



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights

Submission to the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

Purpose: to inform the Special Rapporteur’s annual thematic report to be presented to the Human Rights Council at its 47th session in June 2021, focusing on the issue of disinformation and freedom of opinion and expression.

5. Please share information on measures to address disinformation that you believe have aggravated or led to human rights violations, in particular the right to freedom of opinion and expression.

The spread of disinformation and misinformation is concerning and should be appropriately addressed by governments around the world to prevent the incitement of violence, hatred, discrimination or hostility. Cambodia has not been spared: as internet connectivity rates continue to rise year after year in Cambodia, so has disinformation. In response, a number of developments have attempted to address this concern. However, more often than not, these developments have been weaponized by the Royal Government of Cambodia (“RGC”) to silence legitimate expression, principally consisting in dissent or criticism of the government or its institutions.

Rise in government surveillance, enabling control over internet content and crackdown on perceived ‘fake news’

Recent years have seen the RGC take a brazen stance of policing and criminalizing legitimate, online expression, under the guise of fighting disinformation or ‘fake news’. Indeed, the rise in the use of the internet and social media platforms across Cambodia, combined with the RGC’s ever-growing intolerance of criticism and dissent, has prompted the RGC to turn its attention to policing and severely restricting online freedom of expression, in a bid to stifle disapproving or opposing voices.

Legislative developments, such as the *Law on Telecommunications* and the *Inter-Ministerial Prakas on Publication Controls of Website and Social Media Processing via Internet*, have granted power to the RGC to use the internet as a tool of repression. Both of these instruments include broad and overly-vague provisions, opening the door to subjective interpretation and allowing for arbitrary enforcement. In February 2020, the Ministry of Information confirmed that government monitors were commissioned to surveil social media platforms under the *Inter-Ministerial Prakas*, enabling them to force a publisher to take down a post or to take legal action against a publisher

if they deem the content as “unfit” for publication or false.¹ This has allowed for the arbitrary revocation of media licenses, the shutting down of news websites and media stations throughout Cambodia, and a crackdown on dissenting or critical voices online through social media platforms.

Most recently, the draft *Sub-Decree on the Establishment of a National Internet Gateway* (“NIG”) was signed into law on 16 February 2021. An NIG would give the RGC the ultimate power to monitor or block any connection that falls under the vague justifications of “social order, national security, safety and traditions and culture”, raising further concerns for the future of fundamental freedoms online in Cambodia. While the RGC claims this Sub-Decree is to protect “social order” and “national security” among others, its provisions are of an obvious insidious nature and offer a ripe opportunity for the RGC to undermine freedom of expression and crackdown even further on opinions they arbitrarily deem critical and therefore false.²

These developments unfortunately show that the internet is increasingly being used as a weapon and a magnifying glass through which the government can monitor ordinary citizens. The threat that these instruments represent for human rights in Cambodia, in particular freedom of expression, is compounded by the RGC’s increased reliance on rhetoric regarding ‘fake news’, as the RGC has used various accusations of misinformation to stifle legitimate online expression.

Policy and legislative measures addressing ‘fake news’ overly restrictive

In March 2019, Prime Minister Hun Sen called on ministries to consider creating an ‘Anti Fake News Law’, citing a “need to educate users progressively over posting comments” and “to take legal action too”.³ A few months later, in August 2019, the Ministry of Information warned that it would revoke licenses of print and online media outlets distributing ‘fake news’ deemed to be a danger to national security.⁴ The Ministry of Interior also announced the creation of a working group of 14 people to monitor the Facebook page of Prime Minister Hun Sen to identify users who make “undesirable” comments online or post “‘fake news’ which could affect social security and public order”.⁵

2020 also saw a flurry of new developments, aimed at tackling disinformation pertaining to COVID-19. Setting the tone for the Government’s approach to expression on the COVID-19 pandemic, Prime Minister Hun Sen said in early March 2020 that individuals spreading ‘fake news’ about the

¹ Licadho, “Cambodia’s Law on Telecommunications: A Legal Analysis”, 2016, <https://www.licadho-cambodia.org/reports.php?perm=214>, p. 5

² Phorn Bopha, *Cambodia’s Plan to Establish Internet Gateway Raises Concerns*, VOA, 4 September 2020, <https://www.voacambodia.com/a/cambodia-s-plan-to-establish-internet-gateway-raises-concerns/5570653.html>

³ Ben Sokhean, “PM Pushes for Anti-Fake News Law”, *Khmer Times*, 5 March 2019, <https://www.khmertimeskh.com/583926/pm-pushes-for-anti-fake-news-law/>

⁴ Ly Livsier, “Ministry to revoke licenses of media over fake news”, *Khmer Times*, 13 August 2019, <https://www.khmertimeskh.com/632885/ministry-to-revoke-licences-of-media-over-fake-news/>

⁵ Taing Vida, “Working group assigned to monitor PM’s Facebook”, *Khmer Times*, 16 August 2019, <https://www.khmertimeskh.com/634534/a-working-group-assigned-to-monitor-social-media-network/>

virus were “terrorists”.⁶ More recently, in a statement released on 7 December 2020, the Ministry of Information threatened legal action against journalists acting unethically when reporting on COVID-19 or spreading ‘fake news’ related to the government’s efforts to combat the virus.⁷ In January 2021, the Ministry of Information announced it would expand its monitoring of social media platforms, including close-sourced platforms like WhatsApp, Telegram and Messenger, out of concern about posts regarding COVID-19 and vaccines.⁸

The implementation of these various measures have resulted in 1,343 cases of “fake, objectionable news” being identified in 2020. Worryingly, these cases include “fake news and disinformation, various incitements, unfair criticism of the nation’s leadership and insults to the King”.⁹ Considering the RGC’s sensitivity to criticism and in light of its renewed crackdown on opposition and dissent, there are reasons to believe that the vast majority of these cases constitute unfair restrictions to freedom of expression.

Regarding legislative developments, despite requests from within the government - including from Prime Minister Hun Sen himself - the Ministry of Information announced in July 2020 that it would not proceed with its drafting of the ‘Fake News Law’. While no draft of this law was ever made public, its topic, combined with the RGC’s known intolerance of criticism, raised concern for freedom of expression in the Kingdom. This decision to not proceed with the law seems to have been made, at least in part, because there was no way to safeguard against arbitrary application of the law: “If we created the law, we would find it difficult to set limits because this law would not protect joint interests, it would protect only individual interests and it would become an abuse of freedom of expression”,¹⁰ stated the Minister of Information.

While the scrapping of the ‘Anti-Fake News Law’ seemed like a positive development for fundamental freedoms in Cambodia, it coincided with the drafting of amendments to the draft *Law on Cybercrime* which, in its current version, imposes criminal liability for the “provision of disinformation”.¹¹ Article 45 of the draft law permits authorities to fine or imprison persons who make a “false statement or disinformation through information technology”, building upon the crime of “falsifying information” from Article 425 of the Criminal Code. This provision only further broadens the scope of the RGC’s power to target dissenting and critical voices and criminalize free

⁶ Khuon Narim, “People spreading fake COVID-19 news are terrorists, says Prime Minister Hun Sen”, *Khmer Times*, 3 March 2020, <https://www.khmertimeskh.com/697321/people-spreading-fake-covid-19-news-are-terrorists-says-prime-minister-hun-sen/>

⁷ Nov Sivutha, “Gov’t tackles fake news amid pandemic”, *Phnom Penh Post*, 9 December 2020, <https://www.phnompenhpost.com/national/govt-tackles-fake-news-amid-pandemic>

⁸ “Cambodia expands monitoring of ‘fake news’”, *UCA News*, 28 January 2021, <https://www.ucanews.com/news/cambodia-expands-monitoring-of-fake-news/91186>

⁹ Voun Dara, “More than 1,000 cases of fake, objectionable news identified”, *Phnom Penh Post*, 19 January 2021, <https://www.phnompenhpost.com/national/more-1000-cases-fake-objectionable-news-identified>

¹⁰ Khy Sovuthy, “Information Ministry to push ‘fake news’ education over draft law”, *Cambodia*, 24 July 2020, <https://cambodjaneews.com/information-ministry-to-push-fake-news-education-over-draft-law/>

¹¹ Draft Law on Cybercrime, 4 August 2020, Article 45

speech. The draft *Law on Cybercrime* significantly expands the scope of the existing offense,¹² with Article 45 prohibiting any person from making a “false statement or disinformation through information technology” that could impact one of six vaguely defined categories, namely: “(a) prejudice national security; (b) damage public health, public safety, or public finances; (c) prejudice the relations of Cambodia and other countries; (d) prejudice the outcome of a national election; (e) incite feelings of enmity, hatred, racial discrimination, or ill-will between groups of people; or (f) diminish public confidence in the performance of any duty of function or in the exercise of any power by Government or State institutions”.¹³

Of particular concern is category (f) - making a false statement that is likely to diminish public confidence in the government. Criticism in Cambodia is routinely labelled as ‘fake news’ by the authorities,¹⁴ and research reports into rights abuses are often undermined and delegitimized.¹⁵ It is therefore reasonable to anticipate that this offense could be implemented to prohibit all criticism of the RGC or any state institution in a severe infringement of accountability, joining the RGC’s broader crackdown on all dissent.

“Incitement”: de facto criminalization of dissenting or critical expression dismissed as ‘fake’

While ‘fake news’ is criminalized in Cambodia under Article 425 of the Criminal Code, “falsifying information”, the RGC has relied on a number of other problematic provisions in recent years to undermine and dismiss information that it disagrees with or dislikes as “fake”.

Perhaps the most frequently used of these provisions is the crime of incitement, provided for in Articles 494 and 495 of the Cambodian Criminal Code, whose vague and broad language allows the authorities to arbitrarily - and liberally - resort to it to stifle criticism, in a calculated onslaught against legitimate speech. Numerous individuals have seen their claims dismissed as ‘fake’ and were charged with incitement in retaliation for their exercise of the right to freedom of expression on politically- or socially-sensitive issues. A notable example is the arrest of Rong Chhun on 31 July 2020, the President of the Cambodian Confederation of Unions. He was arrested on charges of incitement and spreading ‘fake news’ for a Facebook post about border markings on the Cambodia-Vietnam border in Tboung Khmum province, in which he claimed that Cambodia had ceded land to Vietnam. He remains in pre-trial detention seven months after his initial arrest and his trial - which has been tainted by judicial shortcomings - is still ongoing.

¹² Article 425 of the Cambodian Criminal Code defines the crime of falsifying information as, “The act of communicating or disclosing false information with intention to create an impression that destruction, deterioration or damage to persons be committed”.

¹³ Draft Law on Cybercrime, 4 August 2020, Article 45

¹⁴ CCHR, ADHOC, SC and ICNL, ‘Cambodia Fundamental Freedoms Monitor: Fourth Annual Report’, July 2020, <https://cchrcambodia.org/ffmp/report4>, p. 26

¹⁵ Khun Vanda, ‘Critical MFI report could be used in political attacks, hurt investment, official says’, *VOD*, 5 September 2019, <https://vodenglish.news/critical-mfi-report-could-be-used-in-political-attacks-hurt-investment-official-says/>

Journalists have also borne the brunt of the government's reliance on the charge of incitement to dismiss their views as 'fake'. Legitimate, investigative work from journalists has been increasingly and disparagingly labelled as 'fake news' by authorities to punish and silence dissent and critical speech.

As an illustration, in June 2019, Rath Rott Mony, who worked for *Russia Today* on its documentary "My Mother Sold Me", which exposed the extent of the sexual exploitation of children in Cambodia, was sentenced by the Phnom Penh Municipal Court to two years in prison after he was found guilty of incitement for contributing to the production of this documentary which the RGC arbitrarily dismissed as 'fake news'.¹⁶ Similarly, in May 2020, Sok Oudom, the owner of *Rithysen* radio station, was arrested in Kampong Chhnang province and charged with incitement for broadcasting a land dispute protest between military officials and villagers within the Phnom Oral Wildlife Sanctuary. During his live Facebook broadcast, Sok Oudom made comments which, according to authorities, were "exaggerated and inciting news coverage" amounting to 'fake news'.¹⁷ *Rithysen's* radio and news website licenses were revoked, its media outlets were shut down, and its website blocked. Sok Oudom remained in pre-trial detention for seven months until his ultimate conviction to 20 months in prison in December 2020.

These incidents mark a systemic pattern of the RGC's campaign to criminalize legitimate speech and opinions, sadly justifying Cambodia's ranking at 144 out of 180 countries assessed in the 2020 World Press Freedom Index - falling 12 places since 2017 - and its low score of 43/100 in Freedom House's 'Freedom on the Net' 2020 Report.

Rise in 'fake news' rhetoric during the COVID-19 outbreak

The COVID-19 outbreak provided fertile grounds for the RGC to further crackdown on freedom of expression under the guise of 'fake news'. The Minister of Health issued a press release in January 2020 warning that legal action would be taken under Article 425, "falsifying information", against the spread of false information on Facebook.¹⁸ The next few months saw a number of arrests on baseless charges of 'fake news' or 'incitement'.

Throughout 2020, numerous restrictions to the freedom of expression related to COVID-19 were recorded. The vast majority of these restrictions took the form of accusations, arrests, and charges for spreading 'fake news', justified by the government as necessary to combat the spread of false information regarding the virus and prevent turmoil. Journalists, former opposition members and ordinary citizens, were arrested for questioning the government's handling of the crisis or merely

¹⁶ Taing Vida, "Rott Mony sentenced to two years in jail", *Khmer Times*, 27 June 2019, <https://www.khmertimeskh.com/618191/rott-mony-sentenced-to-two-years-in-jail/>

¹⁷ Sun Narin, "Kampong Chhnang Radio Owner Charged for "Incitement"", *VOA*, 15 May 2020, <https://www.voacambodia.com/a/kampong-chhnang-radio-owner-charged-for-incitement/5421115.html>

¹⁸ Aun Chhengpor, "Agribusiness Owner Jailed After Poultry Commentary on Hun Sen's Speech", *VOA*, 14 December 2020, <https://www.voacambodia.com/a/agribusiness-owner-jailed-after-poultry-commentary-on-hun-sen-speech-/5698670.html>

expressing concern about the virus in online posts. A number of these cases are ludicrous, showing the lengths the RGC is willing to go to in order to silence criticism.

As an illustration a 14-year-old girl was forced by police officials to publicly apologize in March 2020 for allegedly spreading fake news about COVID-19 in a private Facebook audio message.¹⁹ A journalist, Sovann Rithy, was arrested and charged with incitement in April 2020 for making a Facebook post in which he accurately quoted a comment made by Prime Minister Hun Sen during a press conference on COVID-19. He was convicted and sentenced in October 2020.²⁰ In December 2020, a farmer was arrested and charged with incitement and insult after making a Facebook post in which he mocked Prime Minister Hun Sen's speech about a possible state of emergency, replacing the words "country" and "people" with poultry references. He was accused of spreading "falsehoods" to "challenge the head of the government".²¹

Perhaps exemplifying the weaponization and politicization of the government's use of 'fake news' charges is the fact that affiliates of the Cambodian National Rescue Party – the dissolved opposition party – have been disproportionately targeted for spreading 'fake news' about COVID-19. Between January and April 2020, CCHR noticed that in 'fake news' cases that did not involve CNRP affiliates, individuals were arrested under Article 425 of the Criminal Code, "falsifying information", and in the majority of cases subsequently released without charge. In 'fake news' cases involving CNRP affiliates, it was observed that individuals were instead charged with "plotting" and "incitement to commit a felony" under Articles 494 and 495 of the Cambodian Criminal Code. Falsifying information carries a prison sentence of one to two years, much less than the crime of plotting which carries a sentence of five to ten years imprisonment. This disproportionate impact against individuals associated with the former political opposition seems to indicate the RGC's tendency to arbitrariness against those traditionally seen as holding dissenting or critical views, most notably views which the government perceives as threatening to its way of governance.

¹⁹ Kann Vicheika & Malis Tum, "Kampot Officials Make Underage Girl Publicly Apologize for Fake News, Revealing her Identity", *VOA*, 14 March 2020, <https://www.voacambodia.com/a/kampot-officials-make-underage-girl-publicly-apologize-for-fake-news-revealing-her-identity/5328804.html>

²⁰ Tith Kongnov, "Former TVFB director released from prison", *Khmer Times*, 6 October 2020, <https://www.khmertimeskh.com/50770122/former-tvfb-director-released-from-prison/>

²¹ Aun Chhengpor, "Agribusiness Owner Jailed After Poultry Commentary on Hun Sen's Speech", *VOA*, 14 December 2020, <https://www.voacambodia.com/a/agribusiness-owner-jailed-after-poultry-commentary-on-hun-sen-speech-/5698670.html>