



**The 2017 International Election Observation Mission  
(IEOM) of the Asian Network for Free Elections (ANFREL)  
to the Kingdom of Cambodia's Commune and Sangkat  
Council Elections**



**Final Report**

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Photos courtesy of observers

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The success of this mission is credited to the hard work of the 36 election observers who braved the challenges in their areas of assignments and delivered their tasks with excellence. Most importantly, this mission will not transpire without the generous donations given by the National Endowment for Democracy (NED), the Embassy of Switzerland in Thailand, and the European Union (EU) through COMFREL.

This work is dedicated to the people of Cambodia, whose voices strengthened our resolve to contribute to the democratic development of the country and in Asia.

## IEOM Profile

From May 12 to June 5, 2017, ANFREL deployed 36 observers throughout Cambodia to monitor the campaign and voting processes. The mission covered 13 provinces during the campaign period and 151 polling stations in 18 provinces on election day. The mission conducted literature reviews, in-depth interviews, and field observation.

The present report sets forth the findings of the mission and presents ANFREL's recommendations to Cambodia's National Election Committee (NEC) in the wake of the commune and sangkat council elections. ANFREL's assessment includes careful consideration of how the 2017 commune and sangkat council elections met, or fell short of meeting, the standards set forth in the Dili Indicators of Democratic Elections<sup>1</sup>, the Bali Commitment<sup>2</sup>, and the International Covenant on Civil and Political Rights<sup>3</sup>.



*Members of the ANFREL IEOM at a training session in Phnom Penh on May 28, 2017*

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<sup>1</sup> <http://aesforum.anfrel.org/wp-content/uploads/2015/07/2015-Dili-Indicators-of-Democratic-Elections-1-July-2015.pdf>

<sup>2</sup> <http://aesforum.anfrel.org/wp-content/uploads/2017/02/Bali-Commitment.pdf>

<sup>3</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

## Summary

Since the signing of the Paris Peace Accords in 1991 and the establishment of the modern Cambodian state, the country has been predominantly ruled by the Cambodian People's Party (CPP). During this period, CPP's rule has faced few strong electoral challenges – the most important in 1997 from the royalist party FUNCINPEC (*Front uni national pour un Cambodge indépendant, neutre, pacifique et coopératif*) and in 2013 from the Cambodia National Rescue Party (CNRP), the product of a 2012 merger of the Sam Rainsy Party (SRP) and the Human Rights Party (HRP).

The country has held four commune and sangkat council elections since the adoption of the Law on Commune/Sangkat Administrative Management in 2001. These local elections are important for two reasons: first, they represent the only devolution of power in the country, and second, they act as a sounding board for what may happen in the parliamentary elections which are always held the following year.

ANFREL observed that the 2017 commune and sangkat council elections were held under a restrictive legal regime. The Law on Associations and Non-Government Organizations (LANGO) and the amended Law on Political Parties effectively limited the liberties of civil society and opposition political parties. Such legislation has further aggravated the human rights conditions in the country, characterized by arrests of human rights activists, legal charges brought against opposition party members, and threats of violence and civil war from government leaders, all of which adversely affected the climate of the campaign.

Cambodian electoral stakeholders must work more diligently to ensure a level playing field. Currently, media access, the judicial system, the legal framework, and the absence of effective campaign finance regulations are skewed to benefit the ruling party. Despite the oppressive political situation and unfair practices, the campaign was observed to be more vibrant and peaceful than in previous elections, with only minor conflicts and incidents of violence.

The electoral management body, redesigned by the Law on the Organization and Functioning of the National Election Committee (NEC) of 2015, performed well as evidenced by its fairer regulations and guidelines, despite institutional flaws in its composition and independence. A remarkable improvement in voter list management, the issuance of codes of conduct to stakeholders, and the accreditation of 74,671 observers allowed for a more transparent process which gained the trust of most stakeholders and encouraged cooperation among them.

ANFREL witnessed a smooth and efficient electoral system attributable to the NEC's polling rules and their effective implementation. While some deviations from the standard polling process were observed, these were due to inadequate training of polling staff, and were too minor to affect the credibility of the polling process. In this regard, the capacity of national and local election management bodies should be further enhanced to effectively handle the more crucial 2018 parliamentary elections.

The efforts by the NEC and other Cambodian stakeholders to promote active and inclusive participation were rewarded with a 90.37% voter turnout. Such voter interest should be sustained and promoted by adopting policies to enfranchise migrant workers, and conducting nationwide voter education.

The results were generally accepted by most stakeholders as indicated by a significantly lower number of election result contests received by the NEC. However, the post-election situation itself was not without problems due to unclear rules governing electoral dispute resolution. More disconcertingly, the restrictive political situation again was illustrated once again by the decision of the Cambodian government to launch an investigation of the Situation Room, an ad hoc consortium of 40 civil society organizations which monitored the elections.

Overall, ANFREL's assessment is that the commune and sangkat elections went smoothly, although with room for democratic progress. As a conclusion, ANFREL offers a set of recommendations for Cambodian authorities to consider and, hopefully, implement, prior to 2018 parliamentary elections scheduled for July 2018.

## **Legal Framework**

Cambodian commune and sangkat council elections are governed by a legal framework comprising the 1993 Constitution (as amended), the 1997 Law on Political Parties (as amended), the 2001 Law on the Election of the Commune/Sangkat Councils (as amended), the 2001 Law on Commune/Sangkat Administrative Management, and the 2015 Law on the Organization and Functioning of the National Election Committee (LOFNEC).

Significant changes were introduced to the electoral legal framework after the 2012-2013 election period, the most recent amendments being passed just months ahead of the June 2017 polls. Moreover, new legal requirements adopted in recent years have increasingly restricted the freedom of political parties and civil society organizations (CSOs) and contributed to a growing climate of oppression and uncertainty. In a number of ways, Cambodian laws do not comply with the basic principles of democratic elections and the people's right to choose their government prescribed by international covenants and human rights principles.

For instance, the 1997 Law on Political Parties was extensively modified in March 2017. The changes were widely perceived to target the main opposition party, the Cambodia National Rescue Party (CNRP). Indeed, amended Article 44 states that the Supreme Court can, without any possibility of appeal, disband parties which damage national unity and territorial integrity, sabotage democracy, undermine the state's security, create armed forces, incite people to national disharmony, or are manipulated by foreign governments or political parties, according to offenses listed in amended Articles 6 and 7.

On the same vaguely defined grounds, political party leaders may be banned from politics for five years and their parties sanctioned because of their actions. This was a somewhat direct attack against long-time opposition figure and exile Sam Rainsy, convicted several times on

politically motivated charges. The newest statutory changes led to Rainsy's resignation as CNRP chairman and the selection of Kem Sokha as his replacement in the days following the adoption of the new law. The Office of the United Nations High Commissioner for Human Rights (OHCHR) opines that "the dissolution of political parties based on the activities of party members as individuals is incompatible with the protections awarded to parties as associations<sup>4</sup>".

Subsequently, the Electoral Reform Alliance (ERA) and many Cambodian CSOs issued a joint statement in which they declared that "the policy would allow for the elimination of political competitors" and that there was "clear cause for concern on the basis of the record of previous actions and policy implementation by the state<sup>5</sup>". FORUM-ASIA also warned that the amendments "would further restrict democratic space in Cambodia<sup>6</sup>", while ANFREL considered that "restricting political party and candidate participation by imposing ambiguous and unfair laws not only goes against the established principles of democratic elections, but also the fundamental freedoms of association and expression<sup>7</sup>".

Even before the 2017 amendments to the Law on Political Parties were enacted, the legal environment for political opponents and civil society activists had been steadily deteriorating for years in Cambodia. Since 2015, a number of repressive bills have been adopted, including the Law on the Election of Members of the National Assembly (known as LEMNA), the Law on Associations and Non-Governmental Organizations (LANGO), the Trade Union Law and the Telecommunications Law.

LEMNA introduced harsh undemocratic restrictions on freedom of expression, such as the censorship of political activists through the criminalization of vaguely defined "insults" and the introduction of the possibility, for members of security forces, to participate in partisan politics, which in turn could result in threats. Most notable is Article 84, which singles out CSOs, requiring them to maintain neutrality and restricting what they can do during parliamentary election campaigns. CSO representatives argued then that this law violated the constitutional principle of equal protection<sup>8</sup>.

LANGO is the other main contentious law. It, too, requires CSOs to "maintain neutrality towards political parties" in its Article 24. As with other laws, it includes few legal definitions and its provisions are left wide open to interpretation, which could allow courts to suppress activism or political dissent. It also imposes excessive registration and reporting requirements on CSOs, which, according to a UN human rights expert, "unequivocally threatens the very existence of a free and independent civil society in Cambodia<sup>9</sup>".

The 2016 Trade Union Law has been widely criticized as well for undermining workers' rights to free association<sup>10</sup>. Finally, the Telecommunications Law adopted the same year allowed the government to conduct in-depth monitoring of all electronic communications. Its Article 80

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<sup>4</sup> <https://cambodia.ohchr.org/sites/default/files/Analysis%20on%20the%20Amended%20Law%20on%20Political%20Parties%2028%2003%202017%20FINAL%20no%20TC.pdf>

<sup>5</sup> [http://cchrcambodia.org/media/files/press\\_release/650\\_201joppe\\_en.pdf](http://cchrcambodia.org/media/files/press_release/650_201joppe_en.pdf)

<sup>6</sup> <https://www.forum-asia.org/?p=23145>

<sup>7</sup> <https://scribd.com/document/340024571/ANFREL-Statement-on-the-Amendment-of-the-Political-Party-Law-in-Cambodia>

<sup>8</sup> <http://www.phnompenhpost.com/analysis-and-op-ed/constitutional-justification-missing>

and <http://www.rfa.org/english/news/cambodia/ngos-boycott-workshop-on-electoral-reform-03092015171323.html>

<sup>9</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16240>

<sup>10</sup> <http://thediplomat.com/2016/04/the-trouble-with-cambodias-new-law-on-trade-unions/>

introduced a sentence of up to 15 years in prison for anyone using electronic media to promote “national insecurity<sup>11</sup>”.

Together, these laws constitute a repressive arsenal unprecedented since the establishment of the modern Cambodian state. They severely undermine some of the core provisions of the 1993 Constitution, such as the principle of a liberal multi-party democracy (Article 1), the state’s commitment to recognize and respect international human rights instruments (Article 31) and Khmer citizens’ rights to peaceful demonstration (Article 37) and freedom of expression and assembly (Article 41).

Key Cambodian stakeholders interviewed by the mission believe the enactment of these laws weakens the opposition and limits CSO contributions to political activities, more specifically to democratic elections. Many perceive the laws as part of a plan to maintain the ruling party in power after the 2018 general elections.

Since the recent commune and sangkat council elections, Cambodia has seen additional changes to its election legal framework, as the National Assembly further amended the Law on Political Parties. The latest changes would effectively prevent ex-CNRP leader Sam Rainsy from playing an active role in politics, as his former party can no longer use his image, voice, or written materials, and the changes forbid any party from “openly or tacitly agreeing or conspiring” with a convicted individual for political gain<sup>12</sup>. As they did in March 2017 for the first wave of amendments, CNRP members in both houses of Parliament boycotted the vote to protest changes they viewed as unconstitutional.

The new law also provides that political parties “supporting or organizing any plans or conspiracies with any individual to undertake any actions against the interest of the Kingdom of Cambodia” could be banned from political activities for five years or dissolved<sup>13</sup>. Again, the vagueness of such legal provisions leaves them open to interpretation by executive and judicial authorities and constitutes a threat to the principle of a liberal multi-party democracy enshrined in the first article of the country’s Constitution. Some of the minor political parties have come out against the revised law they deem divisive and unnecessary<sup>14</sup>, and 19 CSOs have issued a joint release<sup>15</sup> in which they state that the amendments would place “further unjustifiable restrictions on the freedoms of association and expression<sup>16</sup>”.

## **Commune and Sangkat Governance and Electoral System**

Communes are the second lowest level of administrative division in Cambodia, below provinces and districts, and above villages. Sangkats are their equivalent in the municipality of Phnom Penh. Commune and sangkat councils were introduced by the 2001 Law on Commune/Sangkat Administrative Management and replaced the system of state-appointed

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<sup>11</sup> <http://www.phnompenhpost.com/national/telecommunications-law-allows-govt-spy-licadho>

<sup>12</sup> <https://www.cambodiadaily.com/news/cpp-passes-more-party-law-changes-in-assembly-2-132365/>

<sup>13</sup> <http://www.phnompenhpost.com/national/breaking-assembly-passes-party-law-changes-targeting-rainsy>

<sup>14</sup> <http://www.phnompenhpost.com/national/parties-lambast-legal-changes>

<sup>15</sup> [http://www.cchrcambodia.org/admin/media/analysis/analysis/khmer/2017-07-19-CSO-ssubmit-Legal-Analysis-of-Proposed-Amendment-to-LPP-to-CC\\_KHM.pdf](http://www.cchrcambodia.org/admin/media/analysis/analysis/khmer/2017-07-19-CSO-ssubmit-Legal-Analysis-of-Proposed-Amendment-to-LPP-to-CC_KHM.pdf)

<sup>16</sup> <https://www.cambodiadaily.com/news/cnrp-to-ask-king-to-snob-new-party-law-changes-132705/>

commune chiefs. This statute regulates their activities and established as objectives decentralization, transparency, and accountability of local governments. However, such objectives are severely undermined by the wide discretionary powers entrusted to the Ministry of Interior (Mol).

Commune and sangkat councils have limited legislative authority, and the Mol can veto any resolution that “runs counter to the spirit of” existing international or national legislation, according to Article 49. All delegations of power to local governments are subject to Mol oversight. Councils act more as agents of State ministries than local representative assemblies, according to the Cambodian Center for Human Rights (CCHR)<sup>17</sup>. CCHR estimates this law “undermines democracy” and classifies it as “red”, meaning it should be rejected, annulled or re-drafted.

Polling and campaigning for commune and sangkat council elections are regulated by the Law on the Election of the Commune/Sangkat Councils, modified last in 2015. Pursuant to that law, commune and sangkat councils must be elected every five years “through a general, universal, just, free and fair, equal, direct and secret election” (Article 2). In addition, the law establishes an electoral system of proportional representation, with seat allocation based on a highest average method. More specifically, seats are distributed according to the Jefferson method of apportionment, which tends to consolidate the electoral advantage of parties finishing in first place<sup>18</sup>.

Unfortunately, in its current form, the law suffers from a serious deficiency, as it provides minimal restrictions on how money can be raised and used for campaigning. Apart from a ban on resources from CSOs and the state, there are no limits on who can finance electoral campaigns, nor are there any caps on contributions. There are no transparency or accountability mechanisms to monitor resources received and used by political parties or candidates.

The Bali Commitment recommends transparent campaign fundraising, transparent campaign spending and transparent public access to campaign finances, none of which are currently attained by Cambodia’s legal framework and election management body. Furthermore, the Dili Indicators of Democratic Elections state that “political parties and candidates are required to make detailed, timely disclosures of their campaign contributions and expenditures<sup>19</sup>”.

The law also provides for a closed-list system in which all candidates must be endorsed by political parties, which in itself is a common practice. However, Article 42 is of concern because it requires candidate lists to include twice as many names as there are seats to fill to be valid. While every country is sovereign in adopting its own electoral system, ANFREL considers this provision to constitute an unnecessary and unfair threshold limiting the participation of smaller political parties in elections. Furthermore, the system does not permit independent candidacies, which should be accommodated in accordance with the Dili Indicators.

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<sup>17</sup> [http://cchrcambodia.org/index.php?url=media/media.php&p=factsheet\\_detail.php&fsid=46&id=5](http://cchrcambodia.org/index.php?url=media/media.php&p=factsheet_detail.php&fsid=46&id=5)

<sup>18</sup> <https://link.springer.com/article/10.1007%2Fs003550200164?LI=true>

<sup>19</sup> <http://aesforum.anfrel.org/wp-content/uploads/2015/07/2015-Dili-Indicators-of-Democratic-Elections-1-July-2015.pdf>, Article II.c.4

Unfortunately, the law does not provide for advance voting, overseas voting, or proxy voting. This effectively means the disenfranchisement of the 1.15 million Cambodians working abroad<sup>20</sup>. Therefore, we encourage authorities to implement an absentee voting and/or voting abroad mechanisms to allow these citizens to vote. Cambodian CSOs have long been pressing on this issue and recently renewed their calls for the NEC to open voter list registration to out-of-country workers<sup>21</sup>.

The Bali Commitment says that governments must allow free and transparent observation of all parts of the electoral process. The commune election law provides, in its Article 86, that CSOs are entitled to “participate in the whole electoral process as observers”, though they must maintain neutrality and cannot provide direct or indirect support to any political party or candidate. Moreover, political parties can appoint agents for each polling station to observe voting and ballot counting operations on their behalf, and the law prohibits party agents and observers from interfering with polling or ballot counting. Thus, these parts of the electoral law are largely satisfactory, although there are no provisions permitting voters to conduct independent observation.

## **Significant Progress Shown by the NEC**

The NEC, Cambodia’s top election management body, was reorganized extensively with the passing of the Law on the Organization and Functioning of the NEC (LOFNEC) in April 2015. This law was part of electoral reforms agreed by CPP and CNRP when they brokered a deal on July 22, 2014, ending the political crisis which occurred after the 2013 general elections.

LOFNEC establishes an “independent and neutral” NEC, composed of nine members, of which four are nominated by the ruling party, four by the minority parties in the National Assembly and one member acceptable by all parties. The NEC is effectively balanced between the two parties with seats in Parliament, but not necessarily representative as smaller parties are not represented. These changes mean that the NEC is no longer monopolized by one party but could still be staffed in a more inclusive manner to ensure wider acceptance of its decisions.

Nomination procedures for leadership positions are discretionary, as there are no prescribed procedures in the law, with the government ultimately choosing who chairs the NEC, despite the chairperson having total control over the body’s agenda and being the only one to represent the committee in meetings with the King, the National Assembly, and ministers<sup>22</sup>.

Overall, the structure of the committee has greatly improved since the adoption of LOFNEC. Nevertheless, the NEC does not meet the requirements for an independent and impartial EMB set forth in the Dili Indicators: the nomination process lacks transparency, key positions are still occupied by CPP appointees and the composition should be even more inclusive,

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<sup>20</sup> [http://news.xinhuanet.com/english/2017-02/15/c\\_136059060.htm](http://news.xinhuanet.com/english/2017-02/15/c_136059060.htm)

<sup>21</sup> <https://www.cambodiadaily.com/news/nec-urged-to-let-cambodians-vote-abroad-132706/>

<sup>22</sup> <http://ngoicedaw.org/wp-content/uploads/2016/08/NEC-Analysis-by-NGO-CEDAW.pdf>

extending beyond the two main political parties and allowing greater participation and input from CSOs.

As some local CSOs have pointed out, other legal provisions of the LOFNEC undermine the NEC's independence and neutrality<sup>23</sup>. For instance, its members are accountable to the National Assembly, which has the power to dismiss them and fill any vacant seat through an absolute majority vote, meaning there are no incentives for political compromise. Also, NEC members can be removed if they lose their "professional aptitude" or miss three meetings -- provisions that may be used to sideline some committee members in case of internal conflict.

The absence of protection from removal or prosecution for NEC members and administrators permitted prosecution of cases against Rong Chhun and Ny Chakrya, both appointees of CNRP coming from a CSO background. Chhun, an NEC member, faced a trial in May 2016 for acts of "intentional violence" dating back to January 2014<sup>24</sup>, before reoccupying his position on the committee. NEC deputy secretary-general Ny Chakrya was found guilty of defamation in September 2016<sup>25</sup>. Chakrya, the former head of the Cambodian Human Rights and Development Association's (ADHOC) human rights section, is now awaiting trial in another case, charged with bribery of a witness along with four ADHOC staffers, all of whom spent nearly a year in detention and were only recently released on bail<sup>26</sup>.



*Leaders of the ANFREL delegation met with the NEC on June 2, 2017 to discuss the status of preparations for the elections*

<sup>23</sup> [http://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing%20Note%20%E2%80%93%20Democracy%20Under%20Threat%202016\\_ENG.pdf](http://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing%20Note%20%E2%80%93%20Democracy%20Under%20Threat%202016_ENG.pdf)

<sup>24</sup> <http://www.phnompenhpost.com/national/old-veng-sreng-case-revived-nec-member>

<sup>25</sup> <http://www.rfa.org/english/news/cambodia/cambodian-court-upholds-ny-chakrya-12142016145939.html>

<sup>26</sup> <https://www.cambodiadaily.com/news/hugs-tears-uncertainty-adhoc-5s-surprise-release-131984/>

Legal provisions ensuring the NEC's neutrality are currently insufficient. Especially with regard to independence, safeguards must be introduced to protect its members from wrongful removal. Dismissal should only be possible if committee members are unable to carry out their duties, and only according to clear rules written in the law. Political authorities like the National Assembly should not have oversight over the election management body. Other possible reforms include the introduction of non-renewable terms for NEC members and some form of immunity from prosecution, making them less vulnerable to outside influence. In any case, criminal proceedings should never be used to pressure NEC members or administrators into complying with political demands, and the trials of Rong Chhun and Ny Chakrya should not be precedents for similar efforts in the future. The government and other electoral stakeholders should strive to adopt a good practice of an independent and influence-free NEC if they want to increase acceptance of election processes and results among voters.

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

It is noteworthy that the NEC has received considerable financial and material contributions from foreign governments. In 2016, the European Union and Japan respectively gave US\$6.7 million and US\$1.1 million to help the NEC establish the new electronic voter list. Last December, China became the biggest contributor, with a donation of US\$11.7 million worth of vehicles, videoconferencing equipment, computers, and printers<sup>27</sup>. Finally, the United States has provided the NEC with a grant of US\$1.8 million for the 2017-2018 electoral period<sup>28</sup>.

The government of the Kingdom of Cambodia should strive to increase the autonomy granted to its top EMB, in all aspects. Neutrality could be enhanced by a balanced composition of NEC members, operational independence, freedom from outside influence and complete control over its budget. In turn, the NEC should implement transparency mechanisms such as financial audits, full disclosure of its expenditures and activities, and the creation of an Internet database so that the public is able to observe all aspects of the body's work, in accordance with the Bali Commitment of Electoral Stakeholders.

Regardless of current flaws, LOFNEC provides for a much improved EMB. The newly established NEC is perceived as more effective and balanced in its composition, as evidenced by its fairer regulations and guidelines. Documents released by the NEC ahead of the commune and sangkat council elections, such as codes of conduct for voting officials, political parties, members of the armed forces, and electoral observers, plus manuals for polling station commissions (PSCs) and ballot counting commissions (BCCs), went a long way in disseminating rules and procedures to all stakeholders and ensuring a peaceful and successful election. The NEC and local EMBs managed to resolve in a timely manner most of

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<sup>27</sup> <https://www.cambodiadaily.com/news/china-donates-11m-vehicles-office-equipment-elections-122261/>

<sup>28</sup> <http://sea-globe.com/us-pledges-1-8m-cambodian-elections-joining-china-eu-japan/>

the issues which arose during the campaign period, which were mostly disputes with regard to the campaign schedule.

The NEC provided capacity training to most polling stations and lower-level EMB staff, a considerable task due to the great number of people involved in polling day processes. Overall, the implementation of polling and counting rules determined by the NEC was satisfactory and ensured an efficient electoral system. However, in several instances, errors were observed in the management of polling or counting stations, especially with regard to administrative duties or paperwork requirements. These were primarily due to inadequate training and/or insufficient experience of polling staff, rather than purposeful nonobservance of NEC rules and procedures.



*Training of polling officers being conducted in Pailin province*

ANFREL commends the steps taken by the NEC to ensure that the commune and sangkat elections could take place under the best possible conditions and encourages it to pursue its efforts at increasing the country's polling management capacity ahead of next year's general elections.

Despite efforts by both the NEC and CSOs on the ground, voter education was lacking in some areas: some voters thought they had to show their voter information brochures in order to cast their ballots — a “misconception from previous elections<sup>29</sup>”. Improvements in voter education are important to ensure the best possible turnout for the next polls and, for that purpose, the media should be utilized to reach a wider audience. The Internet can also provide a new path to reaching the younger generation to encourage participation.

<sup>29</sup> <https://www.cambodiadaily.com/news/nec-announces-shortcut-for-voters-without-ids-130860/>

One issue that arose ahead of the elections was the printing of extra ballots in larger numbers than necessary. The NEC printed 9.4 million ballots for 7.9 million voters, meaning 1.5 million extra ballots. The number was calculated by providing one full book of ballot papers per polling station, to provide them with 50 to 99 extra ballots each in compliance with the electoral law<sup>30</sup>. Nonetheless, this amounts to almost 20% of the number of voters, a disproportionately high figure in comparison with common practice. In addition to unnecessary spending, domestic election observers, including COMFREL and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), voiced concerns that these ballots could be used fraudulently to influence electoral results, although they were hopeful that other NEC regulations would make cheating impossible<sup>31</sup>.



*A CEC official from Ta Khmao, Kandal province, displays a temporary voter identification document*

Also noteworthy is the NEC's decision, on June 1, to introduce a new process to allow voters without identification to vote. Instead of having to obtain an official voter ID, the NEC made it possible for people to vote if they could have their voter registration documents signed by their Commune Election Commission (CEC). While this shortcut was implemented after a recommendation from COMFREL and enfranchised many citizens, it came too late for several reasons. First, the process involved no control by the NEC of these temporary voter IDs issued by CECs, which could possibly have led to abuse. Second, and more importantly, the timeframe was just too short for many people to learn about the new regulation and to get to their CEC in time, the initial deadline being 5 p.m. on Saturday, June 3, less than three days after the process was introduced.

This situation eventually led to a decision by the NEC to extend the issuance of these temporary voter identification documents until 2:30 p.m. on election day, June 4. The decision

<sup>30</sup> <http://www.phnompenhpost.com/national/nec-defends-printing-extra-ballots-vote>

<sup>31</sup> <https://www.cambodiadaily.com/news/monitor-raises-concerns-over-commune-election-integrity-130428/>

came on the same day, after the opening of the polls, which created confusion in and around polling stations, even among polling staff and observers. By the time officials were informed of the revised regulation, many voters had already been turned away at the polls. Better planning would have avoided such disruptions in the voting process.

Interviews conducted by ANFREL observers with election stakeholders noted the perceived neutrality and efficient operation of the NEC. However, most provincial election commissions (PECs) and CECs did not enjoy the same level of regard due to personality politics having a greater role in the localities and to the vast remaining influence of the ruling party in the way local election bodies are formed and, more importantly, operate.

## **Voter List**

One key technical aspect for these elections was the new computerized voter list established in 2016 with help from Japan and the European Union. Previous voter lists were riddled with duplicates and incorrect information, leading to instances of disenfranchisement, vote padding and manipulation. The political agreement of July 2014 between the two main parties paved the way for cleaning up the voter list to reduce opportunities for electoral fraud.

The NEC is tasked by the electoral law with establishing and maintaining the voter list. A registration drive took place from September 1 to November 30, 2016. Overall, 7.87 million people, or 81.5% of the country's 9.6 million eligible voters, were able to register under the new system. Even if the registration rate is fairly low, in part because overseas workers were unable to register, watchdog organization COMFREL has described the new voter list as "an attainment in good governance<sup>32</sup>" in its assessment.

The commune and sangkat council elections held on June 4 were the first to use the new electronic voter list and did so successfully. As expected, the list was instrumental in preventing vote-padding or double voting incidents, which were not observed, in contrast to previous elections. Minimal complaints were received regarding errors in voter registration data, appearance of names of deceased, and duplicates, which did not compromise the conduct of the election. The NEC should continue to improve on this good practice it has ably implemented.

Ahead of the next polls, the NEC will conduct another registration drive to increase enfranchisement among the population, announced to take place from September 1 to November 9, 2017<sup>33</sup>. We commend the EMB's diligence in ensuring the efficiency and inclusiveness of the voter list, although particular attention should be given to the registration of overseas workers and first-time voters.

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<sup>32</sup> [https://www.comfrel.org/eng/components/com\\_mypublications/files/932236Final\\_Report\\_VRM\\_2016\\_\\_\\_\\_English\\_Version.pdf](https://www.comfrel.org/eng/components/com_mypublications/files/932236Final_Report_VRM_2016____English_Version.pdf)

<sup>33</sup> <http://www.phnompenhpost.com/national/eligible-voters-will-get-new-chance-register>



*Voters in Battambang province check their names on the voter list, a day before the elections*

## **Unlevel Playing Field**

Among the tenets of democratic electoral practice is the guarantee that all stakeholders have equal access to resources and opportunities for participation. This is enshrined in universal norms such as the International Covenant on Civil and Political Rights, which reiterated that participation in public affairs, such as voting and getting elected, should not be subject to discrimination on the basis of race, color, language, gender, social origin, religious beliefs, or ideological inclinations<sup>34</sup>. While Cambodia has achieved great strides in ensuring inclusive participation in voting, more effort is still needed to achieve equal opportunity in running for office and the participation of neutral civil society agents.

In the practice of elections, traditional understanding is that there must be a level playing field, especially regarding the access to resources and how these resources can be used. The interplay among these factors is mostly observable during the campaign period. However, in light of increasingly complex electoral processes, access to media and opportunities to deploy party and civil society agents, and other ways to engage in the electoral process, also contribute to shaping elections.

The recently held commune elections revealed a playing field which favors the ruling party, the Cambodian People's Party (CPP). While the major opposition party, the Cambodia National Rescue Party (CNRP), was also able to gather a significant amount of resources, the manner in which it conducted its campaign was negatively affected by the policies discussed

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<sup>34</sup> International Covenant on Civil and Political Rights (1966), Article 25

in the above analysis of the legal framework. This observation also applies to the ten smaller political parties, which were adversely affected to an even greater extent.

Access to media is one of the essential opportunities that all parties require, but the Committee for Free and Fair Elections in Cambodia (COMFREL) hints that private media tended to disregard codes of conduct during election campaign<sup>35</sup>. NEC regulations state that private television networks should disclose the cost and length of campaign advertisement time they intend to sell to political parties. Private television networks failed to comply with this regulation and sold airtime mostly to CPP.

Furthermore, a project conducted by the Cambodian Center for Independent Media (CCIM) and Reporters Without Borders reveals that most of the private media in Cambodia are or were owned by CPP-aligned personalities, including close relatives of the Prime Minister<sup>36</sup>. Since the ruling party-controlled Ministry of Information and Ministry of Posts and Telecommunication are the regulators of content and licensing, these media institutions were given more leeway in their reporting of the electoral campaign. Private media clearly broadcasted more material supportive of the ruling party, despite NEC regulations to ensure fair media access.

In contrast, most politically unaffiliated media resorted to self-censorship of news critical of government policies to avoid charges such as “defamation” and “damaging the country’s image”<sup>37</sup>. This situation resulted in media reporting that was heavily favorable to the ruling party. In Cambodia, non-aligned media are regularly the subject of threats and often labeled as “foreign agents”<sup>38</sup>. COMFREL stated that while all parties were able to access public television, CPP propaganda were aired prior to the official campaign period which is a circumvention of existing regulations.

Another important factor which hindered a balanced campaign was the absence of clear rules regarding campaign finance and auditing, which would give equal footing to small and big parties. One important reason to implement such rules is to curb the unreasonably high costs of running for office, as well as curtail the use of funds from illegal sources.

According to studies conducted by the Situation Room, an alliance of 40 domestic CSOs formed to monitor the 2017 elections, the two major parties spent enormous amounts for their campaigns, with expenditures totaling US\$24 million for CPP, and CNRP spending US\$5.6 million<sup>39</sup>. However, both parties contested these numbers, with CPP claiming that the figure was an exaggeration while refusing to disclose the actual amount, and CNRP on the other hand claiming to have spent only US\$1.7 to 2 million. In contrast, smaller parties lagged far behind in campaign spending: for instance, US\$500,000 for the League for Democracy Party (LDP), US\$30,000 for Beehive Social Democratic Party (BSDP), and US\$27,000 for the Grassroots Democracy Party (GDP)<sup>40</sup>.

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<sup>35</sup> [https://www.comfrel.org/eng/components/com\\_mypublications/files/439937SRs\\_Statement\\_Overall\\_and\\_Ultimate\\_Assessment\\_on\\_Commune\\_Council\\_Election\\_for\\_the\\_4th\\_Mandate\\_\\_24\\_JUNE\\_2017\\_English.pdf](https://www.comfrel.org/eng/components/com_mypublications/files/439937SRs_Statement_Overall_and_Ultimate_Assessment_on_Commune_Council_Election_for_the_4th_Mandate__24_JUNE_2017_English.pdf)

<sup>36</sup> <http://mom-kh.com>

<sup>37</sup> <https://freedomhouse.org/report/freedom-press/2015/cambodia>

<sup>38</sup> <http://www.phnompenhpost.com/national/trump-ban-cited-media-threat>

<sup>39</sup> <https://www.voacambodia.com/a/group-raises-concerns-over-election-as-campaign-spending-seen-to-rise-dramatically/3918090.html>

<sup>40</sup> <http://www.phnompenhpost.com/national/law-needed-campaign-spending>

Such excessive spending by the larger parties resulted in an unfair advantage as they were able to directly influence the cost of campaign resources such as television and radio air time. The CPP spent a total of US\$575,000 for eight television stations to cover the party's rally on the morning of June 2 alone<sup>41</sup>, an amount no small party could compete with.

Despite obvious disadvantages, none of the ruling party's political opponents or neutral agents filed any legal complaints because of the possibility of facing tremendous political and legal repercussions. The country's courts are widely controlled by the ruling party and, accordingly, serve as a tool to sanction political opponents. The Supreme Court is a prime example of the party's control over judicial organs, as Chief Justice Dith Munthly was a CPP lawmaker from 1993 to 1998, when he was appointed to the Court<sup>42</sup>.

Among cases filed prior to the elections are those involving Chao Veasna (a deputy commune chief from Poipet charged with incitement in February 2017) and Ly Sokun (a deputy commune chief from Tuol Kork who was charged with forgery in February 2017<sup>43</sup>), and Neth Sao (a commune councilor from Kampong Thom who was charged with clearing and grabbing state land in April 2017<sup>44</sup>), all members of the CNRP. Such judicial maneuvers effectively silenced critics of the ruling party, and undermined free speech during the campaign.

Neutral agents are systematically disadvantaged in the same manner that smaller and dissenting parties are forced to remain on the fringes of the electoral playing field. The Commune Election Law imposes vastly different standards on civil society organizations and government officials. CSOs are expected to remain neutral and are restricted from participating in any campaign activity which may appear as supporting or opposing a party (Article 74), while civil servants may participate in any campaign activity after office hours (Article 73). Neutrality should be expected from both sets of actors to lessen concerns about meddling in electoral affairs.

## **A Campaign Marred by Intimidation**

The pre-election period, both ahead of and during the official two-week campaign, was noticeably more peaceful than in the past, with no reported instances of violence. That being said, statements made by some high-profile officials contributed to an environment of fear and intimidation which potentially influenced voters' decisions and prevented CSOs from accomplishing their missions for fear of retaliation.

These include, but are not limited to, comments by Defense Minister and Deputy Prime Minister Tea Banh warning that he would "smash the teeth" of anyone protesting the election results<sup>45</sup>; CPP spokesman Sok Eysan escalating that threat and mentioning that protesters could "die"<sup>46</sup>; Deputy Commander-in-Chief of the armed forces Chea Dara declaring that the

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<sup>41</sup> <http://www.phnompenhpost.com/national/live-coverage-rally-would-have-cost-cpp-576000>

<sup>42</sup> <http://www.phnompenhpost.com/national/new-supreme-court-chief-justice-appointed>

<sup>43</sup> <http://www.phnompenhpost.com/national/two-sam-rainy-party-officials-arrested>

<sup>44</sup> <https://www.cambodiadaily.com/news/land-dispute-leads-to-srp-commune-councilors-arrest-127794/>

<sup>45</sup> <https://asiancorrespondent.com/2017/05/cambodian-deputy-pm-threatens-smash-teeth-opposition/#3m2H2I4LRXLqXlh.97>

<sup>46</sup> <http://www.phnompenhpost.com/national/sokha-reacts-banh-threats>

military will support Prime Minister Hun Sen “forever”<sup>47</sup>; and perhaps most worryingly, the Prime Minister himself stating that he was “willing to eliminate 100 or 200 people” to prevent being overthrown<sup>48</sup>.



*Prime Minister Hun Sen participates in a CPP rally in Phnom Penh on the last day of the campaign*

Combined with the violent events of the 2013 post-election period, the court cases mentioned above against elected officials from the opposition, and the fact that Cambodia had 25 political prisoners at the time of the elections<sup>49</sup>, including political commentator Kim Sok and the human rights activists known as the “ADHOC 5” (released on bail on June 29), these threats resonated among opposition and CSO members who may have resorted to self-censorship in order to avoid any backlash from authorities.

Foreign journalists in the country denounced the intimidation of a Cambodia Daily reporter, whose passport was shown on Facebook by Information Minister Khieu Kanharith following a complaint lodged by commune authorities in Ratanakiri province<sup>50</sup>. This incident had a chilling effect on journalists who saw it as a veiled threat.

Another issue of particular concern is that, in some localities, it was reported that large numbers of troops were deployed and registered on the local voter list. The NEC ruled that soldiers could register in the communes where they were assigned to provide security on election day, creating what CNRP candidates described as a “loophole<sup>51</sup>”. But registered soldiers sometimes amounted to several hundred in a single commune, making it highly unlikely that security alone could explain such an intense mobilization.

<sup>47</sup> <http://www.phnompenhpost.com/national/military-will-support-cpp-commander>

<sup>48</sup> <https://www.cambodiadaily.com/second/hun-sen-goes-tirade-opponents-130441/>

<sup>49</sup> [http://www.licadho-cambodia.org/political\\_prisoners/](http://www.licadho-cambodia.org/political_prisoners/)

<sup>50</sup> <http://www.phnompenhpost.com/national/daily-intimidation-slammed>

<sup>51</sup> <http://www.phnompenhpost.com/national/deployed-campaign-cnrp-concerned-number-soldiers-registering-some-communes>

The Phnom Penh Post noted three instances where gender balance on the voter lists was inconsistent with commune data from 2016, suggesting strategic use of the military to manipulate voter lists. In some cases, data suggest that votes from the deployed soldiers helped sway the vote in the CPP's favor<sup>52</sup>. Even if this was an issue in only a few communes, such manipulation of troop movements and out-of-constituency registration can tarnish the image of the elections and negate any benefit brought by the updated computerized voter list.



*CNRP supporters gather for a campaign event in Phnom Penh on June 2, 2017*

While the atmosphere in which the campaign took place has considerably improved over that in previous elections, the campaign cannot be considered as free and fair as long as its environment is marked by intimidation. ANFREL calls on the government to respect its commitment to enforce universal human rights instruments and principles, and ensure a fear-free electoral climate. The electoral debate and competition should in no way be skewed to benefit the ruling party, and the NEC should be granted more regulatory power to intervene in campaign affairs and resolve complaints promptly.

## **Election Day Observation**

On June 4, ANFREL observer teams made random checks and covered 151 polling stations in 18 provinces, including 16 polling stations at their opening and 13 polling stations during closing and counting operations.

The opening of polls was conducted smoothly, with NEC regulations being followed and party agents and observers able to observe the preparations. Materials and staff generally arrived

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<sup>52</sup> <http://www.phnompenhpost.com/national/soldiers-appear-have-swung-seats>

on time, and there were only minor delays reported. ANFREL's main concern is that, in a number of stations, polling staff did not count each ballot paper individually as they should have, presumably because of an incomplete knowledge of their duties or in an effort to save time. We urge the NEC to be more vigilant on this issue in the future, especially given the large number of extra ballot papers sent to each polling station.



*A disabled voter from Stung Treng province holds his identification card, before casting his ballot*

Voting operations were also satisfactory, and mostly in accordance with NEC regulations, with ballot secrecy properly enforced and identity verification processes sufficient almost everywhere. No campaigning was observed in the vicinity of polling stations. A large turnout often led to long queues and considerable waiting time but all voters were able to cast their ballots. Nonetheless, crowd management techniques could be improved to allow smoother access to the polls.

However, ANFREL teams reported uneven implementation of some polling regulations, including the double-checking of voters' documents, the verification for indelible ink on voters' hands, and the requirement for voters to tick their names on the voter list. Such variances demonstrate the perfunctory training received by polling staff, and efforts should be pursued to ensure a more uniform implementation of NEC rules in all polling stations in the future.

Polling station staff were also unaware of how to receive international observers, sometimes asking their colleagues or calling their CECs for advice on the matter.

In a few instances, ANFREL observers noted more serious infractions: in one polling station, polling staff let people vote with only a photocopy of a Khmer ID card and not the required documents. Generally, though, the NEC policy of enfranchising people with only their voter registration documents, as mentioned earlier, was implemented successfully, although with some confusion among polling staff and voters alike. These irregularities were isolated enough to not change the outcome of any election. As such, our general assessment remains that the voting process was satisfactory but could be improved if the NEC were to address the flaws mentioned above.

The NEC did a good job in ensuring the security of the polling centers. Despite this, shortcomings were reported in polling station management. Indeed, political parties sometimes had two observers inside a polling station at the same time. Party agents and domestic observers did not always exhibit the necessary restraint which their duties entail. The behavior of such agents and observers who ventured beyond their proper roles put into question their integrity and constituted meddling in the governance of the polling station.

ANFREL lauds the efforts taken by the NEC, CSOs and other stakeholders to ensure a successful election day. CSOs deployed 74,671 domestic observers, and this culture of vigilance should be cultivated and encouraged through the adoption of laws clearly allowing free speech and expressions of dissent.

However, several of the CSOs accredited as observers were perceived as non-neutral by some stakeholders' due to their privileged relations with the government or the ruling party. The NEC should ensure that no individual or group is allowed to observe unless they present a credible methodology, established credentials of professionalism, and an absence of ties to any political party, both financially and structurally, to prevent any conflict of interest from arising.

Among these controversial election monitors were the International Conference of Political Parties (ICAPP), and Centrist Asia Pacific Democrats International (CAPDI), labelled as "shadow observers" for their work on the 2013 Cambodian general elections<sup>53</sup>. ICAPP, a group that has strong ties to the CPP<sup>54</sup> and indiscriminately rubber-stamps elections as fair and democratic, was invited to deploy observers for five days by the Ministry of Foreign Affairs, which agreed to cover all expenses<sup>55</sup>. Both organizations endorsed the commune and sangkat council elections as free and fair on the afternoon of June 4, hours before preliminary results were published. At the time, NEC spokesperson Hang Puthea himself acknowledged it was "too early" for a proper assessment of the polls<sup>56</sup>. The presence of international election observers with a close relationship to political parties running for office is against the very principle of independence and impartiality which observers should adhere to<sup>57</sup>.

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<sup>53</sup> [https://media.wix.com/ugd/ca20d0\\_72a8e7c1e4e8464da415d102db7605f1.pdf](https://media.wix.com/ugd/ca20d0_72a8e7c1e4e8464da415d102db7605f1.pdf)

<sup>54</sup> <http://www.phnompenhpost.com/national/cpp-ties-controversial-election-monitor-deepen>

<sup>55</sup> <https://www.cambodiadaily.com/news/govt-funds-return-shadow-election-monitors-130309/>

<sup>56</sup> <https://www.cambodiadaily.com/news/after-limited-time-shadow-monitors-offer-broad-approval-130969/>

<sup>57</sup> [https://www.ndi.org/sites/default/files/1923\\_declaration\\_102705\\_0.pdf](https://www.ndi.org/sites/default/files/1923_declaration_102705_0.pdf)

As for the closing process, polling stations closed on time, and there were no reports of voters being denied the chance to cast their votes.



*Polling officers in Boeung Keng Kang High School in Phnom Penh empty a ballot box before the counting process begins*

Counting and tabulation resulted in a more mixed assessment, with some irregularities reported, again caused by poor training of staff. In several of the counting stations monitored, there were instances of ballots marked as spoiled when they should not have been. The assessment of ballots failed to prove uniform, even within the same polling center. No complaints were lodged by party agents either, which illustrates the low level of stakeholder education. In many polling stations, officials demonstrated superficial knowledge of the paperwork they were required to fill out and send to CECs, dragging out the process. Finally, in some cases, ballot counting results were not properly displayed outside the polling station.

Unfortunately, the counting process could have been more transparent if it were not held behind closed doors, and the public were allowed to witness it. Although domestic observers should have been permitted to stay on the premises along with international observers and party agents, there were instances where they were asked to leave by the polling station chief. However, the process should always be as inclusive as possible, and ANFREL recommends that the NEC consider opening counting and tabulation operations to public scrutiny.

## **Voter Turnout and Election Results**

ANFREL congratulates the people of the Kingdom of Cambodia for turning up in great numbers to exercise their right to vote. These commune and sangkat council elections saw 7,107,395 Cambodians cast their ballots, the highest number ever recorded in the country's

electoral history, with the voter turnout surging to 90.37%, due in large part to the lower number of names on the new voter list.



*Voters line up to enter a polling station at Trapeang Krasang Elementary School, in Phnom Penh.*

Final election results released by the NEC<sup>58</sup> reveal that the CPP won 6,503 councilor seats and 1,156 commune chief positions out of the 11,572 seats in 1,646 commune and sangkat councils across the country. The ruling party garnered 3,540,056 votes overall, or 50.76% of the total popular vote. The CNRP won 5,007 councilor seats and 489 commune chief positions, with 3,056,824 ballots, 43.83% of the popular vote.

Of the ten other, political parties running in the commune and sangkat council elections, only five were able to secure councilor seats. Most notably, the Khmer National United Party (KNUP) was the only small party to win a commune chief position, in the province of Banteay Meanchey<sup>59</sup>. KNUP collected in total 78,724 votes and 24 councilor seats. The other parties that were allocated councilor seats are FUNCINPEC, which received 132,319 votes and 28 seats, LDP with 122,882 votes and 4 seats, Beehive Social Democratic Party (BSDP) with 31,334 ballots and 1 seat, and finally GDP with 4,981 votes and 5 seats.

While the ruling CPP won a majority of the popular vote, it had a mixed victory, as it won fewer commune chief and councilor positions than five years ago. In comparison to 2012, the CPP lost 1,789 commune council positions. The ruling party will effectively run fewer local governments than ever before: in each of the past three commune and sangkat council elections, the CPP won over 97% of chief positions.

<sup>58</sup> <https://www.necselect.org.kh/khmer/content/2123>

<sup>59</sup> <http://www.khmertimeskh.com/news/39144/knup-winner-rides-wave-of-support/>

CNRP, on the other hand, gained 2,052 seats more than the former opposition parties in the 2012 elections, before the Sam Rainsy Party (SRP) and Human Rights Party (HRP) merged. The fact that the party was able to forge unified candidate lists in every commune and sangkat in the country allowed it to collect a significantly greater number of votes. However, results still fell short of the expectations of the CNRP, which was hoping to win the support of 60% of the voters to build momentum ahead of next year's general elections.

## Electoral Dispute Resolution

The electoral dispute resolution (EDR) process in Cambodia relies on communal, provincial and national election management bodies to handle complaints related to the campaign, voting operations and electoral results. CECs are the first in line to make decisions in relation to the results or the conduct of the election, and their decisions can be appealed to the 25 PECs across the country. Any further appeals would be taken to the NEC. This effectively makes the NEC and lower-level election management bodies a three-tiered quasi-judicial body.

According to the electoral law, any individual registered on the voter list of a commune or political party running a candidate list can file a complaint with their CEC. Appeals to a PEC must be registered in written form no later than three days after provisional election results are published by the CEC, and the PEC then has five days to rule on the issue. Furthermore, complainants may appeal a PEC's decision to the NEC within four days of receiving notification from the PEC. The NEC then has four days to issue the final ruling.

By June 19, the last day for the submission of complaints, the NEC had received 64 complaints related to the commune and sangkat council elections. Of these, 46 were requests for ballot recounts, while 18 were related to violations of the electoral law<sup>60</sup>. The majority of these complaints were eventually rejected for being filed outside the timeframe determined by the law<sup>61</sup>.

There has been debate as to whether or not these complaints were timely filed, with Meng Sopheary, the head of electoral and legislative affairs for CNRP, stating that out of 22 complaints from her party dismissed on June 15, only two had indeed missed the deadline<sup>62</sup>. The NEC being the last level of electoral dispute resolution, there could be no further appeal. NEC officials insisted that dismissed complaints did not fulfill the requirements of the law<sup>63</sup>.

Three requests for ballot recounts were accepted by the NEC: Doung commune of Svay Rieng province, Boeung Pram commune of Battambang Province, and Kleng commune of Kampong Thom province. All three recounts resulted in different winners than determined by the CECs. After a lengthy and contentious recount process, Doung commune was awarded to the ruling

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<sup>60</sup> <https://www.necelect.org.kh/english/content/press-release-n%C2%BA159-nec-conducted-meeting-nec%E2%80%99s-headquarters-check-and-decide-15-complaints>

<sup>61</sup> <http://www.phnompenhpost.com/national/late-filed-complaints-discarded-nec>

<sup>62</sup> <https://www.cambodiadaily.com/news/nec-rejects-election-complaints-filed-past-deadline-131488/>

<sup>63</sup> <https://www.cambodiadaily.com/news/nec-finishes-complaints-voter-registration-prep-continues-131568/>

CPP, despite CNRP being declared the winner based on preliminary results<sup>64</sup>. In Boeung Pram and Kleng communes, CNRP ended up winning the elections, overturning the preliminary results announced by CECs.

The issue of spoiled ballots proved to be very controversial during recounts, with party representatives arguing at length about which ballots should be considered valid<sup>65</sup>. In the case of Boeung Pram commune, preliminary results showed 608 ballots for the CNRP to the CPP's 631, while the PEC announced 771 and 704 respectively and the NEC ultimately ruled 776 and 707<sup>66</sup>. The discrepancy between ballots considered valid between the first and third counting procedures amounts to almost 20 percent, which highlights the need for clearer regulations and strict across-the-board implementation of clearly written regulations.

Meng Sopheary of CNRP declared that the NEC needs to reform the procedures to declare ballots invalid, to better respect voters' will. It is ANFREL's assessment that there were no clear procedures nationwide to declare ballots as spoiled or invalid. This was evident in cases of ballot recounts by PEC and NEC, when results differed vastly from those at the CEC level. In any case, the NEC should concentrate their efforts on educating polling staff on the subject of counting and assessment of ballots, which provided the basis for the greatest number of complaints related to the 2017 elections.

Capacity building needs to be increased until every voter in Cambodia can be ensured that their ballot will count towards the candidate of their choice. In this regard, ANFREL welcomes the decision of the NEC to conduct a nationwide campaign designed to educate rural voters on how to properly fill in their ballots<sup>67</sup>.

Given the number of complaints rejected for being filed too late, the NEC should also consider reviewing its electoral dispute mechanism. Several reforms could be implemented, from extending complaint filing periods to allowing complaints to be filed electronically. While resolution of electoral disputes is time sensitive, transparency and accountability should in any case be prioritized throughout the process, allowing everyone to check on the status of election-related appeals and decisions by election management bodies.

## **Post-election harassment of election monitoring CSOs**

In the weeks following the elections, the Situation Room, a consortium of 40 Cambodian CSOs including ANFREL member organizations COMFREL and NICFEC, came under threat of legal action from the Ministry of Interior. The Situation Room published its final assessment of the commune and sangkat council elections on June 24. The report commended the NEC for its improved management of the polls, but noted that there were too many significant irregularities and concluded that "elections in Cambodia cannot yet be considered fully free and fair<sup>68</sup>". The

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<sup>64</sup> <http://www.phnompenhpost.com/national/cpp-wins-doung-recount>

<sup>65</sup> <https://www.cambodiadaily.com/news/necs-first-election-recount-turns-rowdy-131272/>

<sup>66</sup> <http://www.phnompenhpost.com/national/cnrp-set-make-gains-during-recounts>

<sup>67</sup> <https://www.cambodiadaily.com/news/spoiled-commune-ballots-spark-voter-education-campaign-131816/>

<sup>68</sup> [https://www.comfrel.org/eng/components/com\\_mypublications/files/439937SRs\\_Statement\\_Overall\\_and\\_Ultimate\\_Assessment\\_on\\_Commune\\_Council\\_Election\\_for\\_the\\_4th\\_Mandate\\_\\_24\\_JUNE\\_2017\\_English.pdf](https://www.comfrel.org/eng/components/com_mypublications/files/439937SRs_Statement_Overall_and_Ultimate_Assessment_on_Commune_Council_Election_for_the_4th_Mandate__24_JUNE_2017_English.pdf)

problem areas included an environment of political repression, the lack of an independent judiciary, the misuse of state resources for campaigning, and ongoing acts of intimidation against civil society by the authorities.

Shortly after the release of its assessment report, the Situation Room was targeted by Prime Minister Hun Sen, who ordered the Ministry of Interior to investigate its members for violating their obligations under LANGO and fomenting a “color revolution<sup>69</sup>”. In speeches, the Prime Minister suggested that criticism of the elections would imply collusion with the CNRP and that if the investigation were to confirm these accusations, CSOs would need to be “punished”.

Following this, the Ministry of Interior began an investigation of the Situation Room on the premise that it was not properly registered as an CSO, despite the fact that it is only a temporary alliance and has no permanent structure. On July 5, the Ministry issued a warning letter to both COMFREL and NICFEC, informing them that they had violated Article 24 of LANGO, requiring CSOs to maintain political neutrality<sup>70</sup>. Such accusations are unfounded, as the work of Situation Room member CSOs is legitimate and crucial to a vibrant democracy. The commune election law, in its Article 83, guarantees the right of domestic civil society organizations to participate in the election process as observers.

Nonetheless, the warning is a clear attempt by the government to disrupt the activities of election monitoring CSOs and prevent them from joining together again as the Situation Room ahead of the 2018 general elections. Interior Minister Sar Kheng said that some CSOs not complying with the regulations imposed by LANGO risk seeing their registrations cancelled<sup>71</sup>. LANGO imposes a number of excessive bureaucratic hoops and reporting requirements on CSOs that can be used as a pretext to effectively silence them and restrain their activities.

It is also worth noting that the office building of COMFREL, where meetings of the Situation Room were held, suffered a sudden and unexplained electric power failure on June 5, just as the CSO coalition was about to hold a press conference and release its preliminary assessment on the conduct of the elections.

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<sup>69</sup> <https://www.cambodiadaily.com/news/hun-sen-orders-investigation-situation-room-131881/>

<sup>70</sup> <http://www.phnompenhpost.com/national/election-monitors-get-warning-over-law-neutrality>

<sup>71</sup> <https://www.cambodiadaily.com/news/ngos-warned-to-comply-with-law-or-face-action-132171/>

## Recommendations



*ANFREL holds a press conference in Phnom Penh on June 5, 2017 to discuss its preliminary assessment of the conduct of the elections*

In light of the observations and assessments above, ANFREL offers the following recommendations for furthering the improvement of Cambodian elections.

1. About the broader legal framework:
  - a. Revisit and amend overly restrictive laws in order to respect the international obligations of Cambodia and the spirit of the 1993 Constitution.
  - b. Encourage political party and CSO development by lifting undue restrictions and burdens on their activities.
  - c. Ensure that fundamental freedoms of association, expression and assembly are enforced for individuals, CSOs and political parties alike both within and outside of election periods.
2. On the electoral system:
  - a. Allow independent candidates to run, in line with Cambodia's commitment to inclusive elections.
  - b. Remove or lower the minimum threshold of candidates required for a party to run in commune elections.

3. Regarding the NEC:
  - a. Establish a more independent selection process for NEC members, especially for the appointment of the NEC Chairperson.
  - b. Consider granting protection from prosecution or wrongful removal to members to promote the independence of the NEC and curtail outside influence on its decisions and activities.
  - c. Grant the NEC increased control over its budget, and institute transparent auditing processes of its accounts and activities, ensure full disclosure of its finances, and publish audit reports on the Internet to promote accountability.
  - d. Reduce the number of printed extra ballots to the minimum and strengthen the enforcement of ballot tracking mechanisms.
  - e. Strengthen the NEC's role in providing nationwide voter education to increase voter awareness of the electoral processes and requirements.
  - f. Intensify training of PEC, CEC, and PSC staff to ensure uniformity in the implementation of rules, and improved management of elections in general.
  - g. Establish stronger coordination with the media, especially during elections, to ensure wide dissemination of information relevant to the conduct of elections.
  - h. Introduce a review of organizations applying for accreditation as observers, and ensure they satisfy requirements of neutrality and independence.
4. On voter registration:
  - a. Conduct another voter registration drive of a longer duration to update the voter list and ensure a cleaner and more inclusive list for the 2018 elections.
  - b. Promote mechanisms for the registration and enfranchisement of overseas workers, such as out-of-country voting or advance voting.
  - c. Identify persons with disabilities (PWDs) on the voter list to ensure their ability to cast their ballots.
5. With regard to campaigns:
  - a. Introduce a disclosure mechanism for campaign contributions and expenditures, to increase accountability and prevent the use of state and other illegal resources. Provide for sanctions in case of non-compliance by candidates or parties.
  - b. Establish an internet database on campaign finance, accessible to the general public.
  - c. Ensure that freedom to campaign is equally granted to all political parties, without fear of intimidation, threats, or violence.
  - d. Guarantee the impartiality of media, both public and private, and fair access to it by political parties and candidates.
  - e. Protect media freedom in covering all political activities and discourses.
  - f. Strictly enforce guidelines regarding armed forces movements and registration to avoid eroding the people's trust in the voting process.
  - g. Prevent any use of state resources by parties or individuals in campaigning.
  - h. Promote participation of CSOs in the political debate and in voter education efforts and ensure they can accomplish their mandates without fear of intimidation or violence.

6. For election day operations:

- a. Ensure that every voter is issued an identity document or voter ID, to avoid makeshift policies like the one hurriedly adopted this year to prevent disenfranchisement.
- b. Promote PWD participation by ensuring that polling stations are accessible, and that materials to facilitate voting by people with special needs are provided.
- c. Provide adequate training to all polling officers ahead of the balloting, including crowd management techniques, and ensure their understanding of NEC regulations and all election day processes.
- d. Continue and strengthen coordination with the Cambodian Police to ensure a safe voting environment free from violence and intimidation.
- e. Adopt clearer guidelines for the determination of which ballots should be declared spoiled and disseminate those guidelines widely among polling staff, observers, and political parties.
- f. Allow voters to attend ballot counting and tabulation operations.

7. Regarding electoral dispute resolution:

- a. Consider the introduction of a system providing for faster submissions of complaints, for instance through the Internet.
- b. Create an online database containing all information related to electoral complaints, including filing details, and the substance, status and ruling on each complaint.
- c. Clarify rules pertaining to ballot recounts at all levels of election management bodies and increase the transparency of the recount process.