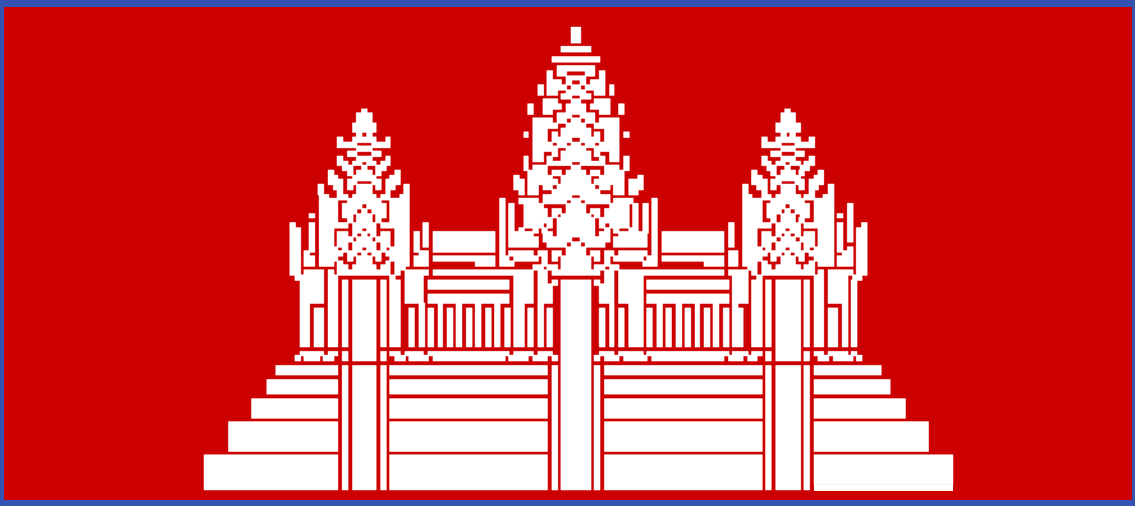


THE DECLARATION OF HUMAN RIGHTS IN THE CAMBODIAN CONSTITUTION

Office of the United Nations High Commissioner for Human Rights
Cambodia Country Office

The Declaration of Human Rights in the Cambodian Constitution

Documents relating to the protection of human rights under the Constitution

Excerpts of the Paris Peace Accords

Chapter III of the Constitution of the Kingdom of Cambodia 1993: The Rights and Obligations of Citizens of Cambodia and other relevant articles

Decision of the Constitutional Council of 10 July 2007

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Dignity and justice for all of us

This publication is produced by the Office of the United Nations High Commissioner for Human Rights on the occasion of the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights in 1948 and the fifteenth anniversary of the adoption of the Constitution of the Kingdom of Cambodia in 1993.



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Contents

Introduction..... 5

Agreement on a comprehensive political settlement to the Cambodia conflict (extract).... 11

Agreement concerning the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia..... 16

Declaration on the rehabilitation and reconstruction of Cambodia (extract) 17

Constitution of the Kingdom of Cambodia..... 19
- Chapter II: The King 20
- Chapter III: The Rights and Obligations of Citizens of Cambodia 21
- Chapter IV: Political System..... 31
- Chapter VI: Educational, Cultural and Social Affairs..... 32
- Chapter XI: The Judiciary 34

Decision of the Constitutional Council No.092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts of Cambodia 37

The Declaration of Human Rights in the Cambodian Constitution

Introduction

The 1991 Paris Peace Accords, which formally ended the Cambodia conflict, established international human rights norms as a basis for lasting peace in Cambodia. Article 15 of the Agreement on a comprehensive political settlement of the Cambodia conflict states 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.*

The signatories made a specific commitment to ensure respect for human rights in Cambodia, support the right of Cambodians to promote and protect human rights and take effective measures "to ensure that the policies and practices of the past shall never be allowed to return".

The Agreement also provided for the incorporation of a declaration of human rights in the Cambodian Constitution. Annex 5 of the Agreement states:

> *Cambodia's tragic recent history requires special measures to assure protection of human rights. Therefore the constitution will contain a declaration of fundamental rights, including the rights to life, liberty, security, freedom of movement, freedom of religion, assembly and association including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination. It will prohibit the retroactive application of criminal law. The declaration will be consistent with the Universal Declaration of Human Rights and other relevant instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.*

In accordance with this provision, the 1993 Constitution of the Kingdom of Cambodia includes a declaration of fundamental rights in Chapter III: The Rights and Obligations of Citizens of Cambodia.

The Paris Accords included a specific commitment to ratify the international human rights treaties. Accordingly, Cambodia has become party to the following treaties:

- International Convention on the Elimination of All Forms of Racial Discrimination (28-12-1983);
- International Covenant on Economic, Social and Cultural Rights (26 August 1992);
- International Covenant on Civil and Political Rights (26 August 1992);
- Convention on the Elimination of All Forms of Discrimination against Women (14 November 1992) and its optional protocol (13 October 2010)
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (14 November 1992) and its Optional Protocol (29 April 2007);
- Convention on the Rights of the Child (14 November 1992) and its two Optional Protocols.
- Convention on the Rights of Persons with Disabilities (20 December 2012)
- Convention for the Protection of All Persons from Enforced Disappearance (27 June 2013)

In addition, Cambodia has signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the optional protocol to the International Covenant on Civil and Political Rights regarding the individual complaints procedures under these treaties. Signing a treaty indicates the Government's intention to ratify in the near future.

Article 31 of the Constitution guarantees each of these treaties as part of Cambodian domestic law and article 48 gives additional protection to the Convention on the Rights of the Child.

In its decision of 10 July 2007, the Constitutional Council, the body created to safeguard respect for the Constitution, reaffirmed the application of the international human rights treaties in Cambodian law and reminded judges that, in deciding cases, they are obliged to consider all Cambodian law, "including the Constitution, which is the supreme law, and other applicable laws as well as the international conventions that Cambodia has recognized…"

As a result, the human rights of everyone in Cambodia should be fully protected by Cambodian law under the Constitution in accordance with the rule of law.

The Paris Accords provided for the United Nations to continue to monitor the human rights situation in Cambodia after the transitional period, a function currently undertaken by a Special Representative of the Secretary-General in accordance with a mandate of the Human Rights Council. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has

maintained a country office in Cambodia since 1993 with the agreement of the Royal Government. The Cambodia country office is one of an increasing number of field offices maintained by OHCHR in different countries around the world.

OHCHR Cambodia, November 2008

Agreement on a comprehensive political settlement to the Cambodia conflict (extracts)

Signed by the States participating in the Paris Conference on Cambodia on 23 October 1991 and endorsed by Security Council resolution S/RES/718 (1991) of 31 October 1991 and General Assembly resolutions 46/18 of 20 November 1991

The States participating in the Paris Conference on Cambodia […],

In the presence of the Secretary-General of the United Nations,

In order to maintain, preserve and defend the sovereignty, independence, territorial integrity snf inviolability, neutrality and national unity of Cambodia,

Desiring to restore and maintain peace in Cambodia, to promote national reconciliation and to ensure the exercise of the right to self-determination of the Cambodian people through free and fair elections,

Convinced that only a comprehensive political settlement to the Cambodian conflict will be just and durable and will contribute to regional and international peace and security, […]

Recognizing that Cambodia's tragic recent history requires special measures to assure protection of human rights, and the non-return to the policies and practices of the past,

Have agreed as follows:
[…]

PART III
Human rights

Article 15
1. All persons in the 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.

2. To this end,
(a) Cambodia undertakes:
- to ensure respect for and observance of human rights and fundamental freedoms in Cambodia;
- to support the rights of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms;
- to take effect measures to ensure that the policies and practices of the past shall never return;
- to adhere to relevant international human rights instruments;

(b) the other Signatories of 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.
[…]

Article 17
After the end of 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.
[…]

PART VII
Principles for a new Constitution for Cambodia

Article 23
Basic principles, including those regarding human rights and fundamental freedoms as well as regarding Cambodia's status of neutrality, which the new Cambodian Constitution will incorporate, are set forth in annex 5. […]

Annex 5

Principles for a new Constitution for Cambodia

1. The constitution will be the supreme law of the land. It may be amended only by a designated process involving legislative approval, popular referendum or both.

2. Cambodia's tragic recent history requires special measures to assure protection of human rights. Therefore the constitution will contain a declaration of fundamental rights, including the rights to life, liberty, security, freedom of movement, freedom of religion, assembly and association including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination. It will prohibit the retroactive application of criminal law. The declaration will be consistent with the Universal Declaration of Human Rights and other relevant instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.

3. The constitution will declare Cambodia's status as a sovereign, independent and neutral States, and the national unity of the Cambodian people.

4. 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 also 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.

5. An independent judiciary will be established, empowered to enforce the rights provided under the constitution.
[…]

Agreement concerning the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia

Signed by the States participating in the Paris Conference on Cambodia on 23 October 1991 and endorsed by Security Council resolution S/RES/718 (1991) of 31 October 1991 and General Assembly resolutions 46/18 of 20 November 1991

[Article 3 of this agreement contains a restatement in identical terms of Article 15 above and is therefore not reproduced here.]

Declaration on the rehabilitation and reconstruction of Cambodia (extracts)

Signed by the States participating in the Paris Conference on Cambodia on 23 October 1991 and endorsed by Security Council resolution S/RES/718 (1991) of 31 October 1991 and General Assembly resolutions 46/18 of 20 November 1991

1. The primary objective of the reconstruction of Cambodia should be the advancement of the Cambodian nation and people, without discrimination or prejudice, and with full respect for human rights and fundamental freedom for all. The achievement of this objective requires the full implementation of the comprehensive political settlement.

[…]

Constitution of the Kingdom of Cambodia (extracts)

Adopted by the Constituent Assembly on 21 September 1993 and promulgated by the King on 24 September 1993. Amended in 1994, 1999, 2004 and 2006.

Preamble

We, the people of Cambodia,

Accustomed to having been an outstanding civilization, a prosperous, large, flourishing and glorious nation, with high prestige radiating like a diamond,

Having declined grievously during the past two decades, having gone through suffering and destruction, and having been weakened terribly,

Having awakened and resolutely rallied and determined to unite for the consolidation of national unity, the preservation and defence of Cambodia's territory and precious sovereignty and the fine Angkor civilization, and the restoration of the country into an "Island of Peace" based on a system of multi-party liberal democracy guaranteeing human rights, respect for the law with high responsibility for the nation's future destiny moving toward perpetual progress, development, prosperity, and glory,

WITH THIS RESOLUTE WILL

We inscribe as the Constitution of the Kingdom of Cambodia the following :
[…]

Chapter II
The King

Article 8
The King shall be a symbol of the unity and eternity of the nation.

The King shall be the guarantor of the national independence, sovereignty, and territorial integrity of the Kingdom of Cambodia, and the guarantor of the rights and freedoms for the citizens and respect for international treaties.
[…]

Chapter III
The Rights and Obligations of Citizens of Cambodia

Article 31
The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights.

[Note: The principal treaties accepted by Cambodia are the International Convention on the Elimination of All Forms of Racial Discrimination (1983); the International Covenant on Economic, Social and Cultural Rights (1992); the International Covenant on Civil and Political Rights (1992); the Convention on the Elimination of All Forms of Discrimination against Women (1992); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1992) and its Optional Protocol (2007); and the Convention on the Rights of the Child (1992) and its two Optional Protocols.]

Every citizen of Cambodia shall have equality before the law, enjoying the same rights and freedoms and fulfilling the same obligations without discrimination as to race, colour, sex, language, belief, religion, political tendency, national origin, social status, resources or other status.

The exercise of personal rights and freedoms by any individual shall not adversely affect the rights and freedoms of others. The exercise of such rights and freedoms shall be in accordance with the law.

Article 32

Every citizen of Cambodia shall have the right to life, liberty and security of the person.

Capital punishment shall be abolished.

Article 33

Citizens of Cambodia shall not be deprived of their nationality, exiled or arrested and deported to any other country unless there is a mutual agreement on extradition.

Citizens of Cambodia residing abroad shall be protected by the State.

The receipt of Cambodian nationality shall be determined by law.

Article 34

Citizens of Cambodia of either sex shall enjoy the right to vote and to stand as candidates for election.

Citizens of Cambodia of either sex who are at least eighteen years of age have the right to vote.

Citizens of Cambodia of either sex who are at least twenty-five years of age have the right to stand as candidates for election as members of the National Assembly.

Citizens of Cambodia of either sex who are at least forty years of age have the right to stand as candidates for election as members of the Senate.

Provisions restricting the right to vote and to stand for election shall be defined in the electoral laws.

Article 35

Citizens of Cambodia of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Any suggestions from citizens shall be given full consideration by the organs of the State.

Article 36

Citizens of Cambodia of either sex shall have the right to choose any employment appropriate to their ability and according to the needs of society.

Citizen of Cambodia of either sex have the right to receive equal pay for equal work.

Work undertaken by housewives in the home shall have the same value and benefits as work outside the home.

Every citizen of Cambodia shall have the right to obtain social security and other social benefits determined by law.

Citizens of Cambodia of either sex shall have the right to form and to be members of trade unions.

The organization and functioning of trade unions shall be determined by law.

Article 37

The right to strike and to non-violent demonstration shall be implemented within the framework of a law.

Article 38

The law guarantees there shall be no physical abuse against any individual.

The law shall protect the life, honour and dignity of the citizens.

The prosecution, arrest, or detention of any person shall not be done except in accordance with the provisions of the law.

Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law.

Confessions obtained by physical or mental coercion shall not be admissible as evidence of guilt.

Any case of doubt shall be resolved in favour of the accused.

Anyone accused shall be considered innocent until the court has rendered final judgment in the case.

Everyone shall enjoy the right to defend themselves or be defended through the proper judicial process.

Article 39

Citizens of Cambodia shall have the right to denounce, or submit complaints to legally challenge or claim compensation for damages caused by any illegal act by State and public institutions or by officers of such institutions committed during the course of their duties.* The settlement of complaints and claims shall reside under the competence of the courts.

Article 40

Freedom of movement, far and near, and freedom of establish a home in a legal manner shall be respected.

Citizens of Cambodia may travel and settle abroad or return to their country.

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* Note: The types of complaint established by article 39 are legally precise under Cambodian law: an individual may submit a complaint legally challenging a breach of the law (*bandoeng tava*) by a State official that interferes directly with his or her rights or interests, and may seek compensation for any damage suffered (*bandoeng team tea samnong*), whereas anyone may in the public interest submit a denunciation (*bandoeng barihar*) of an illegal act, even if their rights or interests are not directly affected.

The right to the inviolability of the home and to privacy of correspondence by mail, telegramme, fax, telex, and telephone shall be guaranteed.

Any search of the home, belongings and the person shall be conducted in accordance with the law.

Article 41

Citizens of Cambodia shall have freedom of expression, freedom of the press, freedom of publication and freedom of assembly. No one shall take advantage of these rights to harm the honour of others, to affect the good traditions of society, or to violate public order and national security.

The regime of the press shall be determined by law.

Article 42

Citizens of Cambodia shall have the right to establish associations and political parties. These rights shall be determined by law.

All citizens of Cambodia may participate in mass organizations for their mutual benefit to protect national achievements and social order.

Article 43

Citizens of Cambodia of either sex shall have the full right to freedom of belief.

Freedom of belief and religious observance shall be guaranteed by the State on the condition that such freedom does not affect the beliefs or religion of others or violate public order and security.

Buddhism shall be the State religion.

Article 44

Everyone, individually or collectively, shall have the right to own property. Only citizens and legal entities of Khmer nationality shall the right to own land.

Legal private ownership shall be placed under the protection of the law.

Expropriation of property shall be done only in the public interest as provided for by law and shall be compensated in advance appropriately and fairly.

Article 45

All forms of discrimination against woman shall be eliminated.

The exploitation of women in employment shall be prohibited.

Men and women have equal rights in all respects, especially in marriages and matters of the family.

Marriage shall be conducted according to

conditions determined by law based on the principles of mutual consent and monogamy.

Article 46

Sale of human beings, exploitation for prostitution and obscenity which harms the dignity of women shall be prohibited.

A woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits.

The State and society shall provide opportunities to women, especially to those living in rural areas without adequate support, so they can obtain employment, medical care, send their children to school, and to have a decent standard of living.

Article 47

Parents shall have the obligation to nurture, care for and educate their children to become good citizens.

Children in turn shall have the obligation to take good care of their elderly parents according to Khmer traditions.

Article 48

The State shall guarantee and protect the rights of children as stipulated in the Convention on the Rights of the Child, in particular, the right to life,

education, protection during wartime, and from economic or sexual exploitation.

The State shall prevent all acts that may harm to the upbringing or education of children or undermine their health or well-being.

Article 49
Every citizen of Cambodia shall respect the Constitution and laws.

Every citizen of Cambodia shall have the duty to participate in the building of the nation and to defend the homeland. The duty to defend the country shall be determined by law.

Article 50
Citizens of Cambodia of either sex shall respect the principles of national sovereignty and liberal multi-party democracy.

Citizens of Cambodia of either sex shall respect public property and legally-acquired private property.
[…]

Chapter IV
Political System

Article 51 (as amended)
The Kingdom of Cambodia shall adopt a political system based on liberal multi-party democracy.

The citizens of Cambodia shall be the masters of the destiny of their own country.

All powers shall belong to the citizens. The citizens shall exercise these powers through the National Assembly, the Senate, the Royal Government and the Judiciary.

The legislative, executive and judicial powers shall be separate.
[…]

Chapter VI
Educational, Cultural and Social Affairs

Article 65
The State shall protect and promote the right of the citizen to quality education at all levels and shall take all necessary steps to ensure that such education is available to all citizens. The State shall take into consideration physical education and sports for the welfare of all citizens of Cambodia.

Article 66
The State shall establish a comprehensive and unified education system throughout the country that shall guarantee the principles of free choice and equality in education in order that that all citizens have equal opportunity to earn a living.
[…]

Article 68
The State shall provide free primary and secondary education to all citizens in public schools.

The citizen must receive at least nine years of education. […]

Article 72
The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor people shall receive free medical diagnosis in public hospitals, health clinics and maternity centres.

The State shall establish health clinics and maternity centres in rural areas.

Article 73
The State shall give full consideration to children and mothers. The State shall establish nurseries, and provide assistance to women with many children who have inadequate support.

Article 74
The State shall provide assistance to persons with disabilities and to the families of veterans who sacrificed their lives for the nation.

Article 75
The State shall establish a social security system for workers and employees. […]

Chapter XI
The Judiciary

Article 128 (as amended)
The Judiciary shall be an independent power.

The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

The Judiciary shall have jurisdiction over all cases including administrative cases.

Judicial authority shall be exercised by all chambers and instances of the Supreme Court and lower courts.

Article 129 (as amended)
Justice shall be exercised in the name of the citizens of Cambodia in accordance with the procedures and laws in force.

Only judges shall have the right to adjudicate. A judge shall fulfil this duty wholeheartedly and conscientiously with due respect for the law.

Article 130 (as amended)
Judicial powers shall not be granted to the legislative or executive branches.

Article 131 (as amended)
Only the Department of Public Prosecution shall have the right to file criminal charges.

Article 132 (as amended)
The King shall be the guarantor of the independence of the Judiciary. The Supreme Council of Magistracy shall assist the King in this matter.
[…]

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Decision of the Constitutional Council No. 092/003/2007 of 10 July 2007 regarding the applicability of the international human rights treaties by the courts in Cambodia

Note: This important ruling by the Constitutional Council clarifies the position of the international human rights treaties in Cambodian law and their direct applicability before the courts.

The case involved a law—the Law on Aggravating Circumstances for Felonies—which seemed to violate provisions of the Convention on the Rights of the Child which is protected by articles 31 and 48 of the Constitution. The Council ruled that the Law was not unconstitutional because it could not have been the intention of the Legislature to violate the Convention. There is an obligation on judges to apply individual laws within the framework of the Constitution itself and the human rights treaties guaranteed by the Constitution. As such, no law should be applied by the courts in such a way that it violates the Constitution or the human rights treaties.

The ruling has general relevance beyond the individual facts of the case.

Kingdom of Cambodia
Nation - Religion - King

Constitutional Council

Case-file No. 131/003/2007 dated 26 June 2007
Decision No. 092/003/2007 dated 10 July 2007

The Constitutional Council,

Having seen the Constitution of the Kingdom of Cambodia,
[…]

After having discussed the matter properly according to the law,
[…]

Understands that [although] article 8 modifies article 68 of the UNTAC provisions, it does not undermine the rights and interests of children. The provision of article 8 of the Law on Aggravating Circumstances for Felonies is not unconstitutional;

Understands that at case trial, in principle, a judge shall not only rely on article 8 of the Law on Aggravating Circumstances for Felonies, but also relies on the law. The term “the law” here refers

to the national law including the Constitution which is the supreme law and other applicable laws as well as the international conventions that Cambodia has recognized, especially the Convention on the Rights of the Child.
[…]

- - - - -

Note: The English translations of extracts from the Constitution and the decision of the Constitutional Council are unofficial translations from the Khmer original. In case of doubt, please consult the Khmer text.