

Using Public International Law to Assess Elections:
The Experience in the Southeast Asian Region

Jakarta – Indonesia, 20 – 21 December 2010

**Report on the Implementation of
Regional Meeting**

1. Introduction

The Carter Center and the Centre for Election Reform (CETRO) jointly hosted a Regional Meeting on Using Public International Law to Assess Elections. The 'regional meeting' was intended to create a forum enabling The Carter Center to share knowledge and experiences regarding the use of PIL in assessing elections within the Southeast Asian region. This event was envisioned to benefit the participating organizations in terms of building cooperation, coordination, and communication in enhancing the quality of elections in particular and democracy in general in the region. 21 participants attended, of which 10 were male and 11 female.

Initiating the discussion, a Carter Center representative provided a brief overview to participating organisations of election observation based on public international law and tools used to conduct such assessments, including The Carter Center's online Database of Obligations for Democratic Elections. The introduction was not given in efforts to push participants to standardize election observation methods and tools used in the Southeast Asian region. Instead these tools, which are the output of the Center's multi-year, collaborative Democratic Election Standards project, were presented for review and discussion amongst participants to determine their effectiveness and relevance in the Southeast region.

As discussion shifted to more specific mention of the Database of Obligations, mention was made to key international documents on which many country's obligations are based. Participants remarked that perhaps additional regional documents could be added although they added that within the Southeast Asian region, such regional documents were not prevalent.

2. Welcome Remarks and Official Opening

During the opening remarks session, it was stressed that it would be important to use the workshop as a forum to discuss participants' and other election observation organizations' conducting of election assessments using public international law (PIL) as their basis.

It was also highlighted that the meeting was intended to improve the quality of elections assessment within the region so that citizens would be encouraged to ensure democratic elections take place within their nations. Emphasis was placed on the notion that without having good standardized tools by which to assess elections, organizations cannot consistently ensure their observation work is professional and non partisan. Through the sharing of knowledge and experience in this discussion, meeting organizers expressed their goal that participants would contribute towards consensus building regarding which tools to use that are specifically developed for the Southeast Asian region.

3. Presentations and general discussions (Day One and Day Two)

3.1 Overview of the Carter Center's work on defining Assessment Criteria based on Public International Law (PIL)

Through the regional meeting, The Carter Center presentation encouraged participants to use the as a forum in which participants could freely exchange knowledge and experiences regarding how they conduct elections assessment in the region. The presentation also introduced in more detail the tools to assess elections based on public international law developed by The Carter Center – in particular, the Database of Obligations. Mention was also made to other tools, including checklists and reporting templates that were also equipped with additional information that could be gathered from The Carter Center's database and website.

The presentation began first with a review of the scope of the electoral process, presenting a timeline that highlighted the three main stages, namely: pre election, election day and post election. Next, the presentation provided an overview of how observers judged elections in the past, utilizing more general assessment terms such as "free and fair" that failed to describe in detail the true nature of the election. This discussion became more active as participants questioned aloud which international standards they should use when assessing elections within the Southeast Asian region

The presentation also explained to participants key reasons why PIL serves as a sound bases from which to assess elections. The reasons were as follows:

- States have voluntarily committed to these obligations.
- The obligations were articulated by the community of states themselves.
- The obligations underscore the need for ALL nations to be vigilant in their efforts to maintain and improve democracy.
- Adherence by states to the obligations becomes a building block for broad consensus

Participants expressed a number of comments at the end of The Carter Center presentation including:

1. There are many international obligations on election implementation and observation which could be complicated for Southeast Asian observation organizations to follow, because organizations within the region have specific needs and particularities that maybe based on historical, cultural and/or religious needs. Nevertheless, these tools provide the region with more ideas to consider when we refer to the public international law;
2. There are many complaints from political parties and candidates when it comes to elections and how they are carried out. This reality makes it all the more advisable to have standardized tools recognized and applied by all election

- observation organizations, to ensure that all phases of the electoral cycle adhere to international standards and;
3. In the Asian region, countries often have their own unique methods to follow which may be more effective rather than using those coming from the western countries. Whether tools used within the region share commonalities from regional country to country though, is not clear. Discussion amongst countries in the region would need to continue in order to achieve our commonalities of methods used.

3.2 Review of Continental and Regional Obligations Relevant to the Political Process

During this presentation, discussion was had regarding relevant obligations to the political process that can be found at the continental and regional levels. Mention was made regarding the treaties and charters, etc. on which electoral obligations for the Southeast Asian region were based. Such documents included:

- ASEAN Charter
- ASEAN Inter-Governmental Commission on Human Rights (AICHR)
- Treaty of Amity and Cooperation.
- Treaty on the Southeast Asia Nuclear Weapon-Free Zone
- ASEAN Regional Forum

However, participants noted that from the above listed, there are no particular obligations related specifically to elections that can be used to assess democratic elections. Participants also noted that certain obstacles may exist that can hinder the quality of election observation within the region. These obstacles include:

- Clause on non-interference and respect of sovereignty
- Regional cooperation may be limited to economic and security cooperation
- Reduction of space for developing a consensus and cooperation on an ideal or electoral system.

Looking at different policies applied by Southeast Asian countries in receiving international election observation organization, the session presenter noted this may evidence the fact that there are historical and cultural sensitivities that effect how observation and assessments are carried out across the region. Therefore, it is not yet clear how, if at all, the local cultures and customs may determine the way elections are observed and assessed.

The participants were then divided in groups to discuss the usefulness and drawbacks of using a non-state/observer organisation initiated process such as ANFREL's blueprint.. Referring to the usefulness and drawbacks, each group was asked to create recommendations for observer groups.

A number of comments came from the group when they reported back from the breakout sessions:

1. There should be one binding standard within Southeast Asia , because this will contribute towards consistently having free and fair elections. Nevertheless, some countries are not ready to accept certain values that come with implementing democracy especially since in some cases, a state's law might not fully recognize and incorporate public international laws. Participants noted that even if this is the case, PIL could still serve a role because at least then, there would exist minimum standard for assessing elections in the region.
2. Organizations within the region need to work together. All responsible election observation organizations and related organizations should be joining forces to form and push this standard for implementation. There is a sense that the government does not actually belong to the people. If you want public international law to be used, the society must come together to push for this standard. To do this though of course often requires external support and funding.
3. There must be a productive dialogue involving all stakeholders in the region in order to devise a common standard.
4. Southeast Asian nations are often reluctant to apply principles from outside their nations, as they hold themselves to be sovereign. It is undesirable to a nation to follow the principles of another nation on important issues. There is a lot of resistance from the political parties, oppositions, and other stakeholders in this regard. It is very difficult to convince governments to change their methods and strategies should be devised regarding how to convince them to make these changes.

3.3 An Introduction to Public International Law's Role in Elections

This session focused on why PIL is an appropriate basis from which to conduct electoral assessments. The session highlighted the fact that using a PIL-based assessment approach is beneficial in that it leads to increased:

- 1) Transparency and Accountability since observers base their judgments on set of clearly defined and commonly acceptable standards – the obligations of states found in public international law. As well, conclusions are more consistent and States will know the criteria against which they will be assessed.
- 2) Objectivity since a common set of criteria may be applied to all States. Additionally, this builds consensus among Election Observer Organizations and;
- 3) Scope since this facilitates observation of the entire 'electoral process' and electoral environment not just election day.

The participants were then divided into groups of discussion where they were asked – after receiving instruction – to conduct a short research exercise using The Carter Center’s Database of Obligations for Democratic Elections.

3.4 Domestic vs International Observation Using the Methodology

The focus of this session examined whether a methodology based on PIL is equally applicable to both domestic and international observation groups. The commonalities and differences between the two types of observation was discussed and an explanation was given regarding the different types of mandates for election observation organizations, as follows:

Discussion was always briefly had regarding “Exploratory Observation Missions” which are often conducted before the deployment of election observation mission. Participants noted that during such missions, consideration should be given to:

- Whether the EOM will be useful;
- Feasibility of the EOM;
- Security conditions and deployment risks;
- Legality of the mission and;
- Minimum conditions for credible elections in existence.

Following the session presentation, participants commented that:

1. Both international and citizen observers follow common mandates for free and fair elections. The Election Management Bodies (EMB), however, seems to favour the International Observers’ reports and statements because they often reflect the more positive aspects of elections.
2. International election observation missions are largely more expensive than the citizen observation mission. However, the citizen observation tend to devote more time to observing the entire electoral process compared to the shorter international mission duration.

Participants then broke out into groups to discuss in more detail commonalities and differences between citizen and international observer organizations.

Day 2

3.5 Application of the Methodological Framework to Assess Elections

It was agreed during this session that PIL methodology should be applied in election observation to ensure free and fair elections occur and to base those assessments on some concrete obligations. Although there are no standard tools currently used in the Southeast Asian region, the assessment tools used by election observation organizations in the region do at times refer to PIL – with some adjustment to local situation and condition. During the session, participants agreed that a nation’s adherence to PIL

should be more closely monitored during election observation. Therefore, an output of the session was the realization that there was a need to know how to create a PIL methodology that would encourage ownership and confidence by nations in implementing it.

Participants were divided into groups and asked to do the exercise applying PIL obligations to different aspects of the electoral process. Participants then summarised and shared their findings during a plenary session that followed.

3.6 Next Steps and Conclusions: Building Consensus on the use of PIL Obligations

Meeting organizers concluded the regional meeting by reviewing the lessons learnt, and encouraging participants to consider what the next steps should be towards implementing the use of PIL in their election assessments.

Closing out the 2 day meeting, participants commented that:

1. The regional networking with peers of observers/monitors must be improved. There should be knowledge and experience sharing amongst activists and organizations involving in election observation. There should be training for local observer on how to apply PIL methodology/regional legislation. A Matrix of Organizations should be mapped so that organization are aware of each other's profile (International, Regional, Local).
2. These efforts will benefit Citizens (Society) – Primary Stakeholders, Secondary Beneficiaries
3. Aid should be sought from Parliaments, Governments, Donors/ International Community, and International government agencies