

Fact Sheet: Fundamental Freedoms Series: Closure of Newspapers



Fundamental Freedom: Freedom of Expression

Snapshot: In August and September 2011 the Ministry of Information (the “Ministry”) closed 39 Khmer-language newspapers, allegedly for holding expired licenses and, in two cases, for failing to publish their addresses. However, licensing and closure are not covered by the Press Law 1995 (the “Press Law”). An obscure 1999 sub-decree grants the Ministry the power to terminate press activities, though without any provision for conditions or process. While it is logical to close newspapers that no longer operate, such measures should be fully transparent, in accordance with due process as prescribed by law, and effected by an independent industry-specific body or the courts, otherwise such measures risk appearing to compromise the right to freedom of expression.

Introduction

This fact sheet includes an overview of the Ministry’s recent closure of 39 Khmer-language newspapers, allegedly for holding expired licenses and, in two cases, for failing to publish their addresses, and a discussion of the lack of a fully transparent legal basis for such measures and the corresponding implications for the fundamental right to freedom of expression. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Newspapers – end of the line

On 2 August 2011 the Ministry ordered two Khmer-language newspapers, *The Water and Fire News* and *The World*, both owned by the same publisher, to halt publications for failing to follow Ministry rules. Yem Noy, director of the Ministry’s Media Center Department, said that the licenses were revoked because both newspapers refused to publish their address, despite being asked repeatedly. Then, according to a Voice of America article dated 28 September 2011, on 20 September 2011 the Ministry announced the closure of 37 Khmer-language newspapers, magazines and other publications – 16 newspapers, 15 magazines and 6 bulletins – on the grounds that their licenses had expired, that none of the them had operated for a long time, some for as much as a decade, and that they had failed to provide a proper identification of their staff members or an up-to-date address (many were reportedly no longer at the addresses on their licenses, which dated back to 2002).

The Press Law and the 1999 sub-decree

The Press Law does not include any provisions regarding licensing, other than the requirement in Article 8 that each newspaper file an application with the Ministry before distribution or publication (whereupon the Ministry must issue a receipt to the relevant newspaper). There certainly seems to be no legal basis for the requirement to renew licenses. There is a requirement under Article 9 to update the Ministry with any changes in administrative information (such as relevant names and addresses) five days beforehand, but there is no mention of applicable sanctions, and certainly not the termination of activities. The Press Law does provide for penalties for breaching specific articles, but the only penalties stipulated are suspensions, fines, civil actions in court for damages, confiscations of offending issues, forced retractions, and a referral to applicable “Criminal Law” in Article 20. The only legal authorization for the Ministry to suspend or terminate press activities is provided for by Article 3 of a 1999 sub-decree on the organizing and functioning of the Ministry,

which is not primary legislation, and, more importantly, does not stipulate either the circumstances in which such powers may be employed or the process. Without the requisite degree of legal and procedural transparency, there is a danger that such measures might be viewed as draconian measures that run counter to the right to freedom of expression as provided for by domestic and international law (please see below).

Freedom of expression – domestic and international law

The right to freedom of expression is protected and promoted under Cambodian law. Article 41 of the Constitution of the Kingdom of Cambodia provides that all Khmer citizens shall have the right to “*freedom of expression, press, publication and assembly*”, while Article 35 states that all Khmer citizens shall have the right to participate actively in the political life of the nation. Article 31 states that Cambodia shall recognize and respect the Universal Declaration of Human Rights (the “UDHR”) and the covenants and conventions related to human rights, thereby incorporating the UDHR and the International Covenant on Civil and Political Rights (the “ICCPR”) into domestic law. Article 19 of both the UDHR and the ICCPR, the latter of which Cambodia acceded to and ratified in 1992, provide for the universal right to freedom of expression. Article 19 of the ICCPR recognizes that restrictions to freedom of expression are allowed in very limited circumstances, namely if they are (1) provided for by law; (2) one of the legitimate restrictions recognized by international law; and (3) necessary.

Conclusion and recommendations

While in principle there might be perfectly acceptable common sense reasons for wanting to shut down a newspaper or other publication – especially if the newspaper in question is a “shell” newspaper with no recent history of activity or publication – in taking measures that are not properly grounded in law, the Royal Government of Cambodia (the “RGC”) risks giving the impression that it is trying to clamp down on freedom of the press and on the right to freedom of expression. Furthermore, the Ministry reportedly failed to provide a proper procedure of notification to the newspapers in question, with no opportunity provided for them to renew their allegedly expired licenses prior to closure. If the closures had followed proper due legal process, and had been effected with total transparency, there would be no such grounds for concern.

As stated above, newspaper – or any other media – licensing is not currently provided for under Cambodian law, while the termination of media activities is only authorized in the obscure 1999 sub-decree, and without any provision for conditions or process. The Press Law should be amended or another law enacted to set out clearly the process for registration, the granting and renewal of licenses, and the circumstances and procedures surrounding the revocation of licenses. Furthermore, a fully independent national or industry-specific body or ombudsman should be established to control and regulate all media licensing in Cambodia – with recourse to the courts for adjudication. Such measures would go a long way towards dispelling the impression that the RGC might use licensing or other administrative issues to justify shutting down publications arbitrarily on the basis of unwelcome opinions, in breach of the fundamental right to freedom of expression.

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