



**CAMBODIA
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**EUROPEAN UNION
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FINAL REPORT

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This report was produced by the EU Election Observation Mission and presents the EUEOM's findings on the Commune Elections in Cambodia. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.

I EXECUTIVE SUMMARY

In its preliminary statement after the 3 February elections, the EU EOM concluded that “the 2002 Commune Elections marked progress in the consolidation of democracy in Cambodia”. However, the EU EOM raised concerns regarding some serious mal-practices in the pre-election period. Further, some of the post-election reports of widespread eve-of-poll vote buying have somewhat tempered the positive assessment of the election day itself.

The decision of the Cambodian authorities to hold the local elections, which have been discussed since the early 1990’s, is commendable, and it is encouraging that Cambodians are now able to elect at least one strata of their local representation. The monopoly of power at the Commune level by a single party has now been broken and replaced by multi-party representation. Whilst this has not achieved full decentralisation of power in a single step, it is an important development.

Democracy in Cambodia can only be further consolidated if the laudable political will to hold the elections and the strong statements by the government against election violence are matched by a determination by all concerned to ensure a free campaign environment, respect for democratic norms and the full application of the rule of law.

As a result of these first direct elections for the country’s Commune Councils , the CPP remains the dominant political force at the local level throughout the country, emerging as the front-runner in 1,597 of the 1,621 Communes. The SRP won in just 13 of the Communes and FUNCINPEC in ten. In national terms, the CPP received some 60% of the vote total (compared to some 40% in the 1998 National Assembly elections). FUNCINPEC received 22% of the vote (down from 32% in 1998) and the SRP some 17% (up slightly from 14% in 1998). The other parties polled less than 0.3% of the national vote.

The Law on the Election of Commune Councils generally provides an adequate framework for competitive elections. Still, some of its provisions, such as not providing for a truly impartial election administration, a lack of clear media guidelines and the existence of an official NGO Co-ordinating Council to regulate the work of independent NGOs, have drawn justified criticism. However, at the same time, some articles, such as the provision for party agents to fully monitor the process and a detailed explanation of the seat allocation formula, have increased the transparency of the process and political confidence.

The formulation for establishing the electoral administration still does not ensure an independent and impartial National Election Committee or subordinate committees. During these elections, whilst the election administration at all levels generally organised the technical aspects of the process in a competent manner, various decisions, such as the cancellation of some scheduled election TV programmes, raised the spectre of political interference in their work.

The voter registration process was criticised for various technical shortcomings and for a failure to capture all eligible persons. The veracity of the claims of a political dimension to the shortcomings remains unproven on a national basis though localised problems certainly exist. However, it is imperative that this registration process is now built upon to ensure all eligible persons remaining unregistered are now added to the lists. The establishment of a permanent register and a system for constantly updating the lists rather than the current annual updates would greatly facilitate this endeavour as well as proving more cost effective and administratively viable.

During the pre-election period there were deaths of some candidates and party activists, intimidation of candidates and voters, inadequate enforcement of the rule of the law, restrictive interpretations of campaign regulations and inadequate and biased media coverage. As a result, the election campaign did not offer parties a fully free environment or equal opportunity, and aspects of the pre-election period therefore fell short of international standards. The election authorities failed to impose the rule of law, instead reverting to informal resolution mechanisms or ignoring violations altogether. As a result, there was an atmosphere of impunity and parties, noticeably the CPP, took full advantage of this to use unfair leverage and pressure against voters, such as through widespread vote buying on the eve of the election.

Electronic media, which is the most important media in the country, failed to adequately cover the election campaign. Coverage focused extensively on the activities of government. When political parties were covered, coverage focused primarily on the CPP. In this respect the media failed to ensure voters were provided with adequate and quality information to enable them to make an informed and free choice on election day. In short though voters may have generally known how to vote they were arguably not sure adequately clear of the meaning of the political choices afforded them or the nature of the bodies being elected. Although the NEC undertook a good level of technical voter education, it failed in its duties to facilitate public awareness of the electoral contest by cancelling a series of election programmes on State TV, which would have offered the public at least some awareness of the political choices in the election.

In technical terms, the preparations for election day and administration of the poll were largely very well conducted. The overall pattern on election day was of a well administered process with voters participating peacefully and in large numbers, with problems limited to isolated incidents. The presence of party agents and observers in all polling stations ensured the transparency of the process, and the good technical preparations for the election in the face of substantial logistical challenges and the good conduct of officials and voters on Election Day represent a strong base for future elections. Further, the large number of registered candidates and elected Council Members, and the large-scale participation of civil society in all aspects of the process is a positive factor for the strengthening of grass-roots democracy in Cambodia.

Whilst the post-election situation was not without its problems, noticeably in the rather poorly administered complaints and appeals procedures, there was no violence and disturbances, which had characterised the post-election environment of the 1998 elections. This is a positive development, and hopefully this can be built upon for the forthcoming National Assembly elections during which the political stakes and possibly tensions will be higher.

In conclusion, whilst the EU EOM has noted some consolidation of various aspects of the democratic process, it also noted some serious irregularities and mal-practices which continue to blight elections in Cambodia. It must be stressed that the concerns identified in this report need to be dealt with to ensure that future elections are not similarly blighted. If such corrosive practices are left un-addressed this might limit the democratic possibilities in Cambodia.

II INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Royal Government of Cambodia, the European Union established an Election Observation Mission (EOM) 19 December 2001 to 26 February 2002. This was the first time that the EU established an EOM to observe local elections, reflecting the importance of the first direct elections of Commune Councils in the modern history of Cambodia. Mr. Carlos Costa Neves (Portugal), a Member of the European Parliament and Vice-Chairman of the Parliament's Committee on ASEAN and South Korea, was appointed as Chief Observer of the EOM.

The decision to deploy an EOM for the local elections was confirmed following the EU Exploratory Mission of July-August 2001 and reflects the EU's continuing involvement in Cambodia, building on the observation mission of 1998 and the on-going programmes of technical assistance in the country. The decision also took account of the importance of the elections in light of the scheduled National Assembly elections in 2003.

The Core Team for the EOM comprised: Deputy Chief Observer, Mark Stevens (UK); Election Adviser, Stefan Krause (Germany); Media Adviser, Andrea Malnati (Italy); LTO Co-ordinator, Delphine Blanchet (France); Logistics Adviser, Robert Berneheim (Sweden).

GTZ was the Implementing Agency, providing logistic and administrative support to the EOM. Karin Roeske acted as the GTZ Liaison Person within the EOM.

The key objectives of the Election Observation Mission were to:

- ❖ Conduct a comprehensive and national analysis of the electoral process, and to offer an impartial, balanced and informed assessment of the election;
- ❖ By the presence of observers, to seek to reduce tension, minimise instances of fraud, intimidation and violence and hopefully give confidence to contestants and voters to participate freely.

The EOM deployed 30 Long Term Observers (LTOs), forming 15 two-person teams, based in Phnom Penh, Siem Reap, Battambang, Kratie, Kampong Chhnang, Kandal, Kampong Cham, Prey Veng, Pursat, Takeo, Kampot, Kampong Thom, Kampong Speu, Svay Rieng, Banteay Meanchey. From these bases LTOs also covered other provinces.

Regular meetings were held with election officials at the national, provincial and commune levels, and with political parties, candidates, civil society and media throughout the country. The EU EOM also maintained close contacts with representatives of EU Member States.

At the time of the election, the mission was joined by some 60 Short Term Observers (STOs) sent by all 15 EU Member States, four bi-lateral STOs from Sweden, a five-person bi-lateral delegation from Switzerland and 12 representatives from EU Member States' embassies accredited to Cambodia.

On election day observers visited 635 (5%) of the 12,543 polling stations, with reports from all 24 provinces. This report consolidates the findings of the entire EOM, taking account of all aspects of the electoral process.

The EU EOM wishes to thank the Royal Government of Cambodia, the National Election Committee and all subordinate committees throughout the country for their co-operation and assistance during the course of the observation. The EU EOM would also like to thank the political parties and civil society organisations in Cambodia as well as EU Member States representatives in the country.

Special thanks are due to the EC Delegation to Cambodia (formerly the EC Technical Co-ordination Office) for their invaluable and unstinting support during all phases of the mission.

This final report presents the findings of the EU EOM, covering the whole process and includes a number of recommendations for future elections.

III POLITICAL BACKGROUND

The holding of Commune elections in Cambodia had been discussed since the 1993 national elections and was even considered at the 1991 Paris Peace Negotiations. The 2002 elections represented the first time that Cambodians were able to cast a vote for their local representatives with any degree of choice between the candidates. Local-level elections were held in the 1960s but only the ruling party was able to put forward candidates. Most incumbent Commune Chiefs were appointed by the government in the 1980s, and virtually all were CPP.

The previous elections in the country were the July 1998 National Assembly elections. These were held in the wake of the July 1997 Crisis, after which a deal had been brokered which enabled Prince Ranariddh to return to Cambodia in March 1998 in preparation for the elections.

In the run-up to the July '98 elections, there was some concern regarding the deterioration of the pre-election environment, and the UN denounced a series of political killings. Thirty-nine political parties were approved by the National Election Committee to participate in the elections. Of these 39, 27 were newly-established parties. During the election campaign in June there were also reports of political intimidation and strong anti-Vietnamese sentiments expressed by candidates. Election Day itself was fairly quiet, though with some claims of malpractice and parties other than CPP claiming irregularities and intimidation. Voter turnout was an impressive 90 percent.

The result of the 1998 National Assembly election was:

Party	Vote Share	Seats	Seat Share
CPP	41.4%	64	52.45%
FUN	31.7%	43	35.25%
SRP	14.3%	15	12.30%

However, there was post-election tension due to the failure of the electoral administration to adequately deal with the complaints and appeals procedures, leading to opposition claims that their legal rights were not being protected. There was also some protest at the fact that the formula for seat allocation was not made public, amid allegations that it had been altered to the favour of the CPP.

After the election there were regular demonstrations outside the National Assembly and later a government crackdown on demonstrators and critics. By November 1998, following talks brokered by the King, Prince Ranariddh agreed to form a coalition government with the CPP¹ and Sam Rainsy formed the parliamentary opposition.

The agreement required considerable bargaining but the new coalition government between the CPP and FUNCINPEC was eventually approved on 30 November 1998. Hun Sen became sole Prime Minister, and Prince Ranariddh President of the National Assembly. The two parties shared ministerial portfolios. The Constitution was modified to provide for the establishment of a Senate, whose Chairman was Chea Sim, the former CPP Chairman of the National Assembly.

In November 1998, the king declared that "The big political crisis in our country has been solved, the political deadlock is over". In the following months, the international community agreed a massive donor aid package, essentially conferring full legitimacy on the newly-elected government of Hun Sen, who then travelled to New York to assume Cambodia's seat at the UN. At around the same time Cambodia was finally admitted to ASEAN.

As mentioned, the holding of Commune-level elections had been discussed since 1993, and the government had been criticised for its prior failure to organise the poll. However, in the context of the political turmoil in the country and the fact that a number of states in the region do not yet hold elections at the local level, the scheduling of these elections is noteworthy.

These elections were important for Cambodia, both because they represented an integral element of the decentralisation process and also because they were a political and technical indicator for the National Assembly elections of 2003. Prior to the elections each of the 1,621 Communes was run by a Chief appointed by the government, close to 100% of whom were CPP. After the elections each Commune would have a Council with multi-party representation. This constitutes a new local political arrangement for Cambodia.

In addition, all of the political parties will look closely at the results of these elections in gauging their strategies for the 2003 national elections, and all parties recognise the importance of the local authorities in determining the local political agenda and therefore facilitating their chances in the national elections.

The elections were also an important technical challenge, as the Cambodians took a more hands-on role in organising the poll in comparison to 1998 and certainly 1993. This is significant in terms of providing important lessons-learned, both operational and procedural, for the 2003 National Assembly elections.

Eight political parties registered for the elections, but the main contenders were the three parliamentary parties.

Hun Sen's Cambodian People's Party (CPP) held a virtual monopoly of local power, as they have been largely responsible for the appointment of officials since the early 1980's. In this sense a main facet of

¹ Article 90 of the Constitution requires the government to enjoy the support of a least 2/3 of the Members of the National Assembly, thus necessitating CPP to find a coalition partner.

the election for the CPP, which is still perceived as the largest party nationally, was the number of communes they could hold on to. Analysis of CPP lists of candidates indicates that the party used these elections to bring 'new blood' into the party. Many incumbent commune chiefs were not on the party list or were placed at a number unlikely to secure their re-election. Local commentators point out that the CPP recognised the unpopularity of some of these chiefs, many of whom have held their position for up to 20 years.

For Prince Ranariddh's FUNCINPEC party and the Sam Rainsy Party (SRP) the elections were an opportunity to try to increase their representative strength around the country. Both parties needed a good showing in the elections to create a momentum of support for the national elections.

Registered Political Parties For 2002 Commune Elections

PARTY	NUMBER OF LISTS	NUMBER OF CANDIDATES
CAMBODIAN PEOPLE'S PARTY (CPP)	1,621	24,948
FUNCINPEC	1,605	23,537
SAM RAINSY PARTY (SRP)	1,501	22,717
KHMER DEMOCRATIC PARTY (KDP)	75	1,042
VKMNP	6	100
KHMER PROSPERITY PARTY (CNKP)	5	63
KHMER ANGKOR PARTY (KAP)	4	38
KHMER WOMEN'S PARTY (KWP)	1	18

IV LEGAL FRAMEWORK

A. General Outline of Relevant Legislation

Cambodia's 3 February 2002 Commune Elections were governed by a number of laws. The main legal documents for these elections were the Law on the Election of Commune Councils, adopted by the National Assembly on 18 January 2001, which defined the organisational and administrative procedures for the election, and the 2001 Law on Commune Administration, which defines the powers and functions of the Commune Councils.

Provisions from the following legal documents also governed aspects of the Commune Elections: the Constitution of the Kingdom of Cambodia (1993); the Law on the Election of Members of the National Assembly (1997, amended in 1998); the Law on Creation of Political Parties (1997); and the Law on Nationality (1996).

In addition, the National Election Committee issued Regulations and Directives interpreting the Law and further detailing the implementation of legal provisions, as well as Codes of Ethics regarding, among others, the election campaign, the role of party agents and election observers.

The National Committee for the Support of Commune Councils, which is an inter-ministerial body operating under the supervision of the Ministry of Interior, also issued regulations and instructions.

B. Electoral System

1. Background

Prior to the finalisation of the procedures for the election there was a great deal of debate with regards the electoral system. Some advocated a system whereby the people were able to vote directly for the Chief of the Commune in addition to a vote for a party. The attraction of this was that it offered smaller parties an opportunity to circumvent the dominant vote of the largest party as well as increase the accountability of the elected members to the electorate rather than to their party.

The system chosen allowed people to cast a vote only for the party of their choice with the party determining the list order and hence the candidate for Chief. Critics pointed out that voters were not able to choose their elected representative, with parties retaining full control of the selected members, thereby decreasing the accountability of representatives. However, the attraction of the system is that it is simple and easily understood by voters who only have to select the party of their choice.

2. The Electoral System

The Law on the Election of Commune Councils provides for the election of Commune Councils for each of Cambodia's 1,621 Communes. Commune Councils are elected by a system of proportional representation for a five-year term. The number of council seats varies between five and 11, depending on the number of residents in a Commune.

Commune Councillors are elected on the basis of lists put forward by political parties. Once the lists are approved, neither the candidates nor their order on the list may be changed. There is no provision for independent lists or individual candidates to compete in Commune Elections. Names of candidates do not appear on the ballot, which contains only the name and symbol of the party. Voters are required to just cast a single vote for the party of their choice.

Commune Council seats are distributed under a proportional formula, which is described in detail in the Law on the Election of Commune Councils². Under this formula, a quota is determined by dividing the number of valid votes cast in a Commune by the number of council seats available in that Commune. Then, each party's vote total is divided by the Commune-specific quota, and a party receives seats equalling the quotient of that division (without the remainder). If seats are still to be allocated after that step, the highest-average method is used to allocate these. Any remaining seats are then allocated using the highest remainder method.

The position of Commune Chief automatically goes to the top candidate of the list receiving the highest number of votes. The top candidate of the party coming in second becomes First Deputy Commune Chief, the top candidate of the third party becomes Second Deputy Commune Chief.

However, if only two parties win seats in a Commune Council, which is quite common in Cambodia, the positions of Commune Chief and First Deputy Commune Chief go to the first and second-placed candidates of the largest party³. The top candidate of the second party becomes Second Deputy Commune Chief. If only one party wins council seats, the three positions are filled by the candidates placed in the first three positions of that party's list.

² Chapter IV, Articles 21-28

³ This further reinforces the benefit of the electoral system for the largest party in the country

C Issues

1. Size of Candidate Lists

Parties must submit candidate lists with twice as many candidates as there are council seats. This provision ensures that there are enough candidates to replace council members if they give up their council seat or die before the end of the council's mandate, or if they withdraw before the elections.

However, such a requirement is rather excessive and made it difficult for smaller parties to find a sufficient number of candidates. In some Communes, even bigger parties lacked the resources to field candidate lists. In the event, only the Cambodian People's Party was able to run in all 1,621 Communes, and ran unopposed in 14 Communes.

2. Communes with Only One Party Competing

Both SRP and FUNCINPEC raised concerns at the lack of competition in some of the Communes, claiming that this was not democratic and also that in some instances they were prevented from registering candidates due to intimidation of their members by CPP.

Whilst it is not ideal that voters were not offered a choice between parties in 14 Communes, the law does foresee the possibility of a single party running in a Commune and therefore there is no basis for rejecting an election simply on the basis that there was no competition.

Based on the reports of LTOs, there were indications that only the CPP had the organisational capacity to establish lists in each and every commune. This was partly due to registration procedures requiring a prospective candidate to be a registered voter in the Commune in which they wanted to stand (which is reasonable, especially for local elections), partly due to the size of candidate lists having to be submitted (see above) and partly due to the nature of the 14 Communes in question.

Of the 14 Communes in which only the CPP was competing, 5 were in the northern province of Otdar Meanchey, all in Trapaeng Prasat District, and a further five in the western province of Pursat, where a whole district, Veal Veng, was without competition⁴. This specific district was under Khmer Rouge control up to 1998 and political organisation is still in its infancy, with only the governing CPP able to muster support or establish a party infrastructure.

Both FUNCINPEC and SRP made some accusations of intimidation by CPP, but at the local level representatives of both parties acknowledged that they simply lacked the support base or resources to make an impact in the areas.

In all cases the communes in question are remote and contain very small numbers of voters compared to the national average (546 compared to 3,208). The total number of voters in the 14 Communes was 7,657.

3. The Electoral Formula

There has been some debate regarding the electoral system and the formula used for seat allocation, with some criticism that voters were not offered the possibility to directly elect the Commune Chief and some criticism that the electoral formula unfairly favours the largest party.

It is usually argued that proportional systems offer increased possibility for representation for smaller parties than majority systems. However, within the family of proportional systems there are variances in the degree to which a system may slightly favour larger or smaller parties.

The formula used in Cambodia's Commune Elections yields the same results as the widely-used d'Hondt formula and is a perfectly legitimate system, though it does, in smaller constituencies, tend to favour the larger, stronger parties.

⁴ The remaining Communes were in Mondulkiri, Preah Vihear and Ratanakiri (2).

In the 1998 National Assembly Elections, problems arose from the fact that the formula to be used was not detailed in the Law on the Election of Members of the National Assembly, which led to allegations that the formula had been changed to favour one political party. Therefore, it is to be welcomed that the seat-allocation formula is detailed in the Law on the Election of Commune Councils.

However, the small number of Commune Council seats at stake in each Commune means that the application of an equivalent of the d'Hondt formula tends to favour the party which received the highest number of votes, particularly in the smaller Communes (5 or 7 seats).

The key determinants for any electoral system are that it enjoys political consensus, is understandable to voters and parties and that once the vote totals are known the results are predictable. In this respect, whilst parliament and civil society may continue to debate prospective changes to the existing system, and the various merits of other models, now that the system, which is widely used internationally, is explained in the Commune Election law and has been used both in 1998 and 2002, it clearly meets the criteria for legitimacy.

4. Powers and Functions of Commune Councils

The Law on Administration of Commune Councils outlines the role of each Council. Primarily they are to be responsible for a modest budget and a local development plan as they help run local affairs as well as have an agency role to represent the state. In addition, they are tasked with "organising" village chiefs and taking care of public order.

It is noticeable in the law, that the Ministry of Interior, in co-ordination with the inter-Ministerial National Committee for Support of Commune Councils (NCSC), retains a significant role in relation to the rights, powers and functions of the Councils, to the extent that Councils are less accountable to their constituents than they are to the Ministry of Interior, the NCSC and the leadership of the political parties.

For example, notwithstanding the co-ordination between the Ministry of Interior and the NCSC, the Law on Administration of Commune Councils explicitly states that the Ministry of Interior has the right to further define the limitations and powers of the Councils as it deems fit (Articles 22, 23, 47, 50, 51). The Ministry as part of its monitoring role, can choose to delegate some Commune powers to government officials at the Province / Municipal or District levels (Article 53).

The Ministry can intervene in the work of the Commune if it deems the Commune is not meeting its legal duty (Article 54). If within six months the Council has not met its legal duty as defined by the Ministry, then the Ministry can dismiss the Council and hold a by-election (Article 57).

Further, the Ministry can also dismiss a Council deemed to be acting contrary to the Constitution and government policy (Article 58). This element is potentially worrying, as Council's have been elected by the local population for the very purpose of representing their local interests, which might be against national government policy.

A further important power of the new Councils to be defined at a later point is their role in organising for the election of local village chiefs, which will be extremely important in terms of the local power structure around the country.

It is also interesting to note that, as for Parliamentary elections, the mandate belongs to the party and not the Member of the Council⁵. Therefore, if a person loses their party membership, they will be replaced in the Council by the next candidate on the list. Such a condition somewhat undermines the accountability of an elected member to their constituents, making them instead more responsible to the party leadership.

A Commune Chief can also appoint a Committee to give advice and assistance, which does not need to include members of the Council. This could be used by a Commune Chief to circumvent the elected Council (Article 27).

⁵ Article 16 of the law on Administration of the Commune Councils

It will be important in the months after the election to scrutinise the decisions of the Ministry of Interior in relation to the newly-elected Councils to ensure that the powers of the Councils are not circumvented and to make sure that the Councils are not treated differently according to their political composition.

5. Conclusions on the Law on the Election of Commune Councils

The Law on the Election of Commune Councils generally provides an adequate framework for competitive elections. Still, some of its provisions have drawn criticism, as have certain NEC regulations further detailing provisions in the Law.

Positive aspects of the Law on the Election of Commune Councils include:

- Access for agents of political parties and election observers to all stages of the electoral process, from voter registration to post-election complaints and appeals. This opened the electoral process to public scrutiny and served to increase transparency of the overall process thereby increasing the confidence of the political parties in the process.
- Detailing the seat-allocation formula, thus avoiding allegations that the formula was changed for political reasons.
- A fuller explanation of complaints and appeals procedures. This includes various stages of the election process, including voter and candidate registration and post-election claims and appeals. However, it is clear from the experience of the Commune elections that much work remains to be done in this respect, particularly with regards simplifying the administrative procedures and ensuring they are more widely understood by election officials, political parties and civil society.
- Obligations on public authorities to provide equal campaign opportunities to proponents of political parties.

However, the Law contains a number of shortcomings which raise concern.

- Election committees at PEC and CEC levels, as well as polling station officials, are appointed without a specific requirement for multi-party representation. Even at the NEC level, party representatives account for only four out of 11 committee members⁶. This has led to allegations that the election administration was dominated by CPP affiliates.
- The Law does not provide for recourse to the judiciary at any stage for election complaints⁷, and the electoral authorities, which have legal competency in this regard, appear unwilling or unable to meet their responsibilities. While it is reasonable to limit the possibility to challenge decisions of electoral bodies in court, in particular in the case of local elections, the authorities should consider this possibility in specific cases, such as final NEC decisions on candidate list registration or post-election disputes affecting the final outcome in a Commune. This is discussed further in Section VIII.
- There is an absence of regulations for media coverage of the election campaign. While it has been argued that state-controlled media should refrain from centrally covering a local election campaign, the lack of legal provisions governing the media during the election campaign period resulted in strongly im-balanced coverage of the various parties and confusion among electoral authorities and political parties regarding media and NEC responsibilities. In short it is clear in Cambodia at present that state media provides biased coverage and voters are not provided with complete and accurate information, thereby negating the possibility for them to make a free and informed choice on election day. In such a circumstance, the NEC as the body ultimately responsible for the election should be compelled to address the situation. This is discussed further in Section V.

⁶ One of these four party members represents MOLINAKA, a party which is no longer represented in the National Assembly

⁷ Cases of a criminal and penal nature are dealt with by the judiciary.

- Some deadlines in the Law are very tight. Most notably, candidate registration lasts only three days, and once the lists have been submitted, the Commune Election Committees have just one day to examine candidate lists, and three days to post them publicly. Such tight deadlines could lead to logistical problems which would then have to be addressed in a claims and appeals process.
- The Law provides for the creation of an NGO Co-ordinating Council (NGO CC) for the Commune elections, which is elected by the NGO community but answerable to the NEC. The NEC, after consulting with the NGO CC, determines the number of non-partisan observers and the necessary qualifications. The NEC may also dismiss NGO CC members for violating the election law or NEC regulations and procedures. If the NGO CC's role is interpreted in a restrictive way, it could result in a limitation on domestic observation. The presence of such a body also results in administrative repetition, wasted financial resources (for example, the NGOCC is mandated with training observers even though NGOs already receive funding for training their own observers) and in-fighting within the NGO community, diverting energy and resources. In short, the NEC should be able to facilitate observer accreditation without the need for a new body. Further, it is questionable whether NGOs should be legally compelled to comply with the direction, on issues such as deployment, of a body affiliated to the very authorities they are observing. In fact this is a contradiction of the very independence which makes domestic observers such a valuable contribution to the transparency of the process.

It is noted that the body was created for the Commune elections and it is hoped that the exercise is not replicated either for future Commune elections or for the National Assembly elections.

V PRE-ELECTION PHASE

A Election Administration

The Commune Elections were administered by a four-tiered election administration. At the highest level is the National Election Committee (NEC). In addition, there were 24 Provincial Election Committees (PEC), 1,621 Commune Election Committees (CEC), and 12,534 polling stations staffed with over 62,000 polling station officials.

Overall, more than 85,000 persons were involved in administering the election process at various levels, including over 12,000 during the registration of voters.

The **National Election Committee (NEC)** currently has 11 members, consisting of:

- Chairman and Deputy Chairman, both to be a "Khmer Dignitary" with professional experience
- Two "Citizen Representatives";
- One Representative from each party in the National Assembly. At present there are four such members because MOLINAKA has a representative despite losing its single seat in the National Assembly in 1998;
- Two representatives from the Ministry of Interior;
- One NGO representative.

The NEC is appointed by decree on the proposal of the Council of Ministers based on a list submitted by the Ministry of Interior. Members need the support of the absolute majority of the National Assembly.

The NEC has a technical staff, which is organised under a Secretary General. Appointed Committee members act as departmental heads of various technical sections, such as media or legal. The technical staff carried out their duties in a professional manner. Concerns are mostly raised regarding the composition and orientation of the appointed NEC members.

NEC appoints all lower-level committees and has overall responsibility for organising and controlling the elections. The NEC issues all instructions, is the point of final instance for complaints and issues the final official results⁸.

Provisional Election Committees (PECs) have a Chairperson and Deputy Chairperson plus 3-5 members. PEC hears complaints and appeals in the second instance, distributes materials to CECs, receives results from CECs and announces the allocation of seats and the elected candidates.

Commune Election Committees (CECs) Have a Chairperson and Deputy Chairperson plus three members. CECs helps organise materials and training for their area, are the point of first instance for complaints and issue preliminary results of party vote totals.

Polling Station officials are recruited through public advertisements and in each polling station there will be a Chairperson, Deputy Chairperson, Secretary and between 2-4 members

B National Election Committee

1. Structure and Functions of the NEC

Some parties and representatives of civil society have raised concerns regarding the independence and impartiality of the NEC, claiming it is dominated by people close to the ruling CPP. Whilst the 5-year mandate of the NEC meant that the composition would remain the same until after the 2002 elections, the degree of criticism the body received after the 1998 elections and the fact that many national and international bodies did question its impartiality meant that this issue would likely hang over the NEC during these elections. Indeed, in its final report on the Commune Elections, the US National Democratic Institute stated that "...the legal framework for the 2002 elections failed to establish independent or impartial electoral authorities....and the NEC retained essentially the same CPP-dominated membership it had in 1998".⁹

Similar concerns have been raised with regards to PECs and CECs. Despite these allegations, there was widespread agreement that election officials at the various levels administered the election process in a professional and efficient manner, and that there were few technical problems. However, criticism of NEC decisions were usually couched in terms of its perceived political affiliation. Given the nature of its current membership, it will always be open to such conjecture, which is damaging for the integrity of the process.

Overall, there is a perceptible difference between the technical aspects of the NEC's work, which are encouraging, and some decisions of a more political nature, taken by the 11-person appointed NEC, which raised concerns. This highlights the need of a planned reform of the NEC before the 2003 National Assembly elections¹⁰. This reform should result in a National Election Committee that is, and is seen to be, both neutral and independent in its composition and work.

In order to achieve this goal, there are two possible approaches. The first is to make the NEC completely independent from party influences by drawing its members from various quarters of society and not provide for any political-party representation. The second approach is to create a balanced NEC consisting of members nominated by political parties, ensuring that no single party holds a majority on the body, whilst also ensuring the body has a legal and technical competence.

While the concept of an independent national election body without party representatives is appealing, it is doubtful whether it could function in Cambodia's politicised and often polarised society. There is a strong possibility that while nominally independent, such a body would be the target of allegations that its members are controlled by one party or another and are not truly independent or impartial. An openly

⁸ After a spate of killings and criticism from national and international communities, the government also established the central Security office for the defence of the Commune Elections. This body was presided over by the deputy Prime Minister and included representatives from the Ministry of Interior, the Ministry of Defence, the police, military and the NEC

⁹ NDI, Final Report March 2002, p.7.

¹⁰ The Prime Minister publicly acknowledged his support for reform of the NEC prior to the 2003 National Assembly elections at a donor meeting in Phnom Penh in January 2002.

political, multiparty election administration, on the other hand, could serve to increase transparency since citizens would know which members represent which parties. In the current situation, such an approach might be more practical and adequate, though this of course remains a matter of judgement for Cambodian political and civil society and must be ultimately legislated for.

However, a few prerequisites need to be met to establish a multi-party administration which can function properly and professionally. These include that at least some of its members must meet certain professional requirements, such as having a legal background; mechanisms which ensure that no party can dominate Committees at any level and encourage Committee members to seek consensus on key issues; a nomination process which allows parties to freely choose their representatives while encouraging the selection of persons who can work together; provisions ensuring that key positions on Committees (such as chairperson, deputy chairperson, and secretary) do not go to one and the same party.

Given these conditions, a five or seven person NEC could be considered, for example, with the Chairman and Deputy Chairman, with appropriate legal or technical experience, appointed by a decision of parliament, and a representative from each of the three existing parliamentary parties making the third, fourth and fifth members. If it is deemed desirable to have a 7-person membership, the extra positions might be filled by persons representing civil society.

It could, and arguably should, also be considered to allow any other political party competing in the National Assembly elections to have some form of representation on the electoral bodies at the time of the election. Such membership could be in the form of a non-voting position, which would mean the transparency and inclusiveness of the process is guaranteed without saddling the NEC with too large a membership.

2. NEC Directives

The NEC issued a number of directives to subordinate Committees during the course of the process to clarify, reiterate or establish procedures. However, there were concerns that a number of these directives were issued relatively late and others were contradictory.

For example, some problems encountered on polling day stemmed from the fact that the NEC issued regulations detailing certain aspects of the election process at a very late stage, in some cases just days before election day. These included a directive whereby to ensure the secrecy of the vote, only ballots marked with the pens provided in the polling booths should be considered valid, which led to the invalidation of a number of votes.

Regulations must be issued well in time to ensure they are well understood among officials and stakeholders. For example, issuing last minute instructions on voting procedures means such requirements were not included in the voter education materials and would therefore not necessarily be understood by voters.

C Voter Registration

Cambodian citizens who are 18 years or older on the day of the election are eligible to vote. Citizens are required to register in the list of voters of their Commune, proving citizenship and residence. They are then issued a voter registration card which they must produce on election day in order to vote¹¹. All persons must be on the voter list to be able to vote.

Each Commune has its own voter list, which are to be established at least 90 days before election day. By law, the voter registers have to be updated, with registration confirmed or new registrants added¹². In addition, people needed to be registered by Commune for these elections and not by Province as was the case in 1998. Voter Registration was carried out in July / August 2001 and ultimately resulted in some 5.2 million persons being registered.

¹¹ If a voter lost their card prior to the election they were able to apply for a Substitute Certificate, proving eligibility.

¹² Article 50 of the Law on Local Elections

Citizens denied voter registration had the possibility to appeal the decision of the voter registration office with the CEC, and a CEC decision with the PEC, whose decision was final. In addition, any voter could file complaints with the CEC about the preliminary voter list once it had been published. The decision to reject such a complaint could also be appealed with the PEC, which issued a final ruling.

1. Analysis of the Voter Registration Process

For the 2002 Commune elections, the NEC operated with a target figure of 6,251,832 eligible voters. Of these, 4,597,691, or 73.54%, had their registration confirmed or were newly registered during the regular registration period lasting from 21 July to 19 August 2001.

Due to allegations that the registration process had been flawed in a number of respects, the NEC decided to extend the registration to 26 August. During the extension, 594,120 additional voters were registered, bringing the total up to 5,191,811, or 83.04% of the eligible electorate.

After the complaints and appeals process on voter registration, the final number of registered voters stood at 5,190,307.

This figure of 5.19 million represents 83% of the target electorate as identified by the NEC at the outset of the process¹³. Reasons for the failure to capture a larger number of voters include:

- A question mark over the reliability of the original figure of over 6 million eligible persons. The Secretary General of the NEC claims that local officials told him that the figures were not realistic and were too high. However, during the period of extended registration, which the NEC conducted in August after pressure from political parties, civil society and the international community, over 500,000 extra voters were captured, indicating shortcomings in the initial process.
- Due to the fact that these were commune-level elections, persons had to return to their ordinary commune of residence to register. This proved difficult and financially unattractive for certain groups of people, such as itinerant manual labourers, factory workers and students. Whilst this stipulation did in practice adversely affect the possibility of these groups to vote, it is at the same time a common and reasonable stipulation which safeguards the administrative aspects of the process.
- The fact that the registration was conducted during the rainy season impacted on the ability of the registration teams to reach all areas.
- The registration teams did not adequately advertise the schedules for the mobile units, resulting in people missing their opportunity to register. Registration teams also ran into a number of technical difficulties and were victims of poor organisation, in terms of film running short, being of poor quality or cameras being in the wrong place at the wrong time. Also, due to registration teams being mobile, registration centres were in effect only open for three days rather than the advertised two weeks. As a result, the process missed some voters whilst others became frustrated at the laborious procedures and may have decided not to pursue their quest to be registered.
- The level of bureaucracy required to register represented an impediment and disincentive for many people for whom such procedures were unfamiliar or for whom the need to return a number of times to the registration centres was both time consuming, costly and inconvenient. Further, there were credible allegations that some local officials were demanding money for documents, such as proof of residence, when they are supposed to be free. This, of course, added as a further disincentive to some voters.

The NEC and UNDP claim that the registration process was successful and that 83% represents a credible figure. Other institutions continue to raise serious questions regarding the registration process, with claims that voters in certain areas known to be opponents of the then-local authorities were deliberately excluded from the registration for political purposes.

¹³ The increase in the provinces ranged from 0.0% in Stung Treng to 137.4% in Pailin.

The EU EOM found that though some groups of citizens, such as students and itinerant workers, may have found returning to their original place of residence troublesome and that on election day small numbers of persons reported not being registered at all, the identified shortcomings in the registration process were not national in dimension.

However, the EU EOM is sensitive to the concerns of some groups in this regard and therefore hopes that the existing registration can now be built upon, with a permanent register established. This will ensure that if there are any gaps then they can be addressed in an on-going effort to ensure all eligible persons are registered. Such a permanent register will be more efficient and cost-effective.

2. Accuracy of Voter Lists

There were a number of glitches in the compilation of computerised voter lists. It is not clear whether these were due to software problems or human error during the inputting process. Ultimately, these mistakes affected only a limited number of polling stations (Battambang seemed to be particularly affected), where officials had to use the original hand-written voter lists, which had been foreseen as a backup and which offered a guarantee to voters.

It was reported that many citizens did not check the preliminary voter lists when these were displayed publicly. Their failure to check that they were indeed on the voter register, and there is a responsibility on the voters as well in this regard, effectively eliminated one step of verification and adds explanation as to the inaccuracy of some lists on election day.

3. Voter Registration Appeals Procedures

Article 76 of the Law on Local Elections states that: "every person may have a right to file a written complaint to the CEC against the preliminary voters list..."

The CEC is obligated to post publicly the name of the person against whom the complaint has been brought. If as a result of this a person is to be deleted from the list then they have the right to bring a counter complaint.

This procedure effectively places an obligation on voters to ensure they are aware that a complaint has been lodged against them and then prove their eligibility. This proof and defence can continue up to provincial level if a complaint continues to be brought.

In addition, it was reported during the registration process that SRP activists in many areas had been instructed to object against names on the list which appeared to be Vietnamese names, regardless of whether there was any evidence or not of them not meeting eligibility requirements. COFFEL reported that 494 such cases related to nationality issues were heard in Phnom Penh alone, the vast majority of which were brought by SRP agents.

D Registration of Parties and Candidate Lists

To be eligible for candidature persons must be of "Khmer nationality by birth," at least 25 years old on election day, able to read and write Khmer, and resident in the Commune where they intend to stand. Only political parties registered according to the 1997 Law on Political Parties¹⁴ can put forward candidate lists, no Independent Lists or Independent Candidates are allowed.

Members of the government, the National Assembly, the Senate or the Constitutional Council, delegates of the government, governors and deputy governors of provinces or districts, judges, civil servants, members of the security forces, court officials, election officials at all levels, monks and priests, and commune clerks are not eligible to stand in commune elections.

¹⁴ A group of 80 Khmer citizens, being a least 18 years of age and having permanent residence in the country may create a political party by notifying in writing the Ministry of Interior (Article 9). Each party must draft its Statutes in accordance with provisions of the Law (Article 10). To be granted legal recognition a party must have at least 4,000 members from several Khets and Khrungs (Article 19).

However, civil servants, court officials, members of the security forces may run if they take leave of absence at least seven days before the start of the election campaign (that is three weeks before election day). For the 2002 elections, the same provision applied to incumbent commune chiefs and their deputies.

Candidate registration was conducted in October 2001. Eight political parties registered for the elections. The total number of registered candidates on party lists was 75,655. There were only three appeals to the NEC regarding candidate registration. Two of these appeals were accepted and one was rejected. Out of the 75,655 candidates, 12,277 were women (16%).

To be eligible for candidacy a person needs to be a Cambodian citizen at birth and needs to be able to read and write Khmer. Candidates must also be at least 25 years of age.

1. Rejection of Candidates and Party Lists

Article 121 of the Election Law states that if a candidate is rejected by a CEC then the entire candidate list is deleted. This is an unreasonable penalty against the party list as the article is currently written. In practice, the level of power afforded to lower-level Committees caused concern among NGOs and some parliamentarians and in response the Constitutional Council ruled that such “modifications” made by Committees at that appeals stage should not result in disqualification of the party list. As a result, no problems in relation to this were reported by parties during the registration process. However, the Law needs to reflect the spirit of the ruling by the Council.

E Media and the Elections

1. Media Landscape

According to a recent nation-wide survey¹⁵, 32% of the population cited *TV* as the main medium from which they get their information about what is happening in the country. 29% cited *Radio* as their main source of information, 22% *Friends, Family and Neighbours* and just 3% cited *Newspapers*.

There are six Cambodian TV channels but none of them is able to broadcast nationally. State-owned TVK can reach almost 90% of the population and TV5 (co-owned by the Royal Army and a private Thai company) almost 80%. These are the two most watched TV stations. Other TV stations are: TV9 Khmer, TV3 Phnom Penh, TV Bayon and TV Apsara. The National TVK has a daily regional 45 minutes long edition of the News in some of the provinces (Siem Reap, Battambang, Sihanoukville, Koh Kong and Ratanakiri).

Fifteen Radio Stations broadcast in Khmer (including Voice of America and Radio Free Asia), between them the three most listened to are: FM103, Radio Bayon and the State-owned National Radio (AM918), which is the only one with a nation-wide coverage.

The most widely read newspapers are: Rasmey Kampuchea (20,000 copies per day), Koh Santepheap (5,000), Moneaksekar Khmer (4,000), Udom Kate Khmer (4,000) and Chakraval (4,000). The bi-lingual English/Khmer Cambodia Daily prints some 4,000 copies per day and, since it has reporters able to travel throughout the country, it is often used as a source of information by other media. It is also widely read by representatives of the international community based in Phnom Penh.

The media landscape in Cambodia is, generally speaking, highly problematic. There is a lack of training and professionalism among many journalists, a lack of a true media market, very limited operating budgets for media and very low salary levels. These factors are compounded by the difficulties of communications throughout the country. Moreover the heritage of the historical and political facts of the last thirty years tends to result in self-censorship among owners, editors and journalists alike, who fear retribution for publication of articles which are too critical of powerful figures.

¹⁵ *Democracy in Cambodia – A survey of the Cambodian Electorate, Centre for Advanced Study and The Asia Foundation, 2001.*

2. Media Legal Framework

The *Law on the Press* (adopted by the National Assembly on July 18, 1995) generally "assures freedom of the press and freedom of publication in conformity with articles 31 and 41 of the Constitution".

According to a recent report made by Human Rights Watch: "No newspapers [nor electronic media] were closed by the Government during 2001 and little or no action has been taken recently against coverage that is critical of the Government or the ruling parties". This is a positive indicator, but can be partly accounted for by the fact that media know the red lines in the country and therefore practice self-censorship to avoid any confrontation with the authorities.

The *Law on Elections of The Commune Councils*, the *Regulations and Procedures for the Commune Council Elections*, the *Code of Ethics for Political Parties [...]* and the *Code of Ethics for Reporters* provide just general rules for the Media. These rules can be summarised as follows:

- State-run media shall not be used for the benefit of parties or candidates.
- State-run media shall disseminate all information requested by the NEC, free of charge.
- Private Radio and Television shall be equally open and rented at reasonable price to all political parties.
- The activities of the electoral campaign shall be prohibited one day before the polling day and on the polling day (i.e. all media shall be prohibited from disseminating electoral campaign information during these two days).

3. EU EOM Media Monitoring¹⁶

The EUEOM media monitoring unit was comprised of a Media Adviser and six Cambodian monitoring assistants. Monitoring of the media began on 29 December 2001 and ended on 3 February 2002.

The following media were monitored.

TV Channels (every day from 16.00 to 24.00 hours):

- Channel 7 TVK (State-owned television);
- Channel 5 (military/private television);
- Channel 3 (Phnom Penh municipal/private television)

Radio stations (only the main editions of the News):

- National Radio (News at 11.30 hours);
- Radio Free Asia (News at 19.30 hours);
- Voice of America (News at 20.30 hours)

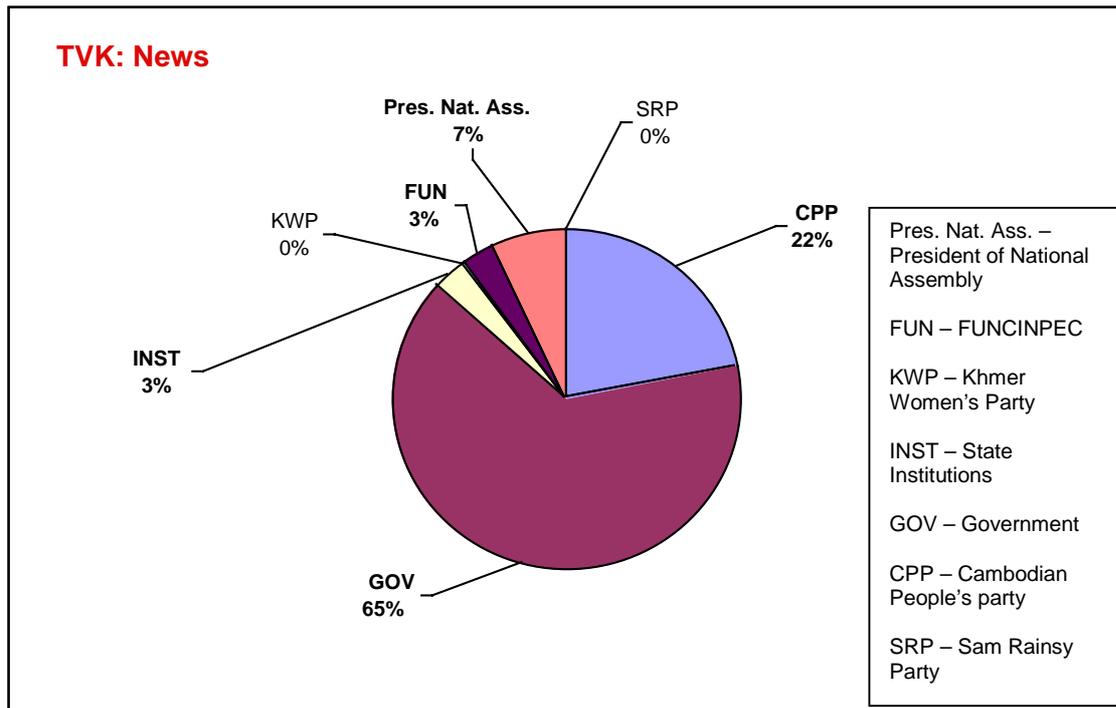
Newspapers (5 of the daily newspapers)

- Rasmey Kampuchea;
- Chakraval;
- Koh Santepheap;
- Moneaksekar Khmer;
- Udom Kate Khmer

¹⁶ All the following statistical analysis is based on the findings of the EO EOM Media Monitoring Unit

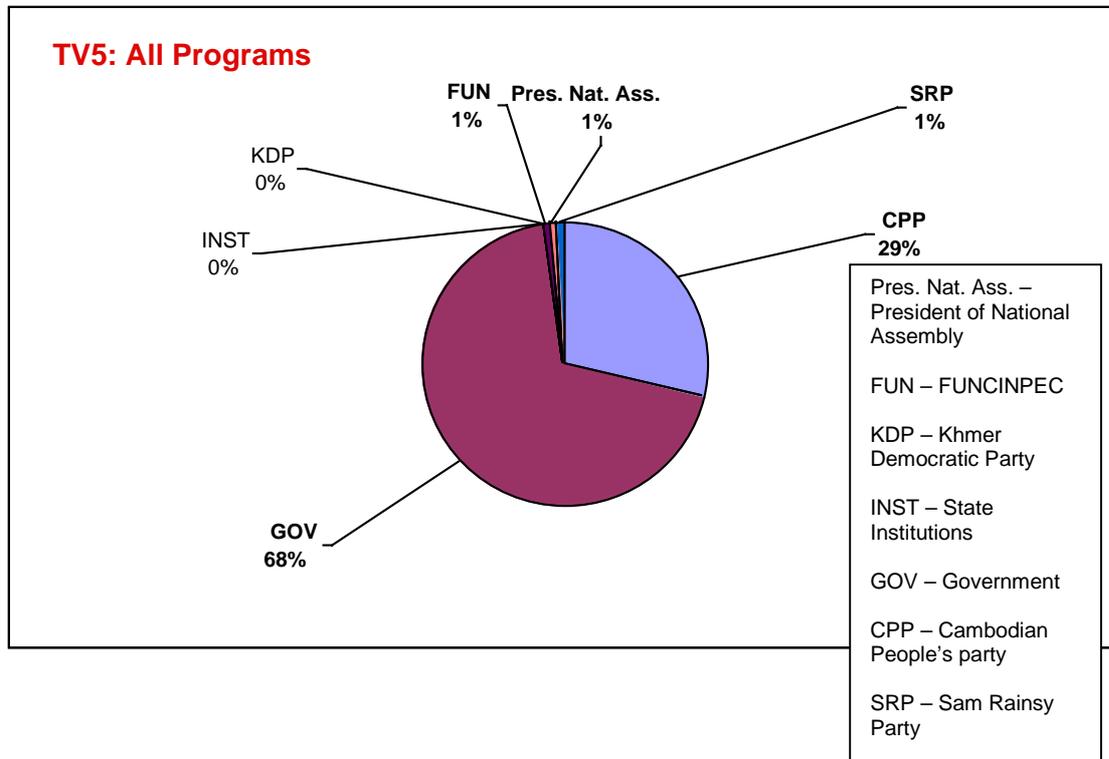
TVK Coverage

The State-owned TVK offered by far the most coverage of politics among the media nationally and is the main source of information for Cambodians. In its news editions TVK gave 65% of its political coverage to the Government, 22% to CPP, 7% to the President of the National Assembly and 3% to FUNCINPEC. SRP received less than 1%.



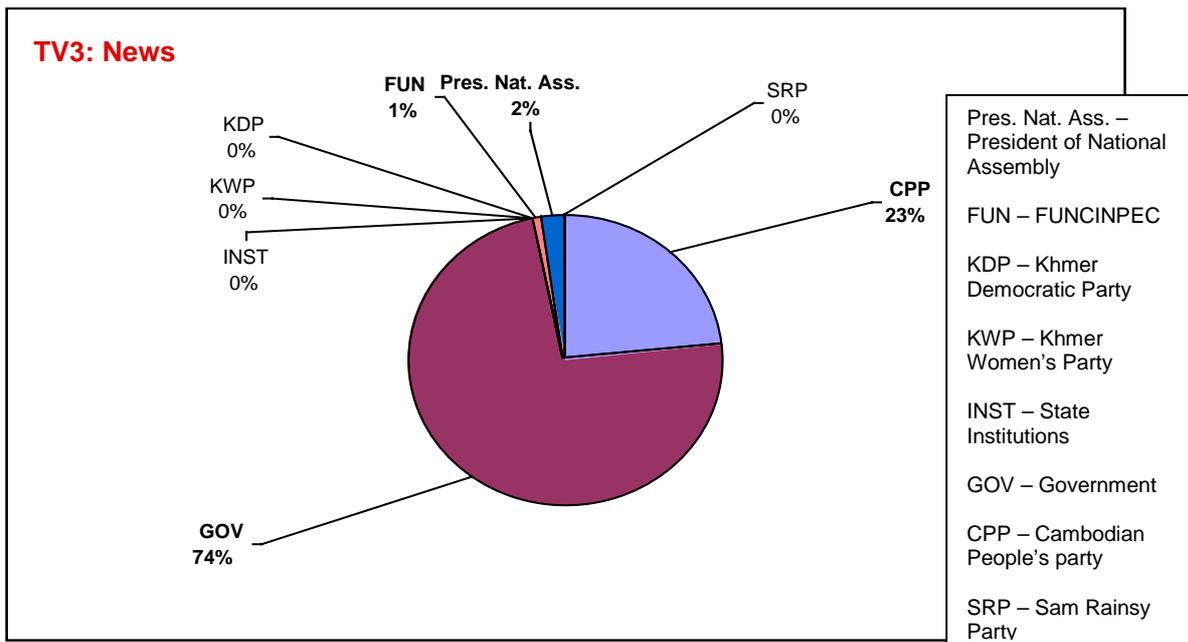
TV5 Coverage

TV5 is the most important private channel and presents a quite similar form of coverage to the State-owned TVK. In all the monitored programs, the Government received 68% of coverage, CPP 29%, FUNCINPEC, President of the National Assembly and SRP 1% each. In the news programming the situation is only slightly different but no better: Government 61% of coverage, CPP 37%, FUNCINPEC and President of the National Assembly 1% each, SRP less than 1%. Speech opportunities were given to CPP (almost 25 minutes) and members of the Government (less than 4 minutes). The Tone of the coverage was mainly positive or neutral.



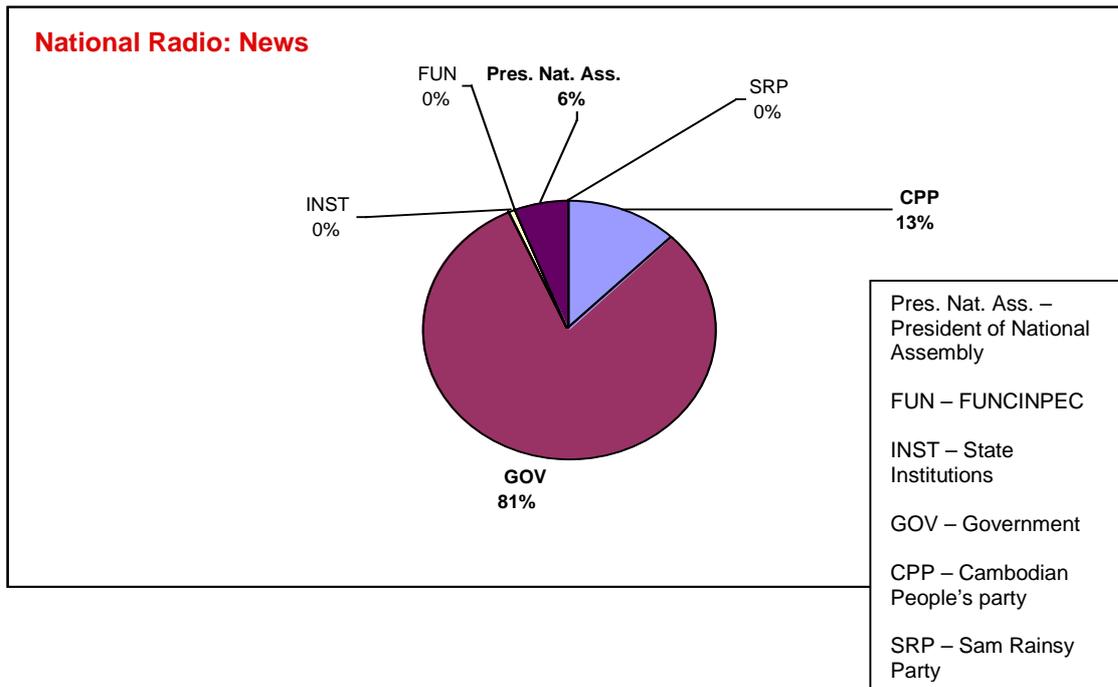
TV3 Coverage

Coverage offered in the news of the private TV3 was even more extreme in its bias. The Government received 73% of coverage, CPP 23%, FUNCINPEC 1%, the President of the National Assembly 2% and SRP less than 1%. In all the monitored programs CPP and the Government together reach 98% of the total coverage. The tone of the coverage is generally positive.



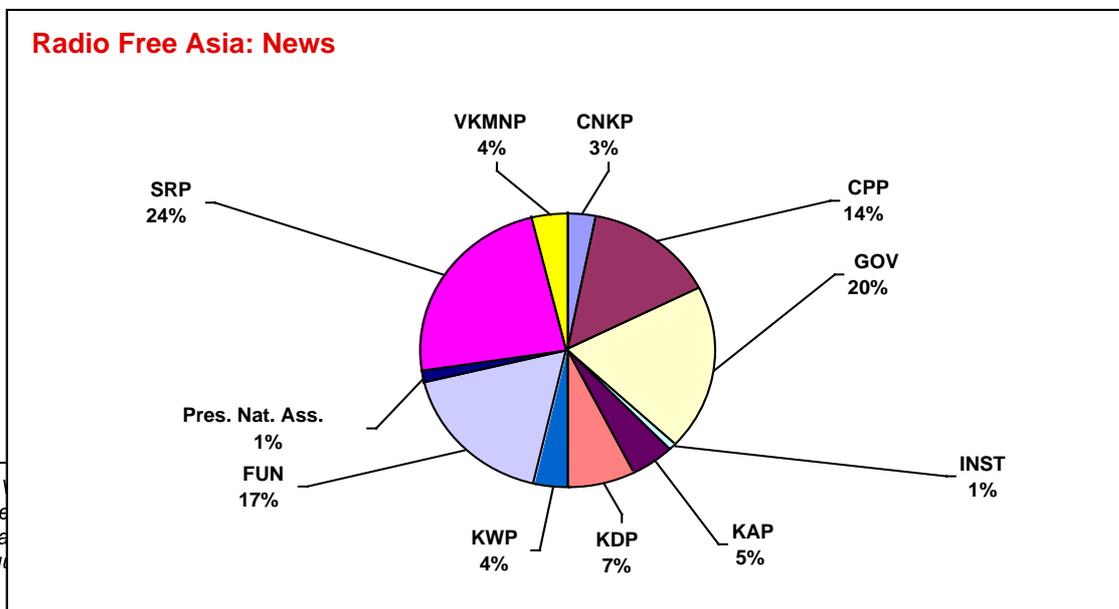
National Radio Coverage

The news programming of the other state-owned electronic media follows the same pattern. The government received 81% of coverage, CPP 13%, President of the National Assembly 6% and the rest less than 1%. Monitoring showed that out of 12 hours of total “speech opportunities” afforded to participants during the monitored period, well over 10 hours was afforded to Prime Minister Hun Sen and other members of the Government. The tone of this coverage was again very positive.



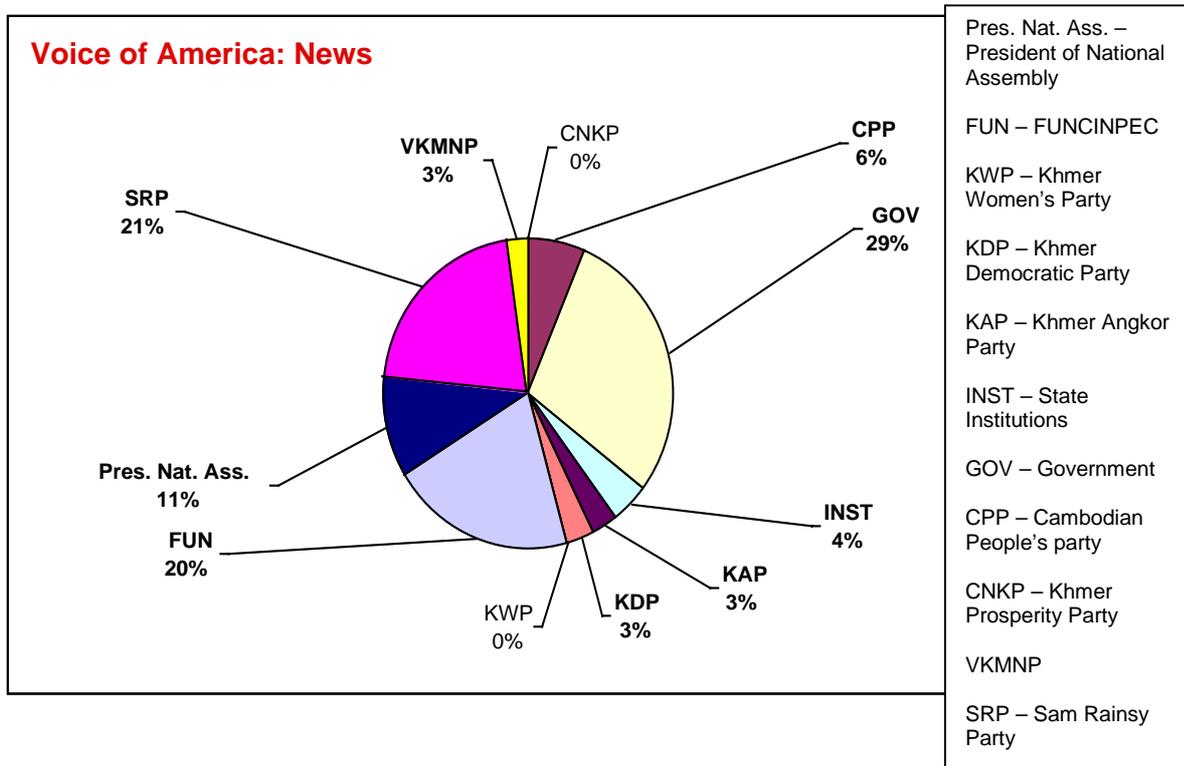
Radio Free Asia and Voice of America Coverage

The two *foreign* radio stations were the only electronic media that covered the campaign in a more regular manner¹⁷. The time afforded to participants is well distributed between all the parties running for elections even though CPP is a little under-represented due to the fact that it declined to participate in a debate. The two stations are unique in their coverage in that they gave some space directly to candidates and not only to party representatives at the national level.



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Newspaper Coverage

Newspapers offer a greater diversity of views, but it must be underlined that the main Cambodian newspaper, *Rasmei Kampuchea*, sells more copies than the other four monitored newspapers together, and it presents the same political landscape offered by the principal electronic media. The Government received 47% of *Rasmei’s* political coverage, CPP 33%.

The pro-SRP *Moneaksekar Khmer* and the critical approach of *Oudomkate Khmer* are not enough to balance a distressing media situation.

The other two newspapers are basically pro-Government / CPP. *Koh Santepheap* gave 80% of its political coverage to the government and CPP (Government 58% and CPP 22%). *Chakraval*, offers only negative or neutral coverage to SRP and FUNCINPEC.

4. Overview of Media Situation

The data from the EU-EOM Media Monitoring of the electronic media did not show any significant difference between the pre-election period and the official election campaign period.

In general the electronic media offered very little coverage of the political campaign. The news coverage offered by the main TV stations and the National Radio focused extensively on the activities of government. When there was any coverage of the political parties it focused overwhelmingly on the CPP, which also benefited from the coverage of the activities of government, including opening bridges, schools and roads etc.

In addition direct coverage of candidates in the media was virtually non-existent, with the exception of Radio Free Asia. This reinforced the focus on political parties rather than candidates, which was a characteristic throughout the election.

On the other hand the private electronic media decided not to cover the campaign and, practically, not to sell any space to the parties allegedly fearing NEC intervention (only one case of a CPP spot in a Battambang Province Radio is reported), due to the NEC considering both media and the parties responsible for the content of the political spots.

Newspapers offered a greater diversity of views but their impact in the country is limited due to illiteracy rates (around 50% of the population), the prohibitive cost and limited distribution possibilities.

5. NEC and Media Coverage

The NEC had indicated that it was going to broadcast 15 special elections programmes on the State-owned TVK during the campaign (one for each night of the campaign in fact). These programmes were to have included some voter education spots, a few minutes for NGOs to phrase some agreed questions and then seven minutes for each of the eight political parties to respond to the questions. At the outset of the observation mission it was stressed by the EOM that this was an excellent vehicle to increase voter awareness of both the technical and political dimensions to the election, especially given that civic awareness is still so lacking in the country.

However, after a long and troublesome internal discussion the NEC decided to prohibit the showing of the scheduled programmes. This decision by the NEC has been defended on the basis of a narrow legal consideration of the election law. However, to understand the issue more clearly one needs to consider the chronology of the issue, the possibilities afforded by the relevant legislation, the fact that there is no prohibition on such a role by the NEC (in fact it is encouraged in associated legislation) and the implications of the decision for the voters.

- The programmes were originally suggested by the media section of the NEC (which later, ironically, defended the cancellation of the programmes).
- The media section requested the vice-chairman of the NEC to secure funding for the programmes.
- NGOs provided some funds for the programmes
- The NEC started recording the programmes.
- During the broadcasting of the fourth programme on 31 December 2001, the Minister for Women's Affairs indirectly credited FUNCINPEC for a government programme for women
- The NEC objected to the fact that the Minister for Women's Affairs (from FUNCINPEC) stressed the success of the Ministry's "Women are Precious Gems" initiative. The NEC argued that politicians are "not allowed to take personal or political credit for government policies". The Minister apologised to the Prime Minister, who was apparently angered by her comments, and copies of a government press release on the matter were distributed, even by helicopter and plane as far afield as Siem Reap.
- The apology was made public despite the fact that the programme was never broadcast and never seen by any member of the public.
- The NEC suspended the recording of any further programmes
- The NEC cancelled the recording of any further programmes
- On 28 January 2002, just four days before the end of the campaign period, the NEC voted to confirm its ban on the broadcasting of any such programmes
- It was later claimed that the Law on Commune Elections did not give the NEC responsibility to provide parties national airtime.

The justifications that there was no legal basis for the programmes is disingenuous as the law does refer to the National Assembly law in defining the responsibilities of the NEC. Article 10 of the Commune Election Law states that the "powers, functions and duties as determined in Articles 7, 8, 9 and 10 of the Law must be assigned in addition¹⁸ to the power, function and duties as required or delegated to the National Election Committee according to the Law on Elections of members of the National Assembly".

Article 16 of the Law on Elections of Members of the National Assembly states that the NEC shall be responsible for, "promoting citizens' understanding of electoral matters through education and publication programs and by other means".

In 1998 the NEC interpreted this Article in its widest sense and provided parties with the possibility for presenting their programmes on State TV. Given the dire need to increase Cambodian voters' civic understanding and to promote political awareness in the country it is regrettable that the NEC altered its approach in this regard, when the media coverage of the elections was clearly not satisfactory and failed to provide voters with complete and balanced information.

¹⁸ Stress added

NEC efforts in the field of voter education (in terms of providing technical information on the process of voting) were impressive, but it could also have, as it initially did, interpreted the law in its widest sense to meet the needs of the election campaign and provide parties with an opportunity to convey their messages to voters. In logical terms, even if the comments of the Minister warranted a response, which they do not except for being judged by the voters, such a response should have been proportionate. This might have involved re-recording of the “offensive” moments, editing of the comments or the complete dropping of the programme in question rather than the entire series.

The NEC’s response, in this regard, whilst not an abrogation of their legal duty, did represent a very restrictive interpretation of the possibilities afforded to them under the Laws on Commune Elections and National Assembly Elections, which establish the functions of the NEC. The law does not prohibit such a role for the NEC, so given that the body had started to undertake such a role why did it stop? Why did it completely reverse its position in this regard? At the end of the day, this led to a lack of qualitative information for voters and arguably restricted their chances to make an informed choice on election day.

6. Voter and Civic Education

Through the collective efforts of NGOs and the NEC there was a great deal of technical voter education explaining to voters the mechanics of the voting process, though of course work still remains in this regard as the challenge to reach all Cambodian voters, particularly in rural areas is immense. Further, whilst the technical understanding of how to vote may have been at least addressed voters in many instances remained unclear of exactly what they were voting for. Civic understanding remains a problem in Cambodia.

The issue of voter education initially caused a great deal of controversy due to the NEC regulation which required the submission of all voter education materials to the NEC for approval. After an outcry from NGOs and the international community the NEC amended the regulations prior to the arrival of the EU EOM to make the submission voluntary¹⁹.

The NEC, through the state media, granted exhaustive radio and TV programs partly organised by local independent NGOs. Both private TV and Radios allowed the paid broadcasting of voter education programmes prepared by local NGOs.

Notwithstanding the efforts made in this regard much work still remains to be done, as observers reported that voter understanding did vary in more remote areas. The challenge for the authorities is greatly increased if one also considers the need to increase voters understanding of what they are actually voting for and the need for extensive civic education in Cambodia in general and particularly in preparation for elections. Responsibility for this must also rest with political parties, which need to increase the understanding among their own candidates and among the general public at large.

7. Conclusion on Media Coverage

It is possible to conclude that the framework for media coverage was unable to guarantee any semblance of balanced media coverage. Electronic media (State TV and Radio and the two main Private TV stations) offered coverage with a strong bias in favour of the Government and the CPP.

To illustrate this point: The EOM recorded the news programming of the three major TV stations over a period of one month. After careful analysis of the recorded programmes there was not a single second of visual coverage of Sam Rainsy in the news. Given that there were only three main parties competing in the election, and only one of these is a major opposition party it would have been reasonable to assume that some coverage of its national leader was warranted.

¹⁹ There were a number of reports that some PECs were still requiring NGOs to seek approval for such materials and the Chairman of the NEC even issued a Directive on 29 December 2001 requiring local-level commissions to establish Committees to review and approve materials. For example, LTOs in Kampong Thom reported that both COMFREL and NICFEC were required by the PEC to submit materials for clearance and the materials have printed on them that they were distributed under the supervision of the NEC.

The situation with regards to media coverage of the elections was significantly worse than in 1998, when the NEC interpreted its role in a more open manner and provided equal access for political parties in the State-owned TV. This aspect of the process is particularly worrying in terms of the forthcoming National Assembly elections and needs to be carefully considered.

A solution to this situation rests with establishing and enforcing clear media guidelines. Whether the NEC is to remain to be responsible for the enforcement of such provisions needs to be assessed by interested parties and persons in the country. If responsibility is to rest with a Ministry, however, this raises the spectre of political partiality, particularly as at present it is the government which is seen to be the main beneficiary of the im-balanced media coverage and therefore it is not obvious that they should be tasked with overseeing the regulations. If the NEC is tasked with enforcement, it needs to be properly mandated and adequately trained and staffed to undertake the technical and legal competencies of such a role.

F Election Campaign

The official election campaign formally ran for just 15 days, from 18 January to 1 February. There was a period of campaign silence on 2 and 3 February.

Legal restrictions on campaigning were essentially represented by Article 128 of the Law on Election of Commune Councils which states:

“During campaign activities, each political party or candidate shall not commit any act of threat, intimidation or violence against any citizen, political party, candidate or other supporters.”

“A political party or candidate shall not incite the supporters or voters into committing any act of abuse, threat, violence or intimidation against other political parties, candidates or other voters”

In addition, NEC Directive (01.086/02), states that parties:

“...can criticise the policies, the programme and working experience of other parties. [But] must avoid criticising the personality of individuals or political parties”.

It was noted that all of the parties were campaigning prior to the official start date, and the government was very active throughout the duration of the EU EOM in opening schools, roads and bridges, which received large amounts of coverage on state media.

The campaign was generally low-key, reflecting the local nature of the election and the use of informal campaign strategies by some parties (such as door-to-door approaches to voters). Parties were allowed to hold meetings with voters, conduct rallies, put-up posters, take-out advertising on TV and receive equal coverage on state-run media. These provisions provided the basis for a free election campaign if implemented within the spirit of the regulations.

Most of the issues raised by parties had a national orientation, though in most cases the parties included pertinent local issues alongside their national message. The CPP encouraged people to vote for them on the basis of their past performance, often stressing that they are connected with the liberation of the country from genocide. Otherwise, like all parties, they stressed issues of security, crime, standard of living and the need to develop the communes. They also pointed to their role in holding these elections as proof of their commitment to democracy.

FUNCINPEC placed a stress on monarchy and religion. FUNCINPEC also encouraged voters to vote for change at the Commune level, which paralleled the SRP message. However, the party took a non-conflictual position, avoiding any strong statements against the CPP and refrained from lodging formal complaints until after the election when the result had gone against the party.

The SRP spoke of national level issues, such as corruption, violence and crime in society. The SRP also had a strong local message in each commune, ranging from refuse collection, poor quality roads, forestry, fishing or illegal immigration. The immigration issue clearly targeted the Vietnamese community.

1. Deaths of a party activists and candidates

The deaths of a number of candidates and activists in the pre-election period raised serious concerns. Whilst some of the deaths were clearly accidents or resulted from personal disputes, it is also clear in some instances that the involvement of local-level officials, either civil or military, raised the possibility of a local political dimension to some of the crimes. It was also clear that the authorities did not act quickly to settle the cases, particularly when they involved local police, military or public officials.

According to reports by the UN Centre for Human Rights in Cambodia, between January 2001 and January 2002, 15 politically-affiliated individuals were killed "in circumstances that are suspect"²⁰. This is an extended definition of the "pre-election period, but the UN Centre defended this by stating that during this period parties and individuals were already putting themselves forward with regards to the Commune elections or had a clear political identity.

Whilst suspicions over the killings remained it was very difficult to clearly ascertain that a clear political link existed. The Ministry of Interior stated unequivocally that there had been "no politically motivated crime" during the election²¹.

However the failure to clearly identify culprits or motives left the suspicion of a political link hanging in the air and this damaged the pre-election environment²². Further, at the local level the differentiation between the political and personal domains is not always clear, with personal disputes able to be used as a pretext or incentive for a killing, and individuals with a personal motive able to be manipulated possibly by somebody with a political motive.

An interesting example of a case in which a "culprit", a member of the military, was apprehended occurred in Pursat. The culprit was presented to observers and media by the police to explain his guilt and to stress that he carried out the act for personal reasons. This was a surreal development that left the LTOs curious as to the motives of the police rather than the alleged suspect.

Regardless of the motivation for the killings the impact was certainly political, with local activists from affected parties claiming the killings had an intimidatory effect²³. The killing of any candidate or party activist during an election campaign or at any other time is a serious development and has a negative impact on the election. It is also noticeable from the UN data and reports from Cambodian Human Rights groups like LICADHO, that the majority of the victims had links to the SRP, and most others were linked to FUNCINPEC.

Reported Killings January 2001 – January 2002²⁴

Date	Province	Commune	Name	Party Affiliation	Circumstances
03/01/01	Kampong Cham	Toek Chrov	Phuong Phann	SRP	Shot outside home
14/01/01	Kampong Cham	Chiro Pi	Chhay Than	FUNCINPEC	Shot at home
30/06/01	Kampong Speu	Baseth	Uch Horn	SRP	Shot on his way home from a

²⁰ UNCOHCHR Pre-Campaign Report, 11 January 2002, p.2. The report covers the period from January 2001 to January 2002, which is an extended definition of the pre-election period.

²¹ Ministry of Interior Statement of 6 February 2002.

²² Responsibility for ultimately addressing such killings rested with a number of bodies, including of course the police, the NEC and the special Central Security Office established for the election and encompassing representatives from the ministries of interior, defence, police, military and NEC.

²³ Some candidates in Prey Veng and Takeo reported to LTOs that they feared for their safety following the killings.

²⁴ Details are taken from various EU EOM observer findings and the January 2002 report by UNCOHCHR Pre-Campaign Report, various reports by LICADHO as well as reports by the Cambodian Election Monitoring Organisations.

					field
17/07/01	Kampong Chhang	Svay Chek	Meas Soy	FUNCINPEC	Shot entering home
23/08/01	Siem Reap	Kampong Kdei	Touch Voeun	SRP	Shot at home
21/09/01	Kampong Cham	Chey Yau	Chhim Leang Sri	SRP	Shot trying to intervene in robbery of brother
05/11/01	Battambang	Prek Preah Sdech	Sam Sophear	SRP	Beaten to death
14/11/01	Kampong Cham	Sanlop	Phuong Sopath	SRP	Shot at home
14/11/01	Kampong Cham	Sanlop	Toun Phally	FUNCINPEC	Shot at home
08/12/01	Kampong Thom	Tbaung Kropeu	Ouk Sao	SRP	Shot at home
12/12/01	Takeo	Kampeng	Orn Chiekleng	FUNCINPEC	
14/12/01	Siem Reap	Krabei Riel	Ros Tun	FUNCINPEC	Found dead in ditch by side of road
04/01/02	Kampot	Chumpoyoan	Long Kim Tom	FUNCINPEC	Shot dead
04/01/02	Kampot	Chumpoyoan	Soun Kroeun	FUNCINPEC	Shot dead
05/01/02	Svay Rieng	Kork Pring	Touch Sean	SRP	Shot dead at home

The EU EOM LTOs looked into all the killings in their respective areas. As an example, the following reports of the highly reported killing of three women over a four-day period in the first week of January are interesting and illustrate the sensitivities and complexities of the cases²⁵. These killings resulted in expressions of great concern by some political parties, NGOs and international organisations, as well as a demonstration in Phnom Penh organised by a women's advocacy group. Initial reports indicated that all of the women were politically active, with two being candidates (one for FUNCINPEC and one for Sam Rainsy Party) and the third possibly being a FUNCINPEC activist or nominee for Village Chief. The incidents were reported by national and international media, and drew comments from the leaders of the three main parties. Sam Rainsy claimed the killings were politically motivated and aimed at intimidating SRP and FUNCINPEC supporters, and Prince Ranariddh (the leader of FUNCINPEC) intimated that if the killings had a political dimension it was attributable to local politics in the areas in question. A few days later a government spokesperson condemned the killings but claimed that the motivation in each case was not political.

The cases:

- On 2 January, an attacker shot dead Sorn Chrun and wounded her husband in Kampot Province in the south-west of the country. Initial reports indicated that Sorn Chrun was a FUNCINPEC activist and their nominee for Village Chief. However, subsequent reports clouded the issue, with some

²⁵ In addition, two separate motor-bike accidents on 5th and 6th January resulted in the deaths of two FUNCINPEC candidates and a party agent in Kampong Cham, but all human rights organisations concur with the police that these appeared to be traffic accidents.

locals claiming that her husband was the FUNCINPEC activist and others claiming he had no political affiliation. The suspect in the killing, together with the incumbent Village Chief, had been in a land dispute with the couple dating back to 1991. The political nature of the killing was in doubt from the start due to the history of the land dispute, the lack of clarity in the political affiliation of the deceased and the assertion locally that the husband may have been the intended target. In addition, despite the fact that the FUNCINPEC central office reported on this issue, when LTOs met the Provincial Governor (who is FUNCINPEC) just days after the incident to discuss the second killing (see below), there was no mention of the killing of 2 January. Neither was the killing mentioned by FUNCINPEC district party representatives in a meeting with LTOs on 7 January. Subsequently it was generally agreed that the killing had no political basis. However, by this time it had helped generate days of media coverage both in Cambodia and internationally.

- On 4 January, Long Kim Thon (3rd-placed candidate on the FUNCINPEC list for Chhouk Commune in Kampot Province) and her husband were shot dead in the night whilst sleeping next to their rice field on the final day of the harvest. The main suspects in the case were two brothers of a person killed by the husband in the late 1990s, for which he had served a prison sentence. At the provincial level FUNCINPEC representatives claimed the killings were due to personal and not political reasons, though district level FUNCINPEC officials were more suspicious of a political motive. The case was also complicated by the fact that one of the brothers in question is a son-in-law of the Commune Chief in Taken Commune, a former Khmer Rouge leader who has been the subject of numerous complaints locally. Local human rights groups acknowledged that the suspects had personal reasons for killing the husband, but were concerned that there may also be a connection between the killing and local Commune officials.
- On 5 January Thauk Sieng (15th-placed candidate on the Sam Rainsy Party list for Kok Pring Commune in Svay Rieng Province in the south-east of the country) was shot dead. The suspect also stole jewellery from the house. The SRP claimed that the killing had a political motivation though when the LTO team met with the local SRP Chairman no explanation into the motivation was forthcoming.

2. Intimidation of candidates and party activists

Intimidation against candidates was reported to LTOs in Kandal, Koh Kong, Takeo, Kratie, Stung Treng, Kampot, Pailin, Siem Reap and Oddar Meanchey. The general types of intimidation and pressure reported were verbal and physical threats against candidates / parties and destruction of party property.

For example, in Pailin COMFREL reported SRP signboards being destroyed, while in Batambang SRP candidates received death threats against themselves and their families. In Koh Kong NGOs reported threats to take away the land of FUNCINPEC voters if they voted for the party. In Prey Veng an SRP candidate was shot at in his house, another candidate was threatened by the police and a third had his pet dogs poisoned.

According to the UNCOHCHR report, two-thirds of the reported cases were directed against the opposition Sam Rainsy Party and for most of the remainder FUNCINPEC were the alleged victims²⁶

A serious level of criminal and political violence existed in Kampong Cham throughout the course of the observation, with attacks against party activists and ordinary citizens occurring frequently. The most violent incident resulted in the slaying of two women and two children apparently by an armed gang, which had been active in the area. This attack occurred the day after Prime Minister Hun Sen had implored local officials to put an end to such levels of violence in the area.

Whilst these scenarios cannot be said to be characteristic of the election as a whole, which involved 1,621 communes and over 75,000 candidates, the reported problems were of concern. Political violence, although of a different nature, occurred during the previous election and whilst it is encouraging that this time around the Prime Minister publicly condemned the violence, such practices, including the killings

²⁶ UNCOHCHR Pre-Campaign Report, 11 January 2002, p.3

and pressure on voters, threaten to become a common feature of elections in Cambodia if not properly addressed.

The culprits in many cases are local officials (village or commune level), CPP party representatives or police or military²⁷. Such groups are very powerful at the local level and also there can be a close connection between them. For example, in Kampot, in the south-west of the country, the two communes in which there were most problems in the province (Ta Kein and Trapaeng Plaing, both in Chhouk District) were previous Khmer Rouge areas. The basic power structure prevailed, with Commune officials (electoral and political), police and village chiefs being former Khmer Rouge. On the basis of this there was a tight connection between them, and Provincial election officials were neither able nor willing to exert any authority.

3. Intimidation of voters, vote buying, provision of gifts

There was also an effort in many areas by local CPP officials to intimidate voters through the taking of thumbprints or by collecting voter cards to try to ensure their support. These cases of voter intimidation were reported across the country, but were noticeable in Kratie, Pursat, Kampong Chhnang, Kampong Thom and Kampong Cham.

In many instances, the cards of voters were physically taken by local officials, allegedly for "safe-keeping". The impact on less educated and vulnerable communities is clearly intimidatory. The CPP also carried out extensive campaigns of finger printing voters on official CPP cards. This is also intended to have, and does have, a clear intimidatory effect on vulnerable communities.

In addition, all parties engaged in the provision of gifts and services to voters as an inducement. The SRP handed out vitamins to voters, claiming they had high medicinal value. All parties handed out small gifts, claiming this is traditional in the country. For example, LTOs in Prey Veng reported parties handing out sarongs and even canned fish at meetings.

The government was also extremely active in inaugurating new projects, such as starting new roads, opening new schools or new bridges. These actions received widespread attention in the media. In Prey Veng, for example, on 15 January, the Prime Minister visited Ba Phnom District for the opening of a new school, giving away 1,000 Riel notes and books and pens to 3,000 high school students and 10,000 Riels to 200 "model students" and 20,000 Riels to 200 teachers.

More invidious examples of the use of State resources in this regard were reported by virtually all LTO teams. These included the distribution of rice to poor communities (which is crucial for their survival), which were then urged by local officials to support the CPP.

Serious reports of vote buying by the CPP on the eve of the election were reported in many provinces. The EU EOM has received clear reports of this practice in Kratie, Pursat, Sihanoukville, Prey Veng and Kampong Chhnang and is of the opinion that it was probably happening across the country. The reports were so familiar as to indicate a systematic nature to the practice, with voters being given between 1,000-3,000 Riels each in the late hours of 2 February. Or voters received 500 Riels prior to election day and were promised the remaining 500 Riels once the CPP had checked the voting patterns in the polling stations concerned.

In many areas this represented an expenditure by the CPP of tens of thousands of riels. The decision for such an activity and the provision of such large sums of money, clearly could not be the responsibility of local level officials alone.

²⁷ This highlights the fundamental underlying problems in the country which manifest themselves at the time of an election, as the political structure continues to be dominated by the CPP and ordinary Cambodians have an inherent fear of confronting authority figures even in the absence of any overt intimidation or threat.

4. Campaign Regulations

The NEC, through the PECs and CECs, is empowered to “administer, supervise and co-ordinate the election campaign” (NEC Regulations and Procedures Chapter 8).

Cambodian civil society had lobbied strongly for clear penalties in the law to address the types of violations they knew to be a common problem in elections in the country. The NEC responded by issuing an “Instruction on the procedures of hearing to punish offenders violating the law on the elections of Commune Councils (4 November 2001).

The instruction stated:

“When receiving a complaint related to an offence as stated in the electoral law, an appointed official of NEC or a secretary of PECs or CECs shall ask for the information on identification of the complainant or the representative to fill in the complaint form, set out the time, date and place where a hearing shall be held and report immediately to NEC”

“Each council shall make a judgement based on the spirit of the law”

“...the adjudicating council of each level shall have the right to make a decision on punishment in accordance with the seriousness of an offence”

“...the adjudicating council of each level shall refer offenders to an adjudicating court regarding the imprisonment of the offenders ... According to the provisions of Article 64, any person by means of threat, physical abuse, any form of coercion either affecting the free conduct of the right to vote and to stand as a candidate or the proper operation of elections, shall be charged with election fraud and punished to a prison term ranging from one to three years”.

“Upon receiving this instruction the Chairmen of all PECs and CECs are requested to ...implement this instruction with high effectiveness”.

However, on 11 December 2001, NEC Chairman Cheng Phon instructed provincial officials to hold regular, informal meetings to “settle all the cases that could happen before and after the election campaign”.

The types of campaign violations discussed above were criticised by the electoral authorities but they were rarely addressed and certainly not according to the original directive or through the imposition of any of the stipulated penalties, but only by facilitating deals between political parties. This was reported by observers in Kratie, Kampot, Kampong Chhnang and Koh Kong.

For example, in Kratie, the CPP apologised for its actions, fully acknowledging that it had collected the cards from voters, yet still the PEC decided not to apply the law, instead pressuring the party to issue a public apology. This was a bold move by the PEC and in a way was credit worthy. However, the law did not stipulate that parties would be punished by being forced to issue an apology. The law stated that the candidates identified as being guilty of such a violation would be struck off the candidate list.

The penalties for the types of violations of the Law observed are specifically outlined in Article 231, which states that:

“Shall be subject to a revocation of a voter registration card and eliminated of candidacy of the concerned person from the candidate list of the political party by the NEC and with a fine in cash from 5 million to 25 million Riels for any person who has committed any of the following offences

- *If he/she made any oppression or threat or compulsion to swear to vote for a candidate list of his/her party;*
- *If he/she buys off the votes by using either any object or cash;*
- *If he/she removes an election card from another person.”*

The general failure to sanction parties created an atmosphere of impunity and failed to offer citizens the protection of the law. It is noticeable that in Kratie there were also reports of vote buying by the CPP even on the eve of the election, thus highlighting the ineffective impact of the conciliation meetings as any type of imperative.

In this respect, it is of concern that the Law was used more in the interests of the parties than for the protection of voters. As a result, the legacy of these elections for the 2003 elections in this regard is that parties will not be punished even if they acknowledge their guilt. The other lesson is that reconciliation meetings do not offer protection to voters from unscrupulous persons or parties.

5. NEC Campaign Directives

Some of the NEC decisions during the campaign raised concerns in terms of restrictions on the campaign freedoms of political parties. This concern was compounded by the NEC decision to cancel the scheduled special campaigning programming on state TV (see Section E.5).

On 15 January, the NEC issued a Directive (01.086/02) to all PECs, detailing campaign-related issues. Among others, this directive stated that parties “can criticise the policies, the program and the working experience of other parties” but “must avoid criticising the personality of individuals or political parties.” Such provisions, while ostensibly aimed at ensuring a fair and orderly election campaign, caused confusion as to what kind of campaigning was permitted and were initially interpreted in such a manner by the NEC as to constitute a restriction on a party’s freedom to get their message across to voters.

For example, the NEC attempted to prohibit the Sam Rainsy Party from using certain campaign materials, including cassettes with speeches by party leader Sam Rainsy as they were, it was claimed, an incitement to public disorder. The NEC argued that these materials violated Art. 128 of the Law, which prohibits parties from inciting their supporters into “committing any acts of abuse, threat, violence or intimidation” against other parties, candidates or voters

The speeches contained phrases such as: “Tyrants and their unscrupulous merchant collaborators have robbed many people of their land and livelihood” and “The people clearly understand that those in power who committed evil acts in the past will repeat them if they remain in power”.

Such speeches may constitute robust campaigning, but the NEC’s initial arguments were not completely credible, as the speeches had already been in the public domain by virtue of being made in the National Assembly.

Subsequently (22/1), the NEC withdrew this order, acknowledging they had no right to scrutinise campaign materials, whilst pointing out that parties remained liable. This acknowledgement by the NEC raised the question as to why such an instruction was issued in the first place.

The NEC had also tried to ban the SRP from distributing a booklet and leaflet which contained a picture of Sam Rainsy with the King. However, whilst the Political Parties Law²⁸ prohibits the use the King’s image as part of a party logo, there is no law, to the knowledge of the EU EOM, prohibiting the use of a picture in booklets and posters etc. of oneself with the King. Earlier in the campaign the Prime Minister warned FUNCINPEC not to keep invoking the name of the King, as they were presenting themselves as the party of the King. But the SRP’s use of the King was of a different nature.

The fact that the NEC even considered banning campaign materials in this fashion is worrying and contradicts the requirement to provide all parties the opportunity to conduct their campaign without undue restrictions.

In other instances NEC Directives were very late, negating their effectiveness. For example, NEC Directive 01.214/02 on the resolution of complaints concerning the election campaign was issued on 29 January, 5 days before the election and just three days before the end of the election campaign.

²⁸ Law on Creation of Political Parties (1997), Article 11.3

VI VOTING, COUNTING AND TABULATION

A Background

During Polling Day 62 teams submitted reports to the Observation Mission HQ in Phnom Penh. In total, 648 polling day report forms were processed. On Election Day observer teams visited 635 polling stations (13 were visited twice), covering all 24 provinces in the country.

B Voting Process

The overall analysis of Election Day was of a well administered process²⁹. The large and peaceful turnout of voters on Election Day contributed to the very well organised and credible poll on 3 February, with polling station officials working hard to administer the process and party agents and observers being present in all polling stations ensuring the transparency of the process.

Some Communes did experience problems, but these were of a limited nature, including the delivery of the wrong ballots to some polling stations or the mis-printing of ballots in a few instances (Prey Veng had re-run elections in six polling stations on 17 February due to this problem).

Observers reported that officials were sometimes lax in checking voters for ink prior to voting, but that voter cards were checked and the registers marked to prevent double voting. In 19% of the visited polling stations observers reported that voters were not checked for ink prior to receiving the ballot paper. This figure is very high, and in a country where the quality of the voter register is disputed this aspect of the process is essential.

In more than 13% of the visited polling stations, observers reported that persons were not found in the register. One explanation could be that in many places several polling stations were located in the same building (often a school) and that the voter went to the wrong polling station in the school and that their name was on the list in the neighbouring polling station in the same building. In other instances small numbers of persons did complain about having not been registered in August 2001. In addition, some areas, such as Battambang, experienced problems with the accuracy of the printed voter registers.

Domestic NGO observers were present in 93% of the polling stations visited. Party agents were present in almost every polling station visited by observers, with an agent from the three major parties being present in most cases. Observers did note that in many cases Party Agents were not completely familiar with the electoral procedures.

To summarise the voting process observers were asked to give an overall rating of the process, and in 96.3% of the visited polling stations observers rated the process as "OK" or "Good". In only two polling stations (Pursat province) the overall assessment was reported as "Very bad".

However, this positive rating has to be somewhat tempered by the disturbing reports of systematic vote buying by the CPP across many provinces which have emerged in the post-election period. These reports cast a worrying shadow on the process, firmly illustrating that despite the progress made in the electoral process in the country, much remains to be done and serious concerns still need to be addressed.

C Counting Process

After the close of the poll at 15.00hrs observers were instructed to follow the counting process. The counting started at the polling station immediately after the poll was finished. After the count was completed observers followed the delivery of election material to the CECs. Observers reported that in the cases observed the material was not tampered with and that the transportation of the election material to the CECs was carried out in a secure way.

²⁹ This conclusion is echoed in the reports of the other international observer delegations as well as domestic observer groups.

66 counting reports were sent in by the observers. No problems were reported for the closing procedures. The counting of the ballots was in most polling stations done in a very quick and efficient way, though bureaucratic procedures were time consuming.

The number of invalid ballots in the polling station visited by observers was 3.2%. The figure is usually considered to quite a regular rate of invalidity. In stations where a high number of invalid ballots were reported the invalidation rules were interpreted in a strict manner. Observers reported that the invalidation of ballots were made in a consistent way, which is key, but sometimes outside of the spirit of the NEC Directive to allow ballots to be counted so long as the intent of the voter is clear.

A further problem in this regard occurred in Prey Veng, where for some inexplicable reason polling station officials stamped the back of ballots with the official red stamp as opposed to the secret blue stamp intended to be used for validating the ballots.

The overall assessment of the counting process is not as good as for the polling process, though still very positive. 90.5% reported "OK" or "Good" compared to 96.3% for the polling process.

1. Determination of Invalid Ballots

There was a lack of clarity regarding the determination of valid and invalid ballots. While instructions from the NEC to all lower levels of the election administration stressed that any ballot should be considered valid if the will of the voter could clearly be determined, in practice the application was not uniform.

This was due to a number of reasons. Often, polling station officials decided to consider the manual's examples of possible valid and invalid ballots as being definitive, and as exhaustive examples, therefore not accepting any other types of marks even if arguably legitimate and with a clear intention by the voter. Secondly, the stipulation that ballots bearing more than one mark should be considered invalid was applied to ballots which had more than one mark for one and the same party in the appropriate box. Given the nature of Cambodia, with widespread illiteracy, many voters only use a pen at the time of an election and some leeway needs to be given in this respect.

The answer to all these problems is improved training and awareness raising among polling station officials of the spirit of the Law and the fact that the system exists to serve and safeguard the voters, as well as ensuring that as many votes are counted as reasonably possible.

D Tabulation Process

The CECs tabulated the results in an efficient and transparent manner.

The vote count took place in the polling station rather than at centralised Commune-level counting stations as in 1998. This provision increased the transparency of the process.

On the negative side, various observer organisations and analysts have pointed out that it could compromise the secrecy of the vote among certain groups of voters, particularly in small villages, and ultimately expose them to intimidation and recrimination. However, the opposition had criticised the alternative system in 1998 due to what it characterised as potential ballot insecurity during the transportation of ballot to count centres.

VII POST-ELECTION ENVIRONMENT & ELECTION RESULTS

The post-election environment remained calm. The only demonstration was organised by the SRP against what the EU EOM considered to be the NEC's reasonable denial of the party's continued calls for recounts even outside of the legal timeframe. Local human rights groups did report some allegations of "retribution" against some communities who had voted against the CPP. The veracity of these allegations was not clear at the time of writing, but this is something that local groups and local representatives of the international community needs to follow very carefully.

Voter turnout for the elections was around 87% of the registered electorate. This figure is a little lower than in 1998, and if one considers that registration levels were also lower, then popular participation, whilst still at a relative healthy level, was down in comparison to the national elections four years before.

In terms of the election results analysts have different perspectives. Given that CPP went in to the election with control of all of the Communes, in this respect they could only lose. And, the communes would be definitely changing from being single party entities to multi-party entities.

However, it is clear that based on the results of the 2002 Commune Elections CPP was the dominant party in all of the 24 provinces. The SRP consolidated its position and made modest gains, while FUNCINPEC suffered a loss of popular support. In several provinces, the party only took third place, while in others it barely edged past the SRP.

The CPP emerged as the frontrunner in 1,597 of 1,621 Communes, meaning that its top candidates in these Communes will become Commune Chiefs. The SRP won in 13 Communes, and FUNCINPEC, in ten. In terms of Commune Council seats, the CPP will hold 7,695 mandates, compared to 2,211 for FUNCINPEC and 1,345 for the SRP. Of the remaining five parties in these elections, only the Khmer Democratic Party (KDP) managed to win a seat, in Kampot province.

According to preliminary results, the CPP took about 60% (compared to some 40% in 1998) of the national vote, followed by FUNCINPEC with around 22% (compared to 32% in 1998) and the SRP with some 17% (14% in 1998). All other parties combined polled less than 0.3% of the national vote in the limited number of Communes where they ran.

The CPP is the sole party in 134 Communes. This relatively high proportion of councils with single-party representation (8.2% of all Communes) in good part reflects the fact that the seat-allocation formula used tends to favour the party with the most votes, especially when few seats are to be distributed.

While 16.2% of the candidates in these elections were women, the share of elected female councillors is just 4.5%. In the end, 448 women were elected on CPP party lists, 35 on FUNCINPEC lists, and 30 on SRP lists. Broken down by parties, this represents 5.8%, 1.6%, and 2.2% of elected councillors from the respective parties.

VIII COMPLAINTS AND APPEALS

A Pre-Election Period

In the run-up to the 2002 Commune elections, there were serious problems with regards to irregularities and violations of the Election Law. There were many complaints and appeals during the registration of voters and candidates (see above) as well during the immediate pre-election period. Most of these later violations concerned withdrawal of voter cards by party activists and candidates, thumb printing of voters in an attempt to make them vote for a specific party, intimidation of voters and candidates, and vote buying.

All of these irregularities should be addressed under Chapter 16 of the Law on the Election of Commune Councils, and especially under Article 231. However, this section of the Law remains silent as to the procedures required, and in most cases, it does not state who is in charge of imposing penalties.³⁰ The lack of clarity in the Law as to how to administer such violations resulted in a general lack of willingness by election authorities to take up such issues. In addition, the financial penalties, ranging from 5 million to 50 million Riel (around 1,100 to 11,000 Euro) are also very high. This probably acted as an additional disincentive to address violations of the Law in the prescribed manner.

³⁰ The EU EOM was told that this was due to the fact that the political parties could not agree on these provisions when the National Assembly discussed and passed the Law on the Election of Commune Councils. Consequently, they decided to adopt this section of the Law in its current vague form.

However, there are problems outside the scope of the Law as well. Most notably, there appears to be a general reluctance to file formal complaints, be it by political parties or by citizens affected by illegal practices. In many instances, parties preferred to try to reach a compromise acceptable to all involved through informal meetings, rather than seeking legal redress.

B Election Day

There are two different kinds of complaints relating to the process on election day — complaints against irregularities in a polling station during the voting or ballot count, and complaints against the preliminary results of a polling station or Commune.

Complaints against irregularities during voting and counting must be filed in writing with the polling station chairperson on election day. They are then reviewed by the CEC and submitted to the PEC for a decision.

In addition, Article 210 of the Law allows parties and voters to contest the preliminary results of Commune or a polling station with the relevant PEC. Complaints must be filed within three days of the publication of preliminary results. They must “be based on precise grounds” and must provide details of the irregularity, names and addresses of witnesses, as well as all factual evidence at their disposal. If the PEC rejects such a complaint, complainants may appeal that decision with the NEC, which takes the final decision. The NEC decided that only complaints filed on a specific form (Form 12.02) should be considered, although in practice, many Committees decided to accept written complaints even if that form had not been used.

C Post-Election Period

Post-election complaints in these elections broke down into two categories: complaints on technical irregularities, including the determination of valid and invalid ballots during the vote count; and complaints of a more political nature, mainly concerning vote buying on the day before the elections and on election day, as well as intimidation on election day.

The first category of complaints was largely handled in a satisfactory manner. Recounts took place in several PECs, and the NEC itself recounted ballots from 10 polling stations. In several cases, the recount established that polling station officials had interpreted the Law and NEC directives in an overly restrictive manner, which had resulted in a high number of invalid ballots. For example, after a recount by the PEC of votes cast in Oressei and Krakor Commune, Kratie province, the number of invalid ballots dropped from 27.6% and 15.5%, respectively, to under 3% and 7%. In a number of close races, the recount reversed the results with regards to the position of Commune Chief.

The handling of the second category of complaints was far less satisfactory. There are several key reasons for this: Failure of election Committees to fulfil their tasks as defined by the Law; the fact that the nature of these complaints is difficult to address under Art. 210 of the Law; and attempts by political parties to seek redress in some cases without sticking to legal procedures and deadlines.

One of the most worrying aspects of the complaints and appeals process was the unwillingness of some CECs and PECs to fulfil their legal obligation and rule on complaints. In Battambang province, the PEC received 81 complaints, mostly concerning vote buying and intimidation. While the only complaint concerning a technical problem was addressed swiftly and properly, the PEC failed to deal with most of the remaining complaints, trying instead to pass them on to the NEC without taking a decision. While the majority of complaints did not include the name of perpetrators or substantive evidence, the PEC chose to procrastinate even in cases where parties brought forward evidence and provided the names of witnesses. In addition, attempts to refer such cases to the higher level, if accepted, would eliminate one stage of the complaints and appeals process and would effectively deny parties the chance to appeal a decision.

A major problem faced by complainants and electoral bodies was determining whether irregularities and violations, such as vote buying and intimidation, should be addressed under Chapter 16 of the Law (in particular under Article 231 and 234), or under Article 210. This is essentially a problem of whether vote buying and intimidation (referred to in Article 234) can be said and proven to have effected the results (as required by Article 210) and therefore be grounds for annulling results.

1. Submission of Complaints by Political Parties

The problems were further exacerbated by the fact that some parties launched complaints and demanded recounts without respecting the legal procedures and deadlines. In the most illustrative example, the Sam Rainsy Party filed a complaint against the preliminary results in Tuol Svay Prey I Commune, Phnom Penh municipality, demanding a recount in four polling stations of this Commune, which the CPP had won by a narrow margin.

The SRP's complaint was accepted by the NEC, which conducted a recount of these four polling stations on 15 February. The recount showed that in one of the polling stations the determination of valid and invalid ballots had been very restrictive, and as a result the gap between SRP and CPP narrowed from 27 to seven votes. Then on 19 February, the SRP demanded a recount in the remaining eight polling stations of that Commune and in six further Communes, and the following day announced it would hold a demonstration on 23 February to push its demands.

However, the SRP had failed to file a complaint on two of the seven contentious cases with the relevant PECs and within the legal deadline, including the remaining polling stations of Tuol Svay Prey I. The other five complaints had been rejected by the relevant PECs who argued that the margin between the parties was above 0.5%, and therefore an automatic recount was not necessary. These decisions were upheld by the NEC.

Such practices by political parties clearly do not serve to diffuse tensions, and parties should seek redress for their grievances within the framework of the Law. Many sides suggested that the NEC should have tried to accommodate the SRP's demands in order to prevent conflict and build confidence³¹. However, such an approach would have been problematic since it would have been outside the provisions of the law, opened the door for further complaints and would have dragged out the election process.

IX RECOMMENDATIONS

The following recommendations are made on the basis of the EU EOM's observation of the process for the 2002 Commune Elections and its analysis of the electoral framework for those elections. Having said this, some of the recommendations are also salient for the forthcoming National Assembly elections as well as for the general democratic environment in the country, though many refer specifically to the conduct and framework for the Commune elections.

A General

The main recommendations for the support for the process in Cambodia basically require the positive engagement of the government and political parties during an election, respecting both the letter and spirit of the laws.

1. Much of the required legal and procedural framework for credible competitive elections in Cambodia is in place. However, in order for the actual electoral process to meet international standards, the laws and procedures must be properly implemented. There must be political will on behalf of the political parties and all stakeholders to honour both the letter and the spirit of the law, otherwise even the best legislation and procedures will be ineffective. This constructive engagement in the process includes not only ending illegal practices but also, for example, meeting legal requirements for complaints and appeals, as many parties failed to submit complaints in the appropriate format thus preventing their proper consideration.

³¹ In this respect, responsibility for defusing tensions rests also with the political parties and not the authorities alone.

2. There should be clear guidelines - established and adhered to - for the behaviour of government, at national and local levels, during an election period, ensuring an end to the mis-use of State resources or abuse of authority during an election. During the Commune Elections there was a Code of Conduct for police and armed forces, but the one for the conduct of local government officials was not signed by the Prime Minister prior to polling day. Regardless of these efforts it is clear that there is a gap between the willingness to put such guidelines on paper and the willingness to ensure their implementation and adherence on the ground. Such mis-use which needs to be addressed includes the excessive inauguration of government projects and widespread publicity related to these, dominance of state media and the provision of "gifts" by parties and charitable agencies. The interference of local-level officials to the favour of any one party must also be prohibited and the prohibition must be enforced.

B. Commune Councils

3. In order for the 2002 Commune Elections to be truly meaningful, the future powers and responsibilities of the elected Councils, many of which are still to be defined by the Ministry of Interior, must result in a real decentralisation of power. Cambodians have now elected their own local Commune Councils, and it is imperative that these Councils are properly mandated and provided with the means and powers to meet the expectations of the people.

C. Election Administration

4. The National Election Committee (NEC) is to be re-formed. The composition of the new body must ensure political balance among members as well as a technical capability, if members are to continue to head the technical departments within the NEC. Establishing a body which is neutral, and which is perceived to be neutral, is probably not possible in the volatile political atmosphere of Cambodia. An openly political, multiparty election administration could serve to increase transparency and confidence.

In light of some of the problems during these elections it is advisable that even the members appointed by decree must meet certain professional requirements, such as having a legal or technical background and there must be a clearly defined formula, which prevents a single party from dominating Committees at any level.

Given these conditions, a five or seven person NEC could be considered, for example, with the Chairman and Deputy Chairman, with appropriate legal or technical experience, appointed by a decision of parliament, and a representative from each of the parties (with deputy) represented in parliament, making the third, fourth and fifth etc. members. Extra members could alternatively be drawn from, for example, civil society. Alternatively parties could contribute all the members and the Chair and Deputy Chair be decided through the drawing of lots.

Further, other political parties competing in the National Assembly elections should have some form of representation on the electoral bodies at the time of the election. Such membership could be in the form of a non-voting position.

The key point of the recommendation is that the guiding spirit for any newly composed NEC is for it to be, and seen to be, impartial, transparent and efficient in its composition, deliberations and output.

5. NEC directives must be issued in good time, to enable officials, parties and voters to be fully aware of the requirements. Wherever possible the NEC must avoid issuing last minute directives.
6. Administrative procedures, for voter registration, candidate registration and complaints and appeals should be efficient and easy for voters and party officials to understand and implement them. Complex and administratively laborious procedures do not serve the process well if they cannot be followed in a timely and accurate manner.

D. Voter Registration

7. The voter register compiled for these elections should now be used as the basis for a permanent voter register, updated on an on-going basis. This will ensure that any persons missing from the register during these elections can now be added and that the register for the next election is complete. Such a permanent register is not only more efficient and reliable but will also be more cost effective. This would require a revision of the existing law, which currently requires the updating of the voter lists on an annual basis.

E. Candidate Registration

8. Providing election Committees with just three days to consider candidate registration applications is not a realistic deadline. Consideration could be given to providing Committees with more time, possibly four or even five days, for a proper consideration of the applications.
9. The requirement for parties to provide lists of candidates twice the size of the councils to be elected is excessive. Such a requirement not only places an undue burden upon the parties but also on the election Committees considering the applications. It might be considered to have a requirement for a candidate list to have a smaller number of replacement candidates.

F. Campaign Violations

10. Articles 231 and 234, which outline campaign violations, need to be clarified and possibly reconsidered. At present the Law is not clear on how these should be investigated and what the implications of a guilty verdict are. For example, if a party is clearly guilty of intimidating voters on a large scale, what are the implications for that party and for the results of the election?

The Law should be more clearly defined, to determine how such allegations of intimidation and vote buying are to be investigated, what levels of proof are required and the penalties to be imposed. The current penalties of high fines appear to deter authorities from imposing the penalty. Therefore consideration should be given into what penalty is more appropriate (a lower level fine?) and who will impose it (see Recommendation 21)

In short, in terms of campaign violations, the penalties articulated must be reasonable, proportionate, verifiable and able to be implemented. It is imperative that the rule of law is applied during elections in Cambodia ending the atmosphere of impunity.

G. Civil Society and Civic Education

11. There is no need for an NGOCC. Such a body adds an extra administrative layer, and could potentially be used as a mechanism to restrict the activities of independent NGOs. In its place, the NEC simply needs to be well organised to deal with the accreditation procedures from organisations with which it is now very familiar and numbers of observers, which are also predictable. Whilst the NEC may remain responsible for determining procedures and uniformity, responsibility for implementation could even be decentralised to lower-level Committees.
12. Cambodia is in need of a comprehensive programme of civic education, increasing awareness among voters of their role in an election and importantly awareness of the institutions they are electing.

Such civic education needs to reach communities in the countryside, where understanding is at its lowest. The electoral authorities could be utilised to disseminate the information and of course civil society will also have a role to play.

H. Media

13. Clear media guidelines need to be established, either in the Law or as a separate set of guidelines. The responsibility for state media to offer impartial and balanced coverage needs to be clearly articulated, with reference made to not only special election programming but also news coverage.

The political identity of the government needs to be taken into account, to ensure that government ministers / ministries are not abusing their positions by receiving disproportionate coverage for government activities during a campaign, thereby increasing the coverage for their political parties. This is relevant whether or not the Minister in question is a candidate in the election.

Guidelines could also be developed for coverage by private media, though there are, of course, limits on the restrictions to be imposed on a free and independent private media.

14. The role of the NEC in relation to media coverage needs to be further clarified. Given the existing level of voter awareness in the country, the need to promote increased civic understanding and the need for balanced coverage, it could be foreseen for the NEC to play a facilitating role in terms of special media programming for the campaign, much as they did in 1998.

I. Election Day and Tabulation Procedures

15. The provision for party agents to be present during all phases of the electoral process, from voter registration through to the announcement of the results is a very positive factor. However, the process would be even further strengthened and the transparency increased further if such agents were better equipped to do the job. In this respect, increased training of party agents is recommended, increasing their understanding of the process, their role and the procedures for complaints and appeals.
16. Training of polling station officials needs to be further strengthened. During these elections many officials remained unclear as to the guidelines for determining invalid ballots. This caused problems in a few polling stations and resulted in a number of complaints against the results. Officials need to understand not only the letter of the law but also the spirit in which it is to be implemented, i.e. that the process exists in the service of the people.

J. Complaints and Appeals

17. Complaints and Appeals procedures need to be simple and understood particularly by political parties and election officials. The NEC should ensure that the format for complaints is straightforward and that the responsibility for implementation is fully understood by relevant subordinate Committees.
18. To facilitate the procedures, the NEC should undertake a centralised tracking of complaints and appeals so that information on the number, nature and status of complaints can be more forthcoming to the media (and hence the public) and political parties. This will increase confidence and transparency.
19. It has been suggested by a number of national and international bodies active on these issues in Cambodia that given the inability of the electoral authorities to satisfactorily investigate complaints or to impose the rule of law in the form of penalties for violations, that an "Election Court" might be established. Such a Court would be mandated to investigate complaints, such as against local officials accused of intimidating or bribing voters, make a ruling and where relevant impose sanctions. It was argued that the attraction of this is that the body would be from outside of a Province and therefore not susceptible to any local pressure.

The attraction of such a mechanism in light of the inability of the electoral authorities during these elections to impose the rule of law is clear. However, getting consensus on its composition and duties might be troublesome, as may be reconciling such an "extra-judicial" body with existing Constitutional provisions. The judiciary in Cambodia does not enjoy widespread confidence and therefore any such court would have to include credible persons with a legal competence possibly from outside of the judiciary.

Alternatively, members could be drawn from higher-level committees, which would also achieve the required "distance" between the decision-making authority and the accused.

Whatever mechanism is deemed most appropriate for Cambodia it is clear that the rule of law must be applied if the legal basis of the elections is to be guaranteed. Whether this is achieved by the training of election officials to increase their capacity to enforce the rule of law or by the creation of another body to take responsibility for complaints and appeals the important point is that a solution to this serious shortcoming in the election (which was also evident in 1998) is found.

20. Regardless of whether or not an Election Court is instituted, it is advisable that citizens and political stakeholders have an ultimate right to seek legal redress from an appropriate court, rather than electoral bodies being the point of final instance. Whilst, in Cambodia at present, the courts may not enjoy sufficient confidence to fulfil this role, as a matter of principle it is important, particularly if a complaint involves a citizen's Constitutional rights.

These recommendations are offered in the spirit of raising awareness of the problems prevalent in the electoral process in Cambodia. The "solutions" offered are meant as a contribution to on-going discussions of these issues. Ultimately, the answers to the questions raised during these and previous elections must come from within Cambodia, reflecting a common consensus of concerned parties.