CCHR Briefing Note – February 2014

Media regulation and freedom of expression in Cambodia

Executive summary

This Briefing Note provides an overview of media regulation in the Kingdom of Cambodia ("Cambodia") and its implications for freedom of expression. It confirms the need for comprehensive media regulation in several key areas and for less restrictive regulation – which in practice amounts to censorship – in others. The Briefing Note begins by briefly outlining the state of freedom of expression in Cambodia and the importance of a free yet independently regulated media. It then goes on to provide an overview of the main components of traditional media regulation: licensing issues, content control, ownership rules, restrictions on media professionals and freedom of information. The Briefing Note then continues with a brief analysis of regulation of new media, including the internet and mobile phones. Comparisons with other regulatory systems abroad – namely, the United States ("US"), the United Kingdom ("UK") and France – are drawn throughout in order to consider best practices and potential reforms.

The Briefing Note concludes with comprehensive recommendations to the Royal Government of Cambodia (the "RGC") with regards to media regulation in Cambodia, and in particular with regards to licensing, content regulation, ownership and plurality, censorship of media professionals, access to information and regulation of online media. Recommendations to the RGC, among many, include:

- Amending and clarifying legislation related to licensing for media and content control;
- Establishing an independent watchdog composed of experts to regulate print media, and an independent regulatory body for broadcast media to promote diversity and restrict programming considered to be indecent or offensive;
- Establishing a public complaints procedure in order for content to be regulated with reference to the market-place rather than at the whim of the RGC;
- Implementing regulations related to the number of media that can be owned by one person or company;
- Strengthening mechanisms and legislation to ensure freedom of information; and
- Ensuring forthcoming cyber regulations respect freedom of expression and of the press online.

This Briefing Note is written by the Cambodian Center for Human Rights ("CCHR"), 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 Cambodia.

Freedom of expression and the media

The right to freedom of expression is guaranteed under Article 41 of the Constitution of the Kingdom of Cambodia (the "Constitution") and Article 31, which recognizes and respects the Universal

Declaration of Human Rights (the "UDHR"). The International Covenant on Civil and Political Rights (the "ICCPR") was ratified by Cambodia in 1992 and incorporated into domestic law.[1] Article 19 of both the UDHR and the ICCPR provide for a universal right to freedom of expression. Furthermore, Article 35 of the Constitution provides that all Khmer citizens shall have the right to participate actively in the political life of the nation.[2] It would appear that Cambodia's legislation enshrines and promotes freedom of expression: in reality, freedom of expression is not guaranteed in Cambodia, especially in relation to the media.

A free media is indispensable for safeguarding freedom of expression and the dissemination of information in a democracy. The United Nations Human Rights Committee - the body that oversees the interpretation and implementation of the ICCPR - states that *"a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression [...], it constitutes one of the cornerstones of a democratic society."*[3] Nevertheless, an essential component of promoting a free, uncensored and unhindered media is a well-designed regulatory structure which operates independently of the government, promotes diversity and plurality, and safeguards against commercial and ideological monopolies.

Such regulatory structures exist and are effective in other countries, such as in the US, the UK and France, where broadcasting is regulated by independent bodies established by statute.[4] These countries also have comprehensive legislation regulating print media and have developed independent self-regulatory systems.[5] There is no such independent regulation of the media in Cambodia. The only legislation in place to regulate the media is the 1995 Press Law (the "Press Law"), which is considered largely ineffective and has been criticized by both NGOs and foreign press on the basis that it severely restricts journalistic freedom.[6] At present the primary controlling factor in Cambodia's media landscape is censorship, both direct censorship by the RGC and self-censorship practiced by media professionals. Comprehensive independent media regulation is required to bring an end to this practice. How media regulation in Cambodia should take form is explained in detail below.

Regulation of media in Cambodia

The following section provides an overview of current regulation of media in Cambodia with regards to media licensing, content control, ownership, restrictions on media professionals, freedom of information and nascent online media regulation. For each section, comparisons are drawn with

[1] As confirmed by the decision of the Constitutional Council dated 10 July 2007, Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007).

[2] For more detailed information on the Constitution and media law, see CCHR, 'The Law on the Press 1995' (Factsheet) (September 2011) http://bit.ly/1aEQmtc.

[3] Human Rights Committee, General Comment No. 34, 102nd session, Geneva, (11-29 July 2011) (CCPR/C/GC/34), General Remark 13.

[4] The Federal Communications Commission in the US, the Office of Communications in the UK and the Conseil supérieur de l'audiovisuel in France.

[5] Note that in the US, apart from laws relating to privacy and intellectual property infringement, the press is generally self-regulated in the absence of legislation due to the protection afforded to the press under the First Amendment of the Constitution.

[6] For an example of such criticism, see Jeanne Sahadi, 'High-level CPJ mission gains access to Vietnam and Cambodia,' Committee to Protect Journalists, (1996) http://bit.ly/1m6qvvX; also see CCHR, 'An overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent' (Briefing Note) (30 October 2012) http://bit.ly/1a6bkmC.

comparative regulations in the US, UK and France. These countries are of course mature democracies in comparison to Cambodia's fledgling democracy, but for the purpose of this Briefing Note, and otherwise, it is important to look to best practices in order to formulate optimistic but comprehensive recommendations.

Media licensing

Currently editors of newspapers in Cambodia require a license from the Ministry of Information (the "MOI") before they can publish. The licensing procedure is governed by Articles 8 and 9 of the Press Law. Under these provisions, editors must submit an application (containing their background and personal details) to the MOI. Although presented as mere regulatory formalities, and despite the prohibition of pre-publication censorship in Article 3 of the Press Law, these provisions enable the MOI to make licensing decisions based on political expediency rather than the promotion of a free and diverse media and thus foster self-censorship.[7] There is no equivalent newspaper license requirement in the US, UK or France, and the respective governments cannot make a decision to prevent publication of material based on a political assessment of the editor.

All television and radio broadcasters in Cambodia also require a license from the MOI. There is no legislative guidance on the granting of such licenses, which means that the RGC effectively has total control over radio and television throughout Cambodia. The RGC can therefore restrict politically sensitive broadcasts by denying licenses and threatening to revoke licenses that have already been granted. This licensing system results in comprehensive state-censorship of all broadcast programming, which is a significant issue since radio and television are the main sources of information for the two-thirds of the population of Cambodia who are functionally illiterate.[8]

The denials of license requests are often made on spurious grounds designed to disguise political motivations. The main opposition party has been repeatedly denied radio licenses, being told that there were no frequencies available, while licenses to broadcasters sympathetic to the ruling Cambodian People's Party ("CPP") were granted simultaneously.[9] Mam Sonando, director of Beehive radio, recently applied for a digital television license and an expansion of radio reach. His application was rejected due to an apparent lack of frequency to provide, according to the MOI.[10] Mam Sonando was also told that his requests could not be fulfilled because of a 70 to 80 channel expansion of a Chinese state television network in the Yunnan Province.[11] The MOI has also rejected these requests in the name of $75,000 that Mam Sonando owes for a supposed broadcasting tax.[12]

[7] For example, the case of Ros Sokhet; a journalist who was denied a MOI license due to his previous criticism of the RGC. See CCHR, 'Repression of Expression: the state of free speech in Cambodia' (Report) (September 2013) http://bit.ly/1lBgmal.

[8] Freedom House, 'Freedom of the Press 2013: Cambodia' http://bit.ly/1dqLN6D.

[9] For further detail see Alex Willemyns 'Opposition's Demand for TV Access Crucial, Futile' *The Cambodia Daily* (5 October 2013) http://bit.ly/1m3Ka2k.

[10] Mom Kunthear 'Expansion of Beehive shot down' *The Phnom Penh Post* (15 January 2014) http://bit.ly/1cBNUoq.

[11] Chhay Channyda 'Chinese TV deal edged out Sonando: minister' *The Phnom Penh Post* (30 January 2014) http://bit.ly/1d9EXhA.

[12] Khouth Sophak Chakrya 'Mam Sonando, minister spar over b'cast 'tax'' *The Phnom Penh Post* (1 January 2014) http://bit.ly/1dRTqyH.

In comparison, the US, UK, France and Thailand all have independent regulatory bodies responsible for broadcast licensing whose procedures are governed by legislation.[13] All four countries ensure that the independent regulators operate a licensing system which promotes pluralism, transparency and non-discrimination. The commissioners are often appointed by governmental leaders, such as the president (in the US) or heads of the legislative branches (as in France) of these countries.[14] In Thailand, the eleven commissioners of the NBTC are appointed by the Senate, but require approval by the Prime Minister and King.[15] In the UK, the chair and other members of Ofcom are appointed by the Secretary of State for Culture, Media and Sport, with executives often appointed from within the organization.[16] In all of these nations, the commissioners typically have diverse backgrounds in politics or policy making, as well as some sort of connection to the telecommunications or journalism industry. In the US, members are not allowed to have any sort of financial stake in the commission's business.[17]

Content control

The content of printed media is governed for the most part by the Press Law, which at first glance appears to take a liberal approach to printed content regulation. Article 1 explicitly guarantees freedom of expression in print media, assuring *"freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the constitution."* Article 3 specifically prohibits pre-publication censorship. However, these provisions are effectively nullified by subsequent content restrictions.

The publication of anything which *"may affect the public order by inciting [...] persons to commit violence"* is prohibited (Article 11), as well as *"information which may cause harm to the national security and political stability"* (Article 12) or anything which affects the *"good custom of society"* (Article 14). These provisions are problematic due to their excessively broad, vague and undefined nature; they are open to abuse by those wishing to silence media professionals who challenge the status quo.

Moreover, the defamation provisions found in the Criminal Code of Cambodia 2009 (the "Penal Code") ensure tight control over the content of Cambodian media. Defamation remains a criminal offense and carries a fine of between 100,000 to 10 million riels ($25 - $2,500), non-payment of which is an offense punishable by imprisonment.[18] The Penal Code also provides that the insult of a public official is punishable by imprisonment and a fine, another powerful disincentive for Cambodians wishing to speak out against the authorities.[19] The retention of defamation as a criminal

[13] As mentioned above, these are: the Federal Communications Commission in the US, the Office of Communications in the UK, the Conseil supérieur de l'audiovisuel in France and the National Broadcasting and Telecommunications Commission in Thailand.

[14] CSA: 'An Independent Authority to Protect Audiovisual Communication Freedom: The Board (Collège)' http://bit.ly/1itSwOl

[15] TeleGeography: 'NBTC commissioners appointed' (6 September 2011) http://bit.ly/1iuEpaN

[16] Government of the United Kingdom, 'New Ofcom Chair Appointed' (Press Release) (18 December 2013) http://bit.ly/1eWzDiM

[17] --'FCC Leadership' *Federal Communications Commission* http://fcc.us/1esIwWi

[18] Articles 305 and 530 of the Penal Code respectively.

[19] Article 502 of the Penal Code. Provisions of this kind run counter to the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR, which advice that "*a limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinions or criticisms*." UN Commission on Human Rights, "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights" (Adopted on 28 September 1984, E/CN.4/1984/4), (The Siracusa Principles).

offense and the possibility of imprisonment are substantial deterrents for any journalists thinking of criticizing the authorities and are effective (albeit indirect) content regulations. Defamation, libel and other related offenses are not criminal offenses or punishable by imprisonment in the UK, France and the vast majority of states in the US,[20] affording media professionals the freedom to make unfettered choices about the content of their broadcasts and publications.

The Press Law and Penal Code aside, there is evidence that the RGC regularly implements ad hoc broadcasting regulations in order to ensure favorable media coverage and to prevent the dissemination of information which could be potentially damaging to the RGC — especially where highly contentious political issues, such as land rights, are concerned. On 31 January 2013, the MOI issued a new regulation which provides that broadcasters must submit a proposal to the Bar Association of the Kingdom of Cambodia (the "BAKC") if they wish to feature or interview legal commentators, and that such commentators must be specifically assigned by the BAKC.[21] The MOI states that the regulation is necessary to avoid the negative consequences of the dissemination of legal information.[22] However, since the BAKC is reported to have close links to the ruling CPP,[23] it is feared that this new provision is a form of potential censorship under the guise of legitimate regulation.

A similarly arbitrary regulation arose during the Commune/Sangkat elections of June 2012, when the MOI banned five affiliate FM radio stations from airing programming from Voice of America and Radio Free Asia, two US government-funded news agencies.[24] No state-run media outlets were placed under a similar embargo, raising concerns about the fairness of the electoral coverage and even the elections themselves.[25] More recently, in anticipation of the general election on 28 July 2013, the RGC implemented a ban on broadcasting all *"foreign-based"* programs in Khmer as well as reporting on foreigners who were campaigning to *"support or oppose"* political parties or candidates.[26] Although the ban was lifted soon after due to public outcry and international criticism, it serves as further evidence of the RGC's unbridled control of Cambodia's broadcast media, as well as its muddled and ineffectual approach to media regulation. It is also worth noting that CCHR's radio program which was being broadcasted on a national radio station in Ratanakkiri and Stung Treng provinces was cancelled four months prior to the July 2013 National Assembly elections. According to a letter sent to CCHR by the Ratanakkiri radio station, the reason for cancelling CCHR's contract was that the content of CCHR's radio program discussed and affected RGC policies.

[20] 17 States and two territories of the US consider defamation and libel to be criminal offenses, and can be charged with imprisonment; see Organization for Security and Co-operation in Europe; 'Libel and Insult Laws: A Matrix on Where We Stand and What We would Like to Achieve' p.171-174 (Vienna 2005) http://www.osce.org/fom/41958.
[21] CCHR, ADHOC and LICADHO, 'The Bar Association of the Kingdom of Cambodia must not infringe Lawyers' Free Speech' (Joint Statement) (22 February 2013) http://bit.ly/1eIwKp0.
[22] Jan Beyer, 'New Restrictions for Legal Commentators in Cambodia' *International Press Institute* (13 February 2013) http://bit.ly/1b2f8zU.
[23] See for instance, Human Rights Watch, 'Cambodia: Government Muzzles Lawyers' (11 February 2013) http://bit.ly/1eSwLHj. For background, see Phann Ana and Porter Barron, 'Hun Sen, Three Senior CPP Officials Join Bar' *The Cambodia Daily* (16 September 2004) http://bit.ly/1dGpw0w.
[24] See "BBG Decries Cambodian Government Cancellation of VOA, RFA Coverage During National Election", Voice of America (5 June 2012) http://bit.ly/1eCRQmJ.
[25] COMFREL, 'Final Assessment and Report on 2012 Commune Council Elections' (October 2012) 36 http://bit.ly/1b3A5hq.
[26] LICADHO, 'Government Censors Local Media in Lead-up to Cambodian Elections' (28 June 2013) http://bit.ly/1jHJFeT.

In the US, UK and France there is no state regulation concerning the content of printed media apart from various intellectual property, privacy and judicial investigation material restrictions.[27] All other content regulation is voluntary. For example, the UK press currently operates under a voluntary, self-regulating mechanism. The self-regulation watchdog, the Press Complaints Commission (whose rulings have no legal force),[28] is made up of representatives of the newspaper industry. Such voluntary regulation in Cambodia would allow for a balanced press whose content would be governed by media professionals and not the RGC.

In the US, the Federal Communications Commission (the "FCC") oversees the regulation of three main areas of broadcasting media: obscenity and indecency; commercial advertising by non-commercial broadcasters; and children's programming. However, the FCC does not generally act as a stringent watchdog. It is accepted that the social norms of the industry, paired with severe regulations, when applied, allow for self-regulation of the media to be effective.[29] In the UK, the Office of Communications produces the Broadcasting Code which all broadcasters must adhere to. Its main provisions relate to programming for youth under 18 years of age, harm and offense, crime, religion, impartiality, accuracy, fairness and privacy.[30] In France, content is more strictly regulated but the relevant provisions focus mainly on promotion of French culture and political pluralism.[31]

Ownership rules

Regulations ensuring plurality of ownership are considered essential components of a free and unhindered media. Plurality of ownership ensures diversity of content and prevents a nation-wide monopoly of media outlets. There is little genuine media pluralism in Cambodia and there are no effective regulations in place to encourage it.

Article 17 of the Press Law provides that no individual or company may own more than two Khmer-language newspapers but the provision is nothing more than a token gesture. There is no rule preventing media ownership by members of the RGC or the ruling CPP, or even by political parties themselves. The result is that the vast majority of Cambodian media is under the direct or indirect influence of the CPP. The most popular television station, the Cambodian Television Network, is owned by one of the Prime Minister's close associates, Kith Meng, who also owns the Cambodian News Channel and MyTV stations.[32] The Prime Minister's daughter, Hun Mana, owns the popular

[27] *Intellectual property* refers to original content created by an individual, which enables them to certain claims and rights; *privacy* refers to the ability to keep information to one's self; *Judicial investigation material* refers to objects or information that is to be used as part of a judicial proceedings and may be summoned before a court of law.
[28] See more at http://www.pcc.org.uk/.
[29] Newman, Abraham L and David Bach. 'Self-Regulatory Trajectories in the Shadow of Public Power: Resolving Digital Dilemmas in Europe and the U.S.' (2004) http://bit.ly/1iSt8EC.
[30] See more at http://bit.ly/1a5IiTY.
[31] For example, films cannot be shown on French television on Wednesdays since this is traditionally the cinema release day; broadcasters must give the same amount of airtime to different candidates during election campaigns; television programming must be at least 50% European (of which 40% must be French); and 35% of songs on radio programs must be of French origin. For more detail see Agnes Poirier, 'France can be proud of its resistance to media deregulation' *The Guardian* (16 July 2011) http://bit.ly/1b6SsPt.
[32] For more information see http://www.royalgroup.com.kh/. Chairman and CEO Kith Meng explains how his business group formed strong relationships with the government during the 1990s. The Royal Group also owns several of the largest telecommunications companies in Cambodia. For further detail of Kith Meng's relationship to Prime Minister Hun Sen, see Raphael Minder, 'Cambodia's transforming tycoon' *The Financial Times* (17 August 2008) http://on.ft.com/1m3OheK.

television channel, Bayon TV.[33] Another popular channel, Apsara Television, is owned by the sons of CPP general secretary Say Chhum and the Deputy Prime Minister Sok An.[34]

A Freedom House report suggests that the majority of the approximately 20 Khmer-language newspapers in operation are owned by individuals associated with or sympathetic to the ruling party and that editors and owners of opposition-aligned outlets are often pressured financially or legally to close their publications.[35] In 2012, a COMFREL report confirmed that *"all eleven TV stations/cables and more than 100 radio stations are either owned by the ruling government itself, by a hybrid of government and private, by members of the ruling CPP, or by tycoon allies or family members of the government and CPP."*[36] Only four independent radio stations were identified.[37]

Unlike Cambodia, the US, UK and France all operate strict media ownership rules designed to encourage pluralism. There are various rules relating to cross-ownership of different media and also rules against ownership of certain media by political parties or religious groups. For instance, the US has held a ban against cross-ownership under their FCC since 1975; although it has allowed for exceptions and waivers of the ban in certain circumstances the ban currently remains in place to "promote competition, localism and diversity."[38] The UK's Office of Communications regulates the media, and has cross-ownership rules under the 2003 Communications Act, that specifically limits the percent of media coverage that an individual or company can own. OFCOM also does not allow political parties to own any sort of media licenses.[39] France is regulated by the Conseil Supérieur de l'Audiovisuel ("CSA"), which was established in 1989 and whose mandate is "ensuring plurality in opinions expressed." The CSA monitors the merging concentrations of networks under the authority of the Broadcasting Law of 1986, and works to "protect pluralism by ensuring stakeholder diversity." The airtime allocated to political groups is monitored and approved by the CSA as well.[40]

In September 2013, the lack of regulation and plurality of the media in Cambodia led the main political opposition, the Cambodian National Rescue Party (the "CNRP"), to demand their own television station in order to counter the striking bias of existing pro-CPP and CPP-owned networks. The demand was, of course, flatly denied by the RGC who advised the CNRP to abandon the idea since they would not grant a license to a political party.[41] Such hypocrisy illustrates the need for effective media ownership legislation.

Restrictions on media professionals

Media professionals are themselves subject to restrictions under Cambodian law. As well as the requirement for editors to have MOI licenses to publish newspapers (see above), the Press Law

[33] See Sokha Cheang Sokha, 'PM appoints own daughter to assist him in govt' *The Phnom Penh Post* (10 September 2008) http://bit.ly/1d5BDnn; see also, COMFREL, 'Final Assessment and Report on 2012 Commune Council Elections' (October 2012) pp. 30 - 31.
[34] Alex Willemyns, 'Opposition's Demand for TV Access Crucial, Futile' *The Cambodia Daily* (5 October 2013).
[35] Freedom House, 'Freedom of the Press 2013: Cambodia' http://bit.ly/L3t3PI.
[36] COMFREL, "Final Assessment and Report on 2012 Commune Council Elections" (October 2012) p.30.
[37] These were Beehive Radio, Radio Free Asia, Radio Voice of America and Radio France International.
[38] See FCC, "Broadcast Ownership Rules Guide' http://fcc.us/1jQZRub.
[39] OFCOM: 'Media Ownership Rules Review' (31 July 2009) http://bit.ly/1dcEfAj.
[40] CSA: 'An Independent Authority to Protect Audiovisual Communication Freedom' http://bit.ly/1a5J7fq; CSA: 'Merger Control in the French Broadcasting Industry' (December 2009) http://bit.ly/1n2lqW2.
[41] For further detail see Alex Willemyns, 'Opposition's Demand for TV Access Crucial, Futile' *The Cambodia Daily* (5 October 2013).

contains several onerous and somewhat confusing provisions which potentially expose media professionals to severe criminal penalties in the course of their duties. It should be noted that these provisions are not regulations but censorship measures.

Article 12 of the Press Law provides that its provisions do not take into account *"possible punishment according to criminal law"* and Article 20 states that "*any act committed by an employer, editor or author of a text which violates the criminal law shall be punished according to the criminal law."* "Criminal law" in this case refers to both the United Nations Transitional Authority Code (the "UNTAC Code") and the Penal Code. However, Article 20 goes on to state that *"no person shall be arrested or subject to criminal charges as the result of the expression of opinions,"* and Article 21 provides that all previous legislative provisions relating to the press are "abrogated." This means that Article 63 of the UNTAC Code, which deals with defamation (and specifically mentions journalists, publishers and editors), will no longer apply.

The issue however is that the Article 20 exemption, combined with Article 21, contradicts the first part of Article 20 and the whole of Article 12, which states that journalists will be subject to the criminal law.[42] This confusion is dangerous since it allows for arbitrary application of different legislation in similar cases. Furthermore, although the exemption in Article 20 may provide the press with some protection, the term "expression of opinions" is not defined and such loose drafting potentially compromises the reliability of such a carve-out. These provisions leave media professionals in a precarious position and encourage an uncompromising culture of self-censorship. Careful amendments need to be made to clarify the law in order that journalists and editors may carry out their work uncensored and without fear of undue criminal prosecution.

Freedom of information

Access to information concerning public matters is essential for media organizations to properly inform the public and ensure that citizens can make balanced and educated decisions on public issues. Freedom of information regulation in Cambodia is inadequately dealt with under Article 5 of the Press Law, which provides a right of access to government-held information but also provides that such access may be restricted in certain circumstances. Although it is reported that requests for non-politically sensitive information are often readily met by government ministries, there is evidence that requests for information that is politically sensitive - and which may lead to criticism of the RGC (particularly when related to land disputes) - are frequently denied.[43] Limiting access to government-held information in this way has a seriously detrimental effect on the freedom and efficacy of all types of media.

With regards to freedom of information, the US, UK and France all have independent government agencies responsible for granting access to government-held information and the agencies are

[42] For a more detailed discussion of this please see CCHR, 'An overview of Cambodian laws relating to freedom of expression and a summary of recent case examples to show how laws are used and abused to stifle dissent' (Briefing Note) (30 October 2012).

[43] CCHR, 'Freedom of Information in Cambodia: A right to know or a culture of secrecy?' (Report) (May 2012) 22 http://bit.ly/1d3wDmz.

regulated by legislation.[44] All three countries also operate an appeal system for requests which have been denied.

The RGC has reportedly been developing stand-alone freedom of information legislation since 2004, yet no draft has been passed. The opposition Sam Rainsy Party ("SRP," which has since joined forces with the Human Rights Party to form the CNRP) submitted a draft law in 2010 but this was rejected. The SRP submitted a second draft law in January 2013, which was once again summarily rejected. ARTICLE 19 - an international NGO supporting freedom of expression - considered the initial draft to be an effective piece of legislation.[45] Its rejection by the RGC showed a true lack of political will at the time to ensure widespread access to information. Recently however, in November 2013, the RGC renewed its commitment to the adoption of a law. Prime Minister Hun Sen called on the MOI to speed up the drafting of the law and to hold a consultation with stakeholders – journalists and civil society for example – to help complete the draft.[46] This is a positive development and will hopefully contribute to a more transparent and accountable government in Cambodia.

The RGC has also established a Press and Quick Reaction Unit, and most ministries now have a spokesperson to deal with freedom of information requests. Nevertheless, concerns have been raised about those ministries who have yet to appoint a spokesperson and about the fact that, generally speaking, information supplied is often vague or simply incorrect due to poorly informed spokespersons.[47] Furthermore, if requests are denied then journalists have no recourse since Article 5 of the Press Law contains no right of appeal and there is no monitoring body. Therefore, although some efforts are being made to increase access to information, there is a need for significant improvement to be made on a statutory footing to ensure that Cambodian media is not restricted by a lack of information.

Online media regulation

Cambodia has one of the lowest internet penetration rates in Southeast Asia; it was estimated that 17-18% of the population had internet access in 2012.[48] However, at the end of 2012, the Ministry of Post and Telecommunications (the "MPTC") reported that the number of mobile phone subscriptions had reached more than 20 million - an average of 1.3 subscriptions per person.[49] This means that almost 100% of the population is believed to have a mobile phone, with almost 40% using a smart phone.[50] With such a large percentage of the population having mobile internet access, as well as the availability of other access methods (such as laptops, tablets and internet cafes), internet penetration in Cambodia is on the rise.[51] It is fast becoming an important tool for

[44] The Department of State and the Appeals Review Panel in the US, the Information Commissioner in the UK, and the Commission d'Accès aux Documents Administratifs in France.
[45] ARTICLE 19, "Cambodia: Draft Law on Access to Information" (September 2011) http://bit.ly/1gIVlJO.
[46] Meas Sokchea and Kevin Ponniah, 'Speed up FOI law, PM says' *The Phnom Penh Post* (10 November 2013) http://bit.ly/LbvgJE.
[47] CCHR, 'Freedom of Information in Cambodia: A right to know or a culture of secrecy?' (Report) (May 2012) 22.
[48] Trade and Investment Promotion Unit, "Land-lines, Mobile phones and Internet Established" *Royal Embassy of Cambodia* (London 2013) <http://www.cambodianembassy.org.uk>
[49] Anne Renzenbrink, 'Investment Options for Cambodian Telcos' *The Phnom Penh Post* (20 February 2013) http://bit.ly/KihhAf.
[50] Im Sothearith, 'Social Media Changing Cambodia's Digital Landscape' *Voice of America* (25 December 2012) http://bit.ly/1gJ0Zvx.
[51] Suy Helmkhemra, 'Cheap Data, Better Tech Putting More Cambodians Online' *Voice of America* (20 March 2013) http://bit.ly/1kBqI4j.

Cambodians to exercise their right to freedom of speech; traditional media outlets – newspapers, radio stations and TV stations – are increasingly using the internet as an additional diffusion method, with all major media already online.

Classified as "partly free" by Freedom House in 2013,[52] the internet in Cambodia remains relatively free in comparison with more traditional media, possibly due to the substantial financial, technical and human resources required to regulate it. However, the various ad hoc circulars and other arbitrary orders implemented by the RGC in recent years indicate that the RGC is anxious to increase its control of the increasingly popular medium.[53] Moreover, a plan to introduce a cyber-crimes law was announced in May 2012 and the law is currently being drafted. It is expected that the proposed law may regulate online media in line with the RGC's restrictions on more traditional media.[54]

Online versions of traditional media are typically governed by the same laws and regulatory mechanisms that apply to traditional media. In the US and France, additional regulations concern the internet, specifically to prohibit child pornography, ensure internet privacy and decrease copyright infringement. However, these regulations apply to all content on the internet, and there are no regulations specifically for online news media.

In the UK, online newspapers and websites of print media are currently regulated under the rules of the Press Complaints Commission,[55] and must follow the guidelines of the Data Protection Act of 1998 as well.[56] The Press Complaints Commissions' guidelines are the same as that of print media, and the Data Protection Act serves to ensure the lawful and secure use of the data of the people. However, current internet media regulations in the UK are in the midst of changing. In the wake of a public inquiry into press intrusion beginning in July 2011 (the "Leveson Inquiry"), thousands of people were found to be victim of phone-hacking by British newspapers.[57] In response, politicians submitted a royal charter in October 2013 that established a new, independent media regulator, to accompany current norms of self-regulation. Although publishers are not required to join this new regulatory institution, they could be subject to fines up to $1.6 million if found to be taking part in further press intrusion or have a legitimate complaint filed against them.[58] While both the Leveson Inquiry and the resulting royal charter have been criticized for not taking online media enough into account, with the Leveson Inquiry stating that "*People will not assume that what they read on the internet is trustworthy or that it carries any particular assurance or accuracy,*"[59] the new system does allow internet news websites to register with the regulatory institution, although it will likely

[52] Freedom House, 'Freedom on the Net 2013: Cambodia' http://bit.ly/19tJ1xV.

[53] For example, in November 2012, the MPTC issued a circular ostensibly to regulate access to internet cafes, which, had it been implemented, would have resulted in the closure of almost all such establishments in Phnom Penh. For details, see Kounila, Keo, "Cambodia Bans Internet Cafes Near Schools" *Global Voices* (19 December 2012) http://bit.ly/K7AJj5. It is reported that the RGC has also routinely requested Internet Service Providers ("ISPs") to block certain cites, in particular sites which are critical of the government. For further examples, see Freedom House, 'Freedom on the Net 2013: Cambodia.'

[54] Read more on cyber regulation in Cambodia: CCHR, 'Cyber Laws: Protecting freedom of expression in an age of cyber crimes' (Briefing Note) (Forthcoming; February 2014)

[55] Press Complaints Commission: "Introduction" http://bit.ly/1aUQ4AG

[56] The United Kingdom Government: "Data protection" (8 November 2013) http://bit.ly/1ilZCEz

[57] - 'Press Regulation,' *The British Broadcasting Company* (30 October 2013)http://bbc.in/1bTn8nh

[58] - 'Press regulation: Internet concerns expressed' *The British Broadcasting Company* (19 March 2013) http://bbc.in/1nGyJyv

[59] - 'Leveson tied in knots over online news regulation' *PaidContent* (29 November 2012) http://bit.ly/1blQxtt

not include smaller blogs.[60] The royal charter will be evaluated again in the lead up or aftermath of the 2015 parliament elections, where it will be seen how internet regulation has succeeded or failed.[61]

Conclusion and Recommendations

Cambodia is ranked 143 out of 179 countries in Reporters Without Border's Press Freedom Index 2013, its lowest position to date.[62] The country's lack of independent media regulations has almost certainly contributed to this fall of 26 places since last year's report. In light of the above analysis of the current media regulations in Cambodia, as well as the consideration of regulatory systems in other parts of the world, several concrete recommendations can be made for the development of media regulation in the Kingdom. The implementation of such recommendations is essential to improve the freedom of the media in Cambodia, and ultimately to improve the state of freedom of expression for Cambodian citizens.

Media licensing

In Cambodia, the MOI has the freedom to grant or deny licenses with no guiding legislation and such decisions are routinely based on political expediency rather than the promotion of pluralism and transparency. As such, CCHR makes the following recommendations to the RGC:

- Repeal Articles 8 and 9 of the Press Law;
- Remove the requirement for newspaper owners to first receive a license from the MOI before publishing;
- Establish an independent regulatory body for broadcast media which is separate from the RGC and does not answer to the RGC; and
- Draft clear and unambiguous legislative guidance on the functions of the independent body with input from civil society organizations, ensuring that transparency, impartiality and political plurality are the principal guiding factors.

Content control

The RGC continue to implement arbitrary regulations to maintain control over Cambodia's broadcast and other media. The vague and confusing provisions of the Press Law, as well as the threat of criminal proceedings for defamation and libel, result in the content of Cambodia's print media being fiercely controlled by the RGC. Broadcast media content should be independently regulated to promote political pluralism and cultural programming and/or to restrict programming considered to be indecent or offensive, but never with reference to the political attitude of the program. As such, CCHR makes the following recommendations to the RGC:

- Amend the Press Law so as to uphold freedom of the press as per the Constitution;
- Re-draft the provisions of the Press Law – specifically Articles 11, 12 and 14 – to ensure that they contain clear, unambiguous, defined terms and leave no scope for abuse;

[60] Patrick Wintour and Lisa O'Carroll, 'Press regulation rules may exclude small-scale bloggers,' *The Guardian* (25 March 2013) http://bit.ly/1fnz8Qk

[61] - 'Hold the presses: The battle over newspaper regulation rolls into the long grass' *The Economist* (2 November 2013) http://econ.st/1dkOiDi

[62] Reporters without Borders, 'Press Freedom Index 2013' http://bit.ly/19KwqUS.

- Establish an independent watchdog composed of experts in the print media sector in order to deal with print media regulation issues as a self-regulating body, drawing up a code of practice to which they adhere;
- Repeal Article 502 of the Penal Code so that officials receive no more protection than ordinary citizens;
- Establish an independent regulatory body for broadcast media which is separate and does not answer to the RGC;
- Establish a public complaints procedure in order for content to be regulated with reference to the market-place rather than at the whim of the RGC;
- Cease to implement ad hoc embargoes on programming which is deemed politically sensitive;
- Repeal the requirement for broadcasters to submit a proposal to the BAKC in order to interview a lawyer.

Ownership rules

There is a total lack of any genuine ownership regulation in Cambodia. This has led to a media dominated by the ruling CCP and a worrying absence of plurality. As such, CCHR makes the following recommendations to the RGC:

- Draft sensible and enforceable ownership rules with the input of civil society organizations;
- Ensure that political parties, politicians or anyone associated with such entities (including military personnel), cannot under any circumstances own any form of media whether directly or indirectly; and
- Regulate the number of media that one person can own and the maximum audience one media-owner can reach (in terms of readership, viewers and listeners).

Restrictions on media professionals

Media professionals in Cambodia continually work in an uncertain legislative landscape, under threat of violent attack and faced with a culture of impunity. As such, CCHR makes the following recommendations to the RGC:

- Clarify the confusion with regards the Penal Code and Press Law; legal proceedings involving journalists should be dealt with under the Press Law and not the Penal Code;
- Ensure that any violence, intimidation or other threatening behavior against journalists is properly investigated; and
- Decriminalize defamation and ensure that no prison sentences are available for defamation and related crimes;

Freedom of information

Although improvements have been made to the access of information in Cambodia, the system remains under-developed and lacks transparency. As such, CCHR makes the following recommendations to the RGC:

- Ensure that all government departments and public bodies readily provide journalists and lay persons with access to information in government held records, as prescribed by law;

- Guidance as to when access to information can be denied under Article 5 of the Press Law should be provided; such guidance should be drafted in line with the principle of maximum disclosure;
- Ensure that all ministries have spokespersons appointed to deal with questions from the public and the press, including a number of specialized spokespersons able to speak on particular issues;
- Ensure ministry spokespersons are appropriately trained and that information is made available to the spokesperson as required;
- Amend Article 5 to ensure that there is an independent review and appeals process against any request denial and establish an independent monitoring body to monitor access to information and to examine any refusals to disclose requested information;
- Ensure all freedom of information regulations are applicable to journalists operating in all sectors of the media as well as to the general public; and
- Ultimately, draft a comprehensive and robust statute dedicated to freedom of information with genuine consultation with the civil society.

Online media regulation

Although the internet remains relatively free, the RGC continues to impose arbitrary prohibitions on websites and access methods, and the imminent cybercrime law has raised fears that severe restrictions of internet freedoms will be put on a statutory footing. As such, CCHR makes the following recommendations to the RGC:[63]

- Actively promote freedom of expression online and the internet as a rich source of information for citizens;
- Ensure the provisions of the forthcoming cybercrime law only concern issues such as the blocking of child pornography/other obscene or seriously offensive content and content concerning racial/religious hatred and terrorism but never content which is deemed politically sensitive;
- Consult genuinely and broadly with the civil society on the draft cyber-crime law: and
- Establish an independent regulatory body in order to enforce any online regulation legislation**.**

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[63] For full recommendations related to the cyber law, please see CCHR, 'Cyber Laws: Protecting freedom of expression in an age of cyber crimes' (Briefing Note) (Forthcoming; February 2014)