



Comments on certain provisions of the Penal Code in relation to international human rights standards

The following comments have been prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in order to assist the process of adoption of the new Penal Code. The comments are based primarily on Cambodia's international human rights obligations. The adoption of the Penal Code provides an important opportunity for Cambodia to strengthen its compliance with these international obligations.

The comments focus on provisions which may be problematic. This in no way implies that the text as a whole is unwelcome – the Office is convinced that the Penal Code represents an important and positive step forward in strengthening the legal system of Cambodia.

Monitoring Pre-Trial Detention

Article 204 of the Code of Criminal Procedure provides that 'provisional detention may be ordered only in case of a felony or of misdemeanours involving a punishment of imprisonment of one year or more' (*emphasis added*).

The range of prison terms indicated for the following misdemeanours in the articles of the draft Penal Code listed below will make Art. 204 of the Code of Penal Procedure impracticable: it will be impossible to ascertain, under the law, whether pre-trial detention may be ordered or not, since it will not be known whether the eventual punishment will exceed one year.

Art. 232	Threat with conditions	6 months to 2 years
Art. 233	Death threat	6 months to 2 years
Art. 236	Wilful wounding	6 months to 2 years
Art. 261	Respect due to the dead	1 month to 1 year*
Arts. 265-269	Discrimination relating to a good, a service or employment	1 month to 1 year*
Art. 270	Discrimination by a public servant	6 months to 2 years
Arts. 278 & 279	Passive and active corruption of employees	6 months to 2 years
Art. 299	Breaking and entering in private property	1 month to 1 year*
Art. 301	Electronic surveillance and recording	1 month to 1 year*
Art. 302	Illicit photographing	1 month to 1 year*
Art. 312	Malicious denunciation	1 month to 1 year*
Art. 314	Professional secrecy	1 month to 1 year*
Arts. 317 & 318	Correspondence and phone conversation secrecy	1 month to 1 year*
Art. 324	Abandoning one's family – non payment of alimony	1 month to 1 year*
Arts. 326 & 327	Visiting rights after divorce	1 month to 1 year*
Art. 343	Inciting a juvenile to drink alcohol	6 months to 2 years
Art. 344	Inciting a juvenile to beg	1 month to 1 year*
Art. 347	Abuse of parental authority	1 month to 1 year*
Art. 350	Bigamy	1 month to 1 year*
Art. 356	Theft	6 months to 3 years
Art. 383	Taking advantage from vulnerability	1 month to 1 year*

Art. 387	False auctioneering	6 months to 2 years
Art. 392	Abuse of trust	6 months to 3 years
Art. 397	Misuse or destruction of item seized or pawned	1 month to 1 year*
Art. 410	Criminal damage to property	6 months to 2 years
Art. 419	Negligent damage to property	1 month to 1 year*
Art. 427	Computer hacking	1 month to 1 year*
Art. 473	Entering into military area / building / vehicle	6 months to 1 year*
Art. 479	Leaking national defence secret	6 months to 2 years
Art. 490	Illegal carrying or transporting of gun	6 months to 3 years
Art. 491	Leaving a gun in a public space	6 months to 3 years
Art. 495	Incitement to commit a crime	6 months to 2 years
Art. 504	Rebellion against civil servants with aggravating circumstances	6 months to 1 year*
Art. 529	Non-denunciation of preventable crimes or whose effect can still be mitigated	1 month to 1 year*
Art. 531	Dissimulation of corpse	6 months to 2 years
Art. 534	Breach of seal	6 months to 2 years
Art. 536	Destruction of items under seal	6 months 2 years
Art. 543	Hit and run	6 months to 2 years
Arts. 571 & 572	Handing over to a prisoner / receiving from a prisoner, unauthorised money, correspondence, items or substances	1 month to 1 year*
Art. 599	Favouritism	6 months to 2 years
Arts. 610-615 & 618-620	Various offences related to impersonating public official	1 month to 1 year*
Arts. 632 & 633	Obtaining a document fraudulently & untrue statements	6 months to 2 years
Arts. 634-636	False and falsified documents	1 month to 1 year*
Arts. 658	Using counterfeited stamps	1 month to 1 year*
Arts. 663-665	Falsifying headed paper, using falsified headed paper and producing impersonating public headed paper	1 month to 1 year*

Whilst it may be the intention that anyone accused of a misdemeanour with a possible sentence of one year or more can be held in pre-trial detention, such an intention would seem unnecessarily harsh for those found guilty who eventually receive a sentence of one or two months, especially given that many people are held in pre-trial detention beyond the legal limit of six months for misdemeanours. The net result will be that in many cases penalties of a few months imprisonment will be meaningless. Furthermore, the matter rests with the discretion of the judge and the Code provides insufficient guidance to judges to allow this discretion to be exercised with consistency.

OHCHR recommends that the compatibility of the two Codes be clarified in order that judges can clearly decide when pre-trial detention should be imposed.

We would recommend that a distinction be made in the Code between petty misdemeanours attracting a maximum possible sentence of one year (articles marked * above) and more serious misdemeanours involving possible sentences of more than one year. The Penal Procedure Code should clarify that pre-trial detention only applies for misdemeanours involving a sentence of more than one year.

We believe that this matter is too important to be left to an instruction from the Ministry of Justice issued at a later date and that the clarification should be made through an amendment to the law.

Sentences applicable to minors

Article 39 of the draft Penal Code provides that “juvenile offenders are subject to supervision measures, educational measures, protection measures and assistance measures.

Nevertheless the court may use a penal sanction against a minor older than 14 yrs old, *if the circumstances of the offence or the personality of the juvenile justify it*” (emphasis added).

The Code does not provide clear criteria against which to decide whether the ‘circumstances of the offence’ or the ‘personality of the juvenile’ would justify using a penal sanction rather than one of the alternative measures reserved for minors. The risk is therefore high that penal sanctions will *de facto* become the norm for juvenile offenders, in contradiction with the **Convention on the Rights of the Child**, which states in article 37, that ‘arrest, detention and imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest time possible’.

OHCHR recommends that ‘the circumstances of the offence or the personality of the juvenile’ be more clearly qualified under the draft Penal Code to provide judges with clearer guidance on when a prison sentence may exceptionally be given in order to ensure that the supervision measures, educational measures, protection measures and assistance measures provided for by the Draft Penal Code remain the norm.

Balance between custodial sentences and non-custodial sentences

Under the UNTAC Criminal Provisions, the dual penalties of imprisonment or a fine were provided as alternatives: the text used the formula “AND/OR” to indicate that either a fine or a prison term or both could be imposed.

The majority of the penalties involving a fine in the new draft Penal Code provide for a term of imprisonment AND a fine, meaning that both penalties are mandatory in all cases. This considerably diminishes the usefulness of fines as an alternative to custody. In addition, considering the level of poverty in Cambodia, the impact may be massive on the increase in the prison population, as the result of the imprisonment of fine defaulters.

OHCHR recommends that the penalties of a prison term and be fine be available as alternatives, following the previous practice so that judges are allowed discretion to choose between imprisonment, a fine or both, depending on the circumstances of the case. The text should therefore be amended to include the formula “AND/OR” as appropriate.

In addition to the two main penalties (imprisonment and fine – art 43), the Code provides for two substitutes to imprisonment (community service and reprimands – art 72 to 76) and a long list of 19 complementary sentences (art 53 to 71) which may be added to the main sentence or, in some cases, substituted for the main sentence (art.100).

Prison overcrowding is among the main challenges currently faced by the General Prison Department of Ministry of Interior. Prison overcrowding results from a chain of decisions made at different stages within the criminal justice system. The Penal Code has a direct effect on prison overcrowding as it directs all decisions related to imprisonment as a penalty.

According the United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”) 1990, non-custodial measures should be used in accordance with the principle of minimum intervention (principle 2.6).

OHCHR recommends that many of the complementary sentences be available in their own right as alternatives to imprisonment. This would provide a wider range of non-custodial options, which would better take into account the need to rehabilitate offenders and the difficulties in conducting rehabilitation programmes in prison, especially in overcrowded prisons.

Effect of recidivism (repeat offending)

Committing a crime after having already been convicted of a first crime seems more serious than committing a crime after having first been convicted of a misdemeanour. Yet **article 85**, dealing with 'Recidivism in felony cases', and **article 87**, dealing with 'Recidivism through the commission of a felony after a conviction for a misdemeanour' provides for the same effect of recidivism, namely the maximum penalty is doubled for cases where the maximum prison term applicable to the new crime is equal to or less than 20 yrs, and the maximum penalty becomes life where the maximum is 30 years.

OHCHR recommends that articles 85 and 87 should better reflect the difference in seriousness between both types of recidivism.

Prohibition of Torture

Article 210 establishes torture as a separate criminal offence. This is a positive step, in line with Cambodia's international obligations under the Convention against Torture and the International Covenant on Civil and Political Rights, as well as the prohibition of torture in article 38 of the Constitution.

However, the article does not contain a specific definition explaining exactly what torture is in legal terms. This may lead to confusion or ambiguity.

Cambodia, as a party to the Convention against Torture, is bound to conform to the concept of torture set out in the Convention. Article 1 of the Convention contains a legal definition which represents the minimum of what should be considered as torture; a broader definition is acceptable but it is important to encompass the concept of torture defined by the Convention within that wider definition.

In March 2004, the United Nations Committee against Torture in Geneva specifically requested the Government of Cambodia to "*incorporate in its domestic law the definition of torture set out in article 1 of the Convention and characterize acts of torture as a specific crime, punishable by appropriate sanctions*".¹ The enactment of the Penal Code provides an opportunity for the Government to comply with this request, but unless a definition is included it will not be a complete response. Cambodia is in the process of preparing its next report to the Committee and the Committee will expect to see Cambodia complying with the recommendation it made in 2004.

OHCHR recommends that a legal definition be inserted into the text which is at least as broad as the definition in Article 1 of the Convention against Torture (see extract below).

Article 211 sets out three categories of victims of torture requiring special protection, namely: people who are particularly vulnerable due to their age; pregnant women; sick people.

OHCHR welcomes this provision if it is clear that it applies to children (under 18 years of age), given that article 37(a) of the Convention on the Rights of the Child specifically prohibits torture of children. It should be noted that the Committee on the Rights of the Child in Geneva has equated torture and cruel, inhuman or degrading treatment or punishment on the one hand with corporal punishment on the other. It may therefore be appropriate to consider adding corporal punishment or beatings as an aggravating circumstance for **articles 337, 339 and 347 of the draft Penal Code**.

¹ CAT/C/CR/31/7 at para. 7.

Article 212 sets out four instances of torture or cruelty with a specific aim or objective which will constitute torture punishable by 10 to 20 years in prison:

- torture which aims to prevent someone lodging a complaint;
- torture which aims to punish someone for having lodged a complaint;
- torture which aims at preventing a witness from providing evidence;
- torture which aims at punishing a witness for having provided evidence.

We believe that, whilst these acts deserve to be punished, the list is not complete. In particular, the provision fails to address the major cause of torture in Cambodia today: torture undertaken by the police or other law enforcement officers aimed at extracting a confession in the context of a police investigation. Another scenario would be torture aimed at extorting money or other benefits from an individual.

We would recommend that Article 212 be extended to include:

- **torture which aims to force someone to confess to guilt for a crime, regardless of whether or not he or she is in fact guilty;**
- **torture which aims to extort money or other benefits from an individual.**

With these amendments, the provisions would considerably strengthen the protections against torture in Cambodia law which is prohibited already by article 38 of the Constitution.

The Government have made efforts in recent years to improve the situation on torture in Cambodia, most notably by ratifying in January 2007 the **Optional Protocol to the Convention against Torture**. When the Prime Minister introduced the draft law to ratify this treaty in September 2006, he spoke strongly of the need to combat torture. We are sure therefore that members of all political parties will support a strong provision against torture in the Penal Code in accordance with the international standards.

In December this year, a high-level UN panel will come to Cambodia in order to visit prisons around the country and see what steps the Government has taken to combat torture. It would be excellent if the Government could say to these visitors that the Penal Code had been adopted with strong provisions against torture.

Protection of children from human trafficking and sexual exploitation

Articles 330, 331 and 333 aim to protect children from human trafficking. Art. 330 deals with provoking parents to abandon their child for a financial gain. Art. 331 outlaws acting, for a financial gain, as an intermediary between parents wishing to adopt and parents willing to abandon their child. Art. 333 prohibits substituting new-born children, simulating or dissimulating the existence of a new-born child, when this implied falsifying the birth registry. Each of these articles provide for very light penalties in comparison with the seriousness of the offences – 1 month to 6 month imprisonment, and fines from 100,000 Riels to a million Riels only.

Child trafficking practices can be extremely profitable, with potential financial gains in the range of thousands of dollars. In order for these penal provisions to provide an effective deterrent against this profitable criminal activity the penalties must be proportionate.

OHCHR recommends that the penalties applicable for the offences covered by articles 330, 331 and 333 should be considerably increased, to better reflect the seriousness of the offences and act as a real deterrent.

Since the adoption of the Law for the Suppression of Human Trafficking and Sexual Exploitation in 2008, it has become clear that there are certain gaps in the protection provided to children against exploitation of children for purposes for production and use of pornography involving minors. In particular, article 41 of the Law applies only to the distribution, sale, leasing, display, projection or presentation of child pornography **in a public place**. This means that the same activities for the dissemination of child pornography **in private** go unpunished.

It should be noted that under article 3 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which Cambodia ratified on 30 August 2002, the Government is obliged to ensure that the penal code prohibits child pornography whether in public or in private.

OHCHR recommends that a provision be inserted after articles 341 and 342 of the Penal Code relating to indecent acts against minors making it a criminal offence to distribute, sell, lease, display, project or present child pornography whether is a public or a private place.

OHCHR further recommends that the National Assembly consult with the Cambodian National Council for Children on this issue.

Provisions balancing freedom of expression against protecting reputation

Book Two of the draft Penal Code includes a chapter aimed at protecting against harm to the personality of the individual including reputation. These provisions can play an important part in guaranteeing the right of everyone to be free from unlawful attacks on their honour and reputation in accordance with article 17 of the International Covenant on Civil and Political Rights (ICCPR). However, this protection must be balanced against the equally important right to freedom of opinion and expression in accordance with article 19 of the same Covenant.

The new draft Penal Code has the potential to be more restrictive of freedom of expression than the UNTAC Criminal Provisions which have already been subject to much debate in Cambodia. The UNTAC Provisions sanctioned restrictions on freedom of expression through provisions on criminal defamation, disinformation and incitement. The new code retains criminal defamation and creates a range of additional crimes with the potential to curtail freedom of expression, including:

- Falsification of information (article 425);
- Public insult” (article 307);
- Slandorous denunciation” (article 311);
- Publication of any commentaries to put pressure on the judiciary (article 522)
- Discrediting a court decision (article 523).

The cumulative effect of these provisions, particularly if they are misapplied, could severely restrict freedom of speech.

There seems to be considerable overlap between the provisions, which could lead to persons being charged and convicted of multiple crimes leading cumulatively to long prison sentences and very high fines. **OHCHR suggests that, where possible, certain provisions be either removed or consolidated, so as to ensure that individuals cannot be convicted of multiple similar offences at the same time.**

The wording of many of the provisions is open to wide interpretation, which may lead to arbitrariness and interpretations inconsistent with the Constitution and international standards on freedom of expression. **OHCHR recommends that concepts such as “bad faith”, “putting pressure on the court”, which are open to subjective interpretation, should be precisely defined.**

Article 305: Public defamation

The recent history of the use of defamation lawsuits in Cambodia has seen an excessive use of the criminal provisions on defamation. Whilst it is legitimate for individuals to seek to protect themselves from unlawful attacks on their honour and reputation, these cases should normally be dealt with through a civil action to obtain damages which are proportional to the harm suffered. Criminal defamation, if it exists, should be reserved only for the most serious cases where the harm caused to the victim is so devastating that it threatens their personal safety or ability to lead a normal life. Politicians, because of their decision to enter into public life, should not expect to rely on criminal defamation to remedy attacks which are part of the normal democratic process.

Article 305 extends public defamation to “institutions”, not covered by the UNTAC provisions. Criminal defamation provisions, to the extent that they can be justified, should be aimed at protecting the personal reputation of individuals in accordance with the right to privacy (art. 17, ICCPR). It is inappropriate for institutions to be protected since institutions cannot possess human rights and, by the very nature as public institutions, have no right to privacy. In any democratic society, government institutions should be subject to a high level of critique and scrutiny. Where individual interests are infringed, the individual concerned should be identifiable and identified. The United Nations Human Rights Committee (the body which monitors implementation of the ICCPR) has, on a number of occasions, cautioned against the criminalization of defamation of the institution of Government and there is a growing international consensus that criminal defamation in itself represents a breach of freedom of expression except in very extreme cases where the defamation results in serious harm.

Article 305 seems to indicate that truth is not necessarily a defence to public defamation. Whilst there may be circumstances where a statement based on true facts may be defamatory, if the truth of a statement can be demonstrated, it should provide a potential defence for defamation.

OHCHR recommends that article 305 should be amended to:

- **apply only to individual human beings with the express objective of protecting their right to privacy;**
- **should be reserved for the most serious cases in which the victim has suffered devastating harm or threats to their personal safety;**
- **allow for the truth of a statement to be a potential defence for the accused.**

More generally, OHCHR recommends that defamation cases should be dealt with by the civil courts in accordance with the provisions that already exist for civil suits for defamation. Criminal defamation, if retained, should be reserved for exceptional cases where excessive harm is caused to the victim, such a threat to personal safety or life.

It should be noted that the reference in Khmer to “in a public conference room” seems superfluous since a public conference room is a public place. The French translation refers to a “public meeting”.

Article 307: Public Insult/Libel

This provision broadly corresponds to the provision on libel in the UNTAC provisions. It covers non-factual imputations. It could severely restrict freedom to express opinions, if the opinion is judged to be insulting, contemptuous or scorning – a subjective assessment.

OHCHR is concerned that this provision relies on an element of subjective assessment which will be difficult to apply in practice without seeming to be arbitrary and to restrict unduly freedom of opinion and expression. **OHCHR recommends that this provision be amended to ensure expression of opinions is adequately protected and that the right balance is struck between protecting a person’s reputation, public morals and order and unduly limiting freedom of expression.**

Article 309: Procedures for defamation and libel lawsuits

While everyone, including politicians and other persons in public life, has the right to have their reputation protected, the fundamental importance for a democracy of free, vigorous and uninhibited debate on issues of public interest² means that such persons must tolerate more robust debate than would be the case if they were private persons.

The Code makes no distinction between defamation in respect to conduct of an official acting in his private capacity and an official acting in his public capacity. From the wording, it would be possible for an institution (government) to file a lawsuit against someone who allegedly defamed a public official in respect to an act/conduct done in his private capacity.

OHCHR recommends that there should be a clear distinction between the official being defamed in his capacity as public official and in his capacity as a private individual. If his defamation relates to conduct in his private life, an institution to which the public official belongs should not be involved in bringing a law suit for the official's benefit.

OHCHR welcomes the provision in article 309 allowing prosecutors to proceed automatically “if the defamation or libel was directed against an individual or a group of individuals on the basis of birth origin, ethnicity, race, nationality or religious belief of that individual”, which conforms to Cambodia's obligations under all human rights treaties, especially the International Convention on the Elimination of All Forms of Racial Discrimination. However, **OHCHR recommends that the provision should be qualified to provide clearer parameters and avoid being too restrictive, for example by adding some form of qualification such as “if the defamation could constitute a real and actual threat to public order”.**

Provisions restricting freedom of expression in the interest of law and order

The Code includes provisions aimed at preventing individuals from exercising their freedom of expression in ways which would undermine law and order and the integrity of the legal process.

Article 311: Slanderous denunciation

This crime did not previously exist under the UNTAC Criminal Provisions. Its rationale is to avoid limited public resources being wasted on gratuitous complaints. While this is important, especially in the Cambodian context where judicial resources are limited, this provision could have an inhibitive effect on the legitimate denouncing of criminal activity if there is uncertainty or doubt as to whether or not a crime has been committed. It is important that the judicial system encourages “whistle-blowers” and does not unduly restrict freedom of expression so as to inhibit people from questioning acts which may be illegal, even if those have not been properly investigated or verified. The net effect of the provision, if it is misapplied, would be to undermine the Government's efforts to fight corruption. In a country where the courts are weak and often corrupt, the potential for this provision to be misapplied is increased, since a corrupt judge could dismiss a case based on a legitimate complaint and then charge the complainant under article 311.

OHCHR recommends that the provision be amended to provide protection to “whistle-blowers” and ensure that the provision is only applicable in cases of malicious denunciation.

² See Aduayom et al. v Togo, Communications Nos. 422-424/1990.

Article 425: Falsification of information

Whilst this provision is restricted to protection of property, it has links with the disinformation provision in the UNTAC provisions which have been frequently misapplied. The provision would benefit from some qualification in order to clarify its precise application.

Article 426: Additional punishment: Category and duration/length

The additional punishments applicable to article 425 seem excessive. For example, the complete deprivation of some civic rights seems particularly harsh. Unlike the provision on defamation, there is no explicit reference here to the media being governed by the Press Law which could mean that, if an editor or journalist is convicted of falsification of information, the State could confiscate the publisher's equipment and effectively shut down a newspaper. This has the potential to significantly undermine freedom of expression.

Article 495: Incitement to the commission of a felony

In principle, prohibiting incitement to commit or attempt to commit certain crimes has the legitimate aim of protecting the rights of others or public order in accordance with Cambodia's obligations under article 19(3) ICCPR). However, any charges in a particular case must in fact be for this purpose, and not to seek to silence critical voices. Recent practice in Cambodia has shown a tendency on the part of some courts to misuse incitement provisions to restrict certain legitimate advocacy activities.

In the case of incitement which did not in fact lead to commission of a crime, it needs to be clear that there was a realistic prospect that a crime would be committed or that public order would be threatened; some individuals are more influential than others in a community and if the alleged incitement was nothing more than ill-judged humour or bravado it law should not be enforced. Similarly, individuals should not be held to account for others' misinterpretation of statements made in good faith with no intent to incite.

Furthermore, the incitement should relate to a specific criminal provision and there should be a realistic link between the actions of the accused and the crime allegedly incited.

OHCHR is concerned that incitement charges should not be brought in an attempt to silence critical voices, including voices raising controversial or sensitive political issues. Incitement charges should only be brought, if a clear and direct link to a specific crime or an actual and real risk of public disorder can be shown. The necessary clear link between the incitement and the crime that was allegedly incited should be specified in the text to avoid arbitrary interpretations and misuse of the provision.

Cases involving media

According to articles 306, 308 and 497, cases of defamation, insult and incitement involving the press (including broadcast media) are specifically reserved to be dealt with under the terms of the 1995 Law on the Press. The Press Law explicitly protects the right of journalists to freely express opinions (article 20) and provides appropriate remedies such as retractions, even if the minimum fine is considerably higher than the minimum fine under the Penal Code for defamation.

It should be noted that articles 522 and 523, related to judicial proceedings, do not include corresponding provisions for the media, an omission which is important since article 4 of the Press Law specifically refers to reporting on the judicial process. **OHCHR recommends that provisions applying the Press Law to media reporting on judicial proceedings should be inserted after articles 522 and 523.**

OHCHR would recommend that a similar approach be taken for all other cases of defamation and libel/insult, making use of the existing provisions in the Civil Code.

Restrictions on freedom of expression aimed at protecting the integrity and independence of the courts

Article 522 prohibits the **publication of any comments to put pressure on the judiciary**. In principle, this provision aims at preserving the independence of the judiciary, an essential component of a democratic society which is guaranteed under the Constitution and international treaties. The provision corresponds to the *sub judice* rules that apply in many common law jurisdictions.

The term “putting pressure on the court” is open to very wide interpretation. Would this include, for example, a NGO statement urging a court to decide in favour of a victim or a defendant? Or an unsolicited *amicus curiae* brief submitted to the court? Or a press conference by the defendant conducted before the announcement of a verdict? Or indeed an intervention by a senior minister expressing a view on whether or not a court should proceed with a particular case?

In a country where the judicial system is acknowledged to be weak, this provision could prove problematic, if not detrimental to the Government’s own legal and judicial reform priorities. The provision could be used to restrict legitimate criticism and freedom of expression. “Comments” is a vague term. The provision should clearly define the type of actions that would constitute “interference”, recognizing that some people are more influential than others within Cambodian society: a comment from a Government minister would apply more pressure than a comment from an unknown private individual.

Like defamation and incitement, there should be a provision stating that the media is specifically governed by the Press Law.

OHCHR recommends that this provision should define more specifically what constitutes undue pressure, taking into account the ability of the accused to influence the process. An aggrieved party or other interested person should always be allowed to express freely his/her views on a case publicly, but politicians and other influential people should never be permitted to pressure the courts. Media should be governed by the Press Law.

Similarly, **Article 523** outlaws **attempts to discredit court decisions**. In a country which is acknowledged even by the Government to have a weak judiciary, this provision seems unreasonable and disproportionately restrictive of freedom of expression. Parties in a court case should always be allowed to express their views on the outcome of a court decision. This is part of the most basic understanding of freedom of speech. Expressing a view on the outcome of a court decision could not be considered as interference as the decision has already been made. Based on recent interventions reported in the press, senior members of the Royal Government could find themselves criminally liable for comments on the effectiveness of the judiciary under this provision.

OHCHR recommends that this provision should be completely removed from the Code as an unwarranted and unhelpful restriction on freedom of speech and constructive criticism of a weak judicial system. If it is retained, it should be heavily qualified with specific exclusions for the media and other commentators.

Prepared by the OHCHR Cambodia Country Office,
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Extracts from relevant international treaties and related sources

Note: all treaties have been ratified by Cambodia and are guaranteed under article 31 of the Constitution

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Convention on the Rights of the Child

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...]*

United Nations - Committee against Torture

Conclusions and Recommendations regarding Cambodia's initial report under the Convention against Torture, 2 March 2004, CAT/C/CR/31/7

[...]

7. The Committee recommends that the State party [Cambodia]:

- (a) Incorporate in its domestic law the definition of torture set out in article 1 of the Convention and characterize acts of torture as a specific crime, punishable by appropriate sanctions; [...]

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:*

- (i) *Offering, delivering or accepting, by whatever means, a child for the purpose of:*
 - a. *Sexual exploitation of the child;*
 - b. *Transfer of organs of the child for profit;*
 - c. *Engagement of the child in forced labour;*
 - (ii) *Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;*
 - (b) *Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;*
 - (c) *Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.*
2. *Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.*
3. *Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.*
4. *Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative. [...]*

International Covenant on Civil and Political Rights

Article 17

- 1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor unlawful attacks on his honour and reputation.*
- 1. *Everyone has the right to the protection of the law against such interference or attacks.*

Article 19

- 2. *Everyone shall have the right to hold opinions without interference.*
- 3. *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.*
- 4. *The exercise of the rights provided for in paragraph 2 of this article 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 necessary:*
 - a. *For respect of the rights or reputations of others;*
 - b. *For the protection of national security or of public order (ordre publique), or of public health or morals.*

Relevant decisions of the Human Rights Committee (ICCPR)

Aduayom et al. v Togo, Communications Nos. 422-424/1990, where the Committee “observe[d] that the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3.”