

The Current State of Democracy and the 2008 National Elections in Cambodia

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1- The Current State of Democracy

- Cambodia's 1993 Constitution, formulated after the Paris Peace Accords of 1991 provides for one directed elected legislative chamber, the National Assembly, for which there have been elections in 1993, 1998, and 2003. Since 1998, a second chamber the Senate has been created with members voted in by a constituency that consists of National Assembly Members and Commune Councilors. The country is divided in to 24 provinces or municipalities and 185 districts which are run by government appointed officials. The only other elected bodies are the 1,621 Commune Councils, first formed in 2002, that are intended to be distinct local government units with their own powers and functions. They replaced one tier of central government control below districts, i.e., at commune level. However central government retains responsibility for the appointment of commune council clerks and much control over the appointment of the lowest tier of government.
- The recently held commune council elections (April 2007) in Cambodia represented other step towards democracy and some creditable increase in political space. Around 90% of the 1,621 communes/sangkats have councilors from a variety of parties, both ruling and opposition parties. However there is a constraint in regarding with the formula of allocating the seats (used for national and local elections) that not encourage small parties. For example the Cambodian People's Party CPP emerged clearly as the winning party, with just under 61% of votes, The Sam Rainsy Party (SRP) gained 25.2%, NRP 8.1%, and two FUNCINPEC(FUN) 5.36%. The most significant outcome is that 61% majority translated in to a 98% majority of 1,591 commune chief positions. The Cambodian People's Party (CPP) received 61% of the vote, equal to 7,993 commune councilors (70% of seats). The Sam Rainsy Party (SRP) obtained 25% of the vote, equal to 2,660 commune councilors (23.4% of seats). The Norodom Ranariddh Party (NRP) saw 8% of the vote, equal to 425 commune councilors (3.7% of seats). FUNCINPEC obtained 5% of the vote, equal to 274 commune councilors (5.3% of seats). The CPP control and dominance the electoral processes, perpetuating a "winner takes all" pattern in all institutions from national to local level, Cambodia will never earn the accolade of truly free, fair, and credible elections.
- There was a situation of gender inequality in election to decision-making positions 12% and 14.5% of the National Assembly and of local council membership, respectively, were taken by female candidates. However, this increase numbers of female elected officials has not yet reached 30% of female candidates on party list, recently raised by civil society groups, as a target, and has not represented an equal reflection of the 52% female Cambodian population. It also has not yet responded to the Cambodian Millennium Development Goal (CMDG), which have set a target of women elected representatives

25% in commune level and 30% in national assembly by 2015. Although women constitute 51% of the electorate, According to UNDP's Human Development Index 2006, Cambodia has among the lowest levels of gender equity in Asia, as measured by the gender development index (0.578) and the gender empowerment index (0.373). Social attitudes and tradition deem women to be of lower status than men.

- A compromise was made and amendment adopted at the National Assembly on 2nd March 2006, between the opposition party and Prime Minister to amend the Cambodian Constitution from a 2/3-majority vote to an absolute majority in order to form a government. After the amendment, there happen the division and FUNCINPEC in two parties FUN and NRP, and the removal of the FUNCINPEC ministers and local governors (provinces and districts). The removals included Co-Minister of National Defense H. E Nhek Bun Chhay, Minister of Interior, Prince Sereyvuth (6th March 2006) and ten Phnom Penh Deputy Governors and Provincial Deputy Governors, who asserted that it was a consequence of the change to the absolute majority vote. At the same time, the split and divisions within Funcinpec Party drew attention as a number of political members at the local and higher levels joined the CPP, SRP and New Party (Human Right Party).
- An increase in the number of opposition Members of Parliament in chair positions is a result of the improvement of the parliamentary function of check and balance. There was an additional change in the expert committees of Parliament with a 5-2-2 formula, consisting of 5 committees led by Cambodian People's Party, 2 committees led by Funcinpec, and 2 others led by Sam Rainsy Party. Sam Rainsy said that the change from a 2/3 majority to an absolute majority would allow his political party to receive a great number of votes in the next term, which could enable him to form his own government. Several political observers designated the change as a form of retribution from the opposition party against Funcinpec party, which was left behind after the creation of the coalition government between Funcinpect party and Cambodian People's Party (CPP).
- According to COMFREL's media monitoring report, some major political parties have access to some radio stations and newspapers (but not Television). They started to campaign and disseminate their political party platform through radio and newspapers. The findings show that most state and private media still are very much in favor of the ruling party (CPP). Despite this the government still is intolerable with the critiques, and restricts freedom of expression through peaceful demonstration. Following the controversial arrests of human rights activists and journalists over defamation charges, the article 63 of the criminal procedure related to defamation was amended to remove the sentence of imprisonment, yet maintaining the sentence over compensation. However, there are currently three lawsuits drawing the attention of the national and international community, it is showing that the environment in Cambodia is still unsafe despite this amendment. Some editors and Journalists of the local newspapers (such as editor of "Moneaksekar Khmer = Khmer Consciousness, were charged according to article 62¹ in a criminal law. Julio Jeldres was still charged of defaming Prime Minister Hun Sen. A professor namely Tieng Narith was arrested for posting strong criticism of the government particularly of Prime Minister Hun Sen in his course book). The government

¹ On the other hand, according to article 62 of the law, defamation is an act of disseminating false information, which could affect national security. Hence, we can conclude that the two crimes have different principles. One affects dignity of an individual and the other affects national security.

has restricted and cracked down the peaceful demonstrations, banned the distribution of independent reports such as global witness report on deforestation in Cambodia, and closed the cooperation with Mr. Yash Ghai, Special Representative of Human Rights of UN General Secretary because he expressed his reports on deep concern over the government's handling of land issues and failure to reform the rule of law.

- No one can assert that any country's democratic transition is complete unless and until there is a peaceful handover of power following defeat at the polls. As the CPP would not surrender power in 1993, this test has not been met. However the election results and clearly point to greater popularity of the opposition party (SRP) in the capital Phnom Penh. If the verdict of the electorate is to be fully respected by the CPP, as they demand for the overall results in the country, then they should at least now relinquish control of the Phnom Penh Municipality or cede a substantial share of control.
- The current political environment of for the 4th National Assembly elections has been becoming active, in some cases tense, political parties organize themselves to take part in the upcoming elections. In the preparation stages for this election, observation has found that some political parties, including parties holding seats in the 2003 and 2007 elections as well as newly established political parties have been steadily carrying out activities, such as strengthening their networks, disseminating party platforms and making promises in order to seek support from voters. However some parties have reported the destruction of signs and intimidation toward its activists. The NRP (Norodom Ranariddh Party) has also faced serious difficulties regarding its president, Prince Norodom Ranariddh, and his ability to stand as candidate for the position of Prime Minister in the national elections. The Court of Appeal recently upheld the verdict of Phnom Penh Municipal Court sentencing him to 18 months imprisonment and payment of compensation of US\$150,000 to Mr. NHIEK Bunchhay, the plaintiff from FUNCINPEC. Observation has found some irregularities and political influence in the handling of FUNCINPEC's controversial complaint against Prince Norodom Ranariddh, which arose over the sale of the FUNCINPEC headquarters, a matter that may lead to the absence of one political party president, a potential candidate for the national elections. If this situation continues without political reconciliation, contesting space in the upcoming elections will not be fully fair.

2- Preparation of 2008 National Assembly Elections

Although Cambodia has made significant steps forward which offer hope for the future, both through these past elections and through the promises for the national elections in July 2008, the elections still was marred by numerous irregularities, such as political violence and institutional inconsistencies, which prevented some of the electorate from exercising their franchise. Some key problems prevalent in past elections and future elections still need to be addressed:

- Partisanship of election administration officials at all levels. (National Election Committee, Provincial, Commune and Polling Station Commissions.)
- Successive failures to enforce proper electoral standards that have emboldened hard line party activists to apply coercive tactics over voters.
- Undue restrictions on efforts to inform all voters of their rights and their full, free and active participation in election processes.
- Serious disparities in media access before and during the election campaign.

- Lack of will to acknowledge and resolve election violations expeditiously and justly.
- In recent commune council elections-2007, the most worrying sign though is in the very low turnout of just 67% of the 7.8 million registered voters, in the areas where the reduction has been most dramatic 90+% in past elections to 50%. This means that overall 2.5 million eligible voters did not vote. A COMFREL survey showed that 18% of potential voters who did not vote went to the polling stations but faced obstructions.

The needs are therefore twofold. Firstly the bureaucratic and technical processes that can act effectively as impediments must be overcome – these are formidable for vulnerable people – illiterate, non-Khmer-speaker, or socially isolated due to poverty, disability or past/present party affiliations. Secondly the reasons for taking part, its virtues and inherent good citizenship responsibilities, all need to be restated with assurances about secrecy of the ballot.

COMFREL's Response:

COMFREL has a well established network of master trainers and election observers extending from national through provincial, commune, and district levels, reaching all polling stations. COMFREL has improved quality and timeliness of deployment and communication of network activists. COMFREL has fully trained and deployed long-term observers operating at commune, district and provincial levels. These cover the full range of electoral activities: voter registration, voter education, political climate at local level, voter education, supervision of polling day/counting, tracking complaints, as well as monitoring the general election climate. This network also establishes relationships with key partners – other domestic observers, international election missions, party agents and election officials.

COMFREL's past experience has shown that despite these formidable problems, systematic and comprehensive monitoring does contribute to the improving of the election environment, and its administration. Successive elections have been marked by fewer technical irregularities compared to earlier elections, although the propensity for violence, vote buying and political intimidation has continued so that serious concerns remain in these areas.

Quality monitoring will be needed not only to cover the polling and counting day, but also throughout the election process starting months in advance of the polling day. This sustained monitoring will be an important tool for deterring violations and reduce the irregularities and enhance confidence among voters and thus ameliorate the prevailing pattern of pre-election intimidation. These elections are in many respects more meaningful for the emerging democratic process, as they have great potential to provide new opportunities for participation, especially the poor, women and youth who make up the majority of voters.

COMFREL will target 15 large constituencies/ provinces with combined eligible voters of around 7 millions of which 51% are female voters.

- Deploying 210 trained long term observers (LTOs) – from February – the end of July 2008, reporting on the election situation and processes from distribution of voter notes, candidates registration, the election campaign, polling and counting day, fact finding mission, follow up complain process, and finally the post-election scene including acceptance of results and the peaceful handover of office. They help disseminate voter education materials and educate voters from house to house meetings.

- Deploying 6,500 short term election observers (STOs).
- Conducting parallel voter tabulation (quick count).
- Conducting media monitoring

The monitoring performed by COMFREL in cooperation with other local and international election monitoring organisations and political parties helped to monitor electoral processes such as registration, electoral commissions, complaints, media access and roles of civil servants to ensure they were as transparent and effective as possible. This also had an impact on the human rights of electorate participants, who had greater opportunities to participate in elections and make their voices heard.

COMFREL plans to conduct countrywide intensified and innovative project activities in line with its mission to promote understanding of the importance of election process and ‘intelligent voters’, and to encourage youth political participation through research, training, media, workshop and publication of voter education materials.

COMFREL has provided numerous legal recommendations and suggestions to the National Assembly, the government, and the NEC on election law and regulation, and other draft laws. Its efforts contributed to creating legal frameworks for elections and mechanisms including the restructure of the NEC, voter registration, and access to broadcasting media. Although some changes occurred that did not take into account COMFREL’s recommendations. COMFREL’s media campaign has broadcasted more than 1,000 live roundtable discussions about democracy, decentralisation, good governance, human rights, laws, electoral and political reform, and senate election and village chief selection. The discussions were broadcast on FM radio stations in the capital and in some provinces. They reached an estimated two million listeners during radio debates and roundtable discussions.

COMFREL has conducted the public forums that around 50% of the problems raised by citizens in the local forums and 60% of the 40 cases raised in national forums were solved. COMFREL also established more than 200 local watchdogs, by selecting participants of COMFREL’s local public forums and deploying them to observe their commune council’s performance.

At the same time, some members of parliaments (MPs) recognised the credibility of COMFREL’s Parliamentary Watch Report, which led to an increased number of MPs and their assistants who had contact with COMFREL’s observers and provided information regarding their activities. This then increased their accountability in fulfilling their duties to their constituents. In general it showed a mixture of progress in some areas but stalled progress in important relevant areas such as the Anti-Corruption Law. COMFREL has produced and published a separate report on how the Royal Government has fared against its 2003 election manifesto promises.

3- The Role of International Community in 2008 Elections

The role of international community is very crucial in supporting the 2008 elections. The elections in Cambodia might not have been held on time if the donor community has not provided assistance. Donors have experience of providing technical and logistical assistance to help strengthen the electoral legal framework and administration. Donors maintain its support before, during, and after Elections for the NEC, and Civil Society Organizations.

However its role and assistance should go beyond principles of the government ownership and responsibility of bringing effective management of aid flows contributed to implementation of

2008 elections. As experience there were promises and benchmarks from the government- the same promise and benchmarks as the last year- and this year. The government had failure to pass key laws such as the anti corruption law. An annual record 50%-60% of total government budget were foreign aid (in 2007, US\$ 690 millions in pledges of pledges of foreign aid). The linking aid to political reform may become difficult in future. 2007 record US\$ 690 millions-is because first time China's aid pledges to the total figures. China unlike Western donors attaches no strings of democracy to its aid. Western donor especially Japanese government shall keep their role to monitor the political environment and election process, and influence over the Cambodian's government on political reforms of governance, rule of laws and respect for human rights.

4- The Main Key Points Needed To Be Addressed:

- ***Strengthen and Encourage the Legitimacy of Non-Partisan Institutions:***

Setting standards for establishing independent, non-partisan government bodies including the key institutions of the Election Administration bodies, Constitutional Council, Supreme Council of Magistrates, National Audit Authority and all other major national institutions established by the Constitution. Amend the law on General Statute of Royal Cambodian Armed Forces, Law on Co-statute of Civil Servant. This aims at preventing all the three types of Cambodian Armed Forces- Gendarmerie, Military, and National Police from being political party member. Law on the Statute of Judges must spell out not to be political party member.

- ***Creation of Independent Institutions within the Constitution:***

National Election and Anti-Corruption Commissions should be written into the Constitution. A separate, independent and non-partisan committee must be established to construct clear guidelines and criteria for selection of candidates for all Constitutional Bodies.

- ***Adopt New Laws that Promote Greater Transparency***

These include the Anti-corruption Law which includes Asset Declaration of Prime Minister, Cabinet Members, Governors, Senators, National Assembly members and any elected official before, during and after their term in office; Political Financing Law;

- ***Strengthen Government Accountability of Government including Elected Officials***

Amend the Law on Election of Representatives in order to change from a proportional to mixed system (proportional and majority systems) which is also open independent individuals running for elections

- ***Strengthening Political Parties:***

Political parties recognized by the Parliament should be provided funding from the National Budget.