Fact Sheet: The State’s Duty to Protect Against Human Rights Violations by Businesses

Snapshot: As part of its business and human rights series, which discusses the obligations of companies to respect human rights wherever they operate and the responsibility of States with regards to the activities of companies, CCHR hereby presents an overview of the relevant State’s obligations and responsibilities to ensure that multinationals and other companies operating on its territory do not operate in a way that violates human rights. In particular, it describes a number of specific steps provided by the leading standard on business and human rights, the UN Guiding principles on Business and Human Rights.

Introduction

In the Kingdom of Cambodia (“Cambodia”), investment by national and international businesses is a key driver of the nation’s development. However, all too often, human rights violations such as land-grabs or restrictions on freedom of expression are a side-effect of this economic development, and the victims are often from the most vulnerable categories in society: women, indigenous people, etc. This is why the concept of Business Human Rights – which refers to the sets of laws and regulations applicable to the actions of businesses in order to avoid any detrimental effect that business activities can have on human rights – is key in Cambodia. Three key principles underline this concept: the State duty to protect against human rights violations by businesses; the companies’ responsibility to respect human rights’ and the obligations for both the State and companies to provide an effective remedy for any human rights violations.

The present fact sheet aims to give an overview of the State duty to protect against human rights abuses by enterprises. It has been prepared 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 Cambodia.

Relevant Law

Article 31 of the Constitution incorporates the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) directly into Cambodian law. Further, the Constitutional Council’s decision of 10 July 2007 strengthened the position of human rights by declaring that international treaties ratified by Cambodia are directly applicable in domestic law.¹

¹ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.
Nearly all human rights can be negatively affected by businesses’ operations. In the context of Cambodia, the following rights are often endangered by companies’ activities:

- The right to property
- The right to adequate housing and the protection against forcible eviction
- The right to non-interference with privacy, home and family
- The right to health
- The right to work
- Freedom of movement and to choose one’s residence
- The right to freedom of expression, of assembly and of association
- The right to a fair trial
- The right to a remedy for human rights violations.

It is a basic principle that every individual within a country’s jurisdiction must respect its laws – including human rights. This extends to moral entities, such as businesses.

By ratifying the ICCPR and the ICESCR, the State of Cambodia undertook to take concrete steps to prevent and protect against all kind of human rights violations. In order words, it must adopt laws and any necessary measures to ensure that all the human rights are given effective meaning.

**To Whom Does it Apply?**

The State’s obligation to ensure respect for human rights covers actions by all businesses operating in Cambodia – be they Cambodian or foreign. State-owned companies are under an even stricter obligation to respect human rights. Since they are wholly or partly owned by the state, the state’s international obligations are directly binding on them. In addition, the state must ensure that Cambodian companies or investors operating abroad do not violate human rights.

**What Can A State Do?**

The United Nations Human Rights Council has adopted a normative framework to help guide both States and companies to respect human rights, the UN Guiding Principles on Business and Human Rights (“UNGPs”). Insofar as the States are concerned, the underlying idea is that they must create an environment where it is conducive for businesses to respect human rights. This is done in two ways:

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2 ICCPR, Art. 17.
3 ICESCR, Art. 11 (1).
4 ICCPR, Art. 17.
5 ICESCR, Art. 12.
6 ICESCR, Art. 6 (1).
7 ICCPR, Art. 12 (1).
8 ICCPR, Art. 19.
10 ICCPR, Art. 2 (3) & Art. 26.
11 ICCPR, Art. 2 (2).
by preventing human rights violations and protecting people against it; and by providing an effective remedy in case of a violation.

Human Rights law leaves states the freedom to decide the course of action to avoid human rights violations by businesses, as long as it is effective. However, the UNGPs provide a number of examples of actions, such as:

- To adopt legislation which governs the question of businesses’ operations and their impact on human rights;
- To adopt a national action plan on business and human rights, containing concrete steps implementing the UNGPs;
- To consult with the relevant stakeholders, including businesses but also members of affected communities and representatives of the civil society;
- To disseminate information about businesses’ obligations to respect human rights;
- To provide guidance to businesses about how to respect human rights, for instance by publishing guidelines;
- To amend its criminal legislation to ensure that businesses have legal personality and can be held criminally responsible in cases of human rights violations;
- To require human rights impact assessment to be conducted prior to any development project being approved, and to closely monitor its respect; and
- To ensure that any company which provides procurement services to the State are not involved in human rights violations, by undertaking a due diligence assessment and/or a background check.

In addition, the state must ensure that any human rights violation is properly addressed. It must ensure that any person whose rights or freedoms are violated has an effective remedy by a competent judicial, administrative or legislative authority, or by any other competent authority provided by the legal system of the state. Further, it is the state’s responsibility to ensure that such remedy is enforced when granted.

Case Study: Borei Keila, Phnom Penh

In 2003, the Phanimex construction company was issued with a social land concession in the Borei Keila area in central Phnom Penh. In return for being able to develop part of the area for commercial purposes, the company was also responsible for providing 10 apartment complexes onsite, aimed at hosting the 1,776 families affected by the project. In 2010, the Phanimex construction company failed to honour its commitment, instead building only eight apartment complexes and leaving 380 families without proper compensation, citing to bankruptcy. These families subsequently saw their homes and belongings destroyed without notice in January 2012, under police supervision. Approximately half of them went to the relocation sites offered outside of Phnom Penh, but dozens of families later came back to Borei Keila as a result of a lack of clean water, basic sanitation, electricity, as well as employment and education opportunities at the resettlement site. The other half stayed with relatives in other areas of Phnom Penh, and later returned.

13 ICCPR, Art. 2 (3).
14 ICCPR, Art. 2 (3).
As a result, in the 2014 forum organized by Municipality of Phnom Penh (MPP), 154 families were found to be living on the Borei Keila site, in makeshift housing on a rubbish dump area under the eight apartment buildings, demanding adequate compensation. MPP was charged with solving the dispute in 2014 and undertook a series of public forums with the affected families, in order to list the claims made by each family and track down the relevant paperwork, to assess who was entitled to compensation. Non-governmental organization were also allowed to monitor the forum. After extensive discussions between the affected families and the Municipality, most accepted the proposed compensation even though most they felt it did not fully remedy their loss. 11 of the 154 families currently remain in a building next to their former homes, awaiting an adequate solution.16

Recently, according to the information received by CCHR, 4 of the 11 remaining families have accepted compensation from the MPP. The 7 other families refused to accept the compensation because the site offered is located in a rural area which lacks schools, markets, and job opportunities. Besides, there are still over 10 families who failed to join the 2014 MPP forum, living in the same area and demanding adequate compensation.

Conclusion & Recommendations

It is essential that the Royal Government of Cambodia takes a more pro-active role in preventing human rights violations to be perpetrated by businesses or as a result of their operations; it must also ensure that, where such violations occur, the victims have access to a prompt, fair and effective remedy.

Recommendations to the RGC:

- To adopt a National Action Plan on the implementation of the UNGPS, in consultation with businesses and representatives of the civil society;
- Improve access to remedy by victims of human rights violations by businesses;
- Require all companies and investors operating in Cambodia to undertake an independent and impartial human rights impact assessment prior to them being granted a license to operate in Cambodia.

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