

Fact Sheet: Hierarchy of Laws in Cambodia

Summary: Domestic legal instruments follow a specific hierarchy that needs to be complied with in order to respect the principle of rule of law. However, there have been instances where the Royal Government of Cambodia (“RGC”) bypasses this hierarchy and uses lower legal instruments to regulate fundamental human rights issues.

Introduction

This fact sheet provides an overview of the hierarchy of laws in the Kingdom of Cambodia (“Cambodia”) and highlights the fact that legal instruments are often misused, thereby jeopardizing the principle of rule of law. This fact sheet 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.

Domestic Law

Each legal instrument derives its validity and authority from the legal instrument placed above it in the hierarchical structure of laws. The higher the level of instrument that is being enacted, the longer its review process will take and the greater its geographical scope will be. Lower ranked instruments of law must adhere to those of a higher ranking or they will be either altered or declared moot.

The hierarchy of law in Cambodia is as follows starting from the highest level to the lowest level of legal force. The Constitution of the Kingdom of Cambodia (the “Constitution”) is the supreme law in Cambodia. All laws, legal documents and state body decisions must adhere to it. A Law (Chbab) is adopted by the National Assembly (“NA”) and the Senate and promulgated by the King or the acting Head of State. A Royal Decree (Preah Reach Kret) is an executive regulation issued by the King following a request from the Council of Ministers in order to organize the functioning of a public institution, create a new governmental body or appoint officials, ambassadors and judges. A Sub-Decree (Anu-Kret) is used to clarify provisions within existing laws, set out the functions and duties of RGC bodies and appoint senior RGC officials. It is drafted within relevant ministries, approved by the Council of Ministers and endorsed by the Prime Minister. It is the most common governmental decision. Ministerial Orders or Proclamations (Prakas) are executive regulations made at the ministerial level to implement and clarify specific provisions within higher-level legislative documents and give instructions. Their scope is limited to the focus and subject matter of the ministry that enacted them. Decisions (Sech Kdei Samrach) are made by the Prime Minister or relevant ministers, and are used for a temporary purpose. They disappear once their goal is achieved. A Circular (Sarachor) is issued by the Prime Minister or a Minister, and provides instructions relating to certain legal or regulatory measures, but is not legally binding. Local Regulations or Bylaws (Deika) are approved by local Councils at sub-national level. They have force of law within the territorial authority of the local Councils, thereby cannot conflict with other regulations at the national level.

International Law

Article 31 of the Constitution recognizes and respects international human rights treaties as part of Cambodian domestic law. In a decision dated 10 July 2007, the Constitutional Council reaffirmed the application of human rights instruments in Cambodian law by reminding judges that they are obliged

to consider all Cambodian laws – including international laws – in the decision making process. However, the Constitution does not provide any indication as to the status of international treaties within the hierarchy of the Cambodian legal system, nor does the case law of Cambodian Courts or the Constitutional Council’s decisions. It might be inferred that international treaties and conventions are below the Constitution. Since treaties should be ratified by a vote of the NA – thus, follow the same procedure as domestic laws, treaties should be above or at the very least, hold the same status as domestic laws.

Misuse of legal instruments

In theory, each legal instrument must follow a specific procedure to acquire its validity and authority. However in practice, a different approach is adopted.

The Village-Commune Safety Policy (“VCSP”) is a 2010 policy proposing measures to reduce crime at the local level and to improve police operation. It is not a law, i.e. a formal piece of legislation adopted by the NA, but a ministerial order issued by the Ministry of Interior. The VCSP was meant to implement wide-ranging, long-term and fundamental changes to society. It should thus have been implemented with proper legislative approval. In addition, the VCSP contradicts many of the primary legislation it refers to – i.e. the Law on Drug Control, provisions of the Criminal Code 2009 and the Code of Criminal Procedure 2007. The VCSP also appears to curtail a number of rights enshrined in the Constitution such as the right to peaceful assembly. Thus, it should be amended to comply with higher-ranking legislation. Instead, many local authorities reportedly consider the VCSP to take priority and precedence over democratically enacted-legislation.

Moreover, according to the Land Law 2001, State public land can be reclassified as State private land by a law passed by the NA. However, the RGC often issues simple decrees to reclassify State land and thus disregard the legal requirement to go through the NA. This has led to abusive reclassification of land in Cambodia, with many examples of State public land being converted into State private land and subsequently granted to private companies for development purposes.

Conclusion/Recommendations

By heavily relying on low-level legal instrument, the guarantees and positive effects that are interconnected with high-level laws and their legislative processes are circumvented. This causes concern especially when low-level legal instruments are used to regulate matters touching upon human rights issues. This ongoing practice needs to be halted to prevent further abuses of power. CCHR calls upon the RGC to follow the formal legislative process as provided in the Constitution as it is essential to a healthy democracy and the principle of rule of law.

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