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Cambodia's National Internet Gateway – a pretext for shrinking digital rights?

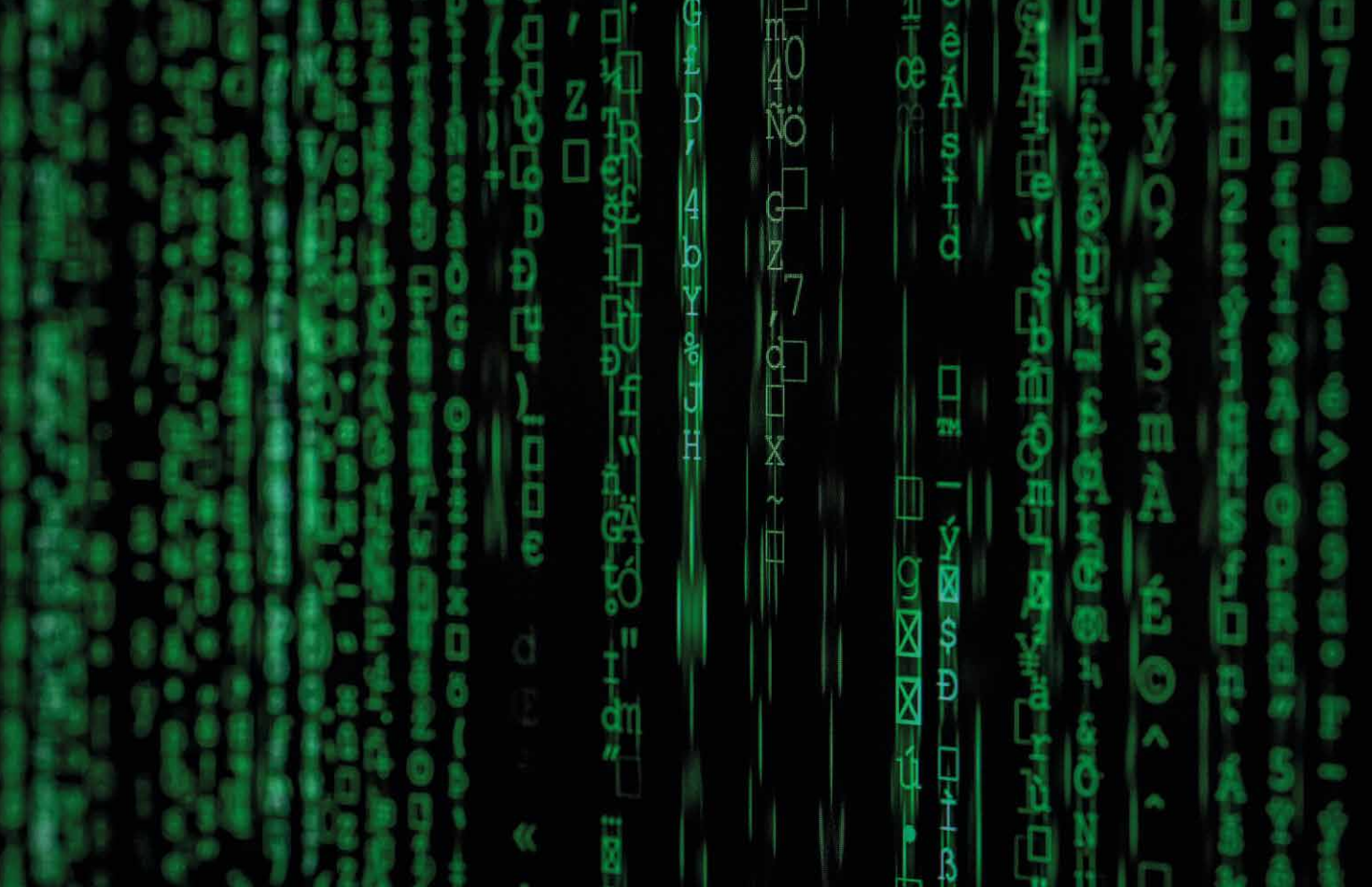
by Sopheap Chak

The Sub-Decree on the Establishment of the National Internet Gateway has the potential to reshape the digital landscape in Cambodia. In an ever-dwindling digital civic space, the passage of the Sub-Decree could be described as an attempt by the Cambodian government to establish its control and dominance over the internet to curtail fundamental human rights.

In February 2021, the Cambodian government adopted the Sub-Decree on the Establishment of the National Internet Gateway (“NIG Sub-Decree”) in a process which lacked transparency and bypassed consultation with relevant stakeholders, namely civil society. While Cambodian citizens, civil society and relevant businesses were arguably forewarned of this outcome when a draft of the sub-decree

leaked several months prior, the news of its passage shocked many and raised questions as to the future of digital rights in the country.

The NIG Sub-Decree has the potential to drastically reshape the digital landscape in Cambodia, rendering its current version as a free and open internet unrecognizable. A deeper dive into legislation in Cambodia reveals that



The sub-decree establishing the National Internet Gateway allows the Cambodian government to filter all data traffic in Cambodia (Photo: Markus Spiske on Unsplash).

the NIG Sub-Decree is merely a culmination of events that can only be described as an attempt by the Cambodian government to establish its control and dominance over the internet to curtail fundamental human rights.

Expansion of technology & country context

Cambodia is a rapidly developing country that has achieved vast economic expansion over the last several years. This expansion heralded high rates of internet and broadband penetration, reaching approximately 52.6% of the population in January 2021, increasing 14% from 2020 alone. With a population of 16.72 million, the rapid expansion of the internet and broadband services within the country has provided millions of Cambodians with opportunities to engage in a world that had previously been blocked off to them, with the majority of Cambodians accessing the internet through mobile connections.

Social media is the most popular medium for Cambodians to share and consume information and engage in political expression. The most popular social media platform in the country is *Facebook*, with a total of 9.2 million recorded

National Internet Gateway refers to a central node of the network infrastructure through which all data flows in the country are to be bundled. This not only allows for a review of data traffic within the country, but also makes it possible to block individual content or websites and to shut down the entire network.

users at the end of 2020. *Instagram* is the second most popular platform, but *TikTok* is steadily gaining traction and popularity among the Cambodian youth.

Access to these platforms not only allowed Cambodians to frequently engage with peers and express themselves in the public eye, but provided prominent Cambodians, politicians, civil society organizations (“CSOs”) and human rights defenders (“HRDs”) with the opportunity to create a public persona to advocate, bring awareness to, and amplify issues of importance to them. It also allowed Cambodians to publish independent news, mobilize civil society for social and political issues and circumvented government controls through traditional media.



While initially individuals or groups were able to hold public platforms for many years with relative freedom, the government's tolerance for any criticism has waned. Cambodia is ruled as a *de facto* one-party state since the forcible dissolution of the only major opposition party, the Cambodian National Rescue Party (“CNRP”) in 2017. The government has since passed sweeping legislation with ease to regulate the telecommunications and internet sector within the country, consolidating its power over the internet, constricting the rights of all who wish to use it freely. As the democratic and civic space on the ground in Cambodia continues to shrink, the digital civic space follows in close pursuit.

Passage of laws affecting digital rights

The internet has functioned as a relatively unregulated place in Cambodia. After only achieving true independence in 1991 and establishing itself as a constitutional democracy in 1993, Cambodia had much rebuilding and reconciliation to do. As such, the Constitution of the Kingdom of Cambodia (“the Constitution”) was, until the past several years, the only piece of legislation which effectively regulated the

internet and telecommunications sector in the country. The constitutional guarantees to the

Digital space for civil society is shrinking in Cambodia (Photo: Chris Yang on Unsplash).

The basis of the Cambodian legal system is the constitution. All subordinate norms and decisions must be in line with it.

Laws (*Chbab*) are drafted by the legislature (the National Assembly and the Senate) and proclaimed by the King.

Royal decrees (*Preah Reach Kret*) are issued by the King at the request of the Council of Ministers. They can, for instance, create new public institutions or appoint senior officials to their posts.

Sub-decrees (*Anu-Kret*) further shape existing laws, specify rights and duties of government bodies or appoint their members. Their content is drafted in the ministries and voted on by the Council of Ministers; they are issued by the Prime Minister's confirmation.

Ministerial directives (*Prakas*) clarify the implementation or wording of existing norms within the framework of specific regulations. Their validity is limited to the core issues of the ministries through which they are issued.



The Ministry of Post and Telecommunications in Phnom Penh (Photo: Chetra Chann on Unsplash).

rights to privacy, the freedom of expression, and access to information protect the ways in which Cambodians utilize the internet or digital technologies.

The web was relatively free from government control until 2015 when a series of laws and policies were passed which imposed strict regulations on the telecommunications sector and how people use and engage with the internet. These developments have sparked fears that the same methods used to control the traditional media have now penetrated into the digital space.

2015 Law on Telecommunications

The 2015 Law on Telecommunications (“the Telecommunications Law”) was adopted in 2015 and regulates firms operating in Cambodia’s telecommunications networks. The Telecommunications Law increased government control over information and the communication technologies sector, giving the government overbearing control over the architecture and functioning of the internet.

This law allows the government to engage in secret surveillance with approval from an

undisclosed ‘legitimate authority’, but provides no definition of what constitutes a legitimate authority nor the criteria for whether the authority is competent to approve surveillance. Under this provision, any individual or entity with authoritative power could conceivably tap or eavesdrop on private conversations or correspondence via any digital platform with impunity. Article 6 of the Telecommunications Law requires all telecommunications operators to provide the Ministry of Post and Telecommunications of Cambodia (“MPTC”) with “telecommunications information and communication technology service data”. This grants authorities broad discretionary powers to demand customers’ personal information or data without a judicial warrant and seemingly without cause, inexplicably infringing upon an individual’s rights to privacy and confidentiality guaranteed under the Constitution.

Article 7 also prescribes authority to the MPTC or other ministries to order internet service providers (“ISPs”) to take ‘necessary measures’ in situations of force majeure. This article provides no definition or clarification on what constitutes force majeure nor the compelling circumstances which would allow the government to use its discretionary powers



Inter-Ministerial Prakas on Publication Controls of Website and Social Media Processing via the Internet

Following the adoption of the Telecommunications Law, The Inter-Ministerial Prakas on Publication Controls of Website and Social Media Processing via the Internet (“the Prakas”) was a ministerial regulation passed in 2018 and provides the government with the power to use the internet as a tool of repression.

The Prakas requires the MPTC to ensure that all ISPs in Cambodia install surveillance software to filter and block alleged ‘illegal’ online content including social media accounts. Government monitors are then commissioned to surveil all online platforms to stop the spread of information that could cause ‘social chaos’ or threaten national security under the guise of combatting ‘fake news’. These government monitors have been granted the authority to take down posts which are broadly considered to undermine national security, the public interest, or social order. The broad and sweeping discretionary power granted to government monitors under the Prakas gives authorities free reign to block content that even remotely falls into these categories on a whim.

to control the operations of ISPs. It also does not clarify the scope of what constitutes ‘necessary measures’, providing a ready-made opportunity for governmental authorities to shut down social networks or websites to control or limit information and political and social mobilization.

These fears came to fruition leading up to the 2018 national elections when the MPTC used its discretionary power to order ISPs to block access to 17 independent news sites and their social media accounts, including Radio Free Asia, Voice of America, and Voice of Democracy, which took a critical stance towards the government. Later that year, the MPTC ordered media and social media outlets to ban a Khmer song which portrayed the grim working conditions of domestic workers in Cambodia. These tactics have only continued at increasing rates during the COVID-19 pandemic; the MPTC and the Telecommunication Regulator of Cambodia (“TRC”) blocked several independent media outlets, including Monoroom.info – a France based Khmer language news website – and a local Cambodian news outlet, TVFB, from the internet in Cambodia over their reporting on COVID-19 and commentary made about the pandemic.

Law on the Management of the Nation in a State of Emergency

In response to the COVID-19 pandemic, the government impulsively drafted and passed the Law on the Management of the Nation in a State of Emergency (“State of Emergency Law”), which would allow authorities to restrict fundamental freedoms and human rights without limit.

Article 5 of the State of Emergency Law is of particular concern as it provides the government with sweeping and unfettered powers to implement measures during states of emergency, including bans or limits on disseminating information that could cause “public panic or turmoil, damage to national security, or confusion about the situation under the State of Emergency.” It additionally permits the surveillance of digital information by ‘any means’. Such measures restrict free speech and grant authorities the power to monitor

and control social media. If anyone is found in violation of the State of Emergency Law, they could be subjected to lengthy prison sentences and exorbitant fines.

Most concerning is the open-endedness and vagueness of the law's terminology, virtually criminalizing all forms of communication and allowing for selective interpretation to target and stifle opposition, critical opinions, and information sharing online without respect for human rights. To date, no state of emergency has been imposed, but it could immediately be implemented at the Prime Minister's or King's discretion.

Draft Law on Cybercrime

The draft Law on Cybercrime was initially drafted in 2010, but has undergone extensive revisions with a leaked draft of the law revealed in 2020. The potential passage of this law raises many concerns among Cambodian civil society, as it imposes severe criminal penalties for breaching its provisions and could permit further control and crackdowns on online freedom of expression and privacy.

The draft law attempts to regulate legitimate, harmful issues in society, including child pornography, identity theft, and computer-related forgery crimes, but it imposes lengthy and disproportionate criminal sanctions on individuals for exercising freedom of expression. For example, Article 45 permits authorities to fine or imprison persons for up to three years if they 'knowingly' or 'intentionally' issue a "false statement or disinformation through information technology" which adversely affects one of several vaguely defined categories - including national security, public health, public safety, public finances - or which prejudices a national election or friendly relations of Cambodia with other countries or diminishes public confidence. These all-encompassing categories could conceivably prohibit any and all speech, unlawfully infringing upon the right to freedom of expression.

Additionally, Article 8 requires ISPs to preserve traffic data for at least 180 days and provide this personally identifiable data upon request by 'competent authorities' in a clear and blatant violation of an individual's right to privacy. This provision essentially imposes

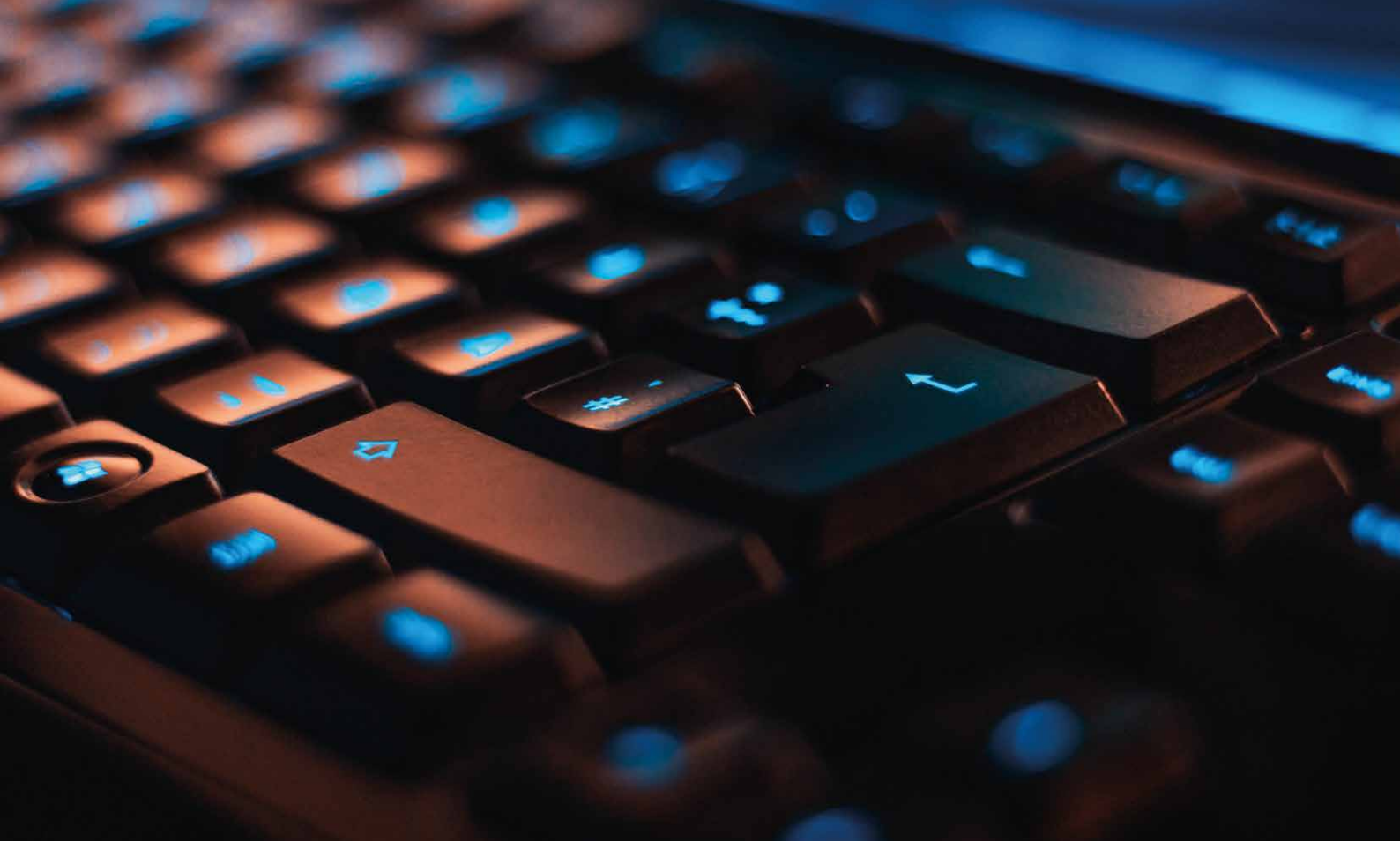
blanket obligations on ISPs for personal data retention and distribution with no legitimate justification provided for the retention of such data.

The Draft Sub-Decree on the Establishment of the National Internet Gateway

The culmination of this series of repressive and questionable laws has manifested in the adoption of the controversial NIG Sub-Decree. The NIG Sub-Decree, adopted in February 2021, is unique compared to the other laws as it seeks to both regulate people's online behaviors, as well as build infrastructure for centralized government control over the internet in Cambodia. Consequently, the NIG Sub-Decree seeks to create an internet gateway, called the national internet gateway ("NIG"), whose purpose is to route all internet traffic into specific entry points where hardware and software may be installed to monitor incoming and outgoing network traffic, allowing for content to be filtered and blocked based on pre-established rules. Cambodia's proposed NIG will require all internet communications and data, both domestic and international, to first be filtered through the NIG before it is sent to an end user.

The NIG Sub-Decree also outlines how the infrastructure is operationalized and managed, as well as providing sweeping powers to government appointed operators ("NIG operators"), the MPTC, and the TRC to 'take actions' in blocking and disconnecting specific network connections. With the government bolstering its already overbearing surveillance powers by controlling network connections and content regulation under the NIG Sub-Decree, fears have rippled throughout Cambodian society that individual freedoms on the internet are now jeopardized, with the potential for internet blackouts or website blocks to become the norm.

Article 6 of the NIG Sub-Decree empowers NIG operators and relevant authorities to block or disconnect online connections or content deemed to "affect safety, national revenue, social order, dignity, culture, traditions, and customs." Due to the vague and undefined reasons for censoring online content, the NIG Sub-Decree permits the mass surveillance and censorship of all internet content and activity



and provides authorities with unfettered access and full control over and all data exchanges within the country. Article 6 can be broadly and subjectively interpreted by authorities to block online content or entire platforms they arbitrarily believe go against any of these ill-defined aims. It would also allow for the blocking of content prior to its publication, precluding the chance for individuals to exercise their freedom of expression. It also effectively strips any autonomy from ISPs over the regulation of their platforms.

Moreover, actions taken under Article 6 could violate the right to access to information, as the government could easily restrict, block, or limit access to a vast array of online content or social media which provide pertinent, trusted, and independent news to many Cambodians.

Article 14 leaves users' personal and personally identifiable data vulnerable to interception by authorities as it mandates the retention of IP addresses, identification of route traffic, and 'other information' for a period of 12 months. This article is excessively vague and does not provide an explicit list of the types of data which may be retained or shared with government authorities, thus amounting to an unchecked interference with internet users' privacy.

The NIG and the NIG Sub-Decree creates the tangible risk that dissenting or critical voices will be silenced with increasing frequency and that individuals who have taken a critical or dissenting stance towards the government such as HRDs, journalists, or activists will be most heavily targeted.

The full effects of the NIG Sub-Decree are not expected to be felt until February 2022, when the law is meant to be fully complied with. However, there is reasonable doubt over Cambodia's ability to construct the NIG within this timeframe, as the country currently lacks the infrastructure and ability to build the mechanisms or obtain the equipment necessary to establish the NIG infrastructure. Despite these doubts, it is clear that the government exercises increased control over the internet, content on the internet, and internet connections.

The Law on Measures to prevent the spread of COVID-19 and other Serious, Dangerous and Contagious Diseases ("COVID-19 Law")

In March 2021, the government swiftly passed the [COVID-19 Law](#) in response to a recent COVID-19 outbreak, bypassing consultation

The repressive atmosphere fuels online self-censorship, a survey shows (Photo: Christian Wiediger on Unsplash).

with relevant stakeholders. There are several problematic provisions in this law that restrict online freedoms. Article 11 outlaws ‘intentionally obstructing’ the implementation of COVID-19 measures and allows for a prison sentence of up to five years. With this expansive and ill-defined language, authorities have broad discretion to implement measures to stop the spread of COVID-19 that could derogate impermissibly from Cambodia’s human rights obligations. While on its face Article 11 does not appear to restrict online freedoms, the Cambodian government has already weaponized this law numerous times to silence online speech on COVID-19 or vaccines.

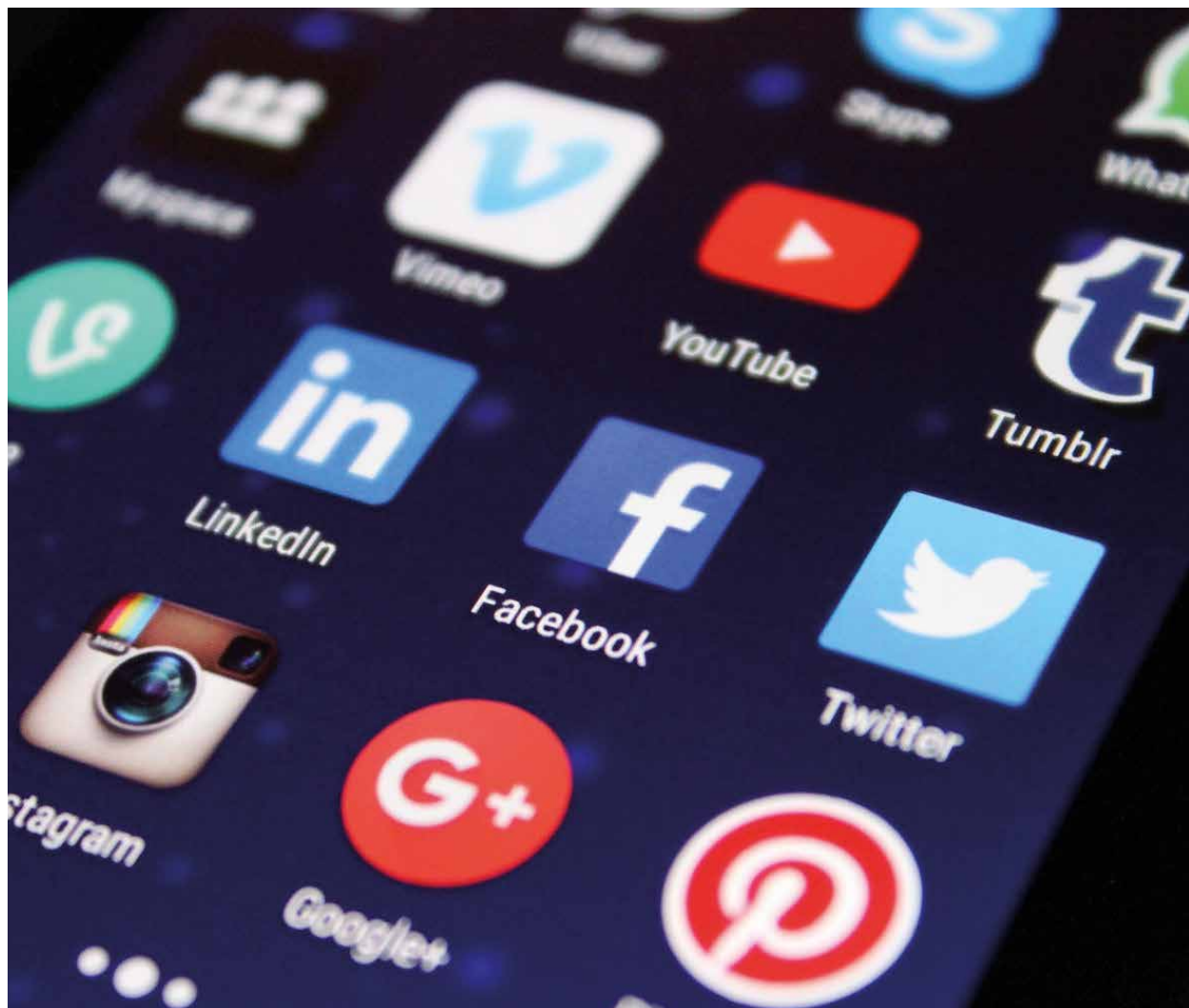
Policies

In addition to these sweeping laws, the government has taken other measures which negatively impact internet users’ rights. In August 2019, the Information Ministry warned it would revoke licenses of print and online

media outlets distributing ‘fake news’ deemed a danger to national security. The Ministry of Interior also announced the creation of a 14-person working group to monitor Prime Minister Hun Sen’s Facebook page to identify users who make ‘undesirable’ comments or post ‘fake news’ which could affect “social security and public order.” In October 2019, the Interior Ministry’s information technology department established a Security Operation Centre to monitor the internet across all digital platforms.

Finally, in February 2021, the Information Ministry announced it was expanding its monitoring capabilities to include *TikTok* as well as closed-sourced platforms such as *WhatsApp*, *Messenger*, and *Telegram*. It appears that this pledge to monitor closed-source platforms proved true, as mere months after this announcement was made, an individual was arrested and imprisoned over critical comments he made about the government in a private message on the [Telegram app](#).

Social media is extremely popular in Cambodia, with the majority of the population using mobile devices (Photo: Pexels).



Repressive laws in use

When enforced, these repressive laws impermissibly hinder digital rights, particularly freedom of expression, from three different angles. First, self-censorship, by both individuals and journalists, is at an all-time high in Cambodia. Second, HRDs, journalists, or CSOs are targeted and harassed when attempting to live-stream or report on issues of critical importance to the public. Third, individuals, journalists, CSOs, or HRDs are retroactively targeted via criminal sanctions after they post information online, which the government deems critical. The tactics employed by the government create an environment where fear flourishes and effectively deters citizens from engaging fully with digital technologies and exercising their fundamental rights.

Although many of the above laws carry with them criminal sanctions for breaching their obligations, the government has frequently weaponized provisions of the criminal code for defamation, falsifying information and incitement to criminalize legitimate online speech. In a span of four months in 2020, approximately 30 people were detained and interrogated for legitimate online expression. The weaponization of the criminal code against citizens, HRDs, or opposition politicians is commonplace and the individuals targeted for their online dissent have suffered through lengthy and disproportionate prison sentences.

As an illustration, Rong Chhun, President of the Cambodian Confederation of Unions, and a prominent political and human rights activist was arrested in July 2020 on charges of incitement and spreading ‘fake news’ for a *Facebook* post about border markings on the Cambodia-Vietnam border, in which he claimed that Cambodia had ceded land to Vietnam. His trial was tainted by judicial shortcomings and extracted private phone data of personal conversations with colleagues as a basis for his purported crimes. He languished in pre-trial detention for nearly 13 months before he was ultimately convicted to the maximum prison sentence of 2 years. Chhun was released at the beginning of November 2021, along with more than a dozen other government critics. Observers suspect that this was part of a potential strategic political-power move, as Cambodia holds the 2022 ASEAN chairmanship



and hosted the ASEM summit at the end of November 2021.

In 2019, the former CNRP president, Sam Rainsy, who now lives in exile in France, attempted to return to Cambodia in a campaign that was organized largely on social media. To quell support, a government spokesman threatened to arrest anyone who posted messages in support of Rainsy’s return, stating they would face life in prison. Now, over 139 former CNRP members are being tried in a mass trial for plotting to overthrow the government for their online support of Sam Rainsy’s return; some have already been sentenced to 25 years in prison.

The precariousness of the digital landscape and intolerance towards political opposition appears to be deteriorating even further. In September 2021, Cambodia’s Prime Minister infiltrated a Zoom call held by exiled former CNRP members and warned the attendees that their communications were being monitored. He then later claimed he had tapped into their private Zoom conversations approximately 20 times before this particular incident.

Journalists and HRDs are also targeted in action for attempting to live stream protests or to report on critical issues. In August 2020, a HRD and Rong Chhun supporter, Chhoeun Daravy, was arrested at protests calling for Rong Chhun’s release from prison for attempting to live stream the protest on Facebook. One year later, in August 2021, two independent journalists from *CamboJA* and *Voice of Democracy*, were harassed by

Prominent union leader Rong Chhun was arrested in August 2020 for fabricated sedition and sentenced to two years in prison. He was released in November 2021 after 15 months in prison but remains fined heavily (Photo: CCHR).

Chhoeun Daravy had protested peacefully after the arrest of Rong Chhun and was arrested herself (Photo: joint campaign of Cambodian NGOs).



CHHOEUN DARAVY

SOCIAL ACTIVIST

368

DAYS IN PRISON

Rong Chhun's arrest sparked peaceful protests in Phnom Penh. Daravy was part of these protests and was dragged by her hair into an unmarked van and charged with incitement.

WHO DID DARAVY INCITE?

#FreeHumanRightsDefenders

authorities when attempting to cover a land protest in Kandal province. The journalists had their press cards and cell phones confiscated. They were then threatened with arrest and legal action if they did not delete all photos taken at the scene of the land dispute and left immediately.

This oppressive atmosphere fuels online self-censorship. In 2020, the Fundamental Freedoms Monitor Project at the *Cambodian Center for Human Rights* recorded a total of 108 restrictions to the freedom of expression in Cambodia during its eight-month reporting period. Of those 108 restrictions, 53% of them occurred online. Only 28% of the public surveyed feel free to openly speak on social media, in a sharp decline from three years prior when 55% of the public felt free to express themselves on social media. Individuals have also reportedly refrained from conducting google or other online searches which could be seen as critical of the government. This

is a manifestation of an alternative way in which people self-censor their expression and thoughts, as well as the ways in which they access information to educate themselves on issues which are of public importance.

Although the NIG Sub-Decree comes on the heels of other laws which have already centralized government control over the internet and have been weaponized against individuals exercising their constitutionally and internationally guaranteed rights and freedoms, the NIG Sub-Decree truly solidifies the government's control over the internet with little oversight and accountability. With greater centralized control of the internet and its infrastructure, abuses of digital rights will only increase, most likely at exponential rates. Likewise, transparency into such abuses will only decrease, because censorship over the internet will now happen behind closed doors before individuals or society have the opportunity to access critical content.

In the wake of the political turmoil and fragile state of human rights in the country, it is imperative that fundamental human freedoms are upheld and protected both offline and online.

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As one of the country's most prominent human rights advocates, Sopheap's work has been recognized by former US President Barack Obama. She is a recipient of the Indian-ASEAN Youth Award (Young Women Achiever Category) and the Franco-German Prize for Human Rights and the Rule of Law. She holds a Master's Degree in International Peace Studies from the *International University of Japan*. Sopheap is also a human rights blogger: <http://sopheapfocus.com>

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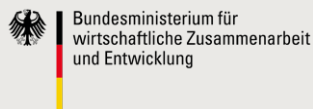
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