



ខុមហ្វ្រែល COMFREL

គណៈកម្មាធិការដើម្បីការបោះឆ្នោតដោយសេរី និងយុត្តិធម៌នៃកម្ពុជា (គ.ប.ស.យ)

COMMITTEE FOR FREE AND FAIR ELECTIONS IN CAMBODIA (COMFREL)

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7th Monitoring Report On Pre-Elections Assessment (The Situation Prior to the 2008 National Assembly Elections)

COMFREL Head Office, July 25, 2008

The atmosphere prior to the 2008 elections was characterized by a **growing sense of insecurity**, ranging from threats to assassinate political party activists, the murder of a Sam Rainsy Party (SRP)-affiliated journalist, to the deployment of Cambodian and Thai military troops to areas around the Preah Vihear Temple. In addition, the atmosphere lacked neutrality owing to a large number of cases in which government officials, authorities, armed forces personnel and the national police supported the ruling party and opposed other political parties.

Although the number of cases of murder, intimidation, threats and irregularities in this election has been lower than in previous elections, this still has affected the feelings and thoughts of voters.

Voters are increasingly focused on and worried about the stand off and the situation of military troop deployments in the areas surrounding Preah Vihear Temple. COMFREL is also concerned about obstacles and difficulties faced by some voters in the forthcoming July 27 elections, particularly with regard to people not being able to find their names on the voter lists or the relevant polling station code.

In addition, since the 1998 National Assembly elections, COMFREL has noted that, one or two days before polling day, voters are often given gifts in cash and/or kind by a certain political party (often referred to as the Night of the Barking Dog). In this regard, COMFREL is concerned that giving gifts to voters in cash and/or kind not only encourages voters to vote for a certain political party, but can also keep voters from casting their ballot for other parties.

The National Election Committee (NEC) has made a strong effort to manage and fulfill its roles and duties in accordance with the electoral calendar and Article 16 of the Law on Election of Members of the National Assembly (LEMNA). Nonetheless, COMFREL's observation still found several weaknesses: (1) rejection of the verification notices of electoral candidates who had their name on the voter list (issued by commune/sangkat authorities), which is beyond the NEC's authority, (2) the failure of the distribution of the voter information notices to reach all voters, (3) the illegitimate consolidation of electoral results at communes by CECs, and (4) the NEC's ineffective interventions with regard to private-run media outlets. Most private-run media outlets are in favor of the ruling Cambodian People's Party (CPP) and did not comply with the Electoral Law and the NEC's Regulations, Procedures and Guidelines.

The detailed report is below.

1. Security: Murder, Intimidation and Threats

Particularly during the electoral campaign period, there has been an increase in the number of cases of violence, including murder, intimidation and physical harassment of political party activists. From June 26, 2008 to the end of the election campaign,¹ there were six (6) cases of murder with a total of seven (7) victims, which included political party activists, supporters and a journalist, notably the murder of journalist Mr. Khim Sambo and his son. Four (4) out of the six (6) cases involved murders of CPP members. One of these cases occurred in Kampong Speu province and was also claimed to be the murder of a Human Rights Party (HRP) member. The two (2) other cases concerned murders of SRP members. In most cases, the perpetrator(s) has/have yet to be brought to justice. The authorities claim that none of these cases were politically motivated.

From July 2007 to the starting day of the electoral campaign, there were fifteen (15) cases² of murder of political party members, activists and supporters. Seven (7) of these cases involved murders of SRP members, three (3) involved Norodom Rannariddh Party (NRP) members, four (4) involved CPP members and the last one involved a HRP member.

The above killing cases took place in the following provinces: Kampong Cham (4 cases); Banteay Meanchey, Kampong Speu, Kampong Thom and Siem Reap provinces (2 cases in each province); and Kampong Chhnang, Kampot, Kandal, Phnom Penh, Preah Vihear, Ratanakiri, Svay Rieng, Takeo and Pailin (1 case in each province/municipality).

Regarding the investigation into the murder case of journalist Khim Sambo, a Cambodia-based US Embassy official announced that the Legal Office of the Federal Bureau of Investigation (FBI) stood ready to provide assistance if requested by the Royal Government of Cambodia. In response to this statement, the Royal Government welcomed the provision of any further information related to the case, however, there is not clear in requiring assistant.³

In addition to the cases of murder, the observation⁴ also found that there were fifty-six (56) cases related to physical harassment and intimidation of political party members, activists and supporters in almost all provinces/municipalities. In addition, a large number of civil servants, armed forces personnel and local authorities participated in activities supporting the CPP and opposing other political parties. Until now, there has been a total of one hundred and fifty-one (151) violations⁵ of the Election Law, Regulations and Procedures, including the destruction of party property; the removal of party billboards, banners, posters and leaflets; prevention and disturbance of party campaign activities; and gift giving in order to buy votes.

These cases occurred in the provinces of Kratie (23 cases), Banteay Meanchey (21 cases), Phnom Penh (19 cases), Kampong Cham (18 cases), Kampong Speu (17 cases), Kampong Chhnang (15 cases), Prey Veng (13 cases), Siem Reap (13 cases), Battambang (12 cases) and Kampot (12 cases); other provinces/municipalities saw fewer than 10 cases apiece. The highest number of victims as a result of these cases were from the SRP (28 cases), followed by the NRP (12 cases) and the HRP (8 cases). The majority of the alleged perpetrators involved, in seventy-four (74) cases, were local authority officials and CPP-affiliated persons.

¹ According to a report of COMFREL-ADHOC networks.

² Ibid. In 2003, there were two hundred and ninety-one (291) cases of intimidation and twenty-eight (28) cases of murder, with a total of thirty-one (31) victims.

³ According to a speech by General Touch Naruth, a Phnom Penh Municipal Police Chief, quoted by Radio Free Asia (RFA) in its media broadcast of July 24, 2008.

⁴ Ibid (1).

⁵ Our observers found fifty-six (56) cases of destruction of political party property; thirty-five (35) cases of vote buying; thirty-one (31) cases of bias by government officials; and eighteen (18) cases of disturbance of electoral campaign activities by political parties.

The deployment of Cambodian and Thai military troops to areas around the Preah Vihear Temple started on July 15, 2008, one week after the Preah Vihear Temple was registered as a World Heritage site. The deployment was triggered by black-uniformed Thai soldiers, who encroached on areas surrounding the pagoda, which is located near the Preah Vihear Temple. The situation worsened when the number of Cambodian and Thai soldiers continued to increase. A meeting between the two nations to resolve the military standoff was held in Thailand on July 21, 2008. The meeting did not result in an agreement.

Cambodia then called for international intervention from the Association of Southeast Asian Nations (ASEAN) community and the United Nations (UN). The Thai side requested bilateral discussion and later both agreed to have a new meeting to resolve the issue in Siem Reap province on July 28, 2008.

2. Administration and Task Performance of Electoral Authorities

The majority of officials working at Provincial/Municipal Electoral Commissions (PECs) and Commune Electoral Commissions (CECs) were former officials with experience in previous election(s); there were not many new officials. In addition, most PEC and CEC chairpersons and members were from provincial/municipal departments. In the past, these older members of PECs and CECs were allegedly biased towards the CPP and, in some cases, the way they fulfilled their role in previous elections favored that party.

This year, there were also rumors indicating that, in the recruitment process for Polling and Counting Office Commissions (POCs/COCs) in some polling stations, money was offered as a bribe to obtain certain positions. Moreover, at least four (4) complaints were filed by political parties (3 cases by the SRP and 1 case by the HRP) against CEC officials whose performance was allegedly biased and contravened the Rules and Procedures. In one case, the CEC of Ka Chanh commune, Banlung district, Ratanakiri province, requested that the SRP remove its party billboard, which had been installed approximately 200 meters away from Borei Kamkor Boun School, which was to be used as a polling station for the forthcoming election. However, there was no request by the CEC that the CPP remove a billboard that had been installed approximately 40 meters away from a polling station in Yeak Lom commune of Banlung district.

Nevertheless, the NEC has done well to implement its roles and duties, and has generally complied with the official electoral calendar as well as Article 16 of LEMNA. Its role in the reception of complaints has been improved. For example, on July 3, 2008 the NEC issued a Reminder Notice about the procedure for Checking, Receiving and Resolving Complaints at CECs during the electoral campaign period. However, only a few complaints were actually resolved. Irregularities and Law and Procedure violations committed by the NEC are listed below.

2.1 Validation to Voter List Contrary to the Rules

There have been numerous cases of voter names being added to the official voter lists. This contravenes the Procedures, as the voter lists were officially validated on February 29, 2008. However, on April 4, 2008 the NEC decided to include 321 voter names; on May 29, 2008, it added another 1,138 names to the list. According to the NEC, this was done because commune clerks or authorities had earlier failed to submit those names to the NEC for entry into the official voter lists.

2.2 Voter Information Notice Not Reaching All Voters

The NEC's plan for the distribution of voter information notices was not well organized, only 85 percent of over eight million eligible voters received their notice; therefore, nearly 1.2 million eligible voters did not receive their notice. COMFREL observers found that tens of thousands of voters living in urban areas of each province/municipality, notably in Phnom Penh municipality, did not receive

their notice because of political discrimination. There is a concern that voters who did not receive their notice would be confused or think they were not allowed to vote because their names were not included on the voter lists.

2.3 Rejection of Verification Notices Exceeding the NEC's Authority

The NEC's authority to reject the verification notices of electoral candidates with their name on the voter list (issued by commune/sangkat authorities) is not stipulated in the Electoral Law. Thus, the NEC is not legally authorized to reject verification notices. As a result of the NEC's rejection of verification notices, at least 99 out of approximately 2,400 electoral candidates lost their rights and those of their prospective party, as they were not able to participate in the elections.

2.4 Illegal Calculation and Recording of Election Results by (CECs)

According to Articles 109 and 110 of LEMNA, CECs are not authorized to consolidate electoral results in their own individual commune. Instead, CECs are responsible for collecting all records and documentation from the polling station commissions and then forwarding them directly to the PECs. Therefore, Point 8.19 of the NEC's Regulations and Procedures, which deals with the Checking and Consolidation of Election Results in the Commune/Sangkat by the CEC, should be considered illegitimate. If implemented, the PECs would use the CECs' illegitimate records to calculate the election results (for a detailed analysis of this issue, see attached document).

2.5 The NEC's Response to Media Violations

During the electoral campaign period, the NEC failed to fulfill its media-related roles and duties to ensure transparency, balance, accuracy, professionalism and respect for the codes of conduct by private-run media outlets. Meanwhile, coverage of election issues decreased as most media turned their attention and coverage to the Thai-Cambodia border dispute.

The NEC even seems to accept current violations of the Electoral Regulations and Procedures by media outlets. According to *Samnei Thmey* newspaper,⁶ the NEC Secretary-General, Mr. Tep Nytha, said: "I have noticed that most local media broadcasts are more biased towards the ruling party than towards (non-ruling political parties). However, the broadcasts of foreign media outlets are negative in tone towards the ruling party". Thus, NEC may believe there is an overall balance in broadcasts by local and foreign media outlets. This raises a question as to whether the NEC is really committed to demanding respect by media outlets for the NEC Regulations and Procedures. When asked about this, the NEC has always responded that it does not have the legal instruments to correct the media.

3. Observation of Complaint Settlement and Hearings by the NEC

During the 29-day electoral campaign, there were many cases of confrontation that led political parties to file complaints. Up to now, there have been 32 appeals to the NEC; 15 of these have been accepted for resolution in open hearings. During the first hearing, which was held on July 16, 2008, 5 complaints were settled. During the second hearing, which opened on July 23, 2008, another 10 cases were settled. Both hearings, where the arguments of the two sides in the dispute were discussed, revealed that several of the points raised were not grounded in legal provisions.

3.1 Negative Outcomes Resulting from the Use of Representatives

In order to seek resolution, complainants (particularly political parties) have authorized the use of representatives in almost every phase of the hearings. However, these representatives were not the

⁶ "COMFREL is Concerned about Insecure Atmosphere and Irregularities during the Electoral Campaign Phase", Oeat Daravuth, *Samnei Thmey* newspaper, July 17, 2008.

complainants. As a result, the representatives often lacked the necessary information when testifying, which hindered their explanations and detailed descriptions of the scene to the trial jury. In the case of complaints No. 063 and No. 064, for instance, the representative apologized for any potential mistakes before answering questions from the trial jury. Moreover, without exception, the word “representative” (which does not refer to an attorney) was used, even though all sides involved in the dispute were present at the hearings.

3.2 Hearing Debates

In electoral disputes, hearings can take the form of a summary judgment, an adversary system or an inquisitorial system. In all cases, the NEC hearings were tacitly considered inquisitorial hearings. COMFREL’s observation of a hearing on July 16, 2008 showed that the judge failed to recognize the role of the representatives as attorneys authorized to speak on behalf of the plaintiffs. This resulted in the representatives/attorneys themselves having to formally request the right to speak (complaints No. 062 and No. 063).

3.3 Presentation of Evidence

Three kinds of evidence were presented during the hearing processes. These included material items (such as a gift package in the case of complaint No. 068 and tape recordings in the case of complaints No. 074, No. 075, No. 087, No. 088, No. 076, No. 083, No. 084 and No. 075), documents and eye witnesses (in almost all complaints). Point 11.10.18 of the Electoral Regulations and Procedures states that “Methods used in presenting evidence in trials in the Kingdom of Cambodia can also be used in the hearing process. Evidence can be presented by all means and shall comply with LEMNA and the Regulations and Procedures”. Regarding Civil Law procedures, the court recognizes a case if it is based on evidence. Thus, the examination of a case by the trial jury will be based on evidence presented during the complaint submission and hearing process. Moreover, the trial jury cannot accept or reject any case before scrutinizing the evidence.

3.4 Questioning of Witnesses and Relevant Persons

Another point is related to the questioning of witnesses and other relevant persons by asking “leading questions”, which could affect the trial jury’s impartiality and jeopardize its responsibility not to favor any of the sides involved in the dispute (in the case of complaint No. 068, for example, a question raised by a council member referred to gift giving as a charitable activity). The questioning of representatives by the trial jury is also regulated by Articles 139⁷ and 141⁸ of this law. For instance, is the phrase “a thief who steals from the nation” an insult or not? Do we know whether the following words and phrases are wrong or not: “that person”, “fat person”, “person with one or two broken legs”, “blind person”, “big-headed person”, “small-headed person”? These questions were asked very often during the second hearing.

4. Neutrality of Civil Servants and Local Authorities

⁷ Article 139 – level of questions

1. If possible, questions should be posed separately and clearly.
2. The following questions cannot be asked unless there is good reason:
 - a. Questions which insult or make the witness nervous;
 - b. Leading questions;
 - c. Repeated questions;
 - d. Irrelevant questions;
 - e. Questions which require the opinion of the witness;
 - f. Questions which require a description of a scene not seen by the witness.

⁸ Article 141 – execution relevant to the provision on primary questioning of the witness.

The observation noted that most civil servants, armed forces personnel and local authorities did not remain neutral, but were biased towards one particular party by actively participating in electoral campaign activities to support their prospective political parties, particularly the CPP; some of their activities were also regarded as disturbance and as acting against other political parties, mainly the opposition SRP, the NRP and the HRP, etc. According to COMFREL's observation, at least thirty-one (31) cases of partiality and eighteen (18) cases of disturbance took place. Moreover, many state-owned resources were used in political party processions, particularly by the CPP. This included cars with state-license plates, cars with no license plates, cars with political party logos and cars with private license plates. The police have not taken any action to look for more information related to these cases.

5. Media

Most party-affiliated media institutions did not follow the Electoral Law or the Procedures, Regulations and Guidelines issued by the NEC. Threats and obstructions toward media outlets took place both before and during the election campaign period. With the election campaign period approaching, Kratie's Radio Angkor Ratha FM 105.25 MHz was closed by the Ministry of Information because it rented airtime to civil society organizations and political parties to disseminate on their activities. The SRP-affiliated editor-in-chief of *Moneaksekar Khmer* newspaper, Mr. Dam Sith, was arrested, jailed and charged with publishing false information and defaming H.E. Mr. Hor Namhong. In fact, the newspaper merely quoted a speech of Mr. Sam Rainsy. After Prime Minister Hun Sen intervened, Mr. Dam Sith was released on bail. During the election campaign period, *Moneaksekar Khmer's* journalist Mr. Khim Sambo and his son Khat Sarinpheata were killed.

5.1 Private Media

Electronic media – radio and TV – affiliated with the CPP continuously violated the NEC's Procedures, Regulations and Guidelines with regard to equity and equality of airtime allocation or the renting of airtime to political parties. These media also violated the media code of conduct. FM 95 MHz, FM 88 MHz, FM 97 MHz, FM 98 MHz, FM 99 MHz and FM 103 MHz, for example, provided opportunities to disseminate on political platforms and talk about activities only to the CPP. Moreover, these stations continued to produce programs that criticized and insulted opposition parties.

Taphrom Radio FM 90.5 MHz, a Funcinpec Party-affiliated radio station, continued to produce programs and disseminate information that served only Funcinpec. Also, this radio station did not made an announcement about renting airtime to political parties.

Opposition parties had access to only a few radio stations⁹ which rented airtime to broadcast on campaigns, platforms and individual party activities as well as to criticize the Royal Government and the CPP. Opposition parties also produced their own programs, making allegations and serious criticisms aimed at discrediting the leaders of other political parties. For instance, the SRP's "Candle Light" radio program, which aired on only a few of the radio stations mentioned above, occasionally used insulting words; for example, it accused the CPP of "selling and stealing from the nation". The NRP's royalist radio program alleged that the presidents of the SRP, the HRP and Funcinpec were "puppets of the CPP", etc.

The coverage of election issues decreased as most media turned their attention and coverage to the Thai-Cambodia border dispute.

Radio FM 105 MHz, FM 102 MHz, Radio Free Asia, Voice of America and Radio France International: The sources and tone of the programming/news of these radio stations varied. However, our observation found that most of the news and programs produced by these stations attacked or were negative in tone towards the CPP and the Royal Government. Our observations of these media outlets

⁹ These included Radio FM 105 MHz, Radio FM 104 MHz and Radio FM 93.5 MHz.

indicated that the SRP was allocated most time (20% of the total time allocated to political parties), followed by the CPP (15%). Funcinpec, the NRP, the Khmer Democratic Party (KDP), the League for Democracy Party (LDP), the HRP and the Khmer Anti-Poverty Party (KAPP) were allocated between 7% and 11% of radio airtime. The Social Justice Party (SJP), the Khmer Republican Party (KRP) and the Hang Dara Democratic Movement Party (HDDMP) were each allotted around 4% of the broadcasting time.

CTN broadcast and produced most of its programs in favor of the ruling CPP and criticizing non-ruling political parties, especially the SRP. During the observation period, five (5) political parties received broadcast coverage. The CPP was allocated 76% (equal to 42 minutes and 51 seconds of the total time allocated to all parties), most of which was positive in tone; the SRP was allocated 21% (equal to 14 minutes and 50 seconds) of the total time allocated, most of which was negative in tone. Meanwhile, Funcinpec, the NRP and the HRP were each allocated between 30 seconds and 1 minute of the broadcasting time.

5.2 State-run Media

Because of “Equity News” and the NEC’s own “Equal Access Program”, the state-run channel TVK was the only TV channel that complied with the Electoral Law and the NEC’s Procedures, Regulations and Guidelines during the election campaign period.

Voter Education¹⁰

Media coverage in terms of voter education programs and/or election-related information sharply increased during the election campaign period, and totaled 154 hours, 18 minutes and 34 seconds. The NEC’s voter education program broadcast using state media included songs and comedy spots, informing people about the importance of voting and about how to vote. The spots also told voters to vote for whatever party they wanted without fear. By dedicating most of their time to the NEC’s programs, the state-run media play a very important role in voter education.

Some private radio stations offered other programs. For example, FM 105 MHz’s Voice of Democracy produced a Prize-giving Electoral Question & Answer program. In addition, Radio Free Asia and Voice of America both produced electoral programs.

CTN and Radio FM 102 MHz, on the other hand, allocated the least time to voter education programs.

Equity News Program on TVK

The content of the Equity News program focuses mostly on parties’ positive aspects, party platforms and the support of voters for specific political parties. Negative tone and criticism of political parties arose only a few times. According to COMFREL’s findings, by July 20, 2008, the time allocated to political parties was as follows: CPP 21%; SRP 16%; Funcinpec 11%; HRP and NRP 10% each; LDP, HDDMP and KDP between 7% and 9%; KAPP, KRP and SJP between 2% and 4%.

The program also allocated a great deal of time to voters commenting on the elections and the particular political party they liked and supported. By July 20, the program had included several appeals by political party leaders asking voters not to vote for the CPP.

NEC’s Equal Access Program on State-run Media

¹⁰ Monitored media included: TVK, CTN, Radio AM 918 KHz, FM 96 MHz, FM 102 MHz, FM 105 MHz, Radio Free Asia, Voice of America and Radio France International.

There were two kinds of NEC Equal Access Program: the NEC-produced Political Parties' Platform Broadcasting and the political party-produced spots. The opposition parties used their time to strongly criticize the CPP-led government, whereas the CPP used their time to disseminate on the CPP government's achievements. Apparently, some political parties lacked the resources to produce spots for broadcast. The KRP, for example, did not produce a spot; the HDDMP only slightly modified its 2003 election spot. Nevertheless, the CPP, the SRP, Funcinpec, the NRP and the HRP had different spots broadcast during the program.

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*COMFREL's first mission is to help to create an informed and favorable democratic climate **for free and fair elections** through lobbying and advocacy to establish a permanent and suitable legal framework; education to inform citizens of their rights; and monitoring activities that both discourage irregularities and provide comprehensive data to enable an objective, non-partisan assessment to be made of the election process.*