

**Fact Sheet: Crackdown on Facebook Users Intensifies****Timeline: August 2015 - February 2016****Snapshot:** A recent surge in the number of people being arrested for expressing themselves online, along with related threats by senior government officials, threatens freedom of expression in the Kingdom of Cambodia (“Cambodia”).**Introduction**

In recent months, Cambodia has seen a substantial increase in the number of internet users being detained and criminally charged for comments they have made online. This Fact Sheet outlines a number of cases in which individuals have been arrested or threatened, and emphasizes the particular importance of freedom of expression for criticism of public officials. Prime Minister Hun Sen has repeatedly threatened legal action against critics of the government, which has created a hostile environment in which individuals are deterred from freely expressing their opinions. The creation of a culture of self-censorship is particularly worrying in the political domain, as the expression and tolerance of diverse views is essential to maintaining a healthy democracy.

This Fact Sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. The views expressed by the internet users in the cases discussed here are not necessarily endorsed by CCHR.

**Facebook: Cambodia’s New Battleground for Freedom of Expression**

At least seven people have been arrested for authoring posts or commenting online since August 2015, and all but one of these individuals remains in prison. At least 24 individuals have also been publicly threatened since August 2015 on the basis of social media comments. Although not all of the following cases involve sensible or constructive criticism, they do plainly illustrate a deeply troubling trend, whereby those who criticize the political elite are routinely being arrested for expressing their views on social media.

One of the most prominent and worrying incidents involves a Facebook post made 25-year-old student, Kong Raya.<sup>1</sup> On 07 August 2015, Raya called for the people of Cambodia to join him in a “*color revolution*”. He was arrested on 20 August 2015 – a scant two weeks later – and was charged the following day with incitement to commit a felony. Despite multiple hearings at the Phnom Penh Municipal Court in September 2015, a final judgment has yet to be delivered, and Kong Raya remains in detention. The rapid and unhesitant crackdown at the mere suggestion of a peaceful movement for political change represents a plainly disproportionate response.

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<sup>1</sup> Ouch Sony, ‘Student Questioned Over Facebook Comment’, *The Cambodia Daily*, (16 September 2015), <<http://bit.ly/1S7R9sT>>.

The number of cases in which social media users have been targeted by the authorities has increased sharply in recent months. On 25 January 2016, a woman was detained and interrogated for one day in connection with a Facebook post, which alleged that the Prime Minister Hun Sen had died after being cursed. On 22 January 2016, the Prime Minister's son and the head of the Defense Ministry's counterterrorism department, Hun Manet, filed a defamation complaint against Chham Chhany for alleging on Facebook that he and his mother, Bun Rany, were involved with illegal logging.<sup>2</sup> On 8 January 2016, three Cambodians in South Korea were questioned by Cambodian diplomatic officials, after the surfacing of a video made in 2014, which depicted them burning a picture of Hun Sen, and referring to him using insulting language. Ten days later, all three appeared in a further video alongside the Cambodia Ambassador to South Korea, Suth Dina, wherein they issued an apology for their actions, and asked publicly for forgiveness.<sup>3</sup> On 31 January 2016 Sok Touch, a senior academic and the government-appointed researcher on the Cambodia-Vietnam border mapping process, threatened to bring a defamation lawsuit against a former student at Khemarak University who had written a Facebook post criticizing the various fees demanded by the university.<sup>4</sup> Sok Touch is also the rector and part owner of the university. This threat of legal action by a private institution restricted the student's right to freedom of expression and the threat was only lifted once she had retracted her comments, and issued a full public apology. The use of the criminal offense of defamation to suppress public criticism which would, according to Sok Touch, "*affect the honor the university,*" is deeply troubling.

On 31 December 2015 a photograph of Bun Rany, the Prime Minister's wife, from a recent family holiday trip was mockingly edited by a Facebook user, leading Hun Sen to strongly condemn those who "*cause damage to my honor and my family.*"<sup>5</sup> No one has yet been arrested in connection with this case but the Ministry of Interior is investigating the case with INTERPOL, in search of a suspect residing abroad. On 20 November 2015, police arrested two people in connection to a Facebook post which included a birth certificate stating that Svay Rieng province is in Vietnam<sup>6</sup>. A commune councilor for the opposition Cambodian National Rescue Party ("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. In a separate incident, police launched an investigation on 19 November 2015 to identify a person who posted a birth certificate on Facebook which listed Takeo province as being located in Vietnam. The authorities threatened legal action against whoever posted the photo of the birth certificate because it "*poisoned the environment.*"<sup>7</sup> On 28 September 2015, a student, Tao Savoeun, was arrested after he made a comment that he would bomb his graduation ceremony - at which Interior

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<sup>2</sup> A Global Witness report entitled 'Cambodia's Family Trees: Illegal logging and the stripping of public assets,' (June 2007), <<http://bit.ly/1W0wISt>>, which the RGC has censored both in physical and electronic formats,<sup>2</sup> 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.

<sup>3</sup> Sen David, 'Trio 'sorry' for South Korea protest', *The Phnom Penh Post*, (19 January 2016), <<http://bit.ly/23S4JEO>>.

<sup>4</sup> Khy Sovuthy and Anthony Jensen, 'Prominent Scholar Threatens to Sue Student,' *The Cambodia Daily* (2 February 2016), <<http://bit.ly/1UNGcKW>>.

<sup>5</sup> Kuch Naren, 'Doctored Image of First Lady Draws PM's Ire', *The Cambodia Daily*, (1 January 2016), <<http://bit.ly/1SY3Rt5>>.

<sup>6</sup> Phak Seangly, 'CNRP duo jailed for birth certificate 'lies'', *The Phnom Penh Post*, (21 November 2015), <<http://bit.ly/1W4FB8b>>.

<sup>7</sup> Khuon Narim, 'Fake Birth Certificate Posted to Facebook Prompts Investigation', *The Cambodia Daily*, (20 November 2015), <<http://bit.ly/1PJkN5N>>.

Minister Sar Kheng was due to speak - because of his frustrations with its organization.<sup>8</sup> He was convicted and sentenced to 15 months imprisonment; however, he only served one month after he apologized, insisting he had never intended to commit any actual crime.<sup>9</sup>

Sam Rainsy Party Senator [Hong Sok Hour](#) was arrested by armed police on 15 August 2015 and charged the following day with forging a public document and incitement to cause serious unrest to national security, after posting a video on Facebook which allegedly contained a fake 1979 Cambodian-Vietnamese border treaty. His arrest occurred shortly after a speech given by Hun Sen accusing him of treason, which strongly suggests the prosecution is politically motivated. In connection with this case, on 20 November 2015 Sam Rainsy, President of the opposition CNRP, was summoned in relation to charges of being an accomplice to forgery and incitement to commit a felony, because Senator Hong Sok Hour had posted the video to Sam Rainsy's official Facebook page. While the judicial harassment of Sam Rainsy and Hong Sok Hour are most appropriately understood in the context of the general crackdown on the opposition party, they nonetheless highlight how Facebook has taken center stage in the Cambodian struggle for freedom of expression. In relation to this case, at least two of the administrators of Sam Rainsy's official Facebook page have also been charged, forcing them to flee overseas<sup>10</sup>.

### **Threats, Warnings and Self-Censorship**

These incidents have occurred against a backdrop of an increasingly hostile environment for freedom of expression, as Prime Minister Hun Sen has repeatedly threatened those who criticize his authority. For example, on 31 December 2015 he warned, "*All actions that ruin my honor and my family's honor, as a prime minister of a country, those must be responsible before the law*", adding menacingly, "*If I want to take action against you, we will get [you] within seven hours at the most*"<sup>11</sup>. In October 2015, he also warned opposition politicians to be "*more civil*" in their comments on social media as well as directly criticizing opposition lawmaker Yem Ponhearith for commenting on Facebook that politicians should be more willing to embrace constructive criticism. In response to this crackdown on online commentary, the leadership of the CNRP has counseled its members to exercise caution when expressing themselves online. On 03 December 2015, the CNRP's acting leader Kem Sokha warned CNRP youth leaders to remain polite in political arguments to avoid provoking trouble with the CPP. The combination of the aforementioned threats, warnings and advice may have a chilling effect on free political debate, whereby Cambodians hesitate to freely discuss political matters, and refrain from actively engaging in participatory political dialogue. Cambodia's senior politicians have recognized the value of social media in bringing them closer to ordinary Cambodians, but they must not prevent social media being used to promote participatory democracy, wherein diverse views and perspectives are expressed and tolerated.

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<sup>8</sup> Mech Dara, 'Graduate Convicted for Bomb Threat; Sentence Cut', *The Cambodia Daily*, (26 October 2015), <<http://bit.ly/1Q4n8tS>>.

<sup>9</sup> On 25 September 2015, an Interior Ministry official, Pheng Vannak faced a police commission in relation to a post from a Facebook account in December 2013, which included a picture of a gun with seven bullets and a written threat to kill CNRP Deputy President Kem Sokha. Following these allegations he was temporarily removed from his position at the Interior Ministry pending the investigation. CCHR differentiates between this case and the case of Tao Sovoeun due to the perceived legitimacy of a threat from a Ministry official, and the disproportionate punishment given to Tao Savouen.

<sup>10</sup> Mech Dara, 'Arrest Ordered for Rainsy Facebook Manager', *The Cambodia Daily*, (02 December 2015), <<http://bit.ly/207D1PD>>.

<sup>11</sup> Kuch Naren, 'Doctored Image of First Lady Draws PM's Ire', *The Cambodia Daily*, (01 January 2016), <<http://bit.ly/1SY3Rt5>>.

### **The Undisclosed Draft Cybercrime Law**

Against the backdrop of this escalating crackdown on free expression through social media, 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.<sup>12</sup> Despite requests from civil society groups, the RGC has refused to publish an official version of the draft law, although a draft version was leaked in 2014. The lack of transparency in the manner in which this law is being proposed further prevents an open and participatory democratic process. Commenting on the proposed law in May 2015, the Minister of Post and Telecommunications affirmed the need for legal controls to censor "people with bad intentions" who "criticize the government" and spread false information online<sup>13</sup>.

This highly controversial proposed law, if adopted in the leaked form seen by CCHR, would significantly restrict freedom of expression and bestow further powers upon the authorities to arrest those who make comments critical of the government online.

### **Freedom of Expression**

Freedom of expression is protected in Cambodia under national and international law. Article 41 of the Constitution of the Kingdom of Cambodia ("the Constitution") confers the "freedom of expression, press, publication and assembly," although this right cannot be used "to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security." The Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR") are both effective in Cambodian law, as confirmed by a 2007 decision of the Constitutional Council.<sup>14</sup> Article 19 of both of these international instruments protects freedom of expression.

### **Permissible Limitations to Freedom of Expression**

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 accountable for their actions. Therefore, the legal protection 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 United Nations' Human Rights Committee has addressed the great importance of tolerating criticism of public figures in a free and democratic society:

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<sup>12</sup> Bridget Di Certo and Kim Yuthana, 'The 'ill-willed' spark cyber law: officials', *The Phnom Penh Post*, (24 May 2012), <<http://bit.ly/1sW3Mvb>>.

<sup>13</sup> Mech Dara, 'Cyber Law to Protect Gov't Honor, Ministry Says', *The Cambodia Daily*, (27 May 2015), <<http://bit.ly/1PYDxP7>>.

<sup>14</sup> Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007).

*“[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. 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.”<sup>15</sup>*

Further, the extensive use of a criminal defamation offense to suppress criticism of public and political figures, as occurs in Cambodia, has also been condemned by the Committee:

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

The escalation in the number of arrests of people for criticizing Prime Minister Hun Sen and other prominent public figures threatens the possibility of a free and open democracy in Cambodia. The use of the offenses of defamation and incitement to stifle criticism of public figures violates the fundamental right to freedom of expression, as strongly declared by a number of international legal instruments and institutions.

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<sup>15</sup> UN Human Rights Committee, General comment No. 34 on Article 19: Freedoms of opinion and expression, (29 July 2011), <<http://bit.ly/1xmySgV>>.