

Cambodian Constitution (CC)

Article 34:

Khmer citizens of either sex shall enjoy the right to vote and stand as candidates for the election.

Khmer citizens of either sex shall of at least eighteen years old have the right to vote.

Article 76 paragraph 2:

The deputies (i.e. of the National Assembly) shall be elected in a free, universal, equal, direct and secret ballot.

International Covenant on Civil and Political Rights (ICCPR)

(adopted by the Kingdom of Cambodia on 26. August 1992)

Article 25 b)

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without reasonable restrictions:

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.

UNITED NATIONS Human Rights Committee, General Comment on Article 25 of the International Covenant on Civil and Political Rights (Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (12. July1996).):

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

11. 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. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

Law on the Election of the National Assembly (LEMNA)

(actual version dated 21.August 2002)

Art.124

Regardless of any possible criminal penalty, his/her name shall be deleted from the list of voters and of a political party list participation in the election, and his candidacy shall be cancelled by the NEC, and he/she shall be fined from five million to twentyfive million riels,a person or poltical party that:

- uses force, violence or intimidation against any elegible voter to deter him from registering or prevents registration of elegible person in the list of voters and electoral book list.
- use force or violence to prevent elegible voters from voting or standing as a candidate.
- use force, violence, threats, or insults as to intimidate, confuse the voters, or to undermine the credibility of the election or the secrecy of the voting

(nota bene: also commune clerks can be sanctioned for such violations - see Art. 122 of the Election Law:

Regardless of any other possible criminal penalty, a Commune/Sangkat clerk or official(s) or member(s) of the Commune/Sangkat Council who commits any of the following violations shall be subject to a dismissal in accordance with the Law on the Administration of the Commune/Sangkat Council and the Law on the Statute of Civil Servants of the Kingdom of Cambodia:

- had issued a registration receipt but had voluntarily refused to record that person's name in the list of voters and electoral booklist.
- had voluntarily registered the underage or ineligible voters in the list of voters;
- had voluntarily registered or issued a registration receipt to person(s) whose right to vote is/are deprived;
- deters citizen aged 18 or over from registration.)

Criminal Code: ("Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period, dated: 10. September 1992", so called UNTAC-Code)

Art. 64:

Whoever, through intimidation, illicit behaviour, or any form of coercion, interferes with the free exercise of electoral rights of a voter or candidate or with the proper functioning of the electoral process is guilty of electoral fraud and shall be liable to a term of imprisonment of one to three years.

Comment:

1. Pertinent Laws concerning free elections:

Every Khmer citizen (-including monks who belong to either male or female sex and therefore are not outside the constitutional provision of article 34 -) have the right to vote in a free election.

According to article 25 of the International Covenant on Civil and Political Rights, which has been adopted by Cambodia, and according to the general comment given on this article by the United Nations Human Rights Commission, free election means, the act of voting has to be free of any undue influence or interference. The reason is, that the voter shall form his political opinion and express it by voting independently, without compulsion, coercion of any kind, inducement or manipulative interference.

Therefore the pertinent Cambodian laws, that protect the free formation of the voters political will, have to be interpreted and applied in the sense, that they give the most and effective protection to the voters.

2.

a) Violation of Article 124 Election Law ?

a)a) use of intimidation ?

Under the headline "Decree" the Superior Monk is telling his subordinate monks, that they should not vote. This could be seen not as a "use of force or violence" but as an "intimidation" to "deter" the monks as citizens and voters from registering under article 124 of the Election Law, because the monks may fear to do something wrong and forbidden if they register against the order of their superior monk. *(On the contrary one might say, that intimidation is only an act, which causes strong fear or real anxiety or even horror or comparable strong feelings, and that this takes some mentioning of negative consequences by the person who uses intimidation.)*

a)b) prevention of registration?

It could be also seen an act of "preventing" registration of monks as the reality has shown, that the decree of the Superior Monk was posted at the registration station in many cases successfully had the effect that monks hesitated to register or were not registered by the officials, who referred to the parkas. *(On the contrary one might say, that the act of prevention of registration can only be committed by registration officers, who directly have an influence on registration. But as article 124 refers to anybody and not only on election officials like article 122 this interpretation seems not be correct).*

a)c) threat to confuse voters or to undermine credibility of election?

Finally this decree could be a "threat" to "confuse" the (monk)voters about their rights, as they are insecure, whether they can or not refuse to follow the order and vote. It also could be seen as an act of "threatening" the voters "to undermine the credibility of the election" as monks are seen by the public as valued examples of leading a good honest life and as monks are educated people whose widespread absence from the act of voting puts damage to the public awareness of the value of the election as a means of nonviolent articulation of political will. *(Again one could counter this interpretation by saying that a threat takes the promise of an immediate and clear strong disadvantage which makes the threatened one anxious).*

Conclusion:

As the free formation of the voters will has to be protected, from my point of view any form of influence and interference is enough to violate voters rights, so it does not necessarily take horror, fear or anxiety on the side of the victim but any undue influence caused by simple threats or coercions such as by orders of the superior who uses his authority and power is illegal already.

So my conclusion is, that the decree of the Superior Monk is a violation of article 124 Election Law, because the use of the authority of his superior office and the use of the form of a "decree" which normally is only reserved to state authorities intimidates monks to deter them from registration. It also prevented them in many cases effectively from registration, as they did not dare to ask for registration or at least were rejected by registration clerks referring to it.

As in the decree there was no direct announcement of negative consequences for monks who don't follow it, I think there is no direct threat, even if the decree obviously caused confusion among the monks and maybe even put damage to the credibility of the election process.

3. violation of article 64 Criminal Code ?

The most clear provision seems to be article 64 (UNTAC Code) which explicitly protects the "free exercise of electoral rights of a voter" against any form of coercion and interference" not only by intimidation but also by "illicit behaviour". As an illicit behaviour it could be seen that the superior monk uses his authority and his influence to order directly his subordinates who depend on him and his leadership not to vote, thus clearly acting against the spirit of the constitution and the Cambodian electoral law, that obviously wants a free exercise of voters wills. The behaviour of the Supreme Monk can be seen as "undue" because it is not neutral any more. Keeping a neutral position would mean to remain silent on election matters but not using influence and institution to order subordinates directly what to do or not do as voters.

(Article 108 of the German Criminal Code for example expresses this idea quite clearly and states punishment for everyone who abuses his professional or economic superior position toward his subordinates or who uses economic pressure to deter them from voting)

4. Decree covered by freedom of exercise of religion ?

Even though Buddhism is called the state religion by the Cambodian Constitution (article 43 section 3 CC) this does not entitle the superior monk to interfere in such a political and important matter of public life as the elections, because Article 43 section 2 of the Cambodian Constitution clearly says that the exercise of freedom of religion shall not violate the public order, part of which is holding free elections. So the superior monk behaves "illicit" if he does not remain silent and neutral but clearly and outspokenly tries to deter his monks from voting. The act of "not voting" is itself also not a neutral act but a kind of expressing the political will too.

5. Final summary

The NEC is responsible for preventing electoral irregularities and for overseeing the legality of the elections (see article 16 number 24 of the Election Law). Therefore it has the duty to check the legality of the decree of the Superior Monk. If he not withdraws his decree NEC should impose a fine according article 124 of the Election law on the superior monk for using intimidation against his monks to deter or even preventing them from registering.

The Prosecutor could file a criminal accusation under article 64 Criminal Code against the superior monk for illicit behaviour , intimidation and a form of coercion towards his monks to interfere with their free exercise of voters rights. The criminal law court finally would have to decide if this law was violated.

Dr. Wilhelm Treiber
(Legal Advisor -KID Legal Unit)