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Cambodian Center for Human Rights

CCHR Briefing Note – February 2016

Digital Wrongs?

An Overview of the Situation of Digital Rights in Cambodia

EXECUTIVE SUMMARY

“The Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies.”

Frank La Rue, Former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (“Special Rapporteur”), May 2011.

The number of internet users in the Kingdom of Cambodia (“Cambodia”) is growing exponentially; the most recent estimate (from the second quarter of 2015) placed internet users at over 41% of the population – an enormous leap compared with World Bank statistics from 2010, which indicated that internet penetration stood at just 1.3%.¹ An increasing number of *netizens* – including bloggers, journalists, news outlets, non-governmental organizations (“NGOs”), activists, and university students – have started to use the internet, especially social media sites, as a tool to spread information and express political opinions.

The internet has quickly become the primary arena for free political debate in Cambodia, where disenfranchised citizens are increasingly utilizing online activism to challenge widespread abuses and demand political reform. From the perspective of civil society organizations (“CSOs”), online communications have grown to be an essential tool in the realm of human rights and election monitoring, enabling rapid reactions to incidences of human rights violations. In the past, the internet has been a relatively free space in Cambodia; however, this protected status is being rapidly eroded by a targeted crackdown on internet freedom and digital rights by the Royal Government of Cambodia (“RGC”). At least seven people have been arrested for their comments online since August 2015, and all but one of these individuals remain in prison. In addition, at least 23 individuals have been publicly threatened since August 2015 on the basis of social media comments.

The increasing prevalence of the internet as the primary medium for political debate is both an opportunity and a threat to the promotion of human rights in Cambodia. While ordinary citizens have more opportunities than ever to engage in the political process, the RGC has increased its capacity to monitor content posted online, increasing the likelihood of those who are perceived to

¹ ‘Internet Subscribers,’ *Telecommunication Regulator of Cambodia*. Available at: <http://bit.ly/1mfBlqa>.

oppose government interests being judicially harassed. This move toward online platforms raises a number of complex legal issues, often involving a delicate balance between an individual’s right to freedom of expression online and competing interests, such as the privacy rights of others or the interests of society as a whole. While this balancing exercise must be undertaken on a case-by-case basis, the findings of CCHR’s monitoring over the course of a six-month period suggest that freedom of expression in the online space is frequently being unduly violated.

This Briefing Note provides an overview of the current status of online rights and freedoms in Cambodia. **Section I (Introduction)** provides a contextual overview of the state of digital rights in Cambodia today. **Section II (The Legal Framework)** offers an examination of the laws and regulations affecting the digital sphere at an international, regional, and national level, including an analysis of the laws that indirectly affect digital rights in Cambodia, such as the crimes of defamation and incitement. **Section III (Cambodia: Digital Rights in Practice)** presents and analyzes a selection of cases of digital rights infringements which have been monitored by CCHR since August 2015. **Section IV (Conclusion and Recommendations)** provides key recommendations on how the digital sphere could be regulated in line with international human rights law and Cambodian constitutional guarantees.

This Briefing Note is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, NGO that works to promote and protect democracy and the respect for human rights – primarily civil and political rights – in Cambodia. CCHR’s Digital Rights Project (the “Project”) aims to defend online freedoms and mount an effective and targeted advocacy campaign to ensure any proposed legislation shall guarantee freedom online.

I. INTRODUCTION

Alongside widespread violations of human rights, a rapidly shrinking democratic space, and a systematic clampdown on dissent by the RGC, escalating violations of the right to freedom of expression in cyberspace characterize the current political climate in Cambodia.² In this context, activists and community leaders standing up for the rights of their fellow citizens are especially at risk of judicial harassment, including arbitrary arrest and detention, and unfair convictions.

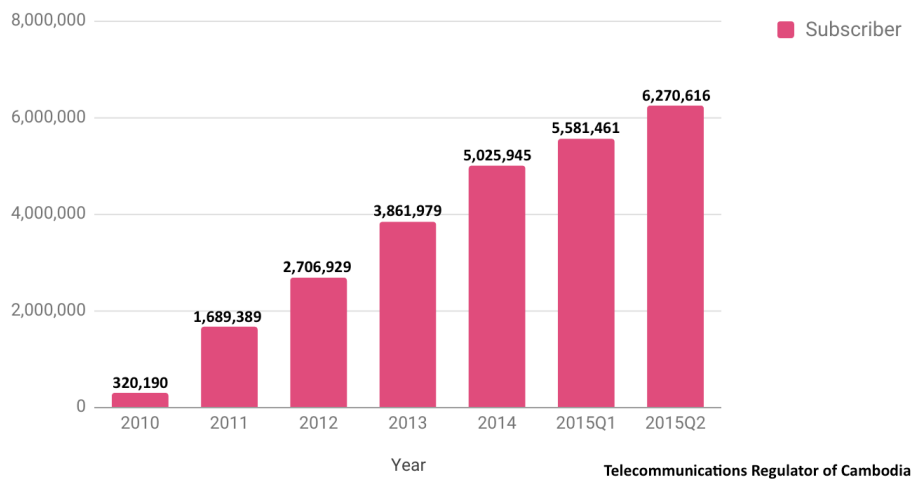
In Cambodia, the internet remains arguably the freest means of expression and information sharing, although this is changing rapidly. A lack of independence among traditional media outlets means that the internet is an incredibly valuable platform, particularly because it provides access to diverse – and unbiased – sources of information, as well as allowing users to engage in online activism, coordinate and mobilize for protests, and document human rights abuses.³ Classified as “partly free” by Freedom House in 2015,⁴ the internet in Cambodia remains relatively free in comparison with more traditional forms of media, possibly due to the substantial financial, technical and human resources required to regulate it.

² For a detailed review of current threats to democracy, see: ‘Cambodia: Democracy Under Threat’, CCHR, September 2015. Available at: <http://bit.ly/1QRhhrw>.

³ Country Report 2015: Cambodia, *Freedom House*. Available at: <http://bit.ly/20J8n1a>.

⁴ *Ibid.*

Internet Subscription(Fixed+Mobile)
Internet Subscribers from: 2012-2015



Statistics from 2015 place Cambodia’s overall urbanization at roughly 20%, though the number of mobile connections is 24.2 million – approximately 157% of the population.⁵ Roughly 16% (2.4 million) Cambodians are active social media users, and the bulk of these (2.2 million) connect to social media platforms and networks using mobile devices.⁶ For the second quarter of 2015, it was reported by the Ministry of Posts and Telecommunications (the “MPTC”) that there were over five million internet subscriptions in the country, with the vast majority of them – an astounding 98.67% - being mobile devices.⁷ These figures are indicative of the significance of internet and smartphone penetration throughout the country. Increased access to the internet has resulted in greater access to social media, the primary apparatus for online activism. Cambodia has approximately 1,760,000 Facebook users, with 1,100 new users joining daily.⁸ In fact, Facebook use has become so widespread in Cambodia that government officials have begun to capitalize on its popularity, utilizing the site to garner support and receive feedback from the public. Prime Minister Hun Sen has joined the rising social media trend, actively using his Facebook account, monitoring online commentary, and even creating his own smartphone app for users to stay updated with his news.

Social media has rapidly become the foremost medium for political commentary and debate in Cambodia. Citizens who were previously denied an outlet to express their dissatisfaction with government practices have taken to social media in droves. This trend was brought sharply into focus during the 2013 national election. The opposition Cambodian National Rescue Party (“CNRP”) effectively tapped into Cambodia’s growing online community, gathering significant support among the youth and urban populations, in turn causing significant political upset as the CNRP came closer than ever to victory, winning 55 seats in the National Assembly. Partly in response to this shock result, and partly due to an overall sense of paranoia about an increasingly empowered and

⁵ Simon Kemp, ‘Digital, Social & Mobile in APAC in 2015’ *We Are Social*, 10 March 2015. Available at: <http://bit.ly/DSMAP15>.

⁶ Ibid.

⁷ Maria Paula Brito And Ouch Sony, ‘One-Third of Cambodians Now Online Thanks to Mobile Phones’ *Cambodia Daily*, March 12, 2015. Available at: <http://bit.ly/1nKVfKC>; See also: ‘Internet Subscribers,’ Telecommunication Regulator of Cambodia. Available at: <http://bit.ly/1mfBlqa>.

⁸ Social Media Cambodia, ‘in Cambodia?’ (2015) <http://bit.ly/1nsWk9O>

connected citizenry, the RGC has increasingly resorted to cracking down on those who criticize the government via social media.

In late 2014, the Council of Ministers' Press and Quick Reaction Unit announced the creation of a "Cyber War Team",⁹ with the stated aim of monitoring all online activity to "*protect the government's stance and prestige*", while the Ministry of Interior announced that it would install surveillance equipment in all of Cambodia's mobile phone networks and Internet Service Providers ("ISPs"). In addition, proposed laws which threaten digital rights have been introduced or proposed, while abusive implementation of the Penal Code is becoming far more common in respect of internet users.

II. THE LEGAL FRAMEWORK

2.1 Human Rights Protections

In theory, Cambodia has a relatively well-developed legal framework for the protection of human rights, including digital rights. This section examines the human rights protections which are, in theory, afforded to the Cambodian people, by virtue of Cambodia's ratification of numerous international human rights treaties and the guarantees enshrined in the Constitution of the Kingdom of Cambodia ("the Constitution").

The Right to Freedom of Expression

The right to freedom of opinion and expression is enshrined in Article 19 of the Universal Declaration of Human Rights ("UDHR"), and is reaffirmed in Article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), to which Cambodia is a party. The latter provides 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."*¹⁰

Both the UDHR and the ICCPR were drafted with the foresight to include and accommodate technological developments through which individuals are able to exercise their right to freedom of expression, owing to the explicit inclusion of a provision that States that everyone has the right to express him or herself through *any media*. The United Nations Human Rights Committee ("HRC") has advised that modes of expression do include all forms of electronic and internet-based methods of communication,¹¹ meaning that the framework of international human rights law is equally applicable to new and developing communication technologies, such as the internet and social media networks.

⁹ Matt Blomberg and Kuch Naren, 'Cyber War Team to Monitor Web,' *The Cambodia Daily*, 20 November 2014. Available at: <http://bit.ly/1PC664c>.

¹⁰ ICCPR Article 19.2.

¹¹ UN Human Rights Committee, *General Comment 34: Freedoms of Opinion and Expression*, CCPR/ C/GC/34 (GC 34) 12 September 2011, [12]. Available at: <http://bit.ly/1xmySgV>.

On 5 July 2012, the United Nations Human Rights Council (“UNHRC”) adopted by consensus a resolution – the first of its kind – to protect human rights online.¹² This ground-breaking resolution was backed by more than seventy HRC members and non-member States, including China, France, the United States and Australia. The resolution affirms that “*the same rights that people have offline must also be protected online,*” and has been lauded as a victorious first step in upholding human rights on the internet. The resolution further recognizes “*the global and open nature of the Internet as a driving force in accelerating progress towards development,*” and calls on States to “*promote and facilitate access to the Internet.*” Importantly, the resolution also acknowledges that, “*the Internet can be an important tool for development and for exercising human rights.*”¹³

However, the right to freedom of expression is not absolute, on the internet or elsewhere: unlike the UDHR, Article 19 of the ICCPR poses limits on freedom of opinion and expression under certain circumstances. The HRC has stated that certain forms of expression are liable to restriction, although any such restriction must fall into the parameters posed by Article 19(3).¹⁴ As such, the protection of freedom of expression shall not extend beyond what is necessary “*for the respect of the rights or reputations of others*” and for the “*protection of national security or of public order (ordre public), or of public health and morals.*”¹⁵

Therefore, any regulations which have the effect of limiting free speech must satisfy the following criteria: (1) be prescribed by law; (2) implemented with the purpose of protecting the rights or reputations of others, or to safeguard national security, and (3) are necessary to achieve the aforementioned purpose.¹⁶ According to the HRC, such forms of expression that could be subject to legitimate restriction under Article 19(3) include (but are not limited to): hate speech, defamation, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹⁷

Further, the actual scope of these rights is determined by each country, and is subject to variation between nations – which has enabled some States to interpret the provision so as to uphold their censorship of the internet. However the Office of the United Nations High Commissioner for Human Rights *has* previously issued a resolution outlining the circumstances in which nations are prohibited from imposing restrictions on the rights protected under Article 19. Accordingly, governments are *not* permitted to restrict:

(a) Discussion of government policies and political debate, reporting on human rights, government activities and corruption in government, engaging in peaceful demonstrations or

¹² UN General Assembly Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, Resolution 20/8, A/HRC/RES/20/8, 29th June 2012. Available at: <http://bit.ly/1PSQrQ3>.

¹³ Ibid.

¹⁴ F. La Rue, *Report of the Human Rights Council’s Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/17/27, 16th May 2011, [23]-[24]. Available at: <http://bit.ly/QD35W5>.

¹⁵ ICCPR Article 19.3.

¹⁶ Jessica Bauml, ‘It’s a Mad, Mad Internet: Globalization and the Challenges Presented by Internet Censorship,’ (2011) *Federal Communications Law Journal*, Vol 63, p. 707.

¹⁷ La Rue (2011), above n 8, [25].

- political activities, including for peace and democracy, or expression of opinion and dissent, religion or belief;*
- (b) *The free flow of information and ideas, including practices such as the unjustifiable banning or closing of publications or other media and the abuse of administrative measures and censorship;*
- (c) *Access to or use of modern telecommunications technologies, including radio, television and the Internet.*
- (d) *Journalists in situations of armed conflict.*¹⁸

Prior to the 2012 resolution, the UN had not taken an explicit stance on the protection of online freedoms, and had only implied that access to the internet ought to be considered a human right.¹⁹ However, the passage of the resolution affirms that online expression falls under the purview of the right to freedom of opinion and expression that is embedded in the foundational human rights instruments which Cambodia has ratified.

The right to freedom of expression is also guaranteed under Cambodian domestic law. Article 41 of the Constitution contains an explicit provision recognizing and guaranteeing, “*Khmer citizens shall have freedom of expression, press, publication and assembly*”. This right is reaffirmed by Article 31, which states that Cambodia will recognize and respect the UDHR. Furthermore, the ICCPR is directly applicable in Cambodian domestic law as confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that “*international conventions that Cambodia has recognized*” automatically form part of Cambodian law.²⁰

The Right to Privacy

The right to privacy is also unequivocally recognized as a fundamental human right, being enshrined in Article 12 of the UDHR, and Article 17 of the ICCPR. The latter provides that:

- (1) *no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation;*
- (2) *everyone has the right to the protection of the law against such interference or attacks.*

In the context of digital rights, the reference to “correspondence” includes private data stored, sent and received online. The interpretation and scope of the right to privacy is complicated by the rapid and monumental changes to information and communication technology (“ICT”) that have occurred in recent decades, as they have irreversibly impacted out perceptions of the boundaries between the public and private spheres.

Article 40 of the Cambodian Constitution confers upon citizens the “*right to privacy of residence, and to the secrecy of correspondence by mail, telegram, fax, telex and telephone shall be guaranteed.*” As

¹⁸ Office of the United Nations High Commissioner For Human Rights Res. 2003/42, The Right to Freedom of Opinion and Expression, U.N. Doc. E/CN.4/RES/2003/42, April 23 2003. available at <http://bit.ly/23HrqM3>.

¹⁹ UDHR art 19 refers to the right to seek, receive and impart information and ideas through *any media and regardless of frontiers*.

²⁰ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

the Constitution was drafted at the beginning of the 1990s, no reference to the internet or ICT was included.

There are two distinct aspects of the right to privacy – analyzed below - that are particularly relevant to the situation of digital rights in Cambodia: (a) Privacy of communications; and (b) Reputation.

Privacy of Correspondence

Traditionally, the reference to ‘correspondence’ in the UDHR and ICCPR was interpreted to mean written communication; however, this term now applies to all forms of communication, not limited to and including via the internet. The right to privacy contains a duty upon states to refrain from unduly interfering with an individual’s correspondence, although a certain amount of interference can be justified in limited circumstances, such as the preservation of national security.

The Special Rapporteur noted in his 2011 report on ‘The Promotion and Protection of the Right to Freedom of Opinion and Expression’ that there are “*insufficient or inadequate data protection laws in many States.*”²¹ According to the Special Rapporteur, there is a “*worrying trend*” of States obliging or pressuring private actors to hand over information relating to their users including geographical data from smartphones and internet usage patterns.

Reputation

Article 17 of the ICCPR holds that the right to privacy extends to the right to protection from interference with one’s honor or reputation, and upholding this right gives rise to one of the few instances where the right to freedom of expression in Article 19 can legitimately be restricted. Human rights instruments do not prohibit defamation laws, however, if not carefully applied, laws such as these can violate the right to freedom of expression.

The key elements of a defamation claim are the making of a false claim of a factual nature, which causes damage to a person’s reputation through publication to a third party. Most states have implemented defamation laws, whose express purpose is to protect reputations. However, the practice in many states has been to abuse defamation laws, using them to stifle public debate, and prevent legitimate criticism of officials, or the exposure of official wrongdoing or corruption.²² In much the same way, defamation laws are also often justified on the grounds that they help to maintain public order or national security.²³ By definition, defamation laws impose a limitation on one human right – freedom of expression – in favor of another important right, the protection of reputation. There is no automatic hierarchy that exists between these rights, thus necessitating a careful case-by-case consideration of the rights in question, in order to strike a balance between the two.

²¹ La Rue (2011), above n 8 [56].

²² UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011. Available at: <http://bit.ly/1xmySgV>.

²³ La Rue (2011), above n 1, [34].

Balancing Freedom of Expression and the Right to Privacy

According to international human rights law, there are legitimate reasons to restrict freedom of expression, including the preservation of public order and the protection of the rights and privacy of others. This involves a delicate balance of the different rights engaged, but freedom of expression should be protected particularly strongly in the political domain. Criticism of public officials is crucial to hold those who exercise public power to account for their actions. Therefore, the legal protection which is afforded to the reputation and privacy of private individuals is weaker in respect of public officials. The particular importance of freedom of expression in the political context is confirmed by well-established international legal standards.

The HRC has addressed the great importance of tolerating criticism of public figures in a free and democratic society:

“[I]n circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant [emphasis added]. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”²⁴

Further, the Special Rapporteur has commented that *“imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the legitimate aims under article 19, paragraph 3, of the International Covenant on Civil and Political Rights.”*²⁵ Additionally, the Special Rapporteur is also in favor of the generalized decriminalization of defamation, and has argued that *“protection of national security or countering terrorism cannot be used to justify restricting the right to expression unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.”*²⁶

The HRC has taken the stance that extensive use of a criminal defamation offense to suppress criticism of public and political figures falls far short of a State’s human rights obligations:

“Defamation laws must be crafted with care to ensure that they ... do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defenses as the defense of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering

²⁴ UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011. Available at: <http://bit.ly/1xmySgV>.

²⁵ La Rue (2011), above n 8, [36].

²⁶ *Ibid.*

*unlawful untrue statements that have been published in error but without malice.”*²⁷

As such, the right to freedom of expression includes the right to express views and opinions that offend, shock or disturb. Moreover, the HRC has unequivocally stated that restrictions should never be applied to discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.²⁸

Again, the right to privacy *can* be subject to limitations in certain exceptional circumstances, including State surveillance measures necessary for the proper administration of criminal justice, the prevention of crime, or combating terrorism. As with the right to freedom of expression, this is only permissible if the criteria under international human rights law are satisfied. Accordingly, there must be clear, national laws that delineate the circumstances under which individuals' right to privacy can be restricted. The measures encroaching on this right must be taken on the basis of a specific decision by a state authority given the express power by law to do so. Finally, it must be for the purpose of protecting the rights of others, and must respect the principle of proportionality.²⁹

2.2 The Regional Legal Framework

In November 2012, the ten member States of the Association of Southeast Asian Nations (“ASEAN”) – including Cambodia – adopted the ASEAN Human Rights Declaration (the “AHRD”). The AHRD affords every person the “*right to freedom of opinion and expression,*” under Article 23, including the right to “*hold opinions without interference ... in writing or through any other medium.*” The right to privacy is enshrined in Article 21, and is nearly identical to that contained in the UDHR, providing specifically for protection from arbitrary interference with an individuals “*correspondence including personal data*”.

The AHRD contains a general limitation clause in Article 8 of its opening principles, whose ultimate effect is to undermine its acknowledgement of the non-derogable or absolute nature of several human rights under customary law and the ICCPR. It holds that limitations on the exercise of fundamental freedoms can be subject to a wide range of limiting factors, including “*the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.*” This is problematic as its wide scope and potential field of application fails to recognize that some human rights can never, under any circumstances, be restricted by the State. Conversely, derogations from civil and political rights protected by the ICCPR may only be made in strict accordance with the ICCPR itself, and some rights are specifically non-derogable.³⁰ In this context, the AHRD is inconsistent with all ASEAN member States' international obligations.

²⁷ See: United Nations HRC General Comment 34, above n 22.

²⁸ UN Human Rights Council, Freedom of opinion and expression: *Resolution adopted by the Human Rights Council*, A/HRC/RES/12/16, 12 October 2009, [5]. Available at: <http://bit.ly/1TAL9Z8>

²⁹ La Rue (2011), above n 8, [59].

³⁰ ICCPR, art. 4(2). No derogation is permitted from arts. 6, 7, 8 (1)(2), 11, 15, 16 & 18.

2.3 The National Legal Framework

Despite the existence of a relatively protective legal framework from a human rights perspective, in practice human rights in Cambodia are routinely violated and victims are consistently denied the vindication of their rights in a judicial system that is both corrupt and dysfunctional. Judicial officers routinely ignore human rights guarantees, while the Criminal Code of the Kingdom of Cambodia (“the Penal Code”) is abusively implemented as a tool against those who oppose the interests of government, both on- and offline.

This section firstly examines the existing laws that are most often used against internet users and others who express dissent, such as defamation and incitement. Secondly, this section analyzes two proposed laws which threaten digital rights in Cambodia.

The Penal Code

While freedom of expression is guaranteed under the Article 41 of the Constitution, there are certain provisions in the Penal Code that stand in almost direct opposition to this. Since its passage in 2010, the updated Penal Code has been criticized by human rights organizations for many reasons, including the fact that it places greater restrictions on freedom of expression.³¹ Of note, is a comment made by Minister of Information Khieu Kanharith, in reference to the Penal Code: *“before, using the argument of ‘freedom of expression’ and opposition party status, some people could insult anybody or any institution. This is not the case now.”*³²

Chapter 2 of the Penal Code enumerates the provisions and punishments pertaining to defamation and contempt, which run counter to repeated calls on the international stage for the widespread decriminalization of defamation. Articles 305 and 307 outline the definition for public defamation and public insult, respectively. Under both articles, the commission of an offence merely requires that the defamation or insult be made *“in writing or sketches by any means whatsoever,”* and for it to be *“circulated in public or exposed to the sight of the public.”* The latter half of the clause implies that individuals may be prosecuted for private conversations that may end up being later made public without the individual’s consent. Worryingly, this phrasing is consistent throughout the Penal Code.

A charge under Article 495, “Incitement to Commit a Crime” does not on its face require a crime to *actually* take place as a result of the incitement in question – merely that the act creates *“turmoil in society.”* Article 496, on “Incitement to Discrimination,” follows the same pattern. Both articles carry with them the supplementary punishment of suspension of “certain” unspecified “civil rights.” The vagueness of this gives both the judiciary and executive branches of government much leeway in what civil rights they can take away – which could potentially include the right to vote.

³¹ See generally: ‘Comment on the Draft Cambodian Penal Code’, (Report released by ARTICLE19), September 2009, available at: <http://bit.ly/1SJKzaZ>; ‘Cambodia: New Penal Code Undercuts Free Speech’ *Human Rights Watch* (23 December 2010). Available at: <http://bit.ly/1VJfUty> and ‘Briefing Note: An Overview of Cambodian Laws Relating to Freedom of Expression and a Summary of Recent Case Examples to Show How Laws are Used and Abused to Stifle Dissent,’ CCHR, October 2012. Available at: <http://bit.ly/1KrljUj>.

³² *Ibid.*

Article 502 broadly criminalizes contempt, and applies to “*the use of words, gestures, writings, sketches or objects which undermine the dignity of a person...*” The elements of the crime are vague and highly subjective – taken to the extreme, the practical effect of the provision is to criminalize all acts which hurt the feelings of public officials.

Article 523 clashes almost directly with Article 39 of the Constitution as it criminalizes the criticism of a judicial act or decision. This has the effect of severely limiting the ability of the public to comment negatively on any decision by the government, hindering the right to freedom of expression, and free participation in political debate and discussion, which is a keystone of democratic society.

The Undisclosed Draft Cybercrime Law

In May 2012, the RGC announced its intention to adopt Cambodia’s first ever ‘Cybercrime Law’ in order to regulate online content and to prevent the “*ill-willed*” from spreading false information.³³ Attempts by civil society to acquire a copy of the draft law from the government were met with vague, noncommittal answers. Worryingly, in late May 2015, the Minister of Posts and Telecommunications announced that the Cybercrime Law was still under consideration, and that the law would include criminal sanctions for “*people with bad intentions*” who “*criticize the government*”.³⁴ The draft law was then leaked in April 2014, but the RGC has refused to publicly release an official version of the draft. The highly controversial draft Cybercrime Law contains several provisions, which, if passed, could severely restrict freedom of expression online, and are likely to result in self-censorship. CCHR has previously raised concerns regarding the draft law’s potential negative impacts on freedom of expression.³⁵

Of particular concern is 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 incohesiveness*” (Article 28(3)) or “*deemed damaging to the moral and cultural values of the society,*” including “*manipulation, defamation, and slanders*” (Article 28(5)(c)). Article 28(4), which prohibits content “*undermining the integrity of any governmental agencies,*” 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 activists and political opposition. Moreover, Article 35 includes “*dissolution*” as an accessory penalty for legal entities – which would include civil society organizations – that commit offenses under Articles 21 to 32, and places an improper restriction on freedom of expression. Finally, the proposed inclusion of predominantly high-ranking members of the government in the National Anti-Cybercrime Committee (the “NACC”), as outlined in Article 6, will not lead to the creation of an independent review institution for internet usage.

³³ Bridget Di Certo and Kim Yuthana, ‘The ‘ill-willed’ spark cyber law: officials’, *The Phnom Penh Post*, 24 May 2012. Available at: <http://bit.ly/1sW3Mvb>.

³⁴ Mech Dara, ‘Cyber Law to Protect Gov’t Honor, Ministry Says’, *The Cambodia Daily*, 27 May 2015. Available at: <http://bit.ly/1PfcTgS>.

³⁵ “Cyber Laws: Tools for Protecting or Restricting Freedom of Expression?” CCHR, February 2014, Available at: <http://bit.ly/1Zfcqji>.

In response to the outrage expressed over the release of the first draft, a second Cybercrime Draft Law was leaked to certain NGOs from the Ministry of Interior in September and October 2015. The second draft is very clearly a “working draft.” Indeed, some articles are copied directly from the Council of Europe’s Convention on Cybercrime, and at least one article – Article 25 – references article numbers that do not correspond to articles in the Draft, but rather to articles in the first draft Cybercrime Law, which has led to questions regarding the reliability of the document. Moreover, this method of leaking both drafts to selected organizations is no replacement for an open and consultative legislative process, which takes the concerns of the general public and civil society into account in a transparent manner. Although the second leaked draft removed some of the most troubling provisions contained in the first draft - such as the creation of the NACC – it nonetheless contains new provisions which also threaten digital rights. Article 27 allows for the dissolution of legal entities – including NGOs – on the basis of the ‘cybercrimes’ of individuals affiliated with the organizations. Additionally, the draft confers overly broad and intrusive powers upon police and investigators to search and seize the property of those suspected of ‘cybercrimes’, with a complete lack of judicial oversight and procedural safeguards, threatening the right to privacy and the right to freedom of expression. The individual crimes enumerated in the draft very broadly defined, and would give significant scope to the RGC to implement the law abusively against its perceived opponents, in violation of national and international human rights guarantees. For example, Article 13(1) criminalizes obtaining data that “...are considered to be confidential and which are specifically protected against unauthorized access...” There is no intent element; a person may be imprisoned for receiving an email containing such data, even if that email was sent by mistake or the receiver did not know that he did not have permission to view it. Finally, most of the crimes enumerated in the second draft are duplicative, and can already be punished under the criminal code, calling into question the need for a Cybercrime Law at all.

The New Telecommunications Law

On 30 November 2015 the National Assembly formally adopted a new draft of the Telecommunications Law, which was later promulgated by King Norodom Sihamoni on 17 December 2015. According to the RGC, the law was “*formulated with the purpose of defending the rightful benefits of all parties concerned, including (1) Telecom operators...(2) Users: include individual citizen, government institutions and private sectors, and (3) Government...*”³⁶

The Telecommunications Law increases the government’s control over the industry and seriously threatens the rights to privacy of correspondence and freedom of expression. Under Articles 6 & 7, the MPTC will have authority to order telecommunications providers to hand over data, systems and equipment, or transfer control of telecommunication systems to the Ministry where it serves the national interest, security and stability and public order. Article 97 criminalizes eavesdropping for private individuals, but makes an exception for eavesdropping “*with approval from legitimate authority*”, which effectively gives the MPTC *carte blanche* to spy on the correspondence of citizens, because no legal or procedural safeguards are included in the law, nor is any authorization process outlined. Articles 93 - 96 contain vaguely worded provisions which allow for harsh and

³⁶ Announcement by the Ministry of Posts and Telecommunications: National Assembly Adopted the Draft of Telecommunication Law <http://bit.ly/1PTxahA>

disproportionate prison sentences for people found to be using telecommunications to plan criminal activity or damage property. Penalties, as stated in Chapter XIV, range from \$2,400 to as much as \$250,000 and carry between 1 week and 15 years in prison.

In addition to the worrying provisions highlighted above, the complete lack of consultation and transparency during the rushed adoption process of the Telecommunications Law is anathema to the right to access to information and the principles of democratic governance.

New Regulation on Cell Phone Data

On 22 September 2015, the Ministry of Posts and Telecommunications and the National Police Department jointly announced that as of 23 September, a new regulation would be enforced, whereby mobile service providers are obliged to supply the police with the identification details of all SIM card holders in Cambodia.³⁷ Deputy National Police Commissioner Chhay Sinarith has claimed that “70 percent of outlaws” use unregistered SIMs in order to carry out serious crimes, thus necessitating the implementation of the new regulation.³⁸ Retailers who do not comply with this regulation will be subject to criminal sanctions. As of 27 January 2016, no steps have been taken to clamp down on these unregistered SIMs.³⁹

III. CAMBODIA: DIGITAL RIGHTS IN PRACTICE

This section considers the state of digital rights in Cambodia today, by selecting 10 individual cases of digital rights infringements and briefly analyzing them in their broader social and legal context. This section further highlights a number of threats made by public officials against those who criticize the government online, which threatens to create a culture of self-censorship in the political arena.

The diversity of cases below – ranging from harmless comments to genuine death threats – highlights the complexity of this area of law and the need for common sense – and independence – on the part of the judiciary when balancing freedom of expression against competing rights, such as the right to privacy. As outlined in Section 2.1., above, this balance must be undertaken on a case-by-case basis, but criticism of public officials and government practices must be given special protection under international human rights law. The findings of CCHR’s monitoring show that since August 2015, at least 23 people have been threatened for making critical comments on social media. An additional seven people have been arrested for making comments online during the same period, and to date, all but one remain in prison.

Warnings by Hun Sen

³⁷ Vong Sokhneg and Jamie Elliot, ‘Sim Card Crackdown’, *Phnom Penh Post*, 23 September 2015. Available at: <http://bit.ly/1KoPtZo>.

³⁸ Khy Sovuthy and Taylor O’Connell, ‘Despite Threats, Unregistered SIMs Still in Service,’ *The Cambodia Daily*, 27 January 2016. Available at: <http://bit.ly/1SrCV6M>.

³⁹ *Ibid.*

On 28 December 2015, during a graduation ceremony speech given at the Royal University of Law and Economics in Phnom Penh, Prime Minister Hun Sen warned that Facebook users who criticize government policy on sensitive issues, or resort to personal insults, could be traced in a matter of hours. He also referenced the conviction of university student Kong Raya (detailed below), saying, *“the color revolutionaries were arrested immediately”*.⁴⁰ Aside from the obvious human rights concerns arising from the string of arrests outlined below, comments such as these by Hun Sen do not bode well for the future of free expression in Cambodia, and may instill a culture of fear and self-censorship amongst the internet-using population. Many of these warnings have targeted the CNRP, leading CNRP Deputy President Kem Sokha to urge youth members of the party to exercise caution with their social media use and posts. He stated: *“We should not play the game they’re drawing for us... especially on Facebook.”*⁴¹ Recently, the Prime Minister reiterated his previous comments, saying that those who insult him on Facebook could be tracked in a matter of hours.⁴² Most recently on 10 February 2016, in response to a Fact Sheet on digital rights released by CCHR, government spokesperson Phay Siphon stated that the government has a duty to arrest citizens if they *“disrespected”* Hun Sen.⁴³ The impact that such warnings will have, particularly when uttered by Hun Sen, is yet to be fully felt. However, they do threaten to create a culture of self-censorship among Cambodia’s nascent online community, thus indirectly impacting on the right to freedom of expression.

Case #01: Kong Raya and the “color revolution”

On 7 August 2015, 25 year-old university student Kong Raya posted the following comment to his Facebook profile: *“Does anyone want to launch a Color Revolution with me? Any day, in the near future I will launch a Color Revolution in order to change the vulgar regime. Even if I am jailed or die, I have to do it.”* On 21 August he was charged with incitement to commit a felony, before being sent into pretrial detention at the notorious Prey Sar prison. The charges fall under Articles 494 and 495 of Cambodia’s Criminal Code, which relate to publicly spoken or published provocation to commit crimes, and direct provocation to commit a felony respectively. Raya was further questioned on 10 September and 15 September, reporting both times that there was nothing criminal in his Facebook post. The trial hearing started at Phnom Penh Municipal Court on 25 February and the verdict is set to be handed down on 15 March. During the hearing, Mr. Raya told the court he now regretted his “mistake” although a prosecutor insisted his comments had *“caused serious turmoil to social security and affected public order”*.⁴⁴ He has remained in detention throughout this time and he faces three years in prison if found guilty.

⁴⁰ Pech Sotheary, ‘Hun Sen warns Facebook users that he’s watching,’ *The Phnom Penh Post*, 15 December 2015. Available at: <http://bit.ly/1PuX6OC>.

⁴¹ Mech Dara and Alex Willemyns, ‘Sokha warns youth against provocative use of Facebook’ *The Cambodia Daily*, 4 December 2015. Available at: <http://bit.ly/20mhB1m>.

⁴² Vong Sokheng, ‘Fake family photos upset PM,’ *The Phnom Penh Post*, 1 January 2016. Available at: <http://bit.ly/1nF6uEf>.

⁴³ Pech Sotheary, ‘NGO notes uptick in gov’t ‘threats’ against online posters’, *The Phnomn Penh Post*, 10 February 2016. Available at: <http://bit.ly/1UtgTA5>

⁴⁴ Buth Kimsay, ‘Student Stands Trial Over ‘Color Revolution’ Facebook Post’, *The Cambodia Daily*, 27 February 2016. Available at: <http://bit.ly/1pnnNLl>

This arrest was one of many targeted at people for expressing dissent online in recent months. However, unlike the other suspects – including opposition Senator Hong Sok Hour – Raya himself neither leads a political party, nor holds any significant political influence. As a university student, Kong Raya clearly has no means by which to lead the Cambodian people in a revolt. Kong Raya’s post was little more than an expression of dissatisfaction with the RGC, which in itself is not a crime. Kong Raya’s mother, Horn Sophat, has also spoken out, saying her son is “*just a freshman at university, he has no means to fight a revolution; he just expressed his individual feelings about what he sees as irregularities in society.*”

In response to Kong Raya’s arrest, prominent academic Dr. Sok Touch, who is the rector of Khemarak University, said, “*the youths in the school are now getting poisoned by political issues.*” Outlining his disapproval of political activity among the student body, Sok Touch also echoed the RGC’s sentiments with regard to freedom of expression, saying, “*His statement or his expression is beyond the freedom of expression as considered by the government.*”⁴⁵ Curiously, Sok Touch has been at the center of a number of high-profile digital rights-related cases, as detailed below.

Case #02: Death Threat against Dr. Sok Touch

On 05 September 2015, twenty-seven year-old migrant worker Mr. Phang Seyha was arrested after posting on Facebook under the alias “Sey Hu”: “*The gun is being kept to shoot the head of Sok Touch, the doctor with the dog brain, the doctor who changes history, the doctor who sold his brain to the Yuon.*”⁴⁶ A photograph of a pistol alongside 10 bullets accompanied the text. Although Dr. Sok Touch – who has been tasked with researching the government’s work demarcating Cambodia’s border with Vietnam – did not file a complaint, police officers came to question Mr. Seyha after news of the threat spread on social media. Mr. Seyha subsequently confessed to posting the death threat, and was charged by the Phnom Penh Municipal Court with “*intimidation to kill*” under Article 233 of the Penal Code. In a letter dated October 17, he apologized to Sok Touch and asked for forgiveness, to which Touch responded that he had not accused Seyha and that this should be taken up with the Phnom Penh Municipal Court’s prosecutor. On 23 February 2016, Phang Seyha was convicted by the Phnom Penh Municipal Court and given an 18-month sentence, with 12 months suspended.⁴⁷ Cases such as this – involving a potentially legitimate death threat – clearly must be differentiated from cases in which non-serious comments are posted online. This differentiation requires a common-sense approach by the Cambodian judiciary, balancing competing rights and interests and taking all of the facts of the case into account.

Case #03: Dr. Sok Touch threatens student

⁴⁵ Aun Pheap and Anthony Jensen, ‘Rector says student was warned against activism,’ *The Cambodia Daily*, 25 August 2015. Available at: <http://bit.ly/1LepzTg>.

⁴⁶ Aun Pheap, ‘Police Investigation Death Threat Against Border Researcher,’ *The Cambodian Daily*, 31 August 2015. Available at: <http://bit.ly/1QbbKGS>; Xinhua, ‘Cambodian Police arrest man who posts on Facebook death threat against border researcher,’ *The Khmer Times*, 06 September 2015. Available at: <http://bit.ly/1TU8R2W>.

⁴⁷ Aun Pheap, ‘Facebook threat earns man 6 months in jail,’ *The Cambodia Daily*, 25 February 2016. Available at: <http://bit.ly/1S7Is13>

In a separate incident on 31 January 2016, Sok Touch threatened to bring a defamation complaint on behalf of Khemarak University against a former student who had written a Facebook post criticizing the various fees demanded by the university.⁴⁸ This threat was only lifted once she had issued a full public apology and retraction of her comments. The use of the criminal offense of defamation to suppress legitimate criticism which could “*affect the honor the university,*” as Sok Touch asserted, is deeply troubling. The comments in question were plainly innocuous and fall well within the bounds of legitimate expression. This threat and subsequent retraction could set a dangerous precedent in which universities – traditionally hotbeds of political expression – become off-limits for expressions of political dissent. This danger is greatly exacerbated by a recent decree from the Ministry of Education, Youth and Sport banning political activity and requiring prior permission from the Minister for other non-political activity at universities and schools.⁴⁹

Case #04: Student convicted for “bomb threat”

Former University student, 26-year old Tao Savoeun was arrested on 28 September 2015 after publishing a Facebook post which has been characterized as a death threat against the Minister of Interior, Sar Kheng. He was charged with “*intimidation to kill*” under Article 233 of the Penal Code. Angered by the repeated changes to the date of the graduation ceremony at which Sar Kheng was due to speak, Savoeun took to Facebook to express his frustration, saying that he would bomb the graduation ceremony. He faced up to two years imprisonment on these charges. On 4 October 2015, Savoeun, wrote a letter to Deputy Prime Minister Sar Kheng asking for forgiveness, asserting that he did not intend to carry out the threat, but was very upset about the date changes. After the Deputy Prime Minister responded, forgiving Savoeun for making the threats, the court subsequently ruled that in consideration of these factors, Savoeun’s sentence would be reduced to fifteen months, of which he would only serve one. This abrupt about-face on behalf of the court speaks to the influence that is routinely exercised by the RGC over the Cambodian judiciary. Moreover, the change suggests that the court acknowledged the “threat” was never legitimate in the first place, in which case the conviction should be overturned and Tao Savoeun pardoned.

Case #05: Senator Hong Sok Hour and the Doctored Border Treaty

On 15 August 2015, opposition party Senator Hong Sok Hour was charged with forgery and incitement and sent to Prey Sar prison, days after Prime Minister Hun Sen personally called for his arrest during a speech, which accused him of ‘treasonously’ posting a doctored version of a 1979 Cambodia-Vietnam Border Treaty to Sam Rainsy’s Facebook Page on 12 August. The Senator was subsequently charged under three articles of the Cambodian Criminal Code, carrying a maximum combined prison sentence of 17 years. His defense team state that the charges are directly at odds with the immunities afforded to Senators under the Cambodian Constitution, which gives them protection from arrest and detention, except for when approved by the Senate itself, or when caught directly during the commission a criminal act (*in flagrante delicto*).

⁴⁸ Khy Sovuthy and Anthony Jensen, ‘Prominent Scholar Threatens to Sue Student’, *Cambodia Daily* 2 February 2016. Available at: <http://bit.ly/1UNGckW>.

⁴⁹ Mech Dara, Ministry Warns of Punishment for Political Activity at Schools, *The Cambodia Daily*, 12 August 2015. Available at: <http://bit.ly/1UtgYng>

Senator Hong Sok Hour's defense team maintains that there is no evidence that Mr. Sok Hour was aware of the inaccuracies contained in his post at the time he made it, and that despite not being officially recognized documents, Sok Hour's use of the fake treaty does not in itself amount to a criminal act, meaning his Senatorial immunity ought to remain intact. Effectively, in this case, Hun Sen has criminalized a statement of historical inaccuracy as a means of cracking down on the political opposition, demonstrating that he has the power to arrest and imprison anybody, anytime.⁵⁰

The Supreme Court heard Senator Hong Sok Hour's bail request on 26 February. While bail requests have so far been refused by the Phnom Penh Municipal Court and the Court of Appeal, Senator Hong Sok Hour appealed the denial of bail on health grounds and promised to deposit 20 million riel (\$5,000) and his Cambodian and French passports. The Supreme Court is set to reach a decision on 4 March 2016.⁵¹

In connection with this case, arrest warrants have also been issued for Mr. Sathya Sambath and Mr. Ung Chong Leang, who are the administrators of the Facebook page belonging to Mr. Rainsy, where the treaty was posted. Mr. Sambath has been charged with conspiring to fake public documents, using fake documents and incitement to cause serious social chaos, committed on August 12 and 13, 2015,⁵² and Hun Sen has called for the men to return and confess to the alleged conspiracy.⁵³

Further provisional charges of being an accomplice to forgery and incitement were brought against CNRP President Sam Rainsy on 09 December 2015, after he failed to appear in court over the aforementioned posting of the video containing the fake border treaty by Senator Hong Sok Hour.⁵⁴ Court officials allege that Rainsy is an accomplice as the post was made on his Facebook page, and have demanded his appearance in court for questioning about the video.⁵⁵ Rainsy remains in self-imposed exile as a result of a spate of rent judicial harassment. On 26 November 2015, the European Parliament approved a resolution urging the Cambodian government to rescind Sam Rainsy's arrest warrant. While this case is perhaps best understood in the context of the RGC's recent crackdown on the political opposition, it nonetheless illustrates how political expression, and by extension human rights concerns, have increasingly moved into the digital sphere.

Case #06: Threat against Hun Sen

⁵⁰ Taing Vida, 'Sok Hour defence balks at evidence demands,' *The Phnom Penh Post*, 27 November 2015. Available at: <http://bit.ly/1JWYucg>.

⁵¹ Kuch Naren, 'CNRP Senator Makes Case for Bail at Supreme Court,' *The Cambodia Daily*, 27 February 2016. Available at: <http://bit.ly/1LUfjjs>

⁵² Mech Dara, 'Arrest Ordered for Rainsy Facebook Manager' *The Cambodian Daily*, 2 December 2015. Available at: <http://bit.ly/1PTCv8r>.

⁵³ Shaun Turton and Vong Sokheng, 'CNRP trio seek asylum' *The Phnom Penh Post*, 10 September 2015. Available at: <http://bit.ly/1KD2AGw>.

⁵⁴ Khy Sovuthy and Alex Willemyns, 'Another Arrest Warrant Issued for Sam Rainsy,' *The Cambodia Daily*, 06 January 2016. Available at: <http://bit.ly/1WfM5RM>.

⁵⁵ Mech Dara, 'Arrest Ordered for Rainsy Facebook,' *The Cambodian Daily*, 2 December 2015. Available at: <http://bit.ly/207D1PD>.

In an unsettling demonstration of Hun Sen's claim that authors of offensive comments on social media could be tracked within hours, a farmer was arrested on 06 January 2016 – and provisionally charged three days later – for threatening the Prime Minister's life.⁵⁶ The comment, posted under the alias 'Som Orn Koko' read: "7 January is the date of your death." It was quickly tracked to Kampong Thom province, where internal security department officers were dispatched, and a farmer named Mann Sam Orn and his cousin Born Sothea were taken into custody. The charges leveled by the Kampong Thom Provincial court prosecutor fall under articles 233 and 503 of the Penal Code – making an insult, and making a death threat, which carry a maximum prison sentence of six days and two years, respectively. Sam Orn's neighbors rose to his defense, attending the hearing at the provincial court and holding a rally on Sam Orn's behalf, appealing to Hun Sen for his release, with his mother stating that someone had taken control of her son's Facebook account.⁵⁷ Mr. Sam Orn spent approximately one month in pre-trial detention before being released on bail on 04 February 2016. Upon his release, he stated that someone else had used his Facebook account to write the offending comment.⁵⁸

Case #07 Rumors of Hun Sen's death

On 19 January 2015, a rumor about Hun Sen's alleged death began to spread on the basis of a Facebook post including a picture of a dead man who appeared to be Hun Sen, with a caption that read, "Hun Sen died after being cursed by the Khmer citizens in 2014. Please [may he] be in the seventh hell. Even if he has died, he will suffer forever!"⁵⁹ The account responsible for the post – which was shared over 400 times – is registered under the name "Kim Bopha". In a public response to the rumor, Hun Sen posted on his own official page, alleging that it was authored by a "political party led by evil men and professional cheaters" that "have always fled."⁶⁰ Hun Sen's adviser, Ananda Yath, threatened legal action over the post, and an arrest was made on 25 January. The suspect was released after concluding "her name had been used by another."⁶¹ It is unclear how this determination was made.

Case #08: Hun Manet files defamation complaint

On 22 January 2016, Hun Manet, the eldest son of Prime Minister Hun Sen, filed a defamation complaint against Facebook user Chham Chhany, in response to linking Manet and his mother, Bun Rany, to the illicit trade of luxury timber in a post titled, "Forestry criminals are challenging to occupy logging areas, and the benefits go to the Hun family."⁶² In the post, Chhany asserted that Manet and

⁵⁶ Khy Sovuthy, 'Farmer Charged for Facebook Threat on PM' *The Cambodia Daily*, 09 January 2016. Available at: <http://bit.ly/20Npt1n>.

⁵⁷ May Titthara, 'Village Begs PM for Death Threat Pardon' *The Khmer Times*, 11 January 2016. Available at: <http://bit.ly/1nLDLj>.

⁵⁸ Mech Dara, 'Man makes bail after PM 'threat',' *The Phnom Penh Post*, 12 February 2016. Available at: <http://bit.ly/1U4NOFQ>.

⁵⁹ Meas Sokchea, 'Rumour of PM's death prompts ire from aide,' *The Phnom Penh Post*, 22 January 2016. Available at: <http://bit.ly/1RZiBcd>.

⁶⁰ Mech Dara, 'Suspected creator of PM death rumour held' *The Phnom Penh Post*, 26 January 2016. Available at: <http://bit.ly/1P8ZKYS>.

⁶¹ Ibid.

⁶² Kuch Naren, 'Hun Manet Launches Lawsuit Over Facebook Post,' *The Cambodian Daily*, 23 January 2016. Available at: <http://bit.ly/1KoYRfC>.

his mother, Bun Rany, provide protection to tycoons Lim Bunna and Soeng Sam Ol, respectively. A Global Witness report entitled *'Cambodia's Family Trees: Illegal logging and the stripping of public assets,'*⁶³ which the RGC has censored both in physical and electronic formats,¹ has linked the family of Prime Minister Hun Sen to the illegal logging trade, claiming that the family has given certain tycoons immunity from official sanctions in relation to their illegal logging activities. The family has strongly denied all of these allegations.

Hun Manet's response to the post was to state – also via Facebook – *"In a democratic society, every citizen has the rights to freedom of expression. Yet, the exercise of a person's freedom of expression must be accompanied by a certain degree of personal responsibility."*⁶⁴ Hun Manet's comment is ostensibly an accurate representation of the permissible limitations of free expression; however, the context of his comment is telling. In Cambodia, where the judiciary is routinely used as a tool by the political elite to judically harrass all forms of opposition, the likelihood of a judge making an impartial determination in a case such as this appears slim. This situation highlights the dangers of increased government access to, and supervision of, political commentary on the internet in Cambodia.

Case #09: Official warnings reach Korea

In early 2014, four Cambodian migrant workers recorded themselves burning an image of Hun Sen, and broadcast the images online in response to the shooting of five protesters on Veng Sreng Boulevard, on the outskirts of Phnom Penh in January of the same year. They can be heard saying, *"please die and go to hell. It is the reason that you order your troops to kill workers..."*⁶⁵ The Cambodian Ambassador to South Korea, Suth Dina, asked for the public's help to identify the individuals so legal action could be taken. On 18 January 2016, the Ambassador appeared in a video he posted to Facebook alongside three of the individuals seen in the initial video, asking for forgiveness from Hun Sen. This case demonstrates that the trend towards tracking down social media commentators has extended to a variety of arms of the RGC, even targeting Cambodians living abroad. That this case targeted those who addressed one of the most egregious human rights violations in recent times in Cambodia is particularly worrying.

Case #10: CNRP officials charged for posting birth certificate

On 20 November 2015, police arrested two people in connection with a Facebook post which included a birth certificate stating that Svay Rieng province is in Vietnam.⁶⁶ A city councilor for the CNRP, Norng Sarith, was charged with forging a public document and local CNRP activist Sok Sam Ean was charged with incitement to commit a crime after he posted a photograph of the birth certificate to Facebook. According to the local police chief Pin Pirom, it was easy to track both men down, as Sam Ean used his real name on Facebook, enabling him to be found within half an hour.

⁶³ Global Witness (June 2007), <<http://bit.ly/1W0wlSt>>.

⁶⁴ Kuch Naren, 'Hun Manet Launches Lawsuit Over Facebook Post,' *The Cambodian Daily*, 23 January 2016. Available at: <http://bit.ly/1KoYRfC>.

⁶⁵ May Titthara 'Kingdom Asks South Korea for Help Finding 'Khmer Social Gangsters,' *The Khmer Times*, 10 January 2016. Available at: <http://bit.ly/1KoWNEEx>.

⁶⁶ Phak Seangly, 'CNRP duo jailed for birth certificate 'lies'', *The Phnom Penh Post*, 21 November 2015. Available at: <http://bit.ly/1W4FB8b>.

The charges seem to have been made under a very broad reading of the Penal Code, given it remains unclear as to whom they were trying to incite, and what precise crime they were trying to commit. According to vague comments made by police chief Pin Pirom, the alleged forgery “*affects our society [and] makes our world confused.*”

IV. Conclusion and Recommendations

Over the past six months, digital rights – in particular freedom of expression online - have come to the forefront of the struggle for the protection of human rights in Cambodia. With the rapid expansion of internet access across Cambodia, ordinary people are gaining access to information on an unprecedented scale, empowering the population to participate in politics as never before. However, the technological shift towards utilizing online platforms for the expression of political dissent, combined with the RGC’s new internet surveillance capacity, has brought millions of citizens under the direct scrutiny of the government, significantly increasing the capacity of the authorities to judicially harass those who oppose government interests. The early indications of how the RGC intends to utilize this increased access to the population are bleak. The findings of CCHR’s monitoring of digital rights infringements over a six-month period suggests that the RGC – with Prime Minister Hun Sen to the fore – intends to utilize this power to heavy-handedly silence its critics. Worryingly, there is a real danger that this will lead to the creation of a culture of self-censorship among Cambodia’s growing population of *netizens*.

The legal issues that arise from the move toward online expression are far from black and white. One of the most urgent issues emerging from this shift is the need for the RGC and Cambodian judiciary to adopt a common sense approach to comments that are posted online. In several of the cases mentioned in this Briefing Note, individual internet users posted content online which was both ill-advised and in bad taste; however, the vast majority of these posts should not amount to criminal offences in a healthy democracy. In respect of comments aimed at public figures, international human rights law demands that a far greater tolerance of expression exist in respect of public officials than has been exercised to date in Cambodia.

In light of the already widespread use of existing laws to target individuals for content posted online, the introduction of a Cybercrime Law is not only worrying, but also unnecessary. Rather than introducing unnecessary laws that are inherently incompatible with national and international human rights guarantees, the RGC – and the Cambodian people – would be better served if the judiciary were trained on the proper application of existing laws, in line with the Constitution and international human rights law.

In the context of the situation described in this Briefing Note, CCHR is deeply concerned about the state of digital rights in Cambodia and wishes to make the following recommendations to the RGC:

- *Scrap the proposed Cybercrime Law, which is not only inherently incompatible with the Cambodian Constitution and international human rights law, but also unnecessary as the activity it wishes to criminalize is already punishable under the Penal Code;*

- *Amend the Penal Code to decriminalize defamation, in line with prevailing international standards and the recommendations of a variety of United Nations human rights bodies;*
- *Amend the Penal Code to alter any provisions that contravene the guarantee of freedom of expression contained in Article 41 of the Constitution. Specifically, Article 495 (incitement to commit a crime), Article 496 (incitement to discrimination), Article 502 (contempt), and Article 523 (discrediting a judicial decision) have been widely misapplied and abused in contravention of human rights guarantees, and must be repealed;*
- *Take steps to formally endorse UN Human Rights Council Resolution 20/8 on the promotion, protection and enjoyment of human rights on the Internet, and implement its contents in practice;*
- *Ensure that the Cambodian judiciary carefully examine the proper application of binding human rights guarantees contained in the Cambodian Constitution and the international human rights treaties to which Cambodia is a party. In particular, judges should be aware of how to deal impartially and appropriately with balancing the right to freedom of expression against competing rights and the interests of society;*
- *Stop the judicial harassment of political activists and opposition politicians, and immediately and unconditionally release those currently detained for politically motivated charges or convictions that have no basis in law and no place in a liberal democracy; and*
- *Refrain from exercising political influence over the judiciary, and advise public officials to exercise restraint prior to initiating complaints against private individuals who have written about them online.*

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