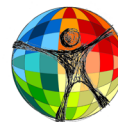


Access Denied: Business, Human Rights, and Networked Authoritarianism in Cambodia

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ABSTRACT

Cambodia's slide into authoritarianism continues to accelerate as the country grows further from the West and becomes increasingly tied to China and the Belt and Road Initiative. While Internet access in the country has empowered civil society organizations and grassroots activists to speak out against human rights abuses, Prime Minister Hun Sen—who has ruled the country with an iron fist for over thirty years—has implemented a sophisticated and multifaceted strategy for restricting citizens' rights to freedom of expression and privacy online. The complicity of privately-owned Internet service providers ("ISPs") is key to this strategy's success. This paper examines whether existing corporate social responsibility mechanisms, including self-regulation, international codes of conduct, and multi-stakeholder initiatives, could protect and promote the respect of Internet users' rights in the Cambodian context, where the majority of ISPs are linked to the regime and lack bargaining power. Ultimately, this paper concludes that these mechanisms are unlikely to succeed locally, and that multinational companies, foreign governments, institutions, and investors must, therefore, do more to protect and promote Internet freedom in Cambodia.

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Introduction

“I will open your eyes, because nothing is secret in this era,” declared Prime Minister Hun Sen in January 2018, delivering an Orwellian speech to a crowd of over three thousand journalists gathered in Phnom Penh.¹ Of the 65 countries assessed by Freedom House in 2018, Cambodia registered one of the largest declines in freedoms on the Internet² compared to 2017. Internet access in the country has enhanced the capacity of citizens, activists, and civil society organizations (CSOs) to advocate and mobilize for change, but it has also strengthened the ruling party’s political chokehold.

From May to July 2019, I was staffed at the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), a high-profile human rights organization in Phnom Penh, Cambodia. On my first day of work, I was handed a new smartphone equipped with encrypted messaging applications and was instructed by management to use these applications for all work-related communications. In talking to colleagues and outside partners, I quickly learnt that this practice was not unique to LICADHO. Other organizations, journalists, activists, and citizens frequently relied on encrypted messaging services out of a justified fear that their messages would be intercepted by the Cambodian government as part of its crackdown on civil society and political dissidence. Throughout my internship, I came to the sombre realization that national and international legislation had largely failed to protect Cambodians from government abuse or ensure the respect of their fundamental rights, including their rights to freedom of expression and privacy online. This realization is what sparked my interest in exploring corporate social responsibility (CSR) as an alternative response to human rights violations in authoritarian contexts.

¹ Bean Sokhean & Erin Handley, “PM Derides Talk of Government Affairs, Hinting Phone Records Could Reveal All” (23 January 2018), online: *Phnom Penh Post* <phnompenhpost.com/national/pm-derides-talk-government-affairs-hinting-phone-records-could-reveal-all>.

² See “About Freedom on the Net” (2019), online: *Freedom House* <freedomhouse.org/report-types/freedom-net> (Internet freedoms include “freedoms of speech, information, privacy, and association”).

Traditionally, international human rights law has focused on states, not companies.³ Whether or not companies are legally bound to international conventions remains a debated issue.⁴ However, a number of international soft law instruments have affirmed companies' responsibility to respect and protect human rights, including the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*,⁵ the *Guidelines for Multinational Enterprises*,⁶ and the *Guiding Principles on Business and Human Rights*.⁷ The responsibility to protect human rights forms part of businesses' broader corporate social responsibility. Notably, this responsibility exists independently of states' obligations⁸ and includes the duty to avoid complicity, meaning the "involvement by companies in human rights abuses where the actual harm is committed by another party, including governments."⁹ In other words, simply following government orders or complying with national laws should not excuse a company's failure to fulfill its human rights duties.¹⁰

This paper examines how Cambodia's slide into authoritarianism—both online and off—is facilitated by Internet service providers (ISPs) and compounded by Cambodia's increasing alienation from the West, rapprochement with China, and ambiguity in international human rights law. It discusses three existing CSR mechanisms for promoting Information and Communications Technology (ICT) companies' respect for human rights: self-regulation, international codes of conduct, and multi-

³ See Christopher L Avery, "Business and Human Rights" in Venkat Iyer & N A Palhivala, eds, *Democracy, Human Rights and the Rule of Law: Essays in Honour of Nani Palhivala* (New Delhi: Butterworths India, 2000) 173 at 187.

⁴ See generally *ibid*.

⁵ International Labour Organization, International Labour Office, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (Geneva: ILO, 1977) [ILO Tripartite Declaration].

⁶ OECD, *OECD Guidelines for Multinational Enterprises* (2011) [OECD Guidelines].

⁷ OHCHR, *Guiding Principles on Business and Human Rights* (Geneva: UN, 2011) [UN Guiding Principles].

⁸ See John Ruggie, "Protect, Respect & Remedy: A Framework for Business and Human Rights" (2009), 3:2 *Innovations Technology Governance Globalization* 189 at 199.

⁹ See *ibid* at 203.

¹⁰ See *ibid* at 204.

stakeholder initiatives (MSIs).¹¹ Most research studying the link between CSR and rights to online expression and privacy has focused on multinational ICT companies that are based in the West. Hence, a gap exists when it comes to applying these mechanisms to companies that are based and uniquely operate in authoritarian countries. This paper attempts to fill this void by assessing how these three CSR mechanisms apply to the Cambodian context, where the vast majority of ISPs that are complicit in the government's rights abuse are indeed local.

For the purpose of this paper, the umbrella term "ICT companies" encompasses ISPs, social media platforms, Internet search engines, Internet payment systems, online marketplaces, and web hosting providers.¹² "Privacy" is understood to mean the right to freedom from interference or intrusion.¹³ It is connected to the right to freedom of expression, meaning the right to "seek, receive, impart information, and ideas."¹⁴ Freedom of expression is recognized as a precondition for greater transparency and accountability in States, which in turn promotes democratization and the realization of other rights.¹⁵

This paper has several important limitations. First, while rights to religious freedom and belief, opinion, assembly, and public participation are equally implicated by Internet use,¹⁶ they fall outside of this paper's scope. Second, although this paper focuses on Cambodia, in reality, government interference with the Internet is not limited by geography or regime type. Between 1995 and 2011, approximately 606 unique incidents of government interference with the Internet occurred worldwide. Of the 99 countries where these took place, 39 percent were

¹¹ See generally Rebecca MacKinnon et al, "Fostering Freedom Online: The Role of Internet Intermediaries" (2015) at 21, online (pdf): UNESCO < unesdoc.unesco.org/ark:/48223/pf0000231162>.

¹² See *ibid* at 21.

¹³ See "What Does Privacy Mean?", online: IAPP <iapp.org/about/what-is-privacy/>.

¹⁴ Yohannes Eneyew Ayalew, "The Internet Shutdown Muzzle(s) Freedom of Expression in Ethiopia: Competing Narratives" (2019) 28:2 J Information & Communications Technology L 208 at 208.

¹⁵ See *ibid*.

¹⁶ See *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNGA, 38th Sess, UN Doc A/HRC/38/35 (2018) 1 at 3 [Report on Freedom of Opinion and Expression].

“democracies.”¹⁷ While efforts have been made to stay away from a “savages-victims-saviours” construction of the issue, this paper is written from my fundamentally Eurocentric perspective. Makau Mutua would likely raise important objections to the veneration of Western political democracy and condemnation of the Cambodian and Chinese states herein.¹⁸

The paper is divided into seven parts. Part I sets the stage by offering a brief history of Cambodia and current issues related to the country’s economy, governance, and foreign relations. Part II discusses the ways in which the arrival of the Internet has been a positive development for individuals, CSOs, activists, and communities in Cambodia. Part III outlines how the Cambodian government, inspired by the Great Firewall of China, has co-opted the network to secure its grip on power, through a combination of legal, psychosocial, and technological methods. Part IV assesses whether online censorship and surveillance efforts by government, in cooperation with ISPs, are in breach of international human rights law. Part V evaluates the benefits and challenges of CSR mechanisms that currently exist for holding ICT companies accountable for their human rights duties. Specifically, it examines self-regulation, international codes of conduct, and multi-stakeholder initiatives. Part VI attempts to apply these mechanisms to the Cambodian context. Finally, Part VII suggests a path forward. Ultimately, the evidence points to local ISPs in Cambodia being extremely unlikely to adopt the CSR mechanisms discussed herein for several reasons, including the strong likelihood of government retaliation and lack of incentive for doing so. In response, I argue that multinationals, foreign governments, institutions, and investors must do more to protect Internet users’ fundamental rights.

Part I: Snapshot of the Cambodian Context

In 1993, the United Nations Transitional Authority for Cambodia (UNTAC) embarked on an ambitious journey to

¹⁷ See Philip N Howard, Sheetal D Agarwal & Muzammil M Hussain, “The Dictators’ Digital Dilemma: When Do States Disconnect Their Digital Networks?” (2011) 13:1 *Issues in Technology Innovation* 1 at 1.

¹⁸ See Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights” (2001) 42:1 *Harvard Intl LJ* 201.

transform Cambodia into a liberal democracy.¹⁹ Three decades of conflict, political upheaval, and isolation from the rest of the world had left the country in turmoil.²⁰ In 1994, in an annual report to the UN Commission on Human Rights, Michael Kirby, Special Representative of the Secretary-General, noted that the country's economy would have to improve before human development could be attained.²¹ The economy would go on to do just that. Between 1998 and 2007, Cambodia achieved the highest real GDP growth of any low-income country in Asia, largely thanks to international trade²² and foreign investment.²³ Although institutions like the World Bank have been eager to cite official numbers showing that economic growth has brought the country's poverty rate down from 48 percent in 2007 to 13 percent in 2014,²⁴ skeptics have pointed to the UNDP's Multidimensional Poverty Index (MPI), which found that 35 percent of Cambodians still lived in poverty in 2018.²⁵

While their existence helps maintain the façade of democracy, elections in Cambodia "have become little more than a side-show helping to bolster the electoral-authoritarian regime

¹⁹ See Mikael Baaz & Mona Lilja, "Understanding Hybrid Democracy in Cambodia: The Nexus Between Liberal Democracy, the State, Civil Society, and a 'Politics of Presence'" (2014) 6:1 Asian Politics & Policy 5 at 5.

²⁰ See Joakim Öjendal & Mona Lilja, "Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society" in Joakim Öjendal & Mona Lilja, eds, *Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society* (Copenhagen: NIAS Press, 2009) 1 at 1; Sophal Ear, "The Political Economy of Aid and Regime Legitimacy in Cambodia" in Joakim Öjendal & Mona Lilja, eds, *Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society* (Copenhagen: NIAS Press, 2009) 151 at 151.

²¹ See *Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the Situation of Human Rights Resolution 1993/6*, UNCHR, 50th Sess, UN Doc E/CN.4/1994/73/Ad.1 (1994) at 4–5.

²² See "Trade Policy Review: Cambodia" (2011), online (pdf) at vii: World Trade Organization <wto.org/english/tratop_e/tpr_e/s253_sum_e.pdf>.

²³ David Chandler, "Cambodia in 2009: Plus C'est la Même Chose" (2010) 50 Asian Survey 228 at 228.

²⁴ See "The World Bank in Cambodia: Overview" (2019), online: World Bank <worldbank.org/en/country/cambodia/overview>.

²⁵ The MPI goes beyond looking at income to measure poverty by also considering the health, education and standard of living dimensions of poverty. See Voun Dara, "UNDP Report Finds 35% of Cambodians Still Mired in Poverty" (26 September 2018), online: *Phnom Penh Post* <phnompenhpost.com/national/undp-report-finds-35-cambodians-still-mired-poverty>.

that Hun Sen has built.”²⁶ Prime Minister Hun Sen has ruled the country for 34 years with an iron fist. His Cambodian People’s Party (CPP), which won all 125 parliamentary seats in the country’s 2018 elections, has systematically engaged in intimidation, surveillance, and suppression of dissent. The Cambodian National Rescue Party (CNRP), the political opposition, was reportedly set to win the 2018 elections but was forcibly disbanded before it could do so.²⁷ Former CNRP leader Kim Sokha remains under de facto arrest for unfounded treason charges. Other CNRP leadership members, including acting president Sam Rainsy, live in exile.²⁸ In October 2019, exiled members announced plans to return to the country. Hun Sen responded to their announcement by issuing warrants for their arrest.²⁹ The World Justice Project (WJP) presently ranks Cambodia among the worst countries in the world for adherence to the rule of law, notably because of corruption³⁰ and lack of regulatory enforcement,³¹ open government,³² and constraints on government powers in the country.³³

As a “least developed” country,³⁴ Cambodia has benefitted from duty-free access to the European Union (EU) markets under the Everything But Arms (EBA) trading scheme. However, EBA preferences are subject to temporary suspension if

²⁶ Duncan McCargo, “Cambodia: Getting Away with Authoritarianism?” (2005) 16:4 J Democracy 98 at 98.

²⁷ *Situation of Human Rights in Cambodia: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, UNHRC, 42nd Sess, UN Doc A/HRC/42/60 (2019) 1 at 4.

²⁸ See *ibid* at 4.

²⁹ See Sun Narin, “Ahead of Return to Cambodia, Leader Says Thailand Refused Her Entry Into the Country” (23 October 2019), online: VOA <voacambodia.com/a/ahead-of-return-to-Cambodia-cnnp-leader-says-Thailand-refused-her-entry-into-the-country/5135962.html>.

³⁰ See WJP Rule of Law Index 2017–2018: Cambodia” (2018), online (pdf): World Justice Project <data.worldjusticeproject.org/pdf/rule-of-law-index-KHM.pdf> (this encompasses corruption in the executive branch, in the judiciary, in the police/military, and in the legislature).

³¹ See *ibid* (this encompasses effective regulatory enforcement, improper influence, unreasonable delay, respect for due process, and expropriation).

³² See *ibid* (this encompasses publicized laws and government data, right to information, civic participation, and complaint mechanisms).

³³ See *ibid* (this encompasses limits by legislature, by judiciary, auditing, sanctions for official misconduct, non-governmental checks, and lawful transition of power).

³⁴ See European Parliamentary Research Service, “Everything But Arms: The Case of Cambodia” (April 2019), online (pdf): European Parliament <[europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS_ATA\(2019\)637931_EN.pdf](http://europarl.europa.eu/RegData/etudes/ATAG/2019/637931/EPRS_ATA(2019)637931_EN.pdf)>.

a beneficiary country fails to respect international human rights and labour standards.³⁵ In February 2019, the EU officially launched its review of Cambodia's enjoyment of the EBA after observing that the country's human rights situation was "very poor."³⁶ Three long-standing issues were flagged by EU representatives in particular: labour rights violations, land grabbing, and political repression.³⁷ In February 2020, a partial suspension of Cambodia's EBA preferences was announced.³⁸ In addition to pressure from Europe, Cambodia also faces increased scrutiny for its human rights violations from the United States and risks losing access to an American preferential trade scheme as well.³⁹

While the economic impacts of these developments from the West stand to be significant, Cambodia's long-standing and increasingly intimate ties to China will help cushion the blow. Since the 1990s, Cambodia has received steady political and financial backing from Beijing. It is even said to have become a "Chinese vassal state."⁴⁰ Approximately 90 percent of businesses in seaside Sihanoukville, including hotels, restaurants, and casinos, are Chinese-owned.⁴¹ Beijing has helped build bridges, hydropower dams, and over three thousand kilometres of highways in the country.⁴² In July 2010, the Cambodian government announced that purchases of arms from China would increase by US\$40 million.⁴³ Looking ahead, Chinese investments in the country stand to grow even further with the Belt and Road Initiative (BRI), China's trillion-dollar project to expand Chinese investment,

³⁵ The standard of conduct that EBA beneficiaries are expected to meet does not appear to be consistently applied, however. For example, Myanmar continues to benefit from the scheme. See *ibid.*

³⁶ See *ibid.*

³⁷ See *ibid.* at 1.

³⁸ See "Cambodia: EU Partially Suspends Trade Preferences" (13 February 2020), online: Human Rights Watch <[hrw.org/news/2020/02/13/cambodia-eu-partially-suspends-trade-preferences](https://www.hrw.org/news/2020/02/13/cambodia-eu-partially-suspends-trade-preferences)>.

³⁹ See Charles Dunst, "Can the US Bring Cambodia Back from the Brink?" (1 October 2019), online: The Diplomat <thediplomat.com/2019/10/can-the-us-bring-cambodia-back-from-the-brink/>.

⁴⁰ See *ibid.*

⁴¹ See Julie Zaugg, "How Cambodia's Backpacker Haven Became a Chinese Casino Mecca" (4 October 2019), online: CNN <[cnn.com/2019/10/04/asia/cambodia-chinese-investment-intl-hnk/index.html](https://www.cnn.com/2019/10/04/asia/cambodia-chinese-investment-intl-hnk/index.html)>.

⁴² "How Chinese Money Is Changing Cambodia", online: DW <[dw.com/en/how-chinese-money-is-changing-cambodia/a-50130240](https://www.dw.com/en/how-chinese-money-is-changing-cambodia/a-50130240)>.

⁴³ See Zaugg, *supra* note 41.

development, and trade in more than 78 countries.⁴⁴ In 2017, Cambodia received US\$2.1 billion in foreign direct investment, 70 percent of which came from China.⁴⁵

China and Cambodia share many similarities. One such similarity is that the authoritarian leaders of both countries have grown stronger with time, in part because of the Liberal Project and the West's commitment to a political theory that has proven tremendously incorrect with time: the theory that economic growth in these countries would weaken their autocratic rules.⁴⁶ Other similarities between the two are discussed next.

Part II: Access to Information, Expression and Activism Online

"If you want to liberate a society, just give them the Internet."⁴⁷

Hun Sen has decimated press freedom in Cambodia by persecuting journalists, denying broadcast licenses, and forcing the closure of independent news outlets. In light of this, Internet access is said to have drastically improved Cambodians' ability to inform and express themselves.⁴⁸ Between 2010 and 2013, the number of Cambodians with Internet access rose from 320,000 to 3.8 million.⁴⁹ By 2017, this number reached more than eight million—nearly half of the country's population. Approximately 96

⁴⁴ See CIMB ASEAN Research Institute, "China's Belt and Road Initiative (BRI) and Southeast Asia" (October 2018), online (pdf): *London School of Economics* <lse.ac.uk/ideas/Assets/Documents/reports/LSE-IDEAS-China-SEA-BRI.pdf>.

⁴⁵ See Toru Takahashi, "Hun Sen Gently Adjusts Cambodia's Intimacy with China" (13 July 2019), online: *Nikkei* <asia.nikkei.com/Politics/International-relations/Hun-Sen-gently-adjusts-Cambodia-s-intimacy-with-China>.

⁴⁶ Farhad Manohoo, "Dealing with China Isn't Worth the Moral Cost" (9 October 2019), online: *New York Times* <nytimes.com/2019/10/09/opinion/china-houston-rockets.html>.

⁴⁷ Quote by Internet activist Wael Ghonim. See Sana Ahmed, "Censorship and Surveillance in the Global Information Age: Are Telecommunications Companies Agents of Suppression or Revolution" (2013) 4:2 *JL Technology & the Internet* 503 at 503.

⁴⁸ See "Going Offline? The Threat to Cambodia's Newfound Internet Freedoms" (May 2015), online (pdf): *LICADHO* <licadho-cambodia.org/reports/files/205LICADHOReport-GoingOfflineInternetFreedoms-English.pdf> [LICADHO, "Going Offline"].

⁴⁹ See *ibid* at 1.

percent of Cambodians own a mobile phone⁵⁰ and over six million Cambodians are Facebook users.⁵¹

The Internet has given citizens, grassroots activists, CSOs, and members of the political opposition unprecedented capacity to undermine Hun Sen's authoritarian rule through advocacy and community organizing.⁵² According to LICADHO, social media use in 2013 allowed the CNRP—which had been shut out of pro-government news coverage—to make unexpected gains in that year's elections, for example.⁵³ Individuals, organizations, and communities are now able to access and share non-censored information far beyond their immediate networks. The Internet has empowered these groups to circumvent government control of media and raise awareness about human rights issues in the country, including land grabbing, state violence, and corruption.⁵⁴ Armed with smartphone cameras, citizens post pictures and videos documenting the situation on the ground. The Internet has also given a platform to CSOs for engaging in extralegal activism, which is particularly important in a country with weak rule of law and where courts generally fail to uphold international human rights standards.⁵⁵ In a 2016 annual report, LICADHO writes: "in the midst of Cambodia's social media boom, LICADHO's [digital] advocacy is a key source of information for community representatives and members of other grassroots groups as our photos, news items and updates can be shared widely in seconds."⁵⁶

In sum, the Internet has empowered individuals and groups in Cambodia to rise against authoritarianism and advocate for greater respect of human rights in the country. However, the same technology has also proved incredibly valuable to those already in power, as discussed below.

⁵⁰ See "Freedom on the Net 2018: Cambodia" (last accessed 13 December 2019), online: Freedom House <freedomhouse.org/report/freedom-net/2018/cambodia>.

⁵¹ See *ibid.*

⁵² See LICADHO, "Going Offline" *supra* note 48 at 1.

⁵³ See *ibid.* at 2.

⁵⁴ See *ibid.* at 1.

⁵⁵ See generally "Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study" (October 2017), online (pdf): ICJ <refworld.org/pdfid/5a212f144.pdf> [ICJ, "Baseline Study"].

⁵⁶ "Human Rights 2016: The Year in Review" (February 2017), online (pdf) at 27: LICADHO <licadho-cambodia.org/reports/files/222LICADHO_Year_in_Review_2016.pdf>.

Part III: Networked Authoritarianism

*"I know the government can do whatever they want, like listening to our conversation. For the ordinary person like us we just try not to stand out."*⁵⁷

At a 2012 UN panel discussion in Geneva, a Chinese delegate delivered a chilling statement on behalf of Cambodia and 29 other countries. Speaking on freedom of expression in the digital age, the delegate declared that while the "right to freedom of expression is one of the fundamental human rights and should be respected and protected, . . . [the Internet] is often used to propagate terrorism, extremism and racism, xenophobia, even ideas of toppling legitimate authorities" [emphasis added].⁵⁸ Beijing has moved to prevent this toppling from taking place through its infamous Great Firewall: Xi Jinping's all-encompassing strategy for securing government control over online content and discourse in China.⁵⁹ This strategy relies on a lethal combination of state-of-the-art filtering software, legal and regulatory measures, and the cooperation of Chinese and foreign private companies.⁶⁰ Tech journalist Farhad Manjoo has warned that China is "a growing and existential threat to human freedom across the world."⁶¹ Many of America's largest ICT companies, including Twitter, Facebook, and Netflix, do not operate in China, but not for want of trying.⁶²

⁵⁷ Statement made by an anonymous Cambodian coffee vendor to the press. See Andrew Nachemson & Kong Meta, "A Digital Echo of the Khmer Rouge Haunts Phones in Cambodia" (22 October 2019), online: Coda <codastory.com/authoritarian-tech/surveillance-phone-cambodia/>.

⁵⁸ See "Joint Statement at the Panel on Freedom of Expression on the Internet" (29 February 2012), online: Permanent Mission of the People's Republic of China to the United Nations <china-un.ch/eng/hom/t910174.htm>.

⁵⁹ See Yutian Ling, "Upholding Free Speech and Privacy Online: A Legal-Based and Market-Based Approach for Internet Companies in China" (2010) 27 Santa Clara Computer & High Tech LJ 175 at 177.

⁶⁰ See *ibid.*

⁶¹ See Manjoo, *supra* note 46.

⁶² Google, for example, has played with the idea of building a censored search engine for the country. Facebook CEO Mark Zuckerberg has set out to learn Mandarin. See Peter Kafka, "Apple Cracked China When Facebook and Google Couldn't. Now That's a Problem for Apple" (10 October 2019), online: Vox <vox.com/recode/2019/10/10/20908480/apple-china-hkmap-app-censorship-hong-kong-protests-tim-cook>.

In 2018, China took steps to expand its Great Firewall model abroad by including a strong cyber component into the BRI. A “digital Silk Road” is being developed through the installation of Chinese Internet and mobile network equipment in countries along the BRI.⁶³ A core component of this endeavour is the indoctrination of foreign leaders. Beijing has organized a number of trainings and symposiums for “authoritarian-leaning governments” to help propagate its views on Internet freedoms.⁶⁴ Cambodian authorities’ current strategy for restricting expression and privacy online is extremely multifaceted and shows how China’s digital Silk Road has reached Phnom Penh and added new weapons to Hun Sen’s arsenal. The methods deployed generally fall into one of three categories: legal, psychosocial, or technological.

(i) Legal methods

According to LICADHO, individuals and groups in Cambodia are increasingly threatened, intimidated or criminally charged for “any dissent expressed,” both online and off.⁶⁵ Legislation in the country has been weaponized by authorities in order to secure Hun Sen’s autocratic rule.⁶⁶ Cambodia’s 2015 Law on Telecommunications (the “Telecoms Law”) is considered a particularly serious threat to freedom of expression and privacy.⁶⁷ The Telecoms Law grants ministries the authority to interrupt Internet or mobile service in undefined situations of *force majeure*.⁶⁸ Article 6 of the Law also requires operators to hand over information and data on citizens’ activities to the government without a warrant. Meanwhile, Article 97 has been interpreted as authorizing secret government monitoring of private phone conversations, text messages, email and social media messages.⁶⁹ In February 2018, a new *lèse-majesté* offence was added to the Criminal Code, making it illegal to defame, insult or threaten the

⁶³ See Adrian Shahbaz, “Freedom on the Net 2018: The Rise of Digital Authoritarianism” (last accessed 13 December 2019), online: [Freedom House <freedomhouse.org/report/freedom-net/freedom-net-2018/rise-digital-authoritarianism>](https://freedomhouse.org/report/freedom-net/freedom-net-2018/rise-digital-authoritarianism).

⁶⁴ See *ibid.*

⁶⁵ See “Cambodia’s Law on Telecommunications: A Legal Analysis” (March 2016), online: LICADHO <[licadho-cambodia.org/reports/files/214LICADHOTElecomsLawLegalAnalysis_March2016ENG.pdf](https://www.licadho-cambodia.org/reports/files/214LICADHOTElecomsLawLegalAnalysis_March2016ENG.pdf)> [LICADHO, “Legal Analysis”].

⁶⁶ See ICJ, “Baseline Study” *supra* note 55 at 10.

⁶⁷ See LICADHO, “Legal Analysis” *supra* note 65.

⁶⁸ See “Freedom on the Net 2018: Cambodia” *supra* note 50.

⁶⁹ See LICADHO, “Legal Analysis” *supra* note 65.

king.⁷⁰ The offence carries a penalty of one to five years in prison and a fine of two to ten million riels (USD\$500 to USD\$2,500). In May 2018, the government issued an interministerial prakas (a proclamation) ordering all ISPs to build surveillance tools into their services, in order to allow online content, including social media and webpages, to be easily filtered and blocked if labelled “illegal” or “fake news” by authorities.⁷¹

The Cambodian judiciary helps give teeth to the laws enacted. According to a 2017 study by the International Commission of Jurists, the country’s justice system is seriously deficient in independence and impartiality. Because of this deficiency, “only in very limited instances...are cases potentially decided on the merits.”⁷² Between April 2017 and March 2018, Cambodian courts tried 40 cases related to Facebook posts or online content.⁷³ The accused faced a number of different charges, including defamation, incitement to commit a felony, incitement to discriminate, and insult of a public official. In the spring of 2019, Kong Mas, a former CNRP member, was arrested for insult and incitement to commit a felony⁷⁴ after posting on Facebook⁷⁵ about the government’s role in leading the EU to consider an EBA suspension.⁷⁶ If convicted, Kong Mas could spend six months to two years in prison.⁷⁷ Similarly, Konh Raiya, a dissident and activist, was arrested in July 2019 for incitement to commit a felony after advertising t-shirts on Facebook commemorating the 2016 murder of political commentator Kem Ley.⁷⁸ More recently, in September 2019, two members of the CNRP, Sun Bunthon and

⁷⁰ See “Freedom on the Net 2018: Cambodia” *supra* note 50.

⁷¹ Irini Katsirea, “Fake News: Reconsidering the Value of Untruthful Expression in the Face of Regulatory Uncertainty” (2019) 10:2 J Media L 159 at 159.

⁷² See ICJ, “Baseline Study” *supra* note 55 at 3.

⁷³ See “Cambodia Fundamental Freedoms Monitor: Second Annual Report” (2017–18), online (pdf): CCHR <cchrcambodia.org/admin/media/report/report/english/FFMP_Second%20Annual%20Report_EN.pdf>.

⁷⁴ See *Criminal Code of the Kingdom of Cambodia*, 2009, arts 502, 495.

⁷⁵ See “CSOs Express Serious Concern and Call for a Stop to the Ongoing Judicial Harassment of Former Cambodia National Rescue Party Members” (1 June 2019), online: LICADHO <licadho-cambodia.org/pressrelease.php?perm=439>.

⁷⁶ See Sun Narin, “Cambodia Takes Aim at Critics Who Post on Facebook” (16 March 2019), online: VOA <voanews.com/east-asia-pacific/cambodia-takes-aim-critics-who-post-facebook>.

⁷⁷ See *ibid.*

⁷⁸ See “Arrest of Two Activists Highlights Authorities’ Lack of Respect for Freedom of Expression and Assembly” (12 July 2019), online: <licadho-cambodia.org/pressrelease.php?perm=443>.

Nou Phoeun, were arrested and charged with incitement, defamation, and violating a Supreme Court order following the leak of a transcript of a private phone call between the politicians.⁷⁹

(ii) Psychosocial methods

Hun Sen's weaponization of the legal system has created an environment of fear and intimidation across the country. Also contributing to this environment are anonymous, pro-government Facebook pages that act as propaganda machines by routinely sharing compromising leaks about Hun Sen's political opponents. The Facebook page "Seiha", for example, leaked damaging private conversations between former CNRP leader Kem Sokha and his alleged mistresses. This resulted in Sokha being charged with prostitution. Lu Lay Sreng, another high-profile political opponent, fled the country after Seiha leaked a phone call in which he insulted the King and accused the CCP of corruption.⁸⁰

Ultimately, fear of government surveillance and persecution has led citizens, activists, and CSOs to engage in self-censorship. In a 2017 survey shared with CSOs and trade union leaders, 20 percent of respondents reported "always" feeling worried about sharing their thoughts publicly, to the point that they no longer wanted to do so—a percentage three times higher than reported in 2016. An additional 20 percent reported "regularly" feeling that way, and 41 percent answered that they "sometimes" did.⁸¹

(iii) Technological methods

Finally, Cambodian authorities have harnessed the power of the network itself to stifle dissent. In addition to periodically censoring content deemed threatening to Hun Sen's rule (discussed below),⁸² in July 2017, the National Police announced that it was actively monitoring Facebook to detect and prevent "rebellion" against the regime and, in January 2018, Hun Sen implied that authorities could access individuals' private phone

⁷⁹ See Nachemson & Meta, *supra* note 57.

⁸⁰ See *ibid.*

⁸¹ See "Freedom on the Net 2018: Cambodia" *supra* note 50.

⁸² See *ibid.*

records. The Prime Minister also promised to multiply government surveillance efforts over the next five years.⁸³

Worryingly, the technologies used by authorities to censor and monitor citizens' online activities risk becoming increasingly sophisticated and invasive as the country grows closer to states known for their mass surveillance infrastructures. In April 2018, Phnom Penh announced that the Russian government would be aiding the National Police in combating terrorism and cybercrime.⁸⁴ A month later, an agreement was also signed with Beijing for a joint anti-terrorism and anti-cybercrime effort.⁸⁵ Chinese-owned Huawei is presently developing Cambodia's 4.5G service.⁸⁶ Similar to the Chinese bottleneck,⁸⁷ in May 2018 the government announced that all domestic and international network traffic in the country will soon be sent through a Data Management Center (DMC) operated by state-run Telecom Cambodia.⁸⁸ No updates on this project have been released since the plan was first announced. In February 2019, Telecom Cambodia also announced it would be using a Chinese data centre to enhance Cambodia's digital infrastructure and "e-government capabilities."⁸⁹

To summarize, the Cambodian authorities' strategy for infringing on Internet users' rights to freedom of expression and privacy is complex and constantly evolving. This strategy includes but is not limited to surveillance and censorship.

⁸³ See *ibid.*

⁸⁴ See Mech Dara & Erin Handley, "Kremlin Promises to Train Police, Worrying Observers" (26 April 2018), online: <phnompenhpost.com/national/kremlin-promises-train-police-worrying-observers>.

⁸⁵ See Ven Rathavong, "Cambodia and China Sign Security Deal" (12 May 2018), online: *Khmer Times* <khmertimeskh.com/488848/cambodia-and-china-sign-security-deal/>.

⁸⁶ See Shahbaz, *supra* note 63.

⁸⁷ There are a limited number of entry/exit points for all Internet traffic in China, which creates a bottleneck for Chinese users connecting to foreign sites. See Ling, *supra* note 59 at 184.

⁸⁸ See "Freedom on the Net 2018: Cambodia" *supra* note 49; Mech Dara & Hor Kimsay, "Three Ministries Set Up Web-Monitoring Group to Look Out for 'Fake News'" (7 June 2018), online: *Phnom Penh Post* <phnompenhpost.com/national/three-ministries-set-web-monitoring-group-look-out-fake-news>.

⁸⁹ See Sok Chan, "Telecom Cambodia and Seatel Team Up to Boost Telco Sector" (22 February 2019), online: *Khmer Times* <khmertimeskh.com/580650/telecom-cambodia-and-seatel-team-up-to-boost-telco-sector/>.

Part IV: Assessing the Legitimacy of Content Blocking in Cambodia

Governments all around the world—even democratic ones—interfere with the Internet in a number of ways. They filter and block content, “throttle” users to discourage access to certain sites, and sometimes even shut down service completely.⁹⁰ In Cambodia, Hun Sen’s interference with the network (which dates back to 2009) has mainly involved content censorship. However, determining when instances of censorship violate international human rights norms is not always straightforward.

In 2010, a landmark resolution from the UN Human Rights Council affirmed that “the same rights that people have offline must also be protected online.”⁹¹ The rights to freedom of expression and privacy are codified in the *Universal Declaration of Human Rights* (UDHR)⁹² and the *International Covenant on Civil and Political Rights* (ICCPR).⁹³ They are also recognized under Articles 23 and 21 of the Association of Southeast Asian Nations’ (ASEAN) *Human Rights Declaration*.⁹⁴ Cambodia has ratified the UDHR, ICCPR, and the ASEAN *Human Rights Declaration*. The Cambodian government’s obligations to respect international human rights law are further enshrined in Article 31 of the *Constitution of the Kingdom of Cambodia*. Article 42 of the Constitution specifically guarantees citizens the right to freedom of expression, so long as the exercise of this freedom does not infringe on the dignity of others, “the good mores and custom of society”, public order, or national security.⁹⁵ It is interesting to note how closely this caveat resembles Article 19(3) of the ICCPR, which outlines permissible grounds for restricting freedom of expression. These grounds fall under two umbrella categories: (1) “protecting national security, public order, public health, or morals”; and (2) “respecting the rights or reputations of others.”⁹⁶ Acceptable infringements on the right to freedom of expression

⁹⁰ See “Content Blocking” (last accessed 13 December 2019), online: Electronic Frontier Foundation <eff.org/issues/content-blocking>; MacKinnon et al, *supra* note 11 at 23.

⁹¹ See MacKinnon et al, *supra* note 11 at 17.

⁹² *Universal Declaration of Human Rights*, 10 December 1984, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), arts 19, 12.

⁹³ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, arts 12, 17.

⁹⁴ ASEAN *Human Rights Declaration*, 19 November 2012.

⁹⁵ *Constitution of the Kingdom of Cambodia*, 2010.

⁹⁶ Amy Shepherd, “Extremism, Free Speech and the Rule of Law” (2017) 33:85 *Utrecht J Intl & European L* 62 at 71.

include, for example, blocking online content that constitutes child pornography or incites genocide, terrorism and violence.⁹⁷

A 2011 study by the Brookings Institute found that, around the world, the vast majority of instances of state interference with the Internet have been justified on 'national security' and 'morality' grounds.⁹⁸ There remains, however, a problematic lack of consensus internationally about what exactly legitimate "national security" and "morality" reasons look like.⁹⁹ Professor Eric Posner has stated that this ambiguity in international human rights law allows states to rationalize rights-violating actions.¹⁰⁰ This statement certainly holds true in Cambodia when applied to the Hun Sen regime's censorship efforts.

Cambodia's journey into networked authoritarianism began under the government's pretext of needing to uphold modesty.¹⁰¹ According to LICADHO, the first reported instance of content blocking was in 2009, with Cambodians losing access to Reahu.net, a site featuring topless traditional dancers and nude Khmer Rouge soldiers.¹⁰² The following year, the government announced that a "morality committee" would begin reviewing websites with the aim of potentially blocking those in conflict with (undefined) "national values."¹⁰³ Over time, however, national security grounds have taken center stage. In May 2018, Hun Sen ordered the Ministry of Posts & Telecommunications of Cambodia (MPTC) to work with ISPs in the country to block access to websites and social media pages with content that authorities considered "dangerous" or "fake news," in accordance with a newly enacted prakas on website and social media control.¹⁰⁴ Commenting on this order given to the MPTC, a senior government official said that stopping the spread of "baseless and fake news would benefit the public and help stop the sharing of 'provocative information'

⁹⁷ See *Promotion and Protection of the Right to Freedom of Opinion and Expression: Note by the Secretary-General*, UNGA, 66th Sess, UN Doc A/66/290 (2011) at 7–13 [Note by the Secretary-General].

⁹⁸ See *ibid.*

⁹⁹ See Shepherd, *supra* note 96 at 71.

¹⁰⁰ See Eric Posner, "The Case Against Human Rights" (4 December 2014), online: *The Guardian* <theguardian.com/news/2014/dec/04/-sp-case-against-human-rights#_blank>.

¹⁰¹ See Howard, Agarwal & Hussain, *supra* note 17.

¹⁰² See LICADHO, "Going Offline" *supra* note 48 at 4

¹⁰³ See *ibid.*

¹⁰⁴ See "Freedom on the Net 2018: Cambodia" *supra* note 50.

that can cause social chaos.”¹⁰⁵ Under this new prakas, those found guilty of sharing “fake news” could spend two years in jail and be fined US\$1,000.¹⁰⁶ Other ASEAN countries along the BRI that have adopted similar “fake news” laws include Malaysia, Vietnam, the Philippines, Singapore, and Thailand.¹⁰⁷ Journalist Clare Brown described its Malaysian counterpart as “a draconian attempt to open intimidation of government critics and indeed the entire population.”¹⁰⁸

In light of the aforementioned confusion surrounding Article 19(3) of the ICCPR, the UN has specified two additional requirements for legitimate restrictions on the right to expression—requirements that the Hun Sen regime has often likely failed to meet. The first is that any restriction must be made out of necessity.¹⁰⁹ The second is that restrictions must be as minimally impairing as possible.¹¹⁰ Thus, to comply with Article 19(3) of the ICCPR, states must “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”¹¹¹ In Cambodia, however, even when government orders have been framed as necessary for national security, Internet censorship has mainly targeted content critical of the regime and thus formed part of a wider government strategy for strengthening Hun Sen’s political chokehold. The link between censorship and national security in the country has been tenuous, to say the least.

It is also worth noting that not all of Hun Sen’s censorship orders have been shared with the public. Indeed, unofficial channels of communication between government and ISPs have,

¹⁰⁵ See Dara & Kimsay, *supra* note 88.

¹⁰⁶ See Kate Lamb, “Cambodia ‘Fake News’ Crackdown Prompts Fears Over Press Freedom” (6 July 2018), online: *The Guardian* <theguardian.com/world/2018/jul/06/cambodia-fake-news-crackdown-prompts-fears-over-press-freedom>.

¹⁰⁷ See Elvin Ong & Isabel Chew, “Fake News, the Law, and Self-Censorship in Southeast Asia” (2 August 2019), online: *East Asia Forum* <eastasiaforum.org/2019/08/02/fake-news-the-law-and-self-censorship-in-southeast-asia/>; CIMB ASEAN Research Institute, *supra* note 44.

¹⁰⁸ Joseph M Fernandez, “Malaysia’s Anti-Fake News Act: A Cog in an Arsenal of Anti-Free Speech Laws and a Bold Promise of Reforms” (2019) 25:1 *Pacific Journalism Rev* 173 at 178.

¹⁰⁹ See *Note by the Secretary-General*, *supra* note 97 at 7.

¹¹⁰ *Ibid.*

¹¹¹ See *General Comment No. 34 on Article 19 of the ICCPR*, UNHRC, 102nd Sess, UN Doc CCPR/C/GC/34 (2011) at para 35.

in the past, enabled Hun Sen to skirt the need to justify his censorship decisions altogether. For example, in 2009, many Cambodians lost access to the Global Witness website temporarily after the watchdog organization released a damning report about government corruption. Publicly, the loss of access was blamed on “technical issues,” although government involvement is suspected.¹¹² In 2011, eight anti-government sites were blocked after ten different ISPs received an email from the MPTC “requesting” their cooperation in blocking Internet users’ access to these sites. When accused by human rights groups of censorship, Khieu Kanharith, Minister of Information, defended the government by saying that he was “surprised that several ISPs accepted the email as an official letter [ordering them to do so].”¹¹³ In July 2018, a number of independent news sites that had been critical of Hun Sen’s leadership, including Radio Free Asia (RFA) and Voice of America (VOA), were mysteriously blocked two days before Hun Sen’s overwhelming electoral victory.¹¹⁴

To summarize, the right to freedom of expression is not absolute and can be lawfully restricted on the grounds articulated in Article 19(3) of the ICCPR and expressed in Article 42 of Cambodia’s Constitution. In Cambodia, however, censorship orders given to ISPs by Hun Sen and his government through unofficial channels—as well as official orders that have clearly been politically motivated despite being framed on national security grounds—have almost certainly been in breach of international human rights norms.

Part V: Overview of Existing CSR Mechanisms

Censorship of Cambodians’ online activities is just one of many components of Hun Sen’s strategy for limiting freedom of expression in the country. The complicity of ISPs in this government censorship is striking but not unique to the Cambodian context. Around the world, ICT companies of all types and sizes play increasingly powerful roles. On the one hand, ICT companies are a source of ‘liberation technology’ and help empower citizens to

¹¹² See LICADHO, “Going Offline” *supra* note 48.

¹¹³ Thomas Miller, “Blocked Sites Back Up” (28 February 2011), online: *Phnom Penh Post* <phnompenhpost.com/national/blocked-sites-back>.

¹¹⁴ See “Freedom on the Net 2018: Cambodia” *supra* note 50.

“lift the authoritarian veils of their oppressive governments”¹¹⁵ through information sharing and expression. On the other hand, however, states increasingly rely on ICT companies to deliver on governmental objectives, however nefarious these objectives may be. Corporate compliance with government demands to restrict users’ human rights can turn networks into “subtle but invasive extensions of government power.”¹¹⁶ In executing government demands, ICT companies exercise “quasi-state authority.”¹¹⁷ Thus, what should companies do when following government orders means breaching their responsibility to protect users’ rights to freely access and enjoy the Internet?

Below, three popular CSR mechanisms, which have been applied to ICT companies specifically,¹¹⁸ are assessed: self-regulation, international codes of conduct, and MSIs. These mechanisms are meant to support companies in fulfilling their human rights obligations, even in situations where a country’s laws or government opposes them. Thus, if properly implemented, these mechanisms could, in theory, support ISPs in Cambodia in better protecting Internet users’ fundamental rights. They advocate for what Barth and Wolff describe as *built-in* CSR, whereby a company’s duty to promote human rights is incorporated into its core activities. This is distinguishable from *bolt-on* CSR, which more closely resembles corporate philanthropy.¹¹⁹ Only a few Cambodian ISPs have shared information publicly about their CSR-related activities to date. Past activities by Ezecom, for example, have included the gifting of free computers and Internet access to schools, the provision of technical support to archival projects, and the sponsorship of

¹¹⁵ See Ahmed, *supra* note 47 at 503.

¹¹⁶ *Ibid* at 508.

¹¹⁷ Emily C Miletello, “Page You Are Attempting to Access Has Been Blocked in Accordance with National Laws: Applying a Corporate Responsibility Framework to Human Rights Issues Facing Internet Companies” (2011) 11 Pittsburgh J Technology L & Policy 1 at 36.

¹¹⁸ See e.g. MacKinnon et al, *supra* note 11; Dorothée Baumann-Pauly et al, “Industry-Specific Multi-Stakeholder Initiatives That Govern Corporate Human Rights Standards: Legitimacy Assessment of the Fair Labor Association and the Global Network Initiative” (2016) 143:1 J Bus Ethics 771; Ahmed, *supra* note 47.

¹¹⁹ See Regine Barth & Franziska Wolff, “Corporate Social Responsibility and Sustainability Impact: Opening Up the Arena” in Regine Barth & Franziska Wolff, eds, *Corporate Social Responsibility in Europe: Rhetoric and Realities* (Cheltenham: Elgar, 2009) 3.

cultural and sports events.¹²⁰ This kind of engagement falls into the bolt-on CSR category.

Another common debate in CSR discourse relates to universalism versus relativism, and the question of which human rights issues should feature on the social responsibility agendas of all businesses, regardless of size, ownership, and context.¹²¹ Relativists, cognizant of the need to promote economic growth in developing countries, argue that “local” economic and social rights should take precedence over “global” civil and political rights.¹²² Conversely, universalists contend that there should be limited divergence worldwide in how rights are understood and fulfilled.¹²³ The relativist perspective is arguably more frequently adopted in bolt-on CSR initiatives, which, like those adopted by ISPs in Cambodia, often consist of ad-hoc charitable projects related to poverty alleviation, education, health, etc. While undoubtedly important, unlike the mechanisms discussed below, these efforts do not alter companies’ underlying structures and practices.

(i) Self-regulation

Codes of conduct are generally drafted, implemented, and enforced internally by companies; they set rules and guidelines for how a company interacts with clients, citizens, and governments. In the ICT industry specifically, David Kaye, the UN’s Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, has emphasized the importance of self-regulation for the protection of Internet users’ rights to expression and privacy.¹²⁴

Scholars have noted that, first and foremost, ICT companies’ codes of conduct should mandate transparency with the public about all requests received from government authorities (even when these requests are made extrajudicially).¹²⁵ They have

¹²⁰ See e.g. “Corporate Social Responsibility” (last accessed 14 December 2019), online: Ezecom <ezecom.com.kh/our-company/corporate-social-responsibility>.

¹²¹ See John Kuada & Robert E Hinson, “Corporate Social Responsibility (CSR) Practices of Foreign and Local Companies in Ghana” (2012) 54:4 *Thunderbird Intl Bus R* 521 at 525.

¹²² See *ibid.*

¹²³ See *ibid.*

¹²⁴ See *Report on Freedom of Opinion and Expression*, *supra* note 16.

¹²⁵ See generally MacKinnon et al, *supra* note 11.

also recommended that self-regulations be developed in consultation with Internet users and CSOs.¹²⁶ Specific examples of what should be found in an ICT company's code of conduct include:

- Provisions mandating the protection of users' freedom of expression;¹²⁷
- A clear internal review process for receiving and responding to government requests related to censorship, surveillance, or other;¹²⁸
- A requirement that clients be informed of these requests and given details on how the company intends to respond to them;¹²⁹
- A requirement that government requests be received in writing, be as minimally intrusive on users' rights as possible, and be justified on specific grounds;¹³⁰ and
- The implementation of appeal and grievance mechanisms to allow users to appeal company decisions.¹³¹

The potential of self-regulation is clear: a 2015 study commissioned by UNESCO found that ICT companies' internal policies allowed them to retain some control over decisions and practices affecting users' freedom of expression and privacy, in democratic and authoritarian countries alike.¹³²

Of course, the benefits of self-regulation are entirely dependent on whether companies are willing and able to fully implement the policies that they adopt. This is far from guaranteed, especially when acting responsibly means sacrificing profits: the 2018 Cambridge Analytica scandal¹³³ and Apple's

¹²⁶ *Ibid* at 17.

¹²⁷ See Ahmed, *supra* note 47 at 521–22.

¹²⁸ *Ibid*.

¹²⁹ *Ibid*.

¹³⁰ See *Report on Freedom of Opinion and Expression*, *supra* note 16 at 16.

¹³¹ See MacKinnon et al, *supra* note 11 at 127–28.

¹³² See Rebecca MacKinnon, Nathalie Maréchal & Priya Kumar, "Corporate Accountability for a Free and Open Internet" (2016), online (pdf) at 3: CIGI <cigionline.org/publications/corporate-accountability-free-and-open-internet>.

¹³³ See "The Cambridge Analytica Files" (last accessed 14 December 2019), online: *The Guardian* <theguardian.com/news/series/cambridge-analytica-files>.

October 2019 decision to remove an app used by Hong Kong protestors to appease China¹³⁴ illustrate this well.

(ii) International codes of conduct

Codes of conduct can be internal to a company, but they can also be shared with companies all over the world. In 2000, the UN launched the Global Compact (UNGC), the world's largest CSR initiative¹³⁵ with over 12,000 signatories in more than 160 countries.¹³⁶ By signing the UNGC, companies of all sizes voluntarily commit to upholding core principles related to human rights, labour standards, environmental protection, and anti-corruption.¹³⁷ UNGC principles are designed to enlighten signatories about the implications of their activities for human rights.¹³⁸ In 2011, as a follow up to the UNGC, the *Guiding Principles on Business and Human Rights* (the "UN Guiding Principles") were unveiled.¹³⁹ Signatories, which include both companies and governments, are required to produce annual reports detailing their progress in implementing the instrument's fundamental principles. These include principles setting out that states should act to prevent and punish human rights abuses by businesses,¹⁴⁰ that states should guide and oversee businesses,¹⁴¹ that businesses should respect human rights in all contexts,¹⁴² and that businesses should avoid contributing to human rights abuses.¹⁴³ The instrument communicates a distinctly universalist perspective on human rights and CSR: it describes the principles as applicable to all businesses regardless of size, sector, and operational context,¹⁴⁴ and defines human rights as those that are

¹³⁴ See Kafka, *supra* note 61.

¹³⁵ See Baumann-Pauly et al, *supra* note 118 at 773.

¹³⁶ "United Nations Global Compact" (last accessed 14 December 2019), online: UN Global Compact <unglobalcompact.org/participation>. Cambodia counts just two corporate signatories, Knai Bang Chatt Resort and Cambodian Mango Farms Limited ("See Who's Involved" (last accessed 14 December 2019), online: UN Global Compact <unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=98&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc>).

¹³⁷ See "United Nations Global Compact", *supra* note 135.

¹³⁸ See Baumann-Pauly et al, *supra* note 118 at 773.

¹³⁹ See *UN Guiding Principles*, *supra* note 7.

¹⁴⁰ See *ibid* (principle 1).

¹⁴¹ See *ibid* (principle 3).

¹⁴² See *ibid* (principles 11 & 23).

¹⁴³ See *ibid* (principle 13).

¹⁴⁴ See *ibid* (principle 14).

“internationally recognized” and “expressed in the International Bill of Human Rights.”¹⁴⁵ Global Compact Local Networks (GCLNs) have been established around the world to help promote the UN Guiding Principles locally, including in Indonesia, Malaysia, Singapore, Thailand, and Vietnam.¹⁴⁶ Several ASEAN businesses have signed on (although no ICT company in Cambodia).¹⁴⁷

Other examples of international codes of conduct include the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*¹⁴⁸ and the *Guidelines for Multinational Enterprises*.¹⁴⁹ Unlike the UN Guiding Principles, these codes are directed at multinationals specifically.

International codes of conduct are particularly dependent on states’ willingness and capacity to oversee corporate activities.¹⁵⁰ Furthermore, their voluntary nature creates serious enforcement and accountability weaknesses. In an attempt to address these weaknesses, the UN is currently working on a binding international law for regulating businesses’ respect of human rights. Promisingly, a draft law released in July 2019 indicates that it will apply to both multinational and local businesses worldwide.¹⁵¹ Like the UN Guiding Principles, however, the law’s effectiveness will largely depend on states stepping in to oversee corporate activities as the principal human rights duty bearers.¹⁵²

(iii) Multi-stakeholder initiatives

Finally, MSIs have also emerged as a mechanism for holding companies accountable for their human rights duties. While the UN Guiding Principles primarily articulate which

¹⁴⁵ See *ibid* (principle 12).

¹⁴⁶ “Engage Locally: Asia” (last accessed 14 December 2019), online: UN Global Compact <unglobalcompact.org/engage-locally/asia>.

¹⁴⁷ Thomas Thomas, “Whiter Corporate Social Responsibility and the UN Guiding Principles on Business and Human Rights in ASEAN?” in Mahdev Mohan & Cynthia Morel, eds, *Business and Human Rights in Southeast Asia: Risk and the Regulatory Turn* (Abingdon: Routledge, 2015) at 20.

¹⁴⁸ *ILO Tripartite Declaration*, *supra* note 5.

¹⁴⁹ *OECD Guidelines*, *supra* note 6.

¹⁵⁰ See *Note by the Secretary-General*, *supra* note 97 at 4.

¹⁵¹ *OEIGWG, Legally Binding Instrument to Regulate in International Human Rights Law the Activities of Transnational Corporations and Other Business Enterprises*, OHCHR (16 July 2019).

¹⁵² See *ibid*.

principles companies ought to uphold, MSIs are focused on how human rights principles can be implemented in practice. MSIs “embody a form of ‘networked governance’”¹⁵³ and are said to ensure greater accountability because multiple stakeholders are involved in evaluating companies’ respect of human rights.¹⁵⁴

An example of an active and high-profile MSI that is specific to the ICT sector is the Global Network Initiative (GNI), which was formed in 2008 by ICT companies themselves.¹⁵⁵ GNI adopts a self-regulatory approach and promotes due diligence and awareness among ICT companies about the human rights impacts of their activities. Members must commit to respecting core principles related to freedom of expression and privacy. GNI’s reach has admittedly been limited. To date, only thirteen companies have joined, including Google, Facebook, Vodafone, Verizon Media, and Microsoft. No ASEAN companies are involved.¹⁵⁶

GNI has established operational guidelines to help companies navigate the human rights complexities of operating in authoritarian regimes. It offers direction on how ICT companies should respond to government demands to block content or disclose personal information about their users. These guidelines were developed with input from NGOs, investors, and academics. It is important to note that GNI does *not* require that companies keep out of authoritarian countries altogether. Instead, companies are simply advised to “interpret government restrictions and demands in such a way as to minimize the potential negative effects on freedom of expression.”¹⁵⁷ Once again, the importance of transparency is emphasized: companies are encouraged to produce annual reports on the number of government requests that have been received and executed. Since 2008, only Google, Microsoft, and Yahoo have completed assessments.¹⁵⁸

Despite their advantages, skeptics of MSIs have been quick to point out that GNI members have not shied away from participating in mass surveillance programmes in the United

¹⁵³ See Baumann-Pauly et al, *supra* note 118 at 774.

¹⁵⁴ See *ibid.*

¹⁵⁵ See *ibid.*

¹⁵⁶ See “About” (last accessed 14 December 2019), online: *Global Network Initiative* <globalnetworkinitiative.org/>.

¹⁵⁷ See Ahmed, *supra* note 47 at 525.

¹⁵⁸ See Ahmed, *supra* note 47 at 525.

States.¹⁵⁹ GNI's voluntary nature also means members can circumvent human rights principles without facing legal penalties.¹⁶⁰ In addition to these enforcement limitations, GNI membership has also been invoked by members as a shield against criticism. For example, responding to privacy concerns raised in 2019 by Amnesty International about the company's use of user data, Facebook said that it "respectfully disagreed" with the organization's findings and that its "longstanding membership in the Global Network Initiative" and "adherence to the governance, privacy and freedom of expression standards enshrined in the GNI guidelines" were proof of the company's commitment to privacy.¹⁶¹ MSIs could thus potentially assist in uniting companies against stronger oversight by civil society and governments.

(iv) In sum

The voluntary nature of self-regulation, international codes of conduct, and MSIs encourages companies' participation. Moreover, their relative informality means they offer greater flexibility than binding law. This flexibility is particularly important for Internet users given that the ICT landscape is constantly evolving.¹⁶² However, these mechanisms have clear enforcement and accountability limitations, which makes their ability to achieve real progress in companies' respect of human rights far from certain. In addition, all three mechanisms problematically assume, to varying extents, that companies have some bargaining power vis-à-vis states in negotiating better human rights outcomes for citizens. As discussed in the next section, multinational companies are more likely to hold this power than local ones.

Part VI: The Usefulness and Viability of CSR Policies and Strategies in Cambodia

For the aforementioned reasons, the usefulness and viability of self-regulation, international codes of conduct, and MSIs for achieving greater respect of human rights in authoritarian contexts

¹⁵⁹ See MacKinnon, Maréchal & Kumar, *supra* note 132 at 4.

¹⁶⁰ See Ahmed, *supra* note 47 at 528.

¹⁶¹ See Paul O'Donoghue, "Amnesty: Tech Giants an 'Unprecedented Threat' To Human Rights" (20 November 2019), online: *The Times* <[thetimes.co.uk/article/amnesty-tech-giants-an-unprecedented-threat-to-human-rights-l77rl9tcl](https://www.thetimes.co.uk/article/amnesty-tech-giants-an-unprecedented-threat-to-human-rights-l77rl9tcl)>.

¹⁶² See Baumann-Pauly et al, *supra* note 118 at 784.

is premised on companies having the capacity and willingness to act. Unfortunately, this premise is what makes CSR an unrealistic solution for protecting Internet users' rights to freedom of expression and privacy in Cambodia. As demonstrated in this paper, the Cambodian government shows little regard for international human rights standards. Furthermore, because Internet censorship has proven to be such a valuable tool for strengthening his grip on power, Hun Sen has a clear interest in maintaining the status quo in rights abuse. Thus, one can reasonably assume that his government would stand in the way of ISPs' implementing CSR policies and practices. If an ISP in Cambodia were to agree with Special Rapporteur David Kaye¹⁶³ and GNI¹⁶⁴ about the importance of being transparent with the public about government censorship demands, for example, the ISP could very well decide to introduce a new internal policy to this effect. However, upon learning of the ISP's intention to disclose such information, Hun Sen would almost certainly take measures to prevent this disclosure from taking place. The ISP's policy would, in effect, become useless. This outcome is even more likely when one considers the ownership and characteristics of Cambodia's ISPs.

In China, Xi Jinping's Great Firewall relies on the cooperation of a variety of both multinational and Chinese ICT companies, including social media companies and search engines.¹⁶⁵ The situation in Cambodia is different, however. Hun Sen has focused his efforts on ISPs in particular, and the vast majority of the country's 37 ISPs are local.¹⁶⁶ Some of the most prominent providers include Viettel Cambodia (Metfone), Ezecom, Cellcard, Smart Axiata, and Telecom Cambodia.¹⁶⁷ An inquiry into these companies' governance structures reveals intimate ties to Hun Sen and the CPP. For example, Telecom Cambodia operates under

¹⁶³ See *Report on Freedom of Opinion and Expression*, *supra* note 16.

¹⁶⁴ See Ahmed, *supra* note 47 at 525.

¹⁶⁵ See Kafka, *supra* note 62.

¹⁶⁶ See "Types of Telecommunications License of June 2019" (last accessed 14 December 2019), online: [Telecommunication Regulator of Cambodia <trc.gov.kh/licenses/>](http://trc.gov.kh/licenses/); "Freedom on the Net 2018: Cambodia" *supra* note 50.

¹⁶⁷ Viettel Cambodia and Smart Axiata are local subsidiaries of Vietnamese Viettel and Malaysian Axiata respectively. See "Freedom on the Net 2018: Cambodia" *supra* note 49; "Phnom Penh Internet Providers" (last updated 2 December 2019), online: movetocambodia.com/city-guides/phnom-penh/expat-essentials/internet-providers/.

the MPTC and Ministry of Finance.¹⁶⁸ Ezecon and Cellcard are operated by the Royal Group of Companies.¹⁶⁹ Kith Meng, Chairman of the Royal Group, is also president of the country's chamber of commerce and a long-time adviser and supporter of Hun Sen himself.¹⁷⁰ The directors of Viettel Cambodia include Hun Mana, Hun Sen's daughter, Tao Toeun, wife of Cambodia's Deputy Prime Minister and Minister of National Defense, and Lieutenant General Phorn Nara, Secretary-General of Cambodia's National Authority for the Prohibition of Chemical, Nuclear, Biological and Radiological Weapons.¹⁷¹ Finally, the Telecommunication Regulator Cambodia (TRC) has been granted regulatory oversight over all of these companies; this "independent" body is overseen by Hun Sen's MPTC.¹⁷²

Given the voluntary nature of self-regulation, international codes of conduct, and MSIs, companies naturally require some incentive to commit to them. CSR advocates are often eager to report that implementing human rights principles into corporate policies and practices improves a company's chances of "success and wealth maximization in the long-run."¹⁷³ An improved reputation, for example, is said to increase a company's access

¹⁶⁸ See "Cambodia Services Trade: Performance and Regulatory Framework Assessment" (July 2014), online (pdf) at 28–20: World Bank <documents.worldbank.org/curated/en/806791468015647474/pdf/912430WPOP12570mbodia0Service0Trade.pdf>.

¹⁶⁹ See "List of companies" (last accessed 14 December 2019), online: The Royal Group <royalgroup.com.kh/list-companies/>.

¹⁷⁰ See "Neak Okhna Kith Meng Re-Elected as President of Cambodia Chamber of Commerce" (2019), online: Swift News Daily <<https://swiftnewsdaily.com/articles/380742>>. But see David Hutt, "Clash of Political and Business Titans in Cambodia" (19 March 2019), online: Asia Times <asiatimes.com/2019/03/article/clash-of-political-and-business-titans-in-cambodia/>.

¹⁷¹ It is interesting to also note that parent company Viettel is owned by the Vietnamese Ministry of Defence. See "Viettel (Cambodia) PTE LTD" (last updated 25 May 2007), online: Open Corporates <opencorporates.com/companies/kh/00019164>; "We Don't Care, We're Still in Power" (31 August 2016), online: Global Witness <globalwitness.org/it/blog/we-dont-care-we-are-still-power/>; Chhay Channyda "Teachers refile 1991 Land Complaint" (27 May 2010), online: Phnom Penh Post <phnompenhpost.com/national/teachers-refile-1991-land-complaint>; "H.E. Gen Phorn Nara, Secretary General National Authority for the Prohibition of CNBR Weapons Cambodia" (last accessed 14 December 2019), online: NCT Asia <nct-asia.com/speakers/maj-gen-h-e-phorn-nara-secretary-general-national-authority-for-the-prohibition-of-cnbr-weapons-cambodia/>.

¹⁷² See "Freedom on the Net 2018: Cambodia" *supra* note 50.

¹⁷³ See Ahmed, *supra* note 47 at 521. See also Ling, *supra* note 59 at 197.

to markets, consumers, and investors.¹⁷⁴ But this is not always the case. In Cambodia, where a majority of ISPs are local and thus entirely dependent on a single market, companies risk annihilation if they fail to cooperate with authorities. This was made clear in February 2018, when the TRC announced that it would investigate and remove the operating licences of ISPs which failed to block access to the website and social media accounts of a reputable independent newspaper, the *Cambodia Daily*.¹⁷⁵ To summarize, when doing so would almost certainly result in government attacks, the chances of local ISPs in Cambodia voluntarily committing to self-regulation, international codes of conduct, or MSIs are slim. Additionally, in light of the intimate ties between executives and the CPP, the interests of company executives and those of the government tend to align very closely.

Further, even in circumstances where the government has not encouraged or ordered the rights abuse, past commitments to CSR policies in other Cambodian sectors have proven ineffective. An August 2019 report by LICADHO, for example, found that land and other rights abuses continue to be perpetrated against Cambodian microfinance borrowers despite microfinance institutions across the country having jointly pledged to act ethically and in socially responsible ways.¹⁷⁶ A lack of government regulation, weak judiciary, and widespread corruption enable companies to act in socially harmful ways without fear of repercussions.

A final potential barrier to the implementation of human rights principles into business relates to the unsettled universalism versus relativism debate. In 2018, Hun Sen's government released an unapologetic statement to the public defending its human right track record. It declared that "[c]ompared to political rights, there are more urgent human rights" and "the rights to food, to housing, to health, to education, to create jobs have been seen as fundamental priorities by the Cambodian authorities who think that these rights are by far more important than the right to

¹⁷⁴ See *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, OCHR Cambodia (December 2011) at 12.

¹⁷⁵ See "Freedom on the Net 2018: Cambodia" *supra* note 50.

¹⁷⁶ See "Collateral Damage: Land Loss and Abuses in Cambodia's Microfinance Sector" (August 2019), online (pdf): LICADHO <licadho-cambodia.org/reports/files/228Report_Collateral_Damage_LICADHO_STT_Eng_07082019.pdf>.

defame and insult, to publish fake news.”¹⁷⁷ Whether the fulfillment of social and economic rights has truly been prioritized is debatable, to say the least. However, this statement raises an important CSR-related question: although improved political participation is an important longer-term societal goal, if citizens’ immediate existential needs have not yet been met, which rights should companies be devoting their limited resources to protecting?¹⁷⁸ While companies could presumably do both, this may require blurring the line between built-in and bolt-on CSR. A stronger philanthropic component, such as programmes related to poverty alleviation, education, and food security, should perhaps be incorporated into self-regulation, international codes of conduct, and MSIs, especially when companies operate in Cambodia and other developing countries.

In sum, the backlash that companies would face from government, lack of incentive or external pressures, and competing priorities make the likelihood of ISPs in Cambodia embracing existing CSR mechanisms for protecting users’ fundamental rights online essentially non-existent.

Part VII: Looking Ahead

Although this paper has ultimately determined that self-regulation, international codes of conduct, and MSIs lack utility and viability when applied to local ISPs in Cambodia, all hope for CSR as a response to human rights abuse is not lost. Multinational ICT companies can and should step up their CSR-related efforts. First, multinationals should implement human rights principles into their policies and practices through the three mechanisms discussed herein. Second, multinationals should put in place greater safeguards for the protection of users’ rights. These safeguards help protect citizens even in situations where local companies are the ones being targeted by government. Encryption is one such safeguard and protects the right to privacy specifically. End-to-end encrypted communication systems are designed “so that messages can be read only by the sender and their intended recipients, even if the encrypted—meaning locked—messages themselves are stored by an untrusted third party, for

¹⁷⁷ “Press Release: Cambodia Stability and Development First” (16 February 2018), online: *Ministry of Foreign Affairs & International Cooperation* <mfaic.gov.kh/site/detail/17067>.

¹⁷⁸ See Kuada & Hinson, *supra* note 121 at 526.

example, a social media company.”¹⁷⁹ Incorporating end-to-end encryption into the online messaging services offered by Facebook, Instagram, Snapchat, etc. would enable individuals, activists, groups, and CSOs to benefit from a “zone of privacy” that would better protect them from government surveillance and monitoring.¹⁸⁰ More accessible, user-friendly censorship circumvention tools, including VPNs, should also be developed to protect users’ right to freedom of expression.¹⁸¹ Crucially, governments in the West must reconsider their efforts to weaken Internet companies’ cryptographic algorithms.¹⁸² For example, in 2019, the United Kingdom, United States, and Australia sent an open letter to Facebook requesting that the company grant law enforcement access to encrypted content on Facebook and WhatsApp.¹⁸³ Commenting on this letter, Amnesty International said that “weakening encryption on popular commercial apps undermines the rights of billions of ordinary people.”¹⁸⁴ To help protect the interests of citizens living in authoritarian regimes, security protections must not be rolled back.

In addition, socially responsible investing (SRI), both at the individual and institutional levels, could help push multinationals in the right direction. While SRI has not been widely discussed in relation to ICT companies specifically, it consists of investors screening investment portfolios for both financial profit and ‘social benefit.’¹⁸⁵ Social benefit is construed broadly and ought to

¹⁷⁹ See Edward Snowden, “Without Encryption, We Will Lose All Privacy. This Is Our New Battleground” (15 October 2019), online: *The Guardian* <theguardian.com/commentisfree/2019/oct/15/encryption-lose-privacy-us-uk-australia-facebook>.

¹⁸⁰ See *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UNGA, 29th Sess, UN Doc A/HRC/29/32 (2015) 1 at 3.

¹⁸¹ See generally “Freedom on the Net 2018: Cambodia”, *supra* note 50 (“recommendations”).

¹⁸² See e.g. Christopher Parsons, “Canada’s New and Irresponsible Encryption Policy: How the Government of Canada’s New Policy Threatens Charter Rights, Cybersecurity, Economic Growth, and Foreign Policy” (21 August 2019), online: *Citizen Lab* <citizenlab.ca/2019/08/canadas-new-and-irresponsible-encryption-policy-how-the-government-of-canadas-new-policy-threatens-charter-rights-cybersecurity-economic-growth-and-foreign-policy/>.

¹⁸³ See “Government Calls for Facebook to Break Encryption ‘Latest Attempt to Intrude on Private Communications’” (4 October 2019), online: *Amnesty International* <amnesty.org/en/latest/news/2019/10/government-calls-for-facebook-to-break-encryption-latest-attempt-to-intrude-on-private-communications/>.

¹⁸⁴ *Ibid.*

¹⁸⁵ See Ahmed, *supra* note 47 at 520.

include companies' efforts to protect human rights, both online and off. To encourage changes in corporate practices, international investors should divest from ICT companies that are complicit in the online censorship and surveillance of individuals.

Finally, a higher-level measure to improve ICT companies' and states' accountability for the respect of human rights has been suggested by researcher Dr. Anja Mihr: a user-driven "Cyber Court." Not unlike the European Court for Justice and the International Court of Justice, this global governing body would be empowered to impose charges and penalties on states and companies for failures to respect and protect human rights.¹⁸⁶

Of course, achieving meaningful change in the human rights situation of any country requires looking beyond CSR. In an ideal world, all government decisions to block content would be justified on clear grounds and shared with the public. These decisions would be reviewed by an independent body to ensure their compatibility with human rights frameworks.¹⁸⁷ To promote behaviour change in the Cambodian government, the international community should continue to exert pressure on Hun Sen and the CPP through diplomacy and trade measures. International financial institutions, including the World Bank and IMF, should also incorporate human rights frameworks into their policies and practices¹⁸⁸ and evaluate states' respect for human rights when granting funds.¹⁸⁹ In light of Cambodia's increasing rapprochement with China, however, international pressure must not come at the cost of further isolating Cambodians from the West.

While Cambodia's current trajectory is worrying, there is reason to be hopeful about the future. If properly implemented, the country's first Access to Information Law—which has been drafted but not yet enacted—could give citizens the right to request and obtain information of "public interest" from government

¹⁸⁶ See Anja Mihr, "Cyber Justice: Cyber Governance Through Human Rights and a Rule of Law in the Internet" (2016). 13 US China L Rev 314 at 328.

¹⁸⁷ See *Note by the Secretary-General*, *supra* note 97 at 14.

¹⁸⁸ See Sigrun Skogly, *Human Rights obligations of the World Bank and the IMF* (Abingdon: Routledge, 2001) (the Articles of Agreement of these two institutions do not currently provide for the protection and promotion of human rights).

¹⁸⁹ See *ibid.*

authorities.¹⁹⁰ This would presumably include information about demands made by authorities to ISPs for censorship and user data, thereby enabling increased public scrutiny of the regime's interference with the Internet. According to researcher Julio Bacio Terracino, access to information laws can lead to improved transparency and accountability in government.¹⁹¹ Whether this will be the case in Cambodia remains to be seen.

Conclusion

"Does anyone dare launch a colour revolution with me? Someday in the future, I will launch a colour revolution in order to change the regime running Cambodian society."¹⁹²

In his 1996 "A Declaration of the Independence of Cyberspace," John Perry Barlow described the Internet as "a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity."¹⁹³ In Cambodia, the Internet has proven to be a powerful tool for enhancing individuals' and groups' access to information and means of expression. It has meaningfully improved advocacy and community organizing capabilities. However, the world imagined by Barlow has not yet materialized—at least not in the Cambodian context. Hun Sen and his ruling party have implemented a multifaceted strategy for infringing on Cambodians' rights to expression and privacy online. Authorities have elicited the cooperation of local ISPs in order to censor online content. While today Internet access in the country is still considered partly free,¹⁹⁴ the situation is likely to

¹⁹⁰ See Ry Sochan, "Gov't Reviews Access to Information Law Draft" (4 July 2019), online: *Phnom Penh Post* <phnompenhpost.com/national/govt-reviews-access-information-law-draft>.

¹⁹¹ See Julio Bacio-Terracino, "Linking Corruption and Human Rights" in *Proceedings of the Annual Meeting*, vol 104 (2010) 243 at 244.

¹⁹² These words, written by Kong Raiya in a Facebook post, would lead a Cambodian court to convict the twenty-three-year-old student to 18 months behind bars for 'incitement. See Pinn Sisovann, "Student Sentenced to 18 Months Prison for 'Revolution' Facebook Post" (16 March 2016), online: VOA <voacambodia.com/a/student-sentenced-to-18-months-prison-for-revolution-facebook-post/3240020.html>.

¹⁹³ See *Report on Freedom of Opinion and Expression*, *supra* note 16 at 3.

¹⁹⁴ In 2018, Freedom House gave Cambodia a score of 55 for Internet Freedom, on a scale where 100 means least free. It was deemed less restrictive than Thailand, Vietnam, and Myanmar, but more restrictive than the

worsen as the country grows further from the West and closer to China and its BRI. The intimate relationship that has developed between ISPs and authorities in Cambodia is worrying. Interferences with the country's network have, up until now, largely been limited to censorship, but it is reasonable to assume that authorities would ramp up their efforts considerably if Cambodians were to one day launch a colour revolution against the regime, for instance. Just like Egypt in 2011,¹⁹⁵ Ethiopia in 2018,¹⁹⁶ and Iran in 2019,¹⁹⁷ Hun Sen is likely to attempt to quash dissent by ordering ISPs in the country to shut down the network entirely. If history is any indication, companies are sure to comply with these orders. Because local ISPs' likelihood of embracing self-regulation, international codes of conduct, or MSIs is essentially non-existent, greater responsibility to act falls on multinational ICT companies, foreign governments, institutions, and investors.

Philippines, Malaysia, and Indonesia. See "Freedom on the Net 2018: Cambodia" *supra* note 50.

¹⁹⁵ See MacKinnon et al, *supra* note 11 at 74–75.

¹⁹⁶ See Ayalew, *supra* note 14.

¹⁹⁷ See Michael Safi, "Iran's Digital Shutdown: Other Regimes 'Will Be Watching Closely'" (21 November 2019), online: *The Guardian* <theguardian.com/world/2019/nov/21/irans-digital-shutdown-other-regimes-will-be-watching-closely>.

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