

Fact Sheet: Extradition in Cambodia

Summary: Extradition procedures in Cambodia are dictated by the Code of Criminal Procedure 2007 (the “Code”) and by bilateral extradition treaties. In addition, international standards provide important guidance on proper extradition procedures. Recent experience has shown however that Cambodia’s extradition practices should be revised to incorporate human rights, as well as to ensure that extradition is applied without interference.

Introduction

This factsheet provides an overview of the current status of extradition practices in the Kingdom of Cambodia (“Cambodia”). Cambodian extradition law remains unclear in parts and suffers from a number of shortcomings – in particular with regards to human rights considerations – and from inconsistencies in the application of the law in practice. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Extradition

Extradition can be defined as the surrender of a person by one State (the “Requested State”) to the authorities of another State (the “Requesting State”) for the purpose of criminal prosecution or the enforcement of a sentence. Although extradition is not a new concept, globalization and the increasing movement of people across borders and State jurisdictions have made clear legal guidelines for the extradition of alleged and convicted criminals a necessity.

International Guidelines on Extradition

Interstate extradition has traditionally been governed by bilateral treaties, which specify the terms and procedures for extradition of alleged criminals between two countries. Regional treaties, such as the Inter-American Convention on Extradition, have also been adopted for the purposes of extradition, although the Association of Southeast Asian Nations (“ASEAN”) has yet to formulate such a treaty.

Although international law provides no obligation for States to extradite, the United Nations Model Treaty on Extradition (“UN Model Treaty”) provides a model for domestic law and bilateral agreements vis-à-vis extradition and is intended to provide countries with a basis to ensure that extradition proceedings reflect international human rights obligations. Article 3 stipulates that extradition should not be granted if the person whose extradition has been requested may be subjected to torture and that extradition is to be refused should the Requested State regard the offence for which extradition has been requested to be of a political nature. The Requested State must refuse to extradite in these circumstances. Article 4 stipulates that the Requested State may refuse an extradition request if the Requesting State has the death penalty for the offence for which the extradition was requested, unless assurances have been given that the death penalty will not be carried out in this instance. In such cases, the decision not to extradite is discretionary.

Extradition and Cambodia

The extradition of Cambodian citizens is provided for in the Constitution of the Kingdom of Cambodia (the “Constitution”), which states in Article 33 that “Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country unless there is mutual agreement on extradition.” Furthermore, the Constitution provides that

international treaties to which Cambodia is a party shall be incorporated into domestic law. Cambodia is a signatory to a number of such treaties which seek to protect fundamental human rights and freedoms and is as such bound by these treaties when making extradition decisions.

Extradition is covered most comprehensively in the 2007 Code of Criminal Procedure (the “Code”). The Code is applicable in extradition requests in the absence of a bilateral extradition treaty between Cambodia and the Requesting State. The Code details the limits of extradition and the grounds on which extradition requests can be denied and incorporates other rules recognized in international treaties. It also addresses procedural matters arising from extradition requests. Given that Cambodia has signed extradition treaties with only three countries (Thailand, China and Laos), the extradition provisions in the Code provide the most significant guidance on extradition procedure in Cambodia.

Problems with Extradition in Cambodia

There are a number of inconsistencies between the UN Model Treaty and provisions in Cambodian extradition law, such as the length of time allowed for the detention of a suspect when considering an extradition request: while the UN Model Treaty allows for only 40 days, the Code allows for 60 days. In addition, the Code remains silent on a number of important human rights issues: unlike the UN Model Treaty, it does not provide for torture as either a mandatory or discriminatory ground to deny an extradition request; and it similarly does not specifically provide for extradition to be refused when an individual is facing the death penalty in the Requesting State. As the Code is applicable to extradition requests when no relevant treaties exist, and given that Cambodia has so few extradition treaties or agreements in place, such omissions are cause for concern.

The recent case of Russian businessman Alexander Trofimov, the chairman of an investment group active in Cambodia, has exemplified the shortcomings of the extradition legal framework in Cambodia. Trofimov was pardoned in December 2011 despite having served only four of an eight-year sentence for sexually abusing underage children and despite an outstanding request by Russia for his extradition for similar crimes committed there. When he was re-arrested in Cambodia on 4 June 2012, the Cambodian government again chose to ignore the extradition request and instead deported him soon after to South Korea. The Royal Government of Cambodia’s (“RGC”) repeated refusal to extradite Trofimov demonstrates the RGC’s willingness to circumvent extradition law when convenient.

Conclusion/Recommendations

Although extradition procedures are outlined in the Code, urgent reform of Cambodia’s legal framework with regards to extradition is needed. Firstly, the Code should be revised to comply fully with the UN Model Treaty, in particular by incorporating Articles 3 and 4. The RGC should also begin a process, guided by the UN Model Treaty and human rights standards, of establishing bilateral treaty agreements with a greater number of countries. Finally, the RGC should take immediate steps to ensure that the current framework is applied and that alternative methods – such as deportation – are not used in place of extradition.

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