

Fact Sheet: Fundamental Freedoms Series: Right to Participate

Fundamental Freedoms: Right to Participate Actively in the Life of the Nation



Snapshot: Important drafts laws relating to human rights have either been sent or are about to be sent to the National Assembly for adoption. However, none of the recent drafts has been published and no consultations with civil society and the public in general have been organized, restricting the right to participate actively in the life of the nation and against all principles of good governance.

Introduction

The Royal Government of Cambodia (“RGC”) has been drafting important laws that have the potential to significantly affect the rights and freedoms of the people of the Kingdom of Cambodia (“Cambodia”). These laws include the Law on the Organization and Functioning of the Courts, the Law on the Supreme Council of Magistracy, the Law on Statute of Judges and Prosecutors, the Cybercrime Law, the Law on Trade Unions, and the Law on Associations and Non-Governmental Organizations (the “LANGO”). However, despite repeated calls by civil society members, no drafts of any of these laws – expect the LANGO released in 2011- have been publicly released nor have any genuine, open and inclusive consultations taken place. The opacity around the drafting and adoption of these laws restricts Cambodians’ right to participate actively in the public life of the nation as guaranteed by the Constitution of the Kingdom of Cambodia (the “Constitution”) and further demonstrates the lack of good governance among Cambodian institutions.

This Factsheet is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent non-governmental organization (“NGO”) working to promote and protect democracy and human rights – primarily civil and political rights – throughout Cambodia.

The right to participate actively in the life of the nation

The right to participate actively in the life of the nation is guaranteed in Article 35 of the Constitution which states: “*Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.*” This article echoes Article 21 (1) of the Universal Declaration of Human Rights (“UDHR”): “*Everyone has the right to take part in the government of his country, directly or through freely chosen representatives*” and Article 25 of the International Covenant on Civil and Political Rights (“ICCPR”): “*Every citizens shall have the right [...] to take part in the conduct of public affairs, directly or through freely chosen representatives.*” Both the UDHR and the ICCPR are directly applicable in Cambodia as prescribed by Article 31 of the Constitution.

The concept of good governance is directly derived from these fundamental human rights. According to the former United Nations Commission on Human Rights, the key attributes of good governance include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good governance relies on transparent, inclusive and participatory government institutions that offer to the public ways and means to participate in the public life formally or informally.

As such, the responsibility to ensure public participation lies with the government institutions, including the National Assembly. An open, transparent and participatory legislative process reinforces legitimacy, consensus, and helps exercise oversight and accountability of peoples and institutions. Consultation also improves the quality of laws and compliance.

In a true democracy, the people of the country should be provided with an adequate opportunity to comment on the content of draft laws prior to adoption by the legislature in order to uphold the rights enshrined in the Constitution and international human rights law.

Opacity and exclusion: Cambodia's legislative process

Despite repeated calls by civil society members, the RGC has so far refused to publish the draft legislations and to organize consultations on the recent drafts laws. On the contrary, in response to civil society calls for greater transparency around the three draft laws related to the judiciary, Prime Minister Hun Sen said on 28 April 2014 that the Constitution did not allow the government to send the law to someone besides the Council of Ministers and that if someone wanted to comment on a law he or she needed to be elected a Member of Parliament. CCHR is not aware of any articles in the Constitution preventing the RGC to share draft legislation with the public. In addition, following domestic and international pressure the Ministry of Interior previously organized public consultations around the draft LANGO. As such, nothing is preventing the RGC from allowing inputs from civil society organizations. Moreover, CCHR contacted different relevant Ministries and institutions to obtain the above mentioned recent draft laws but received negative answers. Similarly, on 5 March 2014, Meas Sarim, deputy director-general of the General Department of Local Administration at the Ministry of Interior, announced that the RGC would not be consulting civil society groups on the latest version of the draft LANGO.

Conclusion

The opacity surrounding the legislative process and the refusal to engage and consult with the general public and civil society members violates peoples' right to participate in the public life of the nation, seriously undermines the legitimacy of government's institutions and further demonstrates that Cambodia is not governed according to good governance and democratic principles.

As such, CCHR recommends that, according to its previous commitment, the RGC adopts a comprehensive Freedom of Information law in a transparent, inclusive and participatory manner. In addition, CCHR believes that regulatory procedures should be developed to ensure effective and timely inputs on draft legislations from interested national and foreign parties such as civil society members. These procedures should be developed in a transparent, inclusive and participatory manner as well and be widely publicized.

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