Fact Sheet: Institutions Series: The National Election Committee (the “NEC”)

Institution: The NEC

Snapshot: An independent, neutral and competent election administrator that is capable of dealing effectively with complaints is fundamental to enabling voters to feel confidence in the electoral process. However, issues pertaining to the structure, independence and functioning of the NEC raise questions about its ability to be a true and fair electoral administrator.

Introduction
In the run-up to the imminent commune elections on 3 June 2012 and next year’s national elections, this fact sheet explains the role of the NEC, its composition and issues pertaining to its ability to effectively deal with complaints, before providing suggestions for its improvement. This fact sheet is written by the Cambodian Center for Human Rights, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

What is the NEC?
The NEC is the main electoral administrator in Cambodia, with jurisdiction to administer elections of National Assembly members and Commune/Sangkat Councils, and indirect elections of Senate members and Capital City, Provincial, Municipality, District and Khan Councils. To fulfill its mandate, the NEC has electoral bodies over the whole of the country at all administrative, provincial, municipal and communal levels. The NEC is in charge of planning, organizing and administering elections, including announcing election results, producing and disseminating civic education material, monitoring media, registering voters and political parties. The NEC is also in charge of complaints and appeals in relation to all elections.

Composition of the NEC
The NEC is made up of nine members. The Law on Elections of Members of the National Assembly defines the NEC as “an independent and neutral body” and provides that “in the carrying out of its duties Members of the [NEC] and those of Electoral Commissions at all levels shall be neutral and impartial in the implementation of their electoral duties.” The members are nominated by the Ministry of Interior (the “MOI”) and appointed by Royal Decree at the request of the Council of Ministers upon approval by an absolute majority of members of the National Assembly. These members are required to relinquish affiliation with any political party. As a division of the MOI, the NEC receives its budget from the Ministry of Commerce, depriving it of the power to administer funds autonomously and making it more susceptible to executive control. NEC members have no fixed terms, and there are no safeguards against the arbitrary removal of members.

Functioning of the NEC
Despite the law requiring members of the NEC to be independent, they are effectively nominated by institutions currently dominated by the Royal Government of Cambodia (the “RGC”), raising questions as to its true independence. Many consider this flaw to be most pronounced when it comes to the NEC’s complaints-hearing mandate for breaches of election laws. Decisions announced by the NEC do not legally preclude the courts from imposing criminal penalties if a parallel complaint is filed before the court. Some complaints can be filed at a local level, with cases referred to the NEC on appeal from the lower administration or filed directly with the NEC if the complaint is brought against the lower administration.
According to statistics released by the NEC in 2010, of 22 electoral complaints received by the NEC in 2010, 13 were dismissed while nine were resolved at the commune level. These complaints related to: commune clerks’ allegedly registering voters without sufficient proof of identification; voters’ names missing from the list; and commune officials’ allegedly deleting voter names from the list.

During elections and post-elections, however, there is a distinct lack of a comprehensive appeals process, with the process in existence riddled with loopholes. For example, in making a polling or counting related complaint in relating to national elections, such complaints must be filed before 11:30 a.m. the day after the election. Complaints concerning misbehavior on the part of officials must be filed within three days of the event. The timeframe for submission of complaints is therefore insufficient for parties seeking to file complaints – the vast majority of whom will be opposition-aligned – to gather evidence. The result is that complaints are routinely rejected.

Reforming Electoral Administration
An independent, neutral and competent election administrator that is capable of dealing effectively with complaints is fundamental to enabling voters to feel confidence in the electoral process. As Cambodia prepares to go to the polls on 3 June 2012, citizens must have faith in the mechanisms of oversight, otherwise they are less likely to vote. Such faith necessarily requires a respected and effective NEC. Any reform of the complaints process of the electoral administrator must include changes to its legal structure. Without such action, any changes to deal with oversight will be worthless if the body carrying it out continues to be viewed by the electorate as lacking neutrality and impartiality. The following changes to the NEC are therefore recommended:

- An open selection process, with greater political diversity and wider membership within the NEC and local electoral administration, is needed. Membership could, for example, include academic experts, political analysts, lawyers, etc., rather than politicians alone. Such an approach could instill the necessary level of independence and neutrality in the decision-making of the NEC and increase its credibility in the eyes of the electorate.
- Security of tenure of members of the NEC and the absence of arbitrary removal will give confidence to members of the NEC to complete the tasks with which they are charged without fear of removal, and limit the potential for executive control. Amending the rules of the NEC so that members cannot work for a political party immediately after leaving the NEC will ensure that members are less susceptible to political influence.
- As part of efforts to bolster the independence and impartiality of the NEC, the National Assembly should make the necessary changes so that the NEC has an independent, legally-mandated budget.
- The RGC and National Assembly should amend the law to revise the deadlines and the procedure for the submission of complaints following an election, so as to allow those looking to file complaints adequate time to gather evidence in support of their complaint.

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