

Research Paper

The Senate Commission 2 on Economy, Finance, Banking and Audit

A Comparative Study of Electoral Process Issues in France, Korea, the Philippines and Indonesia



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Executive Summary

What becomes clear is that as political systems mature, election processes have evolved in the countries surveyed. France began holding popular elections in 1792, the Philippines in 1937, The Republic of Korea (Korea) in 1948, Indonesia in 1955, and Cambodia in 1993. However, in the study countries elections have continued, even when political upheaval has meant their suspension and reintroduction in a new form. Thus, the modern electoral systems in the surveyed countries appeared in their current form somewhat later in each country: France in 1946; the Philippines in 1987; South Korea in 1987; and Indonesia in 1999. This paper examines elements of these electoral systems, which have undergone a period of evolutionary rather than revolutionary change since their implementation.

This paper deals with three of the most significant aspects of these countries' current electoral systems: their election campaign financing regulations; voter registration processes; and the oversight and duties of their Electoral Management Boards. These aspects have been selected for examination because each is essential to conducting what would be considered free and fair elections by international standards. The paper is structured by addressing each country's regime under each specific theme outlined above, starting with an overview of Cambodia's system in order to facilitate comparison, and then continuing in order of the complexity¹ (i.e., with France being the most complex system) of the electoral system: France, South Korea, The Philippines and Indonesia.

These countries have been selected as case studies because they each offer similar and contrasting points in terms of both the practical issues of conducting elections, and varying ways in which these issues can be addressed. Owing to a higher level of economic development, France and South Korea have the resources to introduce advanced digitalised voter lists, which avoid many of the problems faced regarding voter registration and voter identification in Cambodia, the Philippines and Indonesia. Likewise, they have been able to successfully implement complex campaign funding and expenditure-limitation regulations. However, as both these measures rely upon resources, expertise and digital information sharing between government departments, the Philippines and Indonesia have taken different approaches to improve their outcomes in these areas. Of particular note is the Philippines use of biometric data, in the form of digital fingerprint scanners. This technology may have practicable application for countries that already use this in their immigration procedures and therefore they may be able to adapt them for developing voter registration systems. Regarding oversight bodies, each of the country's models vary in both their structure and powers, however they all aim to deliver the same services.

Below is a brief synopsis of each country's electoral regime.

Cambodia

Campaign Financing

Although Cambodia has campaign financing provisions which entitle all parties who receive over three per cent of the popular vote to receive state subsidies, the details of this programme are yet to be fully developed. Cambodia does not have any provisions to monitor or limit election campaign expenditures. This is in contrast to France and South Korea which have complex funding mechanisms with many levels of scrutiny.

Voter Registration

¹ Complexity of electoral system refers to the richness and the most complete system in terms of number and quality of the provisions of law and regulations and in terms of efficiency of the mechanisms

Cambodia's voter registration regime is a mix between a continuously updated voter list, and a periodically updated system, that allows changes to be made for three months each year, as well as during the period before an election. The National Election Committee (NEC) is provided at least 90(ninety) day period - this period shall be prolonged to the maximum 120 (one hundred and twenty) days in the year of organizing the universal Election - for reviewing the voters' lists, the voter registration and providing validity to the voters' lists in which allows for the public review and the reporting and amendment of errors. Persons wishing to enrol to vote, but who lack a valid form of photo ID can do so at their Commune/Sangkat chief's discretion. While a number of measures have been introduced to mitigate against the abuse of this discretion, it remains recognised as a weak-point of Cambodia's election system. Voters are registered on a local list and they cannot vote in other regions.

Oversight – Electoral Management Bodies

Elections in Cambodia are overseen and managed by the National Election Committee. Its governing law has been amended three times since the NEC was established in 1997, which demonstrates the evolutionary approach to election management in Cambodia. Members of the NEC are appointed by the King following a vote of the National Assembly, who may choose a group of candidates approved by the Council of Ministers. Electoral disputes, however, are heard and resolved by the Constitutional Council.

France

Campaign Financing

France began regulating campaign financing in 1988. Candidates' campaign accounts are scrutinised by a specialised commission before having their funding approved, and limits are placed upon the maximum donations which an individual can donate to a candidate. Strict limits for campaign expenditures are also enforced. Fines and prison sentences are applicable to those found in breach of the applicable rules.

Voter Registration

France's voter registration system automatically enrolls each person to vote upon their 18th birthday. This occurs through a well regulated sharing of data between government departments. This data sharing also ensures that each person is only registered to vote on one list. Those wishing to change where they are registered to vote can do so at the municipal hall with their identification card or passport. Lists are prepared on the 31st of December the year before an election, and any changes are reviewed and approved through two levels of hierarchy. Voters can cast their vote at any polling station without needing to make prior arrangements.

Oversight – Electoral Management Bodies

The Bureau of Elections within the Ministry of Interior is responsible for administering elections. However, as in Cambodia, the Constitutional Council, which operates independently of government, is the final arbiter in all electoral disputes.

The Republic of Korea

Campaign Financing

South Korea has increased the public/state provision of campaign funding over the last 20 years as part of an on-going effort to reduce the scope for corruption and the involvement of private interests in South Korean politics. In addition to funding the on-going expenses of political parties with seats in parliament, South Korea also provides additional campaign financing prior to election periods. Funding is calculated based on the number of seats held by a party, and these expenditures are restricted to campaigning. Individual and association donations are capped and kept on record, while anonymous political donations are limited to \$95. Campaign spending must be disclosed to the electoral commission to ensure that expenditure limits and regulations are met. Breaches of these regulations can result in fines and prison sentences.

Voter Registration

South Korea's voter registration process is digitalised and operates through a system which continuously registers eligible voters and automatically compiles voter lists. These lists are made available through designated offices and on-line for public review to ensure their accuracy. People can cast their vote at any polling station without needing to make prior arrangements.

Oversight – Electoral Management Bodies

South Korea's elections are administered entirely by the independent National Election Commission (NEC). This body is responsible for all aspects of election management and dispute resolution, and is empowered to undertake investigations into possible election fraud.

The Philippines

Campaign Financing

The Philippines started regulating campaign financing in 1985. The country's Commission on Elections (COMELEC) is empowered to investigate all campaign-related financial records, publicise findings, and instigate the prosecution of violations. Donations from government organisations, public institutions such as universities and foreign donors are forbidden. Each donor is required to inform COMELEC of their donation. Total campaign expenditures are capped and controlled by COMELEC.

Voter Registration

In 1998 the Philippines designed their voter registration process and voter list from scratch. This list is updated on a continual basis at the precinct level. Any applications to change a voter's registration, or transfer their voting precinct, must be made to an Election Registration Board. Starting in 2003 the Philippines began taking voters' biometric data in order to build a central database that prevents duplicate data being entered. The Philippines does not provide the possibility for a person to vote in a region other than where a person is officially registered to vote in.

Oversight – Electoral Management Bodies

Elections in the Philippines are managed by the Commission on Elections (COMELEC). COMELEC was founded in 1940 and has undergone a number of changes since then, and now operates as an independent authority responsible for the administration of all election law in the Philippines, as well as the investigation of election related crime and enforcement of election regulations. However, the nomina-

tion for, and results of, elections for the positions of President and Vice-President, Senate and House of Representatives are determined by specific tribunals led by Justices of the Supreme Court. The decisions of these tribunals are then implemented by COMELEC.

Indonesia

Campaign Financing

Beginning in 1998, Indonesia has gradually introduced regulations aimed at improving the country's democratic institutions. As part of this, Indonesia limits both donations from individuals and organisations and these must be disclosed. Anonymous and foreign donations are banned. While Indonesia's National Election Commission (KPU) audits election campaign funding accounts, it is still developing appropriate enforcement mechanisms. Public funding of candidates exists, however it is currently only provided at a low level.

Voter Registration

Indonesia's voter registration system follows a periodically-reviewed approach. Previously voter lists had been based upon census data. However, this approach led to too many errors, and as a result, this process is currently being replaced by a method which compiles voter lists based on data cross-referenced from numerous government departments. Under this new system, 34 weeks prior to an election, voter lists are to be made available for a review period of three weeks. After any necessary updates have been made, the final voter lists are published 26 weeks prior to the election. As of 2012, persons not registered to vote can do so by presenting their ID card or passport. Provisions are also included for persons lacking such documentation to be included on a special voter list. The details of how this will be regulated have not yet been announced. A similar process is being developed which will allow people to register themselves on a 'supplementary voter list' up to three days prior to an election in order to allow them to vote at a polling station in a different area from where they are registered. The details of how this supplementary voter list will be managed are still being developed.

Oversight – Electoral Management Bodies

Indonesia's elections have been managed by the National Election Commission (KPU) since 2001. This body has undergone significant changes since it commenced and now operates as an independent and permanent authority responsible for all aspects of elections. The operation of the KPU is audited and assessed by the Election Supervisory Body, which is responsible for investigating any impropriety and is the final arbiter for electoral disputes, except for some decisions related to the illegibility of political parties and candidates for election in the decentralized authorities. In these cases, the Administrative Court of the State is competent.

The Honorary Council of Election Management Bodies (DKPP) is established to be responsible for conducting, approving and enforcing a code of ethics in order to maintain the independence, integrity and credibility of the KPU and Election Supervisory Body members. In case of violations of the code of ethics, DKPP is competent and its decisions are binding and final.

I. Introduction

This research paper is a comparative study of selected issues in relation to the electoral process in four jurisdictions: France, South Korea, Indonesia and the Philippines, with a brief overview of Cambodia in each section for reference. This paper will examine three main aspects of each country electoral system which are necessary to ensure that efficient, free and fair elections are undertaken: their regulation of campaign financing, their voter registration process, and their electoral management bodies. Following this, an analysis section assesses the strengths and weaknesses of each country's approach, and the suitability and benefit for countries adopting such approaches.

Campaign financing is an important, but a relatively recently-developed area of electoral regulation. It is important because the provision of public funding can allow a greater breadth of candidates and political parties to run for election, who might otherwise be unable to afford to do so. The limitation and regulation of campaign expenditures is also important as it prevents simply the wealthiest candidates winning by outspending opponents. However, the successful introduction and oversight of such a process is very complex and resource-intensive, which is an aspect which will also be investigated.

Proper voter registration is crucial for a functioning democracy. It is through the registration process that the citizens' franchise is realized. Thus, the most important democratic principle, equal voting rights, depends upon the establishment of a well-functioning registration process. It is only when the voter list is as complete and correct as possible, that the democratic principle is secured. While registration conditions are defined in many international and regional instruments, to date, ASEAN does not have such instruments². Each of the countries studied have different issues to address which affect the problems faced when trying to develop accurate voter lists, and allow as many people to vote as possible. These issues require varying responses. For example, while France and South Korea have worked to improve their voter registration through digitalization of records and data sharing between government departments, Indonesia has taken a more rigorous bureaucratic oversight approach, with many levels of checks and balances. The Philippines, using a combination of the two approaches, has a very strong and multi-layered bureaucratic process to encourage voter registration, but has also introduced a biometric database to its voter list, which allows people to register to vote with a finger print, and also promises to greatly minimize errors such as duplicate registrations.

The third section on Electoral Management Bodies (EMBs), which administer and oversee the electoral process, reveals a variety of approaches to electoral oversight. For instance, EMBs such as France's can be directly part of a government department, but with an independent oversight mechanism, such as their Constitutional Council. Cambodia and South Korea have entirely independent EMBs. The Philippines has an independent EMB with a number of separate courts assembled to adjudicate disputes over the elections for specific positions, while Indonesia essentially has two independent bodies, one to audit the other to ensure free elections, and a special Court to decide disputes.

Following this is a brief analysis section, which assesses what lessons might be learned and applied from the case study countries.

² The Compendium of International Standards for Elections provides a list of those instruments. Asean itself, for its political process, does not need these instruments, because no Asean wide elections are held. But it could provide (non-binding) guidelines for its member states (like, for example, the Venice Commission does in Europe).

II. Campaign Financing

The question related to financing of election campaigns is one of whether regulation is desirable and, if so, the level of regulation that should be set. The purpose of regulating the financing of election campaigns is to clearly separate money from politics. Financing of election campaigns has benefits such as³:

- Strengthening the institutionalization of political parties and a multiparty system;
- Ensuring uniform rules between political parties and candidates regarding levels of resources during elections;
- Reducing the role of money in politics⁴ and therefore allowing for the election of parliamentarians from all economic levels ; and
- Reducing government influence on the behavior of political parties by the use of public funds (for better implementation of principles of financial transparency, gender equality, promotion of minorities, etc.)

Legislation on campaign financing usually has four objectives⁵:

- To fight against the inflation of election expenses;
- To ensure candidates have sufficient means;
- To impose transparency of resources and expenditures; and
- To ensure compliance, control and sanctions (if the legislation is not adhered to).

However, this brings with it other challenges including the nationalization of political life or the disconnection between the political parties and citizens' concerns (theory of the party cartel). This theory is often applied to a number of mature democracies, and refers to a situation where the political landscape is effectively frozen in place, making it difficult for new parties to take part in political life. This can lead to the domination of certain parties, which may use public funds to cement their position. It can also lead to a lack of trust among poor citizens caused by a sense that money is wasted⁶. Conversely, as states often require parties to adhere to clear rules in order to obtain public funding, public funding can serve to reduce corrupt practices⁷.

There is a distinction between direct and indirect public funding. Direct public funding involves giving money to political parties or candidates; while indirect public funding can include various forms such as free or subsidized access to state media, tax relief or aid in the distribution of campaign material. Indirect financing reduces the flexibility of political parties in how to use the support provided by the state, but it allows the support provider easier control of the funds, which can ensure they are not used for other purposes than those stipulated.

³ Magnus OHMAN, *A brief introduction to public funding of political parties and elections campaign*, IFES, March 2011, p. 2-3.

⁴ Sophisticated rules on campaign financing do not necessarily reduce the role of money, see e.g. the last U.S. presidential elections. But they ensure some sort of equality of arms.

⁵ « Propositions de réforme de la législation sur le financement des campagnes électorales pour les élections législatives », Pierre Mazeaud, *Rapport au Président de l'Assemblée nationale*, Collection des rapports officiels, Documentation française, Paris, 2009, p.5.

⁶ Hopkin, Jonathan (2004) *The problem with party finance: theoretical perspectives on the funding of party politics*. Party politics, 10 (6). pp. 627-651. p. 628.

⁷ Ibid. p. 649.

1. Cambodia

In Cambodia, legislation on campaign financing is embryonic. There is the possibility of public funding to parties receiving more than 3% of the vote in parliamentary elections. However, no agency is actually dedicated to the control of electoral campaigns financing. The Law on Political Parties in Cambodia promulgated on 18 November 1997 (Law n°1197/07) sets out the principle of public financing in Article 27, par. 3 and specified in Article 28⁸. This principle states there is equal public distribution of funds to all political parties. However, Article 28 establishes a threshold of 3% of votes that a party has to receive, or they must return the funds received by the State. Indeed, six (6) of the eleven (11) political parties who participated in the 2008 elections failed to qualify for such support⁹, and should have returned all public funds provided.

The law specifically excludes public funding to political parties for purposes other than election campaigns (Article 28, par. 1), and only funds parliamentary, not sub-national elections. It has been noted that funding of political parties between elections could be used to increase their ability to “participate in national political life” (Article 2)¹⁰.

No connection is made in the law between public funding and requirements for political parties to maintain and present their financial records and it does not seem (yet) there is a legal and regulatory national mechanism/body, for controlling the financing of election campaigns¹¹. Penalties for any breaches of the duty to present financial records stated in the Article 31 of the Act are provided for in Article 38 of the 1997 Act¹². Pursuant to Article 32 of the Act, it is the responsibility of the Ministry of Economy and Finance to identify these breaches. Pursuant to Article 30 of the Act, all reports and accounting and financial documents must be kept stored at least seven (7) years and be available for monitoring or inspection.

Furthermore, there is no prohibition on receiving donations from Cambodian private companies and Cambodian individuals for electoral campaign financing in accordance with the Article 27, par. 4 of the Law n°1197/07. However, political parties are prohibited to receive contributions of any form from associations, NGOs, public enterprises, public establishments, public institutes or foreign firm (Article 29 of the Law).

⁸ The Law on Political Parties in Cambodia promulgated on 18 November 1997 (Law n°1197/07),

Art., 27 : “ Shall be considered as finance of a political party, those incomes which are from:

- 1) Contributions or fixed levies from members;
- 2) Incomes of the political party which come from lawful business activities;
- 3) State’s budget as stated in the Articles 28 of this Law;
- 4) Donation from Khmer private enterprises or Khmer generous persons;
- 5) Political party’s own assets.”

And Art., 28: “ The State could allocate the national budget of equal amounts to all political parties, for a purpose of using only in the campaign for election of Representatives of the people (members of Parliament).

Any political party which fails to receive 3% (three per cent) of the total of valid ballots of the whole country or which fails to gain one (1) seat in the Parliament, shall, within a period of 3 months from the date of proclamation of the final election result, pay back such above allocated budget in full amount to the State.”

⁹ See note 3, p. 6.

¹⁰ See note 3.

¹¹ However, Articles 30 and 31 of the Law on Political Parties dated 1997 include the requirement for political parties to communicate before December 31 of each year their financial and accounting statements to the Ministry of Interior and the Ministry of Economy and Finance. Through an accounting and financial review of these accounts, these Ministries could then contribute to the review of expenditure and revenue campaigns. Political parties are obliged to submit reports to the Ministry of Interior and the Ministry of Economy and Finance, containing the essential activities of the party, the list of income and annual expenses of the party prepared by their accountant, bank statements of the party and the list of party properties, income and debts of the party.

¹² Art. 38 of the aforementioned law stated as below:

“Shall be subject to a fine in cash of 3,000,000 (Three Million) Riels for any political party which violates the Article 31 of this Law. In case of repeated offenses, they shall be subject to paying double the amount of the above fine and, may, in addition, be punishable to temporary cessation of political party activities”.

2. France

In France, there is a high level of financial probity, ensured through election spending limits, prohibition of campaign financing by companies, the authority of oversight bodies, (such as the National Commission for Campaign Accounts and Political Financing (CNCCFP) and the judge of the election), and the deterrent effect of the ineligibility sanction¹³. This deters those without legal capacity¹⁴ to stand for election.¹⁵

2.1. Laws and Regulations

France implemented legislation on the financing of election campaigns and political parties in 1988 (Act No. 88-227 of 11 March 1988), with many subsequent changes to the act. France's regulatory framework includes acts in 1990 (Act No. 90-55 of 15 January 1990), 1993 (Act No. 93-122 of 29 January 1993), 1995 (Act No. 95-63 of 19 January 1995), 1996 (Act No. 96-300 of 10 April 1996) and 2003 (Ordinance No. 2003-1165 of 8 December 2003). These, and a considerable number of decisions of the Constitutional Council and the Council of State, who interpret and apply them, form a total set of legal rules on campaign financing. Together, they form a true 'right to political financing' that governs not only the campaign and the activities of political parties, but also auditing of the financial activities of elected officials, to guard against embezzlement and bribery. The provisions are contained in the laws and regulations in the Electoral Code. This has given France comprehensive and rigorous legislation, with a 2009 report to the Council of Europe stating that: *"France has various rules to ensure a high level of transparency in the financing of politics, which includes control devices and sanctions. No serious divergence between the applicable texts and political practice could be observed"*¹⁶.

Candidates are required to engage a 'financial agent', who is a person with legal capacity as opposed to a corporation or other grouping. The financial agent, must be registered with the relevant departmental prefect¹⁷, and is responsible for all campaign- related financial transactions which the candidate makes and for ensuring that they are properly recorded¹⁸.

¹³ Ineligibility means the status or condition of a person who does not meet the requirements to be able to stand for election. Generally, a may stand as a candidate providing the following requirements are met:

- must have a French citizen;
- must not have been convicted of a serious criminal offence;
- (must be at least 18 years old to run for presidential or legislative elections, and at least 24 years to run for Senate elections ;
- must have satisfied any military service requirements;
- meet the specific eligibility requirements laid down for certain elections : cannot be elected to Parliament through the department where they are in function, so that they do not benefit the influence provided them by their function to be elected.

There are also formal requirements :

- it is necessary to declare his/her candidacy;
- fulfill certain formalities as a declaration of assets for the presidential and parliamentary elections;
- comply with laws on campaign financing : choose an agent and keep a campaign account that will be filed after the election.

¹⁴ Legal capacity is the power provided under law to a natural person or a juridical person to enter into binding contracts, and to sue and be sued in its own name.

¹⁵ Ibid.

¹⁶ Council of Europe. 2007. *Third Evaluation Round: Evaluation Report of France on Incriminations*. Strasbourg: Council of Europe. Accessed 09/12/2013 from: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5_France_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_One_EN.pdf)

¹⁷ In accordance with the Article 5 of the law of 1 July 1901 relating to the association. Art. L. 52-5 of the Electoral Code.

¹⁸ Electoral Code, Article L. 52-10.

2.2. Public Campaign Financing

The right to receive election campaign financing is applicable, subject to certain exceptions, to all constituencies with a population equal to or greater than 9,000 inhabitants. Legislation relates to the campaign accounts of candidates for election¹⁹, to specific bodies responsible for management and control of revenue and election expenses, and also to the establishment or implementation of a range of sanctions, which can take the form of fines, imprisonment or being deemed ineligible to run for public office.

2.3. Limits on Campaign Expenditure

There are limits on donations that can be made by an individual (€ 4,600 for one election²⁰), the contributions of political parties to their individual candidates, and also on the personal contributions of the candidates to their own campaigns as well as in-kind benefits and related products that can be received by a candidate in the form of donations. Legal persons under public law or private law *"cannot participate in the financing of the election campaign of a candidate, by making the donations in any form whatsoever, or by providing goods, services or other benefits direct or indirect at price below those usually charged"*²¹.

2.4. Oversight Bodies

Campaign accounts of candidates for elections are systematically monitored by the National Commission for Campaign Accounts and Political Financing (CNCCFP), an independent administrative authority (or independent regulatory body)²². The Commission consists of nine members appointed for five years by decree²³, and it elects its own President and Vice-President. The Commission can use officials and experts to assist in its work. It can also ask police officers to conduct any investigation it deems necessary for the performance of its mission²⁴.

The Commission has the following tasks in relation to campaign finance control:

- Deposit of campaign accounts - Each candidate present at the first round must submit through a member of the Association of Chartered Accountants his/her campaign account and its annexes with supporting documents;.

¹⁹ This is "the expenses incurred directly to the candidate and with his/her agreement, by individuals who bring their support, as well as political parties and groups that have been created to lend their support or which are providing their support. The candidate evaluates and includes revenue and expenses, direct or indirect benefits, services and in-kind donations he received" (Electoral Code, art. L. 52-12, par. 1).

²⁰ Art. L. 52-8, par. 1 of the aforementioned Code.

²¹ Art. L. 52-8, par. 2 of the aforementioned Code.

²² Ordinance n°2003-1165 of 8 December 2003, art 7, I.

²³ Three members or honorary members of the Council of State, appointed on the proposal of the Vice-President of the Council of State, after consultation with the Office; three members or honorary members of the Supreme Court (*Cour de Cassation*), three members or honorary members of the Court of Auditors (*Cour des comptes*), appointed on the proposal of the First-President of the Court of Auditors, after consultation with the presidents of Chambers. See Electoral Code, art. L. 52-14.

²⁴ Art. L. 52-14, last paragraph of the aforementioned Code.

- Approval, rejection and reformation of the campaign account - This has to occur within six months after the filing of campaign accounts. After this period, the accounts are deemed to be approved²⁵;
- Referral to the election judge in cases of the rejection of an account - When, after modification or rejection of a campaign account, the CNCCFP contacts the election judge, this is to allow the judge to decide whether to disqualify a candidate and, if the candidate was elected, to cancel the election or declare him/her resigned;
- Attaching an amount equal to the excess of the spending limit - In all cases where an excess of the maximum election expenses has been established, the Commission then sets an amount equal to the excess amount that the applicant is required to pay the Treasury;
- Publication of campaign accounts - The Commission shall ensure the publication of the electoral campaign account in a simplified form; and
- Filing a progress report to Parliament - The Law requires the Commission, within one year after a general election, to file a report to the Parliament outlining the appraisal of the activities with any observations it deems appropriate to make.

Furthermore, the Constitutional Council is:

- The competent authority to judge the legality of the Presidential election;
- The judge of the legality of the parliamentary election and thus of the eligibility of the candidates;
- The authority that hears appeals for candidates in parliamentary and presidential elections on issues of financing of election expenses²⁶; and
- The body that hears appeals from candidates for a judicial interpretation of electoral law and regulations, and reparations where appropriate (*recours de plein contentieux*).

2.5. Penalties

The failure to file campaign accounts within a certain time period is subject to the rejection of the account and the candidate not being allowed to run for public office for one year²⁷. Other sanctions include:

- Temporary ineligibility of the candidate for breaking election financing rules; and
- Rejection of the account and temporary suspension of one year for running for public office where donations to a candidate exceed the limits set out by law²⁸.

²⁵ Art. L. 52-15, par. 1 of the aforementioned Code.

²⁶ Au 4 octobre 2012, le Conseil avait rendu 2871 décisions en matière électorale.

²⁷ This is without prejudice and also if he/she is elected, by the cancellation of the election or removal depending whether his/her election was contested or not. The law on this point is extremely firm, for example, from several decisions, Cons. const., 10 Feb. 1998, Dec. n°97-2349, AN Manche, 1st registration: Official Journal Feb. 28 1998 – Cons. const., 20 Feb. 1998, Dec. n°97-2309, AN Moselle, 7th registration: Official Journal Feb. 27, 1998, temporary disqualification of a candidate not elected.

²⁸ Cons. const., Feb. 6. 2003 Dec. N°2002-2955, AN Bouches-du-Rhône, 1st circ.: Official Journal Feb. 12, 2003, donation of € 7,622. - Cons. const., Feb 6. 2003 Dec. n°2002-3257, AN Rhône, 2nd circ.: Official Journal Feb. 12, 2003, donation of € 7,239.

Support services from government departments are also regarded as part of the campaign financing of a candidate during elections for a canton, (France's equivalent to a commune in Cambodia). Although this assistance comes from a public authority, it does not necessarily lead to the rejection of the campaign account, depending on the circumstances of the case²⁹. Moreover, the serious breaches of electoral financing rules can lead to elections rescheduled.

Under Article L. 113-1, I of the Electoral Code, any candidate is liable for a fine of 3750 Euros and/or imprisonment for one year who:

- Has raised funds in violation of the requirements of Article L. 52-4;
- Has accepted funds in violation of the provisions of Article L. 52-8 or L. 308;
- Has exceeded the limit set in the constituency election expenses;
- Will not comply with the formalities of establishing campaign accounts provided by Articles L. 52-12 and L. 52-13; and
- Is found to have falsified their campaign financing accounts to reduce the amount which they reported to have spent.

In cases of breaches of any of these prohibitions, the CNCCFP refers the case to the public prosecutor's office.

Financial penalties come in the form of payment to the Treasury of an amount equal to the excess of the spending limit (set by the National Commission for Campaign Accounts and Political Funding)³⁰, and are subject to appeal. Loss of a candidate's full right to full or partial reimbursement of the expenditure recorded in the campaign account can also occur³¹.

Between the cantonal elections of March 1992 and the parliamentary elections of June 2007, the CNCCFP examined 74,863 campaign accounts, rejecting 2157 (2.88%) of them. In the last parliamentary elections in 2007, the CNCCFP approved 5618 campaign accounts out of 7634 and made changes to 1510 accounts, resulting in 506 referrals to the election judge. Therefore, legislation can be seen to be well understood by the candidates and parties, evidenced by the decrease in referrals to the Constitutional Council by CNCFPP compared to the number of candidates in parliamentary elections (6.63% in 2007 versus 12.45% in 1993).

Despite the successes and comprehensiveness of the French system, it is undeniable that these rules have become more complex and diverse. The consistency of this legislation is not always very clear if we consider, for example, the failure to implement the legal concept of good faith for legislative elections. Another example of this is the possibility for a candidate to be deemed ineligible to run for election for breaching campaign financing laws, while a candidate who is found to have won an election while breaching financing laws may only receive the annulment of the election as punishment, rather than also being deemed ineligible to run for public office.

²⁹ CE, Sect., Nov. 8, 1999, n°201966, Elect. cant. Bruz: JurisData n°1999-051114; Dr. adm. 1999, comm. 303; LPA 17 Jan 2000, p. 13, note E. Vital-Durand; RFD adm. 2000, p. 224, Section P. Terneyre.

³⁰ Electoral Code, art. L. 52-15, last par.

³¹ Under Article L. 52-15 penultimate paragraph, "*reimbursement when required by law, is possible only after approval by the commission*". art. L. 52-4 of the aforementioned Code.

3. The Republic of Korea

The Republic of Korea has put in place regularly-evolving legal instruments governing the financing of election campaigns. Strict rules to regulate and cap spending and contributions spent for campaign financing were gradually adopted with the democratization of political life over the past twenty years and the termination of financial support for candidates by national industrial conglomerates. To do this, an independent authority, the National Electoral Commission was established and is responsible for monitoring the financing of election campaigns.

3.1. Laws and Regulations

Legislation on campaign financing is addressed in the Political Fund Act 1965 (as amended by Act N°11376 of 29 February 2012)³², and the Public Official Election Act of 1994 (19 January 2012 version)³³.

President Kim Young Sam was elected as the Seventh President of South Korea in the presidential election of 1993³⁴. Under his presidency, steps were taken to do away with corruption in the public service and to impose restrictions on election financing. Public subsidies to political parties were increased and new penalties for non-compliance were introduced. Two of Kim Young Sam's predecessors (Chun Doo Hwan and Roh Tae Woo) were prosecuted and sentenced to prison for founding private foundations and forcing large companies to pay membership fees in proportion to their profits³⁵. In 1994, a law was adopted on the election of public officials and preventing malpractice in Electoral Matters (1994, revised 2000). The law on election financing in 1965 was revised in 2000 to prevent the illegal financing of political activities and to create a legal and transparent basis for political financing³⁶. In 1999, a President with no ties to the business sector was elected and an anti-corruption program launched. As a result, there are stricter rules in place to regulate donations and contributions from corporations and individuals³⁷.

3.2. Public Campaign Financing

A system of public funding is provided for election activities. Two main types of grants are available: ordinary subsidies, paid quarterly each year for the financing of political parties; and election subsidies, paid two days before the deadline for nominations for presidential, legislative and local elections³⁸. Public grants are distributed according to the number of seats in the National Assembly by

³² Legislations for the Republic of Korea are publicly available on the Korea Legislation Research Institute : http://elaw.klri.re.kr/eng_service/main.do (free login required)

³³ Ibid.

³⁴ He inaugurated his term on February 25, 1993 and finished it on February 25, 1998. The 1987 Constitution of the Republic of Korea, Article 70 stated : « The term of office of the President shall be five years, and the President shall not be reelected ». NNDB tracking the entire world, *Profile: Kim Young Sam*, retrieved from the <http://www.nnbd.com/people/462/00011129/>, last accessed on December 05, 2013.

³⁵ Blechinger Verena, *Corruption and Political Parties Management Systems International*, November 2002.

³⁶ See note 32.

³⁷ International Institute for Democracy and Electoral Assistance(IDEA), *Funding of Political Parties and Election Campaigns*, Chapter 4 - *Party Funding and Political Corruption in East Asia: The Cases of Japan, South Korea and Taiwan*, 2003.

³⁸ Political Fund Act of the Republic of Korea, 1965 as amended by Act N° 11376 of 29 February 2012, Article 25 (4).

the NEC³⁹, which publishes a quarterly report of public subsidies. The budget for public subsidies is based on the number of voters on the electoral roll (multiplied by 100)⁴⁰.

Public grants are also expected to encourage political parties to put forward female candidates or people with disabilities according to criteria defined by law⁴¹. In addition, the law restricts the use of public subsidies by prohibiting the use of funds collected for other uses than financing of political activities. Fraudulent use of these subsidies causes the reduction or elimination of these subsidies by the NEC.

Anyone subject to the Political Fund Act (Chapter VII, Reporting and Disclosure of Political Fund, art. 34 and seq.) has to appoint a treasurer⁴².

An accounting report is established by the Treasurer and must contain various forms of information, such as details of expenditure and revenue (Political Fund Act, art. 37). The accounting report must be filed with the Commission in charge of the election, such as the NEC for presidential or legislative elections (Political Fund Act, art. 40).

3.3. Limits on Campaign Expenditure

The financing of political parties and election campaigns is legally restricted and subject to a reporting system for each election. Individuals and legal persons governed by private law may give donations or contributions to political parties to the extent permitted by the law on political financing⁴³, and the law limits the amount of cash contributions for elections to an amount that cannot exceed 10% of the election expenses (Political Fund Act, art. 2)⁴⁴.

Supporter Associations (or *koenkai*- associations that support a party and/or independent candidate) are allowed to collect US \$ 2.5 million for the headquarters of a party and/or US \$ 250,000 for a local party or an independent candidate, and these funding limits are doubled during elections. The same Act also provides for an annual subsidy for political parties. Candidates covered by the Political Fund Act run in the election for their constituency, they include: Presidential candidates; candidates for an intra-party competition in a presidential election; candidates who run in the election for the National Assembly; and candidates who run in an election for local government. These candidates must designate a support association⁴⁵. The Political Fund Act defines an association of supporters as a registered organization whose purpose is to help finance the election campaign of the candidate they support under the provisions of the Act. During an election period, the contribution of a donor cannot exceed US\$ 9,500 for a single association, US\$4,500 for the presidential election or a candidate in a party primary for a presidential election if this association has endorsed a candidate in parliamentary elections. The law allows a single annual 'anonymous' donation of a maximum US\$95,

³⁹ Art. 25 (1) & (4) of the aforementioned Act.

⁴⁰ Art. 26 (1) of the aforementioned Act.

⁴¹ Art. 26 (1) of the aforementioned Act.

⁴² Including any representative of a political party, any representative of a supporters' association, a candidate in the presidential election or any candidate vying for the leadership of a party.

⁴³ An individual may give US \$ 83,000 a year to the headquarters of a political party and US \$ 16,500 to a local party or an independent candidate. A legal person is authorized to give US \$ 166,000 to the headquarters of a party and US \$ 41,500 to a local party or independent candidate.

⁴⁴ See note 32.

⁴⁵ Political Fund Act of the Republic of Korea, art. 6.

however the law does not specify whether the donor of the “anonymous” contribution must register with an authority that will ensure his/her anonymity⁴⁶.

3.4. Oversight Bodies

The NEC oversees issues of campaign financing. It is also responsible for providing subsidies to political parties, controlling the establishment and activities of associations of supporters, collecting and distributing political funds and monitoring their use under the conditions prescribed by law on financing policy. The NEC also has a regulatory authority for the implementation of the legislation on the financing of election campaigns, including the application of certain provisions of the law on election financing.

3.5. Penalties

Penalties of up to \$10,000 and five years’ imprisonment can be issued for breaching the political financing laws⁴⁷.

4. The Philippines

4.1. Laws and Regulations

The laws and regulations for the control of campaign financing are the Philippine Constitution, Article IX on the Constitutional Commissions; and the General Electoral Code⁴⁸.

4.2. Public Campaign Financing

The Philippines does not currently publicly fund political parties or campaigns⁴⁹.

4.3. Limits on Campaign Expenditure

The COMELEC resolution establishing the CFU, adopted on June 22, 2012⁵⁰ specifies rules for campaign financing and the documents that have to be provided and made publicly available. Anyone can make a contribution to a candidate or a political party. Reporting requirements are the responsibility of the contributor. He/she must file a report of contributions to the CFU within 30 days after the election. This statement must include the name of the recipient, the amount of the contribution

⁴⁶ The authority is obligated to maintain anonymity of the donor by using all information only in the institution and will not send it to other institutions or publish in public.

⁴⁷ Art. 45 of the aforementioned Act.

⁴⁸ General Election Code (*Omnibus Election Code*). March 12, 1985, Section 94-112.

⁴⁹ Weissenbach, K. 2010, Political Parties and Party Types – Conceptual Approaches to the Institutionalization of Political Parties in Transitional States: The Case of the Philippines Konrad-Adenauer-Stiftung Konrad-Adenauer-Stiftung, p. 38.

⁵⁰ COMELEC. 2012. *Resolution No. 9476*. Manila. Accessed 5/12/13 from: http://www.comelec.gov.ph/uploads/Elections/2013natloc/res/com_res_9476.pdf

and the date of delivery of the contribution. The declaration allows the contributor to receive a tax deduction. Contributions are prohibited from:

- Public or private financial institutions other than credit institutions;
- Certain legal persons⁵¹ receiving certain public contracts;
- Educational institutions receiving public funds;
- Agents or employees of the public service;
- Armed Forces of the Philippines;
- Foreign sources;
- First or second-degree relatives of candidates.

However, while there is no public funding provided for election campaigns, election campaign expenditure is capped according to the following ratio:

- For the Presidential and the Vice-President elections : 10 Philippine Pesos (PhP) (approximately US \$ 0.23) for each registered voter;
- For candidates for other elections: 3 PhP (approximately US \$ 0.07) for each registered voter in the district where the candidate runs in the election;
- For independent candidates who do not have the support of a political party: 5 PhP (approximately US \$ 0.12) for each registered voter in the district where the candidate runs in the election; and for political parties and party lists: 5 PhP (approximately US \$ 0.12) for each voter registered in the district where the candidate runs in the election.

A form to authorize expenses on behalf of a candidate for election must be filed with the CFU. The failure to do so constitutes an unauthorized expenditure on the account of the candidate. In addition, a statement of expenses must be filed with the CFU prior to the organization of a political rally. Every candidate, treasurer of the Party and person acting under authority of such candidate or treasurer⁵² that incurs election expenses must keep track of the expenditure for a period of 3 years. These accounting statements can be verified by the COMELEC or the Courts and they must be made available for public scrutiny. At the beginning of the election campaign, the CFU shall notify the candidates of their obligations relating to the declaration of expenditures and revenue. Thereafter, candidates are required to submit 30 days after the end of the election to the CFU or the local board a statement of all contributions and expenditures in connection with the election campaign. At the same time, the party treasurer who participated in the election shall submit to the CFU a disclosure of contributions received and expenses incurred by the party in connection with the election.

⁵¹ To have legal personality means to be capable of having legal rights and duties within a certain legal system, such as to enter into contracts, sue, and be sued. Legal personality is a prerequisite to legal capacity, the ability of any legal person to amend (enter into, transfer, etc.) rights and obligations.

Legal persons (lat. *persona iuris*) are of two kinds: natural persons (people) and juridical persons (also called juristic or artificial or fictitious persons, lat. *persona ficta*, groups of people), such as corporations, which are treated by law as if they were persons. While people acquire legal personhood when they are born, juridical persons do so when they are incorporated (registered) in accordance with law.

⁵² COMELEC Resolution 9476 (Règles et règlements relatifs au financement des campagnes électorales pour les élections nationales et locales du 13 mai 2013 et les élections postérieures), Rule 7: Section 1 (c), <http://www.comelec.gov.ph/?r=Elections/2013natloc/res/res9476>

4.4. Oversight Bodies

The Philippines' regulations relating to campaign financing is the responsibility of the Commission on Elections (COMELEC), an independent administrative authority with regulatory and judicial competence, to avoid excess electoral spending, so that campaign spending is capped. COMELEC was established under the 1940 Constitution and the Commonwealth Act No. 607 on September 14, 1940.⁵³

COMELEC is responsible for the control of campaign financing and for enforcing the laws and regulations on elections and referendums. It has the power to adopt regulatory resolutions in electoral matters. In addition, it has established a Campaign Finance Unit (CFU) within its organization. The CFU has the following authority and responsibilities in relation to campaign financing:

- Monitor fundraising and spending by candidates and parties;
- Receive and retain reports and financial statements from candidates, parties, contributors and subcontractors of the election (election contractors, advertising contracts signed with media);
- Scan information and make it accessible to the public;
- Determine compliance with electoral regulations and law;
- Coordinate with other departments the prosecution of offenders, the collection of fines and the declaration of the permanent ineligibility of a candidate.

The decisions of the Commission are final and cannot be appealed. As part of its mission, the CFU may request other government and non-governmental institutions to provide it with assistance as necessary⁵⁴.

4.5. Penalties

Failure to meet the campaign financing requirements by the candidate or his/her party is subject to the annulment of the election of the candidate and an administrative penalty in the form of a fine ranging from 1,000.00 PhP (approximately US \$ 23) to 30,000.00 PhP (approximately US \$ 685). The amount of the fine is at the sole discretion of the COMELEC. In the case of recidivism, the fine is doubled and the candidate will be disqualified permanently. However, the COMELEC's scale setting out the amount of the fine depends on the electoral term and position of the candidate and whether or not the candidate is a recidivist.

5. Indonesia

A National Election Commission (*Komisi Pemilihan Umum/ KPU*) is, at the national level, in charge of the implementation of the electoral rules. The KPU was established under the Constitutional reform in 2001 adopted by the People's Consultative Assembly (MPR)⁵⁵ and the KPU's mandate, structure

⁵³ "COMELEC Historical Background", accessed December 5, 2013, <http://www.comelec.gov.ph/?r=AboutUs/HistoricalBackground>.

⁵⁴ COMELEC Resolution 9476 (2013)

⁵⁵ Article 22^E (5), Constitution of Indonesia, 1945.

and power were listed in the Presidential Decree Number 70 of 2001 on the Establishment of the National Election Commission. As a result of the creation of law 22/2007, the KPU was created as a new permanent and non-partisan commission.

5.1. Laws and Regulations

Indonesia has seen a democratization of political life after the fall of the Suharto government in May 1998 and June 1999 elections, allowing for reforms on political parties and electoral activities⁵⁶. Indonesian law sets out the legal tools to control expenditures and contributions spent or received for electoral campaign financing. Election campaign financing and the contributions that can be received by candidates (political parties and individuals) are mainly governed by The Law of the Republic of Indonesia Number 08 of 2012 on General Election of the Members of the House of Representatives, People's Representative Council, and Regional House of Representatives; and Law no. 42 on the 2009 presidential election⁵⁷.

5.2. Public Campaign Financing

A public subsidy system for campaign financing was introduced in 1999 but the amount of this subsidy was drastically reduced in 2006⁵⁸. The law also provides for political parties to submit an initial report on election financing and a statement of *ad hoc* bank accounts to KPU from the time of qualification as an electoral participant⁵⁹ until two days before the start of the election campaign⁶⁰. Campaign fund reports of the candidate must be submitted to the Public Accountant for audit no later than sixty days after the election⁶¹. The audit must be completed within thirty days and then the candidate must file the result of the public account with the KPU within seven days⁶².

5.3. Limits on Campaign Expenditure

Campaign expenditures are subject to a limit at all electoral levels (national, provincial and municipal) and are also subject to public financial and accounting controls. Sources of funding may come from political parties, candidate's contributions and other contributions. Financing of electoral activities may take the form of money, goods or services. Contributions may come from an individual or a legal entity governed by private law (business, non-profit or non-governmental organizations).

⁵⁶ Ufen Andreas, *Electoral Campaigning in Indonesia: The Professionalization and Commercialization after 1998*, in: Journal of Current Southeast Asian Affairs, 29, 4, 11-37, 2010.

⁵⁷ Article 130-131, The Law of the Republic of Indonesia Number 08 of 2012 on General Election of the Members of the House of Representatives, People's Representative Council, and Regional House of Representative. unofficial version, "IFES Indonesia - unofficial and unauthorized translation of Law 8/2012 on General Election of the Members of House of Representatives, People's Representatives Council and Regional House of Representatives".

⁵⁸ OHMAN, op.cit. 3, p.7.

⁵⁹ Electoral Participant refers to «Qualified Political Parties and DPD candidates».

⁶⁰ KPU Decree 676 of 2003, article 9(1&2).

⁶¹ Law No. 12 of 2003, article 79(1).

⁶² Art. 79(2) of the aforementioned law.

In the case of cash contributions, the money must be placed in a special bank account whose purpose is to finance an election campaign for a candidate (Election Contesting Party)⁶³. In-kind contributions in the form of goods or services must be assessed at the market price at the time of receipt of such contributions. Accounting for electoral campaign activities must be separated from the general accounting for activities of the party. At the end of the legal campaign period, the accounting report on the expenditure and revenue must be submitted to the accountant appointed by the National Election Commission (KPU).

Law No.08 limits the amount of contributions for election campaigns: the contribution from a natural person may not exceed an amount equal to US\$ 87,000⁶⁴ and the contribution of a legal person may not exceed US \$ 656,000⁶⁵. The identity of donors must be known. Candidates receiving higher amounts exceeding the limit cannot use the excess funds. They must report any excess campaign funding to the KPU and return them to the National Treasury within 14 days after the end of the campaign period (Law n°08, art. 131 et seq.). Failure to comply with these provisions is punishable by fines and penal sentences.

Candidates may not receive funds from a foreign party, an anonymous donor, regional, local or central government, or a regional or local public state company⁶⁶.

5.4. Oversight Bodies

The competent authority for controlling campaign financing is the KPU⁶⁷. It has the duty to control campaign financing, issue reports on campaign financing, as well issuing statements regarding surplus funds received by the candidates or collected in a manner prohibited by law.

However, the KPU's competence to control campaign financing appears limited, with its functions restricted to the appointment of an accountant in charge of conducting an audit of the campaigns of candidates and their financial submissions and making public the results of the audit⁶⁸.

5.5. Penalties

Failure to comply with the legal obligations of financial reporting will invalidate the candidacy or election of the candidate⁶⁹.

⁶³ Law No. 08/2012, art. 129 (4).

⁶⁴ IDR 1.000.000.000, 00.

⁶⁵ IDR 7.500.000.000, 00.

⁶⁶ Law No. 08/2012, art. 139 § 1 (c) : *"the Government, regional governments, State owned companies, and region owned companies, or village government and village owned companies"*).

⁶⁷ <http://mediacenter.kpu.go.id/>

⁶⁸ Ibid.

⁶⁹ Law No. 08/2012, art. 247 art.129 (4).

III. Voter Registration

Adoption of international standards on establishing voter lists is a critical factor in implementing the right to vote. The Association of European Election Officials' (ACEEEO) Guidelines for reviewing a Legal Framework for Elections recommends that *"the legal framework shall require that a voters register be maintained in a manner that is transparent, accurate, protects the right of citizens of legal age to register, and prevents the unlawful or fraudulent registration of persons"*⁷⁰.

The International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a State Party, guarantees every citizen "the right and the opportunity (...) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors" (Art. 25 of the ICCPR)⁷¹. The UN Human Rights Committee provided guidelines for interpretation of the article. In 1996, it stated that "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed"⁷². From this it can be derived, that the facilitation of voter registration is a duty imposed on the state.

The Code of Good Practice in Electoral Matters (1.2 *Electoral registers*) accepted by the Venice Commission⁷³ sets out the essential criteria for electoral registers to be reliable⁷⁴. These criteria state that:

- Electoral registers must be permanent, and regularly updated (at least once a year);
- Where voters are not registered automatically, registration must be made possible over a long period, and the voters list must be published;
- An administrative or judicial procedure should be established allowing for the registration of voters who were not registered as well as providing a mechanism to ensure that incorrect names on the voter's list can be amended; and
- Registration shall not take place at the polling station on election day.

According to the ACEEEO, the main function of the voters list is to protect two basic principles of a democratic election- the principle of universal and equal suffrage, and the principle of establishing who has the right to vote. The ACEEEO states that: *"The application of lawful, accurate and complete voter lists requires precise legislation. It is not enough to enact the principles and the substantive norms (e.g. the requirement of registering the voters) but it is also important to regulate in detail the*

⁷⁰ Association of European Election Officials (ACEEEO). *Theory and Practice of Voter Registration – Definitions, Standards, Principles, Examples*. Budapest:2009. Accessed 20/11/2013 from: <http://www.aceeeo.org/en/developing-accurate-voters/introductory-study-on-voters-registration>

⁷¹ United Nations OHCHR. *International Covenant on Civil and Political Rights*. New York: 1966. Accessed 20/11/2013 from: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷² United Nations OHCHR. *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service* (Art. 25). New York: 1996. Accessed 20/11/2013 from: <http://www.unhcr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>

⁷³ It should be noted that the Venice Commission is a subsidiary body of the Council of Europe. As such, it does not issue binding legal texts and at best the criteria set by the Council can be seen as an indicator of European best practice or standards. Anyway, it is noteworthy that even member states of the Council of Europe do not always have fair and free elections (e.g. Russia, Moldova, Ukraine).

⁷⁴ European Commission for Democracy through Law (Venice Commission). *Code of Good Practice in Electoral Matters*. Venice: 2002. Accessed 20/11/2013 from: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev.aspx)

*entire procedure of voters' registration, taking into account the specific cases and situations and the support of vulnerable groups as well*⁷⁵."

The General Comment No. 25 on the ICCPR recommends that when voter registration is needed, the residence requirements shall be "*reasonable*" and "*shall not be imposed in such way as to exclude the homeless from the right to vote*"⁷⁶. In addition, the ICCPR notes that registration campaigns are necessary to ensure that people have a fair chance to be included on the voter's list and that the State shall also ensure it.

Voter lists or voter registers can deteriorate over time. This is due to the fact that voters die or become ineligible to vote or move from their place of residence and that new voters may become eligible to be included on the list⁷⁷. In order to address this fact, the voter register must be updated before it is used in an electoral process. In principle, two main models are used to update the list: periodic updates and continuous registration. In the latter case, the list is open for updates at any time, while in the case of periodic updates, the list will normally be updated before an election⁷⁸.

The selection of one of the two systems must be seen in the context of the development of administrative structures in the respective country. In a country with a well-functioning system of civil registration, data can be taken from that system and fed into the voter list on a regular basis. Provided that all relevant changes are reflected in the databases of the civil registry, it can be assumed that the voter list will be of a generally good quality⁷⁹. However, in a country without a proper civil registry, there is still the option to implement either a system of periodic or continuous updates.

Experiences from other countries have shown that this sort of limited updating may not be very cost effective. It must be assumed that citizens become more interested in making sure that they are on the voter list mainly in the run-up to elections. They may fail to notify the register about relevant changes during the registration phase in any year and only do so prior to election day.⁸⁰ Recommendations have been made to the effect that Cambodia should adopt a continuous registration system⁸¹. While the NEC is aware of the advantages this might bring, they hold the opinion that such a system depends on the prior establishment of a functioning civil register⁸² which may take some time to establish.

1. Cambodia

It can be assumed that the voter list in any country contains a number of false entries and missing names⁸³. In the case of Cambodia, the NEC found that "the names of 9 percent of registered voters could not be found. In addition to that, the NEC said that 13 percent of names had been entered incorrectly"⁸⁴. Other observers reported even higher rates of false or missing entries in the voter

⁷⁵ See note 70.

⁷⁶ See note 71.

⁷⁷ International Foundation for Electoral Systems (IFES), Civil and Voter Registries: Lessons Learned from Global Experiences, edited by Michael Yard, June 2011, p. 22.

⁷⁸ IFES 2011, loc. cit.

⁷⁹ Ibid., p. 17.

⁸⁰ Ibid., p. 22, 23.

⁸¹ Special Rapporteur, page 16, Recommendation 74.

⁸² NEC Briefing, p. 18.

⁸³ Ibid.

⁸⁴ <http://www.cambodiadaily.com/elections/nec-opens-hotlines-for-names-missing-from-voter-lists-36152/>

list⁸⁵. Further improvement of the voter list will help to foster trust in democratic procedures in Cambodia. In this section, some aspects of voter registration that appear to be relevant for Cambodia will be highlighted, and put in comparison with standards defined by international organizations and the legal situation in other countries.

In terms of registering voters, Cambodia has implemented a mixed system in which the voters list is open for updates for a certain period each year (from 1st October to 31st December)⁸⁶ and in addition to this, is updated in the run-up to elections.

For comparison, in Philippine, after identification is verified, personal data is entered into the system⁸⁷, as well as biometric data such as finger prints, a digital recording of facial features or alternatively, the electronic recording of a signature⁸⁸. The data is then sent to the central data center on CDs for import into the central system⁸⁹. According to this concept, the data capture system is considered as the “system of entry” and the central database as the “system of record”.⁹⁰ The data will later be used to issue the election day voter list and issue the voter identification cards which in turn serve as the document for identification⁹¹ at the polling station⁹².

This ID, which was originally a by-product of the system, has become one of the most trusted IDs in the country. The unique voters Identification number⁹³ provides the system with some security features.⁹⁴

In Cambodia, a common source of problems is double entries on the voter list. On a technical level, this should be addressed with database matching techniques, e.g. comparing all names, dates of birth and dwelling places on the various databases. Modern IT systems can also detect close similarities in cases where names do not match exactly (e.g. due to misspelling)⁹⁵. In addition to this, political parties, civil society and the general public should be used to scrutinize the data to ensure accuracy. For instance, the IFES states that

“the ideal is to have a method that allows stakeholders to “audit” all changes to the register. This includes the production of periodic reports showing all additions, all deletions and all changes to the voter list⁹⁶”. Moreover, “for purposes of transparency it is important to allow broad access for political parties, civil society organizations and voters to scrutinize the voter register”⁹⁷.

One mechanism to ensure that no citizen is disenfranchised during the electoral process is to publish the voter list for public review and thus to allow voters to check their data, as the Cambodian voter register is considered a permanent one⁹⁸. Moreover, the reviewing of the voter register, voter registration and providing validity to the voters’ list shall be done annually from October 1st to December 31st. However, as experiences in other countries suggest that relatively few people think to update

⁸⁵ NDI VRA.

⁸⁶ See note 82, referred to as “permanent voter register”, p. 6; compare also art. 49 para 1 LEMNA.

⁸⁷ COMELEC: Republic Act 8189, Continuing Registration Act, section 10. Accessed 18/12/13 from: <http://www.comelec.gov.ph/?r=References/RelatedLaws/ElectionLaws/Registration>.

⁸⁸ See note 76, page 109.

⁸⁹ See note 87, section 22.

⁹⁰ See note 76, page 113.

⁹¹ The better term would be authentication.

⁹² See note 87, section 25.

⁹³ Voter Information Notices (VIN), compare above and RA 8189, section 26.

⁹⁴ See note 76, page 111.

⁹⁵ Compare IFES 2011, p. 24: Such matching may “include combinations such as: same last name, first initial and date of birth; same name and year of birth; or reversed last name and first name and same date of birth. This approach can find many suspected duplicates as voters often make only minor changes to the information they provide when registering multiple times.”

⁹⁶ See note 76, p. 19.

⁹⁷ Ibid., p. 15.

⁹⁸ Ibid.

their electoral information outside of election periods, this may not be an effective way to promote the accuracy of electoral lists while also not being very cost-effective.

In the run-up to elections in Cambodia, additional mechanisms apply. The NEC distributes VIN (Voter Information Notices) to all those citizens who are on the 2012 official voter list. For the 2013 general elections, this was done from 1st June to 25th June by the Commune/Sangkat Election Commission (CEC) in cooperation with the local authorities⁹⁹. Moreover, (preliminary) voter lists were published 30 days prior to election day at the CEC and one day before elections at each polling station. The NEC also provided 5 telephone hotlines that voters could use to check their data.

In Cambodia, there are a number of documents that can be presented by a citizen in order to have his or her name entered into the voter list, most prominently, an ID card or a passport¹⁰⁰. However, although there are plans in Cambodia to provide ID cards to all citizens, a large number of Khmer citizens are still not in the possession of such a card.

In such a situation, IFES states that it is “common to establish a form of identity by attestation, whereby an established local leader or one or more neighbors can sign an affidavit, attesting under penalty of perjury, to the identity of the individual in question¹⁰¹”. However, this is followed by the warning: “The risk of such a provision is that it may be possible for a small group of persons to load the electoral roll with a number of fictitious voters”¹⁰².

Cambodia has followed the approach under Law on Election of Members of National Assembly (LEMNA), Art. 54 B, that states that “A citizen who appears in person may certify his/her identity by having a guaranteed statement of two (2) eligible voters in that commune/sangkat, made in front of the Chief of the Commune/Sangkat or the Commune/Sangkat’s Deputy Chief, (in the absence of the Commune/Sangkat Chief) to ensure that the declaration of the applicant for registration is certainly true¹⁰³”. In the past, the certificate referred to in the above provision was known as form 1018.

In previous elections, a large number of Khmer citizens who did not possess an ID card had to rely on form 1018. However, in practice this variant leaves the Commune / Sangkat chiefs with a lot of leeway as to whether to issue such a form or not. This made the form the target of some criticism¹⁰⁴. NEC and the MOI reacted to the criticism through the Directive of 13th July 2011, whereby form 1018 was replaced by a “Certificate of Identity” (Col)¹⁰⁵. As a safeguard against fraud, the Col is issued with a serial number, and a photo of the applicant is affixed¹⁰⁶. Even so, there shall be needed of some mechanism in order to make this electoral system becomes more effective through the involvement of the competent Commune/Sangkat chief for filling any loophole of checking on abuses and strengthening the Cambodia’s voter registration system¹⁰⁷. In this context, the introduction of secure (biometric) ID cards for all Khmer citizens could also an important mechanism that helps to alleviate this situation¹⁰⁸.

Within Cambodia a number of inconsistencies within the voter list can be traced to the incorrect spelling of names. When data are exchanged between different government levels and agencies,

⁹⁹ See note 82, p. 5.

¹⁰⁰ Compare Law on Election of Members of National Assembly (LEMNA), Article. 54.

¹⁰¹ Art. 64 et seq of the aforementioned law.

¹⁰² See note 76, p. 18.

¹⁰³ See note 100, art. 64 et seq.

¹⁰⁴ The Asian Network for Free Elections (ANFREL) Cambodia, p. 40 et. seq, 56; CCHR report, p. 15 et seq.

¹⁰⁵ See note 82, p. 19.

¹⁰⁶ The Committee for Free and Fair Elections (COMFREL), p. 19 and NEC Briefing, p. 19

¹⁰⁷ E.g. questions were raised when according to information provided by NEC, 270.000 Col were issued between the end of the voter registration and election day. (<http://www.cambodiadaily.com/elections/questions-raised-over-forms-used-for-voters-with-no-id-41437/> Cambodia daily of 30 August 2013)

¹⁰⁸ As Cambodia already has experience with the technology necessary to implement this. See below p. 43.

e.g., from the Commune/Sangkat level to the NEC, problems can be aggravated if the procedures for data exchange involve errors being created or perpetuated during the exchange. In Cambodia, the names of electors are noted at the local level in handwriting and then forwarded to the NEC Computer Department, where the data is entered into the IT system. During this process, inevitably errors can occur, be it due to misinterpretation of the Commune/Sangkat clerk's handwriting or other mistakes when entering the data¹⁰⁹. It appears that in the case of misspelling of names in the final voter list, it is left to the discretion of the Polling Station Commission overseeing the casting of ballots as to whether a person is admitted as voter or not. Obviously, this leaves room for discretion that may turn into arbitrariness¹¹⁰.

2. France

2.1. Voter Registration

In France, in order to vote, voters must be registered on the electoral lists. Through the use of the civil registry, which includes the birth dates and residential addresses of each French citizen, voting registration is done automatically when each person on the civil registry turns 18 years of age¹¹¹. If a person is to voluntarily place his/her name on the voters list, he/she must be at least 18 years old before the first ballot and be a French citizen (EU citizens residing in France can register on 'supplementary lists' but only to participate in municipal and/or European elections)¹¹². The registry location can be:

- The city hall of a municipality in which a person has paid local taxes for at least five years;
- The city hall of the place of residence, provided that the person has resided there continuously for at least 6 months; or
- The city hall of the municipality where the person is subject to compulsory residence as a public official¹¹³.

To complete registration, a person must provide to the city hall public officer the required documents, either by mail, in person or electronically (using the dedicated website currently available in 2000 cities)¹¹⁴. In principle, voters must register before the end of the year preceding the election (before December 31st)¹¹⁵. The required documents needed for registration for French citizen are an ID card or passport, and a document showing the place of residency¹¹⁶. Applications to register to vote can be made online¹¹⁷.

¹⁰⁹ COMFREL, op cit., p. 20.

¹¹⁰ Or worse, it could lead even to fraud.

¹¹¹ Official website of the French Ministry of Interior, accessed on 30/12/2013 from: <http://www.interieur.gouv.fr/Elections/Comment-voter/L-inscription-sur-les-listes-electorales>

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

2.2. Process for Establishing Voter Lists

The National Institute for Statistics and Economic Studies (INSEE) is responsible for the management of the general electoral list at the national level through its regional departments. This is the reference point for the control of the electoral lists managed jointly by municipalities and the INSEE. Municipalities transmit information to the INSEE for any person registered to, or removed from, their lists. The INSEE is responsible for transmitting to municipalities the following information: applications for removal from the list, names of people reaching the age of 18, the list of French voters wishing to vote abroad, and information regarding the loss of civil rights. The municipalities continuously transmit information related to the civil status of citizens to the INSEE. Such data is required to establish the National Identification Registry of Natural Person's ("*Répertoire national d'identification des personnes physiques*") and to establish statistics on details such as voting eligibility, and where the voter is eligible to vote. The coordination between the municipalities and the INSEE guarantees a single registration on the electoral list and avoids the issuance of multiple voting cards. The establishment of voter lists is the responsibility of the municipalities.

The INSEE decides on applications for registration filed at city hall. It determines which applications receive automatic registration (e.g., the list of people aged 18), which voters will be removed from the list provided by the INSEE¹¹⁸, and determine which voters have double - registered. The INSEE has the authority to decide whether or not to make any changes in the list and in the case of a dispute the applicant may file an appeal to the court ("*juged' instance*")¹¹⁹.

2.3. Mechanisms to Ensure the Correctness of Voter Lists

An Administrative Commission has the authority to prepare and revise electoral lists for each polling station in each municipality¹²⁰. The list is subject to an annual review by this Administrative Commission. There are two types of voter lists: the voter list (*liste électorale*) (for French citizens) and other voter lists (*listes électorales complémentaires*) for local and European elections and for non-French citizens of the European-Union residing in France¹²¹. A voter cannot be registered simultaneously on both lists. The city hall services responsible for receiving applications do not have the authority to refuse an application for registration, this is under the sole competency of the Administrative Commission.

The city hall office sends the registration forms to the Administrative Commission so that it can ensure that applicants meet all the registration conditions. In cases of automatic registration, the Administrative Commission reviews such registrations based on the list provided by the INSEE. The Commission can remove voters from the list if they do not meet the requirements¹²².

¹¹⁸ Institut National de la Statistique et des Études Économiques (INSEE), <http://www.insee.fr/en/>

¹¹⁹ Ibid.

¹²⁰ Electoral Code, Article L. 17 : "(par. 1) Each polling station is assigned to a geographical area. (par.2) A list of electors for each polling station is established by an administrative commission for each of these polling stations and composed by the mayor or his representative, the representative of the Administration appointed by the prefect or deputy prefect, and one other member appointed by the President of the Tribunal of first instance".

¹²¹ Ministerial Circular NOR/INTA 1317573C of 25 July 2013 on the revision and maintenance of voter lists and additional voter list (*Circulaire ministérielle NOR/INTA 1317573C du 25 juillet 2013 relative à la révision et à la tenue des listes électorales et des listes électorales complémentaires*).

¹²² Electoral Code, Article L. 23.

a) *Table of Additions and Deletions (also called '10 January Modification Table' or 'Tableau rectificatif du 10 Janvier')*

The Administrative Commission shall make a statement of all changes to the voters list (from the 1st to 9th of January). The table contains a list of all newly registered and removed electors. The table is then filed with the secretariat of the city hall on January 10th, and posted for 10 days¹²³.

b) *Final Corrections Table ("Tableau définitif des rectifications")*

The Final corrections table is established every year on the last day of February. It includes all the corrections made since January 10th of the same year. This table is filed at the city hall with the general electoral list, and then sent to the prefect¹²⁴.

c) *Final Voter Lists*

On the last day of February of the same year, the final electoral list for each polling station is established by the Administrative Commission¹²⁵. In municipalities where several polling stations exist, the general list of the commune is established by the Administrative Centralization Commission¹²⁶. The new electoral list is composed of the previous electoral list including the amendments from the Table of Additions and Deletions, and also by the Final Corrections Table. A copy of the final voters list is sent by the mayor to the prefect. A consolidation of electoral lists is carried out every three to five years, whereby each local list is combined and voters are issued with a new voting identification number depending upon their position on the new list. This is done simply to ensure that all voter lists are uniform throughout the country. After the establishment of the final version of the electoral list, a voting card is then sent to all voters. During an election, an annotated list consisting of a copy of the voter list is used for signing in by voters at the polling station.

2.4. Public Access to the Voter List

According to Article L.28 of the Electoral Code, "*Any voter, candidate and any political party or group may have the right of access to and copy the voters list*"¹²⁷. This right is not restricted to voters registered within the municipality. A sworn statement is required to be signed, where the user agrees not to use the list for the sole purpose of making a profit. Access to the electoral lists may be through: "on the spot" free access; delivery by paper copy; or a free copy delivered by e-mail. The delivery fees are charged according to provisions set forth by Prime Ministerial order.

¹²³ Ministerial Circular NOR/INTA 1317573C of 25 July 2013 on the revision and maintenance of voter lists and additional voter list, Annex 1.

¹²⁴ See the aforementioned Circular.

¹²⁵ See the aforementioned Circular.

¹²⁶ The Commission decides on applications for registration filed at the city hall. It decides on applications for automatic registration (the list of youths aged of 18 is provided by INSEE), and on those that will be removed from the list

¹²⁷ Electoral Code, art. L28, Government of France.

2.5. Voting at Polling Stations other than where a Voter is Registered

Due to France's voting register being shared and accessible by each polling station, French voters can vote at any polling station in any region without prior arrangements being made.

2.6. Proof of Identity Required to Vote

Each voter is sent an electoral card prior to elections which they can use as identification to vote. Voters may also use any other valid piece of photographic identification¹²⁸.

3. The Republic of Korea

3.1. Voter Registration

In late 2012, the NEC in South Korea introduced the 'integrated electoral register'. This system automatically registers voters and generates voter lists based on digitalised records from local governments, previous electoral data, the tax office, and agencies responsible for recording births, deaths and marriages etc. This allows the NEC to have a constantly updated electoral list which cross-references its information with many other sources to improve its accuracy by avoiding duplication of data or the incorrect inclusion of deceased persons. Furthermore, this information creates one voter list which is shared across ballot stations throughout South Korea, which allows people to vote in any region without prior arrangements being made. Lastly, as the voter list is automatically compiled, it means that eligible persons are automatically enrolled to vote without requiring them to take any action themselves¹²⁹.

3.2. Process for Establishing Voter Lists

The voter list is generated periodically, prior to each election, by an automated computer process¹³⁰. However, the electronic data which the voter list is based upon is continuously updated and cross-referenced with various government data bases¹³¹.

¹²⁸ Carte Électorale. *Government of France*. 2012. Accessed 20/11/2013 from: <http://vosdroits.service-public.fr/particuliers/F1962.xhtml#OuSAAd>

¹²⁹ Republic of Korea National Election Commission. 2009. *Introduction to the political and electoral system of Korea*. p68.; Republic of Korea National Election Commission. 2013 *Q&A Regarding Absentee Voting and Integrated Electoral Register*. Accessed 25/11/2013 from: http://www.nec.go.kr/engvote_2013/04_news/01_02.jsp?num=49&pg=1&col=&sw=.

¹³⁰ Republic of Korea National Election Commission. 2013. *FAQ: What is "the Integrated Electoral Register"?*. Accessed 26/11/2013 from: http://www.nec.go.kr/engvote_2013/06_feedback/02_01.jsp. *Introduction to the political and electoral system of Korea*. p68.

¹³¹ *Q&A Regarding Absentee Voting and Integrated Electoral Register*.

3.3. Mechanisms to Ensure the Correctness of Voter Lists

As noted above, the voter lists are constantly cross-checked with various government databases. They are also made available for public inspection, as detailed below.

3.4. Public Access to the Voter Lists

Once the voter register is generated, and following the announcement of an election, voters are able to review the list either online or at designated offices. Voters are able to report any areas of discrepancy to the head of the local electoral commission. If the voter is not satisfied with their local election commission office's response, they can appeal their complaint to the regional Election Commissioner¹³².

3.5. Voting at Polling Stations other than where a Voter is Registered

Voters can cast their vote at any designated absentee polling station without prior registration. These polling stations are equipped to take votes from voters registered anywhere in the country¹³³, and open one week prior to the election to further facilitate people casting their vote¹³⁴.

3.6. Proof of Identity Required to Vote

Voters may use their ID card or sign-in on an electronic pad with a thumbprint or signature¹³⁵.

4. The Philippines

4.1. Voter Registration

Since the setting up of the new register in 1998, voter registration in the Philippines is done through a continuous process¹³⁶. It is overseen by the Commission on Elections (COMELEC), the Election Management Board, and carried out by the 'Election Officer' as the "highest official or authorized representative of the Commission in a city or municipality"¹³⁷. This is in cooperation with the 'Election Registration Board', of which the Election Officer is the chairman, the other members being "the

¹³² Ibid. p. 70.

¹³³ Ibid.

¹³⁴ *Introduction to the political and electoral system of Korea*, p. 99.

¹³⁵ See note 129.

¹³⁶ IFES, op cit., page 102.

¹³⁷ See note 87, section 3 letter n.

public school official most senior in rank and the local civil registrar, or in their absence, the city or municipal treasurer”¹³⁸.

In practice, voter registration is carried out in field offices, staffed with two persons-the Election Officer and an assistant¹³⁹. Before the applicant’s data are entered into the system, he or she must be identified. A weak point here is that “identification is based solely on the submission of any valid form of ID”¹⁴⁰. This is not reliable since there appears to be large number of fake IDs which are easily accessible in the Philippines¹⁴¹. It would be preferable to also ask for a birth certificate.

Any applications for registration in the voter register (as well as requests for data correction or transfer of one’s data to another precinct) must be filed with the Election Officer who submits the case to the Election Registration Board, the latter making its decisions by a majority vote¹⁴². If the Board approves the addition of a voter to the list, the Election Officer assigns a Voters Identification Number (VIN) and issues the corresponding identification card to the registered voter. Although in principle this is a continuous process, voter registration has to be stopped “one hundred twenty (120) days before a regular election and ninety (90) days before a special election”¹⁴³.

4.2. Process for Establishing Voter Lists

The government, under the terms of the 1996 Voter’s Registration Act, began collecting voter data in 1998 to establish a new voter list¹⁴⁴.

Despite the fact that various Philippines’ government agencies maintain a number of comprehensive data registers which include data on significant parts of the population, the voter database was not extracted from this information but rather, was newly created¹⁴⁵ by collecting data during the voter registration process. In addition, it was not possible to use data from the civil registry because it consisted of computerized document images (scans of hardcopies of birth and other certificates) rather than a comprehensive data base¹⁴⁶.

4.3. Mechanisms to Ensure the Correctness of Voter Lists

Despite the fact that computerized voter lists existed for a number of years, problems including voter substitution and disenfranchisement remained¹⁴⁷. In order to overcome this, the COMELEC launched, in 2003, the Voters Validation System (VVS). The system involves the use of finger prints of first time voters, collecting biometric data of already registered voters and building a central data base to generate voter lists¹⁴⁸. It is planned to add an Automated Fingerprint Identification System (AFIS) component which would allow for the deletion of double entries on the list. In fact, a pilot

¹³⁸ Ibid., section 15 para 1.

¹³⁹ IFES, op cit., page 109.

¹⁴⁰ Ibid., page 107.

¹⁴¹ Ibid.

¹⁴² See note 87, section 20.

¹⁴³ Ibid., section 8.

¹⁴⁴ Ibid., section 7.

¹⁴⁵ IFES, op cit., page 106.

¹⁴⁶ Ibid., page 123.

¹⁴⁷ Ibid., page 104.

¹⁴⁸ Ibid., page 104.

project for the AFIS conducted in 2003 in one region in the Philippines found that 7.5 % of the registered voters were double entries. At the national level, this percentage could be significant in a tight election outcome¹⁴⁹. The AFIS is an effective means to identify double or multiple registrations.

4.4. Public Access to the Voter List

The Philippines voter list is not made public, but can be requested from the COMELEC by non-commercial entities for a nominal fee¹⁵⁰.

4.5. Voting at Polling Stations other than where a Voter is Registered

The Philippines' law does not provide for the possibility of voting at a different polling station than the one the voter is registered at. On the contrary, the law¹⁵¹ prescribes that "any person who temporarily resides in another city, municipality or country solely by reason of his occupation, (...) shall not be deemed to have lost his original residence". However, voters "who transferred residence to another city (...) may apply with the Election Officer of his new residence for the transfer of his registration records"¹⁵².

4.6. Proof of Identity Required to Vote

A valid form of photo identification is required to vote in the Philippines. No provisions exist for a person without a valid ID to vote¹⁵³.

5. Indonesia

5.1. Voter Registration

According to the new election law, periodic voter registration is based on the transfer of 'population data' from different levels of administration to the EMB¹⁵⁴. This data, together with data on overseas voters provided by the Ministry of Foreign Affairs, is synchronized and becomes the 'Population Data on Potential Voters'. This in turn will be matched by the KPU with the voter data from the previous elections and then updated by public officials specifically assigned with this task, the so called *Pan-*

¹⁴⁹ Ibid., page 123.

¹⁵⁰ COMELEC. 2013. *Questions and Answers about the Voter List*. Manila. Accessed 20/11/2013 from: <http://www.comelec.gov.ph/?r=faq/qnavl>

¹⁵¹ See note 87, section 9 para 2.

¹⁵² Ibid., section 12.

¹⁵³ FES, op cit., page 107.

¹⁵⁴ The Law of the Republic of Indonesia Number 08 of 2012, art. 1 para 6: "The National Election Commission, herein after referred to as KPU, is an Election Implementing Body, a national, permanent and independent body responsible for implementing the election."

*tarlih*¹⁵⁵. In this process, which takes place 10 months before the elections, the *Pantarlih* has to check the data with the potential voters in the respective regency / municipality. When updating data, the *Pantarlih* hands over a token to the voters as proof that they were registered¹⁵⁶.

5.2. Process for Establishing Voter Lists

Indonesia is following a periodic review approach with regard to voter lists. Previously, the basic list was based on the latest census data. However, due to the high percentage of errors, and the fact that the onus was on potential voters to ensure that they were on the list in the run-up to elections the government decided that changes were needed to this procedure¹⁵⁷. Finally, in support of this, during the 2009 Legislative Elections the poor quality of the voter list was sharply criticized and even threatened to derail the elections¹⁵⁸. In order to overcome such problems, the election law was amended and the government just established the world's largest biometric ID card scheme which was used in the general elections in 2014 in order to check on the eligibility of voters¹⁵⁹.

5.3. Mechanisms to Ensure the Correctness of Voter Lists

A copy of the preliminary voter list is given to the parties that registered for the election. The EMB at the local level has to assess the inputs and comments received within 14 days after the end of the publication period and will then publish the revised preliminary voter list for another 7 days, allowing for more comments, which must be dealt with within 14 days after the end of the second publication. This version of the preliminary list, after the second revision, will be transferred to the local EMB, approved by the latter and eventually become the permanent voter list. The local authority has to publish the permanent voter list from this point in time (around 6.5 months prior to the election) until the voting day¹⁶⁰. This provides a long period for voters to check the voter list and make sure that their correct data are included.

5.4. Public Access to the Voter List

As detailed above, the local electoral authority is required to publish the voter list 6.5 months prior to an election.

¹⁵⁵ Art. 1 para 14 of the aforementioned Law: "The Voters Data Updating Officers, herein after referred to as *Pantarlih*, are officers appointed by regency/municipal KPU or PPLN to conduct the updating of Voters data".

¹⁵⁶ Art. 34 of the aforementioned Law.

¹⁵⁷ See note 37, p. 47.

¹⁵⁸ The Asian Network for Free Elections (ANFREL) Indonesia, p. 26.

¹⁵⁹ The Indonesia advances world's most ambitious biometric-based national identity card project, last retrieved on 2/06/2014 from: <http://www.networkworld.com/news/2012/092012-indonesia-biometrics-262628.html>

¹⁶⁰ The Law of the Republic of Indonesia Number 08 of 2012, art. 39.

5.5. Voting at other Polling Stations than where a Voter is Registered

In Indonesia, a specific feature that facilitates the participation of its citizens in elections is the supplementary voter's list. This is a special list for voters "who have been registered on the permanent voter lists for a certain polling station (...) but due to certain reasons, the voter cannot vote at the assigned polling station (...) where they have been registered"¹⁶¹. "In order to be included in the supplementary voter lists, one must provide proof of personal identification and the registration token provided when registered as a voter in the permanent voter lists of the designated polling station"¹⁶². Voters can be added to the supplementary list up to 3 days prior to election day. This feature greatly facilitates the participation of voters who are registered at one place (e.g. where their family lives) but work and live on a regular basis at a different location¹⁶³.

5.6. Proof of Identity Required to Vote

Indonesia's election laws also provide the possibility to register voters who lack an official ID document. Should their name be missing from the list, they can ask the provincial KPU to register them and include them in a so called special voters list. The law contains no provisions as to what is considered as valid proof of eligibility in order for the potential voters to be included in the special voters list¹⁶⁴. Such details are delegated to the regulations which will be issued by the KPU but were not available at the time of the research, due to the fact that the Indonesian law dates only from 2012.

IV. Oversight – Electoral Management Bodies (EMBs)

In a lengthy comparative study of foreign EMB's, the International Institute for Democratic and Electoral Assistance (IDEA) found that EMB best practices were not easily identifiable, and instead identified seven key attributes which are crucial to EMBs' utility and efficiency¹⁶⁵. They are:

- independence;
- impartiality;
- integrity;
- transparency;
- efficiency;
- professionalism; and
- service-mindedness¹⁶⁶.

¹⁶¹ Art. 40 para 2 of the aforementioned Law.

¹⁶² Art. 40 para 3 of the aforementioned Law.

¹⁶³ Art. 40 para 2 of the aforementioned Law.

¹⁶⁴ Art. 40 para 5 of the aforementioned Law: In the case that there are citizens who are eligible to vote but do not hold a residential identification card and/or are not registered on either the preliminary voter lists, revised preliminary voter lists, permanent voter lists, or supplementary voter lists, Provincial KPU shall register them and include them in the special voter lists.

¹⁶⁵ IDEA. 2006. *Electoral Management Design: The International IDEA Handbook*. Stockholm. p. 69.

¹⁶⁶ *Ibid.*, p.12; 22.

The study also notes the five primary causes of the EMB's failure to fulfil their duties, which are:

- a lack of stakeholder confidence in the EMB; government and/or political influence on EMB decisions;
- a partisan approach by the EMB to its members;
- a lack of EMB professionalism; and
- EMB incompetence or financial impropriety¹⁶⁷.

In order to achieve utility and efficiency and address the reasons why EMBs fail, the state must provide a strong judiciary, develop a tradition for conducting fair elections and utilize expert election officials in the election process.

EMB's are usually classified as being one of three basic models: independent; governmental or mixed. Each model has advantages and disadvantages, and each has been used effectively and less effectively in a number of different countries. These models are discussed below.

Independent EMBs

EMB's which operate independently of government tend to be perceived as being impartial and above politics, which can increase electoral legitimacy. They also have the advantage of being able to:

- Focus their work entirely on electoral management;
- Develop the required niche expertise to hold fair and well-organized elections;
- Control their own funding and activities; and
- Coordinate the electoral administration from a single office.

The drawbacks of independent EMBs include:

- Possible isolation from government and decision makers who are relevant to the electoral process;
- A high turnover of staff and loss of corporate memory and expertise between election periods¹⁶⁸; and
- Possibly higher costs due to a greater difficulty in utilising existing governmental resources for the EMB's purposes¹⁶⁹.

Governmental EMBs

Governmental EMBs operate within a government department, are accountable to the executive branch of government and are led by a minister or civil servant. Their strongest advantages lie in their close connection to government which:

- Allows them to retain staff and develop a corporate memory;

¹⁶⁷ Ibid., p. 297.

¹⁶⁸ See *infra* p. 28. In the case they are dissolved after the election, but it must not necessarily and systematically be the case.

¹⁶⁹ Ibid., p. 21.

- Enables them to have access to experienced governmental staff; and
- Enables the use of existing government resources to reduce costs¹⁷⁰.

Their shortcomings are:

- A perceived lack of independence and impartiality;
- Reliance upon the internal decisions of government departments for funding and corporation; and
- The possibility of adopting a bureaucratic style which is ill-suited to managing elections¹⁷¹.

Mixed EMBs

Mixed EMBs are made up of two elements: one independent and one governmental. They often take the form of an independent oversight body with a limited number of responsibilities, and a governmental arm which is responsible for varying degrees of electoral administration. The possible advantages and disadvantages of this model depend upon the exact way in which responsibilities are split between the independent and governmental arms, as well as their regulation and the political environment in which they operate. In general, however, their pros and cons reflect and can combine the pros and cons specific to the above two models.¹⁷²

Permanent or Temporary EMBs

The last broad category which an EMB can be placed in reflects whether it is a permanent or temporary body. The determining factor is usually whether the number of elections held in a country warrants a permanent EMB. However, it bears noting that the costs in re-establishing an EMB for each election can be significant. A major disadvantage of the temporary approach is its loss of expertise after it is disbanded following an election¹⁷³.

The categories of EMB for the countries studied in this paper are as follows:

Cambodia can be classified as having a temporary independent EMB¹⁷⁴. It is temporary, because it retains very few permanent staff between election periods and it is independent because the NEC is legislated to operate independently of government departments and the members of NEC are appointed by the National Assembly

The Republic of Korea has a permanent, independent EMB¹⁷⁵, the NEC.

The Philippines has a permanent, independent EMB¹⁷⁶, the COMELEC.

Indonesia has a permanent, independent EMB¹⁷⁷, the KPU.

¹⁷⁰ Government affiliated EMB can also focus their work entirely on electoral management and develop the required niche expertise to hold fair and well-organized elections as an independent EMBs.

¹⁷¹ Ibid., p. 13;21.

¹⁷² Ibid., p. 14-15; 21.

¹⁷³ Ibid., p. 17.

¹⁷⁴ Ibid., p. 306.

¹⁷⁵ See note 164, p 314.

¹⁷⁶ Ibid., p. 318.

France has a permanent mixed EMB¹⁷⁸ with the management of elections divided between the independent Constitutional Council and the governmental Bureau of Elections within the Ministry of the Interior.

No single EMB model is necessarily preferable over others. For instance, while an independent EMB might appear entirely preferable over a governmental EMB; such attributes cannot determine the quality of the EMB. For instance, Zimbabwe has an independent and well-funded EMB¹⁷⁹, while the United States has a governmental EMB¹⁸⁰. However, given the comparative quality of election management as well as perceived impartiality between these two examples, it becomes clear that the effective functioning of an EMB involves much more than just independence of operation. Instead, focusing on targeted results within the key areas of independence; impartiality; integrity; transparency; efficiency; professionalism; and service-mindedness, regardless of the EMB model in place, is the best practice approach to improving an EMB¹⁸¹.

1. Cambodia

1.1. Structure, Composition and Overview of the EMB

The first elections for Cambodia's National Assembly were conducted by the United Nations Transitional Authority in Cambodia (UNTAC) in 1993. Since then, the National Election Committee (NEC) was created in accordance with the Law on the Election of Members of National Assembly ('LEMNA' or 'Law') adopted in 1997¹⁸², and amended three times since (2002, 2006, and 2011). The NEC was established to prepare, manage and administer the election of Senators, Members of the National Assembly, the Capital/Provincial and the Municipal/District/Khan Councils and the Commune/Sangkat Councils¹⁸³.

The NEC is Cambodia's permanent Electoral Management Body (EMB), which has to be independent and neutral in order to fulfill its duties¹⁸⁴. Furthermore, the NEC also developed its mandate to be the national institution which provides justice, trustfulness, and transparency in the electoral process¹⁸⁵. The purpose for establishing the NEC is to develop the institutional capacity to conduct free and fair elections in Cambodia. To achieve this, the members of the committee and other election commissions at all levels have to be both impartial and neutral in performing their duties in relation to electoral affairs¹⁸⁶.

The NEC is structured with Sub-Commissions of Coordination such as the Provincial/Municipal Election Commissions (PECs), the Commune/Sangkat Election Commissions (CECs), and the Polling Sta-

¹⁷⁷ Ibid., p. 7; 17.

¹⁷⁸ Ibid., p. 14; 310.

¹⁷⁹ Ibid., p. 33.

¹⁸⁰ Ibid., p. 7.

¹⁸¹ Ibid., p. 69.

¹⁸² Law on the Election of Members of National Assembly, art. 1 & 4.

¹⁸³ Law on the Election of Members of National Assembly, Law on Senate Election, Law on the Election of Capital/Provincial, Municipal/District/Khan Councils and Law on Commune/Sangkat Council Election.

¹⁸⁴ Law on the Election of Members of National Assembly, art. 12(1).

¹⁸⁵ The National Election Committee of the Kingdom of Cambodia, "NEC: NEC History", retrieved from http://www.ncelect.org.kh/nec_english/index.php?option=com_content&view=article&id=78&Itemid=152, last accessed on November 12, 2013.

¹⁸⁶ Law on the Election of Members of National Assembly, art. 12(2).

tion Commissions (PSCs)¹⁸⁷ as well as the Ad hoc Commission, Cabinet of the NEC, and the NEC Spokesman and General Secretariat¹⁸⁸.

1.2. How Members are Appointed to the EMB

The NEC commissioners are appointed by the King on the recommendation (through a vote) of the National Assembly. The NEC's members are appointed through a three step process. First, the Ministry of Interior is responsible for preparing the draft of the proposed composition of the NEC at least nine (9) months before Election Day and submits it to the Council of Ministers. Second, the proposed composition is sent to the National Assembly for ratification. Lastly, following approval by the National Assembly, the members of the NEC are appointed by Royal Decree at least seven (7) months prior to election day¹⁸⁹. The NEC Commissioners are appointed for five year terms and all commissioners must take office at least seven-months before each National Assembly Election¹⁹⁰.

1.3. Duties and Powers of the EMB

The NEC is responsible for planning, managing and monitoring the national election in Cambodia. In doing so, it has duties such as¹⁹¹:

- Regulating, interpreting and enforcing the conduct of voter registration, the internal rules and related documents in compliance with the Cambodian Constitution, and electoral laws and other related laws;
- Observing, managing, and monitoring the registration and legitimacy of political candidates;
- Auditing the bank account of political funds of each political party;
- Educating citizens, to ensure that all necessary electoral information is fully transmitted to all citizens;
- Recruiting, appointing, educating , and overseeing the work of electoral commissions and officials at all levels;
- Allocating equipment, documents, and materials for supporting voter registration and the election;
- Providing all necessary measures for ensuring security and public order during voter registration and the election;
- Preparing , developing and validating voters' lists and registration;
- Organizing the registration of political parties wishing to enter the election campaign;
- Regulating and monitoring polling, vote-counting, consolidation and proclamation of the election results, designating the winning seats, and announcing the elected candidates; and
- Adjudicating complaints and appeals in relation to voter registration and the election.

¹⁸⁷ Art. 11 of the aforementioned Law.

¹⁸⁸ The NEC, 2013 National Assembly Election, " *An Overview: Briefing for the International Observers*" (Saturday July 27, 2013), p4.

¹⁸⁹ Law on the Election of Members of National Assembly, art. 13-New.

¹⁹⁰ Art. 3-New & 13-New of the aforementioned Law.

¹⁹¹ Art. 16-New of the aforementioned Law.

1.4. Related Agencies which Assist in Facilitating Elections

The Constitutional Council is the highest Court of appeal for all electoral disputes.

2. France

2.1. Structure, Composition and Overview of the EMB

The Constitutional Council performs the role of France's EMB and was established by the Constitution of the Fifth Republic adopted on October 04, 1958¹⁹². It was created in order to act as a guardian of the separation of powers between parliament and the executive branch of government¹⁹³ and is the highest authority to provide decisions on electoral and constitutional matters.

Unlike the EMBs of many other countries, France's Constitutional Council does not just oversee presidential and parliamentary elections, but also has the power to rule on the constitutionality of laws. Furthermore, the Ministry of Interior also works with the Constitutional Council to conduct impartial and transparent national and local elections, while the CNCCFP acts as a specialized body to insure state funded campaign financing regulations are met by candidates.

2.2. How Members are Appointed to the EMB

The President and chair of each house of parliament each appoint three of the Constitutional Council's nine members for a nine-year term. The members terms are staggered in such a way so that every three years, the President and each house of parliament appoints one member to the Constitutional Council, with persons having the ability to be appointed for multiple terms. There are no age or job requirements for members to be appointed to the Constitutional Council. However, members must adhere to the same conflict of interest requirements as parliamentarians, and cannot hold an elected position. Furthermore, former presidents are afforded a position on the Constitutional Council as a matter of right¹⁹⁴.

2.3. Duties and Powers of the EMB

Government consults the Constitutional Council on statutes relating to the organization of ballot counting for Presidential elections and referendums¹⁹⁵. The Council also provides observations on

¹⁹² *General Presentation, Organization*, accessed November 12, 2013, <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/presentation/general-presentation/general-presentation.25739.html>.

¹⁹³ Pasquale Pasquino, " *The New Constitutional Adjudication in France* ", New York University, 3.

¹⁹⁴ See note 193.

¹⁹⁵ Ibid.

past parliamentary and presidential elections as well as on upcoming elections with the purpose of recommending to public authorities measures that can improve the conduct of elections¹⁹⁶. It is responsible for certifying the outcome of elections, and is the highest legal body to resolve disputes related to elections. Additionally, the Constitutional Council is charged with determining the correct application of the constitution in deciding whether existing or proposed election laws and regulations are in accordance with the constitution¹⁹⁷.

2.4. Related Agencies which Assist Facilitation of Elections

- *Ministry of Interior (Mol)*

The Mol also has responsibilities regarding the administration of elections¹⁹⁸. It is responsible for all technical and logistical preparations for elections at the national level¹⁹⁹. The Mol also issues operational instructions on legal and organizational matters to the prefectures, which are responsible for candidate registration, tabulation of results, and transmittal of them to the Mol²⁰⁰. Each prefecture also appoints three commissions to supervise the electoral process at the departmental level²⁰¹.

- *The Ministry of Foreign and European Affairs (MFEA)*

MFEA is responsible for organizing the elections for French citizens residing abroad. Consulates must inform French citizens registered abroad regarding the voting procedures, the candidates, and location of polling stations²⁰².

- *National Commission for Control of Electoral Accounts and Political Financing (CNCCFP)*

CNCCFP was established under Legislation in 1990 and is composed of nine members chosen from superior courts²⁰³. Three are selected by and from each of the following courts: The State Council, Court of Cassation and the Accounting Court²⁰⁴. The Commission has two main missions: one is to review the campaign accounts of candidates and determine the correct amount of money which the state is required to reimburse each candidate for campaign expenditures; the other is to verify the compliance of political parties with regard to the regulations governing their financing²⁰⁵.

For adjudicating electoral disputes once the election is over, there are different levels of courts dealing with specific electoral questions. These are:

¹⁹⁶ Ibid.

¹⁹⁷ See note 194, p 7 and See note 185.

¹⁹⁸ Office for Democratic Institutions and Human Rights (ODIHR), 2013, *Parliamentary Elections: 10 and 17 June 2012*, 5, Vienna, ODIHR.

¹⁹⁹ Ibid.

²⁰⁰ "The chief of department, the town in which is local government in some countries". Longman Dictionary of Contemporary English, Fifth Edition.

²⁰¹ See note 199.

²⁰² Ibid., p 6.

²⁰³ National Commission for Control of Electoral Accounts and Political Financing (CNCCFP) Presentation. "Three from Conseil d'Etat, three from Cour de Cassation, and three from the Cour des Comptes."

²⁰⁴ Ibid.

²⁰⁵ Ibid.

- *The Court of First Instance*

The Court of First Instance is a judicial body which reviews complaints filed by a voter or the responsible prefect against decisions of municipal administrative commissions regarding voters' lists²⁰⁶. Appeals to decisions of the Court of First Instance can be lodged with the Court of Appeal.

- *The Administrative Court*

The Administrative Court reviews complaints regarding candidate registration. In cases of incomplete or irregular financial declarations from a candidate, the prefect refers the cases to this court, which must reach a decision within 3 days²⁰⁷. In cases where the decision of the Administrative Court is appealed, the case can then be put to the Constitutional Council through a request to invalidate the election of the specific position in question²⁰⁸.

- *The Constitutional Council*

The Constitutional Council has the authority to decide on any challenge to the validity of presidential or parliamentary elections²⁰⁹. Any registered voter or candidate in an affected constituency can file a complaint contesting the results of the election, within 10 days after the proclamation of the results²¹⁰.

3. The Republic of Korea

3.1. Structure, Composition and Overview of the EMB

South Korea's EMB is the National Election Commission (NEC)²¹¹. The NEC is an independent agency, equal in legal status to the parliament and Supreme Court. It was established on March 15, 1960. According to Article 114 of the Constitution of the Republic of Korea, the NEC was established to oversee "the fair management of elections and referendums, as well as matters relating to political parties. Its function and organization are governed by the Constitution of the Republic of Korea (art. 114 to 116) and the Election Commission Act 1963 and amended by subsequent legislation²¹².

3.2. How Members are Appointed to the EMB

The NEC is composed of nine members (commissioners), with three members appointed by the President of the Republic, three members selected by the National Assembly and three members appointed by the Chief Justice of the Supreme Court. The President and a permanent member (permanent commissioner) are elected by the other members. The President is in charge of representing

²⁰⁶ See note 199, p 20.

²⁰⁷ Ibid.

²⁰⁸ Electoral Code, art. L.159-L.160.

²⁰⁹ See note 199.

²¹⁰ See note 205.

²¹¹ National Election Commission. 2013. *NEC*. Seoul. Accessed 20/11/2013 from:

http://www.nec.go.kr/engvote_2013/01_aboutnec/03_01.jsp.

²¹² Law Library of Congress of South Korea. See <http://www.glin.gov/view.do?documentID=91682&summaryLang=en&fromSearch=true>.

the Commission and is responsible for supervising its activities. The permanent member's mission is to assist the President of the Commission in his/her functions and to supervise the affairs of the secretariat of the Commission, this is a full-time position. Members are elected for a term of six years. The members' position on the Commission cannot be revoked, unless the member in question joins a political party or participates in political activities, or unless legal proceedings are instituted against him/her or because he/she is sentenced to prison. Criteria used in their selection are those associated with academic skills, ethical standards, legal background or educational employment.

3.3. Duties and Powers of the EMB

The electoral commission is divided into four levels, the NEC at national level and various committees at regional or local levels (provincial/metropolitan city, district/city/county, municipal).

The NEC is the competent authority on the management of electoral votes, referendums, and administrative matters relating to political parties and their financing. Its jurisdiction includes presidential, parliamentary and local elections. They are also involved in the management and control of elections of the presidents of agricultural cooperatives, as well as university presidents. It is also responsible for providing subsidies to political parties, controlling the establishment and activities of associations of supporters, collecting and distributing political funds and monitoring their use under the conditions prescribed by law on financing policy.

The NEC also has a regulatory authority for the implementation of the legislation on the financing of election campaigns, including the application of certain provisions of the law on election financing. In addition, proposed amendments of the electoral law have to be submitted to it for review. Finally, it can also, when it considers necessary, issue an advisory opinion to the National Assembly proposing reforms to the electoral law.

3.4. Related Agencies which Assist in Facilitating Elections

No other agencies assist with the administration of elections in South Korea, as the NEC has the remit and resources to cover all aspects related to elections²¹³.

4. The Philippines

4.1. Structure, Composition and Overview of the EMB

The Commission on Elections (COMELEC) was created by a 1940 amendment to the 1935 Constitution²¹⁴. Before the COMELEC was created, elections were overseen by the Department of Interior. Its membership was enlarged and its powers expanded under the 1973 Constitution, but its member-

²¹³ See note 212.

²¹⁴ "Historical Background", accessed November 08, 2013, <http://www.comelec.gov.ph/?r=AboutUs/HistoricalBackground>.

ship was reduced from nine to seven commissioners under the 1987 Constitution with seven years terms without reappointment²¹⁵.

All election processes in the Philippines are governed by the COMELEC. It is a permanent and independent body²¹⁶, which is constitutionally required to operate independently of the executive, legislative and judicial branches of government. To facilitate this, it has budgetary autonomy²¹⁷.

4.2. How Members are Appointed to the EMB

The COMELEC consists of six commissioners and one chairman. They are all presidentially appointed for a seven year term²¹⁸. To qualify for appointment, candidates must be Filipino natural-born citizens, at least thirty-five years of age, and members of the Filipino Bar Association with at least 10 years legal practice experience. Furthermore, they cannot be candidates for any elected positions in the elections²¹⁹.

4.3. Duties and Powers of the EMB

The COMELEC has a primary administrative function to enforce and administer all laws and regulations relative to the conduct of an election, referendum, and electoral recalls²²⁰. To effectively fulfill this mandate, the Constitution grants the COMELEC the authority to decide on practically all matters involving elections, including determining the number and location of polling places; the appointment of election officials and inspectors; and the registration of voters²²¹. The Commission is also empowered to register political parties, organizations or coalitions and accredit local electoral oversight bodies²²² and to deputize, with the concurrence of the President, law enforcement agencies, and the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections²²³. Of its own initiative or acting upon a verified complaint, the COMELEC can file petitions in court for inclusion or exclusion of voters and to pursue possible violations of election laws²²⁴.

The COMELEC's recommendation function allows it to propose to Congress measures to minimize election spending, to prevent and penalize all forms of election frauds, malpractice, and nuisance candidacies²²⁵. Similarly, it can recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation of its directives²²⁶. Similarly, the COMELEC also performs a reporting function, whereby it provides the President and congress with comprehensive reports on the conduct of elections and referendums²²⁷.

²¹⁵ Ibid.

²¹⁶ "Philippines Commissions on Elections", accessed November 07, 2013, http://www.aaea-sec.org/home/popContryView.do?seq_no=17.

²¹⁷ "Overview of COMELEC", accessed November 08, 2013, <http://www.comelec.gov.ph/?r=AboutUs/OrganizationalInfo>.

²¹⁸ Ibid.

²¹⁹ The 1987 Philippines Constitution, "The Commission on Elections", section 1(1).

²²⁰ The 1987 Philippines Constitution, section 2(1).

²²¹ The 1987 Philippines Constitution, section 2(3).

²²² The 1987 Philippines Constitution, section 2(5).

²²³ The 1987 Philippines Constitution, section 2(4).

²²⁴ The 1987 Philippines Constitution, section 2(6). "Including acts or omissions constituting election frauds, offenses, and malpractices".

²²⁵ The 1987 Philippines Constitution, "The Commission on Elections", section 2(7).

²²⁶ The 1987 Philippines Constitution, "The Commission on Elections", section 2(8).

²²⁷ The 1987 Philippines Constitution, section 2(9).

The COMELEC also has primary jurisdiction over all matters relating to the elections, returns, and qualifications of all elected regional, provincial, while their decisions are final in regards to municipal officials²²⁸. However, a number of other tribunals exist which arbitrate between disputes over the election outcomes for different state offices. These are detailed below in section 4.4.

The exception here is that the COMELEC has no authority to decide on matters relating to an individuals' right to vote, which is a constitutional matter and disputes regarding this are resolved through the courts²²⁹.

4.4. Related Agencies which Assist in Facilitating Elections

- *The Presidential Electoral Tribunal (PET)*

The PET is an independent tribunal that is created to try, hear, and decide on election contests for the office of president and vice-president of the Philippines²³⁰. The PET is composed of nine members. Three members must be Justices of the Supreme Court and are appointed by the Chief Justice who also chairs the tribunal²³¹. The remaining six are selected from amongst Members of the Senate or the House of Representatives who are chosen on the basis of proportional representation from the political parties²³². The PET exercises the same powers that are conferred upon courts, such as the authority to the issue subpoenas and demand compliance with its orders²³³. In particular, the PET has the power to recommend the immediate prosecution of persons who it finds to have participated in any electoral irregularities²³⁴.

Additionally, the PET is empowered to store or deposit ballot boxes, election returns and all other election paraphernalia in a safe and secure place under guard by deputies whom it appoints. The PET is also responsible for addressing disputes regarding election results.

- *The Senate Electoral Tribunal (SET)*

Under the Constitution, the SET is the sole authority responsible for all Senate elections²³⁵. The SET is an independent and impartial tribunal consisting of nine members. Three of which are Justices of the Supreme Court and are appointed by the Chief Justice, and the remaining six are Senators who are chosen on the basis of proportional representation from the political parties²³⁶.

- *The House of Representatives Electoral Tribunal (HRET)*

Similarly to the Senate, elections for the House of Representatives are also presided over by an electoral tribunal which acts as the sole judge of all contests relating to the election for the House of

²²⁸ The 1987 Philippines Constitution, section 2(2).

²²⁹ The 1987 Philippines Constitution, section 2(3).

²³⁰ *Batas PambansaBlg. 884*, accessed November 20, 2013, <http://www.lawcenter.ph/law-library/laws/batas-pambansa/an-act-constituting-an-independent-presidential-electoral-tribunal-to-try-hear-and-decide-election-contests-in-the-office-of-president-and-vice-president-of-the-philippines-appropriating-funds-there/>

²³¹ *Batas PambansaBlg. 884*, section 1.

²³² *Batas PambansaBlg. 884*, section 1.

²³³ *Batas PambansaBlg. 884*, section 8, "The taking of depositions, the arrest of witnesses for the purpose of compelling their appearance, the production of documents and other evidence".

²³⁴ *Batas PambansaBlg. 884*, section 9. Tampering in any manner with the election returns, failure to affix the required signatures and thumb marks by any member or members of the board of election inspectors or board of canvassers, or unnecessary delay in the sending or transmission of any election returns or in the transport and safekeeping of ballot boxes.

²³⁵ The 1987 Philippine Constitution, section 17.

²³⁶ The 1987 Philippine Constitution, section 17.

Representatives²³⁷. The HRET is composed of nine members, three are Justices of the Supreme Court appointed by the Chief Justice, and the remaining six are members of the House of Representatives who are chosen according to proportional representation from the political parties within the House. The sitting Senior Justice chairs the tribunal²³⁸.

- *The Regional Trial Court (RTC)*

The RTC, the Secondary level of court, has jurisdiction in dealing with civil cases, criminal cases, original jurisdiction and appellate jurisdiction²³⁹. Each of the 13 judicial regions has an RTC²⁴⁰, which are charged with resolving disputed municipal election outcomes²⁴¹.

5. Indonesia

5.1. Structure, Composition and Overview of the EMB

The National Elections Commission (KPU) was established under the 2001 Constitutional reform adopted by the People's Consultative Assembly (MPR)²⁴². KPU's mandate, structure and powers were listed in Presidential Decree 70 of 2001 as the "Establishment of the National Election Commission". In 2007, the adoption of Law 22/2007 provided for a new, permanent and non-partisan KPU, composed of 11 members²⁴³. In 2011, this was replaced by Law 15/2011 which reduced the membership of KPU to seven with terms of five-years, with chairperson elected from amongst its members. Since the KPU's establishment, it has successfully conducted presidential and legislative elections in 2004 and 2009²⁴⁴.

The KPU is an independent and permanent commission, free from the influence of any political bodies²⁴⁵. Structurally, the KPU divides its operations amongst permanent bodies/ bureaus responsible for provincial and regional electorates.

While the KPU is responsible for all administration and logistics related to elections, its functions are overseen by the Election Supervisory Body, which acts as a regulatory compliance agency. Both these agencies are described in detail below in section 5.4.

²³⁷ "Congress of the Philippines", accessed November 08, 2013, <http://www.dbm.gov.ph/wp-content/OPCCB/OPIF2012/Congress/Congress.pdf>.

²³⁸ The 1987 Philippine Constitution, section 17.

²³⁹ "The Judiciary Reorganization Act of 1980", section 19, 20, 21, 22, accessed November 12, 2013, <http://www.chanrobles.com/bataspambansabilang129.html>.

²⁴⁰ See the aforementioned Act.

²⁴¹ *Omnibus Election Code*, article XXI: section 251, <http://www.comelec.gov.ph/?r=References/RelatedLaws/OmnibusElectionCode/OECArt21&bn=Back+to+Search+Results&b=search%26searchbox%3DOmnibus%2Bcode%23ps2034>.

²⁴² The Constitution of Indonesia, art. 22E (5).

²⁴³ United Nations Development Programme (UNDP), Multi-Donor Programme - Support to Indonesia's Democratic Elections (Elections MDP), 7.

²⁴⁴ *Ibid.*, p 7-8.

²⁴⁵ Law Number 15/2011 on the Electoral Management Bodies, Chapter 3: article 3(3), unofficial translated by International Foundation for Electoral System (IFES).

5.2. How Members are Appointed to the EMB

Members of KPU must be at least 35 years old, Indonesian citizens with at least a Bachelor's Degree and with relevant knowledge of election processes. They must not be a member of a political party, holder of a political position at any level of government or with a state owned company, have no criminal record and not be the spouse of any electoral candidate²⁴⁶. The seven members of the KPU are appointed by a vote of the House of Representatives, who may choose from a list of 14 candidates provided by the President²⁴⁷.

5.3. Duties and Powers of the EMB

The KPU is responsible for implementing and administering national presidential and vice presidential elections, national and regional parliamentary elections, gubernatorial elections and mayoral elections²⁴⁸. According to *Article 8 of the Law on the Election Management Body* that was adopted in 2011, the KPU has the following duties and authorities:

- To plan, organize, budget and schedule affairs relating to conducting an election;
- To establish the mechanism and standard operational procedures for the conduct of elections at the national, provincial, and local level;
- To set-out general and technical guidelines for each stage of the election process²⁴⁹;
- To organize, facilitate, evaluate and oversee all election processes;
- To prepare, develop and validate voter lists and registration data based on population data prepared and provided by other government agencies;
- To select a public accountant's office to audit campaign funds and reporting their findings;
- To consider complaints of violations of the Election Laws and Code of Ethics by following up the findings and report endorsed by the Election Supervisory Body;
- To provide temporary suspension or administrative sanctions to the members of the National, Provincial, Regency/Municipal and Oversight Election Board who jeopardize the implementation of the election and implement the decisions of the DKPP²⁵⁰; and
- To fulfill any other duties and obligations provided for in the laws and regulations governing the election process.

²⁴⁶ Law Number 15/2011 on the Electoral Management Bodies, art. 11(a,b,e,f,l,m).

²⁴⁷ Law Number 15/2011 on the Electoral Management Bodies, art. 12(2)(4).

²⁴⁸ Law Number 15/2011 on the Electoral Management Bodies, art. 8.

²⁴⁹ The conducting of the guidelines is based on the Law N° 10/2008 on General Election Mechanism and Law N° 2/2008 on Political Party.

²⁵⁰ The DKPP stands for the Honorary Council of Election Management Bodies (*Dewan Kehormatan Penyelenggara Pemilu*).

5.4. Related Agencies which Assist in Facilitating Elections

Election Supervisory Body

As the supervisory authority of the KPU, the Election Supervisory Body has the following powers²⁵¹:

- Supervising the preparation of the election in terms of: planning and logistics ; implementation of the designated polling stations, disseminating election implementation information and; undertaking the supervision of election functions as set out in election laws;
- Supervising stages of election implementation including: updating the voters data base; affirmation of electoral candidates, overseeing the nomination process; vote counting; and affirming the election results;
- Monitoring the handling of election related crimes by the authorized institutions and overseeing the implementation of sanctions against those found guilty of such crimes by relevant authorities;
- Evaluating and writing reports on the supervision of the election processes; and
- Establishing provincial Election Supervisory Bodies and appointing and dismissing members of Provincial Election Supervisory Bodies.

Competent body: The Election Supervisory Body is responsible for overseeing the implementation of elections in the Republic of Indonesia (Law n°08, Article 1 (17)). A procedure for resolution of electoral disputes is required by law (Law n°08, Art. 257 et seq.), for which the Election Supervisory Body is deemed to be the competent body. The procedure for the resolution of these disputes is detailed under law number 08. This defines general procedure and leaves the Election Supervisory Body to define the specific procedure with detailed regulations. First, the law provides that a report or finding should be submitted to the Election Supervisory Body regarding a dispute. Based on the documents received, the Election Supervisory Body must arrange a preliminary meeting between the parties to the dispute to try to, through deliberation and consensus, reach an agreement. If no consensus is reached, the Election Supervisory Body must make a decision through a consensus of its members. The decision of the Election Supervisory Body on any dispute that falls within the scope of its jurisdiction shall be final and binding on the parties, except for the decisions on elections disputes related to the verification of election contesting political parties and the final list of candidates for members of local decentralized authorities. In the latter cases, the defendant has a right of appeal to the Administrative Court of the State.

The Honorary Council of Election Management Bodies (DKPP)

The DKPP is established as a permanent national-level ethics council. Its members commence sitting no later than two months after KPU and the Election Supervisory Body members take their oaths²⁵². The composition of the DKPP includes one representative of the KPU, one representative of the Election Supervisory Body, one representative of each political party in the House of Representatives,

²⁵¹ Law Number 15/2011 on the Electoral Management Bodies, art. 73.

²⁵² Law Number 15/2011 on the Electoral Management Bodies, art. 109 (1) & (3).

one representative of the Government and four²⁵³ or five²⁵⁴ community leaders. The term of all members of the DKPP is five years²⁵⁵.

The DKPP is responsible for conducting and approving a code of ethics in order to maintain the independence, integrity and credibility of the KPU and Election Supervisory Body members²⁵⁶. In addition, it is responsible for reviewing and deciding upon complaints and/or reports of alleged violations of the code of ethics²⁵⁷. Furthermore, the DKPP is empowered to make recommendations on the dismissal of KPU²⁵⁸ and Election Supervisory Body²⁵⁹ members. The decisions of the DKPP are binding and final²⁶⁰.

V. Analysis

Campaign Financing

In terms of campaign financing, there are two major issues to be addressed. First is the provision of public funding to run for political office, and the second is the limitation of expenditures on campaigns. The first has been recognised as an important feature to reduce corruption and facilitate more representative political involvement by allowing candidates who do not have access to funds for campaign financing to run for office, thus making it possible for the election of 'ordinary' persons. The limitation of campaign expenditures fulfils a similar role. It prevents persons with access to large sums of money from simply outspending competitors in campaign activities, such as advertising, holding events and touring the country, in order to effectively guarantee their victory over less wealthy opponents. For these reasons, over the past 25 years, France and South Korea have both developed highly sophisticated regimes to publicly fund election campaigns, to limit and audit expenditures and prosecute offenders. Although it does not provide public funding for campaigns, in 2012, the Philippines opened a specialised Campaign Finance Unit within its Election Commission to investigate and enforce campaign spending limits. However, due to the complexities in effectively auditing the activities of political parties, the Philippines is still working towards achieving effective adherence to this process. Likewise, Indonesia, in the interests of reducing corruption and improving democratic involvement, began, in 1999, to introduce mechanisms to provide public funding for electoral campaigns, and to limit campaign expenditures. However, in a similar way to the Philippines, the complexities in achieving an effective political finance regime mean this is still a work in progress.

The introduction of public funding for election campaigns, and the capping of expenditures on election campaigns, can benefit the democratic process. However, as the Philippines and Indonesia show, such efforts are very complicated and require well designed reporting mechanisms in conjunction with a well-resourced office with expert forensic accountants, and expert and apolitical oversight bodies if these efforts are to succeed. Without such a comprehensive approach, as exists in

²⁵³ If the number of representatives of political parties in the House of Representatives is in odd number.

²⁵⁴ If the number of representatives of political parties in the House of Representatives is in even number.

²⁵⁵ Law Number 15/2011 on the Electoral Management Bodies, art. 109 (4) & (10).

²⁵⁶ Law Number 15/2011 on the Electoral Management Bodies, art. 110 (1).

²⁵⁷ Law Number 15/2011 on the Electoral Management Bodies, art. 109 (2).

²⁵⁸ Law Number 15/2011 on the Electoral Management Bodies, art. 28.

²⁵⁹ Law Number 15/2011 on the Electoral Management Bodies, art. 100.

²⁶⁰ Law Number 15/2011 on the Electoral Management Bodies, art. 112 (12).

France and South Korea, the introduction of such measures may prove instead to be a hindrance to greater democratic participation.

Voter Registration

Owing to a higher level of economic development than other countries examined in this paper, France and South Korea have the resources to introduce automated systems to register voters, by gathering voter information from a number of digitalised government databases. These systems are costly, technically difficult and slow to implement, but once introduced can reduce the costs and errors involved in conducting elections. However, such an approach is not a feasible option for every country. For example, Indonesia has aimed to improve the accuracy of its voter lists and regularity of its elections by establishing a number of independent hierarchies to monitor the conduct of the electoral bureaus.

Like Cambodia, Indonesia has many isolated communities which make travel to and from them difficult and establishing polling stations complicated. Similarly, many people also work in a different region from where their home is. To allow such people to vote, Indonesia is developing a 'supplemental' voter list, onto which persons can register to vote if they cannot return to their home province for the election. The Philippines faces similar issues, but is addressing them with a combination of France's and South Korea's technological approach and Indonesia's more regulatory focused approach. The Philippines Electoral Commission has broad ranging powers and duties which involve sending officers' door-to-door to ensure as many persons are registered to vote as possible²⁶¹. However, audits revealed that 7.5 per cent of their voter lists are incorrect entries. To improve this, the Philippines has begun developing a new voter list, which requires each voter to 'sign-in' with biometric data, such as a finger print. This biometric data will then be used to inscribe each person onto the voter list and to ensure that no one can vote twice.

While France and especially South Korea's systems are the most proficient and effective, they are also the most technically demanding and require a high level of digitalisation, IT proficiency, and inter-departmental integration. As Indonesia is still in the process of developing new regulations for voter registration and identification, no concrete lessons can be drawn from this example. The Philippines' approach of using biometric data (e.g., finger prints) to register and identify each voter may be a good example for developing countries to consider when establishing voter registration lists. This is due to the fact that many countries use biometrics at their airport immigration points and this technology may be transferrable in the development of voters' lists. Cambodia already has experience with the technology necessary to implement this. Currently the immigration control at Phnom Penh airport requires persons arriving and departing to register biometric information with a digital fingerprint scanner, which then sends the information to a digital storage facility. A similar process of collection and storage of persons' biometric data, scaled-up for the electoral process, would represent a technically feasible way in which to improve the accuracy of voter lists; digitalise and develop one common voter registry; and improve the ability of persons to vote in regions where they are not registered. The two main advantages of such an approach would be that the legitimacy of elections is improved, as it demonstrates the accuracy of voter lists, and costs could be saved after the system's introduction as less administrative staff would be required to draw up voter lists for each

²⁶¹ Commission on Election, Republic Act No. 8189, Section 36, last retrieved on 02/06/2014 from: <http://www.comelec.gov.ph/?r=References/RelatedLaws/ElectionLaws/Registration/RA8189>

province. Finally, these systems could also be used to facilitate further government projects in the future, such as national ID cards, more advanced passports, healthcare cards and advanced criminal registries.

Oversight Bodies

What the case study countries demonstrate is that the specific structure of an oversight body is not the crucial factor to its effectiveness, but rather, the expertise and professionalism of its staff in conducting what is a very complex and politically charged operation. In this regard, Cambodia already has in-place a regulatory structure which is comparable to all the case study countries, insofar as it has a professional election administration bureau – the NEC – and a specialised judicial body to resolve disputes – the Constitutional Council.

Countries wishing to further develop the capacity of their oversight bodies can look to a number of countries with advanced and effective electoral systems, and institutions with experience in the area that offer outreach services that provide training and technical assistance to countries which request it.

VI. Conclusion

As the different approaches taken in each of the case study countries demonstrate, there is no 'best practice' electoral process. Regulation of financing, voter registration and election management bodies can come in various forms and are not indicative of their outcomes, in terms of the quality of the electoral system. What does become evident, however, is the necessity for consistency in applying regulations, professional capability of staff, and the integrity and quality of data relating to voter lists. As discussed in the above analysis, these case studies suggest a number of approaches which Cambodia could consider adapting to local conditions if the need were to be determined.

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