

FINAL REPORT
EUROPEAN UNION FOLLOW-UP MISSION TO CAMBODIA
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1 EXECUTIVE SUMMARY

- The political settlement which resolved the crisis in Cambodia in the wake of the contested 2013 National Assembly elections has resulted in the passing of a new Law on the Election of members of the National Assembly (LEMNA), a new Law on the National Electoral Committee (NEC) and a number of important electoral reforms. Critically, these agreements have provided the country with a window of opportunity to strengthen its electoral process.
- However, a number of important areas remain unaddressed or are only partially addressed. Going forward the credibility of the democratic and electoral processes will be defined by the manner in which electoral and related laws are implemented. The extent to which the political relationship between the ruling and opposition party can be sustained will also have a strong bearing on the environment for future elections. It is hoped that the political agreement can be sustained but this will have to be monitored carefully as deterioration in political relations will have repercussions for the electoral process, including potentially the functioning of the NEC.
- Some important recommendations from previous election observation missions have been addressed and these represent a very positive development. The creation of a new NEC as a constitutional body, with an independent budget and bipartisan political membership recruited through an open recruitment process is a very important step in increasing political and public confidence. The LEMNA also provides for open recruitment for NEC structures at the Provincial and Commune levels, where it is also critical to maintain political confidence.
- The decision to undertake new voter registration is a second very positive development, as this was a major point of discontent during the 2013 polls. There is a consensus among the NEC, political parties and CSOs that some form of biometric registration is desirable and necessary to ensure confidence. For the coming period, the NEC will need to develop a new set of Regulations to provide a framework for implementation across the electoral cycle. The content and spirit of these Regulations will be critical.
- The NEC informed the Mission that the Regulations for voter registration have been completed but not yet adopted. They expect to share these with the EU and Japan in June for review. The plan is to conduct a pilot registration exercise in August 2015 to test the system and procedures. However, at present the NEC has no equipment and no budget for this and intends to prioritise discussion with donors on this aspect. Further, with the limited distribution of the new National ID Cards such a pilot would appear to rely heavily on alternate sources of ID, which could somewhat undermine the exercise.
- The LEMNA provides for the use of National ID Cards as the main source of identity for both registration and voting. However, many millions remain to be distributed and the process is slow and beset by some difficulties at the local level. The Ministry of Interior is responsible for the ID and has stated its intention to distribute as many as possible before the Commune Elections in 2017, but this remains an issue to follow.
- Some important recommendations have only been partially addressed. The LEMNA provides a requirement for parties to establish a designated bank account for all campaign funding and expenditure. However, there is no requirement for public disclosure by parties nor is there an obligation for the NEC to check the accounts, leaving this to the discretion of the electoral body.

- The LEMNA prohibits the use of state resources for the benefit of any party during the campaign, but doesn't provide detail on how this will be implemented, highlighting the importance of NEC Regulations in this regard. On the issue of civil servants' involvement in the elections, the LEMNA is unfortunately ambiguous and does not properly address the matter.
- Some important recommendations have not yet been addressed. There are no provisions in the LEMNA for the equal distribution of seats in each constituency, so equal suffrage is not guaranteed. Naturalised citizens may not stand as a candidate and independent candidates are not permitted to contest. There are no new provisions for media and so the extent to which there will be freedom of expression and balanced coverage by the media remains a significant question. There are no provisions to ensure or encourage increased women's participation in the political process.
- The new LEMNA also raises a new set of concerns. There are provisions which may limit the activities of civil society organizations in the run-up to the elections. CSOs fear that such provisions could be used to limit their legitimate election-related activities as well as their freedom of expression.
- With regard to the rights and freedoms for political parties, the LEMNA contains a vague provision relating to prohibitions on political parties from using "insults". At the same time the LEMNA makes a political party responsible for the actions of senior leading members, with penalties including removal of the party from an election. While the Mission was assured that such penalties would only be used in extreme circumstances, such collective punishment is not appropriate and could be open to misuse.
- A series of new laws are expected to be issued soon, and these will also have a bearing on the democratic environment. A Law on NGOs is expected shortly and there is concern it may place undue restrictions on NGOs¹. A cybercrime law is also under consideration, and similarly there are fears that this may impact on the use of social media for comment on politics.
- While the creation of the new NEC is highly welcomed, more broadly there has been a lack of reform of other institutions that play a critical role in the elections. Namely, there has been no reform of the judiciary, security sector or civil service. In particular the Constitutional Council as the final legal body on decisions relating to election results is seen as lacking independence or impartiality. Some interlocutors even went as far as claiming that the broader institutional environment in Cambodia undermines the chances for a peaceful transition of power should the ruling party lose at the ballot box.
- In the framework of the standard project formulation process of the European Commission, the EU Delegation has identified three prospective areas for future electoral support: capacity building for the NEC; support to electoral processes including voter registration; and support to CSOs in the electoral process including voter education and domestic observation.
- The follow up mission which was deployed at the end of that identification phase wishes to highlight the following key factors:

¹ Since the writing of the report, the Law on NGOs has been discussed and approved by the Council of Ministers (5 June 2015) and is now expected to be put to vote to the National Assembly. The draft was not available to the Mission at the time of writing of this Report.

- Timeframe for electoral preparations is essential. Allocation of funds shall be timely to be able to support the specific parts of the process identified.
- Several elements of the reform process are still unclear; hence a clearer action plan with associated benchmarks during implementation of the core of the support programme shall be established prior deploying resources.
- International support need to be adequately coordinated. The Japanese have a similar programme portfolio as the EU and appear to be able to mobilise support for less than \$100 million USD quite rapidly.
- The electoral reform process in Cambodia, and particularly voter registration, may be controversial. Therefore interventions on that aspect should be carefully considered to actually strengthen transparency, inclusiveness and accountability.

2 MISSION BACKGROUND

Since 1998, the EU has deployed four full Election Observation Missions (EOMs) to Cambodia, for the National Assembly Elections of 1998, 2003 and 2008 and for the first-ever Commune Council Elections of 2002. For the July 2013 National Assembly Elections the EU deployed a two-person Expert Mission (EEM) to follow the electoral process, largely as it was felt that inadequate progress had been made in addressing the concerns and recommendations made in 2008.

In line with a relatively new methodological development the EU is increasing its focus on follow-up to the findings of EOMs and EEMs in order to maximise the overall impact of the findings of respective missions and also to raise awareness of critical issues in the period between elections and further illustrate the EU's interest in electoral reform and its position as a potential partner.

The Election Follow-Up Mission (EFM) to Cambodia was conducted during May 2015 after the EU Delegation (EUD) had already identified areas for EU future support to the electoral process. The aim of this mission was to:

- Confirm the EU's interest in real progress on electoral reform
- Highlight the importance for electoral arrangements to be credible and inclusive, with effective cooperation between parties and a constructive role for civil society
- Assess the current reform process and also the extent to which previous EU election-related concerns and recommendations have been addressed
- Share any relevant additional considerations with the EUD as regards its task to design useful, viable and sustainable support programmes to strengthen the electoral process and democratic environment.

The EFM was led by Silvio Gonzato, Director of Human Rights and Democracy in the European External Action Service (EEAS). The team also included Paolo Salvia (EEAS) and Stein Verschelden (EEAS). Two experts were recruited to support the EFM: Mark Stevens (Team Leader/Political Expert) and Renata Tardioli (Election Expert).

Mr Gonzato and the other members from the delegation from Brussels were in Cambodia from 19 to 22 May 2015 and during this period the EFM, in close cooperation with the EU Delegation to Cambodia, held an extensive meeting programme with Cambodian and international stakeholders, including the National Election Commission (NEC), the Minister of Interior, Minister of Information, political parties, civil society organizations, media, representatives of EU Embassies in Cambodia and international organisations working on election-related programming. A full meeting list is attached in Annex 1. At the end of the visit, a press release was issued during a press conference and is attached in Annex 2.

The two Experts arrived in Cambodia on 10 May 2015 and remained until 28 May 2015. In addition to attending the meeting programme outlined above the Experts also met with relevant actors and developed a broader understanding of the electoral reform process to facilitate the report writing process.

3 POLITICAL CONTEXT

Background

The July 2013 elections were the fifth legislative elections in Cambodia since the signing of the Paris Peace Accords in 1991. Politics in the country has been dominated since 1993 by the Cambodian People's Party (CPP) and its leader, the current Prime Minister Hun Sen. In 1993, FUNCINPEC, a royalist party founded by Norodom Sihanouk in exile in 1981, actually emerged as the largest party in the Assembly, but it was eventually ousted by the CPP in the years following the elections. In the intervening years the CPP has dominated control of the National Assembly and prior to the 2013 elections had 90 of the 123 seats. The CPP also controls the vast majority of Commune Councils throughout the country, holding over 72% of the seats in the local Councils.

The second largest party in the National Assembly in the lead-up to the 2013 polls was the Cambodian National Rescue Party (CNRP), which is an amalgamation of two of the leading opposition parties, the Sam Rainsy Party and the Human Rights Party, led by Sam Rainsy and Kem Sokha respectively. CNRP had 29 seats in the Assembly at the time of the 2013 polls.

The 2013 Elections and the Reform Process

In this context, the 2013 elections resulted in a major political shift in the country. The NEC announced that the CPP had won 68 seats and the CNRP 55 seats. The CPP received 3,235,969 valid votes while the CNRP received 2,946,176 valid votes. The CNRP claimed there had been significant irregularities, and focused their discontent on what they claimed, and many observers concurred, were significant shortcomings in the voter registration and voter identification process. Notably, they claimed that the NEC had not acted as an independent impartial administrator and there were many thousands of names which had been deleted from the voter register, while in other cases there were citizens with multiple registrations and people voting with improper identification documents.

For many months after the election, the country was in a political crisis, with demonstrations by the opposition, and a series of instances of police repression of the gatherings and some deaths. The CPP and CNRP eventually agreed a compromise 14-point plan for reform² and this culminated in a political settlement on 22 July 2014 (see Annex IV). The political settlement did not address all of the 14 points but did pave the way for an end to the crisis and the start of a reform process and "culture of dialogue" between the two parties. The political settlement found expression in various forms in the revised Law of Election for Members of the National Assembly (LEMNA), revised Law on the National Election Committee and a Constitutional Amendment to provide for the new status of the NEC (see below). These priority areas enabled reforms in a number of critical areas, including the NEC and voter registration, though some of the changes to the LEMNA were not so positive or far reaching.

² The 14 areas were: Voter registration and voter lists, Enactment of the Law on Political party finance, EMB reform, Neutrality and integrity of civil society, Media access for parties, Mechanism for EDR, Election observation, Impartiality of civil servants and armed forces, Elections calendar (date), Regulation and procedures of elections, Revision or amendment to strengthened the penalty on law on election, Election campaign, Elections of village chiefs, National forums on reform

The two parties have entered into a “culture of dialogue” as part of the political settlement, which is akin to a cessation of political hostilities. However, it is being interpreted by the CNRP in particular as nullifying political debate, with the CNRP being castigated for reported criticism of the Government, as though the two parties were in a coalition rather than being political contestants with the CNRP as an opposition party. It remains to be seen, going forward, how tenable this situation is and also what impact it has on the CNRP, within which there appear to be varying views as to how much they should cooperate and concede to the CPP.

4 LEGAL FRAMEWORK AND INTERNATIONAL AND REGIONAL OBLIGATIONS

The Legal Framework

As a result of the agreement between the two main parties to proceed with electoral reform, two laws were enacted by the National Assembly at the end of February, namely: the new Law on the Organization and Functioning of the NEC (NEC Law) and the Law on the Election of Members of the National Assembly (LEMNA). The latter law substitutes the previous LEMNA of 1997 and relative amendments. Both laws were deemed as urgent³ and therefore immediately in force under the provisions of the Constitution⁴.

The NEC Law is specifically provided for in the amended Constitution⁵ which has rendered the NEC a constitutional body⁶. Accordingly, the NEC shall be the competent organisation to administer and organise the election of members of the Senate, the member of the National Assembly and other elections as defined by the law. The NEC should be independent and neutral in implementing its mandate to ensure that elections are free, fair, legitimate and in accordance with the principle of liberal democracy and pluralism.

Both laws are adequate for the organisation of a legitimate electoral process. However, some aspects have been left vague, including procedures for the voter registration process, polling, counting and complaints and appeals. This leaves ample space for further Regulations to be enacted by the NEC. It will also be crucial to see how those provisions will be implemented during the electoral process. The NEC Law in fact grants the NEC the power of implementing the electoral laws⁷ and wide-ranging regulatory power, enabling the body to regulate entire steps of the electoral process. Some Regulations are specifically required by the Law such as those for voter registration, complaints and appeals, procedures for selections of NEC lower levels and procedures for disabled.⁸

The NEC informed the Experts that it has almost finalised voter registration regulations and will send the draft to the EU and then to local stakeholders for review.

The NEC can also enforce measures to maintain security and public order during the time of elections and authorities at all levels have the obligation to cooperate with the NEC during the election period.⁹ However, it remains to be seen how the NEC is going to avail itself of this power and how cooperative the authorities will be to this purpose.

³ Art. 171 LEMNA; Art. 66 NEC Law

⁴ Art. 93 (NEW) Constitution

⁵ The Constitution of 1993 was amended in 1994, 1999, 2006, and most recently in October 2014

⁶ Art. 150 Constitution

⁷ Art. 42 (4,24) NEC Law

⁸ Art. 46, 113, 114 LEMNA; 17, 28 NEC Law; Art. 107 LEMNA

⁹ Art. 42 (5); 87 LEMNA

The new LEMNA reflects in most aspects the previous one. Provisions for election administration have been entirely removed to be included in the NEC Law and the chapter on voter registration has been entirely redone.

The right to vote is adequately provided for in the LEMNA.¹⁰ Accordingly, citizens over 18 years of age, having residence in the commune where they will be voting, not being imprisoned and not being deprived of the right to vote; not insane or under guardianship are eligible to vote. Citizens having multiple residences can choose one place to register as voters.¹¹ There are no provisions in the law for voting outside the place of residence. Provisions for citizens not having a fixed residence will be established by NEC Regulations.¹²

The right to stand as a candidate requires Cambodian citizenship; to be at least 25 years of age; residence in Cambodia and to be nominated by a registered party running in the elections.¹³ However, a constitutional requirement for a candidate to be Khmer national at birth¹⁴ was replicated in the new LEMNA. This is in contrast with the provisions of the ICCPR signed by the country¹⁵ and was already reported and recommended for revision by the EEM 2013.

The law also provides a list of incompatibilities for prospective candidates, including civil servants, court officials, member of the armed forces and police, religious figures, persons convicted with felony or misdemeanour and not rehabilitated, persons deprived to the right to vote and the right to stand, insane and under guardianship, member of the NEC, the Supreme Council for Magistrates and the Constitutional Council.¹⁶

Other provisions of the LEMNA are also a source of concern, such as prospective penalties against members of civil society and local and international observers. These issues will be dealt with in more details in the dedicated chapters below.

Provisions for publication of provisional and final election results would also benefit from further clarification as they do not provide a requirement for results to be broken down to polling station level or provide the time frame for publication.¹⁷

The issue of out-of-country voting which was raised by the opposition party and some CSOs and recommended for consideration by EEM 2013 was not included in the new LEMNA.

Three new laws that can impact on the regularity of the elections are expected to be enacted soon: The Non-Governmental Organisation Law (NGOs), the Cyber-Crime Law and the Law on Freedom of Information. Those laws like previous ones were apparently drafted without proper consultation with the stakeholders and are reportedly still sitting at the Ministry of Interior (MoI) at the time of writing.

¹⁰ Art. 46 LEMNA;

¹¹ Art. 48 (2) LEMNA

¹² Art. 49 LEMNA

¹³ Art.23 LEMNA

¹⁴ Art. 76 Constitution; Art 23 (1) LEMNA

¹⁵ General Comment 25 (3). Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

¹⁶ Art. 24 LEMNA

¹⁷ Art. 130 - 134 LEMNA

During the EFM Mission, CSOs in the country expressed concerns regarding the NGO laws, more specifically it would appear that in the draft there is no clarity regarding the criteria for registration and de-registration leaving space for arbitrary decisions and there are cumbersome procedures for financial reporting. It would also appear that this draft Law will be submitted to the Commission for Foreign Affairs in the National Assembly which is headed by the CPP.

Boundary Delimitation and the Electoral System

The Law is silent with regard to boundary delimitation, and this is a step backwards compared to the previous LEMNA which established the electoral formula for allocation of seats and provided for the establishment of a committee for boundary delimitation including parties and members of the National Assembly and the enactment of a new law on the subject.¹⁸

The current constituency boundaries coincide with the provincial administrative divisions: 24 provinces plus the municipality of Phnom Penh, compared to the 23 provinces of the previous LEMNA¹⁹

The new LEMNA has also introduced 2 additional seats, totalling now 125 members elected for a five-year term under a closed party list PR system.²⁰ However, the criteria used for this new allocation are not specified and deleted from the previous law as mentioned above. Specifically, the new LEMNA added one seat to the Kampong Som Province (Preah Sihanouk) and divided the Kampong Cham Province in two allocating 10 seats to Kampong Cham and 8 seats to the newly created Tbong Khmum Province. After the elections the distribution of seats to winning parties is done using the highest average formula and detailed steps are included in the law.²¹

The LEMNA also details provisions in case a party is boycotting the process. Any party which won seats is considered as boycotting if, despite the fact that " After the election process is conducted in a free, fair and just manner in accordance with the Cambodian Constitution, the Law on Organization and Functioning of the Constitutional Council, Law on Organization and Functioning of the National Election Committee and Law on the Election of Members of National Assembly and after the official announcement of the election results by the National Election Committee", it refuses to participate in the first sitting of the National Assembly as convened by the King; in the National Assembly's meeting to announce the validity of its members; and in the swearing-in ceremony. In these cases, the NEC will allocate the vacant seat not later than 72 hours from receiving notice from the National Assembly, to another party running in the same province using the electoral quota.²² This provision has been highly criticised by the Election Reform Alliance (ERA) as the reallocation of the seat disregards the citizen's choice and the actual position the political parties will take towards these results.

Complaints and Appeals

The new LEMNA and the NEC Law replicates the complaints and appeal system for the different steps of the electoral process of the previous LEMNA granting the NEC a semi-judicial power for deciding all complaints by holding of public hearings with the exception of those complaints which fall under the jurisdiction of the courts.²³ Cases are addressed at the level where they occur and can be appealed at the next level above. NEC decisions can be brought in front of the Constitutional Council whose decisions

¹⁸ Art. 7 LEMNA Revised with Amendments 2013

¹⁹ Art. 5 (2) LEMNA

²⁰ Art. 6 LEMNA; Art.78 Constitution

²¹ Art. 135 LEMNA

²² Art. 138 LEMNA

²³ Art. 42 (25) NEC Law

are final. Complaints against the announcement of provisional results can be brought either in front of the NEC or directly to the Constitutional Council.²⁴

The law includes deadlines for filing complaints and issuing decisions of electoral disputes. However, the relative procedures and forms to submit complaints will be contained in the NEC Regulations.²⁵ A source of concern is how trained prepared and impartial the lower levels will be to handle the cases. It has been reported in previous missions how the lower levels of election administration were not prepared to handle the cases and they were resorting too often to a mediation system which was introduced by the Regulations. Moreover, the Constitutional Council is often considered inaccessible for the citizenry and is not perceived to be an independent body.

EU EOM and EEM Findings, Recommendations and Current Status

Both the 2008 EOM and the 2013 EEM presented a number of recommendations on the complaints and appeals system stressing the need for revision of procedures and deadlines. The new LEMNA has reproduced the previous system entrusting the NEC at all levels to adjudicate complaints with appeals to be brought in front of the Constitutional Council. However, responding to the EU recommendations, the new LEMNA has extended the deadline for adjudicating complaints related to the announcement of provisional results to 72h instead of 48h.²⁶

The establishment of an independent body to adjudicate electoral disputes as recommended by the 2013 EEM was not adopted.

As mentioned above, the overall procedures will be contained in the Regulations yet to be enacted. Pending relevant regulations the analysis of the current status of EU recommendations at this stage is preliminary.²⁷

Regional and International Commitments

Cambodia has signed and ratified the main international instruments related to the elections including the ICCPR (International Covenant on Civil and Political Rights), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW). Cambodia is also a member of Inter-Parliamentary Union (IPU) and therefore the Declaration on the Criteria for Free and Fair Elections is applicable to its electoral process. At the regional level, the country also signed the ASEAN Human Rights Declaration (November 2012).

Cambodia has signed and ratified the Convention on the Rights of Persons with Disabilities and only signed the relative Protocol. Nevertheless provisions in the LEMNA facilitating access to voting modalities are still scanty and would benefit from further elaboration in the NEC Regulations.²⁸

The Constitution incorporates provisions of the Universal Declaration of Human Rights (1948).²⁹ However, there is no provision for direct inclusion of those norms in the national legal framework.

²⁴ Art. Art. 131 LEMNA

²⁵ Cf: Art. 15/16/33, 53 (2); 54-59;61-63; 74; 114; 128-134

²⁶ Art. 132 LEMNA

²⁷ English translation of NEC previous regulations was not available to the mission.

²⁸ Art. 107 LEMNA Any handicapped voter, who is unable to vote by him/herself, shall has the rights to bring along an assistive adult or to seek assistance from the Chairperson of the Polling Station Commission. The National Election Committee shall prepare regulations to protect the rights of people with physical/hand disabilities that cannot use the indelible ink.

5 ELECTION ADMINISTRATION

The Constitution and the NEC Law provide for a nine-member body³⁰: Four members to be appointed by the ruling party and four members to be appointed by the opposition party. The additional member must be selected in agreement with all the parties present in the National Assembly. The list of candidates must be prepared by the Permanent Committee of the National Assembly which is approved by the absolute majority of the members and appointed by Royal Decree. The current NEC was sworn-in in April. Two NEC members are from the previous NEC and only one is a woman (from the CNRP side).³¹

Membership to the NEC is incompatible with political party membership and appointed members shall resign from their parties and can only rejoin two years after the end of their mandate.³²

The overall election management body is organised as a four-tiered structure: The national-level NEC; Provincial Election Commissions (including Municipalities) (PECs); Commune Election Commissions (CECs) and Polling Station Commissions (PSCs). According to the new NEC Law, PECs and CECs shall cease functioning after 60 days from the publication of official results.³³ The law does not specify when in time those Commissions should start operating. The NEC determines the modalities and procedures for the selection process of both PECs and CECs, and has also a coordinating role of all electoral processes at all levels.³⁴

At the national level the NEC is supported by a Secretariat headed by a Secretary-General. According to the NEC Law, the relative statute after being drafted by the NEC has to be issued in the form of sub-decree endorsed by the Prime Minister.³⁵ This is a source of concern for CSOs which see it as a potential for interference by the current government in the work of the NEC. Moreover is still unclear at this stage if the current members of the Secretariat will be re-appointed to retain the institutional memory and/or some fresh staff will be brought in to increase the perception of impartiality of the new NEC.

The Law also provides for a 5-year tenure ending with the entering into office of the new members of the National Assembly.³⁶ It would then appear that the current NEC members, who were only appointed in April, will be in place only until the 2018 Parliamentary elections. Moreover, this provision does not specify whether the appointment of the members is renewable.

According to the NEC Law, meetings of the NEC shall be valid only if there is a quorum of two-thirds of all members for any decisions that require a majority vote of two-thirds of all members or if there is a quorum of more than half of all members of the NEC for any decision that requires an absolute majority of all members.³⁷ In the case of a split vote, the Chairperson has a casting vote.³⁸

²⁹ Art. 31 Constitution

³⁰ Art. 151 Constitution; Art. 4 NEC Law

³¹ Reportedly only one woman applied for the position.

³² Art. 8 (2) NEC Law

³³ Art. 22 NEC Law According to the previous LEMNA, the CECs were performing until the publication of official results. It could be considered a positive outcome that they will be operational for additional 60 days in case of outstanding complaints.

³⁴ Art. 42 (19, 2) NEC Law

³⁵ Art. 57 NEC Law

³⁶ Art. 7 NEC Law

³⁷ Art. 50 NEC Law

³⁸ Art. 50 (7) NEC Law

The NEC can be dissolved by the National Assembly in case the decision making process is stalled.³⁹ This provision could present some risks in case of one of the parties decides to boycott the process.

As a positive provision in terms of transparency, all decisions of the NEC shall be made public not later than 5 days after they are taken.⁴⁰

The current provision for membership creates a balanced representation of political forces, reflecting the current composition of the National Assembly where just two parties are present. However, there are no provisions for appointment of members in case a plurality of parties is present in Parliament. This may create problems in the future if the political composition of the Assembly changes, necessitating a change in the provisions for the composition of the NEC. Such a provision appears to be quite short-term, reflecting its origins in the political agreement between the CPP and CNRP.

According to the law, at the Provincial and Commune level, electoral structures are established by the NEC with a selection Commission in an open and transparent manner.⁴¹ The relevant procedures will be decided by NEC regulations.⁴² The current norms allow ample flexibility to the NEC in the selection process but provide no guarantee that the same politically balanced composition of the national level will be reflected at the lower levels of electoral administration. During the meeting with the EFM representatives, the NEC Chairman stated that an equal balance of political forces will be observed in the lower level of election structures. This is of utmost importance given the clear political connotation of most village chiefs.

As provided in the Constitution⁴³ and replicated in the NEC Law,⁴⁴ the NEC should enjoy an independent budget. This must be established in the National Treasury as a Trust Fund for elections⁴⁵ and can include contributions from the Royal Government and donations from foreign government and international and non-governmental organisations. During a meeting with COMFREL, the Experts were informed that there is a concern about the difficulty for foreign donations to earmark and track down their contributions and the lack of provisions for transparency and accountability of the budget items.

EU EOM and EEM Findings, Recommendations and current status

The creation of an independent NEC is the main reform and the outcome of the current political situation in the country. Both the 2008 and 2013 EEM stressed in fact the importance of an independent body for election administration both at the national and the local level.

Both missions also recommended the drafting of Regulations to ensure consistency and in a simplified way.⁴⁶ Reportedly, old regulations included a cumbersome dispute resolution system which was difficult to be absorbed and to be implemented by the NEC at lower levels. It would be advisable for the NEC to consider drafting those regulations in a simple and consistent manner enabling successful implementation at the lower level. Moreover, the power of Regulations, which emanate from the election management body and not parliament, should be limited to interpreting, clarifying and further operationalising election-related legislation and not to create new institutions that are not provided for in the parent laws.

³⁹ Art.50 (8) NEC Law

⁴⁰ Art.51 NEC Law

⁴¹ Art. 15,28 NEC Law

⁴² Art. 17 (2); Art. 28 (2) NEC Law

⁴³ Art. Art. 150 (3) Constitution

⁴⁴ Art. 58 NEC Law

⁴⁵ Art. 59 NEC Law

⁴⁶ English translation of NEC previous Regulations was not available to the mission.

This was discussed during the last meeting between the Experts and the NEC. However, the immediate priority for the NEC is only the drafting of Regulations for Registration and therefore it remain to be seen the extent and the efficacy of the overall regulatory body.

On a positive note, responding to the recommendation of both the 2008 and 2013 missions requiring a more proactive role of the NEC in conducting a daily monitoring of campaign activities, the NEC law has incorporated provisions for the NEC to propose and enforce measures to maintain security and public order during the time of elections.⁴⁷

Moreover, the NEC Law also includes a role for the NEC to prevent and monitor irregularities of the elections⁴⁸ in line with the 2008 recommendations. This provision requires the NEC to enforce the law and redress electoral irregularities even in the absence of formal complaints. However, once more it remains to be seen if the NEC will further regulate this aspect and thereafter how it will be implemented.

6 VOTER REGISTRATION AND VOTER IDENTIFICATION

Background

The obligation for the state to provide for the right to vote is clearly provided for in the legal framework. Article 34 of the Constitution of the Kingdom of Cambodia states that: “Khmer citizens of either sex who are at least eighteen years old shall have the right to vote.” Further, Article 44 of the LEMNA establishes the obligation to provide for both the right and opportunity to vote. It states: “Voter registration and voter lists shall guarantee the right to vote for all Cambodian citizens who fulfil the conditions of this law”.

However, in both the 2008 and 2013 National Assembly elections there was strong criticism expressed by EU teams, citizen observers and opposition parties regarding flaws in the voter lists and associated weaknesses in the identification of voters at the polling station.

EU Findings and Recommendations

The 2008 EUEOM concluded that: “The high number of deleted names from the voter register became an issue of controversy as opposition parties and civil society organizations voiced serious concerns about the voter list update in 2007, in particular with regards to the high number of deletions.... The EUEOM concludes that there were a significant number of mistakenly disenfranchised voters in the 2008 elections”.

In its report on the 2013 elections, the EEM concluded that: “The quality of the voter register remained a controversial issue. The involvement of local administration affiliated to the ruling party in the voter registry revision raises serious concerns for electoral manipulation among opposition political parties and civil society organizations.... the voter register was the main source of irregularities on election day as reported by all interlocutors. The main issues with the voter register are the missing names of almost ten per cent of the registered voters from the final voter list ...”

In both 2008 and 2013 a series of recommendations were offered aimed at improving the quality of the voter registration process and providing safeguards against manipulation and thereby increasing public and political confidence in the process. Key recommendations can be summarised as the following:

⁴⁷ Art. 42 (5) NEC Law (also present at Art. 16, 5 LEMNA 1997 amended)

⁴⁸ Art. 42 (26) NEC Law

- Revision of the overall voter registration system to be based on biometric data voter registration to ensure sustainability, accuracy and completeness of the voter register
- The Government of Cambodia should launch a consultation process on options for simplifying and improving voter registration procedures
- Introduce the use of one identification document (e.g. National ID Card) and abolition of other identification documents that could have been easily manipulated
- Village Chiefs should not be allowed to take a major part in the distribution of Voter Identification Notices.

New Laws and Procedures

The NEC is currently planning a brand new voter registration foreseeing that every eligible Cambodian citizen will present themselves to a registration team in order that their thumb print and photo can be taken for the NEC registration database. The NEC told us they will seek to use some of the old data but was not yet clear on compatibility of the systems.

The LEMNA and Law on the NEC contain a series of new provisions which provide the basis for improving and safeguarding the process, with a focus on management of the process by NEC, the prospective shift to the use of biometrics and the use of the National ID Card to help establish eligibility. However, the implementation modalities and detailed regulations will be critical.

In seeking to address the various shortcomings identified, key new provisions are:

System and Safeguards for Voter Registration

- The LEMNA opens the door for the use of biometrics in voter registration, but does not prescribe a specific system as such. Article 44 of the LEMNA includes a provision that the voter list must record a unique feature identifying each voter “such as a photo and/or a thumbprint”. Based on meetings with the NEC it is clear they are proceeding on the basis that they will capture and use a thumb print and digital photo for each and every voter.
- Article 46 states that “To be eligible to vote every citizen must have his/her name in the voter list and must have a Khmer Citizen Identity Card⁴⁹”
- Article 48 states that “Every Khmer citizen shall have only one name in the voter list of one polling station only”.

On the basis of these provisions, some form of biometric voter registration is provided for, with a stipulation that a National ID Card should be used to guarantee identity and eligibility and a person should only be registered once. These are positive provisions, though there are various forms of ID Card in circulation and the system for providing new ID Cards is not synchronized with the voter registration process and so may not provide as useful in all cases as hoped for (see below).

Management of the Voter Registration Process by NEC

- Article 50 states: “The NEC shall delegate powers to the Commune Council to perform functions on its behalf ...”

⁴⁹ The LEMNA does not explicitly state that the new biometric ID Card has to be used. Given that there are previous versions of an ID card in circulation it is likely that this may cause some confusion and some flexibility in how the process will be implemented in practice.

- Article 50 also states: “The NEC shall assign a voter registration team for each Commune to assist the Commune Council in performing their roles. The voter registration team of each Commune shall be composed of a leader appointed by the NEC.
- Article 60 states that: “The NEC shall enter the names and data of new voters in the voter list database in the Commune or Province or in the national voter list storage centre of the NEC.”

These provisions appear to give a leading management role for the NEC for voter registration, which would help prevent an overt role for local authorities which mostly are linked to the ruling party. However, the Law also states that “The Commune Council shall lead the voter registration team to correctly implement the law on election, regulations and procedures for election⁵⁰. This creates a degree of ambiguity. The NEC informed the EFM Team that it will appoint the head of teams at the Commune level with Commune officials as deputy leader and NEC appointing other officials as required.

The creation of a voter database to be managed by the NEC could be positive, as it would help in the cleaning of data to avoid duplications. The NEC informed the mission that it will clean data at both commune and national levels in order to identify duplicates. It will also print lists of any deletions and amendments to the list, which will help improve transparency and accountability. However, it would need to be clearer exactly how this is managed and at what level. While commune-level data cleaning makes sense and would be more manageable in terms of the size of the task, cross-Commune, i.e. national-level, checking will also be required to pick-up potential double registrants across Commune boundaries. It should also be stressed that in the event of ill-will and a desire to delete names, such a database makes the task easier, so a positive and responsible approach by the authorities remains critical and transparency and accountability will be of paramount importance.

Voter Identification

As mentioned, the LEMNA provides for the use the National ID Card for the purpose of identifying eligible citizens for registration. However, the law also provides for alternative sources of identification in case the ID Card has not yet been issued or in case it is lost (Article 51.B)⁵¹. At present it is estimated that the Ministry of Interior has issued just 3.5 million ID Cards in more than two years. Therefore, to issue the remaining cards will take some significant time. In reality, therefore, given the likely timelines for voter registration (see below) it is highly likely that many citizens will have to use alternate documentation. Some previous formats of ID Card are also in circulation. If these are eligible as proof of identity for registration purposes then this will reduce the number outstanding. However, this may well then create a new set of challenges as such cards do not contain biometric data and therefore the level of trust in them may be lower. Further, there may well be a lack of clarity among citizens if they need a new ID card or not. Given these variables, the Ministry and the NEC will have to be extremely clear in their civic and voter education campaigns to ensure the process is clear for citizens.

Further, it is yet to be assured that data from the National ID Card database and data from the NEC Voter register database can be harmonised for verification purposes. Such inter-agency coordination has often proven problematic in many countries.

NEC Planning on Voter Registration

Regulations on the voter registration are complete but not published as yet. The NEC is planning to conduct a pilot registration exercise in August 2015 to test the system and procedures with a plan to roll-out voter registration from 2016 onwards. The pilot would require some 50 teams working across a limited number of Communes. However, at present the NEC has no equipment and no budget for this, so

⁵⁰ Art. 50 LEMNA

⁵¹ Art. 51 B LEMNA

wants to prioritise discussion with donors on this aspect. A further challenge will be the limited distribution of National ID Cards so far. Such a pilot would appear to rely heavily on alternate sources of ID and older forms of the ID Card in some instances, which is somewhat at odds with the major focus on the new National ID Card.

The Use of Technology to Reinforce Principles for Voter Registration

There is a suspicion among many in civil society and the opposition that the previous problems with voter registration were not due to technical capacity or equipment failures but rather from deliberate manipulation for political gain. There is no evidence of this, but if it is the case then the introduction of technology will not necessarily address the problems or improve the process.

What is critical is that the NEC and the Cambodian Government place the key principles for voter registration at the heart of their policies, regulations and implementation to ensure the right and opportunity to vote and universal suffrage for all eligible Cambodian citizens from all sectors of society. For instance the process must have integrity, while at the same time ensuring the inclusion of eligible persons only, by emphasising a reasonable burden of proof of ID on citizens, and thereby maintaining public confidence. Procedures need to be targeted to ensure accessibility for all sectors of society, with comprehensive information programmes to support the process at each step and specific measures should guarantee a participatory and transparent process, an efficient system for complaints and full implementation of the provision in the LEMNA for the monitoring of the process by political parties and civil society.

Going forward it is important for the exercise to be sustainable. Whichever system is adopted it needs to be guaranteed that it can be used for future elections with regular updates as required. New voter registrations need not be conducted for each election.

7 POLITICAL PARTIES AND ELECTION CAMPAIGN

Background

Article 42 of the Constitution provides for freedom of association, including the right to establish political parties. Article 34 establishes the right to stand as a candidate in the election and Article 35 reaffirms the right of citizens of “both sex” to participate in the political life of the nation. The LEMNA outlines detailed provisions on the registration of candidates and also on the election campaign.

EU EOM and EEM Findings and Recommendations

EU reports from previous elections did not raise serious concerns regarding freedom of association or participation rights⁵². The key concerns raised were largely focused on the lack of a level playing field during the campaign, including the misuse of state resources by the ruling party and a lack of regulations on campaign financing and expenditure. Key recommendations on these were:

- Adopt stricter rules to prevent the use of state resources during the electoral campaign
- Adopt stricter rules and establish tight control to prevent the involvement of civil servants in electoral campaign activities

⁵² However, the restriction on naturalised citizens standing and the right to stand as an independent candidate both remain in the law despite having been raised by EU teams in the past.

- Introduce campaign finance laws, including spending limits, public disclosure of campaign accounts and verification of the origin of funds

Current Situation

The LEMNA has provisions relating to all three areas raised in the key recommendations, but in all cases it could be argued that the provisions do not go far enough and these may still be problematic areas during the campaign.

Rules on State Resources and State Employees

Article 81 of the LEMNA states: “The use of budget, materials, equipment and means of transportation that belong to the State to carry out campaign activities for any political party or candidate and the use of means of transportation that belong to the State to bring voters to the polling station shall be prohibited.”

It is positive that such a reference is now included in the Law. However, implementation and enforcement of this will be critical and will be determined by NEC regulations yet to be published.

With regard to the involvement of civil servants in the election campaign, the law basically prohibits their involvement during working hours⁵³ but then provides for it outside of working hours.⁵⁴ This includes military personnel and court officials. All citizens, whether they are civil servants or members of an NGO, are entitled to freedom of expression. The critical aspect here is for the LEMNA and NEC regulations and codes of conduct to be absolutely clear that state officers should not be actively engaged in the campaign on behalf of any party in the course of their official duties.

Campaign Finance Regulations

The LEMNA now includes a number of provisions relating to campaign finance:

- Article 27.6 states that in order to register for the election a party needs to submit to the NEC “a bank statement indicating the party’s bank account in which revenue, including contributions from whatever sources, has been deposited by the party ...”
- Article 89 states: “Every political party that has registered to run in the election shall have an account book to record the incomes, the source of income and the expenses for the campaign”.
- Article 90 states: “All contributions received by the political party shall be deposited in a bank account and all expenses for the electoral campaign shall be debited from the same account”
- Article 91 states: “The NEC may examine the account book of the political party registered to run in the election if necessary”.

Based on these it is positive that it is a requirement to open such a designated account and deposit all contributions there as well as keep a record of all campaign expenditure. However, there is no requirement for public disclosure and no obligation for the NEC to examine such accounts, instead leaving it a discretionary power to examine the accounts.

It is also noted that there are no spending limits for the campaign. These were recommended by the EU team in 2013. However, this is not critical as such limits do not exist in many countries. The critical elements are to ensure transparency and accountability in political financing but while the law does take some steps towards this it does not yet provide fully.

Campaign Regulations and Penalties Against Parties

⁵³ Art. 82 LEMNA

⁵⁴ Art. 83 LEMNA

The new LEMNA contains a number of articles relating to the conduct of the election campaign which raise some concerns. Of particular note is a potentially vague and arbitrary article relating to prohibited campaign practices and another article which implies punishment for a party in event of an illegal activity by one of its leading members. Both of these articles raise concerns at the potential to limit freedom of expression and legitimate participation rights if they are interpreted in a restrictive or partisan manner; again, the spirit of implementation and of NEC regulations will be critical in this regard.

Article 72 of the LEMNA states: “All political parties and candidates shall avoid using threats, intimidation or violence against citizens, other political parties or candidates [they shall also] not incite their supporters to use abuses, threats, violence or intimidation” This part of the Article is consistent with international practice and provides a regular prohibition against violence or incitement etc.

However, Article 72 continues: “Political parties, candidates or supporters shall not make direct or indirect verbal remarks or make a written statement that is immoral and insults any candidates, their supporters or any person”. This part of the Article is rather vague and open to interpretation. Indeed, in the Cambodian context what might be characterized as regular political discourse, i.e. disagreeing with the policy or comments of a political opponent, seem to sometimes be characterised as insults.

Further, in the penalties section of the LEMNA the NEC is empowered to impose a financial penalty on candidates and/or parties found to be in breach of Article 72. Further, the NEC may also decide to delete the candidacy of a “guilty” candidate.

In addition, political parties can be found guilty on the basis of the guilt of one of its members⁵⁵ and may in such a case have its name deleted from the list of parties running in the election. The Law provides that “The crime committed by a political party” shall be the crime committed by its organization or representative [this] refers to organisations or representatives that hold decision-making rights in the name of the party in accordance with the Statute of that party.”⁵⁶. Not only is this potentially collective punishment, it is based on an Article which in itself is debatable and vague.

8 CSOs AND THE MEDIA

A Civil Society Organisations

Background

Freedom of association is provided for in Cambodia and there are a proliferation of NGOs and associations⁵⁷. However, this is an area now coming under focus from the Government, which is currently considering a draft law on NGOs and associations. It is recognized that it is an area in need of some regulation and rationalisation, but there are fears among some CSOs that the new law may limit their activities, which is critical for the governance, democracy and human rights sector, which is heavily supported by a number of donors including US agencies and institutions.

Cambodia has a well-established and well-renowned citizen observer tradition, dating back to the 1990s. Cambodian organisations also participate in gatherings of the Declaration of Principles and the Global Network of Domestic Election Monitors (GNDEM). For the 2013 elections a combined total of more than 40,400 citizen observers from 33 civil society organisations were accredited by the NEC to observe on

⁵⁵ Art. 155 LEMNA

⁵⁶ Art. 162 LEMNA

⁵⁷ Art. 41 Constitution

election day. Among civil society organisations, the Committee for Free and Fair Elections in Cambodia⁵⁸ (COMFREL) deployed the largest numbers of observers, some 12,000 in all 24 provinces covering some 30 to 40 per cent of the polling stations on election day. Subsequent to the elections, a group of CSOs, formed the Electoral Reform Alliance (ERA), chaired by COMFREL. ERA has provided commentary on proposed reforms and also sought to engage as an expert resource in deliberations.

EU EOM and EEM Findings and Recommendations

In previous recommendations EU teams have focused on the NEC using CSO expertise capacity to supplement its staffing, being used as a resource for the implementation of civic and voter education campaigns and recommending the continued support for civil society from international donors. The current relationship between civil society and Government appears strained, reflecting the fact that the same party has been in power for over 20 years and so feels targeted by CSOs, which have not had an opportunity to be critical of another party in Government. The expertise of NGOs is recognised, as illustrated by the inclusion of a member of one of the citizen observer groups (NICFEC) as the neutral ninth member of the NEC. However, while donors clearly remain committed to supporting CSOs, it remains uncertain how far the Government and the NEC view civil society as a prime collaborator in the democratic process.

Current Situation

The new LEMNA contains a number of new provisions which are of concern and potentially impact unduly on the legitimate activities of civil society (and political party agents) in engaging on the election.

Article 19 prohibits observers while observing the voting and counting from instructing or reproaching election and vote counting officials. While such a provision is, in and of itself, quite appropriate and often contained in a Code of Conduct, in the new Law it is linked with a potential financial penalty for such behaviour. Article 160 states: The Chairman of the Polling Station Commission shall issue a written warning to any political agent or observer who instructs or reproaches election officials. In case of non-compliance he/she shall be fined from 1 million Riels to 10 million Riels by the NEC.

Of potentially more concern is Article 84 of the Law, which seeks to prohibit certain NGO activities during the campaign period. However, there is a question as to how this Article may be interpreted and implemented. Article 84 states (in part):

- Local NGOs shall not do any activity, directly or indirectly, as follows:
 - Initiating or participating in electoral campaigns of a party or candidate, including participating in a rally or meeting
 - Release a statement or do any activities with the aim of supporting or showing bias towards or against a party or candidate, including polling in favour of a party/candidate, writing in support of a party/candidate and direct or indirect remarks or writing to insult a party/candidate

These provisions are vague. They could also be used to limit individuals' freedom of expression as Cambodian citizens. Further, it could be argued that it is normal for a civil society in a country to highlight to voters which policies they believe are more progressive on particular themes. In addition, it is a concern if such provisions may be applied to statements and comments critical of government policies on the election by citizen observers, which can be a norm in any election.

As mentioned, a new NGO Law is expected to be issued by the Government fairly soon and this will be a further indicator as to the likely environment and democratic space for NGOs for the next elections.

B Media

Background

Freedom of expression is nominally provided for in Article 41 of the Constitution. But the same Article also states that “no one shall exercise these rights to infringe upon the honour of others or to affect the good customs of society, public order and national security”. In addition the 1995 Press Law deems “misinformation” a criminal offence. And in another law, “defamation” is also classified as a criminal offence with a prison sentence. According to *Reporters Without Borders Press Freedom Index 2013*, Cambodia ranks 143rd out of 179 countries.

TV and radio remain the primary source of information for most Cambodians. There are numerous TV channels, but virtually all are affiliated with the ruling party. There are also numerous radio stations, at the national and provincial level. In addition, regional/foreign broadcast services, such as Radio Free Asia and Voice of America are also important, as are local stations such as Beehive Radio and Women’s Media Centre. These offer more diverse views, but are seen as more pro-opposition. The use of social media, especially among the youth, has seen a rapid expansion lately. This is critical given that some 70% of Cambodia’s population is under 35 years of age.

EU EOM and EEM Findings and Recommendations

The EU EEM of 2013 concluded that “respect for freedom of expression and opinion remains a key concern in Cambodia. Media interlocutors and human rights activists raised serious worries regarding unacceptable restrictions of freedom of expression caused by prosecutions or threats of prosecution under the Criminal Code mostly for offences related to incitement and defamation.... media practitioners admit to self-censorship [due to] a fear of arrest and detention or revoke of the license of the media outlet.”

In an effort to create a free and independent media environment in the country, both the EOM of 2008 and the EEM of 2013 recommended that an independent media broadcasting authority should be established, with responsibility for the distribution of licenses and frequencies on an open and transparent basis.

Current Situation

The EU recommendation for the creation of an independent media authority, which has support among some local media outlets, has not been addressed. The Ministry of Information informed the EFM that the process for issuing licenses is a regular one and that the main problem is the lack of bandwidth, but local media practitioners did not share this view.

A key development since 2013 is that the CNRP has been granted a license to establish its own channel. It is currently fundraising for this, requiring some \$3million. This was clearly part of the political agreement in the wake of the 2013 polls. However, such a development does not address the issue of media freedom in the country, in essence it merely adds another potentially biased TV channel to the country.

There has been a lot of discussion in the country regarding social media and the extent to which the government may or may not be seeking to try to restrict it. It seems clear that many young Cambodians are active on Facebook and use it to provide opinion and citizen journalism, with a discourse outside the scope of regular Cambodian media discourse. In a meeting with the EFM, the Minister of Information stated that the Government has no intention to seek to regulate social media as it is private. However,

some news reports contradict this. Apparently a cyber crime law is in the pipeline, and this should be followed to establish if it seeks to limit legitimate freedom of expression and opinion.

Overall, the media situation in the country is one of the more worrying aspects and a critical benchmark in determining the extent to which democratic space in the country is being reduced or not.

9 WOMEN'S PARTICIPATION

Background

The Constitution recognises the equality of women and provides for full political and civil rights for women on an equal basis as men⁵⁸. However, it is also clear that the role of women in political life remains limited. Many argue this is due to conservative traditions and a lack of financial means.

For the 2013 elections over 52% of registered voters were women, and more women voted in the 2013 polls than men. Twenty-two per cent of the candidates for the 2013 elections were women, which was a slight increase from 2008. But according to COMFREL in their report on the 2013 elections, only a small number of these were in places on a party list giving them a viable chance of being elected; despite earlier assurances from the parties that they would prioritise women's representation.

Women held 20 out of the 123 seats in the 2008-2013 National Assembly. In the Assembly elected in 2013, 25 women won seats, an increase from 2008. Of these, 18 were from the CPP and seven from CNRP. As mentioned earlier, only one woman is on the NEC.

EU EOM and EEM Findings and Recommendations

The EUEOM Report of 2008 highlighted the comparatively low number of female candidates and elected representatives as well as the low level of women in decision-making positions within the electoral administration. The 2013 team concluded that the role of women in political life remains limited and that political parties are "reluctant and uninterested to support active women participation in politics".

The 2013 EEM recommended the adoption of a quota as a legal requirement to ensure a minimal representation of women on lists of candidates or as elected members of the National Assembly. This reflects a call by some women's groups for such a quota. However, the new Law does not contain any such provision or any new provisions at all on improving women's representation.

Current Situation

While the recommendation of a quota has not been taken on board and may not have been the most feasible option at this stage, it remains clear that mechanisms to encourage/ensure women's participation as candidates and as elected members are required. However, it also remains clear that it is not a priority issue for political parties at present and was not raised extensively by stakeholders. To illustrate this, women's participation was not part of the 14-point reform agreement and neither was it part of the CPP-CNRP July 2014 political settlement.

Given that any changes to the law will emanate ultimately from the National Assembly, priority could be given to seeking to increase awareness of and sensitivity to the issue among the two main parties and their representatives in the National Assembly.

⁵⁸ Art. 45-46 Constitution

10 POLLING AND COUNTING

The LEMNA provides some of the basic procedures for polling and counting, but further details are expected to be included in the NEC Regulations. At this stage it is important to reiterate some key, and simple, provisions, which can help to ensure integrity and transparency of the process. Voting will be held in one day from 7 a.m. to 3 .m.⁵⁹ Counting will follow immediately after the close of poll.⁶⁰

It is highly likely that even if the ID Card process picks up pace that a number of voters will still be without their ID card; or without the new one at least. In event that voters have to use alternate official sources of identification, as provided for in Article 168 of the Transitional provisions of the LEMNA that such forms of ID are issued in as secure and transparent manner as possible to avoid the high level of mistrust as existed in 2013.

At each result count, there needs to be a simple and official copy of the result for party agents. This could be in the form of a simple carbon copy. Further, results need to be posted at some point to enable verification down to the lowest administrative level possible. Such a procedure can be simple but highly effective in ensuring transparency and confidence and thereby avoiding mistrust and speculation.

11 CONSIDERATIONS ON ON-GOING PROJECTS AND EU PLANNED PROGRAMMING ON ELECTIONS

The EU has provided substantial support to the electoral process in Cambodia since its second National Assembly Elections of 1998 when an EOM was deployed. This election-related support has taken the form of repeated technical assistance, capacity building and election observation in order to support and promote the conduct of genuine, competitive and transparent elections in Cambodia.

In 2008, the EU deployed again a full EOM for the National Assembly Elections. This was the third full scale EOM to Cambodia for National Assembly Elections, following those of 1998 and 2003. In addition a full-fledged EOM was also deployed for the first ever Commune Elections of 2002. For the July 2013 National Assembly Elections the EU deployed a two-person Expert Mission (EEM) to follow the electoral process. The EEM followed a formulation mission deployed in the framework of the standard project formulation process of the European Commission from December 2014 to end of January 2015. The same formulation mission returned to the country in April-May 2015 and will conclude operations in July this year.

In view of the upcoming electoral process for the 2017 Commune Elections and 2018 National Assembly Elections there is a need for the EU to continue its support to Cambodia. The present plan, which results from the formulation process, provides for an assistance package of 10 M Euros composed of three main pillars as follows:

Priority Action 1: Support to the NEC

- *Result 1:* The newly formed NEC administers elections in an efficient and credible way and plays its role of neutral, competent and independent body for the 2017 and 2018 elections.

⁵⁹ Art. 93 LEMNA

⁶⁰ Art.116 LEMNA

Priority Action 2: Support to the electoral process, in particular voter registration and polling

- *Result 2:* Electoral operations are conducted smoothly and procedures are followed in a way that is technically satisfactory, efficient, transparent, inclusive and timely.

Priority Action 3: Support to CSOs to strengthen their role during the electoral processes

- *Result 3:* An exhaustive voter and civic education campaign is conducted during the registration period and throughout the Commune and National Assembly electoral processes; a credible CSO observation exercise is conducted throughout the country; other activities enhancing the role of Civil Society are supported in function of needs and priorities identified, such as enhancing the role of women in politics, youth engagement in the democratic debate, inclusion of minorities and other key actions.

The EFM wishes to highlight that the provisions for any EU support should take account of a number of key factors:

- Timeframe for electoral preparations is essential. The EU funds should be timely allocated to be able to support the specific part of the process identified.
- Several elements of the reform process are still unclear; hence a clearer action plan with associated benchmarks during implementation of the core of the support programme should be established prior deploying resources. Such benchmarks could be identified in a joint meeting by the EUD, Japan and the NEC as a clear reference point for the actual implementation of the support programme.
- It will also be essential that political confidence and consensus is maintained at each stage of the support provided. For instance that there is an effective restructuring of the NEC Secretariat; that the composition of NEC Provincial and District Commissions is bipartisan; and that the NEC operates in an inclusive and participatory manner and include all stakeholders in their decision making process.
- International support needs to be adequately coordinated. The Japanese have a similar programme portfolio as the EU and appear to be able to mobilise support for less than \$100 million USD quite rapidly.
- The electoral reform process in Cambodia, and particularly voter registration, are very sensitive and possibly controversial domains. Therefore interventions should be carefully considered to actually contribute to increase transparency, inclusiveness and accountability. These are the critical elements which will determine the extent to which the process is credible and enjoys broad support or not.

12. OTHER INTERNATIONAL ASSISTANCE

The international community is quite active in its support of the electoral process in Cambodia. However, given the long time before the next elections most of organisations are still in the process of developing their plans for financial assistance.

The NEC has established a six-member committee to ensure coordination of assistance with the EU and Japan. This Committee will be the ideal platform to highlight with the NEC any concerns at each stage of the electoral cycle.

The Japan International Cooperation Agency (JICA) is keen to cooperate with the EU in the electoral assistance process. Their representatives have informed the EFM Mission that they are ready to assist the electoral process throughout all the different steps of the electoral cycle. Like the EU they also envisaged three pillars of assistance namely on voter registration, on voter education and on the support to polling procedures (training and development of forms). The budget allocated to this exercise will depend on the assistance provided. They declared to be able to start quickly by deploying a registration expert and possibly a legal expert to assist the NEC in the drafting of relative regulations. However, they also informed the Mission that expenditure over \$1 million USD, requires a longer time for deployment.

A number of US-financed organizations are present in Phnom Penh. USAID is assisting in areas such as capacity building of the National Assembly, on civic engagement and fund response. The Asia Foundation recently ran an opinion poll on the perception of impartiality of public institutions and the NEC ranked lowest after the court in terms of integrity and transparency. The plan for activities in the run-up of the upcoming elections is unknown as yet. The International Foundation for Election System (IFES) has fielded an expert on voter registration which has submitted a detailed report on the exercise. Most recently IFES conducted a study on complaints and appeals⁶¹ and has also previously provided advice on campaign financing. IFES is also organising the English translation of the new laws. NDI is currently working with the ERA network in building a consultation system with the NEC.

At the bilateral level, Sweden is providing support to members of the National Assembly through the Parliamentary Institute. Finally, the German Konrad Adenauer Stiftung is providing capacity building to the political parties. The Mission also heard that a Khmer company has been hired and trained to produce the ID cards using the technology of a German company (Dermalog).

13. RISK ANALYSIS

There are a number of key risks associated with the process going forward and these will have to be monitored carefully to ensure the process is on track and remains credible. These include:

- NEC Regulations and implementation of the process adopts a restrictive and punitive approach to the role of CSOs and political parties, undermining freedom of expression and participation.
- There is a restrictive environment for media, social media and CSOs, resulting in deterioration of the democratic environment and a restriction in democratic space, undermining the credibility of the electoral process. The NEC Secretariat statute which has to be endorsed by the Prime Minister in a form of sub-decree fails to adequately restructure the operational body and re-appointed the existing senior staff, resulting in the loss of confidence in the independence of the NEC.
- The NEC fails to appoint officials at the Provincial and Commune levels to reflect the national structure of the Commission, thereby losing political confidence.
- The NEC Regulations create a cumbersome and complicated system for election disputes rendering it inaccessible and jeopardising the right of citizens to effective remedy.
- The political dialogue between the CPP and CNRP falters and the two parties stop cooperating, resulting in the NEC not functioning adequately.

Of these, the more critical risks are those entailing a restriction on participation rights or narrowing the competitive quality of the election.

13. RECOMMENDATIONS

⁶¹ The report of the IFES complaints and appeals study was not available at the time of the report.

For the NEC

- Ensure that a system for consultation with stakeholders is in place throughout all the steps of the electoral process in order to enable an inclusive and participatory process. This could take the form of regular meetings with the publication of transcripts or decisions.
- Ensure NEC Regulations will be drafted in a timely and consultative manner and reflecting the main provisions of the LEMNA and NEC laws. Regulations could be simplified (compared to previously) and compiled in a way that ensure consistency, avoidance of duplication and redundancy. Regulations also need to be easily accessible to stakeholders and citizens.
- Ensure the voter registration regulations are drafted in consultation with stakeholders and that they reflect provisions of the LEMNA and are implemented in a way which guarantees a legitimate, transparent, accurate and comprehensive exercise with clear lines of responsibility under NEC management.
- Ensure the NEC Secretariat is appointed in a way to enable a neutral and technically diverse representation while retaining the technical institutional memory of past exercises.
- Ensure that criteria for the selection process at the lower levels of election administration are consistent with the prescription of the laws to be based on merit and to include a balanced representation of the two main parties.
- Ensure that campaign regulations clearly articulate the inadmissibility for the use of state resources in the election campaign, with clear guidelines for the NEC as to how to monitor and enforce such measures, including possible use of Codes of Conduct for Ministries.
- Ensure that voter education activities are targeted to reflect the different steps of the electoral process. Special attention could be given to the possibility for registered voters to check their inclusion in the voter registry, with a responsive and accessible complaints and appeal system
- Consider including in the regulations provisions for publication of election results broken down at the polling station level and specific timeline for publication of provisional and final results.
- Consider enacting a Code of Conduct to be signed by the observers, including internationals, which does not include financial penalties.

For NEC, Government and Parliament

- Consider enacting proper provisions for campaign financing with a requirement for public disclosure and verification of assets.
- Ensure provisions in the LEMNA which provide for punishment of a party for the actions of an individual member are only used in exceptional circumstances and as a last resort. In the future consider removing these provisions.
- Ensure provisions in the LEMNA which restrict freedom of expression for CSOs and impose fines are only used in exceptional circumstances and as a last resort. In the future also consider amendment of these provisions.

- Ensure an environment for media, including broadcast, print, radio and social media, whereby freedom of expression is guaranteed, including a transparent process for issuing broadcasting licenses.

For Government and Parliament

- Consider introducing provisions in the law to enhance women's participation in political life, including as candidates for and representatives in the National Assembly.
- In the future, consider inclusion in the LEMNA for detailed provisions regarding boundary delimitation and seat allocation per province, with the updating of the distribution to be done on a regular basis
- In the longer-term, consider removing in the LEMNA and Constitution the candidacy requirement for nationality at birth, leaving only the requirement for candidates to be citizens.