

Technical Working Group on Cambodia's Penal Code

23 January 2006



Dear Working Group members,

RE: Draft Penal Code and Defamation

I am writing on behalf of ARTICLE 19, a human rights NGO campaigning for freedom of expression and freedom of information, regarding the penal code that is being drafted by the Technical Working Group.

We are extremely concerned about the draft provisions on criminal defamation and defamation against public officials. ARTICLE 19 has found that defamation laws, and especially those that criminalise defamation, are one of the main threats to freedom of expression in many countries. As you will be aware, there has been an alarming increase in the use of criminal defamation provisions against the media and human rights activists in Cambodia recently. In the absence of an independent judiciary, defamation laws have been repeatedly abused by the authorities to repress independent voices and government critics. This has increased self-censorship and prevented open debate.

ARTICLE 19 acknowledges that freedom of expression is not absolute and that exercise of this right is subject to restriction on specific grounds, including defamation. However, like all restrictions, the remedy must be proportionate to the harm done and not go beyond what is necessary in the particular circumstances. Furthermore, criminalising defamation does not for the most part remedy the actual harm caused to the victim because:

- it actually results in disproportionate sentences, such as imprisonment or heavy fines; and
- the proceedings result in a criminal record, which is also disproportionate and has further effects in other spheres of life.

Furthermore, as we have seen in Cambodia and other countries in the region, the police and prosecutorial machinery may be brought to bear against the media, helping the government and other public figures to silence all criticism by simply lodging complaints with the police. The “chilling” effect that disproportionate sanctions such as a custodial sentence, or even the threat of such sanctions, may have upon the free flow of information and ideas must be taken into account when assessing the legitimacy of defamation laws.

6-8 Amwell Street
London
EC1R 1UQ
United Kingdom
Tel: 44 20 7278 9292
Fax: 44 20 7278 7660
Email: info@article19.org
Web: www.article19.org

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Agnes Callamard

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ARTICLE 19
Research and Information
Centre on Censorship
(A company limited by guarantee)

Company No: 2097222
Reg Charity No: 327421

International experts and bodies have upheld the principle that imprisonment is not a legitimate sanction for defamation. The UN Special Rapporteur on Freedom of Opinion and Expression has reiterated this on a number of occasions. In his 1999 Report to the UN Commission on Human Rights, he stated:

Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied.¹

In his 2000 and 2001 Reports, the Special Rapporteur went even further, calling on States to repeal all criminal defamation laws in favour of civil defamation laws.² Every year, the UN Commission on Human Rights, in its resolution on freedom of expression, notes its concern with “abuse of legal provisions on defamation and criminal libel”.³

The UNESCO-sponsored Dakar Declaration also calls on the Member States to repeal criminal defamation laws and laws that give special protections to officials and institutions.⁴

Consequently we call on you:

- to remove the provisions for criminal defamation from the draft penal code;
- to ensure that the defamation provisions do not give special protection for public officials; and
- to ensure that libel provisions in other laws (such as the civil code) are proportionate.

I would be happy to discuss these points further with you.

Sincerely Yours,

Shailesh Kataria
Programme Director, Asia & Europe

¹ Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1999/64, 29 January 1999, para. 28.

² See Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 52 and Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2001/64, 26 January 2001.

³ See, for example, Resolution 2003/42, 23 April 2003, para. 3(a).

⁴ Dakar Declaration on Media and Good Governance, issued in Dakar, Senegal, on the World Press Freedom Day, 3 May 2005.