

Fact Sheet: Democracy and Human rights in the Paris Peace Agreements

Snapshot: 23 October 2016 marks the 25th anniversary of the signature of the Paris Peace Agreements, which brought an end to decades of conflict in Cambodia and laid the framework for a political settlement based on human rights and the rule of law. The Agreements created legally binding obligations for Cambodia and the other 18 signatories of the agreements to ensure protection of human rights (in addition to their existing obligations under international human rights law), and tasked the United Nations with specific responsibilities to monitor human rights in Cambodia. The Paris Agreements also set out a number of key principles to be included in Cambodia’s Constitution, notably that Cambodia would follow a system of liberal democracy, and the establishment of an independent judiciary. Despite some limited progress, the promise of the Paris Agreements remains far from realized, and all parties should take action to ensure the fulfillment of their obligations.

Introduction

This Fact Sheet provides an overview of and brief analysis of compliance with provisions of the 1991 Paris Peace Agreements that relate to democracy and human rights. This Fact Sheet is produced by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Background

The Paris Agreements comprise four separate documents with differing legal statuses:¹ the Final Act of the Paris Peace Conference; one non-binding Declaration on the Rehabilitation and Reconstruction of Cambodia; and two legally binding international treaties, the Agreement on a Comprehensive Political Settlement for Cambodia (the “ACPS”) and the Agreement on Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia (the “ASIT”). The treaties contain three broad categories of obligations: i) obligations undertaken by Cambodia;² ii) obligations undertaken by other states that are signatories to the agreements;³ and iii) obligations imposed on various bodies of the United Nations (the “UN”). In addition, Article 28(1) of the ACPS imposes certain obligations on all signatories:⁴ a restatement of the general obligation under international law to “*comply in good faith with all obligations undertaken,*” and an obligation to “*extend full cooperation to the United Nations.*”

While Part I of the ACPS specifically deals with arrangements for the Transitional Period after the end of the conflict – from 23 October 1991 to September 1993⁵ – all obligations related to human rights fall in Part II of the ACPS or in the ASIT, which contain no temporal limitation. Accordingly, all the undertakings set out below remain binding on signatories.

i) Obligations of Cambodia: respect for human rights and promotion of liberal democracy

¹ Available at: <http://bit.ly/2b6dqpl>

² The Agreements were signed on behalf of Cambodia by the newly-formed Supreme National Council of Cambodia (the “SNC”), comprising representatives of the various factions in the Cambodian conflict, and deemed by the Agreements to constitute “*the unique legitimate body and source of authority in Cambodia in which, [...] national sovereignty and unity are enshrined, and which represents Cambodia externally.*” Article 28(2) ACPS explicitly provides that the SNC’s signature committed “*all Cambodian parties and armed forces.*” It should therefore be considered that the SNC was competent to engage the responsibility of the state of Cambodia under international law.

³ The signatories to the Paris Agreements excluding Cambodia were: Australia, Brunei Darussalam, Canada, China, France, India, Indonesia, Japan, Laos, Malaysia, Philippines, Singapore, Thailand, USSR, United Kingdom, USA, Viet Nam and Yugoslavia.

⁴ Both the ACPS and ASIT provide that they shall enter into force upon signature.

⁵ Article 1, ACPS

The Paris Agreements established the foundation for a new political settlement in Cambodia that is rooted in human rights and inextricably tied to the international human rights law (“IHRL”) framework. With the exception of the bracketed text that only appears in the ACPS, Article 15(1) of the ACPS and Article 3(1) of the ASIT contain identical statements that:

“All persons in Cambodia [and all Cambodian refugees and displaced persons] shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.”

This is followed by an explicit undertaking in Articles 15(2)(a) of the ACPS and Article 3(2)(a) of the ASIT that, to this end:

“(a) Cambodia undertakes:

- to ensure respect for and observance of human rights and fundamental freedoms in Cambodia;*
- to support the right of all Cambodian citizens to undertake activities that would promote and protect human rights and fundamental freedoms ;*
- to take effective measures to ensure that the policies and practices of the past shall never be allowed to return;*
- to adhere to relevant international human rights instruments;”*

In the Paris Agreements, Cambodia also committed to a specific political system: one characterized by liberal democracy and pluralism. In Annex 5 of the ACPS, ‘*Principles for a New Constitution for Cambodia,*’ Articles 4 and 5 respectively set out the following principles:

“The constitution will state that Cambodia will follow a system of liberal democracy, on the basis of pluralism. It will provide for periodic and genuine elections. It will provide for the right to vote and to be elected by universal and equal suffrage. It will provide for voting by secret ballot, with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process,” and: *“An independent judiciary will be established, empowered to enforce the rights provided under the constitution.”*

The undertakings and principles above were largely reflected in the text of the Constitution of Cambodia adopted by the Constitutional Assembly on 21 September 1993, which contains explicit protections for the rights of Cambodian citizens. However, the rights explicitly enshrined in the Constitution are narrower than required by IHRL, being limited to Cambodian citizens only. IHRL stipulates that its protections apply to all people within a State’s jurisdiction.⁶ This overly narrow drafting is somewhat mitigated by Article 31 of the Constitution, which gives constitutional status to the human rights contained in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, and the Convention on the Rights of the Child. In addition to the instruments mentioned explicitly in the Constitution, Cambodia has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities, as well as all eight fundamental conventions of the International Labor Organization. The position of IHRL within the Cambodian legal system has been further strengthened by the Constitutional Council’s decision of 10 July 2007, recognizing that international treaties ratified by Cambodia are directly applicable in domestic law.

⁶ United Nations Human Rights Committee, General Comment 31 (29 March 2004), at para. 10

With regard to liberal democracy and pluralism, a commitment to these principles is included in the first article of the Constitution, and entrenched through Article 153, which provides that *“any revision or amendment affecting the system of liberal and pluralistic democracy and the regime of Constitutional Monarchy shall be prohibited.”*

Explicit, formal recognition of human rights protections and democratic principles is welcome and goes some way towards complying with the Paris Agreements. Further, the RGC has made creditable progress in respect of certain human rights, such as non-discrimination and religious freedom. However, Cambodia still falls considerably short of its obligations to ensure respect for human rights and fundamental freedoms in Cambodia, as well as to promote a fully-functioning democracy: new legislation, such as the Law on Association Non-Governmental Organizations (the “LANGO”) and Telecommunications Law, restricts and punishes the legitimate exercise of freedom of expression, association and assembly; key institutions such as the judiciary and military show a worrying lack of independence; and over the past year and a half civil society has experienced an escalating crackdown, with human rights defenders, activists, and the political opposition facing legal action, detention and even violence as a result of their work. As a result, there is reason to fear that if the current trajectory is maintained, the elections in 2017 and 2018 will not be free, fair or credible.⁷

ii) Obligations of other signatories: monitoring, promoting and acting on human rights issues

Article 15(2)(b) of the ACPS and Article 3(2)(b) of the ASIT (without the bracketed text) provide that:

“the other Signatories to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments [and the relevant resolutions of the United Nations General Assembly,] in order, in particular, to prevent the recurrence of human rights abuses.”

These obligations are bolstered by Article 5(4) of the ASIT, which makes provision for cases of non-compliance [emphasis added]:

*“In the event of serious violations of human rights in Cambodia, [the Parties to this Agreement] **will call upon the competent organs of the United Nations** to take such other steps as are appropriate for the prevention and suppression of such violations in accordance with the relevant international instruments.”*

By contrast with the more vague *“undertaking”* above to promote and encourage respect for human rights, which suggests an obligation to make best efforts to achieve the desired outcome, use of the word *“will”* in Article 5(4) of the ASIT appears to create a clear obligation for Parties to act in cases of serious human rights violations in Cambodia, and call upon the competent UN organs. A further mechanism to address violations or potential violations of the ACPS, not limited to its provisions on human rights, is created by Article 29 of the ACPS, which provides [emphasis added]:

*“Without prejudice to the prerogatives of the Security Council of the United Nations, and upon the request of the Secretary-General, the two Co-chairmen of the Paris Conference on Cambodia [France and Indonesia], in the event of a violation or threat of violation of this Agreement, **will immediately undertake appropriate consultations**, including with members*

⁷ For more details, see CCHR’s Briefing Note, *“Democracy Under Threat 2016: Fulfilling the Promise of the Paris Agreements, 25 Years On,”* available at <http://bit.ly/2dlnJAE>.

of the Paris Conference on Cambodia, with a view to taking appropriate steps to ensure respect for these commitments.”

As for Article 5(4) of the ASIT, use of the words “*will immediately*” appear to create a clear obligation on the co-chairmen to act to undertake consultations and, implicitly, on the UN Secretary- General to make the request triggering the consultations, in certain cases.

It is clear that many signatories have provided substantial support for human rights in Cambodia since 1991, and as the government crackdown on fundamental freedoms has intensified over the past year, the international community has spoken out. Most recently, on 14 September 2016 at the UN Human Rights Council’s annual discussion of Cambodia, 39 states, including six signatories to the Paris Agreements, expressed concerns “*about the current escalation of political tensions in Cambodia, which threatens legitimate activities by opposition parties and human rights NGOs,*” and called upon the government of Cambodia “*to make their utmost efforts to create a political environment in which opposition parties and civil society can all function freely.*”

Nevertheless, there remains scope for more action by signatories to live up to their obligations under the Paris Agreements. As the elections draw nearer, Paris signatories should not hesitate to exert whatever influence they possess on the RGC if they feel its obligations to respect human rights and democratic values are not being fulfilled – for example, through their bilateral and trade relations. States should make the most of their membership of various UN bodies, such as the General Assembly and Human Rights Council, to publicly exert pressure on the RGC in the international arena. Consistent pressure from States with strong commitments to human rights and democracy will be increasingly important as a counterweight to China’s rising influence in Cambodia.

iii) Obligations of the UN

A large proportion of the Paris Agreements are concerned with the mandate of the UN Transitional Authority in Cambodia (“UNTAC”). During the Transitional Period, UNTAC was responsible for fostering an environment in which respect for human rights shall be ensured (Article 16 ACPS). However, Article 17 of the ACPS and Article 3(3) of the ASIT provide that, after the Transitional Period:

“The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly.”

This was subsequently endorsed by the UN Security Council through Resolution 718 (1991), in which it “*expresse[d] its full support for the [Paris] agreements.*” Accordingly, the UN Commission on Human Rights (which has since been replaced by the UN Human Rights Council) continues to have an obligation to monitor human rights in Cambodia, in addition to the duties already contained in its general mandate to “*address situations of violations of human rights*” in all member states and conduct monitoring through the Universal Periodic Review mechanism.⁸

UN human rights organs continue to monitor the situation of human rights in Cambodia. A Special Representative for Cambodia was appointed following the conclusion of the Paris Agreements and transformed into a Special Rapporteur on the situation of human rights in Cambodia in 2008. In her

⁸ United Nations General Assembly Resolution 60/251 (2006)

most recent remarks to the Human Rights Council, on 28 September 2016, the current Special Rapporteur, Ms. Rhona Smith, expressed concern at the “*further deterioration*” of the human rights situation in Cambodia and noted that “*if the political situation is not stabilized in an environment of respect for human rights, the credibility of the forthcoming elections would be seriously undermined.*”

However, it does not appear that a UN Secretary-General has ever used his ability under Article 29 of the ACPS to trigger consultations among the Paris conference participants in the case of violations or the threat of violations of that agreement. The implementation of this provision, by obliging all parties including Cambodia to come together and discuss the status of compliance with the agreements, could play a valuable role in exerting pressure on the RGC and in compelling the other signatories to engage more meaningfully with their obligations.

Given their on going human rights monitoring role specifically set out and consented to by Cambodia in the Paris Agreements, the relevant UN bodies could be more forceful in speaking out about violations of human rights and of Cambodia’s obligations under the Paris Agreements. In particular, the continued existence of a country-specific Special Rapporteur (one of only fourteen such country-specific Rapporteurs) highlights the special concern of UN member states in relation to human rights in Cambodia. The Special Rapporteur should make the most of the legitimacy and opportunity this creates to maintain a dialogue with the RGC and, where appropriate, exert pressure on the RGC to comply with its obligations.

Conclusion and key recommendations

Twenty-five years later, and despite some limited progress, the promise of the Paris Agreements remains far from realized. If the elections in 2017 and 2018 are to be fully legitimate, there are a number of actions that must be taken as soon as possible to improve the conditions in which the campaign and voting will take place:

Key recommendations to the Cambodian Authorities

- *Amend repressive legislation, notably the LANGO, Telecommunications Law and Trade Union Law, to bring them into conformity with the Cambodian Constitution and Cambodia’s obligations under the Paris Agreements and IHRL;*
- *Cease all harassment of opposition politicians and civil society actors; in particular, cease all politically motivated prosecutions, including abuse of defamation law;*
- *Immediately release all persons detained as a result of the peaceful and legitimate exercise of their fundamental freedoms.*

Key recommendations to signatories to the Paris Agreements

- *In their capacity as members of intergovernmental organizations, in particular the UN, take opportunities to raise awareness of the human rights situation in Cambodia and exert pressure on the RGC to cease or address violations;*
- *In cases of violations of human rights in Cambodia, call upon competent UN bodies to take action;*
- *Re-evaluate and keep under review existing and new investment and aid relationships with Cambodian governmental and private actors, taking into account their obligations under IHRL and other relevant international standards;*

- *Seek to send election monitors and observers (unilaterally or via regional organizations) to report on the conduct of both the 2017 and 2018 elections.*

Recommendations to the UN Special Rapporteur on the situation of human rights in Cambodia:

- *Maintain a frank and open dialogue with the RGC; where appropriate make recommendations for the improvement of human rights protection in Cambodia; and, where necessary, make robust criticisms of policies, legislation or actions that have a repressive effect on human rights;*
- *Consider timing future country visits to coincide with both the 2017 and 2018 elections, and/or during the respective election campaigns.*

For more detailed analysis of implementation of the Paris Agreements, and additional recommendations to all parties, see CCHR's Briefing Note, "*Democracy Under Threat 2016: Fulfilling the Promise of the Paris Agreements, 25 Years On,*" available at <http://bit.ly/2dInJAE>. For more information, please contact CCHR's Advocacy Director Piseth Duch via telephone at [+855 \(0\) 12 71 23 71](tel:+855012712371) or e-mail at piseth.duch@cchrcambodia.org, or CCHR Consultant Katie Johnston via telephone at [+855 \(0\)77 842 627](tel:+855077842627) or e-mail at katie.johnston@cchrcambodia.org.

