



NGO-CEDAW

ANALYSIS OF LEMNA BY
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OVERVIEW

This is a legal analysis of the provisions of the recently passed amendments to the Law on Election of members of the National Assembly (LEMNA). To begin, there are numerous articles which directly conflict with the requirements of the Cambodian Constitution and with several international treaties to which Cambodia is a party, including: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination Against Women. Moreover, the law fails to implement recommended changes or address serious concerns raised in the UNOHCHR's 2011 report on Cambodia's election laws; the report states that extensive reforms are necessary for fair elections in Cambodia. Of particular concern are: the vagueness of the law and the failure to include a section of definitions of terms used in the laws; the absence of any provision for citizens to play a role in selecting candidates for office; the requirements that all voters hold a Khmer citizenship card and also be on a voter list, rather than be in possession of a voter card; severe restrictions imposed on freedom of assembly for all Khmer and on the right to express opinions for civil society organizations and "foreigners" (who may be third generation Cambodian-born residents). Additionally, the law would potentially disenfranchise any Khmer citizen currently living abroad without additional regulations providing for a way for them to register and vote.

ANALYSIS BY ARTICLE – LEMNA

Definitions

The first issue with the election law is an omission: unlike most laws, there is no definition section. Without a clear set of definitions it is impossible to fully interpret the law, and leaves enforcement up to the whim of the current government. For example, the law states that "foreigners" must not express opinions of elections or political parties, but it is unclear whether "foreigner" refers to foreign-born non-citizens, to anyone who doesn't have the necessary paperwork to obtain a Khmer citizenship card, or to people of foreign descent, regardless of how long the family has been in Cambodia. Additionally, the law does not explain the distinction between "association" and "non-governmental organization."

Article 2

This article announces that National Assembly elections will be held according to "principles of multi-party liberal democracy." The Khmer words may not translate exactly; however, the online Collins dictionary defines "liberal democracy" as "a democracy based on the recognition of individual rights and freedoms, in which decisions from direct or representative processes prevail in many policy areas." This law does not recognize individual freedoms, as it later prohibits individuals from running for office as independent candidates, and severely restricts freedom of speech. Moreover,



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democracies allow voters some influence in the selection of candidates for election; this law leaves the choice entirely to party leadership.

Article 5

Again, here is a section that announces that voting will be “free, fair [and] just,” but fails to outline how the State will ensure fairness. Simply stating that the law is good does not make it so. In a 16 July 2012 report, Surya P. Subedi, UN Special Rapporteur on the situation of human rights in Cambodia, wrote that substantial reforms would be necessary to ensure fair elections in Cambodia. The report then lists a number of recommended reforms. This law does not implement them.

Article 6

This section outlines how many seats each province will get in the Assembly, but does not explain how the numbers were arrived at. If the numbers are based on population size, then a provision should be added to explain how the numbers will be recalculated when the population distribution changes.

Article 7

This provision allows each party running in the election to send one observer into the polling station and count station. There is concern about the party’s influence on voters and behavior if their members are inside the station.

Article 9

Mentions that local communes will issue cards to agents with adequate qualifications as stated in article 7 and article 8 of this law;” however, the law doesn’t list qualifications other than that the name be posted on a list within a week of posting candidates for election.

Articles 10 and 11

These articles state that associations and non-governmental associations may send observers who first obtain registration cards. The observers must meet unspecified qualifications to be later listed by the new National Election Committee’s regulations. There is no guarantee that anyone will be able to meet such qualifications.



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Article 15

This section allows party agents to make objections to violations of election procedures, but does not provide a method for non-party observers to raise objections. Again, the procedure will be created later by NEC regulations. This omission means that the government is deliberately failing to include an obligation to investigate violations of the law observed by “associations and non-governmental organizations” and candidates.

Article 21

This section gives the NEC permission to “invite” foreign NGOs and governments to observe elections, but does not guarantee that any foreign observers will be permitted near polling stations.

Article 23

This Article sets out eligibility requirements for election candidates. It requires that candidates be “Khmer national by birth” but does not define what that means. Since the Cambodian law on citizenship does not confer citizenship automatically to those born in Cambodia, even to parents also born in Cambodia, the meaning of this qualification is not obvious. It appears to prohibit the right of naturalized citizens to run for national office. Moreover, this provision is of particular concern given the high percentage of Cambodians who migrated to and from the region due to years of war and occupation.

Also, the law restricts candidacy to those nominated by a political party, which is not obligated to hold public elections in selecting candidates.

These procedures are contrary to international standards, as noted in the 2012 report of the UN Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi.

Article 24

This provision lists factors that make candidates ineligible to run. One factor is if the candidate’s name is “deleted from the voter list by the National Election Committee” with no indication of why or how the NEC would be able to do such a thing. This provision can easily be abused.

Article 25

Government employees can run for election if they resign from their jobs; however, they are not entitled to return to the same position after they serve a term. The government institution will determine their position. This means that those who run for office and hope to return to military or civil service have an incentive to represent the interests of the ruling party when they run for election and serve in office.



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Article 27

The procedures for selecting and posting lists of candidates for election gives the public very little notice of the candidate's names and creates a very short campaign period. First, there is no rule to implement the Millennium goals or goals stated in Neary Rattanak for increasing the representation of women. The UN recommended quotas for women candidates as a temporary measure to ensure that the representation of women increases, since no gains have been made in this area in the last ten years. Additionally, parties must have a minimum number of candidates and alternates, making it difficult for small parties to form and create a complete candidate list. Moreover, it makes it impossible for individuals to create an independent party for their election campaign. Finally, parties have to pay a "deposit" of 15 million riel which is non-refundable should the party fail to win a seat. This is also a strong deterrent to the formation of third parties as simply running for office requires a donation to the government.

Article 30

This section gives the NEC the responsibility to set a "date for a political party's application running in the Election of members of National Assembly," but fails to explain what, exactly happens on that date that requires the public announcement.

Article 45

This section discusses maintenance of the voter registration list, but states that the list will only be revised during a two-month period from May 1 to July 31 each year. This inherently prevents people who are about to turn 18 from registering before an election. It also prevents people from registering immediately before an election once the date of the election is announced.

Article 46

Eligibility criteria for voting is listed. In order to vote, one must not only be a Khmer national but must also have a Khmer citizenship card. This places many Cambodians at a disadvantage, since they do not have cards already and many do not possess birth certificates and other documentation needed to obtain a citizenship card.

Articles 49 and 50

Article 49 appears to permit migrants or homeless persons to register to vote despite not having a clear home. However, Article 50 creates additional burdens for anyone whose current address does



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not match that of the card. They must provide a residency book or obtain a residency certificate from the commune government.

Articles 53-64

These sections outline procedures for challenging rejections of applications to be listed on the voter list and include appeals to the commune council, NEC and Constitutional Committee.

Article 66

NGOs are permitted to send observers to the voter registration process.

Articles 67-91 describe the election campaign rules and contains numerous restriction on freedom of speech and assembly

Article 68 lists various activities, including several that are conducted in private, that are considered part of the election campaign.

Article 72 states that electoral campaigns can only occur during a 21-day period and must stop 24 hours before the polling day. Polls and surveys must stop 7 days before the polling date. The law then states that results of surveys must be made public and shared equally with all parties, meaning that private research is not permitted. There is no reason given in the law for this restriction of free speech, which violates the Cambodian Constitution, CEDAW and the International Covenant on Civil and Political Rights.

Article 73 dictates during which hours campaign activities can take place. It prohibits using loudspeakers “near schools” during study hours, but fails to define “near,” meaning that any use of loudspeakers could be banned under this section. It also prohibits the use of loudspeakers during the lunchtime hours of noon to two pm for no apparent reason. The law further states that campaign activities (which Article 68 defines to include those done in private) cannot be held from 10pm to 6am. There is no explanation provided for why such a restriction of speech and assembly is warranted. It therefore is in violation of Cambodian and international law.

Article 74

This article gives lip service to respecting all principles of human rights enshrined in the Constitution, despite numerous other sections of the election law which severely restrict the rights of speech and assembly.



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Article 75

Media outlets are required to air or publish “all information” related to the election upon NEC’s request free of charge. It does not limit the amount of airtime required or the content of the information to be aired. There is no requirement that the information be impartial (such as election dates and polling locations) and not leaning on the side of a particular party. There is potential that this section may be abused and infringe upon freedom of the press, in violation of the Constitution and treaties of Cambodia.

Articles 79-80 require managers of “public theaters, sport centers, public parks and halls” to rent space to parties for campaign events and for parties to send copies of any request to reserve the space to the Commune/Sangkat Electoral Commission 3 days in advance. This prevents anyone from holding a campaign event organized at the last minute. Given the short period of time allowed for election activities, this creates a restriction on the freedom of assembly granted in the Constitution and treaties, and prevents campaigns from addressing new events in a timely manner.

Article 81 states that any use of public or private space for campaign purposes requires notice to the Commune/Sangkat Electoral Commission. This creates excessive monitoring of campaign activities. No reason is provided in the law for why the local needs to know about every single campaign meeting.

Articles 82-83

These sections prohibit civil servants, government authorities, and members of the police and military from participating in campaign activities while on duty or while wearing uniforms or carrying weapons. This can actually be helpful in that it reduces the ability for the government and military to intimidate voters. Unfortunately, public servants are well known to the community, and the voting population will recognize them even without a uniform. Moreover, nothing prohibits them from being introduced at rallies with their name and office, so intimidation will still occur.

Article 84

This section bans both Cambodian and international civil associations from having any opinion on elections. There is no corresponding section stating that government offices or groups of government employees must have no opinion on elections. This article is a particular concern due to its overt repression of freedom of expression, opinion and speech. It violates Article 41 of the



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Constitution, which states, “Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly.”

Of particular concern is language prohibiting “indirect” activities: without a definition of this term, there is a risk that any opinion on an issue brought up by any party in an election may be challenged as a violation of this law, regardless of whether the opinion is actually based on an intent to support a party.

Article 85

This section bans foreigners from “direct or indirect activities in the election campaign to support or oppose a political party or a candidate.” Again this is an act that violates Cambodia’s treaties, which entitle all persons to freedom of expression. The failure to define “foreigner” plus the reference to indirect activities gives leverage to the government to potentially charge people with violation of this law even if they do not intentionally support or oppose a political party. Many “foreigners” may have a vested interest in the outcome of an election or in a candidate’s position. For example, foreigners married to Khmer, or with Khmer children; those owning businesses in the country; and those who were born in Cambodia but not Khmer citizens, all have much at stake in the results of elections, but are not even allowed to express an opinion.

Articles 88 and 90

This section states in part, “All expenses for the electoral campaign incurred by each political party and each candidate shall be covered by that political party or candidate...” This law is too vague. While Article 90, which refers to contributions received by a party, implies that the law does not restrict financial donations by any other agency or individual to a campaign account before the party spends it, it is not clear. It also remains unclear whether media coverage is meant to be included in the “expenses.”

Article 93

Voting hours are limited to 7am to 3pm on a single day. Article 3 specifies that voting will be on a Sunday; however, some voters still have to work on weekends. The law does not explain why voting is only allowed during the morning and early afternoon, but not in the evening. Reference is made to people with permission to vote after 3pm, but there is no explanation of who these people are. No provision is made for absentee voting, for example, for Khmer working abroad. This article, therefore leaves the possibility of preventing people from voting in the election.



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Article 94 requires publication of polling locations 30 days prior to the election.

Articles 96 through 101 list polling place procedures on Election Day. They appear intended to avoid the appearance of tampering with votes; however, there are many ways to abuse the system outside of tampering with the boxes inside the polling place. Parties may bring in people from outside villages to impersonate actual voters, for example.

Article 102

This section states that voters must have a Khmer identity card and be on the voter list and not have already voted to be able to cast a vote. This law fails to allow for provisional ballots in case of a person voting in someone else's name, or a last-minute removal of a person's name from the voter list, or an error in printing the voter list resulting in missing pages at the time of polling.

Article 107

This section states that people with disabilities will be able to enter the polling station with a person to provide assistance or to request help from the polling station chair. It does not, however, state that the building must be accessible to a person using a wheelchair or unable to climb stairs.

Articles 115-127 refer to the counting of ballots by local election officials. The provisions do permit party agents to place objections. Storing of invalid and unused ballots are also required.

Article 135

This section lists mathematical formulae to use in calculating the number of seats in each province to be allocated to each party. The calculation method relies on looking for the party with the highest average. In the event of an even tie, the last seat is assigned by "lucky draw" rather than by a run-off election. The equations listed also make it particularly difficult for a third party to gain a seat unless they have a large percentage of the vote.

Articles 140-161

These sections state the penalties for violating various components of the law, including voter tampering and expressing opinions prohibited by this law.

Of particular concern is Article 147, which removes a "responsible" person's right to vote for violating Article 84, which prohibits associations from having opinions. Article 149 imposes a fine and deportation for foreigners who express opinions.