This factsheet describes arrangements for refugee protection in Cambodia. It explains Cambodia’s obligations under international treaties and domestic law, and key information about the refugee status determination (RSD) process and refugee protection in Cambodia, including the relevant law and how the law is implemented in practice. The factsheet also describes more general concerns about human rights protection in Cambodia, key facts and figures, and key dates in Cambodia’s history.

This factsheet is part of a series on refugee protection and Cambodia, including a factsheet on the agreement between Australia and Cambodia for the relocation of refugees from Nauru, and in focus briefs on the implementation of the Cambodia agreement, and Cambodia’s treatment of Montagnard asylum seekers from Vietnam.

Introduction

The Kingdom of Cambodia is situated in the southwest of the Indochinese peninsula, in Southeast Asia. It is bordered by Thailand in the northwest, Lao PDR in the northeast, Vietnam in the east, and the Gulf of Thailand in the southwest. After gaining independence from France in 1953, Cambodia enjoyed prosperity and general stability. However, after King Sihanouk was ousted in a military coup in March 1970, Cambodia entered an extended period of civil war and political uncertainty. The deadliest time in this period occurred during the years of the Khmer Rouge regime between 1975 and 1979. Under the leadership of Pol Pot, the Khmer Rouge sought to restructure Cambodian society as a peasant-dominated agrarian society, and expelled the entire urban population to the countryside to perform arduous physical labour on State-owned farms. In less than four years, a quarter of the Cambodian population – up to two million people – died due to exhaustion, starvation, sickness, and as part of a ‘cleansing campaign’ during which students, lawyers, intellectuals, civil servants, monks, and many others were executed. In 1979 Vietnamese armed forces entered Cambodia and overthrew the Khmer Rouge regime, resulting in ongoing armed conflict until the signing of the Paris Peace Accords in 1991.1 Prime Minister Hun Sen’s government has now been in power since 1998, making him the longest serving head of government of Cambodia and one of the longest serving leaders in the world.

Despite its turbulent past, Cambodia has enjoyed more than two decades of significant progress towards peace, stability and economic growth. Since the early 1990s, Cambodia has established government institutions, and enacted a range of laws and policies to
alleviate poverty and stimulate social, economic and infrastructural growth. Cambodia has become an active member of the international community, signing up to a range of international treaties and participating in United Nations and regional cooperation mechanisms such as the Association of Southeast Asian Nations (ASEAN). However, while Cambodia has taken a number of important steps towards democracy and compliance with international standards, a number of concerns about its political processes and general human rights record remain.

Cambodia was previously a refugee producing country, with several hundreds of thousands of Cambodian refugees fleeing into neighbouring Vietnam and Thailand, both during the Khmer Rouge era and during the subsequent conflict with Vietnam. Recently, however, Cambodia has reversed this trend, and taken a number of steps towards becoming a refuge receiving country. In 2008, the Cambodian Government established a Refugee Office within the Ministry of Interior’s Department of Immigration, and in 2009 it passed legislation establishing a procedure for determining refugee status. Most recently, Cambodia signed an agreement with Australia in 2014 providing for the relocation to Cambodia of refugees who arrived in Australia by boat and were processed in Nauru. Despite this progress, however, a number of serious concerns remain about Cambodia’s capacity and willingness to provide protection to refugees in its territory.

Cambodia’s human rights obligations under international treaties

Cambodia is a State party to the 1951 Refugee Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol, however it is not a State party to either of the two conventions on statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Cambodia is also a State party or signatory to a range of human rights treaties, as set out in Table 1, and a signatory to the ASEAN Human Rights Declaration, which recognises the right of every person to seek and receive asylum. This instrument is not a binding treaty, but is an attempt by the States that sign it to set common human rights standards in the South-East Asian region.

As a result of being a State party to the Refugee Convention and the human rights conventions set out in Table 1, Cambodia has obligations to ensure that every person it expels, extradites, deports or otherwise removes from its territory will not face persecution or a real risk of significant harm in the country to which s/he is removed, and will not subsequently be sent anywhere else where s/he may face a real risk of persecution or significant harm (non-refoulement obligations). Significant harm includes being exposed to arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment.
Table 1: Human rights treaties to which Cambodia is a signatory or State party

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Signature Date</th>
<th>Ratification/Accession Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984</td>
<td>n/a</td>
<td>15 Oct 1992 (a)</td>
</tr>
<tr>
<td>Convention on the Rights of the Child 1989</td>
<td>n/a</td>
<td>15 Oct 1992 (a)</td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities 2006</td>
<td>1 Oct 2007</td>
<td>x</td>
</tr>
</tbody>
</table>


Cambodia’s human rights obligations under domestic law

The Constitution of the Kingdom of Cambodia (Constitution) states that Cambodia ‘recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights [and] all the treaties and conventions related to human rights, women’s and children’s rights’ (article 31). However, Chapter III of the Constitution, which sets out these rights, refers only to the rights and duties of ‘Khmer [Cambodian] citizens’, and to ‘Khmer citizens [being] equal before the law, enjoying the same rights, liberties and duties regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations’. The rights guaranteed (at least to Cambodian citizens) under the Constitution include:

- the right to life, liberty and security (article 32);
- the right of Khmer citizens not to be deprived of their nationality or exiled, or arrested to be extradited to a foreign country, other than in cases of mutual agreement (article 33);
- the prohibition against ‘any physical abuse against any individual’, protection of the ‘life, the honour and the dignity of the citizens’ (article 38);
- any detention must be ‘in accordance with the law’; ‘coercion, physical punishment or any other treatment aggravating the penalty of the detainee or prisoner’ are prohibited (article 38);
- the prohibition of human trafficking, ‘exploitation of prostitution and obscenities which affect the dignity of women’ (article 46); and
- the protection of children’s rights ‘as enshrined in the Convention on Children, especially, the right to life, the right to education, the right to protection during wartime and the right to protection from economic or sexual exploitation’ (article 48).
Enforcing these rights may be very difficult given the political sensitivity of human rights cases, serious concerns about the independence of the judiciary, and generally poor respect for the rule of law in Cambodia.

**Refugee status determination (RSD) and refugee protection in Cambodia**

**Legislation**

In 2009, Cambodia enacted *Sub-decree No 224 on a Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia* (Sub-decree No. 224). This law provides detailed procedures about how RSD is to be conducted, sets time limits within which decisions must be made, and provides for review of negative decisions (article 10). It also guarantees to asylum seekers an interpreter free of charge, and states that the Minister of Social Affairs, Veterans and Youth Rehabilitation must provide a representative or legal guardian to work in the best interests of asylum seekers who are children or who have a disability (article 13). When a person is recognized as a refugee, they are entitled to the same rights as an immigrant foreigner, including the rights to a residence card, to work or run a business, to sponsor family members to come to Cambodia, and to all other rights set out in the Refugee Convention (articles 15-18). The principle of *non-refoulement* is formally enshrined in the legislation, and the UN High Commissioner for Refugees (UNHCR) may assist, facilitate or provide recommendations during the RSD process (articles 23, 24). These are all positive features of the legislation.

However, the law also includes provisions that could expose refugees to *refoulement* (return to persecution). For instance, article 7 permits the government to deny entry into Cambodia to anyone who poses a threat to national security or public order, or who has committed a very serious international or non-political crime. This means that an asylum seeker may be turned away at the border, without having their asylum claim heard, in violation of the principle of *non-refoulement*. While the Refugee Convention may in some cases permit the exclusion from refugee status of people who are suspected of having committed such crimes, UNHCR guidelines state that, given the grave consequences, such decisions should generally be made within the context of a regular refugee status determination procedure, with rigorous procedural safeguards applied. Further, even where a person is excluded from refugee status, international human rights law requires that no person be returned to a place where they will face significant harm, whatever the circumstances.

Another concerning provision in the legislation is article 11, which permits officials to reject an application for refugee status immediately if the asylum seeker:

- does not cooperate with the official in clarifying information;
- shows that the application is based purely on economic needs or to benefit from better living conditions in Cambodia; or
- commits any activity that could endanger national security or public order.
Finally, article 5 provides that recognition, cessation and cancellation of refugee status shall be determined by proclamation of the Minister of the Interior, with the risk that this power may be arbitrary and unreviewable.

**RSD and refugee protection in practice**

In addition to the deficiencies in *Sub-decree No. 224* identified above, other problems arise as a result of the difference between the law on paper, and the law in practice.

A report on RSD by the Jesuit Refugee Service in 2012 identified a number of general issues with how RSD was performed in Cambodia at that time, including:

- lengthy delays at all stages of the RSD process;
- the fact that asylum seekers are not permitted to be accompanied by legal representatives at key stages of the process, such as during interviews and the handing down of decisions; and
- the lack of judicial review of negative decisions made by the Immigration Department (merits review of original decisions by a panel of three Immigration Department officials is available, and considered the final decision).

In addition to these general issues with the RSD process, there have been more specific concerns in recent years about Cambodia’s willingness and ability to provide protection to asylum seekers from Vietnam, China and Myanmar. For example:

- since late 2014, Cambodia has failed to acknowledge Montagnards from Vietnam as asylum seekers (rather than ‘illegal immigrants’), refused to accept applications for asylum from the vast majority of them, and deported others back to Vietnam in groups without conducting RSD. This treatment echoes previous reports of mistreatment and *refoulement* of Montagnard asylum seekers by the Cambodian authorities in 2009. For more information, see our In Focus brief on Montagnard asylum seekers in Cambodia;
- Cambodia has a history of returning Uighur asylum seekers to China, despite ongoing protection concerns. For example, in December 2009 20 Uighur asylum seekers were labelled ‘illegal immigrants’ and deported via chartered plane to China. The following day, Chinese Vice President Xi Jinping arrived in Cambodia and signed approximately US$1.2 billion worth of contracts for aid and loans. China ‘thanked the government of Cambodia for assisting in sending back these people’, who were described by the Chinese authorities as ‘criminals’. In February 2012, information leaked from China suggested that three of the Uighurs were facing life sentences and others faced sentences in excess of 10 years; and
- stateless Rohingya from Myanmar have also experienced difficulties accessing the full range of protections to which they should be entitled as refugees.

Cambodia’s response to these groups, especially the Montagnards, raises questions about how Cambodia understands the obligations it has assumed under the Refugee Convention
and other international treaties. In particular, Cambodia may have a different understanding of what a ‘refugee’ is from the definition of this term under the Refugee Convention, and of the extent to which its obligations are legally binding. For example:

- Phay Siphan, spokesperson for the Cambodian Secretary of State, has reportedly said his government will not take ‘political refugees’ from Vietnam or China, and that ‘those people are not refugees, they are just getting away from the government ... We call it illegal immigration’;
- Phay Siphan has also reportedly said that Cambodia will not accept asylum seekers from Vietnam because it does not want to ‘provoke relations with Vietnam by establishing a refugee camp’, and that ‘stability is our number one goal...and by accepting these people it would provoke the Vietnamese government and hurt our relationship with the country’;
- General Khieu Sopheak, spokesperson for the Cambodian Interior Ministry, has reportedly:
  - asked ‘is the international law more important than the Cambodian laws and Cambodians?’, and said the government would reject refugees to preserve ‘happiness and harmony’ in the country; and
  - stated that it would be ‘unconstitutional’ for Cambodia to accept refugees because ‘the constitution states that Cambodia is a neutral country, not allied with any league. Therefore, taking refugees from any country... is against the Cambodian constitutional law’; and
- General Sok Phal, director general of the General Department of Immigration, has reportedly suggested that people who cross through ‘illegal checkpoints’ are ‘illegal immigrants’, because asylum seekers are required to enter via official checkpoints and register on arrival.

On the basis of these and other statements, UNHCR, Human Rights Watch, Amnesty International and other organisations have expressed strong concerns about Cambodia’s willingness and ability to provide protection to refugees, and its suitability as a country to which Australia is sending people found to be refugees in Nauru. (For more information about the agreement between Cambodia and Australia providing for refugee resettlement from Nauru, see our factsheet on this agreement).

These concerns are not new. In 2013, Human Rights Watch stated that while Cambodia is one of the few countries in the region to have ratified the Refugee Convention, ratification has not translated into real protection for refugees, many of whom now transit through Cambodia on their way to apply for asylum at the UNHCR office in Bangkok. As a result, UNHCR reports that there were only 70 refugees and 21 asylum seekers registered with UNHCR in Cambodia in July 2014.
General human rights situation in Cambodia

Despite considerable progress towards democracy and development, a number of underlying features of the Cambodian political, administrative and judicial systems raise human rights concerns relevant to the processing and treatment of asylum seekers and refugees in the country.

The most recent report of the United Nations Special Rapporteur on the situation of human rights in Cambodia to the UN Human Rights Council, in August 2013, noted a number of ongoing and long-standing issues, including attacks on freedom of expression and the inability of the parliament and judiciary to function as an effective check on the executive’s power. The Special Rapporteur observed that the overall situation of the judiciary had not fundamentally changed since 2010, when he had reported that ‘judges seem to be operating to a greater or lesser extent in a climate of fear in which they are careful not to take steps which might attract criticism from people in power and in prominent positions’. He reported in 2013 that ‘the challenges are the same, namely lack of independence, problems of capacity, lack of resources, widespread corruption, all resulting in a lack of confidence by the general public in the ability of the court system to provide effective remedies when human rights violations do occur’.

A US State Department report of 2013 stated that, other than the flawed electoral process in the national elections in 2013, the three leading human rights problems in Cambodia ‘were a politicized and ineffective judiciary, constraints on freedom of press and assembly, and abuse of prison detainees’. The report noted that the ‘courts lacked sufficient human and financial resources and were subject to corruption and political influence’ and that a ‘weak judiciary sometimes failed to provide due process or a fair trial procedure.’

In 2014, Human Rights Watch reported that Cambodia’s human rights situation had steadily worsened, with a surge in violent incidents in 2012 prior to national elections in July 2013. The report described a social crisis resulting from systematic land expropriations by the Cambodian Government, and widespread official corruption depriving many Cambodians of their economic and social rights. Members of unions and the opposition, as well as journalists and activists, had been subjected to extrajudicial killings, harassment and intimidation. Drug users, homeless people, ‘street children’, sex workers and people with disabilities were reported to be detained routinely without due process. Human Rights Watch has also reported that detainees have been whipped and beaten, electrocuted, and sexually abused.

A number of these issues, including those relating to ‘restrictions on freedom of peaceful assembly and of association … disproportionate violence against protestors and the detention without trial of some protestors’ were raised by Australia itself during the Universal Periodic Review process in January 2014 and a Senate motion in February 2014. Australia’s Department of Foreign Affairs also notes that there are periodic reports of intimidation and political violence in Cambodia.
Key facts and figures about Cambodia

<table>
<thead>
<tr>
<th>Category</th>
<th>Data</th>
</tr>
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<tbody>
<tr>
<td>Population</td>
<td>15.5 million (2014)</td>
</tr>
<tr>
<td>Ethnic groups</td>
<td>Khmer (90%), Vietnamese (5%), Chinese (1%)</td>
</tr>
<tr>
<td>Languages</td>
<td>Khmer (official) 96.3%, other 3.7% (2008)</td>
</tr>
<tr>
<td>Religions</td>
<td>Buddhist (96.9%), Muslim (1.9%), Christian 0.4%, other 0.8% (2008)</td>
</tr>
<tr>
<td>Median age</td>
<td>24.1 years (2014)</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>63.78 years (2014)</td>
</tr>
<tr>
<td>Government</td>
<td>Constitutional monarchy</td>
</tr>
<tr>
<td>Human Development Index</td>
<td>0.543 (138th out of 187 countries)</td>
</tr>
<tr>
<td>Urban population</td>
<td>20.5% (at 2014)</td>
</tr>
<tr>
<td>% of population living in multidimensional poverty</td>
<td>45.9%</td>
</tr>
<tr>
<td>World Justice Index ranking on absence of corruption</td>
<td>86th out of 99 countries</td>
</tr>
<tr>
<td>World Justice Index ranking on protection of fundamental rights</td>
<td>82nd out of 99 countries</td>
</tr>
</tbody>
</table>


Further information

For more information or queries about the refugee protection in Cambodia, please contact Madeline Gleeson, Director of the Regional Protection and Cooperation Project, at madeline.gleeson@unsw.edu.au.

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Endnotes


2 For more information, see the Kaldor Centre’s factsheet on the agreement between Australia and Cambodia at <http://www.kaldorcentre.unsw.edu.au/publication/cambodia-agreement>, and the In Focus brief on the implementation of this agreement at <http://www.kaldorcentre.unsw.edu.au/news/focus-resettlement-refugees-nauru-cambodia>.

3 These obligations arise *inter alia* from the express prohibitions on *refoulement* in article 33(1) of the Refugee Convention and article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Cambodia is also bound by an implicit prohibition on *refoulement* in articles 6 and 7 of the *International Covenant on Civil and Political Rights* (ICCPR).

4 Although the government of Democratic Kampuchea signed a number of international human rights treaties in 1980, the Government of Cambodia deposited instruments of accession in 1992.


