

Briefing Note

The Secretary General of the Senate of Cambodia

Democracy in the digital era and the threat to privacy and individual freedom



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Democracy in the Digital Era

In the “digital era”¹, political institutions, activities and relationships are increasingly mediated and shaped by the technologies of information and communication such as the internet and related digital platforms (e.g. Facebook, Twitter, Instagram, LinkedIn, WordPress and Tumblr).² This provides more opportunities for people to communicate and receive information and updates, and to express their opinions on different digital platforms. In the context of democracy, the digital platform can increase people’s involvement in public debates and decision-making and their ability to gain access to information that could help them stay informed about government activities. In addition, the digital platform can also provide governments and private companies with the means to collect information about citizens’ online activities. As such, this could present many threats to privacy and individual freedoms, and therefore to democracy itself.³

This briefing note provides an overview of democracy in the digital era, in particular focusing on the threats to privacy and individual freedoms, since this issue will be discussed in the convocation of the 133rd Assembly of the Inter-Parliamentary Union (IPU) that will be held in Geneva, Switzerland on 17-21 October 2015. In addition, this paper will also provide a comparison of the right to privacy that is set out by the United Nations with initiatives that could be taken to enhance privacy rights in Cambodia.

1. Influence of the Digital Age on the state of Democracy

There is a sense of disagreement among experts with regard to the effect and importance of the internet and related technologies for political and governmental purposes.⁴ On one side, the digital era could be seen as a transformation period of political life, whereby citizens have greater access to additional instruments to examine the parliamentary environment.⁵ However, on the other side, it could be argued that there are severe risks and dangers due to the involvement of digital technology in government affairs.⁶ Moreover, there is a danger for democracy due to the increased risk of the erosion of citizens’ privacy through the use of modern technology.⁷ This highlights the importance for parliaments to establish a legal

¹ Digital era refers to the Information Age which is also known as the Computer Age, Digital Age, or New Media Age. This is a period in human history that is characterized by the shift from analog to digital tools.

² Nash and Bright, “Digital Era Government and Politics”, (Oxford University: 2015), p 1

³ Inter-Parliamentary Union, *Democracy in the digital era and the threat to privacy and individual freedoms*, (132nd IPU Assembly: Hanoi (Viet Nam), 28 March-1 April 2015).

⁴ Nash and Bright, “Digital Era Government and Politics”, (Oxford University: 2015), p 1

⁵ Global Centre for ICT in parliament, “Chapter 1: Major Global Trends since 2010 and possible Developments beyond 2012, *World e-Parliament Report 2012*, (United Nation: 2012).

⁶ Nash and Bright, “Digital Era Government and Politics”, (Oxford University: 2015), p 1

⁷ Inter-Parliamentary Union, *Democracy in the digital era and the threat to privacy and individual freedoms*, (132nd IPU Assembly: Hanoi (Viet Nam), 28 March-01 April 2015).

framework that protects citizens' rights and ensures oversight and accountability for its implementation.⁸

2. The Threat to Privacy and Individual Freedoms

The freedom of expression and association are basic conditions of democracy.⁹ The increasing amount of information technology with its capacity to collect, analyze and distribute data on individuals has introduced a sense of urgency for the introduction of legislation to address this issue.¹⁰ Equally, populations throughout the world express fears about invasion of privacy and individual freedoms. Human rights groups are worried that technology is being exported to developing countries that lack sufficient mechanisms for the protection of individuals' rights and freedoms. However, assessment and regulation of these technologies remain challenging.

3. Legislation and Policies to Protect Privacy and Individual Freedoms in the Digital Era while Promoting Democracy

The Royal Government of Cambodia (RGC) has enshrined laws on privacy rights according to the Constitution as follows:

- Article 31 (Clause 2): Khmer citizens shall be equal before the law, enjoying the same rights and freedom and obligations regardless of race, color, sex, language, religious belief, political tendency, national origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedoms of others. The exercise of such rights and freedoms shall be in accordance with the law.¹¹
- Article 35: Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. All requests from citizens shall be thoroughly considered and resolved by institutions of the state.¹²
- Article 41: Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No-one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security. The regime of the media shall be determined by law.¹³

⁸ Ibid.

⁹ Ibid.

¹⁰ David Bansiar, *Privacy and Human Rights: An International survey of privacy laws and practice*, (Global Internet Liberty Campaign).

¹¹ Chapter 3: the rights and obligations of Khmer citizens, *Constitution of the Kingdom of Cambodia*, (2008).

¹² Ibid.

¹³ Ibid.

In addition, the Working Group at the Council of Ministers is preparing a draft Law on Cyber Crime.¹⁴

4. Comparison of UN Resolutions on Privacy Rights with areas for Possible Enhanced Privacy Initiatives to be taken by Cambodia

Between December 2013 and December 2014, the UN General Assembly adopted resolutions on the right to privacy in the digital age to ensure that states are in compliance with their obligations under international law.¹⁵ Table 1 below compares these resolutions with areas where Cambodia might wish to take legal and policy initiatives.

Table 1 Comparison of the UN’s and Cambodia’s Legal and Policy Initiatives to Ensure Privacy

UN Privacy Rights	Cambodia’s Privacy Initiatives
<ul style="list-style-type: none"> • Reaffirms the right to privacy and that no one shall illegally interfere with his/her or family privacy.¹⁶ • Recognizes the improvement in information and communication technologies that help quicken progress toward development.¹⁷ • Endorses that people online must have the same protection as those offline, including the right to privacy.¹⁸ • Calls upon states:¹⁹ <ul style="list-style-type: none"> ▪ To respect and protect the right to privacy; ▪ To take measures and create the conditions to prevent privacy violations under international law; ▪ To review the procedures, practices and legislation regarding communication, interception, and collection of personal data; and ▪ To create or maintain effective independent domestic oversight and accountability for states in relation to privacy rights. 	<p>Initiatives regarding privacy rights related to digital technologies could include;</p> <ul style="list-style-type: none"> • Guaranteeing the freedom of expression to ensure that the internet is not penetrated by illegal users (hackers, extremists and piracy).²⁰ • Establishing a clear legal framework, and amending existing laws to protect and promote freedom of expression in accordance with international human rights standards.²¹ • Developing policies and facilitating internet access for Cambodians.²² • Implementing policies that allow Cambodians to learn how to use and access the internet.²³ • Embracing freedom of information and publishing official information online.²⁴

¹⁴ Council of Ministers, “Draft Law on Cyber Crime”, accessed on 2 October 2015, URL:

https://www.article19.org/data/files/medialibrary/37516/Draft-Law-On-CyberCrime_Englishv1.pdf

¹⁵ Inter-Parliamentary Union, *Democracy in the digital era and the threat to privacy and individual freedoms*, (132nd IPU Assembly: Hanoi (Viet Nam), 28 March - 1 April 2015).

¹⁶ United Nations, *the right to privacy in the digital age*, (18 December 2013).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Cambodian Center for Human Rights, *New Media and the Promotion of Human Rights in Cambodia*, (July, 2012)

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

However, in order for these initiatives to move forward, and to implement E-Parliament and E-Government, Cambodia will have to overcome the two main challenges of inadequate budget and human resources.

Conclusion And Policy Options

The digital era has enabled Cambodian citizens to contribute to politics and allowed them to express their opinions by using technology. They are protected by the Constitution under articles 31, 35, and 41, and with a new draft Law on Cyber Crime. Nevertheless, the challenges – budget and human resources – still limit Cambodia’s ability to implement E-Parliament and E-Government. The role of member parliaments of the IPU includes cooperation and exchanges of experiences with other members of the IPU to address challenges and share ideas on how to deal with the current issues that are raised during IPU meetings.²⁵ That forum could be better used to identify solutions to Cambodia’s challenges. The freedom of expression and the participation of parliaments represent the foundation of democracy in which the majority of the people can share their views or receive information through digital platforms such as social media including Facebook and Twitter, etc. In order to manage the use of new technologies in a democratic society, the protection of individual rights and the freedom of expression, Parliamentarians could consider the following policy options:

- Cooperate with the United Nations and other members of the IPU to create an international law with the intention of protecting individual rights and the freedom of expression;
- Strengthen education on the use of new technologies and the benefits of other digital instruments in the context of politics, investment and updated information;
- Strengthen and amend existing laws in order to define how the use of digital technologies can violate individual rights by using threats²⁶;
- Speed up the legislative process dealing with crimes on the internet in order to prevent further threats to individual rights and freedom of expression²⁷;
- Cooperate with other IPU members to create a database in order to receive and store complaints from all countries that are members of the IPU to deal with issues related to violation of rights and threats to individual rights and freedom using digital technologies; and

²⁵ Inter-Parliamentary Union, <http://www.ipu.org/english/home.htm>

²⁶ Constitution of the Kingdom of Cambodia “Article 31, 35 and 41”, <http://www.crrt-cambodia.org/wp-content/uploads/2011/01/Constitution-of-the-kingdom-of-Cambodia-EN.pdf>

²⁷ Council of Ministers, “Draft Law on Cyber Crime”, accessed on 2 October 2015, URL: https://www.article19.org/data/files/medialibrary/37516/Draft-Law-On-CyberCrime_Englishv1.pdf

- Consider drafting an international law on ‘the management of the internet’ in order to protect against terrorism.

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