Fact Sheet: The Right to Equal Participation in Public Affairs
Snapshot: The right to equal participation in public affairs (also known as the right to participate in public life) underlines the democratic process. It is closely related to fundamental freedoms, such as freedom of expression and right to information. In celebration of International Day of Democracy, the Cambodian Centre for Human Rights ("CCHR") wishes to emphasize the importance of this right, and highlight ways to participate in the democratic process.

Introduction

This fact sheet provides an overview of the human right to equal participation in political and public affairs, as outlined by the Constitution of the Kingdom of Cambodia, the United Nations Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR"). It is written by 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").

What Is the Right to Equal Participation in Public Affairs?

The right to participate in public affairs is the right to take part in the government of his country, directly or through freely chosen representatives.[1] In other words, it is the right to take part in the conduct of political affairs. It allows citizens to engage in the political decision-making, and protects them against negative consequences being drawn from it.[2] Article 21 (1) of the UDHR and Article 25 (a) of the ICCPR[3] protect this right. In short, this right enshrines the concept of democracy, which is "a system of government by the whole population or all the eligible members of a state, typically through elected representatives."[4]

The expression "conduct of public affairs" relates to the exercise of the political power, and in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, as well as the formulation and implementation of policy at the international, national, regional and local levels.[5] Citizens' active and unhindered engagement in the political sphere, when they exercise their right to participate in public affairs, permits to ensure accountability and transparency of the public representatives, elements which are essential in a democratic process.[6]

The right to participate in public affairs can be exercised directly, for instance by becoming a member of a legislative body, by holding an executive office, when they participate in a referendum, or through

[1] ICCPR, Art. 25 (a); UDHR, Art. 21 (1).
[2] ICCPR, Art. 25 (a).
[3] UDHR, Art. 21 (1); ICCPR, Art. 25 (a).
[4] Oxford Dictionaries, https://en.oxforddictionaries.com/definition/democracy, accessed 14 Sept 2017.
[5] United Nations Human Rights Committee ("UNHRC"), General Comment No. 25, Article 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, CCPR/C/21/1/7, 12 Jul 1996, para. 5 ("UNHRC General Comment 25").
[6] UNHRC General Comment 25, paras 2, 7.

participation in local assemblies or in bodies established to represent citizens in consultation with the government.[7] In addition, the right to participate in public affairs is often exercised indirectly, through representatives. In this case, those should be freely chosen by the citizens, according to voting processes established by law and respecting internationally recognized human rights.[8] Those representatives can only exercise the powers allocated to them in accordance with constitutional provisions, and are accountable through the electoral process.[9]

The right to participate in public affairs applies equally to all Cambodian citizens. It must be respected and recognized without any discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[10] In addition, it must not be subject to "unreasonable restrictions".[11] While it is limited to actual citizens, as defined in the domestic law of the country,[12] this must be interpreted broadly, as in the same time; the application of the right must not discriminate on the basis of birth or other status.

The Right to Equal Participation in Public Affairs is Protected by Cambodian Law and by International Law

Under the Cambodian constitution, all citizens can actively participate in the political life of the nation pursuant to Article 35. Additionally, all requests from Khmer citizens "shall be given full consideration and resolution by the State's organizations."[13] All citizens also have the right to peacefully organize, and are protected from physical abuse, as highlighted in Articles 37 and 38 respectively. The Constitution also recognizes that all citizens are free to express their personal opinions, and guarantees the freedom of the press, of publication and assembly.[14]

Further, Article 31 of the Constitution states that Cambodia will recognize international human rights as enshrined in the UDHR and all other Human Rights treaties and conventions, including the ICCPR.[15] The UDHR states that: "[everyone] has the right to take part in the government of his country, directly or through freely chosen representatives."[16] The ICCPR provides that citizens have the right to take part in the conduct of public affairs, directly or through freely chosen representatives.[17]

Other international human rights instruments which Cambodia ratified also protect this right, including, among other: the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; the Convention on the Rights of the Child; and the United Nations Declaration on the Rights of Indigenous Peoples.

[7] UNHRC General Comment 25, para. 6.
[8] UNHRC General Comment 25, para. 6.
[9] UNHRC General Comment 25, para. 7.
[10] ICCPR, Art. 2; UNHRC General Comment 25, para. 3.
[11] ICCPR, Art. 25.
[12] UNHRC General Comment 25, para. 3.
[13] Cambodian Constitution, Art. 35.
[14] Cambodian Constitution, Art. 41.
[15] Cambodian Constitution, Art. 31.
[16] UDHR, Art. 21 (1).
[17] ICCPR, Art. 25 (a).

Relationship with Other Human Rights

The right to participate in political and public affairs is closely related to the right to self-determination; the right to freedom of expression; as well as the right to freedom of association and assembly.[18]

The right to self-determination implies that peoples have the right to "freely determine their political status and to enjoy the right to choose the form of their constitution or government."[19] In short, citizens in any given nation should have the right to elect and participate in affairs which shape their government and legislation.

Freedoms of expression, association and assembly is closely linked with the right to equal participation in political and public affairs.[20] The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.[21] It requires a free press and other media to be able comment on public issues without censorship or restraint, and to inform public opinion.[22] Therefore, in order to be able to meaningfully engage in public affairs, citizens should have the right to access information.[23]

What Does this Right Mean in Practice?

The precise way in which the allocation of powers and the means by which individual citizens exercise their right to participate in the conduct of public affairs should be established by the constitution and other laws.[24]

However, certain fundamental activities are protected under this right, such as:

- The right to hold peaceful demonstrations;
- The right to have a free choice of candidates. In particular, persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation;
- The right to fairly elect candidates and to be elected;
- The ability to exert influence through public debate and dialogue with their representatives or through their capacity to organize themselves – in other words, to attend debates, engage in dialogue with their representatives, and peacefully assemble to discuss political matters;
- The freedom to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas;
- Freedom of access to media and publications relating to political and public affairs, and to comment on public issues without censorship or restraint and to inform public opinion.[25]

[18] UNHRC General Comment 25, para. 8.
[19] UNHRC General Comment 25, para. 2.
[20] UNHRC General Comment 25, para. 12.
[21] UNHRC, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, 12 Sep 2011, para. 13 ("UNHRC General Comment 34")
[22] UNHRC General Comment 34, para. 13.
[23] UNHRC General Comment 34, para. 18.
[24] UNHRC General Comment 25, para. 5.

Furthermore, the right also includes the ability to distribute electoral information, such as pamphlets and flyers;[26] or to provide updated polling results in the media.[27]

The right of people to participate in public affairs is protected under the Cambodian legal framework. The Royal Government of Cambodia ("RGC") has ratified the majority of the international instruments guaranteeing its protection, and the right is enshrined in the Cambodian Constitution, as mentioned above. While such strong legal framework is welcomed, when it comes to reality, much remains to be done in order to effectively protect this right. Political parties, analysts, trade unions, human rights defenders as well as members of the civil society are not able to fully exercise their fundamental rights unhindered. Instead, a climate of fear prevails, and individuals can be subjected to retaliation when they attempt to participate in the public life. For the RGC to fulfill its obligations under international law, it must allow its citizens to fully take part in the conduct of public affairs, without any discrimination and, most importantly, without unreasonable restrictions. People's freedom of expression, including the right to access media, must be protected, in order to ensure that democracy is more than an abstract concept in Cambodia.

Conclusion

Overall, this right in practice presents an opportunity for individuals to participate in the political life of their nation through expressing their views freely, voting, attending debates, and running for election, all without fear of negative repercussions. It is the right for peoples to freely determine their political status and choose their form of constitution or government.[28]

The right to equal participation in political and public affairs is intertwined with a number of key human rights outlined in domestic and international law. It is a crucial constituent which maintains the ability of citizens to influence decision-making and engage in their respective political realms. It allows for the freedoms of expression, assembly, and association, as well as creates a safe space for political engagement on a variety of levels. Such significant human right must be continually upheld in order to ensure that the democratic process is free and fair.

[25] UNHRC General Comment 25, paras 10, 12, 15, 19, 25.
[26] UNHRC, *Korneenko & Milinkevich v. Belarus*, Communication No. 553/2007, CCPR/C/95/D/1553/2007, 24 Apr 2009, para. 8.4.
[27] UNHRC, *Jong-Chel v. Republic of Korea*, Communication No. 968/2001, CCPR/C/84/D/968/2001, 23 Aug 2005, para. 8.2.
[28] UNHRC General Comment 25, para. 2.