national security provisions of the Penal Code apply to.

#### **Excessive penalties**

**CCHR is alarmed at the inclusion of excessively harsh penalties throughout the Penal Code,** as follows:

- Inclusion of the same penalty for attempts to commit a crime as for commission of the crime itself is disproportionate to the act and inconsistent with international law.
- The penalty of prevention from practicing one's profession should be removed from the Penal Code, such a provision can only serve to deter open and free debate.
- The penalties that can be imposed for any given offence should be limited in number and proportional to the act in question.
- Offences concerning publication of commentaries relating to court proceedings should be restricted to statements intended and likely to undermine the administration of justice. The current provisions in this regard represent a serious prohibition on freedom of expression.

**Failure to bring the Penal Code into line with International Law on freedom of expression**

**CCHR is concerned that the Penal Code fails to bring Cambodian law into line with International Standards.** We recall that:

- The definition of Freedom of Expression as per Article 19 (2) of the ICCPR, includes the freedoms 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.” We opine that the Penal Code should fully reflect this definition, leaving no room for abuse for silencing discussion and debate.
- Article 19 (3) of the ICCPR provides for a proportionality test to ensure an appropriate balance between the right to free expression on matters of public interest, and the protection of individual reputation that necessitate restrictions to freedom of expression. This balance has not been met in the Penal Code, which is tilted in favour of immunity from scrutiny on the part of politicians. This imbalance can only restrict democratic debate to the detriment of Cambodian citizens and the development of a pluralist society founded upon openness to scrutiny, discussion and debate.

**Recalling that Article 31 of the Constitution of the Kingdom of Cambodia enshrines into Cambodia law International Human Rights law - namely the Universal Declaration of Human Rights and the ICCPR and the definitions of Freedom of Expression contained therein**

**CCHR invokes the Human Rights Council to the ICCPRs’ General Comments, crucially:**

- “[W]hen a State Party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.” And further, that “in no case may...restrictions be applied or invoked in a manner that would impair the essence of a Covenant Right.” The Penal Code - with its excessive restrictions - clearly put the right to freedom of expression in jeopardy, impairing the essence of the right by curtailing the scope for citizens of Cambodia to engage in active debate with the RGC.
- “[I]t is the interplay between the principle of freedom of expression and...limitations and restrictions which determine the actual scope of the individuals right” In this context, the Penal Code’s restrictions to freedom of expression – notably concerning individuals in relation to the crime of defamation – set the scope of the right far more narrowly than what is provided for in ICCPR Article 19.
- Furthermore, “...a general obligation is imposed on all State Parties to respect the Covenant Rights and to ensure them to all individuals in their territory...” This obligation is all the more pertinent under Cambodian Law as a result of Article 31 of the Constitution, and is currently being violated by the Penal Code’s restriction upon freedom of expression.
- This provision is reinforced by Article 26 of the Vienna Convention on the Law of Treaties which states that: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” CCHR contends that by passing of the Penal Code in its current form, the RGC fails to uphold the principle of good faith, instead placing severe

restrictions upon the exercise of freedom of expression which contravene the right to freedom of expression as defined in ICCPR.

In relation to the applicability of international law, the Cambodian Constitutional Council clarified in 2007 that the judiciary should rely not only upon domestic law, but also the international treaties which Cambodia has accepted. This is fundamental, clarifying as it does the integral role international law plays in the promotion of justice in Cambodia. It is of utmost importance for justice in Cambodia that our laws – and particularly legislation as far reaching as the Penal Code – conform with international law and the treaty commitments Cambodia has undertaken.

In light of the above concerns and given the importance of getting the Penal Code right, we call upon the RGC to heed our concerns and seize the opportunity for critical reflection upon the Code, taking into consideration human rights concerns and an overriding desire to foster principles of democracy in Cambodia. The CCHR supports the efforts of the RGC in clarifying the criminal laws of Cambodia but this must not be done at the fatal expense of expression, discussion and debate. To leave the Penal Code in its current form would establish the principle whereby open journalism is prevented. Such an approach to accountability will be extremely detrimental to a nascent democracy such as our own.

In its current form, the Penal Code contravenes international law on freedom of expression. Consequently, it must be brought into conformity with the Cambodian Constitution through amendments that fully incorporate the standards established in ICCPR and pronouncements made by the Human Rights Council. The CCHR implores the RGC not to lose sight of the principles of justice and human rights upon which this country is based and to make the necessary changes to the Penal Code so as to bring it into line with International Law and the Constitution of the Kingdom of Cambodia.