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ការិយាល័យនៃឧត្តមស្នងការទទួលបន្ទុកសិទ្ធិមនុស្សប្រចាំកម្ពុជា



“The use and abuse of defamation and disinformation lawsuits dangerously undermine constitutional freedoms of opinion and expression and democratic development”
says the UN human rights office

A briefing note on freedom of expression, defamation and disinformation

15 June 2009

Since April this year, not less than eight separate criminal defamation and disinformation complaints have been lodged with the Courts by some of Cambodia’s highest public authorities against Government critics. One of them was lodged, not by an allegedly aggrieved individual, but in a generic manner on behalf of “the Government”. These cases are currently under investigation by Phnom Penh Municipal Court Deputy Prosecutor, Mr. Sok Roeun. One of them was adjudicated on 8 June 2009 (see annex for details of these cases).

This recent surge in the use of criminal defamation and disinformation lawsuits filed mostly against politicians, journalists and other persons expressing their views in a peaceful manner on matters of public interest threatens to inhibit what should be a free debate and exchange of ideas and views on these matters. These actions undermine the constitutional freedom of opinion and expression which everyone in Cambodia is entitled to, and which is the cornerstone of the exercise of civil and political rights. The exercise of this right is a significant indicator of the level of protection of and respect for all other human rights in any society. No one should be afraid to express peacefully his or her views, provided this does not infringe on the rights of others. Stifling freedom of expression through the use or the threat of legal action, be it criminal or civil, especially in a context where the courts are vulnerable to executive influence, is a serious threat to democratic development which may undermine the efforts of the past 16 years to rebuild a tolerant and pluralistic environment in Cambodia. The experience in other countries shows that limiting freedom of expression, instead of addressing issues and criticism through discussion and a reasonable debate, not only provokes self-censorship but nurtures fear, frustration and anger, with the risk of leading to further conflict and violence.

At the same time, freedom of expression is not unlimited. It should be exercised in a peaceful manner, with respect towards others and their views, and not in order to advocate violence. International law is clear about the appropriate balance between the rights of free expression and debate on matters of public interest and the protection of individual reputation. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which is part of Cambodian law, states that any restriction on freedom of expression must be provided for by law, and must be necessary for respect of the rights and reputation of others or for the protection of national security or public order, or public health or morals.

Under international law, it is not sufficient that political debate on issues of public interest is expressed in strong terms, or is perceived as disrespectful of or contrary to Governmental policy, for limits on the exercise of freedom of expression to be legitimate. Open and dynamic debate on issues of public interest is part and parcel of the democratic process. Under the Constitution, the Government is responsible before its citizens for its policies and practices, and these must therefore remain open to

public scrutiny, criticism and debate. Around the world, it is increasingly recognised that political debate on issues of public interest must be protected, and that civil rather than criminal law is sufficient to protect individual – rather than Governmental - reputations in the rare cases that these are genuinely infringed upon by political debate.

When investigating the complaints lodged before it, the Municipal Court is under a legal obligation to apply these international standards and to assess each case against them.

In respect of Members of Parliament, international law recognises the special role that they have in the democratic process and in forming public opinion and debate. The very purpose of parliamentary immunity is to enable Parliamentarians to discharge their duties as elected people's representatives and law-makers without fear of retribution. A Parliament, as the name indicates, is a place in society where issues are discussed. The lifting of immunity, or a threat thereof, for no other valid reasons than to intimidate parliamentarians and stifle political or other debate shows disregard and contempt for open and democratic debate. It should be considered only in the case of the most serious offences.

Pursuing the current complaints may reverse the course of the still fragile democratic development process in Cambodia. The OHCHR recalls the international standards accepted by Cambodia and contemporary best practices with regard to defamation related disputes:

- The filing of criminal complaints in respect of public issues raised in the cases concerned is excessive and unjustified. If individuals disagree in public discussions they should first respond to the substance of the allegations and engage in a fair debate about them. If they feel aggrieved by words pronounced by others, they should resort to civil rather than criminal remedies, as the Cambodian law provides.
- It is important for the protection of the democratic space for public debate that public authorities, politicians as well as members of the public, who participate in these debates, tolerate dissenting views and do not regard them as personal attacks. There is nothing wrong in criticising public policies. This is part of a healthy democratic process and environment.
- It is inappropriate for complaints to be filed in the name of the Government. If individual officials feel aggrieved, the Courts are open to them as individuals. This practice reflects international jurisprudence on this issue and the interpretation of Article 19 of the ICCPR by the United Nations Human Rights Committee, the monitoring body of the ICCPR, which has recommended against the criminalisation of defamation of the Government.
- Any issues arising from journalistic publication of matters of public debate should be addressed as provided for under the Press Law.
- The lifting of Parliamentary immunity, or threat thereof, for intimidation purposes undermines its important value in enabling free discussion of public issues among people's representatives and law-makers. This practice should cease in respect of defamation and disinformation lawsuits.
- As independent and impartial arbiters of cases before them, judges and prosecutors, as well as professional bodies such as the Bar Association, have a professional duty to treat all cases presented to them in the order they were filed, in an equal, fair and objective manner and apply the law without discrimination or prejudice. This is an essential principle of justice not only to be delivered, but also to be seen as being delivered by all parties and the wider public.
- In 2006, the Government took the important step to remove prison sentences as a sanction for criminal defamation. A further step in strengthening the legal framework for democratic debate would be to remove defamation and disinformation from the new Criminal Code currently under preparation, so that only civil courts may address these issues. This would constitute an unequivocal confirmation of the right of all Cambodians to freedom of expression in accordance with the law and a clear recognition of the value of free democratic debate on issues of public

interest, while allowing for the reputations of individuals to be properly protected in appropriate cases through civil actions for damages.

APPENDIX

Several of the most recent instances of defamation and disinformation complaints:

1. The case of Ms. Mu Sochua against Prime Minister Hun Sen and subsequent complaint by the Prime Minister against her and her lawyer Mr. Kong Sam Onn:

On 27 April 2009, SRP Parliamentarian Ms. Mu Sochua lodged a defamation complaint against the Prime Minister for a speech he made on 4 April 2009, while in Kampot province which is her constituency. In her complaint, Ms. Sochua claims that the Prime Minister defamed her by referring to a female parliamentarian from Kampot who had allegedly embraced a General and then later complained that the buttons of her shirt had come undone. She was allegedly also referred to as having “strong legs”, reportedly a derogatory term in Khmer. While the speech did not mention her by name, Ms. Sochua claimed that she was being referred to.

On 23 April 2009, Ms. Sochua, with her lawyer Mr. Kong Sam Onn held a press conference at her party’s Phnom Penh headquarters where she announced her intention to file a defamation lawsuit against the Prime Minister. Her lawyer reportedly outlined the evidence and the grounds he would use to support her complaint.

On 27 April, the Prime Minister’s lawyer, Mr. Ky Tech, lodged a defamation complaint against Mu Sochua as well as against her lawyer for defaming the Prime Minister by claiming that he had defamed her. In addition, Mr. Ky Tech filed another complaint against Mr. Kong Sam Onn with the Bar Association for allegedly violating the code of conduct of the Cambodian Bar.

The Phnom Penh Municipal Court dismissed Ms. Mu Sochua’s complaint on 10 June. The Prime Minister’s case against Ms. Sochua and her lawyer is still actively being pursued with threats made to lift her parliamentary immunity. The Bar Association has also started to investigate alleged ethical misconduct by Mr. Kong Sam On.

2. Complaint of defamation and disinformation against Mr. Hang Chakra, editor of the *Khmer Machas Srok* newspaper:

On 21 May 2009, the Phnom Penh Municipal Court issued a summon for Mr. Hang Chakra, the editor-in-chief of the *Khmer Machas Srok* newspaper to appear in court on June 3 for questioning over a disinformation and incitement complaint lodged against him by the lawyer of the Deputy Prime Minister, Mr. Sok An. The complaint reportedly relates to several articles published on April 5 and 7 and 21 May in the newspaper, exposing possible corruption attributed to officials working with Mr. Sok An. (One article is titled “Hun Sen Has Cracked Down on Bad and Corrupt Officials Who Are Working Around Sok An”). The complaint reportedly claims that these articles could affect political stability because they were written about government leaders. According to Mr. Chakra, Deputy Prosecutor Sok Roen questioned him about the sources of the information for his articles, information Chakra has refused to disclose. Article 2 of the 1995 Press Law allows journalists to protect the identity of their sources.

3. Complaint of disinformation and incitement against Mr. Moeun Sonn, President of the Khmer Civilisation Foundation:

On 2 June 2009, government lawyer Mr. Pol Chandara filed a disinformation and incitement lawsuit with the Phnom Penh Municipal Court against Mr. Moeun Sonn, the president of Khmer Civilization Foundation for allegedly publishing untrue information related to the installation of lights at Angkor Watt, contending that heat emitted from the light installation could damage the temple walls. The government lawyer allegedly accused Mr. Moeun Sonn of using such remarks to defame the Government and to incite persons to think negatively about the Government.

4. Complaint of defamation by Municipal Governor Mr. Kep Chuktema against Mr. Sam Rainsy:

The Governor of Phnom Penh, Mr. Kep Chuktema filed a complaint on 27 May in relation to a speech Mr. Sam Rainsy reportedly gave on 14 May, in which he allegedly claimed that Mr. Kep Chuktema was involved in vote-buying for the CPP prior to the 17 May council elections. To date, Mr. Rainsy has not been summoned to the court

5. Complaint of incitement and defamation against SRP Parliamentarian Mr. Ho Vann:

On 5 June, SRP Parliamentarian Mr. Ho Vann was summoned to the Municipal Court pursuant to a complaint of defamation and incitement lodged against him on 27 April by 22 senior RCAF military officers, who were allegedly offended by a comment Mr. Ho Vann had made related to post-graduate degrees conferred on the RCAF officials by a Vietnamese military institution in April.

6. SRP youth leader sentenced to US\$ 1,250 for defamation.

On 6 June 2009, Mr. Soung Sophorn, a 22-year-old law student and local leader of the SRP youth wing was charged, arrested and convicted with defamation within three days and sentenced to pay 5 million Riels fine for having spray-painted words critical of the Government on the wall of his private house. Mr. Soung Sophorn belongs to one of the hundreds families embattled with the Shukakau company and the Municipality to defend their rights to their lands and housing in the disputed Boeng Kak lake case where 4,000 families are under threat of eviction.