

Fact Sheet: Applicability of International Human Rights Law in Cambodia

Summary: The Royal Government of Cambodia (the “RGC”) is obliged to respect a number of norms under international human rights law. It must comply with norms of *Jus Cogens* and customary international law and it is bound by international treaties and conventions it has ratified.

Introduction

This fact sheet provides an overview of the applicability of the main sources of international human rights law in the Cambodian legal system. It is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Jus Cogens and Customary International Law

Norms of *Jus Cogens* are fundamental principles of international law accepted as peremptory norms from which no derogation is allowed under any circumstances. *Jus Cogens* norms form part of Customary International Law (“CIL”) and are defined under Article 53 of the 1969 Vienna Convention on the Law of Treaties (“VCTD”). There is no precise list of international legal norms that amount to *Jus Cogens* but, it is generally accepted that it includes the prohibition of genocide and torture.

CIL is defined as “a general practice accepted as law” by States. To acquire the status of CIL, both a state practice, which is common, consistent and concordant; and an *opinio juris* (the belief that an action was carried out because it was a legal obligation) must be established. CIL binds all States, including those that are not party to a particular treaty. For instance, the principles contained in the Universal Declaration of Human Rights (“UDHR”) have widely been accepted as rules of CIL and do not require signature or ratification by States to be recognized as legal standards.

International Human Rights Treaties

By becoming parties to (i.e ratifying) international treaties, States assume obligations and duties under international law to respect, protect and fulfill human rights. In Cambodia, once signed, a treaty is submitted to the National Assembly for approval, then to the Senate, before being promulgated by the King. International treaties are then binding under domestic law and can be referred to by the Cambodian judiciary.

The RGC has become a party to the following core international human rights treaties:

- The International Covenant on Economic, Social and Cultural Rights 1966 (“ICESCR”) (Entry into force in Cambodia 1992);
- The International Covenant on Civil and Political Rights 1966 (“ICCPR”) (Entry into force in Cambodia 1992);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (“CAT”) (Entry into force in Cambodia 1992);
- The Convention on the Elimination of All Forms of Discrimination against Women 1979 (“CEDAW”) (Entry into force in Cambodia in 1992);
- The Convention on the Rights of the Child 1989 (the “CRC”) (Entry into force in Cambodia in 1992);
- The International Convention on the Elimination of All Forms of Racial Discrimination 1965 (“ICERD”) (Entry into force in Cambodia 1993);

- The Convention on the Rights of Persons with Disabilities 2006 (“CRPD”) (Entry into force in Cambodia in 2012).
- The International Convention for the Protection of All Persons from Enforced Disappearance 2006 (the “CED”) (Entry into force in Cambodia in 2013).

Cambodia has also signed in 2004 but not ratified, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (the “ICRMW”). Signing a treaty indicates the government’s intention to ratify it in the near future. Cambodia is thus bound to refrain from acts that would defeat or undermine the treaty’s objective and purpose. To find out which treaties and conventions were ratified or acceded by Cambodia click [here](#).

Direct Applicability of Human Rights Treaties in Cambodia

Under Article 31 of the Constitution of the Kingdom of Cambodia (the “Constitution”), Cambodia recognizes and respects international human rights treaties as part of its domestic law. A decision of the Constitutional Council dated 10 July 2007 reaffirmed the applicability of the international human rights treaties by the courts of Cambodia. Judges are obliged to consider all Cambodian laws when interpreting laws and making decisions, *“including the Constitution which is the supreme law, all the laws that remain in force, and the international laws already recognized by the Kingdom of Cambodia [...]”* This confirms that international human rights treaties ratified by Cambodia are directly applicable within the Cambodian legal system.

Conclusion/Recommendations

The RGC must comply with international norms of *Jus Cogens* and CIL and must protect, promote and fulfill its international human rights obligations as contained in the treaties and conventions it has ratified. Overall, Cambodia has been incorporating provisions of human rights treaties in domestic laws. However, some provisions of Cambodian laws are vague and contain many loopholes, which weaken or restrict Cambodia’s human rights obligations. For instance, Article 502 of the Penal code criminalizes insult to a public official acting on behalf of his or her office and Article 523 make illegal discrediting judicial decisions. Those two provisions restrict the right to freedom of expression and do not comply with Cambodia’s international human rights obligations. Article 2 of the Law on Peaceful Assembly also specifies that peaceful assembly *“shall not be used abusively affecting the rights, freedoms, and honor of others, good customs of the national society, public order and national security.”* These limitations and in particular “honors of others” and “good customs of national society” put excessively broad restrictions on the right to freedom of assembly and is thus incompatible with the limitations sets out in the ICCPR. The RGC must adhere to its international human rights obligations and cannot use its domestic law as a means of avoidance. Direct application and reference to various human rights provisions are thus necessary and encouraged. CCHR calls on the RGC to amend relevant domestic legal provisions so as to ensure national legislation complies with Cambodia’s international human rights obligations.

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