



## **CCHR Briefing Note – April 2013**

### **Freedom of Expression and Internet Censorship in Cambodia**

#### **Executive Summary**

This Briefing Note provides an overview of the use of new media in the Kingdom of Cambodia (“Cambodia”), the recent trend towards internet censorship, and the implications for freedom of expression in Cambodia. The first section provides an overview of internet penetration in Cambodia and the extent to which the internet is increasingly used in Cambodia. The second section provides a background on the right to freedom of expression as protected under domestic Cambodian and international law and recent efforts to legislate internet activity. The following sections then provide a summary of important cases of internet censorship and of reported self-censorship on the internet. The Briefing Note concludes with recommendations as regards freedom of expression on the internet.

This Briefing Note is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

#### **Internet penetration in Cambodia**

There have been significant and rapid increases in internet penetration in Cambodia in past years, with the most recent government estimates placing the number of internet users at 2.7 million users, or approximately 18% of the population.<sup>1</sup> World Bank statistics indicate that internet penetration stood at only 1.3% in 2010 and 0.5% in 2009.<sup>2</sup> Nevertheless, the vast majority of Cambodian citizens – who for the most part live in poor rural areas – still have no access to the internet.

A number of websites and blogs have emerged which share news and information on important social issues and, through comments functions, provide an outlet for ordinary people to share their opinions on such issues. Increasing numbers of young people in Cambodia, both male and female, are embracing the internet, and online activism is blossoming with a burgeoning number of “cloggers” (Cambodian bloggers) disseminating views on important social and political issues. Social media – particularly websites like Facebook and Twitter – are quickly becoming an integral communication tool not only for NGOs and activists to promote human rights and other ideas, but also for the Prime Minister and other government officials to communicate and share information with the Cambodian people.

#### **Legal framework**

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<sup>1</sup> Suy Heimkhemra, ‘Cheap Data, Better Tech Putting More Cambodians Online’ (VOA News, 25 March 2013) <[www.voanews.com/content/cheap-data-better-tech-putting-more-cambodians-online/1628531.html](http://www.voanews.com/content/cheap-data-better-tech-putting-more-cambodians-online/1628531.html)>.

<sup>2</sup> World Bank <<http://data.worldbank.org/indicator/IT.NET.USER.P2>>.

The right to freedom of expression is guaranteed under Cambodian and international law. Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”) states that all citizens shall be entitled to freedom of expression. Article 31 of the Constitution recognizes and respects the Universal Declaration of Human Rights (the “UDHR”) and the covenants and conventions related to human rights. Cambodia ratified the International Covenant on Civil and Political Rights (the “ICCPR”) in 1992, thereby incorporating the provisions of the ICCPR into domestic law. The fact that the ICCPR is incorporated into Cambodian domestic law was confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that “*international conventions that Cambodia has recognized*” form part of Cambodian law.<sup>3</sup> Articles 19 of both the UDHR and the ICCPR guarantee the right to freedom of expression. Furthermore, Article 35 of the Constitution provides that all Khmer citizens shall have the right to participate actively in the political life of the nation, which includes the right to freedom of expression.

Despite extensive provisions protecting the right, the situation of freedom of expression in Cambodia is dire. The Royal Government of Cambodia (the “RGC”) continues to stifle free expression and to suppress dissent. Extreme measures instill fear in the population and create a climate of self-censorship. Human rights activists, NGOs, journalists, bloggers and opposition parliamentarians are routinely targeted by the authorities.

It is rumored that the RGC is considering new legislation to regulate the internet, as currently it is the only form of media not regulated in any form. In 2009 and 2010, it seemed likely that the RGC was attempting to control Cambodia’s internet through the creation of a state-run centralized internet hub. It was reported that the hub would consist of a domestic internet exchange point (“DIX”) hosted by Telecom Cambodia (“TC”), through which all of Cambodia’s internet traffic would be routed, with TC charging other operators a transmission fee.<sup>4</sup> It seems that such efforts, however, are no longer being pursued by the RGC.

In May 2012, the RGC announced that it is drafting its first ever cyber law to regulate and to limit the use of the internet. One of the reasons for the adoption of such a cyber law is to prevent “*ill-willed people... from spreading false information*”.<sup>5</sup> The law is in the early stages of drafting and has not yet been made available to the public, but fears abound that such a law could be extremely damaging to freedom of expression online in Cambodia. Thailand’s Computer Crime Act, which was passed in 2007, provides a pertinent example as to how the implementation of a similar cyber law in Cambodia, instead of protecting the interests of the Cambodian people, could have a detrimental effect on political freedom, freedom of expression, and the “right to know”.<sup>6</sup>

In December 2012, it was reported that the Ministry of Post and Telecommunications (the “MOPT”) had issued a Circular dated 12 November 2012 calling for the relocation of all internet cafés located within a 500 meter radius of schools and educational institutions in Phnom Penh. If applied, this Circular would result in an almost total ban on internet cafés located in the city center, thereby

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<sup>3</sup> Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

<sup>4</sup> Read more: CCHR, ‘Internet Censorship: The Ongoing Crackdown on Freedom of Expression in Cambodia’ (Briefing Note) (June 2011) <[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=analysis\\_detail.php&anid=2&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=2&id=5)>

<sup>5</sup> ‘The ‘ill-willed’ spark cyber law: officials’ *The Phnom Penh Post* (24 May 2012) <[www.phnompenhpost.com/2012052456372/National/the-ill-willed-spark-cyber-law-officials.html](http://www.phnompenhpost.com/2012052456372/National/the-ill-willed-spark-cyber-law-officials.html)>

<sup>6</sup> CCHR, ‘Cyber Rights’, (Factsheet) (July 2012) <[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=factsheet\\_detail.php&fsid=51&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=51&id=5)>.

unjustifiably restricting internet access to those who do not possess personal computers. Moreover, the Circular seeks to outlaw “all kinds of [internet] games”, and effectively places them on the same footing as terrorism, economic crimes, and the viewing of pornography. The penalties for the violation of the Circular include forced closures of internet cafés, the confiscation of equipment, and arrest. This Circular bears a striking similarity to draconian cyber laws already in place in China and Vietnam, and appears to be another step to pave the way for the RGC’s forthcoming Anti-Cyber Crime Law.<sup>7</sup>

### Cases of internet censorship

There have been several attempts by the RGC over the past couple years to censor content on the internet.<sup>8</sup> On 19 January 2011 BlogSpot sites in Cambodia were blocked following an order from the Ministry of Interior (the “MOI”) to all Cambodian Internet Services Providers (“ISPs”).<sup>9</sup> For weeks, users of EZECOM, one of the growing number of ISPs, complained that they were unable to access a number of sites, including KI-Media. The day of the outage, customer service representatives at EZECOM told several clients that the sites had been blocked at the request of the MOI.<sup>10</sup> EZECOM management later denied in writing that it had received a directive from the RGC. Minister of Information Khieu Kanharith also denied involvement. Over the following days, service was restored for all ISPs except Metfone.

In February 2011 Cambodia suffered a new wave of outages, affecting KI-Media, Khmerization – a citizen-journalist blog often critical of the RGC – and the blog of Khmer political cartoonist Sacrava, as well as five others. The ISPs affected included Online, WiCam, Metfone and EZECOM. On 10 February 2011 So Khun, Minister for the MOPT, presided over a meeting during which he asked mobile phone operators to “co-operate” in blocking certain internet sites “*that affect Khmer morality and tradition and the government*”.<sup>11</sup> The request was published in the official minutes of the meeting. On 14 February 2011 *The Phnom Penh Post* reported that when WiCam customers attempted to access KI-Media they saw a message stating that the site had been “*blocked as ordered by the Ministry of Post and Telecommunications of Cambodia*”.<sup>12</sup> An unnamed WiCam employee told the newspaper that the ministry had ordered KI-Media be blocked because it “*impacts the government*”.<sup>13</sup>

On 16 February 2011 *The Phnom Penh Post* revealed that an e-mail was leaked from a senior official at the MOPT congratulating ten ISPs, including EZECOM, for blocking access to a list of websites, including BlogSpot sites, KI-Media, Khmerization and Sacrava, all of them well-known for propagating information critical of the RGC.<sup>14</sup> However, the e-mail also included published extracts from leaked minutes of the meeting in which the Minister for the MOPT criticized certain ISPs for not

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<sup>7</sup> CCHR, ‘Cambodian Government seeks to shut down internet cafés in Phnom Penh thereby posing a threat to internet freedoms’ (Media Comment) (14 December 2012)

<[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=press\\_detail.php&pid=327&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&pid=327&id=5)>.

<sup>8</sup> More cases are provided in CCHR, ‘Internet Censorship: The Ongoing Crackdown on Freedom of Expression in Cambodia’ (Briefing Note) (June 2011)

<[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=analysis\\_detail.php&aid=2&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&aid=2&id=5)>.

<sup>9</sup> Global Voices, ‘Blogspot sites blocked in Cambodia’ (*Global Voices Online*, 20 January 2011)

<<http://globalvoicesonline.org/2011/01/20/blogspot-sites-blocked-in-cambodia/>>.

<sup>10</sup> E Dyer, ‘Government axes Internet monopoly plan,’ *The Phnom Penh Post* (13 April 2010).

<sup>11</sup> T Miller, ‘Ministry denies blocking website,’ *The Phnom Penh Post* (15 February 2011).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> T Miller, ‘Tangled Web Revealed,’ *The Phnom Penh Post* (16 February 2011).

having taken the step of blocking access to critical sites.<sup>15</sup> The e-mail, which was electronically signed by Sieng Sithy, Deputy Director of the MOPT's policy regulation, addressed ISPs such as WiCam, Telesurf and Hello as follows: *"We found that you are not yet taken an action, so please kindly take immediate action [...] Here below [are the] websites [...] Again and again, in case of not well cooperation is your own responsibility."*<sup>16</sup> The block was confirmed by ISPs such as Cellcard, Metfone and EZECOM, although KI-Media was up and running on WordPress within a matter of days.<sup>17</sup> The crackdown was apparently a government reaction to the KI-Media post in December 2010, which described key RGC officials as "traitors".

ON 24 January 2013, teacher Phel Phearun was stopped by police and had his new motorbike impounded, despite producing the correct documents. He then posted an account of his experience on Facebook and asked readers whether they thought that police procedures could be improved in such cases. Phel Phearun's posts received significant attention on Facebook and were widely shared. Almost a month later, on 23 February 2013, Phel Phearun received a letter from the police requesting he attend the police station on 25 February 2013 to answer questions in relation to a defamation case.<sup>18</sup> Although no charges were filed against Phel Phearun, this case indicates a worrying trend in internet censorship.

### **Self-censorship**

Participants to roundtable discussions on freedom of expression – including freedom of expression on the internet – organized throughout 2012 and early 2013 have repeatedly noted that there is a noticeable trend of self-censorship amongst bloggers. Although many bloggers and journalists are aware that legal protections exist to protect their right to free expression, when they witness the treatment of other media professionals and bloggers who speak out on sensitive issues, they choose to remain silent. When members of these groups are arrested, threatened or physically abused, fear is instilled in others, who then avoid criticizing the RGC, or those connected with it. As a result, politics or related topics have become taboo. It is common for families and friends of bloggers – and media professionals – to advise them not to speak out about controversial topics. A corrupt judicial system that deals in impunity is also noted as another prime reason for self-censorship as bloggers know that they will not be protected when their rights are violated.

Some bloggers have developed strategies to express their views more securely. They write anonymously or cryptically in order to avoid repercussions. However, they still face obstacles. One roundtable participant noted that his blog was inexplicably removed after he posted an article that criticized Prime Minister Hun Sen.<sup>19</sup>

### **Conclusion and recommendations**

The fate of new media in the coming years and the extent to which freedom of expression will be curtailed online – in much the same way as it is through traditional platforms – is thus far unknown. While, generally speaking, there has been relative freedom in engaging with new media, particularly

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> CCHR, 'Case Study Series: Phel Phearun accused of defamation over a Facebook post' (Factsheet) (March 2013)

<[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=factsheet\\_detail.php&fsid=54&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=54&id=5)>.

<sup>19</sup> CCHR, 'Finding from Round Table Discussions on Freedom of Expression' (Policy Brief) (September 2012)

<[www.cchrcambodia.org/index\\_old.php?url=media/media.php&p=analysis\\_detail.php&anid=21&id=5](http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=21&id=5)>.

in relation to online sources like Facebook and blogging, the blocking of blogs and the announcement of the drafting of a cyber law have raised serious concerns that censorship of the internet will soon become a reality in Cambodia.

Recent events across the globe have shown that new media has proven to be a dynamic force for positive change. As Cambodia stands at a crossroads in terms of how the RGC will respond to opinions expressed on the internet, CCHR makes the following recommendations to the RGC with a view to preserving online freedom of expression in Cambodia:

- **All restrictions on freedom of expression on the internet imposed by the RGC should be (i) proportional, (ii) provided for by law, (iii) in compliance with international standards, and (iv) necessary to protect an interest which is recognized under international law;**
- **Laws developed by the RGC to regulate other forms of media and other means of communication should be specifically adapted for the internet if they are to be used successfully to regulate internet use for the benefit of Cambodian society;**
- **The RGC should develop alternative, tailored approaches – adapted to the unique characteristics of the internet – for responding to illegal content, while recognizing that no other special content restrictions should be established for material disseminated over the internet;**
- **The RGC should ensure that intermediaries who provide internet services in Cambodia – such as ISPs – are not held liable for content generated by others and divulged using those services; furthermore, ISPs should not be required to monitor user-generated content, or be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression;**
- **The RGC should cease blocking entire websites and refrain from imposing content filtering systems – unless they are “end-user” controlled and accompanied by clear information as to their functionality and potential pitfalls in terms of over-inclusive filtering – as such measures do not generally represent justifiable restrictions on delivering positive freedom of expression outcomes; and**
- **The RGC should refrain from (i) cutting off access to the internet, (ii) imposing “slow-downs”, (iii) imposing registration or other requirements on ISPs, and (iv) denying individuals the right to access the internet as a punishment – such a sanction is an extreme measure, which can be justified only where less restrictive measures are not available and where ordered by a court, taking into account the impact of this measure on the enjoyment of human rights.**

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