Policy Brief concerning issues identified by participants at the Roundtable Discussion on Human Rights Defenders and Freedom of Expression held by on 18 September 2012, Phnom Penh

The purpose of this policy brief is to summarize the issues that were discussed during the Roundtable Discussion on Human Rights Defenders and Freedom of Expression (the “Roundtable”) organized by the Cambodian Center for Human Rights (“CCHR”) at Imperial Garden Hotel, Phnom Penh, on 18 September 2012.

The Roundtable was designed as an open forum for a wide range of civil society members including human rights activists, lawyers, media professionals, NGO workers and others to openly discuss challenges to their free expression that they have faced within the context of their work. This Roundtable Discussion was the third in a series of Roundtable Discussions on freedom of expression as part of the CCHR’s Cambodian Freedom of Expression Project, generously supported by the European Union. Forty human rights activists, lawyers, media professionals and NGO workers participated in the discussion.

As a follow up to the Roundtable, CCHR organized a dialogue on 13 December 2012 for representatives of the Royal Government of Cambodia (“RGC”) and representatives from civil society to further discuss and negotiate the issues raised during the Roundtable. As such, included in this policy brief are some points raised by participants of the follow up dialogue. CCHR invited 12 representatives of the RGC and 12 representatives from Civil Society Organizations (CSOs) to the dialogue; unfortunately only 8 participants attended, including only one representative from the RGC – a member of the Bar Association of Kingdom of Cambodia (“BAKC”).

A. Introduction

Ambassador of the European Union (“EU”) to Cambodia, Mr. Jean-Francois Cautain delivered a welcome remark to participants of the Roundtable, in which he pointed out that human rights and freedom of expression are universal values, which are at the core of European foreign policy, along with the promotion of democracy and the rule of law. These values are also enshrined in the Cambodian Constitution.

He went on to say that, both in Cambodia and within the EU there are, and always will be, individuals and groups who attack fundamental freedoms for personal or collective interests. The EU believes that,
in addition to a strong political commitment at the highest level to defend those freedoms, there is also a need for a vibrant, strong and open civil society to counterbalance such unlawful actions.

The Ambassador highlighted the United Nations (“UN”) principles on the protection of human rights defenders (“HRDs”), enshrined in the UN Declaration on Human Rights Defenders, adopted by the General Assembly in 1998. He also drew attention to the fact that the EU has itself adopted a set of guidelines on the protection and promotion of the rights of HRDs.

This policy brief is the result of the Roundtable held on 18 September 2012, and participated in by a wide range of civil society members including community activists, lawyers, journalists and NGO staffs. The Roundtable gave participants the opportunity to raise key issues that they have been facing within their line of work and to come together to look for possible recommendations, aimed at the RGC and other stakeholders, to improve the situation of freedom of expression for Cambodian HRDs. This policy brief looks at issues facing three groups: (i) Community Activists; (ii) Journalists/Media Professionals; and (iii) Lawyers.

B. Issues Raised and Discussed

(i) Community Activists, particularly those advocating for an end to land grabbing and forced eviction, are regularly targeted by the authorities and have their free expression violated. They raised the following key challenges that they face in the context of their work:

- Local authorities threaten and restrict the activities that are independently organized by activists.
- The judiciary is not independent and is regularly used as a political tool to threaten and intimidate land activists, unions, associations, etc.
- The use of violence against land activists, unions and associations when they organize advocacy activities seems to be increasing.
- Youths with independent political views are threatened and restricted from participating in any activism or expressing their opinions both inside and outside of universities.
- Most media agencies (TV/radios/newspapers) report news with no balance; for example some TV and radio channels do not report anything negative but only discuss positive actions of government.
- Some independent unions, associations and communities are not allowed to register and are therefore restricted in their conduct of activities.

(ii) Journalists/Media Professionals are faced with challenges such as low wages, lack of support when they are intimidated, bribery and corruption, lack of access to information, and fear of violence, arrest and imprisonment. They raised the following key issues they face in their profession:

- Cambodia’s press is not free and journalists/editors do not dare to criticize the RGC or those connected to the government because they are fearful of legislative harassment, extra-judicial killing, etc.
• Currently, there is no law on access to information; this makes it difficult for journalists to access true/real information from the RGC’s side. For this reason the public believes that some journalists only report on one side of the story.

• As the media is extremely important in a democracy and journalists are perceived as working on behalf of the public interest and have to take certain risks in their profession, there is a law that applies to them specifically, and that, in theory provides them with protections against some risks that are particular to their profession. The Press Law should be used in relation to journalists, in order to protect them from certain charges and to prevent unfair convictions. However, in practice Cambodian courts do not use this law but instead use the Penal Code or the outdated UNTAC\(^1\) law.

• Journalists who work for local news agencies/organizations feel unsafe when they are carrying out their work, while those who work for foreign news agencies such as the Phnom Penh Post or the Cambodia Daily feel that there are enough resources to help support staff when they face problems or get threatened.

• There is only one school in Cambodia to train as a media professional. For this reason, the professionalism of journalists is limited and this affects the quality of the news.

• Lack of cooperation from government institutions in responding to journalists’ queries and the fact that, according to article 5 paragraph 2 of the Press Law, journalists are required to write formal requests for information to government institutions and the competent official who governs the institution shall respond to the request within 30 days, make it very difficult for journalists. Newspapers are published daily; therefore a 30-day wait for each story is implausible.

• Journalists receive low wages, especially those working for local newspapers. Therefore they are more likely to take bribes from people wanting to protect or boost their reputations.

• The RGC does not appreciate the media and discriminates against journalists.

(iii) Lawyers, especially those who dare to represent human rights defenders, often face challenges that can prevent them from properly carrying out their work and putting clients at risk of unfair trial. They highlighted the following key issues that they face:

• Legal practitioners often face restrictions to their freedom of expression. For example when lawyers attempt to publicize legal analyses of their cases through the media in order to call for fair trial for their clients, they are threatened and intimidated. If lawyers represent clients who are charged for being critical of the RGC, the lawyers themselves can become a target.

• There are often delays and/or interruptions when lawyers attempt to receive case files prior to the prosecutors questioning their clients.

• New evidence that the defense lawyer(s) have not been given the opportunity to review in advance is often introduced during trials.

\(^1\) UNTAC is the acronym of the United Nations Transitional Authority in Cambodia – established to ensure the implementation of the agreements on the comprehensive political settlement of the Cambodian conflict. This transitional body was in place between February 1992 and September 1993, and its mandate included aspects of human rights, administrative restoration, election organization and rehabilitation of Cambodian infrastructure. The UNTAC Law was the criminal code put in place during this time; it was replaced by the current Penal Code in 2010.
• Lawyers and legal professionals expressed concern regarding their expression or public intervention in the form of online publications\(^2\) that relate to advice or analysis about legal issues.
• Legislation prohibits comment or criticism on court verdicts.\(^3\)
• Lawyers and legal experts are fearful of defending clients in political cases, especially land cases related to powerful people.
• Lawyers and legal experts who give legal advice to communities, for example affected by land conflicts, are often charged with incitement as a result.
• Lawyers regularly do not have access to important documents that impact on the cases of their clients. Even though, according to the Criminal Procedure Code, files related to cases should not be withheld and the lawyers in theory have the right to copy related documents at every stage, in practice lawyers can be very restricted in their access to certain information. Lawyers’ rights to access all documents that relate to their clients are invaluable to a fair and efficient defense.

Regarding the above point made by the lawyers, a member of the BAKC who was present at the follow up dialogue between civil society and the RGC on 13 December 2012,\(^4\) responded that if there is any evidence to show that the judge prevented lawyers from accessing court documents then the lawyers are welcome to file a complaint to the BAKC so that the BAKC can take action on the case.

C. Recommendations

After identifying and discussing issues surrounding freedom of expression of human rights defenders, the participants worked together to formulate the following recommendations:

_The RGC should:_

• Refrain from monitoring and restricting the activities conducted by human rights defenders and the advocacy work of the people more generally, especially youths.
• Stop using the judicial system as a tool to threaten and intimidate human rights defenders.
• Ensure that local authorities at all levels carry out their work in respect of the law, fulfill their duty to serve the Cambodian people and stop all the activities that intimidate or harass community activists or aim to prevent them from protecting their own rights.
• Adopt a clear and comprehensive law on access to information in order to oblige all government officials to respond to requests for information from journalists and especially from ordinary people who seek access to public information.

\(^{2}\) Art. 15 of Code of Ethic for Lawyer: All public or media activities by the lawyer in his or her capacity [as a lawyer] are prohibited unless in strict conformity with professional obligations. Such activities require the greatest prudence. The President must be informed and, unless impossible, consulted prior to the activities.

\(^{3}\) Article 520, 522, 523 of the Cambodian Penal Code.

\(^{4}\) This dialogue was organized by CCHR at the Imperial Hotel in order to use feedback collected at the Roundtable to lobby with RGC representatives.
• Ensure that each of the state institutions/ministries have their own spokespersons in order to deal specifically with disseminating information and dealing with queries.

**The Judiciary should:**

• Act independently and in accordance with international fair trial standards and legal principles.
• Ensure the use of the Press Law in cases involving journalists and not the Penal Code.
• Ensure correct interpretation of laws in line with international human rights standards.

**The Media:**

• Media professionals and associations should put in place an ethical code of conduct for journalists/reporters/media outlets, to guide their work and to ensure higher standards of journalism in Cambodia.
• Media outlets should do their utmost to protect journalists from arbitrary charges of defamation or disinformation.
• News agencies/outlets should build the capacity of their journalists and strengthen professionalism, for example through increased wages and emphasis on responsible reporting.

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