

H.E. Mr. Chea Vandeth

Minister of Post and Telecommunications

Cc: H.E. Mr. Koeut Rith

Deputy Prime Minister
Minister of Justice

Cc: H.E. Mr. Vongsey Vissoth

Minister, Office of the Council of Ministers

Cc: Secretaries of State & Under Secretaries of State

Ministry of Post and Telecommunications
Building 13, Monivong Blvd
Sangkat Srah Chak, Khan Daun Penh
Phnom Penh, Cambodia
120210

Dear H.E. Mr Chea Vandeth,

Re: Submission on the Draft Law on Cybersecurity

We write to make a submission to your office on the **Draft Law on Cybersecurity** (“**Draft Law**”), prepared by the Ministry of Post and Telecommunications in November 2022.¹

Our organizations, Access Now and the International Commission of Jurists (ICJ), understand that your Ministry is currently undergoing a process of review and revision of this Draft Law.

In this connection, we write to ask that you undertake a revision, or send it back to the responsible Ministry for review and revision in order to bring it into line with international law and standards. We consider that the Draft Law, if adopted in its current formulation, is likely to significantly undermine the exercise of the rights to privacy and freedom of expression and information in Cambodia, and would in fact harm cybersecurity and expose people to increased cyber threats. If the law remains in its current form, Cambodia would lose the opportunity to design its regulations according with international standards, many of which even industries have committed to respect.

Current provisions of the Draft Law risk violations and abuses of rights protected under international human rights law. The rights to privacy and freedom of expression and

¹ Kang Sothear, “MPTC finalises more draft laws, policies on cybersecurity, posts”, Khmer Times, 7 November 2022, available at: <https://www.khmertimeskh.com/501180686/mptc-finalises-more-draft-laws-policies-on-cybersecurity-posts/>

information are guaranteed under articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a State party.

Our organizations recognize the legitimacy and importance of Cambodia's objective of taking effective measures to strengthen its cybersecurity landscape to deal with malicious cyber activities. However, it is of critical importance that any such law, policy, or practice be guided by and conform with Cambodia's obligations to respect, protect and fulfill human rights.

These obligations, protected under international human rights law including the ICCPR, require any limitations on the rights to privacy and freedom of expression to be grounded in the principles of legality, legitimate purpose, necessity, proportionality and non-discrimination.

At present, the provisions of the Draft Law fail to meet any of these principles – detailed in our legal analysis **attached** for your reference and review.

As a **first** concern, the Draft Law would not protect but would rather undermine cybersecurity and in turn undermine human rights protected in international law by blanketly prohibiting the provision of any cybersecurity service by a person without a license from the Ministry of Post and Telecommunications. This would gravely reduce access for individuals and organizations in Cambodia to digital security tools.

Secondly, the Draft Law would confer upon the executive wide-ranging powers to enforce the law through the Digital Security Committee (DSC) and Cybersecurity Inspectors – whose remit of powers remain undefined and unrestricted. These allow for potential executive overreach and abuse in both interpretation and implementation of the law.

Thirdly, the provisions of the Draft Law are vague and overbroad, and therefore indeterminate, making it for any person or organizations in Cambodia to determine whether they may fall foul of the law and encouraging self-censorship or overcompliance to avoid punishment. This necessarily has a chilling effect on freedom of expression.

Fourthly, the imposition of criminal sanctions for non-compliance of administrative requirements, in the form of heavy fines and imprisonment, is inconsistent with the principles of necessity and proportionality, as these are not the least restrictive means to ensure the legitimate aim of promoting cybersecurity.

Fifthly, there is an absence within the Draft Law of any independent, impartial or effective mechanism for oversight or effective remedy in case of human rights violation. Heavy sanctions, combined with the concerns of overbroad provisions and unfettered executive powers, risk serious violations to the rights to privacy and freedom of expression – which will be accentuated and ultimately left unchecked because of inadequate oversight and lack of access to appeal or remedy.



For these reasons, we urge your office and government to withdraw the Draft Law on Cybersecurity, or otherwise substantially amend it to bring its provisions in line with international human rights law and standards.

We remain at your disposal for any further information or clarification.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian Seiderman".

Ian Seiderman
Legal and Policy Director
International Commission of Jurists

A handwritten signature in black ink, appearing to read "R. Chima".

Raman Jit Singh Chima
Asia Pacific Policy Director & Global Cybersecurity Lead
Access Now