



Minute of the Meeting

“Consultative Meeting on the draft of Cybercrime Law”

5 June 2014: 7.30 – 12.00 am

KSSA meeting room (KSSA/ICF Center: #19-21, Street 330,
SangkatBeoungKeng Kang III, Chamkamorn, Phnom Penh. Tel: 023 220 475/012 979 843)

I. Introduction:

The Royal Government of Cambodia (RGC) committed to fast track the adoption of many laws including the Law on Associations and NGOs, Cybercrime Law, Law on Status of Judges and Prosecutors, Law on Organization and Functioning of the Courts, Law on the Supreme Council of Magistracy, Law on Access to Information, Law on Management and Use of Agricultural Land, and Law on Trade Unions etc. The adoption of these laws is seen at different paces. Some laws have already been drafted and consulted with numerous stakeholder groups, including experts from civil society, the private sector, legal and academic experts to ensure the transparency and accountability of the government while some laws have been sent for approval from the National Assembly without any public consultations. Moreover, the analysis from different sources such as from independent analyst, local and international NGOs and others have been made available for some prioritized laws which are believed to be more sensitive and potential impact on rule of laws, democratic space, enabling environment, rights of the Cambodian citizens, and sustainable development for Cambodia.

The Cambodia’s Cybercrime Law might be drafted in 2012 with two main objectives. First is to ensure the implementation of law, anti-cybercrime and combating all kinds of offenses commit by computer system. Second is to ensure safety and prevent all legitimate interests in using and developing technology¹. However, legal experts, human right activists, and technical experts on information, communications and technology (ICT) viewed the draft law in its current form as broad, vague, and restriction on the freedom of expression rather than cybercrime.²

Given the aforementioned context, the Cooperation Committee for Cambodia (CCC), The NGO Forum on Cambodia (NGO Forum), Advocacy and Policy Institute (API) in partnership with other organizations plan to organize a Consultative Meeting on “The draft of Cybercrime Law” to be held on 5 June 2014 (half day) in Phnom Penh in order to build awareness and to discuss the appropriate way to protect the democratic space and enabling environment in Cambodia.

Objectives:

1. To raise aware to current content of the law
2. To share the consolidate analysis and key findings
3. To discuss and collect inputs for joint advocacy effort
4. To give input and agree on joint advocacy strategies.

Expected Outcomes:

1. The consolidated and key findings have been shared with stakeholders;

¹ Cybercrime Law, Draft V.1 unofficial Translation to English

² The International Center for Not-for-Profit Law (ICNL,2014)



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2. The comments and inputs have been generated and integrated in the joint advocacy;
3. The joint advocacy strategies have been input and approved by participants.

Participants:

There are 60 participants from civil society organizations, academies, legal experts and relevant governmental agencies. The honored guests, resource persons/speakers are invited from the Government agencies and CSOs representatives.

II. Summary of the consultation meeting

Welcome and Opening Remarks was delivered by CSO representative, Mr. Soeung Saroeun, Executive Director (CCC). He called for the collaboration among CSO working in different sectors. To strengthen the CSO for common position, to share the same vision, to reach common goal, and to move forward are the key messages he urged each individual organizational leader to reflect, and to take actions. In addition, he emphasized on emerging law issues that concern the CSO as a whole.

Mr. Mi Nac, Advocacy Specialist of CCC shared the content and main concerns of the draft cybercrime law. The law, which was first announced in May 2012 is supposed to be passed this mandate but the government has thus far ignored calls from civil society groups to release a draft for consultation. According to the leaked draft cybercrime law, the most troubling of the cybercrime law’s provisions is Article 28, which allows to be imposed for any electronic communication deemed to “hinder the sovereignty and integrity of the Kingdom of Cambodia...[or]incite or instigate the general population.” Article 28 also allows those same penalties to be imposed for any publication or republication “deemed to generate insecurity, instability, and political cohesiveness...[or that] slanders or undermined the integrity of any governmental agencies, ministries...[or is] damaging to the moral and cultural values.” This language is exceedingly vague, and could easily be used to silence critics of the Royal Government.

Mr. Andrew Boname, Chief of Party (EWMI) presented the consolidated analysis on the Cybercrime Law. The presentation describes the purpose, scope of review, sources of the draft, legislative analysis, key findings, and possible conclusion. The consolidated analysis reflects on the potential abuse in article 28 of the draft that leads to many questions from participants during the Q & A sessions. Those questions can be addressed meanwhile others are needed the clarification from the government side.

Mr. Lam Soheat, Deputy Director of API took a strategic discussion session in which Road Map and Advocacy Plan were actively participated from CSO representative stakeholders. His presentation was about the consolidated Advocacy strategy from the three consultation meetings on the draft of Cybercrime law. At the end of the small groups and panel discussions, there are suggestions on the adjustment of objectives and activities of the advocacy strategy.

CSO’s council (Tentative) is an initiative of CSO group to provide oversight and leadership in discussion, debating, and advocating on several laws government is proposing to enact in this mandate. The temporary secretariat for this is NGO Forum, CCC and API.

Mr. Chea Sarom, Representative of NGO Forum on Cambodia, provided a closing remark on calling for the strong collaboration among CSOs in order to move forward with harmonization. The closing remark ended by the suggestion on CSOs’ role in making the advocacy plan possible.

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www.ccc-cambodia.org
info@ccc-cambodia.org
T +855 (0)23 214 152
F +855 (0)23 216 009

#9-11, Street 476,
ToulTompoung 1, Chamkamorn
P.O. Box 885, Phnom Penh,
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Session 1

Presentation by Mr. Mi Nac Advocacy Specialist (CCC)

The draft of cybercrime law is under the coordination of Ministry of Post and Telecommunication and Council of Minister. According to the leaked draft cybercrime law, the most troubling of the cybercrime law’s provisions is Article 28, which allows to be imposed for any electronic communication deemed to “hinder the sovereignty and integrity of the Kingdom of Cambodia...[or] incite or instigate the general population.” Article 28 also allows those same penalties to be imposed for any publication or republication “deemed to generate insecurity, instability, and political cohesiveness...[or that] slanders or undermined the integrity of any governmental agencies, ministries...[or is] damaging to the moral and cultural values.” This language is exceedingly vague, and could easily be used to silence critics of the Royal Government.

Presentation: Mr. Andrew Boname, Chief of Party (EWMI)

The consolidated analysis of draft Cybercrime Law

The consolidated analysis of draft Cybercrime Law reflects on several matching purposes of the law while a technical analysis of mechanisms applied to cyber activity does not clearly stated. The scope of review looks at impact on stakeholders as the following: criminal liability of ISPs/social media providers/cloud storage providers for unintentional, unknowing acts, criminalization of legitimate expressive conduct, cellphone and computer users subjected to warrantless searches, and Cambodia diaspora in Lowell, Long Beach.

On the legislative analysis, it is impossible to say how government will actually use a draft law if it is enacted. We can only identify the powers and opportunities the words allow. A good law restrains rulers, but comments on this law are about absence of restraints, limits and controls, and it is not about how the rulers will actually use (or abuse) those provisions.

The sources for the draft law are from Cambodia Anti-Corruption Law – for structure of Anti-Cybercrime Committee, but omitting independence features and making the PM the Chairman, Council of Europe Cybercrime Convention, but leaving out HR protections, free expression and privacy in particular, and from Romanian Cybercrime Law, but opting to use alternatives, such as lesser penalties for child pornography.

Legitimate public expression criminalized, criminal offenses defined without “intent”, liability for innocent pass-through and 3rd party carriers, global application of law without detail, Anti-Cybercrime unit created under PM, investigation authority includes warrantless search and seizure, and penalties include withdraw of civil rights are the key finding of the consolidation analysis of the draft law.

On article 28 of the draft, AIC found this article “troubling” because it criminalizes legitimate expression. The punishment would allow jail terms of 3 years for having a website that “hinders the sovereignty and integrity” of Cambodia, “Publications that incite or instigate the general population that could cause one or many to generate anarchism” [Note that information does not have to be false]. Publications that generate insecurity, instability . . . [Does criticism qualify?]

Some features of the draft states those collateral penalties under Arts. 34 and 35 include, for individual, deprivation of civil rights and/or ban on professional activities; for legal entities, dissolution and/or barring of activities. On search of Article 19(1) of Draft describes whenever for the purpose of discovering or gathering evidence it is necessary to investigate a computer system or computer data storage medium, the prosecutor or court can order a search.

From Article 16 NACC substitution for prosecutor “In the framework of these investigations and contradictory to articles 85 (power of judicial police officials in flagrant offence investigation), article 91

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(searching) . . . of the code of criminal procedure, the Secretary General of National Anti-Cybercrime Committee or officially assigned representative has the duty to lead, coordinate and control the mission of those officials instead of the role of prosecutor to the point of arresting a suspect.”

For the potential abuse suggests as follow: no provision for protecting (or balancing) human rights interests in speech or privacy, purpose, per EkTha, is to control people who would spread “misleading” information, enforcement in hands of PM and political appointees (determine what’s “misleading”), special investigation powers, with NACC apparently replacing prosecutor, and Article 28’s criminalization of legitimate comment on government conduct.

The possible conclusion suggests as the following draft law unclear, unbalanced and unnecessary – and in many instances, unconstitutional, provisions contrary to ICCPR Art. 19 should be eliminated, any truly necessary cyber-offences can be added to the Penal Code, no need for NACC; use existing agencies, and need for stakeholder consultation if Draft persists.

Key Questions:

1. Does using software without license and data transferred consider as criminal act?
2. Do we conduct a study that under which institution Cybercrime Law was adopted Post and Telecommunication Ministry or the Council Minister?
3. Do we include the private sector stakeholders in Cybercrime Law strategy?
4. What happened to project of USAID (Development Innovation) if the Cybercrime Law will be legally approved?
5. Do we engage the government in the process? Or only CSOs who do concern about the draft law
6. In ASEAN countries, which countries do have Cybercrime Law?
7. What are strategic plan on Cybercrime Law?

Suggestions:

1. In the strategic plan, all the stakeholders should be well informed not just individual organization. The holistic approach of advocacy should be done as a package not individual organization, so CSOs will be stronger and easier for the Development Partner to support.
2. We have developed many advocacy strategies in the national level over the past 20 years. Hence, there is a need to expand our advocacy activities at the sub-national levels. Additionally, there are many networking in provinces, so the action of coordinating those to be one strong networking team should be done as soon as possible.

Session 2: Strategic Discussion

Presentation: Mr. Lam Socheat, Deputy Director of API

Advocacy Strategy on Cybercrime Law

In Asia, Afghanistan, Cambodia, Bahrain, Bhutan, Democratic People’s Republic of Korea , Iran, Iraq, Jordan, and Kuwait, etc. do not have the Cybercrime Law while Armenia, China, India, Indonesia, Japan, South Korea, etc. have adopted the Law. More information <http://www.cybercrimelaw.net/Cybercrimelaws.html>

The background is the Cambodia’s Cybercrime Law might be drafted in 2012 with two main objectives, according to the preliminary draft available to civil society. The first objective is to ensure the

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implementation of law, anti-cybercrime and combating all kinds of offense commit by computer system. The second is to ensure safety and prevent all legitimate interest in using and developing technology. However, legal experts, and human right activists view the draft law as broad, vague, and restricted on the freedom of expression rather than cybercrime.

Due to its vague contents, and non-inclusiveness of the legislation process which is seen as having strong effects on the individuals, institutions, and CSOs especially youth groups, and a majority of population, the CCC, NGO Forum, API, TI, CCHR, CLEC, and other NGOs are committed to a series of joint actions as part of the advocacy strategy on the Cybercrime Law as follows:

Objective

1. To urge the government to hold off the passages of the law until an appropriate time, just as they have done with the NGO Law
2. To call for, if a delay is not possible, a serious consultation of Cybercrime Law with CSOs (NGOs, Youth, etc.) until an agreement is reached from each side
3. To urge transparency and accountability of the state actors in legislation process and to impulse the government to uphold and maintain inclusiveness in the process
4. To generate a deliberate legal analysis of the Cybercrime Law

Suggestion from group discussion:

Yes to Cybercrime Law

1. Among the four objectives, the team suggested to combine objective 1&2 together, and objective 3&4 together.
2. Omit objective 1
3. Two groups put objective 2 is priority
4. Objective 4 should be written as output

Proposed Actions

5. Requested official draft law in Khmer and its timeframe commitment
6. Joint statements from CSOs on current draft law
7. Put pressure through social and traditional media channels
8. Awareness raising on sub-national level, Technical working group, Networking group who often use the social media
9. Publicly disseminate on draft law analysis (positive and negative impacts)
10. Call for joint advocacy actions
11. Joint campaigns
12. Monitor and follow up the inputs and progress
13. Continue to revisit and review from other sources commentaries
14. Youth Forum (Focal person)
15. Google, Yahoo Company to revisit the draft law
16. 12 steps in making draft (Which steps CSOs can join)
17. Special rapporteur for UN, and other commentaries (additional analysis is better)
18. Legal analysis (Engage lawyers team), Technology aspect analysis, and economic analysis
19. Campaign in sub-national level as there many NGOs implementation in the grass-root level.

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Support: No cybercrime law (advocacy plan)

Proposed activities

1. Awareness of social campaign
2. Survey on the Cybercrime Law
3. All Stakeholders joint letters to Post and Telecommunication Ministry, and the Council Minister with the attachment of analysis of the law.
4. Engagement of private sectors in the process
5. Seek input the from media institutions (as the draft law effects media the most)
6. Seek input from EU on the impact of the law, update about draft content
7. Find sample of the law from other countries (better Cybercrime law)

| Activities | Key strategies | Key interventions | Responsible organizations | Timeframe |
|------------|---|--------------------------|---------------------------|-----------|
| 3.1 | Getting clarification from government side on Cybercrime Law | Multi-stakeholders Forum | CCC, API, NGO Forum | 5 June |
| 3.2 | Getting input from youth group | Youth Forum | TI | June-Aug |
| 3.3 | Ensure all legal components including in analysis & Compiling existing legal analysis | Legal Analysis | CHRAC, CLC, EWMI | June-July |
| 3.4 | Raising awareness of Cybercrime Law | National campaign | All? | August? |
| 3.5 | National Awareness of Cybercrime | Media Campaign | CCC, API, NGO Forum | ??? |
| 3.6 | Advocacy at national level | National Forum | All? | ??? |

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|-----|--|------------------------|------|-----|
| 3.7 | Awareness raising on the international level throughout the networking | International campaign | All? | ??? |
|-----|--|------------------------|------|-----|

- 1.1 Holding a multiple-stakeholders forum with an expert from the government (Possibly Mr. OU Phannarith, Permanent Member of NIDA giving a presentation on the draft Cybercrime Law. Participants to the forum would come from civil society, private sector, academicians and students, media, development partners including donor agencies and foreign embassies. The expected outputs from the forum would be a common understanding of the purposes, the needs for and the effects of the draft Cybercrime Law based on the presentation and explanation by the government’s official(s) and then a joint statement by the forum would be produced to reflect their position and to be presented to the government. It is also craving that the draft law in both Khmer and English from Ministry of Post and Telecommunication and Council of Minister be made available to civil society and other stakeholders for reviewing and consultations. Engage all the stakeholders on the early stage, so they would have role in the coordination, and action process.
- 1.2 Holding a “Youth Forum” to discuss the impacts of the Cybercrime Law on users, particularly, youth groups. Participants would derive from youth associations, universities in Phnom Penh and provinces. The forum is projected to come up with a joint position paper to be presented to the government and development partners in the country
- 1.3 Inviting legal experts on Cybercrime Law to conduct an analysis of the draft with support from CHRAC, CLC, etc. Not only an analysis of the draft would be made but also the expert(s) would have to develop series of suggestions of how a Cybercrime Law that meets international standard should be and with successful experiences from other countries be used as references. In the analysis, Panel codes that stated in article 28 of Cybercrime Law should be highlighted. Trying to get these points: benefits, scopes and impacts, data security and privacy, confidential, transparency, involvement, awareness, and priority included in the scope of the analysis. Use the legal analysis of the draft Cybercrime Law for advocacy purposes. This includes grass-root level campaign, and national linkage to ITU representatives
- 1.4 Giving a debriefing of the legal analysis to other stakeholders including government and legislative bodies, development partners, private sectors, universities, and media clubs. The idea is to lobby the government and the parliament and to seek support from especially non-government bodies on an international-standard cybercrime law as suggested and introduced by the experts. This debriefing could be organized in different

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groups namely government and parliament in one group, development partner and private sector in another group while universities and media as another group.

- 1.5 Holding a series of media forum (radio talk shows esp.) with many stakeholders as possible on the draft law and its possible affects. Each radio talk show should be organized for one specific group. However, since youth is the main target and priority, it should be split so that their voices would be heard as many times as possible. For example: one talk show is just for youth associations and another one is for university students etc. In addition to that, a broader media scheme should be developed and implemented so that the issues would be reported or discussed on the media channels: radios, newspapers and TVs repeatedly. One of the methods is, if affordable, a newspaper columns or a specific radio air time be sought for youth writers. This means that a youth or a student would write an opinion piece in the column on the issue for every issue of the newspaper or for the reserved radio airtime. In the meantime, a song sheet on the issue must be developed so that everybody talking with the media would be well-prepared and would be talking with the same language and voice
- 1.6 Holding a National Forum with as many stakeholders to advocate for the adjustment of the law to meet the international standards. By doing National Forum, there will be a clear stakeholders' position on the draft law. Lobbying as many politicians as possible on either holding-off the law or opening the process to participation by other stakeholders. This should be a face-to-face approach
- 1.7 Networking: developing an effective mechanism (like a mailing list and/or rapid information-sharing system...) for network communication with overseas advocacy groups so that, once our network members have something that could be helpful to us, we can share and make use of it immediately

CSO's council (Tentative)

The Objective of CSO's council is meaningful inclusiveness and genuine participation in discussion and consultation on 8 legislations that are on the way. Temporary Secretariat: CCC & NGO forum, API

Proposed action plans are to formulate CSO's Council with ADHOC, LICADO, CCHR, Solidarity House, NGO Forum, API, CCC, CHRAC, CLC, PAC, SAC, SILAKA/CWPD (noted some of these have not been consulted - just proposed), to reactivate INGO Core Group, and TOR's CSO Council for Short & long term perspective be developed. Moreover, to consolidate all existing analysis law, design advocacy and common strategy, to set up National consultation on the consolidated analysis law and the Advocacy Communication strategy. To have a regular meeting/ communication with major donors, private sector, Embassies, Media, Government and international Network.

Prioritized Laws for advocacy are Cybercrime Law, LANGO, Access to Information, Trade Union, Farmer/agricultural Land Law, 3 Judicial Reform Laws.

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