Legal Impacts on Freedom of Expression in the Digital Age

Summary

Now more than ever, we exercise our right to freedom of expression online almost as much as offline. Posting, commenting, sharing and liking on social media platforms are all ways we exercise this right digitally.

As CCHR's new Legal Analysis paper shows however, there are now a number of draft laws that may negatively impact the right to digital freedom of expression. These laws, if passed, would add to the legal provisions already used by the Royal Government of Cambodia (RGC) to restrict this right.

Here's what you need to know:

The right to freedom of expression is guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia in 1992. It is also guaranteed under Article 41 and Article 31 of the Cambodian Constitution.



This right may be restricted, but only in line with a three-part test. According to this, the restriction must be:

1. Provided by **law**
2. Pursue a **legitimate aim**
3. Be **necessary** and **proportionate** → It shouldn't go further than absolutely necessary to achieve the legitimate aim

Scan to read the full analysis:

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A number of existing laws are already used to disproportionately restrict freedom of expression online:



Criminal Code of Cambodia:

- **Article 305**: Defamation
- **Article 494 & 495**: Incitement
- **Article 437-bis**: Insulting the King
- **Article 307:** Public Insult
- **Article 523**: Questioning a judicial decision
- **Article 502**: Insult of a public official
- **Article 425**: False information

Law on the Press

Prohibits sharing information that:

- **Article 11** - Affects public order
- **Article 12** - Affects national security and political stability
- **Article 13** - the publication or reproduction of false information that humiliates or contempt national institutions
- **Article 14** - Affects the good customs of society

Charter for Professional Journalism

- Does not include public interest override clause
- Prohibits dissemination of content that "affects the culture, traditions and good customs of the nation"
- Appears to restrict, rather than enable, journalists to carry out their work

Law on Telecommunications (2015) & the Inter-Ministerial Prakas No. 170 on Social Media and Website Control (2018)

- **Clause 8(a):**
  - Creating social turmoil.
- **Clause 6(c):**
  - Publicizing information willing to create turmoil; undermining national economy.
- **Clause 6(c), Clause 8(a):**
  - Publicizing information undermining: national Defense; national security; relations with other countries; public order; national culture and tradition.
- **Clause 7(c)**:
  - Publicizing illegal contents which are considered as incitement, breaking solidarity, discrimination, create turmoil by will, leading to the undermining of national security, and public interests and social order.

Sub-decree on the National Internet Gateway (NIG)

- **Article 6**: allows the blocking of online connections or content deemed to "affect safety, national revenue, social order, dignity, culture, traditions and customs"
- **Article 14**: allows for the surveillance of internet activity and the preparation of records on allocated IP addresses

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In addition to these existing laws and provisions, there are a number of draft laws that contain concerning restrictions on the right to freedom of expression and privacy:

Draft Cybercrime Law

- **Article 42:** Imprisonment from 1 month – 2 years for an individual found guilty of intentionally causing "intimidation, threat or abuse to another person by information-technology related means"
- **Article 43**: Includes prison sentence for offence of "defamation", which is at odds with the civil offence in the Criminal Code, Article 305.
- **Article 44:** Imprisonment from 1- 6 months for an individual found guilty of having used "any insulting, derogatory or rude language without imposing blame on any act through information technology"
- **Article 49:** Imprisonment for 3-5 years got anyone found guilty of having "disseminat[ed] or distribut[ed] false information through information technology that intentionally harms national defense, national security, relations with other countries, economy, public order, or causes discrimination, or affects traditional culture"

Draft Law on Cybersecurity

- **Article 4**: provides wide-ranging power to the Digital Security Committee (DSC)
- **Article 21(1)**: authorizes the DSC to access "any relevant computer or computer system" - impacts right to privacy and freedom of expression. How? Knowledge of being potentially surveilled leads to self-censorhip
- **Article 24**: establishes Cybersecurity Inspectors, appointed as "judicial police officers", granting them overbroad powers

Draft Law on Access to Information:

- **Article 20(7):** does not include a public interest clause for the release of certain information to the public

Draft Law on Data Protection

- **Article 7 (d), (e) and (f)**: Overbroad exemptions to seeking consent for the processing of personal data.
  - "public interest", "legitimate interests" or the "vital interests of… another natural person"
- **Article 14 (c), (e)** and **(g)**: Overbroad exemptions for the processing of "sensitive personal data"
- **Article 4**: establishes the Ministry of Post and Telecommunications as the office that will oversee the implementation of the law, rather than an independent data commissioner, in line with international best practice

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