



FREEDOM OF EXPRESSION



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights

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About CCHR

The Cambodian Center for Human Rights (CCHR) is a non-aligned, independent, non-governmental organization that works to promote and protect respect for human rights – in particular civil and political rights – democracy, and the rule of law in the Kingdom of Cambodia.

CCHR is a member of the International Freedom of Expression Exchange (IFEX), the global network for freedom of expression, and CIVICUS: World Alliance for Citizen Participation. CCHR is also a member of the World Organization Against Torture (OMCT) SOS-Torture Network and OECD Watch.

The Cambodian Human Rights Portal www.sithi.org is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award awarded by the Centre for Communication and Social Change at the University of Queensland in Brisbane, Australia.

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About the Freedom of Expression Module

The Freedom of Expression Module has been produced as part of the Promoting Independent Media and Freedom of Expression in Cambodia Project to raise awareness for Cambodian people about freedom of expression issues in the country. This module covers the definition of the freedom of expression, the applicable legal framework, and the state's obligation to uphold the individual rights to freedom of expression.

Likewise, the module also provides a comprehensive explanation of how the right to freedom of expression is protected by the International Covenant on Civil and Political Rights (ICCPR) to illustrate the right and to provide concrete examples for the reader.

Queries and Feedback

Should you have any questions or require any further information about this module, please contact CCHR at:

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The Right to Freedom of Expression

1. Introduction

Freedom of expression is a core value in the democratic process. It ensures that people can discuss, exchange, and debate ideas as well as gain access information and share it with others without censorship or reprisals. Freedom of expression is not only a human right in itself but it also plays a vital role in the protection of various other rights. This freedom is also a necessary condition for transparency and accountability which are, in turn, essential for the promotion and protection of human rights, the rule of law, and democracy.¹



2. What is the Right to Freedom of Expression?

Freedom of expression is defined by international law as the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any means, be it orally, in writing or in print, in the form of art, or through any other chosen media. The right to freedom of expression therefore encompasses the **freedom of opinion**, **freedom of the press**, and **access to information**.



¹ General Comment No 34 to Article 19 of the CCPR, Human Rights Committee, 102nd session, July 211, page 1.

3. Legal Framework for the Right to Freedom of Expression

Article 31 of the Constitution of the Kingdom of Cambodia (“the Constitution”) incorporates international human rights obligations into Cambodian domestic law. The right to freedom of expression is therefore protected by both national and international law.²

Article 41 of the Constitution states that “*Khmer Citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to effect the good customs of society, public order and national security.*”³

Likewise, Article 19 of the Universal Declaration of Human Rights (“UDHR”) states that “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”.⁴ Article 19, paragraph 2, of the International Covenant on Civil and Political Rights (“ICCPR”), states that “*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.*”⁵

4. State Obligations regarding the Right to Freedom of Expression

The obligation of upholding the right to freedom of expression that falls onto the States comprises three components: the obligation to respect, protect and fulfill.



4.1 Obligation to Respect Freedom of Expression

The “**obligation to respect**” means that States are obliged to refrain from interfering in the enjoyment of freedom of expression by individuals and groups. It prohibits State actions that

² Cambodian Constitution. Article 31.

³ Cambodian Constitution. Article 41.

⁴ UDHR. Art 19.

⁵ ICCPR. Article 19.

may undermine the enjoyment of this freedom.⁶ For example, a State should not pass a law prohibiting any form of freedom of expression, except for some narrowly-defined exceptions (see Section 5), as it would violate the obligation to respect under the ICCPR.

4.2 Obligation to Protect Freedom of Expression

The “obligation to protect” requires States to protect individuals against abuses by non-State actors, foreign State agents, or State agents acting outside of their official capacity. A State is obliged to enact legislation protecting freedom of expression, to take action to protect individuals when it is aware (or could have been aware) of threats to this freedom and to ensure access to fair justice when freedom of expression violations are alleged.⁷ As an illustration, if a journalist is attacked by timber traders after he wrote an article on illegal logging, the State has a duty to protect the journalist. That may take the form of prosecuting the timber traders for their attack on the journalist who exercised his freedom of expression for instance. The State has the responsibility to take the appropriate measures to protect the rights of the journalist.

4.3 Obligation to Fulfill Freedom of Expression

According to the “obligation to fulfill”, States are required to take measures to ensure that the right to freedom of expression can be realized, in particular to incorporate the right to freedom of expression in its domestic law and guarantee its full enjoyment. States should create “the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full.”⁸

5. Restrictions of Freedom of Expression

Article 19, paragraph 3, of the ICCPR permits the right to freedom of expression to be restricted. To be permissible under international law, restrictions on the right to freedom of expression must be strictly and narrowly tailored and may not put in jeopardy the right itself. To determine whether the restriction is permissible, a three-part test applies: restrictions must: (1) be provided by law; (2) pursue a legitimate aim; and (3) conform to the strict tests of necessity and proportionality.



⁶ United Nation Office of the High Commissioner for Human Rights, Handbook for Parliamentarian. page 34(2016).

⁷ United Nation Office of the High Commissioner for Human Rights, Handbook for Parliamentarian. page 34(2016).

⁸United Nations Office of the High Commissioner for Human Rights, Handbook for Parliamentarian. 2016. page 34.

5.1 Provided by Law



Article 19, paragraph 3, of the ICCPR requires that restrictions on the right to freedom of expression must be provided by law. In particular, the law must be precise enough to enable an individual to regulate his or her conduct accordingly. Ambiguous or overly broad restrictions on freedom of expression are therefore not permitted. The ICCPR itself provides for two legal restrictions to the right to freedom of expression in its Article 20 by prohibiting any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.⁹

5.2 Pursue a Legitimate Aim

Interferences with the right to freedom of expression must pursue one of the legitimate aims enumerated in Article 19, paragraph 3, subparagraph (a) and (b) of the ICCPR. The only goals that may be legitimately invoked to restrict freedom of expression are: (1) respect of the rights or reputations of others; and (2) the protection of national security or of public order (ordre public), or of public health or morals. Therefore, States cannot prohibit information on the basis that they cast a critical view of the government. For instance, as such a restriction does not pursue one of the legitimate aims provided for in Article 19 of the ICCPR. Similarly, a restriction on freedom of expression cannot be a pretext for protecting the government from embarrassment or exposure of wrongdoing or to conceal information about the functioning of its public institutions.

5.3 Be Necessary and Proportional

State parties to the ICCPR are obliged to ensure that any legitimate restrictions on the right to freedom of expression are necessary and proportionate. Necessity means that there must be a pressing social need for the restriction: the State must show a direct and immediate connection between the expression it wants to restrict and the protected interest. Proportionality means that the least restrictive measure must be applied if it is capable of achieving the same purpose as a more restrictive one.



For example, if the State wants information from a website to be deleted, the State must show that this restriction is necessary to achieve one of the legitimate goals mentioned in the three-part test of Article 19 of the ICCPR and that it is proportional, meaning that it is the least-restrictive measure. While shutting down the website might achieve the legitimate goal, it would not be a permissible restriction as it is not a proportionate response. Indeed, there are other less restrictive measures that are available, such as deleting a page on the website rather than shutting down the whole website.

⁹ ICCPR. Article 20.

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