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Cambodian Center for Human Rights

STRENGTHENING ELECTORAL PROCESSES AND DEMOCRATIC PRACTICES IN CAMBODIA: Report on Forums on Elections and Democratic Space



Implementation period: September to December 2010

Implemented by: The Cambodian Center for Human Rights

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Cambodian Center for Human Rights (CCHR)

CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights in the Kingdom of Cambodia (“Cambodia”). Our vision is of a non-violent Cambodia in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia’s development. We desire rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. Our logo - a dove flying in a circle of blue sky - symbolizes Cambodia’s claim for freedom.

This report, *Strengthening Electoral Processes and Democratic Practices in Cambodia: A Report on Forums on Elections and Democratic Space* (the “Report”), is an output of the Forums on Elections And Democratic Space Project (the “Project”) implemented by CCHR with financial support from the Strengthening Democracy and Electoral Processes in Cambodia (“SDEP”) project of the United Nations Development Programme (“UNDP”). The content and recommendations made in the Report are based on information available during the implementation period, being September to December 2010. CCHR acknowledges that the Royal Government of Cambodia has, in the months following the implementation period, taken steps towards implementing certain of the recommendations set out in this Report.

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The opinions, findings and conclusions stated herein are those of CCHR and do not necessarily reflect those of UNDP, SDEP or other donors, supporters and partners.

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Table of Contents

Definitions and Acronyms	v
Executive Summary	vii
1. Introduction	1
Elections and Democratic Space in Cambodia.....	1
Recent History of Democracy in Cambodia.....	2
Legal Framework.....	3
2. Methodology	5
Audience and purpose.....	5
Consultation with Stakeholders.....	5
Desk-based Research.....	6
The Forums.....	6
Post Forums.....	8
Closing Workshop.....	8
Analysis.....	8
3. Voter Registration and Voting	9
Obstacles to Registration.....	9
Exercising the Right to Vote.....	11
Reforming Voter Registration and Voting.....	12
Recommendations.....	14
4. Voter Identification	15
The Problems with Forms 1018.....	15
Developing the National ID Card.....	16
Recommendations.....	18
5. Pluralism: Political Tolerance and Impartiality	20
Shrinking Space for Political Pluralism.....	20
Political Tolerance? Partiality in Local Authorities and Vote-Buying.....	21
Guaranteeing Free Expression of Electoral Will.....	22
Recommendations.....	24
6. Electoral Administration	25
Complaints Resolution.....	25
The Composition of the NEC.....	27
Reforming Electoral Administration.....	28
Recommendation.....	30
7. Participation of Minorities and Women	32
Participation of Indigenous People.....	32
Barriers to Participation of Women.....	33
The Vietnamese Question.....	34
Recommendations.....	36

8. Democratic Engagement Outside of Elections.....	37
Democratic Participation at Local Level.....	37
Civic Participation – Building the Link Between Citizens and the State.....	38
Recommendations.....	40
9. Election System.....	41
Recommendations.....	42
10. Conclusion.....	43
11. Appendix.....	44
12. Bibliography.....	45

Definitions and Acronyms

CEC	Commune Election Commission
CEDAW	Convention for the Elimination of Discrimination Against Women, 1979
CCHR	Cambodian Center for Human Rights
Closing Workshop	A closing workshop on the Project held in Phnom Penh on 8 December 2010
COMFREL	Committee for Free and Fair Elections
Constitution	Constitution of the Kingdom of Cambodia
CPP	Cambodian People's Party
Declaration on Democracy	Inter-Parliamentary Union Universal Declaration on Democracy, 1997
Declaration on Free and Fair Elections	Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections, 1994
Forums	Forums on Elections and Democratic Space
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Co-operative Cambodia
Handbook	National Election Committee, in collaboration with the United Nations Development Programme, code of conduct information booklet for village chiefs
HRP	Human Rights Party
ICERD	International Convention for the Elimination of All Forms of Racial Discrimination, 1965
ICCPR	International Covenant on Civil and Political Rights, 1966
IPU	Inter-Parliamentary Union
LEMNA	Law on the Election of Members of the National Assembly 2008
Mol	Ministry of Interior

NDI	National Democracy Institute
NEC	National Election Committee
NRP	Norodom Ranariddh Party
PEC	Provincial Election Commission
Policy Briefs	Policy recommendations produced and disseminated following each Forum
Project	The Forums on Elections and Democratic Space Project
Rectangular Strategy	Royal Government of Cambodia's Rectangular Strategy for Growth, Employment, Equity and Efficiency
Report	The report entitled <i>Strengthening Electoral Processes and Democratic Practices in Cambodia: A Report on Forum on Elections and Democratic Space</i>
RGC	Royal Government of Cambodia
SDEP	Strengthening Democracy and Electoral Processes in Cambodia project
SRP	Sam Rainsy Party
Technical Working Group	Technical Working Group established by the Ministry of Interior, in which the UNDP and NEC are participating, which is consulting with stakeholders on issues including voter registration, electoral reforms, and identification
UDHR	Universal Declaration on Human Rights
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia

Executive Summary

Civic participation – being individual and/or collective action taken to participate in democracy or address issues of public concern - in electoral and democratic processes is fundamental to ensure that the government reflects the needs and the interests of the people and as a means of holding the government to account. Multi-party democracy in Cambodia is still young, yet several analysts argue that democratic space in Cambodia is shrinking. The Royal Government of Cambodia (the “RGC”) together with the Ministry of Interior (the “Mol”) has taken some positive steps to address some of the problems associated with civic participation, however, much more needs to be done. The Report is an output of the Forums on Elections and Democratic Space project (the “Project”) implemented by CCHR, which received financial support from the SDEP project.¹ The Report presents information obtained through consultation with key stakeholders, data collected from four Forums on Elections and Democratic Space (the “Forums”) conducted in Battambang, Ratanakiri, Takeo and Phnom Penh between 21 October and 2 December 2010, and comments from stakeholders during a closing workshop in Phnom Penh on 8 December 2010, where data and information from the Project was presented (the “Closing Workshop”). The Report was written with the aim of providing the RGC, the Mol and other relevant stakeholders with an overview of key issues that were raised during the Forums and seeks to offer solutions for improvements in the identified areas.

Chapters One (Introduction) and Two (Methodology) of the Report provide background in relation to the right to civic participation. These chapters provide a brief summary of some of the reasons often offered by stakeholders interviewed and participants at the Forums for the failure to entrench a culture of democratic participation in Cambodia which include: lack of understanding of electoral processes; physical barriers to voting; distrust of a system that is considered not to ensure equal participation; and reverence to paternalistic traditions. These chapters also set out the process of the Forums and explain the way in which the analysis contained in the Report was conducted.

Chapter Three (Voter Registration and Voting) discusses issues raised in relation to the voter registration process. Many participants spoke about the onerous nature of registration requirements. Without registering, the electorate cannot vote. An effective and accessible registration process is key to the exercise of the right of franchise. However, the Forums highlighted the difficulties faced by citizens in trying to register. For example, many who have moved away from their village to work elsewhere in the country face arduous trips back and forth to their commune in order to register, check the voter list and then eventually vote. CCHR recommends that the registration process be reformed to allow for a yearlong registration window.

¹ The Strengthening Democracy and Electoral Processes in Cambodia project (SDEP) was a multi-donor funded project that operated between January 2006 and December 2010.

Chapter Four (Voter Identification) discusses voter identification requirements and obstacles for potential voters. The main issue raised by participants at the Forums related to the misuse of Form 1018, the form used if other acceptable means of identification are not available to the voter. There were many allegations of election officials misusing the forms in order to provide ineligible voters with a means to vote while disenfranchising others who were eligible to vote by refusing to issue them with these forms. In order to combat this alleged misuse, it is important for the national ID card program to continue its progress towards providing national ID cards to every eligible Cambodian citizen. It is also extremely important that the suggested moratorium on the expiration of national ID cards due to expire between now and the 2013 National Assembly election is put into effect and applied by all those involved in electoral processes.

Chapter Five (Pluralism: Political Tolerance and Impartiality) covers issues of political bias and partiality in all branches of government in Cambodia. Many participants at the Forums spoke of acts of intimidation due to their political affiliations and the widespread use of vote buying to encourage people to change their affiliations. Many also raised the issue of partiality on the part of local authorities and village chiefs who attempted to disenfranchise those who did not want to vote for the party favored by the local authority by, for example, refusing to register people who had been involved in protests about land or who were seen by the chiefs to be opposition aligned. In order to combat this, and to deter similar practices in the future, CCHR suggests that the National Election Committee (the “NEC”) be more active in investigating such complaints and enforcing the law and its own Codes of Conduct to ensure that those who breach these regulations are brought to justice.

Chapter Six (Electoral Administration) relates to the election administration itself, namely the NEC. Many of the stakeholders spoke about the lack of trust in the independence of the NEC, due, amongst other things, to its politically imbalanced composition and its position within the MoI. The NEC’s ability to handle complaints was also questioned by participants. The CCHR considers the lack of a comprehensive appeals process and loopholes throughout the complaints procedure bars the complainants from having access to justice as required by the International Covenant on Civil and Political Rights (the “ICCPR”). Many stakeholders questioned the effectiveness of a system that places the NEC in the position of administrator of the election and the adjudicator on complaints about the election. It is recommended that in order to combat all of these issues, large-scale reform of the NEC is required to improve the public’s perception of its neutrality and also to provide safeguards to combat future allegations of corruption.

Chapter Seven (Participation of Minorities and Women) discusses the democratic process from the perspective of minorities and women. Indigenous people face additional difficulties due to linguistic differences, geographic isolation and low exposure to education which combine to further exclude them from participation in political and electoral processes at both national and sub-national level. There is a

positive obligation on the RGC to overcome these difficulties. A recurring theme at the Forums concerned non-nationals being allowed to vote in the Cambodian elections. While concerns do exist in relation to the alleged registration of non-citizens, it is important that people understand the distinction between non-citizens and citizens who are not ethnically Khmer but who are still legally allowed to vote in Cambodia.

Chapter Eight (Democratic Participation Outside Elections) discusses the opportunities that people have for democratic engagement between elections. Good governance requires effective institutions that respond to the needs of the country and its people. It equally requires an active demand from citizens. Currently, this demand is not as widespread as it could be due, in some part, to the traditionally paternalistic nature of Cambodian society, which precludes the people from demanding things from those in authority – whether that be their parents or, where democracy and governance is concerned, the RGC and provincial, district, commune and village authorities. It was noted during the Forums that in recent years there has been an improvement in National Assembly members realizing that their obligation is to serve the electorate and not the interests of their parties. This has led to the increased use of public forums and other media to allow for public debate about issues. This process must be continued and expanded so that the public can improve its capacity to hold the government to account in between elections.

Finally, **Chapter Nine (Election System)** posits, based on accounts given by stakeholders at the Closing Workshop, that to truly address the issues raised during the forums regarding voter registration, intimidation, political bias, and the shortfalls of democratic participation, a more fundamental change is required to the existing electoral system. This change, it was argued, requires a shift away from the current proportional representation party system, which many argue does little to encourage communication with or accountability to the electorate and which institutionalizes reverence to political leaders and party politics.

The Report concludes with **Chapter Ten (Conclusion)**, which includes a final call on the RGC, MoI, NEC and other stakeholders to give due consideration to the accounts of the Cambodian people about their experiences with the democratic process and to take heed of the recommendations made to support demands for an improved electoral process and more responsive democratic practices that encourage the evolution of citizen-state relations.

1. Introduction

Elections and Democratic Space in Cambodia

Civic participation - being individual and/or collective action taken to participate in democracy or address issues of public concern -in electoral and democratic processes is fundamental to ensure that the government reflects the interests and the needs of the people and as a means of holding government to account. Civic participation necessitates an active citizenry working to shape and influence society at a local and national level. Civic participation can take a number of forms from regular voting to participating in community forums to writing petitions and protesting.

Since Cambodia's transition to democracy in 1992, following two decades of armed conflict and isolation, several reforms have been implemented aimed at promoting peace, development and good governance. The RGC's *Rectangular Strategy for Growth, Employment, Efficiency and Equity* (the "Rectangular Strategy") places good governance at the core of Cambodia's development agenda. As noted by the World Bank, good governance needs active demand by citizens, a demand that manifests itself through civic participation.² However, whilst the Constitution of the Kingdom of Cambodia (the "Constitution") guarantees the right of Khmer citizens of either sex "to participate actively in the political, economic, social and cultural life of the nation",³ and while positive steps have been taken to promote good governance, there remains difficulties in entrenching the idea and value of civic and democratic participation amongst the Cambodian people. Despite initial enthusiasm, statistics on public participation in recent years show a decline in the proportion of the electorate exercising their right to franchise at national and sub-national elections. Voting for the National Assembly for example declined from 93.74% in 1998 to 75.08% in 2008,⁴ while participation in commune elections declined from 87.55% in 2002 to 67.87% in 2007.⁵

"[T]he establishment and strengthening of democratic processes and institutions is the common responsibility of governments, the electorate and organized political forces, that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and the interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of human rights and fundamental freedoms."

– IPU Declaration on Criteria for Free and Fair Elections⁶

² The World Bank, 'Cambodia Linking Citizens and the State: An Assessment of Civil Society Contributions to Good Governance in Cambodia', (February 2009), p. 2, available at: http://siteresources.worldbank.org/INTCAMBODIA/Resources/293755-1245833003896/Linking_Citizens_Eng_Final_fullreport.pdf.

³ See Article 35 of the Constitution.

⁴ Statistics from Committee for Free and Fair Elections (COMFREL), 'Cambodian Democracy, Elections and Reform: 2009 Report', (February 2010), p.2., available at: <http://www.comfrel.org/images/others/1265785063Comfrel-Cambodia%20Democratic%20Reform%202009-En-Final.pdf>.

⁵ Ibid.

⁶ IPU Declaration on Criteria for Free and Fair Elections 1994', unanimously adopted by the Inter-Parliamentary Council at its 154th session, Paris, (26 March 1994), available at: <http://www.ipu.org/cnl-e/154-free.htm>

Multi-party democracy in Cambodia is still young, with concepts such as active citizenship still emerging. Whilst with each election there have been steady technical advances, improvements in the level of political stability and reductions in the incidences of violence,⁷ there are still notable shortcomings in civic participation. There are many different reasons offered for this lack of civic participation including: reverence for paternalistic ideals; lack of understanding of electoral processes; complications with the electoral process; and distrust of a system that people believe does not ensure equal participation but rather favors the wealthy and politically connected and leaves the less powerful isolated from the decision-making process. To varying extents, analysts and civil society, including CCHR, have argued that the Cambodian democratic space is shrinking.⁸ Of particular concern in this regard has been the steady decline in respect afforded to the rights of freedom of expression, assembly, association and information in recent years – rights which are essential in any true pluralistic democracy.⁹

Recent History of Democracy in Cambodia

The recent history of Cambodia's democracy follows the darkest chapter of Cambodian history, brought about by the Khmer Rouge and marked by genocide, forced labor, disease and hunger, which saw the complete destruction of political, economic, administrative and social structures in Cambodia, as well as international political isolation.¹⁰ On 7 January 1979, Vietnamese forces entered Cambodia and pushed the Khmer Rouge out of the capital, establishing a new regime in its place. The Vietnamese withdrew in 1989 and on 23 October 1991 four competing Cambodian political factions, representatives from 18 countries and the UN Secretary General signed a series of Peace Agreements in Paris. The Agreements gave the United Nations Transitional Authority in Cambodia ("UNTAC") the authority to supervise a cease-fire, repatriate displaced Cambodians, disarm and demobilize factional armies, and prepare the country for democratic elections.

The 1993 UNTAC supervised election was widely celebrated as Cambodia's first step towards democracy. It culminated in the participation of 4.2 million Cambodians and was contested by 20 different political parties.¹¹ High levels of violence, however, marred the elections. In the end, the elections resulted in the

⁷ As per the World Bank's Worldwide Governance Indicators 2010, available at: http://info.worldbank.org/governance/wgi/sc_chart.asp.

⁸ See CCHR et al., *Cambodia Gagged: Democracy at Risk? Report on Freedom of Expression in Cambodia*, (September 2010), which fears that the Royal Government of Cambodia's "apparent efforts to systematically erode freedom of expression in Cambodia in the last year puts democracy at risk"..."and suggests a policy aimed at creating a de facto one-party state in Cambodia" available at <http://www.article19.org/pdfs/publications/cambodia-gagged-democracy-at-risk-pdf>. The Economist Democracy Index as of 2010 defined Cambodia as a "hybrid regime" defined as one where "elections have substantial irregularities that often prevent them from being both fair and free. Government pressure on opposition parties and candidates may be common. Serious weaknesses are more prevalent than in flawed democracies – in political culture, functioning of government and political participation." See The Economist, *Democracy Index in 2010: Democracy in Retreat*, available at: http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf.

⁹ For more information see *Cambodia Gagged: Democracy at Risk*, Ibid.

¹⁰ See David P. Chandler, *A History of Cambodia* (Boulder, Colorado, West View Press, 2008), for further details about this period.

¹¹ United Nations, *Cambodia-UNTAC Background Summary*. Available at: <http://www.un.org/en/peacekeeping/missions/past/untacbackgr1.html>.

establishment of a coalition government of the National United Front for Independent, Neutral, Peaceful and Co-operative Cambodia (“FUNCINPEC”) and the Cambodian People’s Party (the “CPP”). Following the election, a new Constitution was promulgated, declaring Cambodia a multi-party liberal democracy under a constitutional monarchy.

Since the 1993 elections, there have been a further three National Assembly Elections. Whilst each election has been increasingly more peaceful than the one that preceded it, the pre-election periods of each of these elections continued to be marked by allegations of widespread intimidation and threats, though incidents of political violence have decreased over the years. A program of decentralization began in January 2001 with the passage of the Commune Election Law, which set up the framework for direct commune council representatives. Elections for commune chiefs and councils were held in 2002 and 2007. In April 2008, the RGC passed a law providing for the creation of a new layer of district and provincial authorities, which will be elected by commune councilors rather than the general population.

Legal Framework

The Constitution expressly aims to restore “*Cambodia into an ‘Island of Peace’ based on multi-party liberal democratic regime guaranteeing human rights and respect of law...*”, while Article 1 contains a commitment “*to the principles of liberal democracy and pluralism.*” Article 35 of the Constitution provides that “*[a]ny suggestions from the people shall be given full consideration by the grant of the State.*” In order to ensure these rights, it is fundamental that the rights to freedom of expression, assembly and association are protected and promoted.¹²

Cambodia is a member of the Inter-Parliamentary Union (“IPU”), an international organization of parliaments of sovereign states. The IPU Universal Declaration on Democracy (the “Declaration on Democracy”) provides further guidance on the principles of democracy and includes guidelines to help improve the quality of democracy of its member states.¹³ The Declaration on Democracy defines democracy as a “*basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.*”¹⁴ Amongst its statements on the elements and exercise of democratic government it provides that “*[d]emocracy is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions....[and] must accommodate the participation of all people in homogenous as well as heterogeneous societies.*”¹⁵

Voting is an invaluable mechanism by which citizens participate in democracy. Specifically – in relation to the right to universal suffrage and elections – Article 34 of

¹² See Human Rights Committee, ‘*General Comment No. 25 para 1: The right to participate in public affairs, voting rights and the right of equal access to public service*’ (Article 25), 7 December 1996, and para. 8, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).

¹³ IPU Universal Declaration on Democracy 1997, adopted by a vote by the Inter-Parliamentary Council at its 161st session in Cairo, 16 September 1997, available at: <http://www.ipu.org/Cnl-e/161-dem.htm>.

¹⁴ *Ibid.*, paragraph 1.

¹⁵ *Ibid.*, paragraphs 11 and 22.

the Constitution provides: “*Khmer citizens of either sex shall enjoy the right to vote.*” Other national laws such as the Law on Election of Members of the National Assembly (“LEMNA”) and the Law on the Election of Commune Councils, elaborate on this guarantee and define its content. Furthermore, there are NEC Regulations and Procedures as well as Codes of Conduct from the NEC that also form part of the national legal framework impacting elections.

Article 31 of the Constitution provides: “*The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenant and conventions related to human rights, women’s and children’s rights.*” The right to participate in the government of one’s country through periodic and genuine elections is an internationally recognized human right. Article 21 of the Universal Declaration on Human Rights (the “UDHR”) provides that the “*will of the people shall be the basis of the authority of government...expressed in periodic and genuine elections which shall be by universal and equal suffrage.*” Much of the UDHR is regarded as having acquired legal force as customary international law.¹⁶

Article 1(1) of the ICCPR, which was ratified by Cambodia on 26 May 1992, guarantees the right of self-determination by virtue of which “*people have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government.*”¹⁷ Article 25 of the ICCPR expands on the right to vote by providing that “*every citizen shall have the right and opportunity...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors.*” Furthermore, Article 25 of the ICCPR provides for the “*the right of every citizen to take part in the conduct of public affairs*”,¹⁸ a right which is exercised by exerting influence through public debate and dialogue with public authorities or through the capacity of the people to organize themselves. Further guidance on interpreting Article 25 can be found in the United Nations Human Rights Committee General Comment No. 25.¹⁹

The IPU’s Declaration on Criteria for Free and Fair Elections (the “Declaration on Free and Fair Elections”) reaffirms the rights relating to elections contained in the UDHR and the ICCPR.²⁰ As an IPU member state, Cambodia should respect the Declaration on Free and Fair Elections by, amongst other things, establishing an effective procedure for registering voters; ensuring the integrity of polls; ensuring non-partisan coverage in State and public service media; and facilitating national programs of civic education.

¹⁶ Antonio Augusto Cancado Trindade, ‘*Universal Declaration of Human Rights*’, United Nations

Audiovisual Library of International Law, (2008), p.2. Available at: http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr_e.pdf. W.M. Reisman has argued specifically that Article 21 is “declaratory of customary international law”, see W.M. Reisman, “Sovereignty and Human Rights in Contemporary International Law”, *Am. J. Int’l Law*, 84 (1990), pp. 866 at p. 867. available at http://www.cerium.ca/IMG/pdf/reisman_1990.pdf.

¹⁷ See Human Rights Committee, *General Comment No. 25*, supra note 11, para.2.

¹⁸ Article 25(1) of the ICCPR.

¹⁹ See Human Rights Committee, *General Comment No. 25*, supra note 11.

²⁰ IPU Declaration on Criteria for Free and Fair Elections, supra note 5.

2. Methodology

The Project was implemented by CCHR as with financial support from UNDP's *Strengthening Democracy and Electoral Processes Project*. The Project was implemented and the Report written following the methodology set out in this chapter.

Audience and Purpose

The overarching goal of the Project is to engage stakeholders, including decision makers (at local and central levels), electoral constituents and civil society in discussions about matters of concern regarding elections and democratic space in order to improve the integrity of electoral processes, increase civic participation and strengthen Cambodian democracy. The Report presents the Project activities and findings, and aims to highlight particular areas of concern regarding election processes and democratic practices as raised during the Forums, and offers recommendations to the RGC, the Mol, the NEC and other stakeholders. The information presented in the Report serves as a reference from which to implement changes to electoral processes and democratic practices, and will be shared with the intended audience of the Report. It is hoped that the Report will inform and encourage further dialogue between stakeholders, electoral constituents and civil society to address the issues highlighted herein.

Consultation with Stakeholders

In order to develop and finalize the agenda for the Forums, CCHR investigated significant issues related to elections and democratic governance in Cambodia. This investigation involved coordination with the UNDP Project team, desk-based research and consultation with major stakeholders in Phnom Penh. The objectives of the consultation process were three-fold:

- Collect and compile information on electoral and democratic processes from major stakeholders, including representatives of the different political parties, political analysts, civil society and other relevant institutions;
- Utilize the information to identify pressing issues related to elections and democratic governance in Cambodia; and
- Utilize the consultation process and the issues identified in order to shape and finalize the modality of the Forums and the agenda for the Forums, and to use this to encourage key stakeholders to participate in the Forums.

The Appendix to the Report includes a list of the stakeholders who participated in the consultation phase. In total CCHR consulted with ten major stakeholders (of which eight were men and two were women), which included representatives from four of the major political parties, a representative from the NEC, three

representatives from civil society, one political analyst and one person from the media. The consultation period lasted from 22 September 2010 to 1 October 2010.

Desk-based Research

A number of Cambodian and international organizations and institutions have previously considered issues of elections and democracy in Cambodia. CCHR reviewed press releases, articles, briefing notes and reports from these organizations including: the Asian Network for Free and Fair Elections, the Committee for Free and Fair Elections in Cambodia (“COMFREL”), the European Union, the National Democracy Institute (“NDI”) and the World Bank.

CCHR also used data, information and analysis from UNDP’s publications.

The Forums

The central platform of the Project for engaging the public and collecting information was the Forums – four of which were conducted over the course of the Project, involving members of the public and guest speakers. Forums took place during the period 21 October to 2 December 2010. In preparing for and hosting the Forums, CCHR drew on its extensive experience in hosting community public forums, trainings and hearings as part of its Community Empowerment Project.

In total 737 people participated in the Forums of which 497 were men and 240 were women. All the Forums were carried out in the Khmer language and were recorded in audio. In addition, the forum in Ratanakiri was conducted in Khmer and translated into Kreung, the language of one of the main indigenous groups in the province.

Forums were held in the following provinces on the dates specified:

- Battambang, 21 October 2010;
- Ratanakiri, 11 November 2010;
- Takeo, 17 November 2010; and
- Phnom Penh, 2 December 2010.

Each Forum took place from 8:00 a.m. to 11:30 a.m. Participants were invited from throughout the province. Prior to each Forum, CCHR visited the location and the surrounding districts to explain to members of the community, local officials and activists of all political affiliations, the objectives of the Project and to encourage attendance at the Forum. CCHR made transport available to bring those who lived in the areas surrounding the venue of each forum to ensure that the discussion engaged as many people and as diverse a group as possible.



Figure 1: Panel at the Ratanakiri Forum, 11 November 2010

Each Forum included a panel of guest speakers. The panelists consisted of representatives of political parties and local authorities as well as experts on elections and democracy, including members of relevant civil society organizations and independent consultants. At all the Forums, except the forum held in Phnom Penh, a representative of either the NEC or the Provincial Election Commission (“PEC”) attended as an observer and addressed some of the questions raised by the participants. The Phnom Penh forum was attended by a representative from the Mol. Invitations for the guest speakers were sent to all the major political parties, who were asked to invite their activists. It is regrettable that despite inviting several parliamentarians of the ruling CPP to individual Forums and repeated attempts to engage with them throughout the Project, a CPP parliamentarian was not present at any of the Forums. Although its members of parliament did not participate in the Forums, CPP councilors and a provincial governor participated in the Forum in Battambang.



Figure 2: Man addressing panel in Takeo, 17 November 2010

The Forums used an ‘open-space’ modality. Guest speakers were invited to initially address the participants for five minutes on issues pertaining to elections and democratic space. Following these short speeches, participants were encouraged to

comment or ask questions pertaining to elections and democracy. Panelists were then invited to respond to the comments and/or questions raised.

Post-Forums

Based on each forum, CCHR developed brief policy recommendations (“Policy Briefs”). The Policy Briefs reflected key points raised at the Forums and were shared with policy-makers and other stakeholders as part of the Forums philosophy of engaging with a variety of different stakeholders and advocating for focused initiatives with Ministries, electoral authorities, civil society and political parties.

Following each forum, CCHR aired a truncated version of the Forum over the radio on a number of frequencies, disseminating information about the Forums and what was discussed to listeners in Phnom Penh, Battambang, Siem Reap, Kampong Thom and Oddar Meanchey. The radio broadcasts were made available on the following frequencies: FM 105 Phnom Penh, FM 106.5 Phnom Penh FM 90.25 Battambang and Oddar Meanchey, FM 88.5 Kompong Thom, and FM 95.5 Siem Reap, reaching an estimated audience of millions of people. The radio broadcasts allowed for information generated through each Forum to be disseminated to a much wider audience, thereby extending the scope for the discussion beyond the venue and surrounding locale of each Forum.

Closing Workshop

Following the completion of the Forums, CCHR analyzed the data from the desk-based research, consultation process and information obtained through the Forums, applying international and national law, and identified positive developments as well as areas for improving electoral processes and strengthening Cambodian democracy to put together a set of recommendations on how to improve the issues identified. CCHR presented these recommendations and the Project activities at the Closing Workshop. The Closing Workshop was attended by representatives from the Mol and NEC as well as parliamentarians and representatives from civil society. The Closing Workshop represented the culmination of the Project activities, with participants encouraged to discuss the recommendations put forward by CCHR and offer their thoughts on the issues identified and the solutions for improvement suggested.

Analysis

The Report presents the independent data recorded during the Forums and during the Closing Workshop as well as analysis of this data, highlighting issues of concern. To ensure that the analysis provided has depth and is presented in a clear and manageable form for use by stakeholders, Chapters Three to Nine of the Report focus on providing analysis vis-à-vis particular issues that were raised during the Forums and discussed at the Closing Workshop, including - in respect of the election process: voter registration and voter lists, voter identification, voter intimidation and

electoral administration - and in respect of democratic space: political partiality, democratic engagement, minority participation and the election system.

3. Voter Registration and Voting

Voting in elections is an important exercise of civic participation, with free and fair elections constituting a key element in the exercise of democracy. In Cambodia, in order to exercise the right to vote, a citizen must register for his/her name to be included on the voter list. As such, the ability to register to vote is essential in order to exercise the fundamental rights of franchise and to participate in democracy. This was an issue that was raised at all of the Forums.

Obstacles to Registration

Article 4(1) of the Declaration on Free and Fair Elections provides, amongst other things, that States have a responsibility to establish “*an effective, impartial and non-discriminatory procedure for the registration of voters.*” Registration as a voter is the right of all eligible voters and the process should not be unreasonably burdensome. Every citizen eligible to vote should be able to partake in an effective, impartial and non-discriminatory procedure to register to exercise his or her vote.²¹ In order to be able to exercise the fundamental right to vote, the registration process must be accessible to the electorate, both in terms of their understanding of what is required to fulfill registration but also in the ability of the electorate to actually be able to undertake the practice of registration. Whilst the LEMNA provides for a process of voter registration,²² discussions with stakeholders during the consultation process and issues raised by participants at the Forums highlighted the complicated nature of registration in practice. These discussions make it clear that the voter registration process system places an undue burden on the electorate, which hinders accessibility to an effective registration process and which acts as an obstacle to the right of franchise.

In order to register to vote, prospective voters must check the voter list as many as three times to ensure they are registered to vote; the first time to register (this has to be done in person),²³ the second following the posting of the preliminary voter list, and the third when the final list is posted. Pursuant to LEMNA, the period for voter registration and checking the voter lists shall run from 1 October to 31 December of every year.²⁴

Many participants at the Forums spoke of their confusion at the registration process, stating that they did not know when they should register and when they should check the lists. In terms of the accessibility, some participants who speak indigenous languages rather than Khmer spoke of impediments due to language difficulties. Information and voter education on registration was only available in Khmer and

²¹ Article 2(2) of the Declaration on Free and Fair Elections, see supra note 5, states “*Every adult has a right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.*”

²² Following the February 2002 commune elections, on 21 August 2002 the government enacted the Law on Amendments to the National Assembly Election Law, introducing the permanent voter registration process, to be conducted each year between October and December, at commune officers, by commune clerks. Final responsibility for preparing the electoral registers rests with the NEC. The NEC is responsible for maintaining and periodically reviewing this register, deleting those who are no longer eligible to vote (due to death, emigration, etc) and adding those who are newly eligible.

²³ Article 54 of LEMNA.

²⁴ Article 49 of LEMNA.

thus discriminated against the indigenous minority and affected their ability to register (see Chapter Seven Participation of Minorities and Women below for further information).

Others spoke of physical impediments to the registration process. The registration system in Cambodia requires prospective voters to attend their commune office to register to vote, rather than providing for confirmation through mail, for example, as is done in some jurisdictions. In remote areas such as Ratanakiri, the long distances to commune offices act as a significant barrier to registration in terms of the cost to travel to register and the short period for registration.²⁵ Many participants complained about the timing of the registration period, noting that it fell in the rainy season when it is difficult to travel. A participant in Takeo complained that the fact that the registration period coincided with Pchum Ben, the Khmer Buddhist festival to commemorate the dead, provided an additional obstacle as most people are busy with festival rituals and meeting family. It is interesting to note that this was a recognized problem in Battambang where at the Forum the local authority representative announced a three-day extension to the registration period as a result of the coincidence with Pchum Ben, in order to ensure that people had time to register. The representative of the MoI explained at the Closing Workshop that the Technical Working Group, a technical working group established to review, through broad consultation with stakeholders and international experts, important issues on election reforms, including voter registration (the “Technical Working Group”), had suggested increasing the registration period by 15 days, thus giving a total of 30 days for registration, with the NEC having discretion to increase that period by a further 15 days pursuant to the LEMNA.²⁶

Whilst the reform suggested by the Technical Working Group would be a welcome development, the time period for registering would still remain very short and would still be onerous for voters who have to travel to register. This was raised as a particular problem for migrant workers. The criterion for registration requires that prospective voters have a fixed home address in the commune in which they are registering.²⁷ Many migrant workers do not have a fixed address in the commune where they work and are thus required to register in their home communes. Given the geographical distances often involved and the need to travel back and forth, this is a significant burden. Several participants at the Forums, who had been the victim of land evictions, also spoke of the difficulties faced in registering as a result of being forced to move from their homes. Given the increasing numbers of individuals working away from their homes,²⁸ and the number of people who have been the

²⁵ Currently voters have 15 days to register on the voter list.

²⁶ Since the Closing Workshop, the National Assembly has amended the National Election Law by extending the number of days that voters have to check their names on the voter registry from 15 days to 30 days. See Neou Vannarin, “National Assembly Approves Three Financial, Election Laws”, *The Cambodia Daily*, 12 May 2011.

²⁷ See Article 50 of the LEMNA, which provides that in order to have his/her name on the voter lists, every citizen must meet conditions which include having a residence in the Commune/Sangkat where he/she is going to cast his/her vote.

²⁸ Statistics from the United Nations Capital Development Fund show that 31% of Cambodians now live in villages other than where they were born, see United Nations Capital Development Fund (UNCDF) – ‘*Local Development Outlook Cambodia*’, (April 2010), p.11, available at:

http://www.uncdf.org/english/local_development/uploads/other/Local%20Dev%20Outlook%20Cambodia%20-%20Exec%20Summary.pdf.

subject of an eviction,²⁹ the fixed address requirement is a bar to registration to these two identifiable groups and, potentially, large portions of the electorate. The difficulties faced by migrant workers and individuals who have been evicted conflicts with the right to vote as prescribed under international law. The UN Human Rights Committee's General Comment 25 states that *"if residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote."* The RGC and MoI should consider the ways in which reasonable provisions can be implemented into the registration process to account for the socio-economic difficulties that citizens currently face preventing effective registration and which contribute to their disenfranchisement. At the Closing Workshop, the NEC representative noted that provisions had been made to ensure the registration of those previously living in the Boeung Kak Lake area (see Chapter 8 Democratic Participation Outside of Elections for further information). For example, a NEC official was sent to the area where the residents had been relocated to help with the process. However, a spokeswoman for the Boeung Kak Lake residents group and other civil society organizations and parliamentarians at the Closing Workshop spoke about the continued difficulties residents face in trying to register. These included the absence of appropriate documentation, including residency status, and a lack of political will on the part of the authorities to move their registration forward. Referring back to the principles of the right to registration in the Declaration of Free and Fair Elections, the current voter registration process presents some difficulties in the ability of an identifiable portion of the electorate, specifically migrant workers and those who have been the subject of an eviction, to access the voter registration procedure. As such it does not fully meet the standards set out in Article 2(2) of the Declaration on Free and Fair Elections.³⁰

Exercising the Right to Vote

It is the onerous practices associated with registering, as noted above, that many at the Forums argued were responsible for inaccuracies in voter lists. It was argued that this meant that voters' names were either not on the list or were incorrectly spelt and that this accounted for why names did not match given names on identification documentation.³¹ Pursuant to an independent audit conducted by the NDI and Cambodian non-governmental organizations with support from UNDP and other donors, it was determined that more than 57,000, or 0.7%, of eligible voters were incorrectly deleted from the list.³² Irregularities in the voter lists were found in at least 28 of the 165 communes/sangkats where COMFREL deployed observers.³³

²⁹ In 2009 alone 27,000 people were displaced as a result of 26 evictions, see Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia', (16 September 2010), A/HRC/15/46, para. 31.

³⁰ See page 9 of this Report and footnote 20 for further details.

³¹ A 2009 COMFREL survey noted *"On July 27, 2008, around 2.1 million of 8.12 million registered voters did not vote, according to national-level figures. Figure 1 shows that 21.4% of surveyed voters who did not vote in 2008 elections or around 440,000 voters at national level if this is taken to be representative....went to a polling station but could not vote (though, the number might be less at national level given the possible existence of ghost voters and double voters)." For further information see, COMFREL, Survey Report on Voters List and Registration, July 2009, p. 12.*

³² National Democratic Institute (NDI), *Voter Lists Improved but Many Voters Incorrectly Deleted*, 13 June 2008, available at: http://www.ndi.org/files/2343_kh_statement_voterslist_engpdf_07172008.pdf.

³³ Committee for Free and Fair Elections in Cambodia (COMFREL), *2008 National Assembly Elections*, 2008, p. 30, available at: <http://www.comfrel.org/images/others/12250728892008%20NAE%20Report.pdf>.

This meant that people who were eligible to vote and had registered were disenfranchised as they did not check the voter list during the checking period and in some cases even when they had checked the list. The representatives of the PEC in Battambang and Ratanakiri respectively stated that it is the responsibility of the public to ensure that they are registered and that the information on the voter registration and voter list is correct.³⁴ Yet, when the steps required to register and check information are onerous, then an examination of the system is also warranted to help facilitate this process, which is integral to the exercise of the right to vote.

The representative from the Mol at the Closing Workshop noted that the Technical Working Group with the NEC had drafted an order on the situation of deletion, acknowledging that there were still reported occurrences of incorrect deletions. It was explained that the order reminded officials of the rules on deletions and warns that if these provisions are abused or violated, resulting in the negligent or deliberate deleting of names entitled to be on the register, the relevant official will be punished. Whilst the introduction of this order is incredibly important, it is vital that the NEC continues to monitor and inspect deletions and ensure that where the system has been abused, officials are penalized, as required.

At both the Takeo and Phnom Penh forums, participants spoke about the changing of the venues of the polling station. Generally, the polling station was located at the same place where residents registered to vote. However, participants at both forums said that when it came to Election Day the polling station was no longer there. The Mol representative at the Phnom Penh Forum noted that this information was given in the Voter Information Notices, the notices that are sent prior to elections with relevant voter information, including the address of the polling station. However, it appears that many had not received this information and were disenfranchised as a result.

With regards to the ability to vote, it was argued during the Forums that in the past the timing of Election Day hindered the ability to exercise the right of franchise. The last National Assembly election was held on 27 July 2008, in the middle of the rainy season. Human Rights Party (“HRP”) representatives during the consultation period called for Election Day not to be in the rainy season as the vast majority of voters are farmers who are busy tending and harvesting their crops at that time of year. This was a call that was reiterated following comments heard by the HRP representative who attended the Ratanakiri and Phnom Penh forums.

Reforming Voter Registration and Voting

As noted above, the Mol has established the Technical Working Group to examine issues relating to election process. The establishment of the Technical Working Group is commendable and evidences recognition on the part of the RGC of the shortcomings of the current system. It is fundamental for the RGC and the Mol to consider ways for reforming voter registration, making registration, and

³⁴ Comment by PEC Representative at Battambang forum on 21 October 2010.

consequently voting itself, more accessible to the electorate. During some of the Forums and during the consultation process, comparisons were made between the current Cambodian voter registration system and the system during the UNTAC supervised elections of 1993 where home registration took place.³⁵ Comparisons were also made with Thailand, where there is no voter registration *per se*; rather household data is used to develop voter lists, which are then sent to each household for verification. Whilst there are fundamental issues surrounding the application of either of these processes in Cambodia - the budget that was available during the UNTAC elections is simply not available in Cambodia today and the lack of infrastructure such as an efficient postal system renders postal registration unreliable - the point is still relevant; that the Technical Working Group needs to look at other models to reform the existing process so it is streamlined, practical and more effective. For example, with regards to migrant workers, a number of participants at the Closing Workshop endorsed a recommendation to have facilities near factories to help facilitate registration.

The MoI, NEC and other ministries and bodies should consider the use of technology as a means of improving voter registration. The internet can be used as a means of disseminating the voter list for example, thus limiting the amount of times a person must travel back and forth to check the list. The Technical Working Group should also consider the ways in which mobile phone technology can be used to assist in the process of voter registration. Recently, a campaign by the National Police Force of Cambodia used text messaging to raise awareness of drunk driving.³⁶ With one quarter of the Cambodian population now using mobile phones,³⁷ the NEC should consider how it can work with mobile phone operators to disseminate information on voter registration and voter lists in order to encourage voters and raise awareness about the importance of this process. It is also worth exploring the ways in which mobile phones and online systems can be used to verify registration in the event there has been no changes to a voter's details.

³⁵ Mrs. Chea Vannath, an independent analyst, who was interviewed by the CCHR for the consultation process on 24 September 2010, talked about the procedural simplicity of UNTAC where name registration was made at people's homes.

³⁶ Chhay Channyda, "SMS texts warn drunken drivers", *The Phnom Penh Post*, 14 October 2010.

³⁷ UNDP Cambodia, *Cambodia Country Competitiveness: Driving Economic Growth and Poverty Reduction*, 2009, p. 47. available

at:<http://bravo.ilo.org/gimi/gess/RessShowRessource.do?sessionId=4e5b1e70c36f30da63f2abe30ea69520bd5563204824456145aef84d0f04f7fd.e3aTbhuLbNmSe34PbxqQaxqMa310?ressourceId=22977&longTitle=Cambodia+Country+Competitiveness%3A+Driving+Economic+Growth+and+Poverty+Reduction&author=UNDP&ressYear=2009>.

Recommendations

- Voter registration is a right and its exercise should not be unreasonably burdensome. The Technical Working Group should consult with civil society and key experts on how to simplify and improve the voter registration process. The priority of registration should be the enfranchisement of the people. At the moment too many people are being disenfranchised as a result of short registration periods, challenges with checking the lists and an unduly complicated process.
- One manner of simplification would be to reform the procedure so that voter registration continues all year round. The RGC and the National Assembly should consider amending the law to allow for permanent voter registration. Such an approach would allow for a more systematic update of the voter list when people move, turn 18, die, etc.
- Consideration should also be given to how mobile units could further be used to assist in registration and checking voter lists. This could greatly assist the situation of migrant workers and those who have been subject to eviction.
- The RGC should amend the LEMNA to ensure that those who are homeless or recently evicted are not precluded from voting as a result of the fixed address requirement for registration.
- The NEC should ensure that any deletion of a name from the voter lists is accompanied by evidence supporting deletion, as required by the LEMNA. For example, deceased voters should only be deleted with proof of death and relocated voters should only be deleted if proof of registration in another location is available. Officials should be regularly trained and reminded of the evidentiary requirements and the order on deletion to be issued be implemented in practice. Documentation and records for the deletion of voters' names should be maintained and be open to independent audit.
- The NEC, in consultation with the MoI and civil society organizations, should carry out extensive national campaigns and civic education initiatives aimed at encouraging and informing voters to register updates and check their names, including raising awareness of complaints procedures that are available to voters for issues relating to registration. All such campaigning should be through a variety of different media, and should take into account low levels of literacy in Cambodia.
- The Technical Working Group should look into ways that the NEC can utilize technology to improve the registration process. For example, the internet can be used to allow people to check the lists without requiring them to have to go back to their hometown. Mobile phone technology should equally be used, for example, by sending text messages to remind voters to register or to confirm their name on the voter list.

4. Voter Identification

The issue of identification documents for the purposes of registration was a recurring theme at the Forums. Many participants raised the issue of national ID cards, which can be used to confirm identity for the purposes of registration and voting. In 2000, the RGC launched its national ID card program with the aim of providing all Cambodians with legal identity documents, which could be used for a number of purposes, including voting in elections. Pursuant to the LEMNA there are a number of different forms of identification that can be used for the purposes of registering to vote and voting.³⁸ However, national ID cards appear to be the most popular, with many believing, and being misinformed according to comments made by participants at the Forums, that they cannot register or vote without one. Mistakenly believing this to be true, many of the participants spoke of the measures they had taken to try and obtain national ID cards.

“In my village people want ID cards but the local authority is careless and slow so people bribe the local authority to get an ID card. Even then they still do not get it.”

– Participant at the Battambang Forum, 21 October 2010

The Problems with Forms 1018

The difficulties with obtaining a national ID card are compounded by the measures that are in place with regards to other forms of identity, particularly with regards to the statement of identity form, the Form 1018, which is one of 11 documents that can be used by voters to identify themselves. The Form 1018 was the subject of extensive criticism by international and independent observers during previous elections, who found the fraudulent issuing of the forms to be *“a relatively widespread phenomenon.”*³⁹ The absence of sufficient safeguards such as serial numbers and records of the forms issued were said to leave the process open to manipulation. CCHR understands that the Technical Working Group has made suggestions to the MoI about the Form 1018, which include a registry with record slips of the forms issued and serialization of the forms. It has also been suggested that in an election year, commune chiefs should report to the NEC, through the Commune Election Commissions (“CECs”) and PECs about the number of Forms 1018 issued and should publish such information in their respective communes. Many of those who attended the Closing Workshop approved of these proposed changes and noted that change to the current system was important and the best way forward. Whilst CCHR commends these proposed ‘technical’ safeguards with respect to Forms

³⁸ Article 54 of the LEMNA.

³⁹ See European Union Election Observation Mission, *Kingdom of Cambodia Final Report: National Assembly Elections, 27 July 2008*, 13 October 2008, p. 18; and The Asian Network for Free Elections (ANFREL), *Cambodia National Assembly Election 27 July 2008: Report by the International Election Observation Mission*. Pursuant to the LEMNA, Forms 1018 can only be issued on presentation of a form accompanied by two photographs with two witnesses (who are both eligible voters) who can confirm identity, age and residency of the applicant. Lack of serialization of the forms for tracking purposes and the absence of a records on the forms issued however are argued to contribute to the irregular use of the forms.

1018, we are concerned that the forms will remain open to manipulation. As with any regulatory system, the potential for abuse remains if the parties that are administering the forms are intent on manipulating the system for their own ends, a fear which was expressed by a number of participants and stakeholders during the Forums with regards to local authorities and village chiefs (see Chapter Five Pluralism: Political Tolerance and Impartiality below for further details). One man, who identified himself as a Sam Rainsy Party (“SRP”) activist, said at the forum in Battambang that he understood that CPP voters who had turned 18 just before Election Day, but were not 18 during the registration period, were allowed to use the Form 1018 by the local authorities to register and vote whereas his own son, who was in a similar position, was not.

The current law and system, even with the proposed safeguards, offers too much discretion to commune clerks to issue the forms, particularly given the political bias and the intimidation of voters by local authorities that was widely recounted by participants at the Forums (see Chapter 5 Pluralism: Political Tolerance and Impartiality below). This compromises the integrity of the elections by failing to ensure that those not entitled to vote do not vote and is in violation of Article 4(2) of the Declaration on Free and Fair Elections. National ID cards give officials less discretion. Given the intrinsic issues that remain with Forms 1018, it is fundamental for the Mol to step up its efforts to issue national ID cards for all eligible voters and ensure that people are not subject to unreasonably burdensome processes or even bribery to obtain documentation that is essential for exercising such a fundamental right.

Developing the National ID Card

A Cambodian National ID Program is being supported by UNDP as part of broader efforts to strengthen democratic reform and electoral processes in the country. The assistance UNDP is providing in strengthening the IT capacity of Mol personnel for the new computer-based ID card application systems is fundamental in addressing the shortfall in the number of National ID cards that are being issued. In 2010, UNDP trained personnel from 23 provinces and one municipality in managing mobile computer-based ID card data capturing units.⁴⁰ Whilst the development of an electronic ID card system with a centralized database of information is an important step in strengthening electoral and democratic processes in Cambodia, and the RGC and Mol should continue their efforts in improving this system, it is of paramount importance that all efforts are taken to ensure those who are eligible but still without ID cards get the basic identification documentation.

A Cambodian delegation of members from the different political parties, government officials and civil society representatives undertook a trip to Malaysia in 2010, where they were informed about Malaysia’s electronic documentation system

⁴⁰ UNDP, “Graduation and IT Equipment handing over ceremony 9 August 2010 for Cambodian ID Card Personnel”, 9 August 2010, available at: <http://www.un.org.kh/undp/pressroom/speeches-and-statements/speech-by-undp-country-director-elena-tischenko-at-graduation-and-it-equipment-handing-over-ceremony>.

for national ID cards.⁴¹ Cambodia must continue to look at its ASEAN neighbors for advice and examples of methods that may be implemented to facilitate and sophisticate the documentation process, thereby simplifying the electoral and democratic processes.

A number of guest speakers at the Forums noted the fact that several million ID cards will be expiring between now and the Commune and National Assembly elections in 2012 and 2013 respectively. At the Takeo forum, it was mentioned that a moratorium on the expiration of ID cards due to expire between 2011 and 2013 has been proposed by the Technical Working Group.⁴² It has subsequently been reported that the Interior Ministry will ask the government to extend the validity of national identity cards that are due to expire before the next commune and national elections until December 2013.⁴³ CCHR supports the implementation of this reform as a means of reducing the risk of disenfranchisement of many eligible voters in the upcoming elections. Furthermore, with the issues associated with Form 1018, such an approach reduces problems associated with using this alternative form of identification. Should such a reform be accepted, the MoI must require local authorities to inform personnel and voters of this change. Without an adequate information campaign and monitoring, the risk of disenfranchisement remains.

⁴¹ The “My Kad” system in Malaysia has been very successful. The card not only acts as an identity card, but is also used as a driving license, electronic identification, ATM-card, electronic wallet and payment for public transport, amongst other things.

⁴² The NRD representative at the Takeo forum on 17 November 2010, H.E. Sao Rany, mentioned at a workshop in Siem Reap that the Ministry of Interior and NEC had discussed such a reform.

⁴³ Eang Mengleng, “Ministry to Seek Extension of Voters’ ID Card Validity”, *The Cambodia Daily*, 23 May 2011.

Recommendations

- The MoI should increase the rate of distribution of national ID cards, including increasing the capacity of those involved in processing ID cards. UNDP, as part of its support to the broader effort to strengthen democratic reform and electoral processes in Cambodia, should continue to offer technical assistance and capacity development, including the provision of more mobile units and technical training to increase production of ID cards. The workforce tasked with issuing ID cards should be expanded.
- The MoI through the NEC should conduct voter education aimed at reducing the misunderstanding among voters who believe that ID cards are the only document that can be used for voter registration.
- The RGC and National Assembly should accept the Technical Working Group's proposal of extending the expiry of national ID cards until after the 2013 National Assembly Elections as a means of reducing the risk of disenfranchisement of many eligible voters in the upcoming elections, whilst continuing to improve distribution of new and expired cards. If such a proposal is accepted, the MoI and NEC must conduct an information campaign to ensure that local authorities and the electorate are aware of the change.
- The use of Form 1018 should be discontinued. Even with the proposed reforms suggested by the Technical Working Group, the system of issuing the forms remains open to manipulation. An increase in the national ID card distribution rate and improved monitoring of the process of distribution will help facilitate the phasing out of Form 1018. It is important however for state authorities to find an alternative solution that is not open to manipulation that enables voters to identify themselves on Election Day if voters do not possess an ID card or other ID document. Whilst authorities find an alternative solution, the MoI and the NEC should issue a joint directive in line with the Technical Working Groups recommendations on safeguards, including a registry of the forms and serialization.
- The NEC and the MoI, through the Technical Working Group and with the assistance of civil society, should begin consultation on how a national ID card system/database can be established. Looking at examples in other ASEAN countries, the Technical Working Group should consider how the use of ID cards with unique serial numbers, which can be integrated into the NEC database, could be developed. Consultation should also consider how ID cards could be automatically issued when an eligible person turns 18. This could work in tandem with the construction of a centralized database/registry of civilian information and a system that automatically registers a voter when he/she becomes eligible to vote, removing this burden from the voter.
- The RGC with the MoI should start a national education campaign, engaging in social media to encourage those who have just turned 18 or do not yet have a national ID card to register for their national ID card and to register to

vote in the 2012 and 2013 elections respectively.

- Young people should take responsibility for the future development of democracy in the Kingdom by registering for a national ID card so that their voice is heard at the next election. They are, after all, Cambodia's future.

5. Pluralism: Political Tolerance and Impartiality

The Cambodian Constitution is based on the principles of multi-party democracy and pluralism. Pluralism by its very nature necessitates an environment where divergent views and opinions are respected and where people feel safe and are encouraged to express those views. The issue of the lack of political tolerance, or respect for divergent views and opinions, was widely discussed during the Forums with many expressing the view that partiality towards supporters of particular parties occurred not only during election times but was widespread in the day-to-day behavior of officials.

The Shrinking Space For Political Pluralism

A number of participants at the Forums mentioned threats and pressure being applied to them in order to alter their political affiliations. Such action towards citizens is against the fundamental tenets of democracy and pluralism, and violates the rights to freedom of expression and association. There must be greater respect by all state institutions and officials of all political parties to respect diversity of political opinion.

“I have served in the army for the past 30 years. Recently the army has deleted my name from the army list. I have been told that if I want my position back I need to resign my SRP membership in the province.”

– Participant at the Battambang Forum, 21 October 2010

Whilst citizens reported being penalized for their political affiliations, opposition party members outlined their struggles to find the necessary space in which to actively campaign. Throughout the course of the Project, opposition MPs spoke of restrictions to their freedom of expression, with media bias and limited access to radio and television hindering their ability to impart information and opinion, and to participate in the democratic space. Participants spoke equally of the limited access they have to hearing the divergent views of others. If civic participation and multi-party democracy is to have any true meaning, citizens must have access to sufficient information in order to make an informed choice, and all political parties should have fair access to the media to disseminate their views and positions. This necessarily requires greater tolerance of critical and divergent views by those controlling television, radio and the print media and the creation of a climate of pluralism where difference of opinion is properly protected and embraced. One change which is fundamental to ensuring a climate of pluralism is the transfer of media regulation from the Ministry of Information to an independent regulatory authority.

Political Tolerance? Partiality in Local Authorities and Vote-Buying

In addition to overarching issues of the lack of political tolerance outside of specific election related situations, many of the participants at the Forums spoke about the partiality and lack of political tolerance shown by commune council and village chiefs towards those who actively protest against government policy or those who are seen as non-government aligned. In Ratanakiri, where land disputes are common, a number of participants spoke about how their engagement in the legitimate democratic processes of peaceful protest and demonstration in relation to land conflicts had resulted in their being disenfranchised. Local authorities had told members of the community that as they had taken part in protests against the government they were not allowed to vote or, in some cases, to register to vote. Another community representative in Ratanakiri recounted how he and members of his community had been asked by the local authority which party they voted for. They stated that that they were told that if they did not say CPP they would not be allowed to register to vote.

In Battambang, CCHR heard of commune council and village chief intimidation of opposition or non-government aligned electorate. One participant, an SRP activist, told of how he was prevented from voting by the Commune Chief because he did not have a national ID card. The activist in question should, as a matter of course, have been allowed to use a Form 1018 or other form of identification in order to vote,⁴⁴ but was prevented from doing so. The activist lodged an appeal to the local authority. At the time of the forum his complaint had yet to be resolved. One participant alleged that in Chey Commune, Battambang province, three out of 14 of the polling stations were located in CPP supporters' homes. He said that this led to some non-CPP voters not voting as a result of feeling intimidated.

Many participants spoke about vote-buying. In Ratanakiri one participant stated that the local authorities in his commune gave gifts to CPP supporters and told others they could only receive gifts if they said they would vote for the CPP. When they were asked who the gifts were from, it was claimed that they were from the United Nations.⁴⁵

“Officials in my commune went from house to house asking those of us who wanted to register who we were going to vote for. My next-door neighbor, an elderly grandmother, was told that if she voted for the CPP she would receive a gift. I went to Radio Free Asia to complain and they then spoke to the local authority. The local authority claimed it was a lie and said because I protested[against] land grabbing that I was saying it because I was an opposition supporter. The local authority then came to visit me and told me not to go to ADHOC with my complaint.”

– A community representative at the Ratanakiri Forum, 11 November 2010

⁴⁴ Article 54(b) of LEMNA.

⁴⁵ Account relayed by a participant from Ratanakiri at the Ratanakiri forum on 11 November, 2010.

Guaranteeing Free Expression of Electoral Will

The incidents relayed by participants during the forums and the failure of the electoral authorities to combat such incidents is in violation of international standards of free expression of will. Pursuant to the Human Rights Committee General Comment No. 25, “persons entitled to vote must be free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”⁴⁶ Furthermore, as local authorities form a crucial part of the infrastructure for the dissemination of information, reports of political bias and intimidation severely compromise the integrity of the information that is distributed to the people.

The NEC, in collaboration with UNDP, released an information booklet in 2007 to village chiefs providing a code of conduct outlining how they should behave in the exercise of their duties (the “Handbook”). The Handbook directs village chiefs “to maintain... neutrality and impartiality... [providing] the same service and information to all villagers, regardless of their political affiliations”.⁴⁷ This was reiterated in a directive issued before the Commune Elections of 2007, which stated that village chiefs, who stand for commune positions, should not use their positions as village chiefs to “gain political advantages.”⁴⁸ Whilst there are provisions and guidance in place that reflect international standards for guaranteeing the exercise of free will, from the experiences recounted by participants at the Forums these are not actualized in practice, with the actions of the local authorities, in particular village chiefs, having the effect of isolating and intimidating people from civic participation. The fact that in Ratanakiri voters are being penalized for simply exercising their right to freedom of expression through protesting against issues that directly affect their lives is extremely worrying and shows a lack of understanding on the part of the local authorities of what democratic participation truly means. The right of any individual to vote cannot be removed as a result of his/her exercise of his/her right of freedom of expression and/or freedom of assembly. Voting is one way of participating in the public affairs of the nation, as is participation in a peaceful demonstration. The two are mutually exclusive and are both fundamental tenets of exercising rights under Article 25 of the ICCPR.⁴⁹

The NEC has a role to play in this context in terms of disciplining village chiefs who violate the rules, but also in ensuring that the legislation relating to the conduct and administration of elections is respected and enforced. For example, Article 45 of the

⁴⁶ Human Rights Committee, *General Comment No. 25*, supra note 11, paragraphs 19 and 25.

⁴⁷ National Election Committee, ‘*Information Booklet For Village Chiefs And Their Subordinates On Their Obligations In Times of Elections*’, (2007), p. 8, available at: <http://omega.nextgenerationwebhost.com/~nec/sites/all/files/BOOKLET%20FOR%20VILLAGE%20CHIEFS%202007.pdf>.

⁴⁸ National Election Committee, ‘*Directive for Members of Commune/Sangkat Council’s Members, Chiefs of Villages, Deputy Chiefs of Villages and Villagers’ Members who Stand as Candidates for the 2007 Commune Council Elections*’, (22 December 2006), p. 8, available at:

<http://omega.nextgenerationwebhost.com/~nec/sites/all/files/Directive%20on%20the%20code%20of%20Conduct%20of%20village%20Chiefs%20standing%20for%20Commune%20Elections%202007.pdf>.

⁴⁹ See Human Rights Committee, *General Comment No. 25*, supra note 11, paragraph 25.

LEMNA gives discretion to the NEC to determine the location of polling stations, in accordance with regulations and procedures. It is fundamental that the NEC examines these regulations and ensures that they make clear that using a party member's house as a polling station compromises the integrity of the election. The Code of Conduct prohibits the buying of votes using material or money⁵⁰ while the LEMNA sets out the penalties for those who use "*coercion to secure a promise to vote for a candidate or political party that he (it) desires.*"⁵¹ The NEC must enforce these provisions and investigate complaints. In addition, any act of intimidation should be properly punished in accordance with the Code of Conduct, and LEMNA.

⁵⁰ National Election Committee, *Code of Conduct for Political Parties, Candidates and Political Party's Agents during the election of National Assembly members*, July 2008, p. 3, article(iv) (10), available at: [http://omega.nextgenerationwebhost.com/~nec/sites/all/files/Code%20of%20Conduct%20for%20Political%20Party%202008.p](http://omega.nextgenerationwebhost.com/~nec/sites/all/files/Code%20of%20Conduct%20for%20Political%20Party%202008.pdf)
[df.](http://omega.nextgenerationwebhost.com/~nec/sites/all/files/Code%20of%20Conduct%20for%20Political%20Party%202008.p)

⁵¹ Article 124 of the LEMNA.

Recommendations

- The RGC should ensure that every citizen is entitled to support the party of his/her choosing, and is free from intimidation and discrimination as a result of his/her political allegiance. The RGC must ensure that all levels of government - national and sub-national - are impartial in carrying out their duties and respect the plurality of political choice of the people.
- The RGC should ensure the right to freedom of expression of all people in Cambodia, including opposition political parties and their supporters. This requires the RGC to ensure that citizens can express their opinion free of fear and favor, including through peaceful protest. It also requires a commitment to a free media environment, which affords equal access for all to all forms of media. The establishment of an independent broadcasting regulating authority is fundamental in this regard.
- The NEC should continue to inform local election administrators that they must not show bias towards people who are of different political affiliations than themselves and that they must not intimidate others when voting. An important way of doing this will be to educate administrators about the sanctions they may face if they intimidate or show bias in favor of or against anyone.
- The NEC should ensure that its regulations on the neutrality of the venues of polling stations are implemented through pre-polling vetting of all polling station venues.
- The NEC should penalize those who commit offences that breach the LEMNA or Codes of Conduct appropriately by, for example, imposing a fine. If local officials are allowed to continue to act in breach of these regulations with impunity there is no incentive for them to change.
- Given the frequency with which allegations of voter intimidation have been recorded, the RGC, in consultation with the MoI, political parties and civil society, should revise the provisions in the LEMNA and/or the Code of Conduct to ensure that they clearly set out what constitutes an act of intimidation and to clarify which institutions monitor and sanction such practices.
- To further combat vote-buying, the NEC, as part of its mandate of civic education, should ensure that people understand why they should not sell their vote. This should be combined with education about the procedures that voters must follow if they are made aware of an act or attempt of vote buying.

6. Election Administration

As noted in the previous chapters, acts of intimidation and partiality that compromise the fairness and freeness of the democratic process were recounted by participants at all the Forums. With participation in elections being a core mechanism through which people partake in public affairs, having an independent electoral administrator is vital to end impunity with regard to these acts and to ensure the integrity of the electoral process.

The ICCPR requires an effective remedy for a person whose rights or freedoms have been violated *“by persons acting in an official capacity.”*⁵² Article 39 of the Constitution provides that *“Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.”* Furthermore, the Declaration on Free and Fair Elections provides that *“every individual who is denied the right to vote or to be registered to vote shall be entitled to appeal to a jurisdiction competent to review such decisions and correct errors promptly and effectively. States should ensure that complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority.”*⁵³

The NEC is the main electoral administrator with lower level electoral administration being appointed during the election period in the form of PECs and CECs. The LEMNA defines the NEC as *“an independent and neutral body”* and provides that *“in the carrying out of its duties Members of the [NEC] and those of Electoral Commissions at all levels shall be neutral and impartial in the implementation of their electoral duties.”*⁵⁴ The NEC can delegate tasks and responsibilities down to the lower level of the electoral administration. It is crucial that such delegation, which can involve handling certain complaints and appeals, is accordance with the NEC's own Regulations and Procedures.

Complaints Resolution

One of the NEC's electoral duties is to hear complaints related to election processes. The NEC is an administrative body that is also the main body for complaints regarding electoral irregularities. Its mandate includes the capacity to hand out fines for breaches of the LEMNA. Decisions announced by the NEC do not legally preclude the courts from imposing criminal penalties if a parallel complaint is filed before the court. Some complaints can be filed at a local level with cases going to the NEC through appeal from the lower administration or filed directly with the NEC if the complaint is against the lower administration. Whilst some stakeholders expressed the opinion that the delegation of certain issues by the NEC to the lower

⁵² Articles 2(3) (a) and (c) of the ICCPR.

⁵³ See Articles 2(4) and 4(9) of the IPU Declaration on Free and Fair Elections, supra note 5.

⁵⁴ Article 12 LEMNA.

administrative levels was a good development for conflict resolution, participants at the Forums who said they complained to their local electoral committees indicated they had received no response. Statistics from the EU electoral mission in 2008 show that at both CEC and PEC level in some provinces, 100% of complaints received about polling and counting were rejected on formal grounds without a hearing.⁵⁵ The reasons given for rejection included, for example, the filing of incomplete complaint forms.

According to statistics released by the NEC of 22 electoral complaints received by the NEC in 2010, 13 were dismissed while nine were resolved at the commune level.⁵⁶ These complaints related to commune clerks allegedly registering voters without sufficient proof of identification; claims that voters' names were missing from the voter list; and claims that commune officials had deleted voter names from the list. Whilst the number of complaints resolved at the commune level shows great improvement in the delegation of electoral responsibilities to the local level, there seems to be a distinction between the ways in which complaints are dealt with before elections and during voting. The fact that the majority of electoral complaints are being rejected is still a significant cause for concern.

“During the last election my local commune chief said that I could not vote as I did not have a national ID card. I appealed to the local authority regarding this but nothing happened. By law they need to be neutral, but in practice they are not.”

– Participant at the Battambang Forum, 21 October 2010

The lack of a comprehensive appeals process and the existence of a complaints procedure that is riddled with loopholes means that individuals who are denied a right to vote or political parties complaining against misconduct do not always have an effective right to appeal. For example, many stakeholders talked of the awkward timing for submitting a complaint in relation to National Elections. Polling and counting related complaints - a category of complaints that usually concerns threats and intimidation on polling day - must be filed before 11:30 a.m. the day after the Election. Chapter 11 complaints - those concerning misbehavior on the part of officials – must be filed up to three days after the event. It was argued by many stakeholders that the timeframe for submission of complaints is insufficient for parties to gather the evidence required to launch a complaint resulting in complaints being rejected on technicalities.⁵⁷ During the Closing Workshop it was mooted that the NEC and other electoral commissions accept the complaint first with the obligation to fulfill evidentiary requirements following afterwards. The Representative of the Mol at the Closing Workshop noted that a recommendation to increase the period for submitting a complaint by five days had been submitted by

⁵⁵ See European Union Election Observation Mission, supra note 38, p.14.

⁵⁶ Meas Sokchea, “Majority of electoral complaints rejected”, *The Phnom Penh Post*, 1 December 2010.

⁵⁷ Ibid. The SRP representative at the Takeo FORED on 17 November 2010, H.E. Mrs. Keo Vannaroath, spoke of the problems with this system saying by the time evidence was collated in respect of a complaint the NEC or PEC would say that the complaint was time-barred making the system of complaint ineffective and denying adequate redress for legitimate complaints that go to the heart of the fairness of the elections.

the Technical Working Group. If accepted by the RGC it would go to the National Assembly for consideration.

There is a lacuna in the operation of the NEC. If a violation is not listed in the law, such as the fraudulent issuance of electoral documents by local administration officials, the NEC is precluded from penalizing those responsible, thus allowing serious transgressions to take place with impunity.⁵⁸ The types of action that can follow a complaint are also vague. For example, the NEC can call for re-elections or recounts for “serious irregularities.” The term, however, is not defined in the legislation, providing the NEC with an undue degree of discretion to respond to allegations of misconduct, which could undermine the very integrity of an election.

The Composition of the NEC

Implicit in the problems identified with the manner in which the electoral administrator handles complaints, it was argued by some stakeholders,⁵⁹ is the “*inherent tension between the role of the NEC as the institution that administers elections and the body that receives and adjudicates complaints.*”⁶⁰ Some stakeholders questioned whether the body administering the election should ever be allowed to adjudicate on complaints against the administering of those elections, especially where that body is considered by many to lack neutrality and independence.

Whilst, pursuant to the terms of the LEMNA, NEC members are supposed to be independent, many questioned whether this is in fact possible given its structure and the way that members are appointed. NEC members are nominated by the Mol and appointed by Royal Decree at the request of the Council of Ministers upon the approval by an absolute majority of members in the National Assembly. However, as some commentators and observers allege “*all the institutions mentioned are currently dominated by the CPP.*”⁶¹ NEC members have no fixed terms and there are no safeguards against the arbitrary removal of members.⁶² Decisions within the NEC are taken by simple majority rather than consensus.⁶³ As a division of the Mol, the NEC receives its budget from the Ministry of Commerce,⁶⁴ depriving it of the power to autonomously administer funds and making it more susceptible to executive control.

⁵⁸ National Democratic Institute (NDI), ‘*Electoral Reform in Cambodia: Workshop Report*’, August 11 to 12 (2009), p. 17, available at: http://www.ndi.org/files/Cambodia_Electoral_Reform_Workshop_Report%202009.pdf

⁵⁹ This point was addressed by Mr. Hung Puthea, managing director of NICFEC, at the Takeo forum on 17 November 2010.

⁶⁰ The Asian Network for Free Elections (ANFREL), ‘*Cambodia National Assembly Election 27th July 2008: Report on the International Election Observation Mission by ANFREL*’, p. 59.

⁶¹ European Union Election Observation Mission, *supra* note 38, p. 15.

⁶² Article 15 of the LEMNA states that the dismissal of the Chairman or the Deputy Chairman or members of the National Election Committee is the competence of the National Assembly.

⁶³ In practice the enlargement of the NEC to nine members means that the SRP and FUNCINPEC can currently both nominate two persons for membership with the rest being nominated by the CPP. However, the simple majority means that opposition nominees can be easily overruled. Furthermore, they cannot put forward proposals because internal regulations require at least three members of the NEC for a proposition, see Articles 12 – 17 of the LEMNA.

⁶⁴ Article 121 LEMNA.

The legal structure and provisions governing the NEC have led many commentators to question the ability of the NEC to ensure a fully independent administration of elections. Many stakeholders in the consultation, and both participants and panelists at the Forums, doubted its ability to ensure fully independent administration of elections. They pointed to the fact that many of the names that were allegedly removed from the voter list were those of opposition supporters, the fact that complaints by opposition supporters to the NEC were regularly rejected and that electoral officials could misuse Forms 1018 for the benefit of the CPP with impunity as examples of its lack of neutrality. Some civil society actors argued that in spite of the law requiring independence and relinquishment of affiliations, the reality is that in the current structure, NEC members are members of political parties that are sure to find benefit for their party in any decision the NEC makes.⁶⁵

Reforming Electoral Administration

An independent, neutral and competent election administrator that is capable of dealing effectively with complaints is fundamental to allow voters to feel confidence in the electoral process. Citizens must have faith in the mechanisms of oversight otherwise they are less likely to vote. This necessarily requires a respected and effective NEC. Any reform of the complaints process of the electoral administrator must include changes to its legal structure. Without such action any changes to deal with oversight will be worthless if the body carrying it out continues to be viewed by the electorate as lacking neutrality and impartiality.

Some stakeholders argued that greater political diversity within the NEC and local electoral administration is needed, whilst others stressed the need for neutrality and thus called for a wider membership. Membership could, for example, include academic experts, political analysts, lawyers etc., rather than politicians alone.⁶⁶ Such an approach, it was posited, could instill the necessary level of independence and neutrality into the decision making of the NEC and increase its credibility in the eyes of the electorate. Some stakeholders called for the establishment of an independent neutral ombudsman to adjudicate over such complaints. It was generally agreed that such a step was needed given questions of the independence of the NEC and the conflict between having an institution act as both administrator and monitor and adjudicator. Some stakeholders also argued that such a new independent ombudsman was needed given the fact that NEC decisions may be reviewed by the Constitutional Council.⁶⁷ Whilst it was agreed that this was a good development in providing a much-needed level of judicial review of NEC decisions, concerns were expressed about the independence of the Constitutional Council⁶⁸ given its close links to the executive and the executive's dominance over the National Assembly.⁶⁹ An independently constituted tribunal established by law

⁶⁵ Comment from Kek Kalabru, president of LICADHO, during consultation on 27 September 2010.

⁶⁶ The Election Commission of Indonesia, the KPU, is comprised of a number of experts with some levels of success.

⁶⁷ Article 117 of the Constitution.

⁶⁸ Article 118 of the Constitution.

⁶⁹ Asian Human Rights Commission, 'Cambodia: The authorities must ratify the First Optional Protocol to the ICCPR Now', (22 March 2006), available at: www.ahrchk.net/statements/mainfile.php/2006statements/459/.

rather than by an institution, much like the arbitration model for labor law, was proposed by a participant at the Closing Workshop as the appropriate way forward.

Recommendations

- The RGC and Mol, as part of the work of the Technical Working Group, should consider reforming the composition of the NEC to ensure that it operates as a fully independent and impartial institution at all levels of electoral administration. Any reform should ensure that the NEC does not comprise only of members of political parties but of independent candidates, for example academic experts, political analysts and lawyers. A selection committee comprised of diverse representatives from different sectors should choose members.
- Security of tenure of members of the NEC and the absence of arbitrary removal will give confidence to members of the NEC to complete the tasks with which they are charged and limit the potential for executive control. Amending the rules of the NEC so that they cannot work for a political party immediately after leaving the NEC will ensure that members are less susceptible to political influence. Fixed terms for NEC members will ensure that it does not become institutionalized and will allow for fresh ideas to be brought to the body.
- As part of efforts to bolster the independence and impartiality of the NEC, the RGC should make the necessary changes so that the NEC has an independent, legally mandated budget.
- Reform of delegation of responsibilities from the NEC to the lower level electoral administration, particularly commune chiefs and village chiefs should be considered given concerns of lack of competence and impartiality at the lower levels. More training, support and oversight must be provided by the NEC over the activities of the PEC and CEC, particularly with regard to voter registration, national ID cards, Forms 1018 and distribution of Voter Information Notices.
- The RGC and National Assembly should consider the procedures relating to the settlement and submission of complaints, with consideration given to the establishment of an independent tribunal for complaints. If not, the LEMNA must be more clearly formulated so that the NEC can enforce the law and address serious electoral irregularities. The general jurisdiction of the NEC to address all types of complaints related to the electoral process needs to be re-instated. Inherent in the recommendation to re-establish the general jurisdiction of the NEC to address complaints is the need for the NEC to be reformed. Without impartiality of election commissions, complaint resolution processes will fall short of what is needed and impunity will continue to be prevalent.
- The RGC and National Assembly should amend the law to revise either the deadlines or the procedure for the submission of complaints following an election to allow those with complaints with adequate time to submit evidence.
- The LEMNA and other rules and procedures applicable to the NEC and

electoral administration should be re-examined to ensure terms relating to complaints and reviews are defined appropriately. For example, “serious irregularities” must be given a clear and unambiguous definition under the law.

- Civil society organizations specializing in democracy and electoral issues need to engage in an active campaign informing relevant stakeholders and voters of the different complaints and appeals procedures available at the various stages of the electoral process.

7. Participation of Minorities and Women

“...the capacity and willingness of individuals to participate in democratic processes and make governance choices cannot be taken for granted. It is therefore necessary to develop conditions conducive to the genuine exercise of participatory rights, while also eliminating obstacles that prevent, hinder or inhibit this exercise. It is therefore indispensable to ensure the permanent enhancement of, inter alia, equality, transparency and education and to remove obstacles such as ignorance, intolerance, apathy, the lack of genuine choices and alternatives and the absence of measures designed to redress imbalances or discrimination of a social, cultural, religious and racial nature, or for reasons of gender.”

– Declaration on Democracy, paragraph 18

The participation of minorities is crucial for a democracy that is reflective of the plurality of cultures, religions and languages that make up the social fabric of a nation. This requires commitment from the state to ensure that the voices of minorities are not drowned out by the majority and that the processes of political participation do not discriminate on the grounds of race, sex, language or religious beliefs. Article 31 of the Constitution guarantees equality to all, *“regardless of race color, sex, language, religious belief, political tendency, birth origin...”* Furthermore both the UDHR and the ICCPR contain anti-discrimination obligations with regards to all the guarantees they contain.⁷⁰

Participation of Indigenous People

Cambodia has acceded to the International Convention for the Elimination of All Forms of Racial Discrimination (the “ICERD”)⁷¹ and should, as a United Nations member state, act in accordance with the General Assembly Declaration on the Rights of Indigenous Peoples. Pursuant to its obligations under the ICERD, which are guaranteed in Cambodian law by Article 31 of the Constitution, the RGC needs to ensure that all minority groups in Cambodia are able to enjoy human rights on the same basis as the Khmer majority. This includes ensuring that minority groups have equal access to voting rights as guaranteed under international law and the Constitution.

Indigenous peoples in Cambodia face unique challenges in fully realizing their rights to participation and access to information. Linguistic differences, geographic isolation, and lack of adequate education mean that they are less equipped to participate in electoral and democratic processes at both national and sub-national level.

⁷⁰ See Article 2 of the UDHR and the ICCPR respectively.

⁷¹ United Nations International Convention for the Elimination of Racial Discrimination (1966). Cambodia acceded to the ICERD in 1983.

“The indigenous community faces difficulties getting information about the registration process. The low level of Khmer literacy in the area means that many people do not understand what the banners the NEC puts up say. The information cannot be understood through pictures alone. Authorities should announce what needs to be done to register on the radio and also via local announcements by loud speaker.”

- Participant at the Ratanakiri forum, 11 November 2010

The government has a duty to help indigenous communities overcome difficulties such as illiteracy and language barriers which prevent their members from exercising their right to vote, including making available information and materials about voting in minority languages.⁷² At the forum in Ratanakiri, one man spoke of the difficulty indigenous people face in accessing information about registration and voting. He explained that there were posters advertising the voter registration period but these were in Khmer – a language that many indigenous people cannot read or understand. He argued that even if there were pictures, people were not sufficiently knowledgeable about the process to understand what the pictures symbolized.

It is fundamental that the RGC develops these indigenous language materials and works with civil society to ensure that minority groups, particularly indigenous groups, are adequately empowered to exercise their right to vote. These materials must take into account the fact that the indigenous languages are not written by, for example, being produced in audio format and being played on the radio and/or loudspeakers in villages and communities.

Barriers to Participation of Women

The Forums raised issues about barriers to participation of women in electoral and democratic processes. An indigenous woman in Ratanakiri spoke about how the local authority had told her that because she was a woman and she had protested in a land dispute she did not have the right to vote. Low levels of understanding of law and basic rights means that some indigenous women will believe this to be the case, particularly as they view the local authority as, in the words of the woman at the Ratanakiri forum, a ‘parent.’ Not only does this show that people are not allowed to freely voice their opinions or protest without fearing that they will be disenfranchised, it illustrates a fundamental gap in knowledge of basic rights amongst indigenous and isolated communities which local authorities are actively taking advantage of.

The fact that the woman in question was told that she could not vote on the ground that she is a woman is concerning. Cambodia has ratified the Convention for the Elimination of Discrimination Against Women (“CEDAW”)⁷³ and Article 45 of the Constitution abolishes all forms of discrimination against women. Article 7 of

⁷² Human Rights Committee, *General Comment No. 25*, supra note 11, paragraph 12.

⁷³ United Nations International Convention for the Elimination of Discrimination Against Women (1981).

CEDAW specifically provides for state parties to take all appropriate measures to eliminate discrimination against women, and to ensure that they are on equal terms with men, with the right to vote in all elections. However, in reality, it appears that those with lower levels of education continue to be vulnerable to infringements of their civil and political rights with women, especially those in remote communes, still struggling to find a voice in the political sphere.

The complaints from women and indigenous populations are evidence of areas that still require development under the RGC's Decentralization and De-Concentration program.⁷⁴ The Decentralization and De-Concentration program is a key aspect of the RGC's Rectangular Strategy, one of the basic principles of which is to ensure that people, especially women, vulnerable groups and indigenous people, can participate in decision-making.⁷⁵ It is fundamental that the rights of minorities and others are enhanced under the Decentralization and De-Concentration program to ensure that they no longer remain on the periphery of democratic participation but are able to actively participate in matters that directly affect their lives.

The Vietnamese Question

Participants at the forums also expressed concerns about the perceived practice of illegally issuing ID cards and illegally registering Vietnamese immigrants. These concerns were expressed in all of the Forums and dominated the comments made by participants at the Takeo forum with many expressing concerns that local authorities are manipulating family books and other forms of identification so that Vietnamese nationals get 'national identity' and can thus vote as a Cambodian citizen. Such practices, if they are indeed taking place, are extremely concerning and undermine the rights of the Cambodian people to determine the composition of their own government. However, from the comments made at the Forums, it is apparent that anti-Vietnamese sentiments⁷⁶ may be causing discrimination and the isolation of legitimate participation in democracy by ethnic Vietnamese people who are Cambodian citizens.⁷⁷ It is fundamental to distinguish between ethnic Vietnamese who are Cambodian citizens and a minority in Cambodia, and Vietnamese citizens living in Cambodia who do not have citizenship. The former,

⁷⁴ Over the past few years, various legal and regulatory frameworks have been developed for decentralization, i.e. the development of management systems at provincial, district, khan and commune levels, which are based on 'democratic participation', aimed at developing local order and delivery of public services to meet the needs of the people at local level. See Strategic Framework for Decentralization and De-concentration, June 2005 [http://www.ncdd.gov.kh/attachments/026_2005%20Strategic%20Framework%20for%20Decentralization%20and%20Deconcentration%20Reforms\(Eng\).pdf](http://www.ncdd.gov.kh/attachments/026_2005%20Strategic%20Framework%20for%20Decentralization%20and%20Deconcentration%20Reforms(Eng).pdf).

⁷⁵ Ibid.

⁷⁶ It is interesting to note in a 2003 Asian Foundation survey on democracy in Cambodia the vast majority of those surveyed supported the right of non-ethnic groups to vote – 90% of those surveyed supported the rights of members of Chun Chiet, a highland tribal group to vote, with 85% supporting the voting rights of Khmer Krom, 76% supporting the voting rights of Cham Muslims and 69% supporting the voting rights of ethnic Lao. In contrast, only 57% said that ethnic Vietnamese with Cambodian citizenship should have a right to vote. See The Asia Foundation, *Democracy in Cambodia 2003: A Survey of the Cambodian Electorate*, draft 16 May 2003, p. 79, available at: <http://asiafoundation.org/pdf/DemocracyinCambodia.pdf>.

⁷⁷ At a NEC public meeting in 2010, Mean Satik, an NEC member, stated in response to the question of illegal Vietnamese immigrants unlawfully registered as voters that fluency in Khmer was not a requirement for those voting in Cambodian elections and that so long as an individual could prove he / she is a Cambodian citizen, he/she had the right to vote. Mr. Mean went on to say that if it was established that an individual had cheated authorities or the Mol, the NEC would delete their names from the voter list. See Meas Sokchea, "Majority of electoral complaints rejected", *The Phnom Penh Post*, 1 December 2010 and Eang Mengleng, "SRP Asks NEC to Delete Illegal Vietnamese Voters", *The Cambodia Daily*, 1 December 2010.

who are legitimate, legal Cambodian nationals, are entitled to vote, irrespective of their Vietnamese origin. The latter have no right to vote and the practice of issuing them ID cards and registering them to vote is undemocratic and illegal.⁷⁸

As noted above, all rights in the ICCPR are provided to citizens on an equal basis. Similarly, the provisions of the Constitution apply to “Khmer citizens.” Therefore once an individual is deemed a Khmer citizen, he/she is protected by the Constitution from discrimination and guaranteed the right to vote, once they have reached the age of majority notwithstanding their origin of birth. The General Comments of the Human Rights Committee on the right to vote and participate in public affairs states that “[d]istinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25 [right to participate in public affairs, voting rights...].”⁷⁹ The problem of illegal registration of non-Cambodians is extremely concerning. It is essential that the NEC be confident that those who are on the voter list have the proper documentation. In this context however it is also important that everyone bears in mind the distinction between Cambodian citizens who are ethnic Vietnamese and non-Cambodian citizens, and that anti-Vietnamese sentiment does undermine the political rights of legal Cambodian nationals.⁸⁰

⁷⁸ It was alleged by some civil society members in the previous elections that Vietnamese migrants were being granted ID cards and told to vote for the CPP. For further information see, *Idealism Without Illusions; Lessons from Post Conflict Elections in Cambodia, Rwanda and Sudan*, (January 2008), “The 2008 Cambodia Elections by Britt Lake and Julie Sawyer, p. 14, available at: [http://aceproject.org/ero-en/misc/to-be-filed/Idealism_Without_Illusions-Lessons_from_post_Conflict_Elections\(2008\).pdf](http://aceproject.org/ero-en/misc/to-be-filed/Idealism_Without_Illusions-Lessons_from_post_Conflict_Elections(2008).pdf).

⁷⁹ Human Rights Committee, *General Comment No. 25*, supra note 11, paragraph 3.

⁸⁰ In 2010, the NEC heard allegations from an SRP councilor in Prampi Makara district, Tep Chan Sokheya, who claimed that three Vietnamese had been placed on the voter list despite being illegal migrants. The NEC dismissed the case saying they were placed on the list based on their nationality documentation. See Meas Sokchea, “NEC dismisses vote-list deceit case”, *The Phnom Penh Post*, 5 November 2010.

Recommendations

- The NEC should recognize the unique challenges faced by indigenous communities in realizing their rights to participation as a result of linguistic differences, geographic isolation and lack of access to education. The NEC should work with civil society to develop civic and voter education programs aimed at ensuring that these communities have the requisite knowledge and skills to participate fully in elections and other democratic processes.
- The NEC should announce and explain on local radio and through loud speakers in isolated and remote areas with indigenous populations in indigenous languages voter registration and the relevant steps each individual must take, taking into consideration indigenous dialects in a particular area.
- The RGC must act to end discriminatory practices against women and encourage participation of women in all areas of electoral processes and democratic practices. The RGC and the Ministry for Women’s Affairs should ensure that all local authorities are trained on gender equality issues and are reminded that the right to vote is guaranteed to all eligible Cambodian citizens, regardless of sex.
- To the extent it occurs, the MoI and other ministries should ensure that the practice of registering Vietnamese who are not Cambodian citizens on voter lists stops immediately.
- The RGC must act to end discriminatory practices that affect ethnic Vietnamese and remind all Cambodians that ethnic Vietnamese who are Cambodian citizens have the right to vote. Local authorities should be reminded that the right to vote is guaranteed to all Cambodians who are of legal age, regardless of their ethnicity.
- Civil society organizations should work with the RGC, the MoI and the Ministry of Women’s Affairs to help disseminate information and training on minority and women’s rights and to encourage the participation of minorities and women in electoral and democratic processes.

8. Democratic Engagement Outside Elections

Democratic engagement can take a number of different forms. Voting is perhaps the clearest and most fundamental way in which citizens can engage in the democratic process by choosing their own leaders and indicating how they want their country to be governed. Equally important, however, is the manner in which citizens interact with their elected representatives between elections, the access they have to democratic institutions and the extent to which they can hold their government accountable.

Democratic Participation at the Local Level

The Declaration on Democracy provides that “*democratic institutions and processes must foster decentralized local and regional government and administration, which is a right and a necessity, and which makes it possible to broaden the base of public participation.*”⁸¹ The RGC’s decentralization plan emphasizes the importance of participation at a local level and strives to achieve this national and sub-national level of participation.

However, citizens continue to lack opportunities for democratic engagement with lower levels of government. This is likely to be the result, at least to some extent, of a paternalistic culture in which leaders expect a reverence towards authority and constituents view their relationship with local authority as akin to that of a parent-child relationship. This seems to be accompanied by a growing lack of belief that things will change. As noted by a female participant at the Ratanakiri forum, “[t]he CPP is our parent, how is the child supposed to change its parent?”

This viewpoint of seeing authority as a parent is the product of a hierarchical view of society in which less powerful people, like the ordinary citizen, are not only removed from decision-making but do not see how ordinary people can affect the decisions of those who are seen as higher in the hierarchy. A 2009 World Bank survey, for example, found that while a large number of respondents attended commune council meetings, most of this participation was passive, with less than 10% of people who attended speaking and an even smaller number daring to raise problems.⁸² The survey noted that people living in patrimonial cultures tend not to speak publicly for fear of rejection or losing face unless invited to.⁸³ As noted by participants at the Forums, a restricted sphere of freedom of expression, where criticism of the government is often met with intimidation or threats of criminal sanction, operates to prevent voices from being heard and removes the ordinary person from the decision-making process.

⁸¹ IPU, Declaration on Democracy, supra note 12, paragraph 23.

⁸² The World Bank, supra note 1, p. 30.

⁸³ Ibid.

“The authority is like our parent, then why do they not protect us from the private company that is grabbing our land? When we complained we were oppressed and blamed for the way we brought the complaint. If this is the reaction we get, then from whom can we seek help?”

A Boeung Kak Lake resident speaking at the Phnom Penh forum, 2 December 2010

Participants and panelists at the Forums acknowledged that in recent years more parliamentarians have recognized that their obligation is to serve the electorate and not the interests of their parties. Panelists and participants agreed that this improvement needs to continue and that parliamentarians, and officials at all levels, need to listen to the complaints of their constituents to find solutions to the problems they face. Many noted however that there is still a failure to listen to the voices of the electorate and to consider the impact of decisions on the lives of the electorate, an accusation that was levied at all political parties. This was most emphatically emphasized at the Phnom Penh Forum by residents of the area adjacent to Boeung Kak lake, who are the subject of an ongoing mass land eviction that will result in the displacement of around 4,000 families.⁸⁴ Residents stated that despite trying to make their concerns and complaints heard by local authorities and even the Prime Minister, they have been oppressed and ignored, at times even chastised for the way they handled their complaints. The residents taking part in the Phnom Penh Forum noted how promises before the 2008 elections by the ruling party that Boeung Kak lake would not be sold have been broken. The most prevalent complaint amongst these residents was the perception of a lack of genuine desire on the part of the authorities to resolve a problem that could leave these people homeless and destitute, with total disregard for the broader issues of displacement and economic migration. As one female resident poignantly asked, “[w]hat is the benefit of elections to the country or the people when things like the eviction at Boeung Kak happen?”

Although the MoI representative at the Phnom Penh Forum stated that the decentralization reform is aimed at making it easier for representatives at the lower level to listen to the complaints of the people, participants at all the forums voiced skepticism as to whether these reforms would give rise to any real change. The feeling seemed to be that representatives in every level of government and political parties in general were not responsive to the needs of the people.

Civic Participation – Building the Link Between Citizens and the State

⁸⁴ Bridges Across Borders Cambodia, ‘World Bank Investigates Cambodian Land Titling Projects As Thousands Face Forced Evictions’, (1 June 2010), available at: <http://www.babcambodia.org/newsarchives/world%20bank%20investigates%20Cambodia%20land%20titling%20projects%20as%20thousands%20face%20forced%20eviction.html>

Fundamental to any change in public participation at local levels is not just a change in the mindset of institutions about the merits of and the need for public participation, but an understanding amongst the people themselves of the role they play in a democracy, in demanding change and reform. The people need to see themselves as a central cog in the wheel of democracy. To truly improve and strengthen democratic practices, people need to realize that their representatives are accountable to them and that their participation is fundamental in the progressive development of the economic, political, social and cultural life of the nation, even if this may be a long and drawn out process. Access to information is key in this regard. At the forum in Ratanakiri one participant asked about the basis for granting land concessions, asking if consultation regarding the granting of concessions needed to happen in advance. The answer to this question is crucial to the continued struggle that the man's community faced with regards to land conflicts. This information, however, has not been made available to the community. Citizens should be encouraged to demand such information in order for them to be able to fully pursue their political rights and to have a say on issues that affect their lives. Statistics show that whilst 94% of people think it is important to be informed about Cambodian laws, 72% know little to nothing about laws.⁸⁵ If information on law was readily available the participant in Ratanakiri, for example, may have known that public consultation on land concessions is prescribed by law as a matter of course.⁸⁶ With that information he would have had a stronger basis to demand good governance and accountability from his representatives and consequently vote for change if that was what was viewed by him as necessary.

In addition to increasing access to information, the confidence of the Cambodian electorate needs to be built through capacity-building initiatives so they can ensure the accountability of elected representatives to the electorate. The space within which citizens can engage at the local level needs to be expanded. To aid public participation, the NDI has organized multi-party dialogues since 2004 *"to provide an avenue for broader interaction and more meaningful engagement between citizens and their elected representatives."*⁸⁷ These types of projects are positive developments that will increase the public's awareness of the fact that they can, and should, have an effect on what occurs in their community and beyond. However, more still needs to be done to ensure that people understand the level of change that they, themselves, can affect. Many people at the Forums were genuinely perplexed by what they could do if they were not happy with government action. More needs to be done to explain what steps are available to them, from submitting petitions, to protesting, to recognizing that they can bring about change through the way they exercise their vote. People also need to see evidence that they can discuss these things without fear of repercussions from the authorities. Only when the public is confident to discuss political issues openly, without fear of recrimination, can a country experience true democracy.

⁸⁵ World Bank, *supra* note 1, p. 21.

⁸⁶ For example, The Sub-Decree on Economic Land Concessions 27 December 2005 provides that an economic land concession may only be granted when a number of criteria are met, which include public consultation between territorial authorities and local residents relating to economic land concessions projects or proposals.

⁸⁷ National Democratic Institute, *'Report on Constituency Dialogues in Cambodia: Covering the Program Period of October 1 2008 to September 30th 2009'*, p. 3, available at: http://www.ndi.org/files/Report_on_Constituency_Dialogues_in_Cambodia%20_2009.pdf

Recommendations

- The RGC and the MoI should work in collaboration with civil society to increase the ways in which ordinary people have the chance to raise queries directly with local authority and National Assembly members. National Assembly members from all political parties should also investigate routes through which members of their constituency and the public generally can contact them directly. The RGC, MoI and other appropriate stakeholders should organize public forums in respect of any and all laws so that information is disseminated at a local level.
- The RGC, local authorities and public institutions should give due consideration to the concerns and suggestions of citizens with responses being made as soon as practicable.
- The RGC should make public information more readily available and accessible. To improve access to public information, the RGC should draft and implement a freedom of information law.
- A public education system should be implemented to educate the public about the difference they can make to their own lives by engaging with the political process. This should include training on law, human rights and democracy and include how individuals can engage with local and national authorities. This public education also needs to include education about the political accountability of government officials. If members of the public understand the responsibilities and powers their local representatives have, they will be better able to make informed decisions on voting and better able to hold their officials to account.
- Civil society should continue to provide neutral arenas for public debate so that all opinions can be heard without fear or intimidation. The RGC should assist this by reassuring the public that they are allowed to discuss political or controversial issues without punishment.

9. Election System

Whilst issues pertaining to voter registration, intimidation and harassment in the exercise of electoral will, limitations to democratic participation and perceived shortcomings of electoral bodies were all raised as important issues during the Forums, the Closing Workshop extended the remit of inquiry into these issues. Participants at the Closing Workshop took a step back to ask a bigger question about the efficacy and fairness of the election system as a whole and how that impacts on democratic space in Cambodia. It was argued that without consideration of this larger issue, the issues identified at the Forums would not necessarily be resolved as the election system itself can affect the behavior of institutions as a whole. For example, it was noted that district and provincial councils are elected by the commune councils and not by the public. Whilst the public votes in commune elections, they do not directly appoint district and provincial councils. It was argued that this form of ‘indirect election’ fails to strengthen the accountability of elected officials towards their constituencies but rather encourages a feeling of obligation towards those elected members from the major political parties and commune council that put them in the position of power in the first place.

The Cambodian political system operates a form of proportional representation. There are 123 seats in the National Assembly elected in 24 constituencies (20 provinces and four municipalities). Of these 24 constituencies, 15 are multi-seat constituencies and nine are single seat. The people vote for the party rather than the individual. Political parties submit candidate lists for constituencies based on the number of seats that are available. Political parties must also submit the names of alternative candidates. Party leadership has control of the content of the list, arguably “*making candidates on the party list more loyal to the party leadership than to their own constituents.*”⁸⁸ Furthermore, citizens cannot stand for elections as independent candidates and thus candidates cannot be independent from a political party.

It was argued during the Closing Workshop that the current electoral system helps breed the apathy and lack of accountability that was commented on by so many participants during the course of the Project. It was noted that a system whereby people vote for a party rather than an individual, and where there is indirect voting at the local level, does little to encourage National Assembly members to communicate with the electorate regarding their actions as elected officials and deliver on their promises. Rather, it was perceived by the majority of those who spoke on this topic at the Closing Workshop that the system takes power away from the people and places it back with political leaders who are in control of the candidate lists and who can orchestrate the removal of those who fail to work towards the party’s interests. It is worth reflecting on the fact that during the third mandate of the National Assembly (2003-2008), for example, at least 13 members of

⁸⁸ COMFREL, *Cambodian Democracy, Elections and Reform: 2009 Report*, Supra note 3, p.4.

the National Assembly were removed from their position because they held viewpoints on policy issues that conflicted with the party line.⁸⁹

A number of speakers at the Closing Workshop proposed a plurality voting system as the new electoral system, whereby the electorate votes for a person rather than a party. It was argued that this would ensure greater levels of accountability, more responsive democratic practices and a fairer and more equitable electoral system. Others, however, expressed some trepidation about such a proposal, arguing that a plurality voting system, as used in the United States of America, was dangerous for Cambodia with its nascent democracy and where corruption continues to be rife. It was argued that more time and thought was needed on how to develop the electoral system. Some argued that such a proposal would be good at a local level where the dynamics of responsibility between the elected representative and constituent was fundamental and to encourage a more active citizenry. It was argued that the system could work at a local level and aid in answering calls for a more neutral and less partisan officials.

Recommendations

- The RGC should form a technical working group composed of political parties, civil society organizations and local and international experts to discuss a system of plurality of voting and the extent to which such a system would work and/or is needed in Cambodia.
- The RGC and the National Assembly should consider allowing independent candidate lists.

⁸⁹ Ibid.

10. Conclusion

The information collected during the Project provided evidence of areas in electoral processes and democratic practices in Cambodia where improvements are being made and highlighted a number of issues of concern in relation to electoral and democratic practices. At present there still remain deficiencies that prevent the democratic system from fully representing the interests and the will of the Cambodian people. Voters have been disenfranchised, political partiality and intimidation continues to compromise the integrity of the electoral process, limitations on political participation and freedom of expression stymie real democratic development, political parties are precluded from competing on equal terms and citizens continue to be isolated from decision-making.

Cambodia's multi-party democracy is still young with great room for growth. In order to maintain and to encourage democratic development, an increase in civic participation is fundamental. This involves more than just the periodic holding of elections. It entails fostering the correct environment and expanding the democratic space needed to ensure that citizens understand and are empowered to actively participate in the political, economic, social and cultural life of the nation as guaranteed by the Constitution. Improving electoral processes is one way of achieving this greater participation, but equally attention and focus must be placed on the national and sub-national authorities to ensure that citizens can engage in democratic practices on a day-to-day basis.

CCHR welcomes the establishment of the Technical Working Group and commends the involvement of the RGC and Mol in the discussions that have already taken place with regards to reform. As “[e]lectoral reform necessitates the political will and directives of the country's leaders”,⁹⁰ it is welcome to see the formation of such a group and to hear that it is already recommending areas that are in need of reform. It is important to recognize that improved electoral processes and more responsive democratic practices relies upon the interaction of a number of actors including the RGC, the Mol, the NEC, local authorities, opposition parties, judges, police, civil society and the Cambodian people. In order to ensure that the right of public participation is respected in every aspect of Cambodia's democratic development, co-operation is required between the various stakeholders.

The 2012 Commune Elections and 2013 National Assembly Elections are critical to the development of Cambodian democracy. It is thus fundamental that all stakeholders consider and seek reform with regards to the issues of concern highlighted in the Report, in order to widen democratic space and strengthen electoral processes. We hope that the information and recommendations set out in the Report will support efforts to strengthen elections and Cambodian democracy.

⁹⁰ National Democratic Institute (NDI), *Electoral Reform in Cambodia: Program Consultations Report*, August 2009, p. 8.

11. Appendix

Stakeholders interviewed as part of the consultation process:

- Mr. Mam Sonando, President of Beehive Radio, interviewed on 22 September 2010
- Mr. Sok Sam Oeun, President of the Cambodian Defenders Project (CDP), interviewed on 23 September 2010
- Mrs Chea Vannath, independent analyst, interviewed on 24 September 2010
- Mr. Koul Panha, President of the Committee for Free and Fair Elections in Cambodia (COMFREL), interviewed on 29 September 2010
- Dr. Kek Kalabru, President of the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), interviewed on 27 September 2010
- H.E. Em Socheat, member of National Election Committee, interviewed on 28 September 2010
- H.E. Nhem Bonharith, Human Rights Party parliamentarian, 28 September 2010
- Mrs Mu Sochua, Sam Rainsy Party parliamentarian, 30 September 2010
- H.E. Sao Rany, Norodom Ranariddh Party parliamentarian, 30 September 2010
- H.E. Nhek Bunechhay, General Secretary of FUNCINPEC Party and Deputy Prime Minister, 30 September 2010

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