

H.E Prak Sokhon

Minister of Post and Telecommunications

Phnom Penh, Kingdom of Cambodia

28 April 2014

Open Letter from CCHR concerning Draft Cybercrime Law

Dear H.E Prak Sokhon,

The Cambodian Center for Human Rights (“CCHR”) is writing to express its serious concerns regarding certain provisions of the draft Cybercrime Law, a copy of which CCHR obtained after it was leaked to the public in early April 2014, and the Royal Government of Cambodia’s (the “RGC”) refusal to publicly release an official copy.

CCHR is concerned about a number of provisions in the draft Cybercrime Law, especially Article 28, which prohibits publications on a number of vaguely defined grounds and provides for heavy prison sentences and fines. Some of the most problematic provisions seek to prohibit content deemed to “*generate insecurity, instability and political cohesiveness*,”¹ content deemed to “*be non-factual which slanders or undermined the integrity of any governmental agencies*,”² and content “*deemed damaging to the moral and cultural values of the society*,” including “*manipulation, defamation, and slanders*.”³ These provisions are unreasonably vague and give excessive liberty to the RGC to determine which content is harmful, a dangerous strategy already in practice with the Cambodian Criminal Code 2009. Instead, the draft Cybercrime Law should clearly and explicitly state the extent of restrictions: content that is going to be deemed “illegal” must be narrowly and unambiguously defined so as to avoid the possibility of abusive judicial interpretation and any content restriction must be exceptional and absolutely necessary.

Furthermore, CCHR is concerned that Article 28 (4), which prohibits content “*undermining the integrity of any governmental agencies*,” is clearly written to provide the RGC with a weapon to silence activists and organizations that speak out against RGC policies and actions. With this provision, the Cybercrime Law could hinder the ability of civil society to monitor the RGC’s activities – a crucial role in an emerging democracy – as well as serve to silence any political opposition. Moreover, Article 35 includes “dissolution” as an accessory penalty for legal entities – which would include civil society organizations such as CCHR – that commit offenses under Articles 21 to 32 and places an improper restriction on freedom of expression.

Finally, the proposed composition of the National Anti-Cybercrime Committee (the “NACC”), as outlined in Article 6 of the draft Cybercrime Law, is problematic. The inclusion of predominantly high-ranking members of the RGC in the NACC will not lead to the

¹Article 28(3)

²Article 28(4)

³Article 28(5)(c)

creation of an independent review institution for internet usage. Instead, the Cybercrime Law should legislate the establishment of an *independent* working group made up of (*inter alia*) technical experts, members of civil society organizations and academics to properly investigate and analyze website content prior to prosecution or blocking requests and before requests are forwarded to the judiciary.

The Cybercrime Law will have a broad impact on freedom of expression in Cambodia in the long-term and the RGC should adopt a multi-stakeholder model of internet governance, to consider and represent the rights and needs of all Cambodian citizens. Internet usage is on the rise, and citizens deserve to maintain their online right to freedom of expression, as affirmed under both Articles 19 of the Universal Declaration of Human Rights (“UDHR”)⁴ and the International Covenant on Civil and Political Rights (“ICCPR”).⁵

CCHR urges for the immediate official release of the draft, to allow stakeholders, members of civil society and the general public to give direct feedback and input on the law. In addition to the recommendations made earlier, we propose the following measures to ensure the impartiality and effectiveness of the Cybercrime Law:

- Establish an open forum or national congress in order to let civil society organizations, human rights activists, bloggers, individuals who work with new media, Internet Service Providers and programmers discuss their needs and raise their concerns with the RGC, and use their input to inform the contents of the Law;
- Strictly limit content prohibitions to child pornography; to direct and indirect incitement to genocide; to advocacy of national, religious or racial hatred constituting incitement to discrimination, hostility or violence; and to incitement to terrorism;
- Provide effective privacy and data protection, to be subjected to a rigorous set of criteria to prove that it meets international privacy standards; and
- Develop a thorough training mechanism for officials to interpret, apply and enforce the Law.

We look forward to engaging with you further on the drafting process. If you should have any questions or comments, please do not hesitate to contact me or CCHR’s Freedom of Expression Project Coordinator Ms. Sorn Ramana via telephone at [+855 \(0\) 17 65 55 91](tel:+855017655591) or e-mail at ramanasorn@cchrcambodia.org. Please also find enclosed a copy of CCHR’s Briefing Note on cyber laws and freedom of expression, which we released in February 2014, and more fully details our recommendations for cyber legislation in Cambodia.

Sincerely yours,

Chak Sopheap
Executive Director
Cambodian Center for Human Rights

⁴ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

CC:

- Samdech Akeak Moha Sena Padey Decho Hun Sen, Prime Minister of the Kingdom of Cambodia
- H.E. Sar Kheng, Deputy Prime Minister, Minister of the Ministry of Interior
- H.E. Ang Vong Vathana, Minister of Justice