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Cambodian Center for Human Rights

The State of Freedom of Expression, Press Freedom, and Access to Information in Cambodia

Annual Report: 1 September 2020 – 31 August 2021



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Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated, rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom. For more information, please visit www.cchrcambodia.org

About this report

This report is a joint output of CCHR’s *Advancing Rights in Cambodia: Advancing Access to Information* (“ARC”) project and *Promoting and Protecting Freedom of Expression and Independent Media* (“FoEx”) project. Both projects were launched in September 2020. The ARC project seeks to strengthen and promote access to information and press freedom in Cambodia. The FoEx project aims to create a widened space for freedom of expression and a pluralistic and independent environment for free media, to enhance opportunities for citizens to engage and participate in democratic processes and make informed decisions.

Queries and feedback

Should you have any questions or wish to provide feedback on this report, please email CCHR at info@cchrcambodia.org. This report, along with all other publications by CCHR, is available online on CCHR’s website, www.cchrcambodia.org, or on the award-winning Cambodian Human Rights Portal, www.sithi.org, which is hosted by CCHR.

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List of Acronyms and Abbreviations

A2I	Access to Information
Cambodia	Kingdom of Cambodia
Constitution	Constitution of the Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CCIM	Cambodian Center for Independent Media
CHRC	Cambodian Human Rights Committee
CSO	Civil Society Organization
FFMP	Fundamental Freedoms Monitoring Project
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ITC	Internet and Technology Communications
LANGO	Law on Associations and Non-Governmental Organizations
MOI	Ministry of Information
MOJ	Ministry of Justice
MPTC	Ministry of Post and Telecommunications
NGO	Non-governmental Organization
NIG	National Internet Gateway
OBS	Open Budget Survey
OHCHR	United Nations Office of the High Commissioner for Human Rights
RFA	Radio Free Asia
RGC	Royal Government of Cambodia
RSF	Reporters Sans Frontières/Reporters Without Borders
TRC	Telecommunication Regulator of Cambodia
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Committee
VOA	Voice of America
VOD	Voice of Democracy

Scope and Methodology

Scope

The present report outlines key information pertaining to the rights to freedom of expression, press freedom, and access to information and findings regarding the state of these rights in the Kingdom of Cambodia (“Cambodia”) over a period of a year, starting from 1 September 2020 to 31 August 2021. This annual report focuses more specifically on the right to freedom of expression of journalists and human rights defenders (“HRDs”) as well as on access to information of journalists and the general public in Cambodia.

Methodology

The information contained in this report was compiled using data systematically recorded from several sources. To report on the current situation regarding the rights to freedom of expression, press freedom, and access to information, desk research was conducted to present the international and domestic legal framework pertaining to these rights. A desk review in the form of legal analyses of the *Sub-Decree on the Establishment of a National Gateway* (“NIG Sub-Decree”) and of the draft *Law on Access to Information* (“draft Law on A2I”) was also carried out to assess their compliance with international human rights standards.

The data used in the report was gathered through daily media monitoring and through the collection of incident reports by CCHR’s Fundamental Freedoms and Monitoring Project (“FFMP”). This data was complemented with additional data recorded by the ARC and FoEX projects whenever needed. The report also includes case studies on key violations of freedom of expression, press freedom, and access to information, for which information was gathered from available internet sources.

In addition, interviews of journalists and HRDs were conducted to collect their views on the current state of freedom of expression, press freedom, and access to information, and their experiences and challenges in exercising these rights while conducting their reporting duties or activism. CCHR staff interviewed nine journalists, including four women, as well as three HRDs, including two women. Due to the COVID-19 pandemic, the interviews were conducted online rather than in person. Follow-up interviews were conducted virtually to clarify some of the answers provided or obtain additional information. As requested by the interviewees, the names of the journalists and HRDs and the publications and organizations involved remain confidential. However, the value of their testimony lies in the views and experiences they have to share rather than in their identity.

Limitations

Due to resource constraints and the COVID-19 pandemic, which limited its staff’s ability to conduct field research in the provinces to interview more journalists and HRDs, CCHR was only able to interview a small number of journalists and HRDs operating in the country. In addition, it should be noted that the collected data and the reported cases are not exhaustive, as some instances of violation of freedom of expression, press freedom or access to information may go unreported.

Executive Summary

The right to freedom of expression is an umbrella right that also encompasses the right to press freedom and the right to access information. These three rights are intertwined and interdependent on one another. They are fundamental to an equitable and free society in which democracy can flourish and thrive.

Freedom of expression, and with it press freedom and access to information, is protected under both international and Cambodian law. However, Cambodian legislation sets numerous barriers to the full enjoyment of freedom of expression in Cambodia. Legislative developments frequently deal new blows to freedom of expression, as they fail to align with international human rights standards. The swiftly adopted NIG Sub-Decree is a case in point, as it is nothing less than a new weapon for the Royal Government of Cambodia (“RGC”) to further chip away at an already severely curtailed freedom. In the same way, while legislation protecting access to information is encouraged, the RGC’s draft Law on AZI does not fully comply with international human rights standards, thus not effectively protecting access to information for all.

Repressive laws are just one of the many tools that the RGC has been wielding to crackdown on freedom of expression in recent years. Intimidation, surveillance, threats, or judicial harassment are also used on a regular basis to target those who dare to speak up, with journalists and HRDs being the primary targets of the RGC’s witch hunt against critical voices. The right to freedom of expression of HRDs and press freedom has taken a hard blow between 1 September 2020 and 31 August 2021, with at least nine journalists and 17 HRDs bearing the brunt of the RGC’s ongoing repression and zero-tolerance policy towards criticism. Similarly, Cambodia still has a long way to go before the right to access information is fully upheld.

This report outlines the state of freedom of expression, press freedom, and access to information within this period. It contains key data on the state of freedom of expression and its corollaries collected during the reporting period, which shows multiple instances of legal harassment of journalists and HRDs, the revocation of several media licenses and the various challenges in accessing information in Cambodia. This data is complemented by testimonies of journalists and HRDs on the challenges they face in exercising their legitimate work in an increasingly dangerous environment.

In this context, this report provides various recommendations to the RGC to take concrete measures to fulfill its international human rights obligations of protecting and promoting freedom of expression in Cambodia.

I. Introduction

In recent years, the right to freedom of expression has garnered increased international attention as attempts by governments to curtail this right have risen significantly, with this freedom being virtually non-existent in some countries. The right to freedom of expression is a key pillar of a flourishing democracy.¹ Yet, it is a right that is frequently suppressed globally² and that has experienced an accelerated decline worldwide since the beginning of the COVID-19 global pandemic.³ Similarly, its corollaries, press freedom and access to information, have known a dramatic decline caused by the pandemic,⁴ which contributed to causing an unprecedented blow to democracy in the world in 2020.⁵

Cambodia is no stranger to the deterioration of freedom of expression. The country continues its worrying trend of over-policing free speech and silencing critical voices, repression that has been exacerbated by COVID-19. Since 2017, the human rights situation has continued to deteriorate and the civic space to shrink, with the sustained targeting by the RGC of all those who dare express opinions and ideas that are contrary to those of Cambodian leaders, including independent media and HRDs. CCHR's most recent FFMP Report shows that freedom of expression is consistently stifled in Cambodia, with an increase in restrictions and violations of online expression, and continued harassment and conviction of journalists and closure of media outlets.⁶

In addition, the right to access information is far from being upheld in the Kingdom. While recent efforts appear to be made by the RGC to promote access to information, obtaining information from public bodies remains an obstacle course in a country in which opacity reigns and in which there is little accountability of government institutions.

As a result, Cambodia ranked at 144 out of 180 countries assessed by Reporters Without Borders in its 2021 World Press Freedom Index, which evaluates the overall performance of countries and regions in the world as regards media freedom. Cambodia has fallen 12 places since 2017 and is categorized as a "not free" country.⁷ Similarly, the Economist Intelligence Unit's 2020 Democracy Index, which assesses the state of democracy worldwide, ranked Cambodia at 130 out of 160 countries assessed, defining it as an "authoritarian country."⁸ The 2020 Democracy Index also highlighted that between 2006 and 2020, Cambodia had lost more than a point in its overall score,⁹ leading to its demotion from a hybrid to an authoritarian regime in the last decade.

¹ See UNHRC, "Views on Rafael Marques v. Angola", (UN Doc. [CCPR/C/83/D/1128/2002](#), 29 March 2005), para.6.8.

² Adrian Shahbaz and Allie Funk, "The Global drive to control big tech", ([Freedom House](#), 2021).

³ Adrian Shahbaz and Allie Funk, "The pandemic's digital shadow", ([Freedom House](#), 2020).

⁴ Reporters without Borders, "2021 World Press Freedom Index: journalism, the vaccine against disinformation, blocked in more than 130 countries", ([RSF](#), 2021).

⁵ The Economist, "Global democracy has a very bad year", ([The Economist](#), 2021).

⁶ CCHR, "Cambodia Fundamental Freedoms Monitor: Fifth Annual Report April-December 2020", ([CCHR](#), 2021).

⁷ Reporter Without Borders, '2020 World Press Freedom Index', ([RSF](#), 2021).

⁸The Economist Intelligence Unit, 'Democracy Index 2020: In Sickness and Health?', page 20, ([EIU](#), 2021).

⁹ Ibid, page 23.

II. The importance of freedom of expression, press freedom, and access to information

The right to freedom of expression is an umbrella right that also encompasses the rights to press freedom and access to information. These three rights are intertwined and interdependent on one another, meaning that no right can be realized in the absence of the other. To create a world that is more equitable and free, the ability to speak one's mind, and to share and receive information is essential. When society partakes in these actions, democracy thrives and harmful norms and ideologies are challenged. The realization of these rights has become increasingly important as digital technologies have accelerated the rate at which individuals and society see and consume information and express themselves. However, such technologies have also provided repressive governments with the ripe opportunity to curtail these rights seemingly without limit.

Freedom of expression

Freedom of expression is a core pillar to a well-functioning, inclusive and pluralist democracy, allowing individuals to form their own opinions on issues of public importance, to disagree with those in power, and to expose corruption or wrongdoings. It also provides an enabling environment for informed citizens and enables transparency in both the public and private sectors. When freedom of expression is not guaranteed, citizens cannot challenge the power structures of government or corporate institutions.



Freedom of expression is also the foundation for the protection of other human rights.¹⁰ When the right to freedom of expression is realized, it is a gateway to the promotion of the rights to freedom of thought, conscience and religion, freedom of assembly, and freedom of association. Freedom of expression covers all forms of expression, including spoken and written expression, and a broad range of means, such as books, posts,

banners, audio-visual, electronic and any other internet-based modes of expression. It also encompasses individuals' right to engage in many discussions, including political discourse, discussions of human rights, or journalism.¹¹

Press freedom

A free and uncensored press is essential to ensure that freedom of expression is realized and that democracy flourishes. The press plays an essential role as a government watchdog, ensuring transparency and accountability. Without press freedom, there would be little to no checks on government's activities, which could lead to widespread corruption, injustice, and government overreach into the lives of individuals.

The dissemination of knowledge, views, and ideas is necessary for individuals to develop viewpoints, to be informed on issues of public interest and governmental decision-making, and to exercise their

¹⁰ UNHRC, "General Comment No. 34 – Article 19: Freedoms of opinion and expression", ([CCPR/C/GC/34](#), 12 Sept. 2011), para.2, (General Comment No. 34).

¹¹ Ibid, para. 11 and 12.

rights.¹² An independent and diverse media relies on journalists' research, writing, and investigatory skills which allow them to uncover truths and disseminate important information to the public. This ensures that the information citizens receive is reliable, objective, and not biased by external interests. A free press means that no topic is off-limits out of fear of reprisals and that equipping citizens with knowledge is of the utmost importance. It therefore allows society to develop public opinions on pertinent social, political, and economical issues and to advocate for change without fear of repercussions. Thus, the media should be able to freely communicate and comment on information or ideas without censorship or restraint, as without journalists or independent media, government wrongdoings remain hidden.¹³

Access to information

Access to information is also a right enshrined under the right to freedom of expression as citizens have a right to seek and receive information in the public domain.¹⁴ If access to information is limited, transparency and accountability of the government or public officials are unattainable and citizens' ability to actively participate in decision-making processes is stifled.¹⁵



Access to information is also a pragmatic way to create a better society because it ensures transparency of governmental bodies, facilitates the participation of citizens in public life and increases dialogue and trust between the government and society.¹⁶ It also ensures that the media has access to information of public affairs or public importance.¹⁷ Since democracy is rooted in the free flow of information and ideas, access to information is what distinguishes democratic governments from regimes that seek to operate free from accountability and conduct their activities surrounded by a veil of secrecy.

III. Legal framework on freedom of expression, press freedom, and access to information

Press freedom and access to information are key components of the fundamental right to freedom of expression, which is guaranteed under both international and Cambodian law. This right, however, is not absolute and can be restricted in narrow circumstances defined under international and Cambodian law.

¹² Norway Ministry of Foreign Affairs, "International efforts to promote freedom of expression and independent media", ([MFA](#), 30 Nov. 2020).

¹³ UN, "Press freedom more important than ever, as UN condemns killing of 59 media workers", ([UN News](#), 23 Dec. 2020).

¹⁴ Frank La Rue, "Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression", ([UN Doc A/68/362](#), 4 Sept.2013), para 2.

¹⁵ Ibid, para 3.

¹⁶ Andrew Ecclestone, "Suggestions on Strategy for Freedom of Information in Cambodia", (Sept.2008).

¹⁷ UNHRC General Comment No. 34, (n 10), para 18.

3.1. International law guaranteeing freedom of expression

Several international instruments ratified by Cambodia guarantee the right to freedom of expression.



Universal Declaration of Human Rights (“UDHR”) (1948)

According to **Article 19**, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

International Covenant on Civil and Political Rights (“ICCPR”) (1966)

Article 19 provides that “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.”

UN General Comment No. 34 on Article 19 of the ICCPR

Freedom of expression, journalism and human rights advocacy - The right to freedom of expression enshrined in Article 19 of the ICCPR is broad in scope. The United Nations Human Rights Committee (“UNHRC”), which oversees the implementation of the ICCPR, has provided details on the right to freedom of expression in its general comment No.34. It notably affirmed that this right includes the expression and receipt of communications of all kinds, of ideas and opinions that can be transmitted to others, including political discourse, commentary on one’s own and on public affairs, discussion of human rights and journalism, among others.¹⁸ Paragraph 2 also embraces expression that may be regarded as deeply offensive.¹⁹ Journalism is therefore included in the right to freedom of expression, and freedom of the press has been recognized as a key component of this right. Similarly, discussions on human rights topics are an integral part of this right.

Media licenses - The UNHRC has highlighted that general State systems of registration or licensing of journalists are incompatible with Article 19 of the ICCPR as journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.²⁰

Freedom of expression and access to information - The freedom to express opinions necessarily requires the ability to access information in order to draw conclusions. To that end, the UNHRC recognized that Article 19 encompasses the right to access information held by public bodies.²¹ Public bodies include all branches of the State, meaning the executive, legislative and judicial branches, other public or governmental authorities who are in a position to engage the responsibility of the State, no matter their level (national, regional or local),²² and can include other entities that exercise public functions.²³ The information that can be accessed includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.

¹⁸ UNHRC, General Comment No. 34, (n 10), para.12.

¹⁹ Ibid, para 11.

²⁰ Ibid, para 44.

²¹ UNHRC, General Comment No. 34 (n 10), para. 18.

²² Ibid, para 7.

²³ Ibid, para 18.

The UNHRC has also outlined that taken together with Article 25 of the ICCPR – which protects the right of every citizen to participate in public affairs, to vote and to be elected, and the right to have access to public services – the right to access information includes a right for the media to access information on public affairs and the right of the general public to receive media output.²⁴

To give effect to the right to access information, public bodies have the duty not only to provide information when requested, but also to proactively disseminate information of public interest, and to make every effort to ensure easy, prompt, effective and practical access to such information. State parties are also encouraged to enact freedom of information legislation to enable access to information, including timely processing of requests for information according to clear rules. Access to information should also not be impeded by unreasonable fees for requests for information. Any refusal to provide access to information must be justified by authorities and procedures to appeal their refusals or failures to respond to requests must be put in place.²⁵

Other relevant international instruments

Various other conventions guarantee the right to freedom of expression, including the International Convention on the Elimination of All Forms of Racial Discrimination (**Article 5 (viii)**); the Convention on the Rights of Persons with Disabilities (**Article 21**), the Convention on the Rights of the Child (**Article 13**), or the Universal Declaration on the Rights of Indigenous Peoples (**Article 16**). All these human rights instruments are directly applicable in Cambodian domestic law by virtue of **Article 31** of the Constitution of the Kingdom of Cambodia (“the Constitution”). Further, international human rights norms, including provisions of the ICCPR, are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.²⁶



Article 31 of the Constitution

“The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”

3.2. Cambodian laws guaranteeing freedom of expression

Cambodian law also guarantees freedom of expression and its corollaries, press freedom and access to information.

Cambodian Constitution

Article 41 of the constitutional law provides that *“Khmer citizens shall have freedom of expression, press, publication, and assembly.”* Additionally, the Cambodian Constitution promotes an environment in which citizens are empowered to exercise their right to freedom of expression and involve themselves in public affairs. **Article 35** of the Constitution states that *“Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.”*

²⁴ Ibid, para 13 and 18.

²⁵ Ibid., para. 19.

²⁶ Constitutional Council of the Kingdom of Cambodia, Dec. No. 092/003/2007 ([CCC](#), 10 July 2007), p.2: “The term “Laws” as above referred to means the national laws, including the Constitution which is the supreme law, all the laws that remain in force, and the international laws already recognized by the Kingdom of Cambodia.”

Any suggestion by the people shall be given the full consideration by the grant of the State.” These articles apply only to Cambodian citizens, and not all within Cambodia’s jurisdiction, thus insufficiently protecting the right to freedom of expression of all individuals living in the Kingdom. However, the freedom of expression of foreigners living in Cambodia is protected under **Article 31** of the Constitution, which makes international human rights instruments directly applicable in Cambodia’s domestic law.

Law on the Press (“Press Law”) (1995)

The Press Law was adopted by the RGC in 1995 to regulate the media in the Kingdom. **Article 1** guarantees freedom of the press and freedom of publication separately. This article provides that the Press Law “*determines the regime of the press and assures freedom of the press and freedom of publication in conformity with articles 31 and 41 of the Constitution of the Kingdom of Cambodia.*” In addition, the Press Law includes other positive provisions such as **Article 3** which prohibits pre-publication censorship, **Article 4** which guarantees the non-penalization of publications of official information that are fully true or accurate summaries of the truth, **Article 5** which provides for the right for the press to access information in government-held records, and **Article 20** which guarantees that no person shall face criminal liability for the expression of an opinion. However, this law also contains many broad and vague provisions that have the potential to restrict legitimate expression (See paragraph 3.4 of Section III).

Draft Law on Access to Information (“Draft Law on A2I”)

The RGC has also drafted a Law on A2I which it plans to adopt in the forthcoming months. A detailed legal analysis of this law is provided in Section IV of the present report.

3.3. Legitimate restrictions to freedom of expression

While the right to freedom of expression is one of the keystones of every free and democratic society,²⁷ it is not absolute and can be legitimately restricted in certain circumstances. However, States do not enjoy a wide margin of appreciation when it comes to curtailing its citizens’ freedom of expression. Article 19 (3) of the ICCPR has defined the conditions that – if met – allow for lawful restrictions to freedom of expression. Any restrictions on freedom of expression must meet the three following conditions: be provided by law, be necessary and proportionate, and pursue defined legitimate aims.

Article 19 (3) of the ICCPR

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

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

²⁷ UNHRC General Comment No. 34, (n 10), para 1.

3.3.1. Restrictions to freedom of expression must be “provided by law”

For a norm to be considered a “law” as intended by paragraph 3 of Article 19 of the ICCPR, it must be sufficiently precise and clear to enable citizens to determine from the content of the law what types of expression are restricted and regulate their behavior as such.²⁸ It is also critical that the law authorizing restrictions does not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution and that it provides sufficient guidance to enforcement authorities to enable them to determine which sorts of expression can be restricted and which cannot.²⁹ Generic bans are therefore often incompatible with international law as they are not sufficiently precise and clear to avoid abusive restrictions on freedom of expression. When a State wishes to impose restrictions³⁰ on its citizens’ freedom of expression, it must demonstrate the legal basis of such restrictions³¹ to ensure that this first condition is properly met.

3.3.2. Restrictions to freedom of expression must pursue a legitimate aim

The burden falls on the State to specify the legitimate aim of a particular restriction.³² Article 19 (3) of the ICCPR provides an exhaustive list of the legitimate aims in the pursuit of which the right to freedom of expression can lawfully be restricted. These aims include the respect of the rights or reputations of others, or the protection of national security, public order, or public health or morals.

Respect of the rights or reputations of others

According to the UNHRC, the term “rights” includes human rights recognized in international human rights law and the term “others” refers to other persons individually or as members of a community or individual members of a community defined by its religious faith or ethnicity.³³

To uphold the right to privacy and not to be subjected to unlawful attacks on their honor and reputation – as enshrined in Article 17 of the ICCPR – States can adopt measures, including laws, to prohibit interferences with its citizens’ privacy and attacks on their reputation,³⁴ thus making restrictions to freedom of expression permissible, should they meet the two other conditions. Such measures include defamation laws, which aim to protect individuals against publications or statements that have caused or are likely to cause serious harm to their reputation.³⁵ However, such laws must be crafted in a way that they do not in practice stifle freedom of expression. The UNHRC has advised for the decriminalization of defamation wherever possible, and has outlined that when criminalized, the State should avoid excessively punitive measures and penalties, further highlighting that

²⁸ Ibid, para 25.

²⁹ Ibid.

³⁰ General comment No. 34, para 22.

³¹ Ibid, para 27; See also “UN Human Rights Committee, *Korneenko et al. v. Belarus*,” Communication No. 1553/2007, ([UN Doc CCPR/C/95/D/1153/2007](#), 29 March 2009).

³² UNHRC, *Vladimir Sekerko v. Belarus*, Com. No. 1851/2008, (UN Doc [CCPR/C/109/D/1851/2008](#), 28 Oct. 2013), para. 9.4.

³³ UNHRC, General Comment No 34, para 28.

³⁴ UNHRC, General Comment No 16, “Article 17 (Rights to privacy), the right to respect of privacy, family home and correspondence, and protection of honour and reputation”, ([OHCHR](#), 8 Apr. 1988), para.1.

³⁵ Definition of Defamation from [Lexis Nexis](#).

imprisonment is never an appropriate penalty.³⁶ As an example, the arrest and detention of a journalist critical of a President was found by the UNHRC to have violated Article 19.³⁷

Similarly, United Nations (“UN”) experts have emphasized that *lèse-majesté* laws, which prohibit defamation, insult and threats to the monarchy, have no place in a democratic society and should be repealed. They have notably recalled that “*under international human rights law, public figures, including those exercising the highest authority, such as heads of State, are legitimately subject to criticism. The fact that some forms of expression may be considered offensive or shocking to a public figure is not sufficient to justify the imposition of such severe penalties.*”³⁸

In the same way, Article 20 of the ICCPR prohibits any propaganda for war and incitement to national, racial, or religious hatred, thus obliging State parties to adopt the necessary legislative measures to give effect to such prohibitions.³⁹ Such required prohibitions are fully compatible with the right to freedom of expression as guaranteed in Article 19.⁴⁰

Protection of national security, public order, or public health or morals

Public order refers to the sum of rules ensuring the peaceful and effective functioning of society, while national security refers to the political independence and/or territorial integrity of the State.⁴¹ However, national, political, or government interest is not synonymous with national security or public order.⁴² Any laws relating to national security, such as treason laws, must be drafted and applied in conformity with Article 19 (3) of the ICCPR. As an example, prosecuting journalists, environmental activists, human rights defenders, or others on treason charges for disseminating public information of legitimate public interest⁴³ or to suppress or withhold from the public such information⁴⁴ on the grounds of national security is incompatible with the national security exception provided by Paragraph 3.

Similarly, while restrictions on freedom of expression can be permissible to protect public health, for instance by adopting measures to combat disinformation regarding public health concerns, such measures must never prevent journalists and media actors from carrying out their work and lead to online content being unduly blocked.⁴⁵

³⁶ UNHRC, General Comment No 34, (n 10), para.47.

³⁷ UNHRC, “Views on Rafael Marques v. Angola,” (n 1), para. 6 and 8.

³⁸ Statement of UN experts, “Thailand: UN experts alarmed by rise in use of *lèse-majesté* laws”, ([UN](#), February 2021).

³⁹ UNHRC, “General Comment 11: Prohibition of propaganda for war and inciting national racial and religious hatred”, ([OHCHR](#), 1983), para.1.

⁴⁰ *Ibid*, para.2.

⁴¹ UN Commission on Human Rights, ‘Siracusa Principles on the Limited and Derogation of Provisions in the International Covenant on Civil and Political Rights’, (UN Doc [E/CN.4/1984/4](#), 28 Sept. 1981), para. 22 and 29.

⁴² UN Human Rights Council, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies”, (UN Doc [A/HRC/31/66](#), 4 Feb. 2016), para 31.

⁴³ UNHRC, General Comment No.34, (n 10), para 30.

⁴⁴ *Ibid*, para 30; See also UNHRC, “Concluding observations on the Russian Federation”, (UN Doc [CCPR/CO/79/RUS](#), 1 Dec. 2003).

⁴⁵ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Disease pandemics and the freedom of opinion and expression”, (UN Doc [A/HRC/44/49](#), 23 Apr. 2020), para. 49.

Finally, the UNHRC has highlighted that the concept of morals derives from many social, philosophical, and religious traditions, making it essential that limitations applied to freedom of expression for the purpose of protecting morals take this reality into account and do not derive exclusively from a single tradition. Restrictions to freedom of expression imposed on the grounds of morals protection must therefore be understood in the light of the universality of human rights and the principle of non-discrimination.⁴⁶

3.3.3. Restrictions to freedom of expression must be necessary and proportionate

Restrictions imposed on freedom of expression must be necessary for a legitimate purpose and must not be overbroad. The State must be able to demonstrate in a specific and individualized fashion that the restriction of freedom of expression is necessary to target the precise nature of the threat, by establishing a direct and immediate connection between the expression and the threat.⁴⁷

The measures must also be proportionate, meaning that the restriction should not go further than what is strictly necessary to achieve the legitimate aim. Accordingly, if the State has different ways of achieving the aim, it should choose the least intrusive measure.⁴⁸ The UNHRC highlighted that the principle of proportionality must be respected both in the law imposing the restrictions and by administrative and judicial authorities in applying this law. It is also important that the principle of proportionality take into account the form of expression at issue and the means of its dissemination.⁴⁹

Furthermore, experts on freedom of expression have noted that general prohibitions on the dissemination of information based on *“vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’ should be abolished as they are incompatible with human rights law.”*⁵⁰ Such vague prohibitions conflict with the requirements of necessity and proportionality set by Article 19 (3) of the ICCPR as they provide governments with the ability to determine the truthfulness or falsity of content in the public and political domain.⁵¹

3.4. Cambodian laws illegitimately restrict freedom of expression

There are multiple legislative barriers to freedom of expression in Cambodian legislation. The RGC passed increasingly repressive laws in recent years, which impermissibly infringe on the right to freedom of expression, press freedom and access to information. The list provided below is not exhaustive and only highlights the laws that can have an impact on freedom of expression as exercised by the media and HRDs.

Press Law

Cambodia’s current Press Law worryingly contains various provisions that illegitimately restrict press

⁴⁶ UNHRC General Comment No 34, (n 10) para 32.

⁴⁷ Ibid, para 33, 34 and 35.

⁴⁸ UNHRC, Views on *Vasily Poliakov v. Belarus*, ([CCPR/C/111/D/2030/2011](#), 17 July 2014), para. 8.3 .

⁴⁹ UNHRC General Comment No 34, (n 10) para 34.

⁵⁰ [Joint declaration](#) on freedom of expression and ‘fake news’, disinformation and propaganda, (2017), para. 2. a.

⁵¹ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Disease pandemics and the freedom of opinion and expression”, (UN Doc [A/HRC/44/49](#), 23 Apr. 2020), para. 49.

freedom.⁵² The Press Law prohibits a wide array of legitimate publications, including publications commenting critically on government institutions, and uses undefined and vague terms such as “*political stability*” or “*good customs of society*,” which open the door to broad interpretation and leads to risks of the law being used to censor media outlets. The Press Law also provides the RGC with the right to immediately confiscate issues of the press that breach the law and to temporarily suspend publications while the cases are transferred to the judiciary. This power granted to the government comes with no judicial review and no appeal recourse, making this Law a potential tool in the hands of the government to stifle the media for political ends.

Furthermore, the Law sets up a licensing procedure for the press that is entirely managed by the RGC and that provides the Ministry of Information (“MOI”) with unchecked power to grant and revoke media licenses, without any independent overview mechanism. This enables authorities to make licensing decisions based on political expediency rather than the promotion of a free and diverse media,⁵³ which the RGC has increasingly been doing to stifle press freedom in Cambodia in the past years (See Section V). Finally, while the Press Law guarantees the press with the right to access information contained in government-held records, it also provides an exhaustive list of exceptions that, while generally aligning with international standards, do not give any explicit consideration to the public interest.⁵⁴ No recourse is provided if the request for information is denied by the government, as recommended by the UNHRC.

Law on Telecommunications & Prakas on Social Media and Website Control (“Prakas on Social Media”)

The Law on Telecommunications was introduced in 2015 to regulate telecommunications in Cambodia. It institutionalizes the surveillance of online expression and creates a series of criminal offenses related to the use of telecommunications devices, violations of which are subject to imprisonment and significant fines, causing a chilling effect on individual expression of opinion through telecommunications.⁵⁵ The Law also grants the government power to surveil telecommunications without strictly requiring judicial oversight.⁵⁶ It also permits the secret listening, recording and publication of private dialogue if approval has been granted from a “*legitimate authority*.” The term “*legitimate authority*” is undefined in the Law, making this surveillance inadequately regulated, open to abuse and potentially exposing individuals to severe penalties for exercising their freedom of expression online.

These intrusive powers for the RGC to monitor telecommunications, including internet use, were vastly broadened with the introduction of the 2018 Prakas on Social Media,⁵⁷ which aims to manage all news or other forms of contents on websites and social media, and to obstruct and prevent all publications or news content, sharing or written message, audio, photo, videos, and/or other means intended to undermine national defense, national security, relation with other countries, national economy, public

⁵² For a more detailed analysis of the Press Law, see CCHR, “Briefing Note on Media regulation and freedom of expression in Cambodia”, ([CCHR](#), Feb. 2014).

⁵³ Ibid.

⁵⁴ Article 19, “Memorandum on the Cambodian Law on the Press”, ([Art.19](#), Oct. 2004), page 16.

⁵⁵ CCHR “Protecting Fundamental Freedoms: A Desk Review of Domestic Legislation and its Compliance with International Law” ([CCHR](#), Dec.2019), page 37.

⁵⁶ LICADHO, “Cambodia’s Law on Telecommunications: A legal analysis”, ([LICADHO](#), March 2016), pages 1 and 2.

⁵⁷ Prakas No. 170 Br.K/Inter-ministerial, ‘Publication Controls of Website and Social Media Processing via Internet in the Kingdom of Cambodia’ (28 May 2018), available [here](#) and unofficial English translation available [here](#).

order, discrimination, and national culture and tradition. To do so, the Prakas affords the executive branch power to manage information published on the internet and to shut down social media pages or websites, severely impacting freedom of expression online.

Cambodian Criminal Code

In February 2018, the criminal offense of *lèse-majesté* was incorporated into the Cambodian Criminal Code. Article 437-*bis* prohibits anyone from defaming, insulting or threatening the King through “*any speeches, gestures, writings, paintings or items that would affect the dignity of the King.*” Anyone found guilty under Article 437-*bis* faces one to five years imprisonment and a fine of between two and ten million riel. In addition, defamation is not decriminalized in Cambodia and is a criminal offense under Articles 305 and 306 of the Criminal Code.⁵⁸ These two offenses, as well as the offenses of incitement (Articles 494, 495, 496, and 497) and insult (Article 502) are often used to silence independent and critical voices in Cambodia (See Section V).

Law on Associations and Non-Governmental Organizations (“LANGO”)

Passed by the RGC in 2015, the controversial LANGO contains provisions that undermine the freedom of expression of non-governmental organizations (“NGOs”) operating in the country. Article 8 gives the MOI, which manages the NGO registration process, the power to deny the registration request of domestic associations or NGOs whose purpose and goals would endanger the security, stability and public order or jeopardize national security, culture, traditions, and customs of Cambodian national society. This article is not in line with Article 19 of the ICCPR as the grounds of “stability” or “national security” could be invoked by authorities to stifle the freedom of expression of associations that would suggest better ways to implement human rights and call for changes in the *status quo*.⁵⁹ Similarly, Article 24 infringes on the right to freedom of expression by imposing neutrality towards political parties in Cambodia on domestic NGOs, foreign NGOs and foreign associations. This contravenes international law guaranteeing freedom of expression to everyone and on a variety of topics, including political discourses.

Latest problematic legislative developments

In April 2020, in response to the COVID-19 pandemic, the RGC enacted the *Law on the Management of the Nation in State of Emergency* (“State of Emergency Law”). Article 4 of the ICCPR codifies the specific rules a State must follow to legally derogate from their human rights obligations during a state of emergency. Derogations from human rights obligations must be: 1) designed to be temporary; 2) only applicable in the exceptional case of a “*grave threat to the survival and security of a nation*”; and 3) must adhere to the principle of proportionality and not exceed what is strictly necessary to the “*exigencies of the situation.*”⁶⁰ Article 5 (11) of the Law restricts the right to information, as it gives the RGC power to “*prohibit or restrict news sharing or media,*” which could discourage transparent reporting. It further empowers the RGC to prohibit any speech or expression that could “*cause people panic or chaos or bring damage to the national security*” or that could “*cause confusion*” among the public. Prohibiting all speech that could “*cause confusion*” or “*chaos*” does not satisfy the

⁵⁸ CCHR, “Briefing note: the criminalization of defamation and freedom of expression in Cambodia” ([CCHR](#), May 2014).

⁵⁹ United Nations High Commissioner for Human Rights in Cambodia, “A human rights analysis of the law on associations and non-governmental organizations”, ([OHCHR](#), 3 August 2015), page 9.

⁶⁰ UNHRC, “General Comment No. 29: Article 4: Derogations during a State of Emergency,” (UN Doc [CCPR/C/21/Rev.1/Add.11](#), 31 August 2001).

proportionality and necessity requirements of Article 4 of the ICCPR as this restriction is overly broad.⁶¹

Additional concerns for freedom of expression arose with the adoption of the heavily criticized NIG Sub-Decree and with the draft Law on A2I, should it be adopted.

IV. Legal analyses of domestic legislative developments

The provisions of the NIG Sub-Decree severely undermine freedom of expression online. Similarly, the draft Law on A2I contains several provisions that restrict the right to access information of citizens. Both laws fail to pass the three-part test set by Article 19 (3) of the ICCPR.

4.1. Sub-Decree on the Establishment of a National Internet Gateway

Three-part test of Article 19 ICCPR	
To be legitimate according to international standards, restrictions on freedom of expression must:	
1	Be provided by law (legality requirement)
2	Be necessary in a democratic society and proportionate (necessity and proportionality requirement)
3	Pursue one of the set legitimate aims (legitimate aim requirement)

The NIG Sub-Decree, signed by Prime Minister Hun Sen on 16 February 2021, provides for the establishment of a National Internet Gateway (“NIG”) in Cambodia. An NIG routes all internet traffic into specific points where hardware and software may be installed to monitor incoming and outgoing network traffic, allowing for specific content to be filtered and blocked. Set to be operational in the future, Cambodia’s proposed NIG will require any and all internet communications and data, both domestic and international, to first be filtered through the NIG before it is sent to an end user.

The NIG Sub-Decree outlines how the NIG will be operationalized and managed. It provides powers to government-appointed operators (“NIG operators”) and state institutions, including the Ministry of Post and Telecommunications (“MPTC”), and the Telecommunication Regulator of Cambodia (“TRC”). Further, it imposes obligations on Internet Service Providers, and provides penalties for NIG operators, telecommunications operators, content service providers and data centers.

The NIG Sub-Decree is of grave concern for the future of human rights in Cambodia. The fact that NIG operators will be government-appointed and tasked with collaborating with authorities “to take actions” in blocking and disconnecting specific network connections means the RGC will exercise nearly complete control over the NIG’s operations. This is likely to facilitate mass surveillance, the interception and censorship of digital communications, and the collection of personal data, thus threatening individuals’ abilities to exercise their rights to privacy and other fundamental freedoms, including freedom of expression.⁶²

Article 6 tasks NIG operators appointed by the RGC with the duty to collaborate with the MPTC, the TRC, and relevant authorities to block and disconnect any online connection or content deemed to “affect safety, national revenue, social order, dignity, culture, traditions and customs.” Due to the

⁶¹ CCHR, “Cambodia Fundamental Freedoms Monitor, Fifth Annual Report April-December 2020”, (CCHR), page 12 and 13.

⁶² UN Human Rights Council, “The right to privacy in the digital age”, (UN Doc [A/HRC/27/37](#), 30 June 2014), para 47.

vague and undefined list of reasons for censoring content, this provision effectively permits the RGC to police and censor almost all online content, with the NIG providing unfettered access and full control over all data exchanges in the country. This may be used to violate the right to freedom of expression as enshrined domestically and internationally (See Section III).

Article 6's listed aims for the establishment of the NIG give rise to concerns. The reference to the undefined and highly-subjective "*dignity, culture, traditions, and customs*" precludes a clear understanding of what content could be blocked under the NIG, therefore failing to satisfy the legality requirement of Article 19's three-part test. This provision would effectively permit the RGC to police and censor online content it arbitrarily deems as going against these aims. Further, the current wording of Article 6 requires a simple "affect" on one of the listed protected aims to block content, whereas the UNHRC requires for restrictions on expression to be individually justified in order to meet the necessity requirement under point (3) of Article 19's three-part test.⁶³ Because Article 6 fails to require a specific justification of why the blocking of a network connection is necessary, it could allow for overbroad and excessive restrictions on freedom of expression to be imposed, in contravention of international law.

In addition to failing the three-part test of the ICCPR, Article 6 also contravenes the Human Rights Council's 2020 resolution on freedom of expression, which explicitly demands states to refrain from imposing unlawful restrictions on the right to freedom of expression, including through "*the use of Internet shutdowns to intentionally and arbitrarily prevent or disrupt access to or the dissemination of information online.*"⁶⁴

There is a real risk that the NIG could be used to block or omit dissenting opinions online, even when doing so is not permissible under international human rights law, and a likelihood that it could be used to target journalists and HRDs.

4.2. Draft Law on Access to Information

The MOI has recently finalized a draft Law on A2I,⁶⁵ which is awaiting the review and endorsement of the Ministry of Justice ("MOJ").⁶⁶ This law aims to ensure the public's right to access information from public institutions. This new piece of legislation is welcome as under Article 19 of the ICCPR, State parties are strongly encouraged to enact freedom of information legislation.⁶⁷

However, such legislation must adhere to international laws and standards and any restrictions imposed on access to information must pass the three-part test set out by Article 19 (3). Access to information hinges on the principle that information of the State belongs to the public.⁶⁸ Limitations on the right to access information must be applied narrowly and strictly so that they do not jeopardize

⁶³UNHRC, General Comment No. 34, (n 10), para, 35.

⁶⁴ UN Human Rights Council, "Freedom of opinion and expression", (UN Doc [A/HRC/44/L.18/Rev.1](#), 14 July 2020) para 8(g).

⁶⁵ Draft law on A2I (Ministry of Information, 20 April 2020), available on CCHR's [Sithi Portal](#). In addition, a detailed analysis is provided in Annex I.

⁶⁶ Sar Socheath, "Law on access to information awaits endorsement from Justice Ministry", ([Khmer Times](#), 29 Sept. 2021).

⁶⁷ UNHRC, General Comment No. 34, (n 10), para 19.

⁶⁸ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the right to access to information, (UN Doc [A/68/362](#), 4 Sept. 2013) para. 50.

the right itself⁶⁹ and to ensure the free flow of information and ideas. Any non-disclosure of information must therefore be seen as an exception to the right to access information and must be justified by authorities on a case-by-case basis.⁷⁰

While the draft Law on A2I contains various positive provisions, there are also some areas for improvement in order for this future piece of legislation to fully comply with international standards on the right to access information, as outlined in the table below.

International standards for A2I laws	Cambodia's Draft Law on A2I
Right to access information guaranteed to all	 Article 1 ensures the right to freedom of access to information from public institutions to the public. Article 3 defines the public as all persons, whether natural or legal persons, both Khmer and foreign.
Extend to private bodies performing public functions	 Article 4 successfully includes <i>“other entities performing public functions”</i> in the definition of public institutions. However, this could be strengthened by also including <i>“private bodies operating with public funds”</i> into the definition.
Apply to all information under possession, custody, or control of public institutions	 Article 4 defines information as all pieces and all formats of <i>“official documents”</i> under the possession of public institutions, which is too vague. In addition, Article 3 excludes <i>“confidential information as stipulated in the prohibition provisions.”</i> This fails to meet the legality requirement of the three-part test of Article 19 of ICCPR as the language used is too broad and imprecise, making it difficult for individuals to determine what kind of information is confidential and increasing the risk of arbitrary denial of access to information.
Principle of maximum disclosure: all information should be presumed public. This presumption may be overcome only in very limited circumstances	 Article 6 recognizes the principle of maximum disclosure. However, Article 6(5) requires the regular and broad dissemination of information of all aspects of public institutions, court functions and procedures, and administrative affairs, except for <i>“some prohibited procedures or regulations.”</i> This article does not describe clearly what these prohibited procedures or regulations constitute and fails to meet the three-part test.
Obligation to proactively publish information of public interest	 Article 6 lists some types of information that public institutions must regularly disseminate to the public. This article could be strengthened by adding a clause identifying information that must be proactively published as <i>“any information objectively considered to be of public interest.”</i>

⁶⁹ UNHRC, General Comment No.34, (n 10), para 21.

⁷⁰ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the protection of sources of information and whistle-blowers” ([UN Doc A/70/361](#), 8 Sept. 2015) para 8.

<p>Public interest test</p>	<p>✓</p>	<p>Article 7 provides an explicit public interest analysis test: <i>“In the case the public interest is greater than the preservation of confidential information... the confidential information must be provided to the public on request.”</i> However, this Article could be strengthened through examples, and it should be inserted explicitly into Article 20 to ensure exempt information is weighed against public interest when deciding whether to disclose or refuse.</p>
<p>Apply to all without discrimination</p>	<p>✗</p>	<p>Article 10 guarantees the right to request information from public institutions to all, without discrimination. This is contradicted by Article 11(1) which requires requestors to provide unnecessary personal information. This Article should be amended to remove requirements to provide <i>“sex, age, nationality, occupation”</i> which should not have any relevance to their access to information request. Article 11(2) is however praised for making an exception to the requirement for requests to be submitted through written application forms due to <i>“illiteracy or disability.”</i></p>
<p>Easy, prompt, effective and practical access to information</p>	<p>✗</p>	<p>Article 11 requires requestors to complete an application form to request access to information, which does not align with international standards. This procedure should be amended to enable requests to be made through any written format, such as a letter or email.</p>
<p>Refusals to release information should be provided with reasoning</p>	<p>✗</p>	<p>Article 15 provides for the conditions in which public institutions can deny the provision of requested information but fails to explicitly require public institutions to communicate the reasoning behind disclosure refusals to requestors.</p>
<p>Fees charged for providing information should not constitute an unreasonable impediment</p>	<p>–</p>	<p>The fee scheduled for delivering information to requestors is left to be prescribed through an Inter-Ministerial Prakas by Article 19. This is problematic as the Prakas will not have the same Parliamentary scrutiny as primary law.</p>
<p>Presumption of disclosure</p>	<p>✗</p>	<p>The draft Law on A2I does not explicitly include a presumption in favor of disclosure. This should be added into Article 20.</p>
<p>Narrow system of exceptions</p>	<p>✗</p>	<p>Article 20 lists some information exempt from disclosure under the law. However, it fails to prescribe a consideration of whether substantial harm would be inflicted by releasing the information, bypassing the individualized public interest analysis, in violation of the legality and necessity and proportionality requirements of the three-part test. Article 20(6) is particularly concerning as it excludes all information related to government processes from disclosure, thus putting an absolute disclosure ban on this type of information, in violation of the legality requirement and of the necessity and proportionality requirement of the three-part test. This provision could be easily used to conceal official corruption within the government. Similarly, Article 20(7) exempts <i>“other confidential information as stipulated in the</i></p>

		<i>prohibited provisions</i> ” from disclosure and could easily be used as a catch-all clause to refuse disclosure of any and all information. The sweeping language of this provision could also be used to disregard public interest to conceal corruption or wrongdoings, in violation of Article 19’s three-part test, thus undermining governmental transparency. To meet international standards, exemptions must be explicit and unambiguous with a narrow scope.
Protection of whistleblowers	✘	The draft Law does not currently provide protection for whistleblowers. This should be added into Article 26.
Independent appeal procedure for refusals and failures to respond	–	Articles 16 and 27 provide an opportunity of appeal. However, they fail to establish an independent oversight body with the purpose of reviewing such appeals, instead relying on existing institutions.
Penalties for breaches must be proportionate	✘	Article 33 provides for 7 - 15 years’ imprisonment for staff revealing confidential information that causes damage to national security or the economy. This is a disproportionate jail term which should be reduced.

V. State of freedom of expression, press freedom and access to information in Cambodia

Between 1 September 2020 and 31 August 2021, the rights to freedom of expression, press freedom and access to information continued to be undermined in Cambodia, with a sustained targeting of journalists and an intensified crackdown on HRDs for legitimately exercising these rights in their crucial reporting and advocacy work. The table below summarizes the state of the three rights:

State of Press Freedom	State of Freedom of Expression of HRDs	State of Access to Information
<ul style="list-style-type: none"> • Seven media licenses were revoked; • Nine journalists faced legal action: <ul style="list-style-type: none"> - three were summoned, four were questioned, two were arrested, six were detained, three were forced to sign agreements, two were charged, and three were convicted. 	<ul style="list-style-type: none"> • 17 HRDs faced legal action: <ul style="list-style-type: none"> - six were summoned, eight were questioned, eight were arrested and two had warrants issued for their arrest; eight were detained; three were forced to sign agreements; nine were charged; and eight were convicted. 	<ul style="list-style-type: none"> • Journalists faced various obstacles in accessing information held by authorities, who often provided requested information too late or refused to provide it; • Independent journalists were discriminated against by the authorities; • Information on land and environmental issues, as well as the COVID-19 situation and vaccines, were particularly difficult to access; • An improvement in court proceedings’ transparency was noted but budget transparency is still lacking.

5.1. State of press freedom

Disappearance of independent media

According to a journalist interviewed for this report, independent journalists are often misperceived by the RGC as part of the opposition's efforts to "destroy Cambodia" or as working for foreign interests. For the last few years, Cambodia has therefore witnessed repeated assaults on press freedom. A damaging crackdown on the press was ignited in 2017 – ahead of the 2018 national elections – when the RGC shuttered approximately 30 print and broadcast operations.⁷¹ The *Cambodia Daily*, a long-standing English language newspaper, closed its doors in September 2017 after the government ordered it to pay a massive tax bill that was unsubstantiated and widely criticized as politically motivated.⁷² Soon after, *Radio Free Asia* ("RFA") closed its Phnom Penh office, citing "unprecedented" government intimidation.⁷³

This crackdown also dealt a blow to the independence of remaining media outlets. Leaked messages from September 2016 to February 2017 allegedly revealed the involvement of one of the Prime Minister's sons in securing funding for the *Khmer Times*. The SMS conversations further showed the *Khmer Times* publisher agreeing to alter an article painting a tycoon in a negative light at his request.⁷⁵ Government interference in journalists' work is also an issue: a journalist interviewed for this report said their media outlet was asked by a government official to review the content of one of their articles. In 2018, the *Phnom Penh Post* – the only remaining independent daily newspaper – was sold to a Malaysian businessman connected to Prime Minister Hun Sen, prompting half of the outlet's staff to quit in protest.⁷⁶ As for Khmer-language media, most are owned by four businesspeople connected to the ruling party, including the Prime Minister's daughter.⁷⁷

In **2020** in Cambodia, there were:

- **669** online media outlets, including 588 news websites and 81 online TV channels,
- **450** newspapers,
- **196** magazines,
- **220** FM radio stations (83 in Phnom Penh),
- **one** AM radio station,
- **eight** digital TV stations,
- **212** cable TV stations (two in Phnom Penh),
- **two** satellite TV stations, and
- **51** media associations.⁷⁴

Before this crackdown even began, a 2015 joint study conducted by Reporters Without Borders ("RSF") and the Cambodian Center for Independent Media ("CCIM") revealed that almost 25% of media outlets belonged to politically-affiliated owners, representing about 43% of the print readership, 63% of TV viewership, and 8% of radio listenership. Since then, Cambodia has become a *de facto* one-party State, resulting in media ownership being increasingly concentrated, with the RGC owning or having influence in the majority of media services. Cambodia's dire political situation was identified by one of

⁷¹ Reporters Without Borders, "RSF publishes report on media freedom under attack in Cambodia" ([RSE](#), 15 March 2018).

⁷² Ibid.

⁷³ Voice of America, "2 Former Radio Free Asia Journalists on Trial in Cambodia" ([VOA](#), 9 Aug. 2019).

⁷⁴ CamboJA, "Cambodian journalism situation report 2020" ([CamboJA](#), 2021), page 5.

⁷⁵ Ben Paviour, "Leaks Link Hun Manith, NagaCorp CEO to Khmer Times", ([Cambodia Daily](#), 2 March 2017).

⁷⁶ Eli Meixler, "The Sale of Cambodia's Last Independent Newspaper Pushes Press Freedom Into Peril", ([Time](#), 11 May 2018).

⁷⁷ David Hutt, "The Truth About Hun Sen and the Media in Cambodia", ([The Diplomat](#), 30 Jan. 2020).

the journalists interviewed for this report as one of the biggest threats to press freedom. According to RSF, “Cambodians now only have access to news provided by major media groups directly linked to [Prime Minister] Hun Sen.”

Revocation of media licenses

In early October 2021, following discussions at the UN Human Rights Council on Cambodia’s human rights situation, the governmental Cambodian Human Rights Committee (“CHRC”) rebuffed the international community’s concerns about press freedom in the country, arguing that approximately 2,000 media outlets – including those critical of the government – have been operating freely in Cambodia.⁷⁸ According to the MOI, more than 4,000 press cards have been delivered to national and international journalists in Cambodia in 2020.⁷⁹

While on the surface, these seem like positive developments, the RGC’s ongoing crackdown on press freedom has also resulted in the arbitrary revocation of multiple media licenses. Between 1 September 2020 and 31 August 2021, seven media outlets have had their licenses revoked. Six of these licenses were revoked based on allegations that they spread misinformation about or caused chaos amidst the COVID-19 pandemic.

Seven media licenses revoked between 1 September 2020 and 31 August 2021

In **February 2021**, Angkor Today’s license was revoked after the online news platform published an article titled “Cambodia Sells COVID-19 Vaccines Donated by China,” which authorities said was false and had affected the honor and reputation of Cambodia.⁸⁰

In **March 2021**, the licenses of San Prum News and the Cambodia Facebook Journalists Association were revoked after San Prum, the administrator of these pages, posted a picture on Facebook of what he erroneously thought was the wrapped-up corpse of a dead COVID-19 patient. The MOI said he had distorted information about the death of a COVID-19 patient, thereby affecting the reputation and efforts of authorities.⁸¹

In **March 2021**, popular social media news publisher Pheng Vannak had his media license revoked for “*affecting Buddhism as the state religion*” after he posted footage of a chief monk beating junior monks with a stick in a Siem Reap pagoda.⁸²

In **March 2021**, two news websites, Youth Techo and Stoeng Chral Post, had their media licenses revoked for spreading false information and causing social unrest during the COVID-19 pandemic.⁸³ It is unclear what information the websites posted that led to their licenses being revoked.

In **April 2021**, the K01 TV online news outlet was shut down and its license revoked for disseminating “*information that incites malicious intent to cause social unrest.*” The revocation

⁷⁸ Voun Dara, “Cambodia rebuffs human rights infringement reports”, ([Phnom Penh Post](#), 7 Oct. 2021).

⁷⁹ Chea Vanyuth, “No renewal of media licences for unregistered outlets” ([Khmer Times](#), 20 May 2021).

⁸⁰ Khy Sovuthy, “Chinese-language editor to be deported over “fake news” vaccine sales” ([CamboJA](#), 25 Feb. 2021).

⁸¹ Khy Sovuthy, “Information Ministry advisor stripped of position, news outlet license” ([CamboJA](#), 15 March 2021).

⁸² Sun Narin, “Online Publication Shut Down for Criticizing Monk Beatings in Siem Reap” ([VOA](#), 19 March 2021).

⁸³ Nath Sopheap, “Ministry revokes two media licenses on the grounds of serious professional abuse” ([VOD](#), 26 March 2021).

came after the website's owner posted several videos deemed "*provocative*" on Cambodia's fight against COVID-19.⁸⁴

These revocations came after two particularly egregious cases of arbitrary revocations that occurred in April and May 2020: two media licenses were terminated after the news websites' owners were charged with incitement, the first for accurately quoting a comment made by Prime Minister Hun Sen during a press conference on COVID-19,⁸⁵ and the second for reporting on a land dispute involving powerful individuals.⁸⁶ These revocations, along with the seven recorded since, seem to illustrate how the RGC uses revocations as a means to silence journalists who report on topics and subjects that impede its agenda or tarnish its image.

Judicial harassment of journalists

Journalists have been the targets of sustained attacks at the hands of the judiciary for carrying out their investigative duties and exercising their freedom of expression. Five journalists interviewed for this report said the RGC's liberal use of the Criminal Code to target journalists represented the biggest threat to press freedom in Cambodia.

Government hostility towards journalists resulted in legal action being taken against **nine journalists** between 1 September 2020 and 31 August 2021. Amongst these nine journalists:

- three were summoned;
- four were questioned;
- six were detained;
- three were forced to thumbprint agreements, pledging they would not attempt to cover a land dispute anymore;
- two were arrested;
- two were charged, one with falsifying information (art. 425) and one with incitement (art. 494 and 495); and
- three were convicted.

Three journalists convicted between 1 September 2020 and 31 August 2021

SOVANN RITHY - On 5 October 2020, Sovann Rithy, director of the online publication TVFB, was convicted of incitement under Articles 494 and 495 of the Cambodian Criminal Code and handed a 18-month prison sentence, which was suspended after spending six months in pre-trial detention. He was released on the day of his verdict and ordered to pay a fine of one million riels (around \$250).⁸⁷ On 7 April 2020, Sovann Rithy had been covering a press conference held by Prime Minister Hun Sen on COVID-19. When asked about helping informal workers facing economic hardship due to COVID-19, the Prime Minister had answered: "*If motorbike taxi drivers go bankrupt, they can sell their moto. The government is unable to help.*" Sovann Rithy had made a Facebook post on his TVFB

⁸⁴ "Ministry of Information decides to revoke K01 website license after disseminating provocative information" ([Freshnews](#), 10 Apr. 2021).

⁸⁵ Sun Narin, "Online Journalist Charged with Incitement for Reporting Hun Sen's Comments" ([VOA](#), 9 Apr. 2020).

⁸⁶ Sun Narin, "Kampong Chhnang Radio Owner Charged for 'Incitement'" ([VOA](#), 15 May 2020).

⁸⁷ Tith Kongnov, "Former TVFB director released from prison", ([Khmer Times](#), 6 Oct. 2020).

page, accurately quoting the Prime Minister. He was arrested later that evening. Police claimed that the Prime Minister's words were intended as a joke.⁸⁸

ROS SOKHET - On 11 November 2020, newspaper publisher Ros Sokhet was convicted of incitement under Articles 494 and 495 of the Cambodian Criminal Code and sentenced to 18 months in prison and a fine of two million riels. Ros Sokhet was arrested on 25 June 2020 for making critical Facebook posts about government officials, including one criticizing Prime Minister Hun Sen for not helping indebted Cambodians struggling to pay back their loans amidst the COVID-19 pandemic.⁸⁹

SOK OUDOM - On 22 December 2020, the Rithysen news and 99.75 FM radio station owner, Sok Oudom, was convicted of incitement under Articles 494 and 495 of the Cambodian Criminal Code and sentenced to 20 months in prison and a fine of 20 million riels (nearly \$5000). He was arrested on 13 May 2020 after hosting a Facebook livestream in which he reported on a land dispute involving military officials in Kampong Chhnang Province.⁹⁰ Following his broadcast, the deputy commander of the Kampong Chhnang military operation area filed a complaint against him for allegedly inciting villagers against the military.⁹¹ He was also accused by authorities of disseminating 'fake news' about the local land dispute.⁹² The MOI revoked the media licenses for both Rithysen and his 99.75 FM radio station for "*exaggerated news reporting*" and Oudom was then sent to pre-trial detention at Kampong Chhnang's Provincial Prison.⁹³ At a trial hearing on 3 November 2020, Sok Oudom maintained his innocence and asserted that he had not incited villagers in Kampong Chhnang province against the military.⁹⁴

While many journalists faced legal action during this reporting period, others saw their legal ordeals come to a positive end. In November 2020, the Ratanakiri Provincial Court announced it was dropping the incitement charges against two former *Cambodia Daily* reporters, Aun Pheap and Peter Zsombor. The two had been charged with incitement in 2017, after they interviewed residents in Ratanakiri's Pate commune in connection with the commune council elections. The commune chief had filed an incitement complaint against the pair. While the dropping of the charges against them marked a positive end to their legal ordeal of more than three years, the fact that charges were filed in the first place in retaliation for their investigative and reporting activities is cause for concern. Peter Zsombor said: "*We should not have had to face a bogus incitement charge for the past three years, and the court should have thrown the case out from the start for being so obviously baseless, not after three years because the plaintiffs are withdrawing their nonsense complaint.*"⁹⁵

While the judicial system is often used to target and stifle journalists, sadly it is seldom used to bring perpetrators of violations of freedom of expression to justice. Multiple journalists interviewed for this report mentioned their distrust of the judiciary, highlighting its lack of independence and inefficacy in holding perpetrators of attacks against journalists accountable.

⁸⁸ Sun Narin, "Online Journalist Convicted and Given Suspended Sentence for Quoting Hun Sen" ([VOA](#), 5 Oct. 2020).

⁸⁹ Khuon Narim, "Another journalist convicted for incitement, sentenced to 18 months" ([CamboJA](#), 11 Nov.2020).

⁹⁰ Khuon Narim, "Provincial journalist convicted for reporting military-linked land dispute" ([CamboJA](#), 22 Dec. 2020).

⁹¹ Sun Narin, 'Court Convicts Kampong Chhnang Journalist for Reporting on Land Dispute' ([VOA](#), 23 Dec. 2020).

⁹² Khy Sovuthy, 'Radio station owner charged over alleged fake news' ([Camboja](#), 15 May 2020).

⁹³ Sun Narin, 'Kampong Chhnang Radio Owner Charged for "Incitement"' ([VOA](#), 15 May 2020).

⁹⁴ Khoun Narim, 'Kampong Chhnang Journalist Denies Inciting Villagers Against Military' ([Camboja](#), 4 Nov. 2020).

⁹⁵ Hul Reaksmey, "Ratanakkiri Court Drops Incitement Charges Against Cambodia Daily Reporters" ([VOA](#), 27 Nov. 2020).

- One journalist said that after their media outlet was asked by a government official to review the content of an article, their organization did not file a complaint, out of fear it would face additional problems;
- One journalist who was frequently subjected to insults, threats and online harassment for their work said they did not file a complaint because they did not think they would get a resolution due to previous complaints being ignored;
- One journalist said they have no trust in the judiciary and that the justice system could be used “*anytime*” against them, if they angered the ruling party;
- One journalist, who received death threats from a corrupt police officer, said that upon filing a complaint with the court, authorities made baseless accusations against them to discredit them. They were also ordered by a high-ranking official to withdraw their complaint.



UON CHHIN & YEANG SOTHEARIN – Nearly four years since their arrest, the Cambodian judiciary has failed to deliver a definitive verdict for ex-RFA journalists Uon Chhin and Yeang Sothearin, forcing them into legal limbo with their criminal charges and lengthy prison charges looming over them indefinitely. Their case is an emblematic case of the judicial harassment that independent journalists endure in Cambodia.

On 14 November 2017, both journalists were arrested and detained under accusations that they were continuing to report to the shutdown RFA in September 2017 by running an informal studio in a hotel room in Phnom Penh. At the time of their arrest, the police did not specify the reasons for their arrest or present an arrest warrant. The police later stated they were arrested for running an unlicensed karaoke studio. According to a preliminary judgement, the authorities “*conducted an administration inspection and found that broadcasting devices and equipment were installed*” and used this as a basis to investigate them. On 18 November 2017, the Phnom Penh Municipal Court formally charged the pair with “*supplying a foreign state with information prejudicial to national defense*” under Article 445 of the Cambodian Criminal Code, an offense which carries a sentence of up to 15 years in prison. They were then placed in pre-trial detention.

On 29 March 2018, while both were in prison, the Phnom Penh Municipal Court additionally charged them with the alleged production of pornography under Article 39 of the *Law on the Suppression of Human Trafficking and Sexual Exploitation*, which carries a prison sentence of up to one year. Thus, Chhin and Sothearin face up to 16 years in prison if convicted under both charges. These additional charges were on the basis of pixelated images of people in sexual positions, published a day prior by government-aligned media outlets. On 21 August 2018, both were released from prison on bail, after more than nine months in pre-trial detention, but were kept under judicial supervision and had their passports confiscated from them to ensure that they did not flee the country.

On 15 March 2019, the Court ordered their case to proceed to trial based on allegations that the journalists “*illegally collected information from a foreign source.*” On 26 July and 9 August 2019, the pair’s first hearings took place before the Phnom Penh Municipal Court. On 30 October 2019, the court failed to deliver a verdict on either of the charges against them on the grounds that further

investigation was required due to insufficient evidence. Their case was sent back to the investigating judge who did not stipulate any timeline for the completion of the investigation. In December 2019 and January 2020, after the Phnom Penh Court of Appeal heard the two journalists' appeal against the reinvestigation into their charges, the Court rejected their appeals on the grounds that the Phnom Penh Municipal Court had not concluded their proceedings into the case. However, the appeal judge did not specify what proceedings needed to be completed by the Phnom Penh Municipal Court. This decision was upheld by the Supreme Court in July and October of 2020.⁹⁶

Threats against journalists

Many journalists were also threatened by authorities, often with legal action, in attempts to intimidate them and discourage them from carrying out their work. During the reporting period, CCHR recorded at least five instances during which at least seven journalists were threatened by authorities while attempting to cover stories in the field.

At least seven journalists threatened by authorities between 1 September 2020 and 31 August 2021:

On 23 October 2020, while they were covering a protest in front of the Chinese Embassy calling on China to respect the Paris Peace Agreements, at least six **journalists from VOICE OF DEMOCRACY (“VOD”), REUTERS, KHMER TIMES, and THMEY THMEY** were harassed, threatened and ordered not to take pictures, while others had their material confiscated. The Phnom Penh deputy governor was filmed pressuring a journalist to give up his camera before turning to a VOD reporter videoing the scene, shouting *"give me your phone"* and pushing him along the sidewalk. Another foreign journalist was hit in the face with a walkie-talkie and an officer shouted at him *"Better watch out because you're in the land of Cambodians."* A Reuters journalist was also asked to cease photographing.⁹⁷

One of the reporter present on that day was a woman. While attempting to cover the gathering, she was threatened by authorities and chased away when she tried to record the violent crackdown by authorities on the protesters. Authorities also screamed at her and attempted to seize and confiscate her phone. She said it was not the only time she had been threatened and harassed by authorities over her reporting. She reported receiving frequent threats from authorities when reporting on land disputes on site. In another instance, she was dragged and pushed when she reported on protests in front of Phnom Penh Municipal Court. She believes that journalists are still threatened by authorities in the course of their work. She has also stated that the incidents of harassment she has endured and violence against her has made her feel unsafe working in the field as a journalist and that the MOI should work with the authorities to stop such crackdowns and unacceptable treatment of journalists.⁹⁸

⁹⁶ RFA, “Cambodia’s top court rejects ex-RFA reporters’ plea to drop probe of espionage charges”, ([RFA](#), 27 Oct. 2020); See also CCHR, ‘Factsheet: Three Years of Judicial Harassment for Former Radio Free Asia Journalists’ ([CCHR](#), Nov. 2020).

⁹⁷ Tran Techseng, “Rights monitors, journalists threatened over taking photos at rally”, ([VOD](#), 26 Oct. 2020); Khy Sovuthy, “Three CNRP activists arrested in Paris Peace Agreements demonstration”, ([CambojaNews](#), 23 Oct. 2020).

⁹⁸ Sok Srey Lux, “Support for female journalists sought”, ([Khmer Times](#), 5 Oct. 2020)

Physical violence against journalists

Threats to journalists' safety were identified by one of the journalists interviewed for this report as the biggest threat to freedom of expression in Cambodia. This fear is not without cause: during the reporting period, seven journalists were attacked by third parties in three separate attacks.⁹⁹ Five of them believe they were targeted by timber traders, in retaliation for their investigative work on illegal logging.¹⁰⁰ All incidents have gone unresolved by the police, implying a lack of interest from authorities in bringing perpetrators of such violations to justice.

Seven journalists attacked while performing their work between 1 September and 31 August 2021:

ONLINE JOURNALISTS - On 28 September 2020, four online news journalists working for PMN news, Chakrapop news, and Eysan Post were attacked by a group of five assailants in Tboung Khmum province. The journalists believed the suspects were timber traders who were seeking revenge after the reporters had reported them to police for committing forestry crimes. The journalists reported that they were sleeping in their car when someone hurled a large log through the front driver's window. They began to drive away but the suspects chased them with their truck, eventually crashing into them. The suspects physically assaulted the journalists, beating them with sticks and axes; two of them suffered injuries. The journalists filed a complaint to local police, but have not yet received any updated information.¹⁰¹

HIM MATH & MOM VIBOL - In a separate yet similar incident on 20 October 2020, two journalists, UMA TV online journalist Him Math and TV3 journalist Mom Vibol, were also attacked while they were on a mission investigating timber traders in Stung Treng province. The pair were reporting on illegal logging of luxury logs in the province and attempted to film timber traders crossing the Sekong bridge in Stung Treng City while parked in their car. The traders recognized the journalists, blocked them with their cars, threw a log through their window, and attempted to physically attack them but they remained safe in their car. The journalists were fortunately able to escape before the attack became more serious.¹⁰²

Journalists banned from reporting on land disputes

Data collected during the reporting period shows that many journalists were targeted or harassed while reporting on land disputes or forced evictions. Land violations have long been an issue of contention in Cambodia, as development projects have increasingly encroached on citizens' land. Recent developments seem to show authorities cracking down on journalists covering such disputes and hampering their investigative work. One journalist interviewed for this report revealed that a corrupt police officer, protecting an illegal timber business, threatened to shoot them in the head while they were investigating. They were subsequently surrounded by police, who destroyed their camera and forced them to delete their files.

⁹⁹ Va Sopheanut, "Two journalists beaten while covering a gambling venue" ([VOD Khmer](#), 1 Apr. 2021).

¹⁰⁰ Vann Vichar, "Journalist beaten as he slept outside temple" ([VOD](#), 16 March 2021); Khuon Narim, "Journalists attacked after reporting forestry crime" ([CamboJA](#), 30 Sept. 2020).

¹⁰¹ Khuon Narim, "Journalists attacked after reporting forestry crime", ([CamboJA](#), 30 Sept. 2020).

¹⁰² Khy Sovuthy, 'Timber traders attack journalist in Stung Treng' ([CamboJA](#), 23 Oct. 2020).

KHUT SOKUN - On 11 May 2021, VOD reporter Khut Sokun had his material confiscated while covering a land dispute at the border between Kampong Chhnang and Pursat provinces. An eyewitness said authorities took his phone and deleted pictures before it was returned to him. He was questioned and told not to take more pictures of the protest scene. Khut Sokun also said his notebook and recorder were confiscated. The recording he had made of the Pursat deputy governor's speech was deleted and the notes he had taken were torn up. His material was only returned to him once the meeting between authorities and the protesters was finished. The Pursat deputy governor, Cheng Lay, said authorities had only confiscated his equipment to make sure his information was clear, as reporting land issues could cause trouble. One of Khut Sokun's colleagues who interviewed Cheng Lay later told him the deputy governor informally said that his reporting had caused incitement among the villagers, a serious charge. After hearing this, Khut Sokun said he was now scared to report about land disputes in that area and that he was worried for his safety and security.¹⁰³

CAM-HOT NEWS JOURNALISTS - In early June 2021, while attempting to cover a land protest in Phnom Penh's Boeung Tamok lake, three journalists from Cam-Hot News were detained, questioned, and ordered to sign an agreement that they would not attempt to live broadcast the land protest again. Authorities claimed the journalists began filming the protest "*too early*" when the protesters were still shouting and yelling. The three were taken to a commune police station, where they were questioned from 9a.m. to 1p.m. and subsequently released after signing the agreement.¹⁰⁴

HENG VICHET - On 18 June 2021, VOD reporter Heng Vichet was banned from filming and covering the forced eviction of the residents of Phnom Penh's floating houses. He stated that when he arrived at the scene, he was questioned by authorities who then forbade him from recording footage of the eviction, threatened him to delete the photos he had taken, and said he would face legal action if he published the photos or story.¹⁰⁵

LOS SENG - In July 2021, Los Seng, a news publisher of Los Seng News and owner of the online LSN TV 24 news, said that he was experiencing pressure from authorities to stop his coverage of the land dispute related to the development project of the new Phnom Penh International Airport in Kandal province. Los Seng said he was warned to stop his reporting and told a case against him was headed to court.¹⁰⁶

AN VICHET & LORS LIBLIB - On 13 August 2021, authorities stopped and harassed a journalist from CamboJA, An Vichet, and a journalist from VOA Khmer, Lors Liblib, for attempting to cover a land dispute on Boeng Tompun lake. An Vichet claimed the police confiscated his smartphone and press card and ordered him to delete all the photos he had taken while at the site of the land dispute or else he would be arrested. The authorities then refused to return his press card and told him to retrieve it from the district office. As for Lors Liblib, he said authorities confiscated his phone, forced

¹⁰³ Mech Dara, "Land protesters block road as reporter's equipment confiscated" ([VOD](#), 11 May 2021); Khan Leakena, "A VOD journalist was confiscated by authorities and not allowed to film while covering a land case" ([VOD Khmer](#), 11 May 2021).

¹⁰⁴ Mech Dara, "Three Journalists Detained, Educated for Covering Boeng Tompun Dispute" ([VOD](#), 22 July 2021); Mech Dara & Danielle Keeton-Olsen, "Boeng Tompun Residents' Land Dug Up for City Reservoir" ([VOD](#), 22 July 2021).

¹⁰⁵ Nem Sopheak Panha, "Civil society groups fear restrictions on freedom after journalist banned from filming evictions of floating houses" ([VOA Khmer](#), 21 June 2021).

¹⁰⁶ Mech Dara, "Journalist Reporting on New Airport's Land Dispute Faces Pressure" ([VOD](#), 13 July 2021).

him to delete photos from the scene and threatened him with legal action if he did not leave immediately. Both journalists were then ordered away from the scene after the confrontation with authorities. The Phnom Penh deputy governor defended the authorities' actions, saying they were lawful.¹⁰⁷

COVID-19 and freedom of the press

The COVID-19 outbreak appears to have heightened the RGC's intolerance to criticism, and journalists have become increasingly vulnerable to targeting and prosecution for their legitimate reporting activities on the topic. Cambodia has witnessed a further crackdown on free speech, with increasing rhetoric regarding 'fake news' and frequent cases of litigation against journalists, creating an atmosphere of fear around independent journalistic work. During the reporting period, out of the nine journalists who faced legal action, four of them were targeted for their coverage of COVID-19-related matters.

Further, government statements aimed at regulating journalists' coverage of the COVID-19 pandemic and the RGC's handling of the outbreak have further hampered journalists in their work, raising fresh concerns for press freedom in Cambodia. In light of the RGC's growing intolerance to criticism – especially on its handling of the COVID-19 outbreak – such statements seem to illustrate the RGC's desire to control the COVID-19 narrative and prevent unfavorable reporting, in clear violation of press freedom.

In a statement released on 7 December 2020, the MOI threatened legal action against journalists acting "*unethically*" when reporting on COVID-19 or spreading 'fake news' related to the Government's efforts to combat the virus.¹⁰⁸ In addition to creating a chilling effect among independent reporters for fear that the information they publish could be misunderstood or misinterpreted, this statement goes against best practices which provide that journalists should be given the opportunity to correct errors in their publications.

On 4 May 2021, the MOI issued a letter warning journalists that violations of COVID-19 measures could result in legal action. The letter mentioned journalists broadcasting live from within red zones, treatment centers and hospitals, as well as chasing ambulances and "*drawing conclusions without clear background*" leading to misunderstandings among the public, societal chaos and public health dangers. This came a day after a Facebook livestream showing COVID-19 patients and ambulances waiting for hours to enter a government treatment center went viral on social media.¹⁰⁹ The threat of legal action for broadcasting live from treatment centers and hospitals was deemed excessive, as less restrictive measures could be imposed to prevent the spread of COVID-19 while upholding press freedom.

¹⁰⁷ Sorn Sarath & Sam Sopich, "Journalists harassed on the job as authorities clear homes for development at Boeng Tompun" ([CamboJA](#), 13 Aug. 2021); Pork Kheuy & Ouch Sony, "Boeng Tompun Houses Demolished, Reporters Obstructed" ([VOD](#), 16 Aug. 2021).

¹⁰⁸ Khy Sovuthy, "Government alleges misconduct among journalists, greenlights legal action", ([CambojaNews](#), 8 Dec.2020).

¹⁰⁹ Khuon Narim, "Information Ministry warns journalists against 'ambulance chasing' after video of long waits for COVID-19 patients goes viral" ([CamboJA](#), 4 May 2021).

Self-censorship

As a consequence of fear of threats, intimidation and criminal sanctions, there is evidence that media professionals use self-censorship and avoid publishing information that the RGC would consider offensive or politically sensitive. When asked whether they felt free to perform their job without repercussions, one journalist said they could not do their job “without fear” and that they avoided writing on “sensitive issues” such as those related to the Prime Minister and his family. Another journalist expressed their reticence to write on “sensitive issues,” such as corruption or budget matters, saying such topics could lead to threats being made against them. This was echoed by a third interviewee who revealed there were “a lot” of issues they refused to write on, out of concern for themselves and their family. A fourth journalist said they “always” felt restricted in their reporting and worried they would face legal charges, threats or harassment from government supporters for their work. Another interviewee, who faced legal action in the past for their investigative work, said they “carefully restrict” themselves every time they express their opinion. However, two journalists said they were not worried at all and were able to work freely because they adhere to professionalism and report accurate information.

5.2. State of freedom of expression for HRDs

Targeting of HRDs for exercising their freedom of expression

Unfortunately, the media is not the only one to bear the brunt of the RGC’s intolerance to criticism and divergent views. HRDs have also been the targets of the government’s crackdown on freedom of expression, with an intensification of judicial harassment of HRDs during the reporting period. Judicial harassment led by subservient courts was cited as one of the biggest threats to freedom of expression of HRDs in the country by the three HRDs interviewed for this report, along with the unstable political situation and the latest legislative developments undermining freedom of expression, especially online, such as the NIG Sub-Decree. The COVID-19 pandemic was also reported by one of the interviewees as having given the RGC a new ground to further undermine freedom of expression in the Kingdom.

The intensification of the crackdown on HRDs occurred at the end of July 2020, following the arrest of prominent union leader Rong Chhun for voicing his opinion regarding Cambodia-Vietnam border issues on the radio. Since then, various other HRDs have been arrested and convicted on spurious charges for exercising their freedom of expression to shed light on human rights issues. Notably, environmental activists have been on the Government’s radar during the reporting period. The Mother Nature Cambodia environmental group saw several of its activists imprisoned for raising environmental concerns and natural resources violations in the country.

According to the data collected through media monitoring, the regular judicial harassment of HRDs by the RGC resulted in the following legal action taken against **17 HRDs** for exercising their freedom of expression between 1 September 2020 and 31 August 2021:

- six HRDs were summoned;
- eight HRDs were questioned;

- eight HRDs were arrested and two HRDs had an arrest warrant issued for their arrest;
- eight HRDs were detained;
- three HRDs were forced to thumbprint agreements in which they promise to stop their advocacy work;
- nine HRDs were charged with incitement or/and with plotting and *lèse-majesté*; and
- eight HRDs were convicted for defamation and incitement and sentenced to imprisonment and/or fines.

Eight HRDs convicted between 1 September 2020 and 31 August 2021 for exercising their freedom of expression:

KREUNG TOLA - On 19 January 2021, land activist Kreung Tola was sentenced by the Monduliri Provincial Court to pay a compensation of 40 million Riel (\$10,000) to O'Raing District Governor Siek Mony and four million Riel (\$1,000) to the state for public defamation. Tola had written a Facebook post in which he said that authorities were encroaching on land in a protected area in O'Raing district in January 2020, for which he was charged with defamation under Article 305 of the Cambodian Criminal Code. Tola said he intended to file an appeal.¹¹⁰

PHON SOPHAL - On 2 July 2021, the Tboung Khmum Provincial Court sentenced land rights activist Phon Sophal to one year in prison and a two million Riel fine (\$500). He was convicted of conspiracy to incite to cause social chaos under Articles 29, 494, and 495 of the Cambodian Criminal Code for distributing tee-shirts with human rights slogans to farmers in Memot district and allegedly criticizing authorities for banning gatherings. He has reportedly been detained since his arrest on 30 December 2020.¹¹¹



RONG CHHUN - On 18 August 2021, the Phnom Penh Municipal Court sentenced prominent union leader Rong Chhun to two years in jail for incitement under Articles 494 and 495 of the Cambodian Criminal Code over comments he made on border issues between Cambodia and Vietnam. At the time of his verdict, Rong Chhun had spent more than 12 months in pre-trial detention. He was ordered to pay 400 million Riel (nearly \$100,000) in damages to Cambodia's border committee and was fined two million riel (about \$500).¹¹² On 13 November 2021, the Court of Appeal upheld Rong Chhun's conviction but suspended the remainder of his sentence, leading to his release from prison on the same day. However, Rong Chhun will remain under judicial supervision for the next three years.¹¹³

MOTHER NATURE CAMBODIA ACTIVISTS: LONG KUNTHEA, PHOUN KEOREASMEY, THUN RATHA, ALEXANDRO GONZALEZ-DAVIDSON & CHEA KUNTIN

On 5 May 2021, Mother Nature Cambodian activists Long Kunthea, Phoun Keoreasmey, Thun Ratha, Alexandro Gonzalez-Davidson, and Chea Kuntin were convicted of incitement over Facebook posts.

¹¹⁰ Soth Koemsoeun, "Activist hit with \$10K defamation fine", ([Phnom Penh Post](#), 21 Jan. 2021).

¹¹¹ RFA, "Cambodian Court Sentences Dissidents, Land Activists to One-Year Prison Terms", ([RFA](#), 2 July 2021).

¹¹² Ouch Sony, "Updated: Rong Chhun sentenced to two years in jail for Vietnam comments", ([VOD](#), 18 Aug. 2021).

¹¹³ RFA, "Cambodian authorities release labor union in surprise move," ([RFA](#), 12 Nov. 2021).

All five were sentenced to between 18 and 20 months imprisonment and ordered to pay fines of \$1,000.

Kunthea, Keoreasmey and Ratha were arrested and charged in 2020 after making Facebook posts about their plan to organize a one-woman march to the Prime Minister's residence in order to raise awareness about the environmental impact of filling in the Boeung Tamok Lake. They were also accused of operating a recording studio without a permit.¹¹⁴



Mother Nature Cambodia co-founder and activist Alejandro Gonzalez-Davidson, who was deported from Cambodia in 2015, and activist Chea Kuntin were charged in the same case and convicted *in absentia*. On 5 November 2021, the Phnom Penh Court of Appeal upheld the convictions of Long Kunthea, Thun Ratha and Phuon Keoreasmey but suspended the remainder of their sentences.¹¹⁵ All three were released from prison on 12 November 2021 but will remain under judicial supervision for the next three years.¹¹⁶ On 12 November 2021, the Court of Appeal also upheld the conviction and sentence of Alexandro Gonzalez-Davidson.¹¹⁷ Long Kunthea, Thun Ratha, Phuon Keoreasmey and Alexandro Gonzalez-Davidson were also handed additional charges of plotting and *lèse-majesté* in June 2021, alongside three other Mother Nature Cambodia activists Sun Ratha, Ly Chandaravuth, and Yim Leanghy. They all face up to ten years in prison if convicted.¹¹⁸

The three HRDs interviewed for this report all reported having experienced restrictions or violations of their freedom of expression by authorities while exercising their advocacy work. However, none of them filed complaints to relevant institutions or courts. One interviewee explained that there was no hope for fair justice from the RGC when violations were perpetrated by authorities while another stated that they were documenting them and raising them with partner organizations they work with and with relevant ministries.

Physical safety concerns of HRDs

In this repressive environment, HRDs in Cambodia fear for their physical safety. While no physical attacks on HRDs were recorded during the reporting period, HRDs in Cambodia have experienced physical attacks on several occasions in the past. Some were even murdered in impunity, such as activist Kem Ley. The activist, known for speaking what others would not, was shot in a gas station in Phnom Penh in July 2016 and his unresolved case has become one of the most emblematic cases of the rampant impunity plaguing the country, especially for crimes committed against critical voices.¹¹⁹

Against such a background, none of the interviewed HRDs reported feeling free to conduct their work. All stressed being constantly concerned for their safety as the authorities regularly surveil their

¹¹⁴ Khuon Narim, "Mother Nature activists found guilty, jailed for planning one-woman march", ([CambodiaNews](#), 5 May 2021); RFA, "Cambodian Environmental Activists arrested before protest over development on lake", ([RFA](#), 3 Sept. 2020).

¹¹⁵ Buth R. Kongkea, "Mother nature activists convictions upheld, sentences reduced,"([Khmer Times](#), 5 Nov.21).

¹¹⁶ K. Longdy, M. Dara & O. Sony, "Mother Nature activists, Rong Chhun among 18 released in flurry of verdicts, reunions, ([VOD](#), 12 Nov. 2021).

¹¹⁷ Buth R. Kongkea, "Alexandro Gonzalez-Davidson's sentence upheld by Appeal Court,"([Khmer Times](#), 13 Nov. 2021).

¹¹⁸ Khy Sovuthy, Three convicted Mother Nature activists handed an additional plotting charge", ([CambodiaNews](#), 21 Jul.21).

¹¹⁹ CCHR, Infographic "Impunity in Cambodia", ([CCHR](#), July 2021).

whereabouts and activities. One interviewee reported feeling particularly unsafe when traveling to the provinces for work and monitoring assemblies. They also stated that the authorities knew their personal address and had monitored their house in the past. Another interviewee reported that they had to relocate abroad for several months in the past due to safety concerns after they got involved in a high-profile politically-motivated case.

This unsafe environment has led many HRDs to adapt and make adjustments to continue to perform their important work in the safest possible way. The adjustments that the HRDs interviewed by CCHR had to make include carrying official documents from their organizations or lawyers to show authorities in case of intimidation or arrest, and showing greater flexibility, preparedness, and caution when conducting their activities. Two interviewees reported being particularly careful with the content they post on social media. One interviewee notably stated that with the increasingly repressive legislation and government crackdown on HRDs, they exercised much more caution than they used to when posting on their private social media out of fear of repercussions. However, they highlighted feeling more protected and freer to exercise their freedom of expression in a professional setting and not experiencing the same concerns when speaking on behalf of the civil society organization (“CSO”) for which they work.

Despite these difficulties, none of the interviewees reported refusing to advocate on human rights issues deemed too sensitive, all being fully committed to fulfill the mandates of their respective organizations.

Freedom of expression of Women Human Rights Defenders (“WHRDs”)

In an environment hostile to critical voices, WHRDs are not spared by the many challenges faced by activists in Cambodia. Of the 17 HRDs who faced legal action for exercising their freedom of expression during the reporting period, **six** were women. Two of them, Mother Nature Cambodia activists Long Kunthea and Phoun Keoreaksmeay, were convicted of incitement in May 2021 and sentenced to imprisonment. They were released from prison in November 2021, after the Court of Appeal reduced their sentence. However, they will remain in judicial supervision for the next three years. Both were also charged with plotting and *lèse-majesté* in June 2021 and face up to ten years in prison.



Cambodian WHRDs also experience many other challenges stemming from entrenched societal norms, which impact their freedom of expression. The two WHRDs interviewed reported experiencing discrimination in exercising their freedom of expression. One interviewee stated that even if she has a leadership position within the human rights organization she works for, she sometimes feels that she is not taken seriously when she speaks out, not listened to, and at times criticized for expressing her views by her male colleagues, by men working in other CSOs, or by male government officials. The other interviewee also raised that many WHRDs lack knowledge in information and communication technologies (“ICT”), which can make their advocacy work more challenging in a digital age and exercising their freedom of expression online more difficult.

5.3. State of access to information

Limited access to information hampering journalists

Many journalists continue to encounter obstacles in their efforts to access certain types of information, especially from authorities. Journalists interviewed for this report said that answers from authorities were often provided too late to be useful. Another said that obtaining information from authorities is complicated: government websites seldom provide comprehensive information, and some government officials refuse to give interviews while others discriminate against independent reporters and journalists. Another journalist said it was “very difficult” to access information in the hands of the government. A third one revealed it was common for authorities to simply refuse to provide information that should be publicly available.

Similarly, a female journalist interviewed by the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) to mark International Day for Universal Access to Information in September 2021 revealed that she has faced many difficulties in accessing information, especially from public bodies. She explained that she was unable to get the latest version of the Labor Law when looking into the amendments that had been made to it, even after she contacted the Ministry of Labor.¹²⁰

It also seems that some topics – deemed sensitive – are harder to obtain information on. Two journalists interviewed for this report revealed they had trouble accessing information related to land rights in Cambodia. One said authorities would refuse to comment on economic or social land concessions and on forest administration matters; the other added they would be prevented from taking pictures of forestry crimes.

During the reporting period, CCHR also noted that officials contacted for information were frequently unable or unwilling to provide information or comment on cases. Tactics employed to dismiss journalists include acting elusively, saying they are “in a meeting” or too busy to deal with inquiries, and referring journalists elsewhere for information. For instance, the arrest and defrocking of a monk in early September 2021 made headlines in Cambodia. At the height of this saga, the spokesperson for the Phnom Penh Police Commissariat denied any knowledge of the monk’s arrest when contacted by RFA.¹²¹ Similarly, when asked by VOA about the possible presence of the South African variant of COVID-19 in Cambodia in April 2021, the Health Ministry spokesperson answered “*I have not had that information.*”¹²² Likewise, when contacted for comments about a rise in COVID-19 cases in Battambang province in July 2021, the director of the Battambang provincial health department declined to comment and referred questions to the provincial administration.¹²³

In light of the above, it therefore seems that the principle of maximum disclosure has yet to be fully embraced in Cambodia, even by individuals appointed – or best-placed – to share information. The lack of access to sufficient and accurate information severely hinders the ability of journalists to

¹²⁰ UNESCO Cambodia’s Facebook page, ‘Female journalist, Ms. Yon Sineat’ ([UNESCO](#), 28 Sep.2021).

¹²¹ Richard Finney, “Defrocked Khmer Krom Monk Jailed in Cambodia for ‘Obstructing’ COVID-19 Measures” ([RFA](#), 16 Sept. 2021).

¹²² Aun Chhengpor, “Vietnam Detects UK, South African Variants in Imported Cases from Cambodia” ([VOA](#), 27 April 2021).

¹²³ Khy Sovuthy & Chea Sokny, “Fears of new Delta COVID-19 variant as hundreds of migrant workers return to Cambodia” ([CamboJA](#), 7 July 2021).

provide information and encourage debate, and undermines the media's function as a key pillar of democracy.

Journalists' access to information during the COVID-19 pandemic

The COVID-19 pandemic seems to have exacerbated journalists' struggle to access information. One journalist interviewed for this report said that accessing information pertaining to COVID-19, and especially to COVID-19 vaccines, was difficult.

On 7 February 2021 for instance, two VOA journalists, Mono Khan and Socheata Hean, were barred by security forces from entering the Phnom Penh International Airport to cover the shipment arrivals of the Chinese Sinopharm vaccines. The authorities claimed the journalists were "not invited" to report on the incident. The journalists reported that the MOI told them two days earlier that they would only need to bring their press IDs to report on the event. Despite presenting their IDs, the pair were still barred from reporting on the vaccines' arrival.¹²⁴

Further, on 3 May 2021, the MOI announced that only state media and journalists invited by the Government could report from Phnom Penh's red zones, explaining that public health was their primary concern. The Ministry spokesman justified this announcement by saying that red zones were like war zones, and that the State would take the risk to report from there for the public.¹²⁵ Some journalists suggested that the MOI's statement showed there was discrimination in favor of government-friendly outlets. This sentiment was echoed during a high-level forum titled "How can we ensure that information remains a public good in times of COVID-19?" held a few weeks later on 27 May 2021, during which a Reuters correspondent expressed frustration about the MOI's decision, deploring that "*all journalists didn't get the same rights.*"¹²⁶ He added that journalists in search of comprehensive information could not limit themselves to press releases from ministries, and should be allowed to be in the field to access information and cover the news.¹²⁷ Another journalist expressed her wish to see all media outlets, regardless of their editorial policy, have the freedom to cover events.¹²⁸

Limited access to information on land and environmental matters

Land rights have long been – and continue to be – a prominent issue of contention in Cambodia. The apparent widespread violations of land rights and the opaque practices that surround extractive industries and development projects underline the need for access to information. Transactions involving a country's land and natural resources should be concluded with the interests of the people in mind, free from corruption and in line with legal requirements.

Despite this, as mentioned above, two journalists revealed how difficult they found it to access information pertaining to land rights. Authorities' reticence to share information pertaining to land

¹²⁴ This incident was reported to CCHR by VOA directly. It was not reported in the media.

¹²⁵ Mech Dara, "Red zone news reporting is invited only: information ministry" ([VOD](#), 3 May 2021).

¹²⁶ Seng Reaksmey, "UNESCO discusses press freedom in C-19 times" ([Khmer Times](#), 28 May 2021).

¹²⁷ Sem Vanna & Teng Yalirozy, "COVID-19 Press Coverage in Cambodia Faced with Limited Access to Facts and Places, Reporters Say" ([Cambodianess](#), 29 May 2021).

¹²⁸ Ibid.

and environmental matters does not only hamper journalists: an environmental science student interviewed by UNESCO on the occasion of International Day for Universal Access to Information in September 2021 revealed that he struggled to access information related to the environment, air pollution, water pollution and wastewater treatment for his thesis proposal. He said that institutions and research centers put him through “many processes” to request this information and sometimes still declined to grant him access to it.¹²⁹ This seems to suggest a deliberate attempt by the RGC to conceal its dealings on the sensitive subject of land rights and environmental matters, in violation of the right to access information. The non-disclosure of information on these topics stems from the ruling elite’s presumption that consultation and the sharing of information on these matters may slow Cambodia’s economic growth. However, on the contrary, well-managed revenue raised from the resources within Cambodia could help it to develop. In fact, the Extractive Industries Transparency Initiative recognizes that public access to information can help a country avoid the “resource curse”: the paradox that countries and regions with an abundance of natural resources suffer from less economic growth and worse development as a result of different factors, including resource mismanagement and corruption – whilst improving its investment climate and promoting greater economic and social stability.¹³⁰

Improvements in court transparency

The transparency of court procedures is as much an issue of fair trial rights as it is an issue of access to information. The right to a public judgment is key to ensuring transparency and accountability, as it limits the judges’ ability to act arbitrarily. It is also important in terms of access to legal information, as it allows the public to know what type of behavior is, or is not, prohibited under the law. Transparency International therefore considers that, although subject to exceptions, the right of access to court files is a manifestation of the right to information.¹³¹ Ensuring access to judicial proceedings is not only crucial to counter corruption, but is also central to sustainable development.¹³² The UN recognizes that “*broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development.*”¹³³

Judiciary transparency still leaves much to be desired in Cambodia. While the Constitutional Council regularly publishes its decisions,¹³⁴ those from other courts are largely impossible to access. However, one notable improvement should be noted: in early January 2021, the MOJ’s spokesperson announced “the start of the publication of verdicts”, including in criminal cases.¹³⁵ This is a welcome development, which should be cautiously lauded while awaiting its concrete implementation.

Lack of budget transparency

Budgetary transparency is linked to how public resources are spent and is a key area of potential corruption. The most up-to-date Open Budget Survey (“OBS”) of the International Budget

¹²⁹ UNESCO Cambodia’s Facebook page, ‘Sem Danuch, Environmental Science Student’ ([UNESCO](#), 1 Oct. 2021).

¹³⁰ EITI, “The resource curse revisited”, ([EITI](#), Aug. 2015).

¹³¹ Guillaume France, Transparency International Anti-Corruption Helpdesk Answer, ‘Transparency of court proceedings’ ([TI](#), 30 September 2019), page 1.

¹³² *Ibid*, page 5.

¹³³ UN General Assembly, “Resolution 66/288: The Future We Want”, (UN Doc [A/RES/66/288](#), 11 Sept. 2012), para. 43.

¹³⁴ [Website](#) of the Constitutional Council of Cambodia.

¹³⁵ Niem Chheng, “Courts’ decisions now published as reference source” ([Phnom Penh Post](#), 4 Jan.2021).

Partnership's Open Budget Initiative ranked Cambodia at 32/100 in 2019.¹³⁶ To obtain this ranking, the OBS measures the extent to which the public has access to information on how the government raises and spends public resources, by assessing the online availability, timeliness and comprehensiveness of eight key budget documents. While all eight documents were published on time by the RGC in 2019, their comprehensiveness left something to be desired, explaining Cambodia's low score. This score – although substantially higher than Cambodia's 2017 score (an abysmal 20) – remains far below the score of 61 and above which indicates that a government is publishing enough material to enable informed public debate on the budget. This is problematic as a lack of access to key information about a country's budget makes it very difficult to verify that the money is being spent for the benefit of the people.

Promising developments towards the adoption of a Law on A2I

It has been years since the RGC publicly declared its commitment to the right of freedom of information. In 2003, the Legal and Judicial Reform Program acknowledged "*free access to information ... as a fundamental pre-requisite for a functioning liberal democracy.*"¹³⁷ In 2004, strongly encouraged by donor countries, the RGC acknowledged the need for a freedom of information law, with the goal of creating a transparent government, reducing corruption and promoting confidence in the government.¹³⁸ At the time, the RGC stated that it aimed to develop such a law by 2006. A decade and a half later, this law has yet to see the light of day. However, the last four years have seen the process finally gain momentum and a law might be adopted soon.

The MOI was tasked in 2013 with drafting the law. A technical working group consisting of MOI's officials, the United Nations Office of the High Commissioner for Human Rights ("OHCHR"), UNESCO, civil society, and journalism experts was formed with the aim of creating the first draft of the law.¹³⁹ Members of the working group were trained by UNESCO, in close cooperation with the MOI, to "*equip them with the tools and knowledge to develop and debate a legislation which is applicable to Cambodia and has a sound basis in the country context.*"¹⁴⁰

In August 2019, the final revision of the draft law by key ministries was concluded.¹⁴¹ In May 2021, the MOI pledged to finish its consultations on the draft law with the MOJ "*soon*", and said the draft would be submitted to the Council of Ministers and the National Assembly for approval in 2021.¹⁴² On 28 September 2021, on the occasion of International Day of Universal Access to Information, the Minister of Information said the draft law had been finalized and was awaiting a final review by the MOJ to ensure its compliance with the Constitution before being submitted to the National Assembly for a vote.¹⁴³ After years of consultations and amendments, the draft law went from having only 32 articles

¹³⁶ International Budget Partnership, "Open Budget Survey 2019: Cambodia", ([OBS](#), 2020): The Open Budget Survey is part of the [Open Budget Initiative](#) is a global research and advocacy program led by the International Budget Partnership to promote public access to budget information and the adoption of inclusive and accountable budget systems.

¹³⁷ Council for Judicial Reform, 'Legal and Judicial Reform' ([CLJR](#), June 2003), page 10.

¹³⁸ MoNASRI, "Access to Information: A clear policy framework for Cambodia" (22 July 2007) page 4.

¹³⁹ Ry Sochan, "Gov't reviews access to information law draft" ([Phnom Penh Post](#), 4 July 2019).

¹⁴⁰ UNESCO, 'Working Towards an Access to Information Law in Cambodia: Bridging the Government and Citizens for Participatory Law-Making' ([UNESCO](#)).

¹⁴¹ Voun Dara, "Information access law to be finalized next month" ([Phnom Penh Post](#), 21 Aug. 2019).

¹⁴² Ry Sochan, "Access to information law set to be approved this year, ministry pledges" ([Phnom Penh Post](#), 28 May 2021).

¹⁴³ Ry Sochan, "Info access draft law all set for final review" ([Phnom Penh Post](#), 28 September 2021).

and nine chapters to having 42 articles and 10 chapters.¹⁴⁴ As previously highlighted in this report, this initiative is most welcome. However, further efforts must be made by the RGC to ensure that the Law on A2I fully complies with international human rights standards.

Despite these recent efforts, the right to access information is far from entrenched in Cambodian society. On the one hand, a patriarchal tradition means that many Cambodians are reluctant to ask for information or do not see it as the role of the citizen to interfere with the affairs of the authorities, though this is slowly changing. On the other hand, the government seems reluctant to share information, viewing its activities as the business of those in power, and leading to claims that it sees itself above responsibility and beyond accountability. A change of behavior, both from citizens and from authorities, is needed to ensure people are granted comprehensive access to information.

V. Conclusion and Recommendations

The rights to freedom of expression and press freedom have taken a hard blow between 1 September 2020 and 31 August 2021, with journalists and HRDs being frequent victims of the RGC's ongoing bid to silence critics. Judicial harassment, physical attacks, self-censorship and intimidation are just some of the threats faced by those who dare to speak out about sensitive issues or voice opinions critical of the RGC. As for the right to access information in Cambodia, areas of improvement remain to fully realize it. While the RGC's draft Law on A2I is a step in the right direction, too many barriers remain for this right to be fully respected and protected, and Cambodia still has a long way to go before the right to access information is fully upheld. This unsatisfactory situation is concerning in light of the fast-approaching commune elections in 2022 and general elections 2023. While freedom of expression, press freedom, and access to information must be upheld and respected at all times, they take on a special significance during election periods, a time during which citizens must be able to exercise their fundamental freedoms, including their freedom of expression, and access reliable information, in order to meaningfully participate in their country's political life and make informed decisions about their leaders.

Human rights can only be upheld and a flourishing democracy can only thrive if every citizen is free to exercise their right to freedom of expression which is, along with its two corollaries - press freedom and access to information - a catalyst for other rights. In 1991, Cambodia signed the Paris Peace Agreements, pledging to protect human rights and fundamental freedoms and promote democracy in the Kingdom. Thirty years later, such a promise has not been fulfilled and Cambodians long for a just society in which their rights, including the right to freedom of expression, are fully upheld.¹⁴⁵ It is therefore paramount that the RGC urgently redresses the declining situation of freedom of expression in Cambodia. Concrete action is needed to turn these commitments into reality.

CCHR therefore encourages the RGC to take concrete measures to fulfill its international human rights obligations and makes the following **recommendations**:

¹⁴⁴ Sar Socheath, "Law on access to information awaits endorsement from Justice Ministry" ([Khmer Times](#), 29 Sept. 2021).

¹⁴⁵ CCHR, "Briefing Note: Cambodia's Fulfillment of the Paris Peace Agreements, 30 Years later," ([CCHR](#), Oct.2021).

1	Discard the NIG Sub-Decree, in line with Cambodia’s obligations under the Constitution and international human rights law to ensure that the right to freedom of expression and to access information of all individuals is protected in Cambodia.
2	Undertake inclusive and legitimate consultation with stakeholders with a vision to amend the State of Emergency Law to bring the law into compliance with its human rights obligations.
3	Amend the draft Law on A2I to align it with international human rights standards regarding access to information to ensure that the right to access information is fully upheld in the country, and promptly adopt it. Similarly, review all other existing laws that illegitimately undermine freedom of expression to bring them in line with international law, such as the Press Law.
4	Remove the <i>lèse-majesté</i> offense from the Criminal Code as it constitutes an impermissible restriction on freedom of expression according to international human rights standards and undermines freedom of expression and press freedom.
5	Cease all judicial harassment against journalists and HRDs for exercising their freedom of expression and ensure an enabling environment in which they can freely carry out their legitimate activities without fear or undue hindrance, obstruction or judicial harassment, and other forms of harassment.
6	Immediately release all journalists and HRDs imprisoned for exercising their freedom of expression and drop charges against them, such as the recently convicted Mother Nature Cambodia environmental activists, among others.
7	Ensure that attacks and crimes committed against journalists and HRDs are concretely, thoroughly and independently investigated, and that perpetrators are brought to justice to put an end to impunity for crimes committed against journalists and HRDs to enable them to work safely.
8	Cease threatening and intimidating journalists who report on issues deemed “sensitive” such as the COVID-19 pandemic and land disputes to ensure that journalists can conduct their essential role of informing the public on any matter of public interest, regardless of how the RGC perceives these issues.
9	Encourage media pluralism and diversity by permitting independent media outlets to investigate and report on all issues of public importance without fear of repercussions from the government, to create an open media landscape where divergent opinions and ideas can circulate freely and be accessible to the public.
10	Abolish the requirement for media outlets to obtain a license from the MOI before being able to publish, and establish an independent media regulatory body that is separate from the RGC to ensure media regulation is conducted in respect of press freedom and in all impartiality.

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| 11 | Ensure that all government departments, public bodies, and private bodies with public functions adhere to the principle of maximum disclosure and approve requests for information disclosure, particularly from journalists, from government-held records to enable information of importance to the public interest to circulate freely in the country and increase transparency and accountability of the RGC's actions. |
| 12 | Take meaningful steps to eliminate discriminatory attitudes towards female journalists and women human rights defenders through <i>inter alia</i> gender-sensitivity trainings and educational campaigns, to enable them to exercise their freedom of expression and conduct their legitimate work free of discrimination. |

VIII. Annexes

1. Detailed legal analysis on the Draft Law on Access to Information
2. Questionnaires for journalists and HRDs

ANNEX I: FULL LEGAL ANALYSIS OF DRAFT LAW ON ACCESS TO INFORMATION

In order to adequately protect the right to access information, the draft Law on A2I must adhere to international laws and standards and any restrictions imposed on access to information must pass the three-part test set out by Article 19 (3) of the ICCPR. Access to information hinges on the principle that information of the State belongs to the public.¹⁴⁶ Limitations on the right to access information must be applied narrowly and strictly so that they do not jeopardize the right itself¹⁴⁷ and allow for the free flow of information and ideas. Any non-disclosure of information must therefore be seen as an exception to the right to access information and therefore justified by authorities on a case-by-case basis.¹⁴⁸

While the Law on A2I drafted by the RGC contains various positive provisions, there are also some areas for improvement in order for this future piece of legislation to fully comply with international standards on the right to access information.

Article 1 of the draft Law on A2I guarantees the right of the public to access information held by public institutions. Article 4 provides a definition of public Institutions, which include ministries/institutions, or “*other entities performing public functions*” including national and subnational administration, created by law or/and other regulations. This is in accordance with international standards.¹⁴⁹ However, this definition could be strengthened by also including “*private bodies operating with public funds*” into the definition.

Article 3 provides that the law is applicable to all pieces of information detained by public institutions across the Kingdom, except “*confidential information as stipulated in the prohibition provisions.*” **Article 4**, which defines several technical terms that clarify the scope of provisions within the draft Law on A2I, defines the term “confidential information” as “*information that public institutions cannot disclose to the public.*” This definition fails to meet the legality requirement of the three-part test as the language used is broad and vague, making it difficult for individuals to determine what kind of information is considered confidential. This imprecise language can lead to the arbitrary denial of access to information without first conducting a case-by-case analysis on whether the requested information is, in fact, confidential and subject to permissible non-disclosure.

Moreover, the language of what constitutes “confidential information” is an absolute definition which could result in the over-classification of what authorities may deem “confidential” without first assessing whether disclosure of the information would pose a substantial risk of harm to a legitimate State interest as defined in Article 19(3) of the ICCPR, thus failing to meet the necessity and proportionality requirement of the three-part test. Even if a legitimate State interest is invoked, the public’s right to know necessitates

¹⁴⁶ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the right to access to information, (UN Doc [A/68/362](#), 4 September 2013) para. 50.

¹⁴⁷ UNHRC, General Comment No.34, (n 10), para 21.

¹⁴⁸ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the protection of sources of information and whistle-blowers” ([UN Doc A/70/361](#), 8 September 2015) para 8.

¹⁴⁹ UNHRC, General Comment No. 34, (n 10), para.18.

an individualized analysis on whether the public interest outweighs the potential harm to the State.¹⁵⁰ While some information may be classified as “confidential” or “private,” if it exposes high level government corruption or human rights abuses, the interest of the public to know such information outweighs the potential substantial harm to the State. In such a case, the law should be amended and provide for disclosure of the information for the public good. The wording of Article 4, as it currently stands, would completely bypass this case-by-case analysis and permit authorities to arbitrarily claim information that may be pertinent to the public as confidential and impermissibly deny disclosure.

Article 6 is an overall positive provision that explicitly recognizes the principle of maximum disclosure in compliance with international standards. However, the wording of Article 6(5) gives rise to concerns that legitimate information in the public interest could be arbitrarily denied disclosure. **Article 6(5)** requires the regular and broad dissemination of information of all aspects of public institutions, court functions and procedures, and administrative affairs except for “*some prohibited procedures or regulations*.” For the same reasons as those listed above, Article 6(5) fails to meet both the legality and the necessity and proportionality requirements of the three-part test of Article 19 (3) of the ICCPR. The article does not sufficiently describe what constitutes “*prohibited procedures or regulations*”. Further, it permits authorities to refuse disclosure of information without weighting the potential substantial harm of the legitimate aim against the public interest. Such a provision could be used to conceal wrongdoings of governmental institutions, corruption, and human rights abuses, undermining the public’s right to information.

In addition, Article 6 could also be further strengthened by adding a clause identifying information of public interest that authorities should proactively publish without awaiting information requests in order to meet the obligation of authorities to proactively publish information of public interest as recommended by international standards.

Article 10 guarantees the right to request information from public institutions information for all, without discrimination. However, **Article 11** details the procedure to follow to request information from public bodies. According to this article, requestors are required to complete an application form. According to international human rights standards, access to information should be easy, prompt, effective and practical.¹⁵¹ Information requests should therefore be made through any written format, such as a letter or email. Further, Article 11 imposes citizens to provide their age, sex, nationality and occupation. This requirement provides ground for discrimination based on age, sex, nationality or social status in providing information and has therefore the potential to undermine the right to access information of certain groups of citizens.

Article 15 provides for the conditions in which public institutions can deny the provision of requested information. However, this article fails to explicitly require that the reasoning behind disclosure refusals be provided to requestors, which contravenes international human rights standards.¹⁵²

¹⁵⁰ UN Commission on Human Rights, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, ([UN Doc E/CN.4/2000/63](#), 18 January 2000) Annex II, page 60.

¹⁵¹ UNHRC, General Comment No.34, (n 10), para.19.

¹⁵² Ibid.

Article 19 describes the procedure that public officers must follow to provide the information requested and sets fees for the delivery of the information in writing, sound, picture or any other format. While international standards do not prohibit fees for information requests, such fees must be reasonable to not impede citizens from accessing information.¹⁵³ Article 19 does not set the applicable fees and instead leaves the fee schedule to be prescribed through an Inter-Ministerial Prakas, which is problematic as the Prakas will not have the same parliamentary scrutiny as primary law does.

Article 20 sub-sections 1-4 lists detailed exceptions whereby authorities may refuse disclosure of requested information. The types of information that can be withheld encapsulate information that “*causes harm or damage*” to national security and defense matters, foreign or international relations, national economy and finance, criminal investigations, law enforcement, and court confidentiality.

The vague terminology of “*causes damage or harm*” is a low threshold test and permits authorities to subjectively and broadly determine the types of information subjected to non-disclosure. Article 20 could therefore be used to conceal critical information from the public, in violation of the legality requirement of the test.

When a legitimate aim is invoked, authorities still have an obligation to undertake a case-by-case public interest analysis to justify non-disclosure. The protection of national security and public order are legitimate aims that can permit restrictions under Article 19(3) of the ICCPR, but even if disclosure of information could cause substantial harm to a legitimate aim, the information must be disclosed if the benefits of disclosure to the public outweigh the potential harm to the State.¹⁵⁴ Thus, if the benefits of the public interest outweigh the potential harm to the legitimate aim, the law should provide disclosure of the information. Article 20 (1-4) fails to prescribe a consideration of whether substantial harm would be inflicted by the release of the requested information, bypassing the individualized public interest analysis, in violation of the necessity and proportionality requirement of the test. As such, authorities could arbitrarily deny a wide range of information requests that may be important to the public interest, such as documented human rights violations. An individual’s right to obtain information on the circumstances of a human rights violation gives effect to other rights such as due process and the right to remedies. The overriding public interest in the disclosure of human rights violations is subject to a high presumption of disclosure and States must ensure the dissemination of this information.¹⁵⁵ The absence of a public interest test within Article 20 (1-4) could permit authorities to exploit the expansive language of this provision to issue impermissible blanket refusals of information pertaining to human rights abuses committed by public bodies or officials, which harms the public interest, weakens governmental institutions, and undermines the right of access to information.

¹⁵³ Ibid.

¹⁵⁴ UN Commission on Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (UN Doc [E/CN.4/2000/63](#), 18 January 2000) Annex II, page 60.

¹⁵⁵ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the right to access to information, (UN Doc [A/68/362](#), 4 September 2013) para. 37 and 40.

Particularly, Article 20(1) permits authorities to refuse disclosure of information that is harmful to national security. The protection of national security is a legitimate exemption for disclosure of information but requires nuance and cannot be used as a blanket justification to deny information disclosure. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression clarified that the most secure nations adhere to their human rights obligations and a persistent denial of information related to human rights abuses under the justification of national security significantly weakens public trust.¹⁵⁶ Thus, information related to human rights abuses, especially when conducting investigations for rights violations,¹⁵⁷ may not be withheld on justifications of national security, particularly if it would prevent accountability for the violations or deprive access to remedy.¹⁵⁸

Article 20(6) is of particular concern because it excludes all “*information classified as confidential related to internal meetings of public institutions, process of appointments and examinations organized by the public institution*” from disclosure. This provision acts as an absolute ban on all information of governmental processes and completely foregoes an analysis of whether correspondence or contents of meetings could cause *substantial* harm which outweighs the benefits to the public interest. It is likely that this blanket provision could be used to harm the public interest and conceal official corruption within the government, in violation of the legality and necessity and proportionality requirements of the three-part test.

Chief among the concerns with Article 20 is sub-section 7 which allows authorities to refuse disclosure of “*other confidential information as stipulated in the prohibited provisions.*” This Article acts as a catch-all provision to refuse disclosure of any and all information, regardless of its effects on the public interest or the legitimate aim. Exemptions must be explicit, unambiguous, and conducted through public interest analysis. Article 20(7) is neither unambiguous nor explicit and its sweeping language could be used to disregard the public interest to conceal corruption, wrongdoing, or human rights abuses, especially when committed by public officials. It therefore undermines governmental transparency and violates the first and second requirements of the test. Articles 20(6) and 20(7) are also inherently problematic because the word “confidential” is a broad and ambiguous term as mentioned above regarding Article 4 and could impermissibly permit authorities to refuse disclosure of any information.

To comply with international standards, Article 20 should explicitly include a presumption in favor of disclosure in the public interest and ensure that Article 7, which provides an explicit public interest analysis test, is incorporated throughout the draft Law on A2I, particularly Article 20. *

Articles 16 and 27 provide an opportunity of appeal for requestors in case public bodies fail to provide the information requested within the time limit set out by the law or refuse to provide the requested information without providing clear reasons. Article 27 details the appeals process. According to this

¹⁵⁶ UN Doc A/68/362, (n 87), para. 58 and 63.

¹⁵⁷ UN General Assembly, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the protection of sources of information and whistle-blowers”, (UN Doc [A/70/361](#), 8 September 2015), para. 11.

¹⁵⁸ See UN Doc A/68/362, (n 87), para 66, citing the [Tshwane Principles](#), which are guidelines created by a coalition of international CSOs and bodies which are designed as guidance for States to balance national security concerns with the right to information in their national laws.

article, an individual may first appeal their decision through the head of the public institution that initially rejected their request. If the individual receives an unsatisfactory result, they may file a complaint with the head of the institution or ombudsman located in the sub-national area where the information was requested. Finally, if still dissatisfied with the results, the individual may then begin formal legal proceedings in the capital or provincial courts of first instance.

Restrictions to access to information must be subjected to independent judicial oversight and various layers of internal governmental oversight should ensure that restrictions are strictly and narrowly tailored.¹⁵⁹ Although Article 27 provides for appeal processes to government institutions and to the judiciary in compliance with international human rights standards, the administrative appeal process appears weak as it has only a single layer and relies on existing institutions. To fully comply with international standards, the draft Law on A2I should provide for the establishment of an independent administrative oversight body specifically in charge of adjudicating appeals in instances of non-disclosure of information by public institutions.

As for **Article 26**, it protects the officers in charge of information against criminal, civil and disciplinary sanctions for their decision to provide information to the public when such provision is made within the scope of their work and position. However, the Law fails to extend this protection to other individuals who expose information that they reasonably believe, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety.¹⁶⁰ Article 26 should extend its protection to these individuals – also called “whistleblowers” – who play a critical role in exposing government wrongdoings and corruption.

Finally, **Article 33** provides for penalties in case of breaches of the law and notably sets a punishment of between 7 to 15 year’s imprisonment for staff who reveal confidential information that causes damage to national security or the economy. The jail terms defined by this law are heavy and disproportionate and should be reviewed and reduced.

¹⁵⁹ UN Doc A/70/361 (n 89), para 11.

¹⁶⁰ Ibid, para. 28.

ANNEX II: INTERVIEW QUESTIONNAIRES

Questions for journalists

1. What do you think are the biggest threats to press freedom and access to information in Cambodia nowadays?
2. Have you personally experienced restrictions / violations of your right to freedom of expression as a journalist by the RGC and/or by third parties? If so, did you file a complaint? If you did, did you obtain redress?
3. Do you feel you can do your job freely and without fear of repercussions?
4. What are some adjustments you have had to make to account for this increasingly dangerous environment for journalists?
5. Do you struggle accessing information for your articles? If so, can you please give us some examples?
6. Are there some topics you refuse to write on? If so, why?
7. Have you ever been at a disadvantage while exercising your freedom of expression as a journalist because of your gender? (for female interviewees)

Questions for HRDs

1. What do you think are the biggest threats to freedom of expression in Cambodia nowadays?
2. Have you personally experienced restrictions / violations of your right to freedom of expression as human rights defenders by the RGC and/or by third parties? If so, did you file a complaint? If you did, did you obtain redress?
3. Do you feel you can do your job freely and without fear of repercussions?
4. What are some adjustments you have had to make to account for this increasingly dangerous environment for HRDs?
5. Are there some human rights issues you refuse to advocate on? If so, why?
6. Have you ever been at a disadvantage while exercising your freedom of expression as a HRD because of your gender? (for female interviewees)