

HUMAN RIGHTS WATCH

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August 25, 1995

First Prime Minister Samdech Krom Preah Norodom Ranariddh
Second Prime Minister Samdech Hun Sen

Your Excellencies:

Human Rights Watch is deeply concerned by reports that the Royal Government has pressed criminal charges against the *Phnom Penh Post* under Article 62 of Cambodia's 1992 criminal code, seeking to prosecute and fine the publisher and close the newspaper. This is but the latest in a series of government actions, both judicial and legislative, to curtail the freedom of the press and stifle the right to hold and express opinions. Indeed, the Ministry of Information has announced that it intends to pursue prosecutions of other Cambodian journalists as well. We urge you to reverse these actions and put an end to the impression that basic civil liberties in Cambodia have severely deteriorated since the 1993 elections.

Article 62 of the criminal code provides for a fine and up to three years of imprisonment for those who publish false or falsely attributed information "in bad faith and with malicious intent" when the publication "has disturbed or is likely to disturb the public peace." Each of these three elements -- falsity, malicious intent, and disturbance of public peace -- must be present for the government to charge an individual under this law.

The *Phnom Penh Post* story in question, an article by Nate Thayer in the March 24-April 6 edition titled "Security jitters while PMs away," describes various alleged security threats and measures taken by the Royal Government while the prime ministers attended the April 1995 donors' meeting. The article clearly marks many assertions as "rumor" or the opinions or statements of unnamed third parties. The law should never be used to force a journalist to disclose sources merely to prove they are genuine unless there is a highly compelling need. That is because any forced compromise of confidential journalistic sources severely curtails the ability of the press to report on and the people's right to be informed about matters of public interest, such as government abuse. In Mr. Thayer's case, far from showing a malicious intent, he contrasted many of the allegations raised by unnamed sources with statements from named government representatives. This is a standard journalistic technique, and

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demonstrates at a minimum that the author made an effort to verify and represent the government's position on the subject of the report. Nor is there any evidence that this report "has disturbed" the public peace, let alone that it will do so now, some five months after publication.

Mr. Thayer's story cited "human rights officials" as saying that recent government actions against the press, the U.N. Centre for Human Rights, and opposition politician Sam Rainsy "are the beginning of an official effort to put an end to criticism of the government that leaders say undermines its image at home and abroad as a democratic country." This is clearly a statement of opinion rather than information, and as such, could not be subject to Article 62 at all. Indeed, the prosecution of journalists for reporting such opinions serves only to deepen the impression of government abuse.

This is not the first time the Royal Government has initiated a prosecution under Article 62 on dubious grounds. Two journalists have already been convicted under Article 62 for articles that plainly purported to express opinions rather than report facts. On May 19, the editor of *Oddom K'tek Khmer* ("Khmer Ideal"), Thun Bun Ly, was fined five million riel (\$2,000) and sentenced to one year of imprisonment should he fail to pay for printing a letter to the editor titled "Stop Barking Samdech Prime Ministers." The following day Hen Vipheak, the publisher of *Serei Pheap Thmei* ("New Liberty News") was fined five million riel and sentenced to two years of imprisonment should he fail to pay for a cartoon and satire that criticized the three branches of government. A third trial, again of Thun Bun Ly, for six articles expressing opinions highly critical of the government and political figures, is now underway. These cases present a clear misuse of the law, which is narrowly drafted to apply only to misrepresentations of fact and only in circumstances when such misrepresentations are intentional or made with reckless disregard for the truth, and when a disturbance of public peace can be demonstrated. Such provisions should be invoked by the government only in the most egregious circumstances when there is no doubt as to any element of the violation.

For these reasons, we are profoundly concerned that Ministry of Information officials have in the last two days indicated the government is seeking criminal prosecution on unspecified charges of anywhere between two and five other newspapers. One of them, *Samleng Yu Vachuon Khmer* ("Voice of Khmer Youth), has already received a court summons, although the charges against it are still obscure. Indiscriminate resort to criminal sanctions will place writers in fear of imprisonment should they make honest factual errors or merely express opinions.

Criminal prosecutions are only one of the Royal Government's actions that threaten to destroy freedom of the press in Cambodia. On more than a dozen occasions over the last year, the Ministry of Information has ordered the closure, suspension, or confiscation of newspapers, in many cases relying on a 1992 press regulation that was never adopted as law by Cambodia's sovereign authority of the time, the Supreme National Council. At least three journalists have been killed in the same period in circumstances that have raised questions about official complicity; in no case has the government found and convicted those responsible. These events have instilled a climate of fear that is stifling free debate.

Nor have journalists been the only targets of government prosecutions that undermine free speech. On August 16, 1995, the Royal Government charged and jailed six men under Article 60 of the criminal code for allegedly attempting to incite a crime that was never committed, an offense which can draw up to five years of imprisonment. The accused were arrested on August 5 while trying to tie leaflets to balloons and release them during U.S. Secretary of State Warren Christopher's August 5 visit to Phnom Penh. The leaflets, while critical of government corruption and other alleged abuses, nowhere urge violence or the commission of any crime. One of the leaflets appeals to Secretary of State Christopher to "help Cambodia abide by human rights, follow democracy, obey the law and promote independence of the courts, ensure the press law can ensure freedom of expression and the right to speak out against corruption." Four of the men imprisoned, Lim Nem, Kay Vichet, Sam Soun and Sam Sophann, are balloon sellers who were hired by a fifth, Son Yin. Son Yin, in turn, assisted the sixth detainee, Sith Kosaing Sin, who was the author of the leaflets. Human Rights Watch urges the immediate and unconditional release of these men, whose actions are protected under international guarantees of freedom of expression.

We are also deeply troubled by the Royal Government's proposal and the National Assembly's adoption of a press law that would allow criminal prosecutions to continue when material "affects national security and political stability." The law also permits the Ministry of Information and the Ministry of Interior to confiscate publications or temporarily suspend publications without the approval of a court. Although this law contains many positive features, such as a prohibition of pre-publication censorship, we fear that these protections are meaningless if the threat of closure or prosecution effectively causes journalists to practice self-censorship.

A further assault on free expression is the recent expulsion and threat of expulsion of opposition legislators from the National Assembly because of their political opinions. While political parties are free to set their own conditions of membership, the request by political leaders that the National Assembly strip legislators of their position and parliamentary immunity clearly presents a serious restraint on free speech within the legislature. Sam Rainsy, an outspoken critic of the government, has not only lost his parliamentary seat, but has endured death threats, and the bodyguards he employs to protect him say they have been abducted and assaulted by government officers in an effort to coerce them to implicate Sam Rainsy as a "Khmer Rouge." Now a split in the Buddhist Liberal Democratic Party threatens yet further expulsions from the legislature, including the expulsion of the chairman of the Commission on Human Rights and Complaints.

The impression that the Royal Government endorses this pattern of intimidation and suppression of free speech is reinforced, unfortunately, by First Prime Minister Ranariddh's statement this August that "the Western brand of democracy and freedom of the press is not applicable to Cambodia." The guarantees in the Paris Accords of democracy and fundamental rights such as press freedom were not "Western" but universal, and as such were supported by each Cambodian party and eighteen nations. Freedom of expression and opinion are integral provisions in Cambodia's constitution and the International Covenant on Civil and Political Rights, to which Cambodia is a signatory.

The creation of a free press and a democratic form of government in Cambodia is still recent, and some conflicts are to be expected. However, neither the inexperience of some journalists nor the challenges of managing a coalition government are reasons to curtail universally recognized rights. It is these rights which have fostered some of Cambodia's most striking achievements: a varied and thriving press, a flourishing community of nongovernmental associations, and open debate among those of different political views.

We urge you to protect free speech vigilantly, by abandoning criminal prosecution of journalists and punitive measures against all who peacefully advocate dissenting political views. Such actions would speak loudly, and restore confidence that the Royal Government is genuinely committed to respecting universal rights.

Yours sincerely,

Kenneth Roth
Executive Director
Human Rights Watch