

# ELECTORAL REFORM AND THE CONSOLIDATION OF DEMOCRACY IN CAMBODIA

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# 1 Introduction

Following the national elections on July 28, 2013 the Cambodia National Rescue Party (CNRP<sup>1</sup>) rejected the results, claiming widespread irregularities in the election process. The CNRP has since said it would not take its seats in National Assembly until there is significant election reform. The political deadlock was coupled with months of demonstrations from CNRP, and intensified by demonstrations by other aggrieved sectors, such as garment workers and victims groups protesting human rights abuses.

Since then there has been a virtual ban on assembly for oppositional groups (although the sub-national elections in May offered an opportunity for CNRP to show numbers on the streets during the two week campaign period). The government has produced a package of laws (cybercrime, fundamental statutes of the judiciary, trade unions, and law on associations and NGOs) which raise concerns over specific provisions that may restrict dissent, and further prevent separation of powers between the executive and the judiciary.

Despite several attempts at negotiations, there had been little progress towards a political settlement. On January 2 and 3, 2014, clashes between rock-throwing protestors demanding an increase in the minimum wage and soldiers deployed to control the demonstrations led to a violent crackdown, with troops firing on unarmed civilians, killing five and wounding many others. Recognizing a national crisis close at hand, the CNRP called on its supporters to stop the street demonstrations.

On February 18, 2014, a team from the Cambodian People's Party (CPP) led by Prum Sokha (Secretary of State at the Ministry of Interior) sat down with CNRT team led by Son Chhay (Whip of the SRP and MP-elect) to discuss election reform. Although little was expected from the negotiations, much was accomplished, and at the conclusion of the meeting the negotiators issued the following joint statement:

*(unofficial translation from Khmer)*

*Based on September 16, 2013 agreement, we meet today. We agree to:*

- 1. Creation of a committee with legal representation of parties having seats at national assembly to research and prepare electoral reform in the future to insure elections are free and fair.*
- 2. To prepare the ground for electoral reform, this committee must prepare a national workshop that must be open to and welcome national and international experts, development partners, registered parties, civil society with election expertise, and other relevant actors. This must also insure involvement of citizens through public forums.*
- 3. During the above-mentioned electoral reform process, there must be financial support provided by development partners, as well as national and international organizations*

*The result of this meeting will be disseminated to the leaders of both parties and agree to have further meetings to discuss important issues related to both parties.*

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<sup>1</sup> The CNRP is a coalition of the Human Rights Party (HRP), led by Kem Sokha, and the eponymous Sam Rainsy Party (SRP).

*Signed by Prum Sokha & Son Chhay*

The reforms proposed so far by the opposition parties are focused on improving the voter list, changing the process for choosing the election commission, and legal reforms to improve opposition access to broadcast media. These reforms may be useful for improving the election process, but for a number of reasons are unlikely to have a significant impact on strengthening or deepening democracy in Cambodia.

## **2 Problem Statement**

### **2.1 Winner-Take-All**

The Paris Peace Agreement signed by the four warring parties in 1991 included a power-sharing form of government as one of the measures intended to resolve the long-running conflict. Unfortunately the mechanism created to achieve this end never functioned as intended. Rather than power-sharing, it eventually created a system in which 50% of the vote plus one seat gave the winning party 100% of the power at both the national and local levels. None of the normal checks and balances between the executive, legislative, and judicial branches of government were effective.

The winner-take-all system has had a number of detrimental effects on democratization in Cambodia. The winning party's incumbent position at all levels of government provides a huge and unfair advantage during elections. Even more problematic, the consequences of losing an election by one percentage point (49 to 51%) are so severe—the loss of 100% of their power and influence at every level of government—that parties and candidates will do anything to avoid defeat, and may be unwilling to accept defeat if it occurs<sup>2</sup>.

The existence of this system makes the peaceful transition of power in Cambodia much less likely than it would be in a system where an election loss didn't mean exclusion from government at all levels. The question is, why does a system designed to facilitate power-sharing promote the opposite effect?

### **2.2 Election System**

Cambodia uses a closed list proportional representation (PR) election system. In this system voters choose a party, and seats are then allocated in the national legislature based on the percentage of votes each party received. The system is believed by some to provide better representation because a small party with just 10% of the national vote will get 10% of the seats in the national assembly, and can make its voice heard on issues of national concern.

In PR systems parties compete in multi-member constituencies and party leaders have the greatest say in who will be their party's representatives in government. Consequently, representative accountability in PR systems is primarily upward to the party leadership, rather than downward to constituents. In practice the system works well in small and homogenous developed democracies, where people's primary political identification is ideological, and parties are internally democratic. Experience suggests it is less effective in developing democracies, where parties are often based

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<sup>2</sup> This pathology is also evident in Bangladesh and to some extent in Thailand as well.

on historical, geographical or ethnic affiliation rather than a particular ideology; and often lack effective mechanisms for internal party democracy.

In pure PR systems like that used in Cambodia, party discipline is strong. This means that in most cases MPs are not allowed to vote against their party. Strong party discipline makes sense in a PR system because voters choose a party rather than an individual to represent their interests. But strong party discipline can have adverse effects as well, creating permanent majorities and diminishing the quality of representation.

For example, party discipline would prevent two MPs from Kampot, one CPP and one CNRP, from working together on an issue of interest to fisherman in coastal Kampot. Likewise, women MPs cannot form an effective cross-party caucus to advance issues of interest to all women. In PR systems MPs have relatively little ability to directly represent the interests of their constituents, and particularly in parties that lack mechanisms for internal discussion and debate. Rather they tend to be merely quanta that in sum express the party's power in the legislature.

Party discipline in PR systems can create permanent legislative majorities that diminish the quality of representation. If one party has 51% of the seats and another 49%, and strong party discipline is present, then the result of every vote taken in the term of the legislature can be accurately predicted. If the CNRP comes up with a good farming policy, under the current system they have no possibility of convincing a few CPP MPs from rural Kampong Cham to join them to support a bill. This not only reduces the quality of representation and governance, but the opposition party's inability to ever contribute to governance creates a feeling of hopelessness, and prevents the emergence on either side of consensus leaders able to effectively reach across the aisle.

The zero sum game in the National Assembly, combined with party discipline, and the lack of internal mechanisms within parties for leadership change, have contributed to the development in Cambodia of a remarkably static political structure. The same leaders, in the same positions, in the same parties, sometimes for decades. But PR is not the only reason for this political stasis, as one of the most common avenues for the emergence of new leaders is entirely absent in Cambodia.

### **2.3 Political Decentralization**

The 1993 Cambodian Constitution—developed without public participation and largely in secret—established a constitutional monarchy with a highly centralized state. The Constitution was a compromise primarily between the two dominant parties in the National Assembly, royalist FUNCINPEC party and the ex-communist Cambodian Peoples Party (CPP). Reflecting this compromise, the Constitution was heavily influenced by the 1947 colonial/royalist constitution and the 1989 constitution of the communist State of Cambodia (SOC).

While the 1993 Constitution met the primary objective of its drafters (and of the international community overseeing the process) in that it created a stable political settlement that effectively ended the civil war, it failed to enshrine a governmental structure conducive to democracy. To be fair, these flaws are much more apparent with hindsight than they were at the time, and even if known they might have been

ignored, as ending the endless bloodshed (not the establishment of a liberal democracy) was everyone's first priority.

In any case, it wasn't long after the guns fell silent that the need for decentralization to improve governance became apparent, and by the late 1990s the international community, through the UNDP and other agencies, was spending millions of dollars a year to facilitate "decentralization". Unfortunately, these efforts consisted largely of administrative "deconcentration", rather than political decentralization.<sup>3</sup>

While deconcentration may have marginally improved service delivery, it still left all political power under central control, with public participation seen as an information input rather than accountability mechanism. Why assistance providers focused on administrative deconcentration rather than political decentralization can be explained through political economy analysis.

Two factors worked against significant political decentralization. First, the agencies involved in decentralization were working in partnership with the central government (specifically the Ministry of Interior), and since political decentralization would have weakened central government power and control, it is unsurprising the focus was on deconcentration. Second, the party in power (the CPP) had controlled local administration since the fall of the Khmer Rouge government, and this control is widely seen as providing a significant electoral advantage to the party, so they had little incentive for reforms that might weaken their control.

In the decade and a half following the signing of the Paris Peace Agreement political decentralization was still talked of occasionally, but the only significant progress was made in 2002 with the establishment of directly elected commune councils. Little real power was devolved, and the council (i.e. committee) structure combined with the proportional election system tended to diffuse political accountability. Nevertheless, and somewhat surprisingly, even this limited level of political decentralization and local accountability brought significant improvements in local governance, particularly in comparison to the impact of previous deconcentration reforms.

The failure to achieve significant political decentralization—either in the original constitution or subsequent reform processes—has almost certainly diminished the quality of governance in Cambodia, and may have also significantly hindered democratic development in several other ways. For example, we observe that no significant new political leaders have emerged in Cambodia since the early 1990s (Sam Rainsy was a senior figure in FUNCINPEC before founding his eponymous party, and Kem Sokha was a senior leader of the BLDP).

In countries at similar levels of development (like Indonesia and the Philippines) we see new national leaders emerging from executive positions in sub-national government (governors and mayors of large cities). They win election based on

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<sup>3</sup> Deconcentration involves shifting some functions previously performed at the central level of government to the local level so they are closer to the people affected. This is believed to improve communication and enhance understanding of local problems, leading to better governance, but ultimate authority remains with the central government. Political decentralization involves the ceding of some power or authority by the central government to local governments, and on these issues ultimate decision-making authority rests with the local rather than national government.

individual characteristics, then build a positive governance record in comparison to peers in similar positions. By the time they emerge from the pack and move on to the national stage they have significant experience in managing individual campaigns and in governance, and will have an established track record that provides voters with confidence they can handle the challenges of leadership at a higher level.

Because Cambodia has no elected executive positions at the sub-national level, politicians have difficulty establishing an individual identity and record that would make them credible candidates at the national level. For example, very few CNRP politicians have any experience in government, and this lack of experience can diminish voter confidence that they could govern if elected. It's almost a catch 22, in that to win national elections they need experience in running the government, but to gain experience in running the government they must first win national elections.

While the lack of opportunity to establish an independent political identity is surely a concern for the CNRP, it should also be a concern for the CPP. All things pass in time, and someday the leaders of the CPP—most now in place for thirty-odd years—will be superseded by the next generation. The assumption on many people's part seems to be that the children of current leaders will simply step into their parents' shoes. While this may have been a viable strategy in an earlier time, its success in achieving stability is increasingly rare in the 21<sup>st</sup> century.

In modern electoral democracies political dynasties still exist (the Bushes and Clintons in the US, or the Aquinos in the Philippines are examples), but in each case the younger generation uses name recognition and the track record of the elder generation to help win elections at a lower level, and then establish their own record before seeking higher office. This process weeds out the clearly unsuited, and deflects the charges of nepotism or illegitimacy that would invariably follow a leader that lacked previous governance experience.

A final consideration with overly-centralized government in developing democracies is that it contributes to the winner-take-all nature of government and thus may make the transfer of power between parties more difficult. In a centralized state there is only one significant political contest, and only one winner. In this situation parties and candidates are more likely to use any means to win, or may refuse to accept results when they lose. In contrast, in a decentralized system every election is significant, with each winner (regardless of party) sharing some of the sovereign power of government, and thus each winner has a stake in supporting the legitimacy of the process.

## **3 Response**

### **3.1 Constitutional Reform**

The constraints on democratization outlined in this paper are structural rather than procedural, and consequently the constraints cannot be removed by procedural or legal reforms. To remove structural impediments to the deepening of democracy in Cambodia will require constitutional reform. Potential constitutional reforms that could improve the quality of democracy in Cambodia, and make more likely that

future peaceful transfer of political power, include election system reform, political decentralization, and term limits.

### **3.2 Election System Reform**

Replacing the current closed list proportional representation (PR) system for electing members of the National Assembly with a single-member district (SMD) or mixed system would have a number of positive benefits. Electing individual representatives from electoral constituencies about the size of the current administrative districts would improve the quality of democratic accountability by promoting downward accountability to constituents.

Smaller constituency sizes would bring representatives closer to their constituents and reduce the costs of campaigning, thereby reducing barriers to entry for women and other marginalized populations. While parties would still be important, representatives would primarily be accountable to their constituents, and free to make cross-party alliances to better represent their constituents' interests. This would be of particular benefit to women, who currently are restrained by party discipline from joining together to address concerns of particular interest to women.

Such a system would also bring an end to the permanent majority in the National Assembly, which currently means that the outcome of every vote on every proposed law or bill is known before it is taken. Because representatives would be free to vote in the interest of their constituents, the opposition party could propose popular measures and hope to peel off enough votes from the ruling party to pass them into law. Under an SMD system the opposition would have a real and important role in government, and the overall quality of democratic representation would improve. SMD would also allow individual politicians to build an independent track record, facilitating the emergence of new and popular political leaders.

Although introduction of a single-member district system might be the ideal, in practical political terms the transition from straight PR to SMD would be difficult, as it would require representatives elected through PR to vote for a different system. In such cases mixed systems (like that in Germany) have proved more politically palatable. In a mixed system some representatives are elected through party-based PR, while others are elected through SMDs.

### **3.3 Democratic Decentralization**

Political decentralization is another means to facilitate real power-sharing between parties and interest groups in Cambodia, and would end the winner-take-all election process. If significant power were devolved to provinces and districts, and provincial governors and district chiefs were directly elected, the party that lost at the national level would still have significant political power (for example, holding 45% of the governorships).

Winning positions at the sub-national level would allow the losing party to maintain a base and build a track record to compete more effectively in future elections. Because defeat by a few percentage points at the national level would not mean the loss of all political power, losing parties might be more willing to accept the election process as legitimate. Particularly because many of the senior leaders of the party would have

won their races at the national or sub-national level, and legitimization of the process would be the only way to confirm their own electoral victories.

Finally, democratic decentralization would improve the quality of governance overall by introducing an element of competition between provinces and districts. Some sub-national governments will clearly be better governed than others, and this will create pressure on parties and individuals to improve governance in underperforming areas. Likewise, a variety of different programs and policies can be advanced by different parties or individuals at the sub-national level, then their impact compared, and the most successful copied while the least successful will be dropped.

## **4 Opportunity Knocks**

### **4.1 Why Parties Might be Open to Reform**

The largely unexpected results of the last election, coupled with the current political impasse, create an opportunity and possible openness for reform that has not existed in Cambodia since the early 1990s. While each side would have to give up something in a significant reform, each, in different ways, would also gain something.

Since opposition political parties are unlikely to be able to convince the current government to hold early elections, their next chance will be national elections in 2018. In those elections they may win the big prize in the winner-take-all system. Or they may not, as four years is a long time, and in that time voters may swing back towards the CPP, or the CPP might refuse to give up power.

Given these externalities, opposition parties might be willing to trade the uncertain possibility of 100% of government power under the current system, for early elections for provincial governors and some level of election system reform that together would guarantee them a significant share in government power at the local and national levels and with the possibility of winning a majority in the National Assembly.

The ruling party might also be willing to deal. History suggests that eventually there will be a change in government, and the results of the last election suggest that the desire for change—any change—is growing. If the trend continues the governing party will have an increasingly harder time winning the next elections, and a loss will mean either they lose 100% of government power; or they reject the results with potentially disastrous consequences that spell the end of the party completely.

Alternatively, the CPP could lead a reform process that would bring about political decentralization and election system reform. In the worst case scenario for the CPP they would fail to maintain their majority in the National Assembly, but would retain a powerful (not powerless) minority; and would have party members in elected position in a significant number (possibly a majority) of provinces and districts. They would have a spell in the wilderness, but after five years would have the opportunity to make a strong comeback.

In the best case scenario (for the CPP) their reform efforts would win back the electorate and they would return to the National Assembly with an even stronger mandate. In either case, the reform effort would create a more stable and sustainable

party system, which would long out last its founders, and would introduce a merit-based mechanism for the identification and advancement of future party leaders.

## **4.2 Role of Civil Society in Reform**

Civil society organizations that were involved in observing the 2013 elections have proposed a series of six electoral reforms<sup>4</sup>. While these reforms may improve the quality of the election process, they are unlikely to bring about substantial improvement in the quality of representation and the quality of democracy in Cambodia. In addition to their advocacy for electoral reform, civil society organizations could play an important role in promoting and advocating for deepening democracy through constitutional reform. Civil society also has an important role to play in ensuring that discussions of constitutional reform are not merely between the two parties, but also include the voice of ordinary people from across the country.

Advances in communication technology, particularly social media, make possible coordinated advocacy at a level unseen in Cambodia in the past. And the simple messages at the heart of constitutional reform, elected governors and accountable representatives, are well-suited to modern methods of social advocacy.

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<sup>4</sup> [http://www.comfrel.org/eng/index.php?option=com\\_content&view=article&id=748:press-release-on-the-process-of-the-electoral-reform&catid=188:other](http://www.comfrel.org/eng/index.php?option=com_content&view=article&id=748:press-release-on-the-process-of-the-electoral-reform&catid=188:other)

