

The Asian Network for Free Elections
2018 Cambodia National Assembly Elections

PRE-ELECTION ASSESSMENT REPORT



1. Mission Profile

The Asian Network for Free Elections (ANFREL) conducted a Pre-Election Assessment Mission (PEAM) from May 5th to May 11th, 2018 in the Kingdom of Cambodia to assess human rights and electoral conditions in the country prior to the holding of the July 29, 2018 National Assembly Elections. The mission team was made up of five (5) international election experts from three countries (Indonesia, Philippines, and Sri Lanka) and was headed by Mr. Damaso Magbual, ANFREL Board Member and Spokesperson.

The mission team met with stakeholders representing members of human rights organizations, political parties, the media, labor unions, academics, diplomats, intergovernmental organizations, and youth and rural community leaders. Such engagements were made to ensure a thorough analysis of the pre-election political situation.

This mission report presents analysis based on literature reviews, key informant interviews, expert interviews and focus group discussions. The mission team was guided by principles of impartiality enshrined in the Declaration of Principles for International Election Observation and takes into account the norms set forth in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and ANFREL's own instruments -- the Bangkok Declaration on Free and Fair Elections¹, the Dili Indicators of Democratic Elections², and the Bali Commitment on Transparent Elections³.

¹ <https://aesforum.anfrel.org/the-bangkok-declaration/>

² <https://aesforum.anfrel.org/dili-indicators-of-democratic-elections/>

³ <https://aesforum.anfrel.org/wp-content/uploads/2017/02/Bali-Commitment.pdf>

2. Introduction

Only a year after the 2017 Commune and Sangkat Council Elections, the Cambodian people are set to head to the polls again on July 29, 2018 to choose 123 members of the National Assembly. The bleak atmosphere of the 2018 pre-election period was a stark contrast to the enthusiasm and vibrancy of civil society and political party activity which characterized the 2017 elections, which most election monitors viewed as the most democratic election in the country, despite it nevertheless being plagued with a host of issues⁴.

Months prior to the elections, the ANFREL Assessment Mission saw disinterest among the voters and various civil society actors to participate due mainly to the proliferation of heated and unfruitful exchanges between the two polarizing forces in Cambodian politics – the ruling Cambodian People’s Party (CPP) and the now-dissolved Cambodia National Rescue Party (CNRP). Policies and actions enacted by the ruling CPP against the opposition party and its critics have created distrust on political processes in the country. The most disconcerting being the arrest of Kem Sokha⁵, the leader of the strongest opposition party, on September 3, 2017, and the dissolution of his party, the Cambodia National Rescue Party (CNRP), by the Cambodian Supreme Court on November 16, 2017⁶. In its decision, the Court also ordered a five-year political ban for 118 members of the party. These events happened in an environment of harassment against human rights actors, a further declining media independence, and the absence of checks and balances in the government.

CNRP, on the other hand called for the boycott of the elections⁷ and the imposition of the sanctions on Cambodian officials⁸ which further aggravated the already volatile political conditions in the country. While most Cambodian stakeholders interviewed by the mission view such drastic calls as justified, most have expressed their hesitation to support such moves due to the possible grave repercussions. Laborers and government workers for instance have expressed that they have received threats from their employers of salary deductions and promotion bans should they return to work without indelible inks on their fingers. Government officials have gone to lengths of describing non participation in the elections as direct contempt to Cambodian democracy and outright support for rebellious actors and love for dictatorship⁹.

The prevalence of such threats from the ruling party and its supporters has basically incapacitated the civil society who are still in a state of shock due to the unprecedented events which transpired post-2017 elections. With the absence of a strong opposition party, most civil society organizations have expressed that the degree of freedom and competitiveness in the elections have suffered greatly. On May 15, 2018, the Committee for Free and Fair Elections in Cambodia (Comfrel) and the Neutral and Impartial Committee for Free and Fair Elections (Nicfec) announced that they will not formally participate in the elections¹⁰ due to the prevailing atmosphere of intimidation directed at human rights workers. Other human rights groups have adopted the same stance. However, other domestic groups such as the Higher Education Community (HEC) have expressed their willingness to observe the elections in all polling stations have at least USD 200,000 to fund its operations, according to the NEC¹¹.

⁴ ANFREL Report on the 2017 Commune and Sangkat Council Elections can be viewed through this link:

<https://anfrel.org/anfrel-final-report-2017-cambodia-communesangkat-council-elections/>

⁵ <https://www.phnompenhpost.com/national/sokha-arrested-treason-accused-colluding-us-topple-government>

⁶ <https://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrp-dissolved-supreme-court-ruling>

⁷ <https://www.reuters.com/article/us-cambodia-politics/cambodias-former-opposition-leader-calls-for-election-boycott-idUSKBN1HF0G6>

⁸ <https://www.voanews.com/a/cambodia-international-criticism-threat-of-trade-sanctions/4119805.html>

⁹ <https://www.phnompenhpost.com/national/nonvote-vote-rebels-aids-authority-chief-slams-rainsys-call-boycott-national-elections>

¹⁰ <https://www.rfa.org/english/news/cambodia/comfrel-vote-05152018163110.html>

¹¹ <https://www.phnompenhpost.com/national/nec-hits-out-ngos-over-vote-observation>

Other international actors friendly to the Cambodian Government like the Chinese and Russian governments have expressed their support for the July 2018 Elections through financial assistance and deployment of observers. Other international actors such as the International Conference of Asian Political Parties (ICAPP) and the Centrist Asia Pacific Democrats International (CAPDI), both having the CPP as members, are also most likely to observe the elections and will most likely adopt positive remarks about the elections similar to their previous statements in 2017¹². While the United States and the European Union (EU) have pulled back their support for the NEC¹³, the Japanese Government will continue their financial support to the NEC, while the South Korean Government continues to offer trainings to the NEC on voter education.

Independent media has essentially been crippled with most resorting to self-censorship and operating outside the country due to the restrictive environment in the country. Most stakeholders have expressed great concerns about media independence after the takeover Phnom Penh Post, considered by most as the last independent print media in the country, of a Malaysian firm which allegedly have close relations with the ruling party¹⁴, and the subsequent sacking of its editor-in-chief, Kay Kimsong, and resignation of its editorial leadership¹⁵.

All civil society actors have also expressed their dissatisfaction on the composition and management of the National Election Committee (NEC). The management body is widely perceived as totally dominated by the ruling party due to the resignation of representatives nominated by the opposition parties. They expressed that while the 2017 NEC composition was balanced between the ruling and opposition parties, much are to be desired about the independence of the institution in terms of the appointment process of its members and its financial independence. These problems still exist, and are made worse with the lack of opposition representation.

There are currently 38 political parties registered with the Ministry of Interior. These parties, in order to contest the elections will have to register with the NEC as well. As of May 23, 2018, there are 20 political parties who were successful in their registration with the NEC, ensuring the inclusion of their party in the ballots¹⁶. This include parties which contested in the 2017 Commune Council Elections such as the Fucinpec, the Grassroots Democracy Party, and the League for Democracy Party among others. While the existing parties were able to organize themselves, most of them on a nationwide coverage, those interviewed by the mission have expressed that the repressive legal environment and the political conditions pose difficulties for them to effectively participate in the elections.

3. Historical Background

Throughout its rule, the CPP has based its legitimacy on its success in ending the Khmer Rouge threat and bringing peace, stability, and basic economic development to a war-torn land. However, the social and economic transformations that have resulted directly from CPP rule have also served to weaken the party's time-proven systems of control. A large majority of Cambodians now have no memory of the Khmer Rouge and, unlike the older generation, are no longer willing to accept Pol Pot's nightmare as a benchmark. Cambodians also have greater access to information. Urban migration and the proliferation of internet access and social media networks such as Facebook have fostered awareness that local

¹² <http://www.akp.gov.kh/archives/34921>

¹³ <https://www.voanews.com/a/us-eu-talk-tough-on-cambodia/4120040.html>

¹⁴ <https://www.voanews.com/a/phnom-penh-post-sold-malaysian-investor/4381221.html>

¹⁵ <https://www.phnompenhpost.com/national/post-senior-staff-out-dispute-over-article>

¹⁶ <https://www.necselect.org.kh/english/content/press-release-list-20-political-parties-running-election-members-national-assembly-6th>

concerns (land grabs, deforestation, rising levels of corruption) are part of a larger system — one that has created massive amounts of wealth for a few, yet largely ignored the needs of ordinary people¹⁷.

The Hun Sen’s leadership has also weakened the country’s democracy. “Rule of law” has often been construed as “the law of the ruler”, and social injustice has been widely perceived as a major problem. Moreover, the National Election Commission (NEC) now consists primarily of persons who are sympathetic to the ruling party, so little wonder that it has not won the trust of the general population, being perceived as lacking independence and integrity.

Meanwhile, the popularity of the ruling party (CPP) has suffered from the government’s failure to improve its justice system and law enforcement. Killing of political and social activists often takes place with impunity, and social injustice has been exacerbated by a double standard that seems to accept less outrageous suppression of opposition and social activists. The national election in 2013 and the commune election in 2017 both showed a dramatic decrease in the popular support of the CPP, with significant gains by the now-disbanded CNRP.

The political tension increased from 2014 through 2017, which stepped-up intimidation of political and social activists and the arrests of key political figures of the CNRP. At the time of this report, at least 15 key officials of the CNRP party (including Kem Sokha) are in prison, while the driving force of the party, Sam Rainsy, is forced to live in exile.

As the situation has deteriorated, warnings have been issued by the international community, including the United States and the European Union. However, even with the dissolution of the CNRP and the ban from political activity of most of its leaders, the government vows to keep the election on schedule.

At present, Cambodia has 38 political parties registered with the Ministry of Interior. These political parties have to register to the NEC every election in order to contest. Amongst these, 20 parties have now begun to participate in the upcoming general election to be held in July 2018.

4. Mission Findings

a. Voter Participation

Generally, the mission team learned that the upcoming election has been marked by fears and frustration among the voters, especially after the dissolution of the CNRP. Social activists, especially those who address land, labor and natural resources issues, as well as opposition supporters, have an overwhelming commitment not to vote or to spoil their ballots. As they said *“I don’t want to waste my time to go to vote this time as I no longer believe in any change in the upcoming election as CPP will win anyway”*. This argument was also echoed by the CNRP leadership, who declared a boycott of the election and appealed to people not to vote. *“Just stay home, means you will win”*, said by Mr. Sam Rainsy, the pre-eminent leader of the CNRP.

In contrast, the CPP has released a different message, appealing to people to vote. At the local level, cadres have started a campaign to encourage voters to participate in the elections by saying that “not voting is a treasonous act”. Ieng Moly, CPP member and chair of the National AIDS Authority, even said that nonvoters “love dictatorship” and are “supporting rebel groups.”¹⁸ As a result of conflicting messages, the voters are pulled in two directions, creating confusion among them.

¹⁷ <http://www.newmandala.org/rethinking-cambodias-political-transformation/>

¹⁸ <https://www.phnompenhpost.com/national/nonvote-vote-rebels-aids-authority-chief-slams-rainsys-call-boycott-national-elections>

Genuine democratic processes recognize abstention as a valid vote, and a fundamental right. It must be noted that the Constitution of the Kingdom of Cambodia¹⁹, voting and political participation are defined as rights which all citizens should enjoy, rather than as an obligation. Not a single provision of the Cambodian Electoral Law indicates any penalties for the abstention to vote. However, norms do indicate that low voter participation in the elections means distrust in the existing systems, or legitimacy deficit²⁰. For this reason, leaders of unstable or insecure regimes often employ undue influence to “encourage” voter participation, or manipulation of statistics to create a façade of acceptance from the populace.

ANFREL learned that vulnerable sectors of the population, such as laborers and factory workers, face tremendous pressures to vote. One of them relayed their fear: *“if I don’t go to vote, then my salary will be deducted”*. A similar threat has also been circulated to government employees: *“if you don’t go to vote, then you will be dismissed from your job or will never be promoted”*. In an appearance on Facebook, a police official circulated a warning that *“your name has been recorded by the computer chip connected to your identity card, so if you don’t go to vote, then, you will never get a job”*. Although these threats are illegal, some people have become afraid and believe they have no choice but to go to vote. As they explained *“in the absence of an independent judicial system, the government could do anything they wanted. In this case, we at least must show up at the polling station, put our finger in the ink, then, we either tick nothing on the ballot or just cross on the ballot and leave”*. It was also reported that, in rural areas, local authorities have received instructions from CPP party officials to tell people to vote, and if they have no ink on their fingers, then it is an indication that these people are sympathetic to the opposition and should be treated as participating in a rebellion.

The assessment team also interviewed a youth group based in Phnom Penh. Different views were expressed, where about half of the key respondents said they would go to vote, while others said they will not vote or just wait and see. Notwithstanding their differences, however, most appeared to be apathetic or distrustful of the electoral process. Severe social polarization has taken a toll on their social relationships -- they do not trust each other, with even simple conversations about political matters deemed unsafe. Most worrying, they are not getting the necessary information about the country’s political situation even in schools due to academic restrictions. *“At our universities, students are prohibited to talk or discuss about politics. Our lecturers have also been instructed not to discuss current politics in their class, even if they are teaching political science”*, said respondents. They further elaborated, *“when some of us wanted to talk about the current politics, we have to meet either at a coffee shop or elsewhere outside the university”*.

Generally, the level of awareness of political and electoral issues among rural and urban residents is fairly high, though rural residents seem to live in greater fear and thus are more reluctant to express their thoughts on politics. People continue to receive conflicting messages from the political parties. The CPP has attempted to enhance its legitimacy by using both appeals and threats to ensure people go to vote, whereas, the opposition wants to undermine the validity of the election by appealing to people not to vote on the ground that a high voter turnout will only help legitimize the government after the 2018 election.

b. The State of Political Parties

At the beginning of the post-Khmer Rouge era, after the fall of the regime in 1979 and the formal end of the civil war in 1993, the UNTAC administered elections in May 1993 as 20 parties contested

¹⁹ Article 34 recognizes voting as a right; while Article 35 similarly defines public participation as a right.

²⁰ <https://ecpr.eu/Filestore/PaperProposal/d83ddd59-0a00-4535-a117-55a859e6a630.pdf>

elections for parliament²¹. The election was conducted under Cambodia's new constitution, and the country seemed on its way to multiparty democracy. National general elections have been conducted every five years since 1993 (in 1998, 2003, 2008 and 2013). While the Cambodian People's Party (CPP) and National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) were the main political parties in the 1993 and 1998 elections, by 2003 the Sam Rainsy Party had pushed FUNCINPEC to third place. Further, in the 2013 general elections and the 2017 commune elections, the CPP and CNRP, a new party formed through the merger of the Human Rights Party led by Kem Sokha and the Sam Rainsy Party, were the dominant parties, with the CPP leading the government and the CNRP being the main opposition party in the parliament until its dissolution in November, 2017.

According to the NEC's election calendar for the 2018 general elections, the two weeks from April 30 to May 14 was the period for registration of political parties and candidates who intend to contest the July 2018 elections²². NEC instructions stated that after the deadline for party registration, NEC would take seven days to review the process, and the parties who have not completed and submitted all of the required documents would get another 5 days to complete the registration process for contesting the election²³. By May 23, the NEC had announced that 20 political parties had been accredited for this year's elections and, out of 25 constituencies, 9 parties are contesting all 25 constituencies²⁴.

The absence of the former main opposition party (CNRP), which secured 44% of the votes²⁵ in the 2013 general elections, has created a vacuum in the political arena, as the party has been dissolved and 118 active senior members banned from politics for five years. According to them the credibility of the election is at issue, as they raised the concern over fair competition, since there remains no strong opposition party. Former leaders of CNRP have called for an election boycott even while the ruling party has been trying to encourage the participation of other [smaller] parties in the elections. There is a prevailing consensus among Cambodian stakeholders that no remaining party is strong enough to contest toe-to-toe with the CPP, leading to general disinterest in the elections. The ruling party is aware of this situation and is encouraging the participation of political parties to give the election the semblance of legitimacy.

The CPP has far greater political power and funding than any other party participating in the the elections. Indeed, none of the other parties running in the elections received more than 4% of the vote in either the 2013 general elections or the 2017 commune elections. While there are a number of political parties which have a nationwide base, they admitted that their political machinery is not as strong as that of the former CNRP, much more the ruling party. Interviews with the various stakeholders reveal that the people support CNRP because "only they can contests toe-to-toe with the CPP".

ANFREL interviewed four of the major parties participating in the elections; a) those who are part of or are supportive of the ruling party have expressed strong optimism that the election will proceed even without a strong opposition; b) moderate parties say they will continue to demand better electoral conditions; c) parties most strongly opposed to the CPP have expressed strong pessimism and decided to boycott the election.

c. Civil Society and the 2018 Elections

²¹ http://archive.ipu.org/parline-e/reports/arc/2051_93.htm

²² <https://www.ncelect.org.kh/english/content/calendar-6th-legislature-election-members-national-assembly-2018>

²³ <https://www.ncelect.org.kh/english/content/press-release-15th-day-registration-political-party-running-election>

²⁴ <https://www.ncelect.org.kh/english/content/press-release-nec-has-accredited-20-political-parties-running-election>

²⁵ <https://www.rfa.org/english/news/special/election/home.html>

The role of civil society in elections often takes the form of support for the institutional processes of democratic elections as well as the more substantive development of a democratic electorate. Furthermore, involvement of civil society in the electoral process is one of the key elements in characterizing an election as transparent, free and fair. Freedom of association and freedom of expression are very basic principles in a democratic society. Indeed, the Cambodian constitution enacted in 1993 and amended in 1999 created a democratic system that showed respect to the norms of universal human rights.

In recent years, civil society organizations have increasingly been perceived by the CPP as being overly critical of the government, particularly in the area of human rights. The Law on Associations and NGOs (LANGO) introduced in 2008 has been contested by some CSOs on the ground that the law could be used to restrain criticism of government by CSOs or to restrict freedom of association and expression.

More recently, the amended Law on Associations and Non- Governmental Associations was adopted by the National Assembly on July 13, 2015 to provide basic legal rules applicable to civil society organizations and NGOs. In particular, articles 24 and 25²⁶ control their activities, largely through the mechanism of government audits. Moreover, article 24 requires that such organizations maintain neutrality towards political parties in the Kingdom of Cambodia and, as LANGO does not provide any measurements, the article provides sufficient flexibility for the government to invoke it to crack down on organizations that are critical of government activities.

Civil society organizations have raised concerns about recent charges brought against three of Cambodia's most prominent civil society leaders – Pa Nguon Teang, Venerable But Buntenh, and Moeun²⁷, as politically motivated arrests. In addition, prominent human rights organizations in Cambodia such as ADHOC and LICADHO have faced numerous attacks from the government in the recent past²⁸, as well as assassination of some of their members: Dr. Kem Ley, a prominent activist and political analyst, was murdered in July, 2016; Chut Wutty, founder and director of the Natural Resource Protection Group (NRPG), was shot dead at Veal Bei Point in Mondol Seima in 2012; and Chea Vichea, the leader of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), was shot in the head in 2004. That the government has failed to provide transparent investigations of those assassinations does not help in building positive trust in the government. Baseless charges and highly political murders are clearly a form of intimidation aimed at further silencing Cambodian civil society and human rights defenders. Threats against CSOs contribute to limitations on free expression that violate international human rights law and may deter CSOs from freely observing elections.

Heading into the elections, civil society activists and human rights defenders are under attack and face intensifying levels of harassment, surveillance, unprecedented pressure, intimidation and threats that are pervasive. The level of disruption or termination of events by armed guards or police, anonymous and official warnings and calls which threaten arrest or harm, have prevented civil society members from performing their work and forced them to minimize the activities they are able to carry out. Security

²⁶http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Unofficial_Translation_of_5th_LANGO_ENG.pdf

²⁷ Mr. Pa Nguon Teang, Executive Director of the Cambodian Center for Independent Media, Venerable But Buntenh, Executive Director of the Buddhism for Peace Organization, and Mr. Moeun Tola, Executive Director of the Center for Alliance of Labour and Human Rights (CENTRAL) were charged by the Phnom Penh Municipal Court with “breach of trust” under Articles 391 and 392 of the Criminal Code of Cambodia, for allegedly misappropriating funds for the funeral of Dr. Kem Ley, a prominent activist and political analyst who was murdered on July 10, 2016.

²⁸Hun Vannak and Doem Kundy, environmental activists affiliated with the recently de-registered NGO, Mother Nature Cambodia (MNC), were wrongfully detained for over two months on spurious charges on 11 September 2017; Tep Vanny, one of Cambodia's most prominent land activists and human rights defenders, will have spent one year in prison on 15 August; four staff members of human rights NGO the Cambodian Human Rights and Development Association (ADHOC) – Ny Sokha, Nay Vanda, Yi Soksan and Lim Mony – as well as National Election Committee Deputy-Secretary Ny Chakrya were imprisoned from May 2016 until their release on bail just recently on politically-motivated bribery charges; in October 2016, Boeung Kak Lake community representative Chan Puthisak and Am Sam Ath, LICADHO's Monitoring Manager were brutally attacked by para-police in the middle of Phnom Penh while monitoring a peaceful World Habitat Day march.

threats have had a particularly adverse impact on the ability of different organizations and communities to work together, as the climate of fear has reduced trust among them.

With respect to the forthcoming elections, many civil society organizations and voters have expressed distrust of the ongoing election preparations, as there is no strong opposition party to compete against the CPP in the wake of the dissolution of the CNRP.²⁹ Notable election monitoring bodies such as COMPREL and some 40 civil society organizations which were involved in election observation in the past have decided to refrain from observation of this year's election, as they likewise refrained from observing the Senate elections held on February 25, 2018.

Ostensibly to fill the void, a considerable number of organisations formed and managed by individuals with close ties to the government have recently been formed. One such organisation, led by a son of Hun Sen, the Union of Youth Federations of Cambodia, has plans to observe the coming elections with the help of students from several public and private universities in collaboration with the Minister of Education³⁰. There are also a few new organisations that were registered in a very short time with the Minister of Interior and NEC³¹ in time to observe the senate elections in February, though questions were raised question about their neutrality. While there is no restriction on any organisation observing elections, generally accepted universal principles require that the organization and its observers adhere to a code of conduct that is non-partisan and neutral³².

Recommendations

- Amendments to the LANGO should be adopted to minimise government control over civil society activities and ensure that LANGO is clearly worded. There should also be a provision to allow all organizations to appeal decisions to reject their registration.
- Ensure no permission is needed for CSOs to hold meetings/forums/workshops and allow them to conduct their activities freely.
- Address the issue of harassment of civil society activists, writers, and journalists and take effective actions to prevent violence against them.
- There should be transparent investigations of murders and attacks on civil society activists and impartial judicial procedures for all defendants charged with politically related crimes.

d. The NEC and International Support

The National Election Committee (NEC) is the highest body for managing elections in Cambodia. The NEC is an organization whose jurisdiction is to organize, prepare, and manage elections for senators and members of the National Assembly as well as other elections as determined by law³³. Following its creation in 1998, the NEC was seen as owing an undue allegiance to the ruling party, the CPP, which has governed Cambodia since before the creation of the NEC. However, after election reform in 2015 in the form of the Law on the Organization and Functioning of the NEC (LOFNEC), the NEC appeared to become more neutral. This law was part of electoral reforms agreed by CPP and CNRP when they brokered a deal on July 22, 2014, ending the political crisis which occurred after the 2013 general elections³⁴.

²⁹<https://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrcp-dissolved-supreme-court-ruling>

³⁰Youth organisation wing from CPP lead by the PM's son and will mobilize around 2000 observers around the country during General Election.

³¹<https://www.phnompenhpost.com/national/monitors-ready-senate-vote>

³²International Electoral Standards Guidelines for reviewing the legal framework of elections by International Institute for Democracy and Electoral Assistance (International IDEA) 2002

³³ <https://www.necselect.org.kh/english/content/history-nec>

³⁴ Cambodia IEOM Final Report 2017 - ANFREL

At the core of the two-party agreement was a change in the composition of the NEC. According to LOFNEC, the NEC was to be composed of four (4) members representing the ruling party, four (4) members representing the leading opposition party in the National Assembly, and one (1) member chosen by consensus from all parties³⁵. The NEC was effectively balanced between the two parties with most of the seats in Parliament but not necessarily representative, as smaller parties were not represented. However, these changes meant that the NEC was no longer monopolized by one party.

Unfortunately, this “independent and neutral” NEC did not last long. As part of the dissolution of the CNRP by the Supreme Court, three NEC members from CNRP (Kuoy Bunroeun, Te Manyrong, and Rong Chhun) left the electoral body. Nuth Sokhom (former Funcinpec lawmaker), Hel Sarat (formerly of the CNP), and Dim Sovannarom (former deputy director of the government’s human rights body and a CPP election campaigner in Takeo province in 2013) replaced three CNRP-nominated members³⁶. With the addition of Sovannarom, five of the nine NEC members now have strong ties to the ruling CPP.

The current members of the NEC are: H.E. Mr. Sik Bun Hok, the Chairman (affiliated with CPP), H.E. Mr. Nuth Sokhom, the Vice-Chairman (affiliated with Funcinpec Party), and members: H.E. Mr. Mean Satik (affiliated with CPP), H.E. Mr. Dim Sovannarom (affiliated with CPP), H.E. Mr. Duch Sorn (Member - affiliated with CPP), H.E. Mr. Hing Thirith (Member), H.E. Mr. Em Sophath (affiliated with CPP), H.E. Mr. Hel Sarath (affiliated with CNP), and H.E. Mr. Hang Puthea (independent)³⁷.

The current composition of the NEC is a regression to the time when the NEC was more favorable to a single political party – the CPP. On the other hand, it includes representatives of more political parties than under the 2015 agreement. However, this latest iteration of the NEC has cast doubt on NEC neutrality. During the one week observation of the mission team in Cambodia, most stakeholders expressed the belief that there was no intention to have an independent election management body (EMB) in Cambodia at this time. While they mostly praised the NEC for its significant progress in the 2017 Commune and Sangkat Council Elections, the most recent personnel changes undermined the confidence of people that this year’s general elections would be free and fair.

One of the hallmarks of electoral integrity is a non-partisan, neutral election management body. The NEC does not meet the requirements for an independent and impartial EMB set forth in the Dili Indicators: the composition should be more independent and inclusive and not serve as representatives of only political parties (moreover only big parties). In addition, the nomination process for the NEC lacks transparency. Key positions are still occupied by CPP appointees (Chairman), who has total control over the body’s agenda, as only the chairman can represent the committee in meetings with the King, the National Assembly, and ministers³⁸.

The US and EU have threatened to cut off funding to the NEC following the dissolution of the CNRP. So far, the US has decided not to provide support to the NEC and other electoral efforts, while the EU has not made any official statement yet regarding election observation but has also decided to cut off electoral support. Japan and China continue to fund the NEC. The government of Japan will provide 800,000,000 yen, or approximately \$7 million, to the NEC for the general election in July. NEC Secretary General Tep Nytha said previously that China had also provided vehicles worth about \$12 million at the end of 2016 and would be donating ballot boxes and walkie-talkies ahead of the election. Recently, the NEC of Cambodia and the Central Election Committee (CEE) of Russia signed a cooperation deal to ensure the election process is free and fair in both countries. This agreement includes help to develop technology for elections, including voter registration and organising elections in remote areas. The

³⁵Law on the Organization and Functioning of National Election Committee - Final draft agreed by the Working Groups of the two parties on December 1, 2014.

³⁶ <https://www.phnompenhpost.com/national-politics/new-nec-members-insist-they-are-neutral>

³⁷ <https://www.necselect.org.kh/english/content/members-nec>

³⁸<http://ngocedaw.org/wp-content/uploads/2016/08/NEC-Analysis-by-NGO-CEDAW.pdf>

support of the Republic of China and Russia for the NEC raised suspicion from stakeholders contacted by the PEAM team, since neither country has acceptably free and fair elections in their own countries. Some have also voiced out disappointment on the Japanese and Korean Governments over their support to the NEC.

Among the more important characteristics of an independent EMB which the NEC lacks are financial independence and autonomy in hiring its own staff. Article 59 of LOFNEC provides that all funding, whether from the government, foreign contributions, or others, must be deposited into a fund established at the National Treasury called the “Trust Fund Account for Election”. All financial revenues must first go through the national budget process before they can be utilized, giving the Ministry of Finance complete control over the NEC’s budget and therefore potentially considerable influence over its activities.

One of the main concerns raised by ANFREL regarding the 2017 Commune and Sangkat Council Elections is that legal provisions ensuring the NEC’s neutrality are currently insufficient. NEC members can be removed if they lose their “professional attitude” or miss three meetings -- provisions that may be used to sideline some committee members in case of internal conflict. More concerning, members of the NEC with civil society backgrounds have continuously been exposed to threats and intimidations.

In 2018, three NEC members from CNRP left the NEC due to the dissolution of their party. According to LOFNEC, NEC members are accountable to the National Assembly, which has the power to dismiss them and fill any vacant seat through an absolute majority vote³⁹, meaning there are no incentives for political compromise. This concern was illustrated when vacancies were filled by a party that did not win any seats in the National Assembly. Whatever the merits of dissolving the CNRP, there was no legal basis for replacing NEC members originally chosen by the CNRP with members from a party that did not win any seats in the National Assembly. Therefore, the latest composition of the NEC does not seem to enjoy legitimacy in the eyes of the civil society and other critics of the Government.

Recommendations

- Political authorities like the National Assembly should only have limited oversight over the election management body;
- Introduction of non-renewable terms for NEC members and some form of immunity from prosecution, making them less vulnerable to outside influence, should be adopted. In any case, criminal proceedings should never be used to pressure NEC members or administrators into complying with political demands;
- Re-establish the balanced composition of the NEC in order to regain the trust of other electoral stakeholders.
- The nomination process for selection of NEC members should be transparent and include a requirement that candidates meet certain defined qualifications, rather than rely on political negotiations;
- Authority must be given proportionally to all members and not be dominated by the chairman;
- NEC should have financial independence rather than affording the Ministry of Finance with complete control over the NEC’s budget;
- Financial independence means that the NEC should not be influenced by countries that have provided financial support to the NEC; and includes independence from government officials from the different agencies/branches of government
- NEC should have autonomy in hiring its own staff from the national level down to the Commune and Sangkat level.

³⁹Law on the Organization and Functioning of National Election Committee - Final draft agreed by the Working Groups of the two parties on December 1, 2014.

e. Media Freedom

About the time of its first democratic elections in 1993, Cambodia became home to one of the most open media environments in Southeast Asia⁴⁰. However, this situation has changed drastically in the last year. With the approach of the 2018 general elections, the press in Cambodia has come under increasing government restrictions to the point that it is now deemed ‘not free’⁴¹. Reporters Without Borders now ranks Cambodia near the bottom on its annual press freedom index⁴².

The attack on the free press started when Prime Minister Hun Sen recommended at a cabinet meeting in early 2017 that government agencies investigate alleged back taxes supposedly owed by media outlets and civil society organizations⁴³. Subsequently, The Cambodia Daily, an English-language newspaper⁴⁴, and Radio Free Asia⁴⁵ were shut down over claims for significant back taxes. In addition to using dubious tax claims, the government has also shut down media on the basis of other unfounded charges, such as claims that certain media organizations were helping the opposition CNRP with plans to overthrow the government. In addition, the government forced closures of local radio stations (Moha Nokor, Voice of Democracy, Kampong Cham, and Voice of America) by alleging that they had violated their contracts with the Ministry of Information (MoI) by airing “outside programmes without requesting authorisation”. Licences have been revoked for more than 30 radio stations, including those that carried the now shuttered news services. In mid-December in 2017, the MoI closed 275 publications it called “inactive.” During the one week PEAM observation period, the study team also witnessed the transfer of ownership of the largest operating print media, the Phnom Penh Post, to a Malaysian investor who allegedly has close ties to the CPP.

Furthermore, individual journalists have become targets of the government's suppression of the media. As of this writing, at least five former journalists, including a filmmaker, have been criminally charged in the past year⁴⁶. Two former reporters for The Cambodia Daily were charged with “incitement to a crime” while covering the last commune elections campaign. Two former RFA reporters were also charged with espionage due to filing news reports to the US-funded broadcaster. James Ricketson, an Australian filmmaker, was also charged with espionage for flying a drone over an opposition rally in Phnom Penh in mid-2017. The executive director of the Cambodian Center for Independent Media was charged in a separate case and has fled the country. Tragically, the shooting death of a media commentator, Kem Ley, has resulted in a climate of terror that has also assisted the government's efforts to drastically curtail press freedom⁴⁷.

⁴⁰<https://www.theglobeandmail.com/news/world/in-cambodia-independent-media-have-closed-as-chinese-content-moves-in/article37464168/>

⁴¹The Media Ownership Monitor Cambodia revealed high levels of ownership concentration, a low transparency level, and a problematic dependency of media outlets on the government. The research and publication, jointly conducted together with the Cambodian Center for Independent Media (CCIM) from September to December 2015 and relaunched in 2018, highlights the related dangers to media freedom, particularly through self-censorship and the absence of critical reporting” (<https://www.mom-rsf.org/en/countries/cambodia/>)

⁴²Cambodia now ranks 142 globally, below fellow Asean nations Indonesia, the Philippines, Thailand and Myanmar (<https://rsf.org/en/cambodia>)

⁴³<https://www.cambodiadaily.com/news/government-digs-into-tax-returns-of-ngos-cambodia-daily-133287/>

⁴⁴ The Cambodia Daily – an independent newspaper – was embroiled in a tax dispute that ended its 24-year. The Cambodia Daily shut down after it was slapped with a US\$6.3 million tax bill which its publishers said was politically motivated. <https://www.cambodiadaily.com/cambodia-daily-close-24-years/>

⁴⁵ In late August 2017, American-funded radio stations Voice of America (VoA) and Radio Free Asia (RFA), and the independent Voice of Democracy (VoD), which broadcast in the Khmer language, were silenced for airing “outside programmes without requesting authorisation”. Council of Ministers Spokesman Phay Siphon called VoD Pa Nguon Teang a “foreign agent”. He accused RFA and VoA helping the opposition CNRP overthrow the government. (<https://www.cambodiadaily.com/news/anger-mounts-as-radio-purge-knocks-19-stations-off-air-134077/>)

⁴⁶ <https://www.voacambodia.com/a/cambodia-free-press-in-ruins-after-crackdown-campaigners-say/4268940.html>

⁴⁷ Prominent political analyst and government critic Kem Ley was shot dead this morning at a Caltex service station on Phnom Penh’s Monivong Boulevard, in what the suspected gunman claimed was a dispute over money but others have labelled a political assassination.” (<https://www.phnompenhpost.com/national/longtime-rights-champion-kem-ley-gunned-down-broad-daylight>)

Interestingly, China is now beginning to establish a presence in Cambodia's media industry pursuant to an MOU with the Cambodian government, China is offering scholarships to Cambodians to study journalism in China. In late 2017, Cambodia's Interior Ministry also partnered with Chinese firm NICE Culture Investment Group to launch a new television station, NICE TV, in Cambodia. Whether this is a benefit to the Cambodian people is highly doubtful, given that China is ranked fifth from the bottom in the Reporters Without Borders world press freedom index.

According to the majority of CSOs and media organizations interviewed by the PEAM team, the pressure being exerted by the Cambodian government on the media is solely motivated by political considerations. Following the election in 2013, the ruling CPP faced a newly energized opposition in the form of the CNRP, and after the opposition did surprisingly well in the June 2017 municipal elections, the regime launched an all-out war on independent media outlets with the aim of ensuring victory in the 2018 general elections⁴⁸.

Media restrictions are seen by most stakeholders as a means by the government to control the flow of information, as well as further propagate pro-government propaganda in the country. This situation was also noted by ANFREL during its mission to observe the 2017 commune and sangkat council elections, when media access was already skewed to benefit the ruling party, which was not surprising, given that most, but not all, of the private media in Cambodia were even then owned by CPP supporters, including relatives of the prime minister⁴⁹. Despite NEC regulations designed to ensure fair media access, most of the media in the runup to the 2017 elections clearly skewed broadcasts in favor of the CPP.

A free media is important to ensure that the general public can be informed of the political platforms, views and goals of all parties and candidates in a fair and unbiased manner, or at least to insure that all points of view are represented across the spectrum of the media. For an electorate to be informed, there must be a level playing field, with equal access to resources and how these resources can be used.

Because so much of the independent media has been shuttered, Cambodians now get much of their news via social media, which in the past has been used effectively by the opposition to mobilize support⁵⁰. There is increasing availability and utilisation of the internet and social media in the wake of the suppression of independent media. This alternative space for public debate and articulation of opinions has, to a large extent, been the domain of the large youth segment of the population. However, there are some challenges to relying on social media for those offering positions different from those of the government: not every region in Cambodia has internet connections, the majority of the Cambodian population is low income and many people do not have smart phones or other devices necessary to use social media, and social media is often plagued with false information. To provide a healthy democratic situation, there needs to be a thriving independent media as well.

In addition to attacking independent media directly, the government has enacted a Telecommunications Law which allows the government to conduct in-depth monitoring of all electronic communications. Article 80 of the law provides for imprisonment for up to 15 years for anyone convicted of using electronic media to promote “national insecurity⁵¹”. As a result, most politically unaffiliated media have resorted to self-censorship of news critical of government policies to avoid charges such as “defamation” and “damaging the country’s image”⁵². Consequently, media reporting is even more

⁴⁸<https://rsf.org/en/cambodia>

⁴⁹<http://mom-kh.com>

⁵⁰https://www.washingtonpost.com/news/democracy-post/wp/2017/08/30/suddenly-its-open-season-on-the-press-in-cambodia/?noredirect=on&utm_term=.646118a3da14

⁵¹ <http://www.phnompenhpost.com/national/telecommunications-law-allows-govt-spy-licadho>

⁵² <https://freedomhouse.org/report/freedom-press/2015/cambodia>

heavily favorable to the ruling party, and non-aligned media are regularly the subject of threats and often labeled as “foreign agents⁵³”.

Furthermore, the Telecommunications Law, the government has amended several provisions of the constitution to further limit freedom of expression. For example, an amendment to Article 49 prohibits Cambodian citizens from “any activity” that directly or indirectly “affect[s] the interests” of Cambodia or its citizens. This provision is unacceptably broad and lacks definition, meaning legitimate activities and the exercise of fundamental freedoms could be banned if deemed to be “affecting interests”. The proposed introduction of a *lèse-majesté* offense to Cambodia’s Criminal Code is also a threat to human rights and fundamental freedoms and is clearly designed to criminalize additional individual or entity activity that dares to express legitimate dissent.

A democratic election is not possible where campaign speeches and other forms free expression are sharply curtailed, with huge numbers of independent media being shut down and journalists being arrested or murdered. The threats to persons deemed to be critical of the government or simply having a different opinion are real and affect almost all sectors: media, civil society, academia, and youth groups.

Recommendations

- Restore the independence of media to help promote a free and fair election environment;
- Drop charges against journalists and protect their safety;
- Reconsider several regulations that curtail freedom of expression including the *lèse-majesté* offense to Cambodia’s Criminal Code;
- The NEC should establish stronger coordination with the media, especially during elections, to ensure wide dissemination of information relevant to the conduct of elections.

f. Electoral Participation and Competitiveness

As a result of the decision by the Supreme Court to dissolve the CNRP and ban 118 of its senior officials from any political activity for five years⁵⁴, CNRP elected officials at all levels were ousted from office, including 55 members of the National Assembly and 489 commune positions, with those offices then distributed to other political entities that had not won any seats in the most recent elections. Kem Sokha, leader of CNRP, was arrested a few months before this year’s general elections and charged with “treason” based on a 2013 video, which alleges that Sokha colluded with the United States to overthrow the Cambodian Government⁵⁵.

There is a difference between individual crime and organisation crime. A political party as a whole can not be held responsible for the individual behaviour of a member who is not authorised by the party to perform the questionable act⁵⁶. Any disqualifications should be clearly authorized by applicable, clearly written laws and not subject to the whims of an institution or a person. Scrutiny and caution are required since the right of suffrage is a fundamental human right.

Political parties play an essential role in a democracy. Freedom of association, including political association, is a fundamental human right, and dissolving a political party and banning its members

⁵³ <http://www.phnompenhpost.com/national/trump-ban-cited-media-threat>

⁵⁴Based on a complaint filed by the Ministry of Interior that the CNRP was attempting to overthrow the government through a so-called “colour revolution” aided by the United States.

⁵⁵ <https://www.phnompenhpost.com/national/sokha-arrested-treason-accused-colluding-us-topple-government>

⁵⁶Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures - European Commission for Democracy Through Law.

from political activity without strong legal basis undermines the right to run and be elected to office. Thus, the legal framework should ensure that all eligible citizens are guaranteed the right to contest elections without any discrimination based on political opinion.

One critical rule-of-law principle is that “No one is subject adversely to a retrospective change of the law”, but Kem Sokha was arrested for his statements on a 2013 video which, at most, contravened 2018 amendments to the Law on Political Parties which made it a crime to associate with a convicted criminal or to conspire with individuals “against the interest of the Kingdom of Cambodia”. It is rare for retrospective legislation to lead to criminal prosecutions against individuals for activities they had been involved in that had not been covered by the existing laws at the time those activities were carried out. Indeed, some countries explicitly provide in their constitutions that no one can be charged on the basis of such an ex post facto law.

The prevailing consensus among the CSOs and international community in Cambodia seems to be that there can be no free and fair election in light of the dissolution of the CNRP, because there can be no meaningful competition without the CNRP. Moreover, the only way to express meaningful opposition to the CPP seems to be to boycott voting, which is a legitimate means for people to express their will. There is no law in Cambodia which makes voting mandatory, but branding those who intend not to vote as allies of rebels or supporting rebellion risks undermining even this last resort of people to express their unhappiness with the CPP.

5. Conclusion

Efforts to define parameters or measurement tools on what makes an election “free and fair” started in the early 90s. Hence the Conference on Security and Cooperation in Europe (CSCE) came out with their Copenhagen Document (1990); the Organization of the Americas had their “Santiago Commitment” (1991); the Organization African Unity (OAU), had their own document “The Evolving Role of Intergovernmental Organizations in Election Monitoring” (1992). The Asian countries never had a similar document until 2012 with the ANFREL-initiated Bangkok Declaration (which is non-governmental compared with the others).

The Inter-Parliamentary Union (IPU) played a leading if not pioneering role in defining standards with the “Declaration on Criteria for Free and Fair Elections” (1994) which was unanimously adopted by its membership on March 26, 1994 in Paris, France. This document is adopted likewise by the Bangkok Declaration (Preamble Sec. 5). From this document came the study of Guy S. Goodwin-Gill “Free and Fair Elections” (IPU 2006).

In November 2004, the IPU convened a group of experts for a “round table discussion” on the IPU declaration. The group of experts arrived at a consensus that the document should not have changes/amendments “as it was still valid”. The roundtable released a report which was titled “Revisiting Free and Fair Elections” (IPU 2005).

The roundtable released four papers and the one that directly concerns us is the paper of Professors Jorgen Elklit of Denmark and Andrew Reynolds of the USA. The paper was titled “Judging Elections and Election Management Quality by Process”. As election observers, we are after the process, not ‘who are the competitors’, nor the results (outcome) which are the concerns of the partisan players. This paper was adopted by the Electoral Integrity Project of Pippa Norris of Harvard on their indicators.

The majority of the critics of the forthcoming elections are of the opinion “that the forthcoming election cannot be free and fair because the CNRP is not participating”. Unfortunately, nowhere in the IPU document can we find a justification for such a position.

1. On the issue that Cambodia votes for a party and not a candidate: “... the choice of electoral system ... is within the realm of domestic jurisdiction.” (G. S. Goodwin-Guy, p 95). Thus, it has no bearing on the freeness and fairness of an election.

2. “An election is a choice between options, options WHICH ARE ALL ASSUMED (emphasis ours)) at the very least to be worthy of public discussion” (Revisiting... p 44). And, “... an assessment of electoral fairness based on political or partisan outcomes should be avoided” (ibid p 45). When we talk about outcomes, we talk about political parties participating in the election.
3. The greater majority of the Cambodian CSOs have taken a position of passing judgment on the elections in ‘bimodal terms’ – it is either good (if CNRP participates) or bad if CNRP does not participate. Elklit and Reynolds said that “The greatest failing of election assessment to date has been the tendency to see election quality in bimodal terms”. Perhaps “a fudge is required, it is ‘substantially free and fair’ (Revisiting ... p 57)” as we often use in our own mission reports.

From what ANFREL gathered in the PEAM, there are reasons to hold the position that the coming elections in Cambodia will not be “free and fair” as the stakeholders opined but for entirely different reasons and ANFREL can cite a number:

1. The fundamental civil and political rights in the country are not observed, and impunity;
2. Independent media is stifled, and the widespread use of machineries to promote mal- and disinformation;
3. The presence of undue influence to voter behaviour, such as intimidation and threats;
4. An unlevelled playing field which favours only one party and an unbalanced election management body, both of which do not enjoy the trust of the people.

This mission report concludes by saying that the coming elections will not be free and fair, because of the four reasons cited above which created a restrictive sociopolitical environment and an unlevel playing field which has stagnated to the point of near-permanence. While the participation of the CNRP would enhance the competitiveness of the election, its failure to participate (regardless of reason) is not by itself the sole measure of electoral integrity for the forthcoming election.