



# **Kingdom of Cambodia**

## **FINAL REPORT**

**National Assembly Elections, 27 July 2008**

**13 October 2008**

**EUROPEAN UNION  
ELECTION OBSERVATION MISSION**

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*This report was produced by the EU Election Observation Mission and presents the EU EOM's findings on the 27 July 2008 National Assembly Elections in the Kingdom of Cambodia. These views have not been adopted or in any way approved by the European Commission and should not be relied upon as a statement of the Commission. 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.*

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## **I. EXECUTIVE SUMMARY**

### ***EU EOM Mission***

Elections for the 123 Members of the National Assembly took place on 27 July 2008. Following an invitation from the Royal Government of Cambodia the European Union (EU) decided to establish an Election Observation Mission (EU EOM) to Cambodia. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections. The Chief Observer was Martin Callanan, Member of the European Parliament. The EU EOM deployed the largest international observation mission with 130 observers from 25 EU Member States and Norway. The EU EOM undertook observation in all twenty provinces and four municipalities of Cambodia and was joined over the election-day period by a seven member delegation from the European Parliament.

### ***Overall Conclusion***

While the campaign was generally conducted in a more peaceful and open environment compared to previous elections the 2008 National Assembly Elections fell short of a number of key international standards for democratic elections. Despite improvements in transparency there was a lack of confidence in the impartiality of the election administration among election stakeholders. The campaign was marked by consistent and widespread use of state resources by the governing party and the distribution of money and gifts by candidates and party officials was widely reported.

### ***Legal Framework***

The legal framework generally provided a workable framework and overall conformed to international standards and established the necessary institutions for the conduct of elections. However the main problem was the inadequate implementation of the legal provisions and the perceived lack of independence of the institutions. Overall, the legal framework remained fragmented, and the wide variety of norms of different levels and nature created confusion as the law does not set a clear hierarchy of norms. The lack of consolidation of the regulatory framework made it difficult for stakeholders to have access to the rules and obtain clear understanding of them.

### ***Election Administration***

While the National Election Committee (NEC) proved its ability to organise technically good elections and improved the level of transparency, there was a lack of confidence in the neutrality and impartiality of the NEC and the election administration among election stakeholders. The NEC continued to allow village chiefs to be involved in the distribution of voter information notices (VINs), in spite of concerns raised in previous elections on the lack of impartiality of village chiefs. The good organisation of the polling and voting was hampered by the issuing of fraudulent Statement of Identity Form 1018. As the NEC and relevant authorities had not established safeguards regarding the issuing of these forms, the process was open to manipulation. Although no precise figures could be established the issuing of fraudulent Forms 1018 was a relatively widespread phenomenon. The administrative functions related to the electoral process performed by the Commune Councils did not reach the same level of efficiency and professionalism as the NEC and had a negative impact on the electoral process.

### ***Voter Registration***

The high number of deleted names from the voter register became an issue of controversy as opposition political parties and civil society organisations voiced serious concerns about the most recent voter list update in 2007, in particular with regards to the high number of deletions. Despite strong criticism regarding irregularities and flaws in the voters list by senior representatives of opposition parties, there is no clear evidence of systematic deletion of opposition supporters. However, during the election-day, numerous complaints regarding the voters list were observed by both EU and domestic observers. The EU EOM concludes that there were a significant number of mistakenly disenfranchised voters in the 2008 elections.

### ***Party and Candidate List Registration***

The party and candidate registration process took place from 28 April to 12 May 2008 without any significant problems. However, the United People of Cambodia Party (UPCP) was rejected by the NEC on the ground that several of the candidates that it fielded were not on the official voter register. Out of the total number of 213 rejected candidates across the political party lists more than 200 candidates were rejected due to the NEC not being able to find their name on the final voter list.

### ***Campaign period***

The official campaign was generally perceived by all observers as more peaceful and open compared to previous elections. However, the overall impression of EU EOM observers is that the Cambodian People's Party (CPP) took advantage of its incumbency to dominate the campaign. The practice of distribution of money and goods was carried out by most parties, but the ruling party engaged in such practices to a significantly greater extent than any other party. During the official campaign period, the CPP consistently made use of several types of state resources including government property and vehicles as well as government employees. EU observers also noticed that local authorities and CPP offices were often placed next to each other and in a few instances even located in the same compound making it difficult to distinguish the political party from state institutions.

### ***Media***

The media environment in the run up to the elections was marred by the closure of Angkor Ratha radio station in Kratie in May, the arrest and temporary detention on defamation charges of *Moneaksekar Khmer* editor Dam Sithik in June, and the worst incident: the murder on 11 July of *Moneaksekar Khmer* journalist Khim Sambo, whose son also lost his life in the attack. The CPP dominated media coverage of the elections to the detriment of the other parties to a degree which was not consistent with international standards on free and equal access to the media for all electoral contestants. All opposition parties received access to state television TVK and state radio RNK according to election regulations, as well as time on a small number of private radio stations which do not have national reach. The dominance of the CPP may have undermined the ability of the Cambodian electorate to receive a sufficient amount of information about the parties to make an informed choice.

### ***Polling and Counting***

On election-day, voters turned out in good numbers and voting was generally conducted in an orderly manner in a very calm and peaceful atmosphere. The NEC polling staff proved to be committed, efficient, generally well trained and demonstrated a good understanding of the procedures. The main problem that occurred on election-day was a significant number of

voters whose names were either deleted from the voters list or voters who could not find their polling station. A significant issue was the illegal issuing of the Statement of Identity known as Form 1018. The widespread presence of political party agents and domestic observers contributed to the transparency and confidence in the voting process. The counting procedures were generally respected and implemented accordingly. While in almost half of the polling stations observed a copy of the Results Form was not posted outside the polling station this irregularity was assessed as an unintentional mistake.

### ***Collection and Consolidation and of Results***

The collection and consolidation of results at the commune level gave rise to certain problems. In many cases the premises of the Commune Election Commissions (CECs) were poorly organised and inadequate to proceed with the reception of the materials and the consolidation of the results. The retrieval of material was in some cases disorganised and lacking transparency. In general, the CEC members did not demonstrate the desirable level of knowledge and understanding of the procedures proving some inadequacies in the training received and confirming the strong indications during the electoral process of the human resources weaknesses of the CECs. In spite of this CECs communicated immediately all the available results to the Provincial Election Committees (PECs).

### ***Women in Elections***

The 2008 national saw fewer female candidates and fewer women gained seats in the National Assembly. Female candidates and politicians experienced discrimination during the candidate nomination process and internal political party elections. Women are generally under-represented within the election administration and rarely hold decision-making positions within the electoral administration but tend to hold lower level administrative positions.

### ***Domestic Observation***

Participation of civil society organisations and a large number of accredited observers was one of the positive features of the 2008 elections and contributed significantly to the transparency of the voting and counting processes at the polling station level. A total of 72 Cambodian civil society organisations were accredited as domestic observers by the NEC. Between them they registered a total of 31,262 observers for election-day.

### ***Complaints and Appeals***

Overall, the electoral complaints and appeals process did not appropriately address the main problems of the electoral process and did not contribute to the confidence of electoral stakeholders in the process. The dealing with election-day related complaints and appeals fell short of international standards, as the institutions did not provide effective remedies. Thus the Cambodian state violated its responsibility to ensure the Right to an Effective Remedy.<sup>1</sup>

### ***Key recommendations***

In advance of future elections, the election framework needs reforms to be fully in line with international standards for democratic elections. As a contribution to this process, a set of detailed essential and desirable recommendations is included at the end of this report. Essential recommendations include:

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<sup>1</sup> International Standard: The Right to an Effective Remedy: “Each State Party undertakes: to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”, cf. ICCPR Article 2(3) (a) and (c).

- The government of Cambodia must take credible steps to ensure that the NEC operates as a fully independent institution at all levels in order to enhance its credibility and acceptance among the electorate. Members of the NEC should be approved by a consensus among all political parties represented in the National Assembly. In particular the NEC chairperson should be a person acceptable to all political parties represented in the National Assembly. A limitation of the term in office of the chairperson and members of the NEC should be considered.
- The legal and regulatory framework, particularly the NEC Regulations and Procedures, should be simplified and consolidated in order to eliminate inconsistencies, ambiguities, redundancies and gaps. Directives adopted by the NEC should as much as possible be incorporated in the Regulations and Procedures.
- The use of the Form 1018 should be abolished prior to any future election.
- The Ministry of Interior should increase the ID card distribution rate and improve monitoring of the process. In cases where voters do not possess an ID card or other ID document the state authorities should find an alternative solution to enable voters to identify themselves on election-day. Regardless of the solution, records of voters using alternative identification should be kept as a safeguard and as information to support further improvement of the Cambodian electoral framework
- The Village Chiefs should not be allowed to take a major part in the distribution of VINs. The NEC should find an alternative method of distribution that can take place with the presence of party agents and CEC members.
- A free media environment is absolutely essential to ensuring that Cambodia's efforts to tackle corruption and protect fundamental human rights meet with success. The government must show its commitment towards this end by the establishment of an independent broadcasting regulatory authority, responsible for the distribution of licenses and frequencies to the broadcast media on an open and transparent basis.
- The government of Cambodia and the NEC should launch a consultation process on options for simplifying and improving the voter registration procedures. There should be an additional involvement of NEC personnel during the annual update and registration period. Reasons for the deletion of voter's names should be properly documented.
- Government institutions, including NEC and civil society organisations should prioritise comprehensive and targeted civic education initiatives taking into account the relatively low literacy rates in Cambodia. Such initiatives could be integrated in curricula offered by public and private education institutions at all levels.

The EU EOM urges the authorities, political parties and civil society of Cambodia to swiftly start to take these and other required steps in order to ensure that the conduct of future elections can be held in accordance with international standards for democratic elections.

## II. INTRODUCTION

Elections for the 123 Members of the National Assembly took place on 27 July 2008. Following an invitation from the Royal Government of Cambodia the European Union (EU) decided to establish an Election Observation Mission (EU EOM) to Cambodia. The EU EOM is independent from EU Member States, the European Parliament and the European Commission, in its findings and conclusions. Its mandate was to conduct a comprehensive assessment of the electoral process in accordance with international principles for genuine democratic elections.<sup>2</sup> The Chief Observer was Martin Callanan, Member of the European Parliament.

The EU EOM was deployed on 12 July 2008. Its headquarters were located in Phnom Penh and the Mission undertook observation in all twenty provinces and four municipalities of Cambodia. The EU EOM deployed the largest international observation mission with 130 observers from 25 EU Member States and Norway. The EU EOM was joined by a seven member delegation from the European Parliament, led by Glyn Ford, Member of the European Parliament. On election-day observers visited 719 polling stations across the 24 constituencies to observe voting. They remained stationed across the country during counting, reconciliation and lower level hearings on complaints. The EU EOM issued its statement of preliminary findings and conclusions on 29 July 2008.<sup>3</sup> The EU EOM closed its operations on 28 August 2008.

The EU EOM wishes to express its appreciation for the cooperation and assistance it received during the course of its work from: the Ministry of Foreign Affairs, the National Election Committee, political parties, civil society organisations, international organisations, the European Commission Delegation in Cambodia, and representatives of EU Member States and other embassies.

## III. POLITICAL BACKGROUND

### A. Elected Institutions

Cambodia is a multiparty constitutional<sup>4</sup> monarchy with two legislative chambers, the National Assembly and the Senate<sup>5</sup>. The National Assembly election on 27 July 2008 was the fourth National Assembly election since the first United Nations Transitional Authority in Cambodia (UNTAC) organised election conducted in 1993. Since 1993, National Assembly elections have been conducted with regular five year intervals as prescribed by the Constitution. Elections for Commune Councils were held in 2002 and 2007 respectively. The National Assembly counts 123 seats elected in 24 constituencies (twenty provinces and four

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<sup>2</sup> See “Declaration of Principles for International Election Observation”, commemorated at the United Nations on 27 October 2005:

[http://europa.eu.int/comm/external\\_relations/human\\_rights/eu\\_election\\_ass\\_observ/docs/code\\_conduct\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/docs/code_conduct_en.pdf).

<sup>3</sup> See the EU EOM website ([www.eucomcambodia.org](http://www.eucomcambodia.org)) and the European Commission’s election observation webpage ([http://ec.europa.eu/comm/external\\_relations/human\\_rights/eu\\_election\\_ass\\_observ/index.htm](http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/index.htm)).

<sup>4</sup> While the King is head of State this position holds no political powers. The current King Sihamoni replaced the old King Sihanouk in October 2004 when he unexpectedly abdicated due to health reasons.

<sup>5</sup> Members to the Senate are indirectly elected. Two Senate members are appointed by the King, two are elected by the National Assembly, and the remaining members are appointed by National Assembly and Commune Council members – the first such ‘elections’ took place in January 2006 (Art. 100 of the Constitution).

municipalities)<sup>6</sup> among which 15 are multi-seat constituencies and nine are single-seat constituencies.

## **B. Political Context**

The Constitution of the Kingdom of Cambodia guarantees a number of fundamental individual freedoms. While Cambodia has experienced overall political stability which has facilitated rebuilding of infrastructure and economic growth, several reports claim that the constitutional guarantees have been challenged by a poor record of law enforcement, a trend towards increasing imbalance between the executive, legislative and judicial powers as well as lack of clear separation among these powers. Furthermore, despite several attempts at security sector reform Cambodia continues to have a comparatively large army and contingents of military-police.

Despite stability and promising growth rates in recent years, Cambodia's political and economic outlook is also shaped by factors such as high levels of poverty<sup>7</sup> and an increasing income gap, low levels of literacy and low completion rates in primary education, gender inequalities, inflation<sup>8</sup> as well as border disputes with Vietnam and Thailand respectively. Furthermore, expectations that the new Cambodia would finally come to terms with endemic corruption<sup>9</sup>, land/property issues as well as an appalling human rights record have not been met. Although a formal peace agreement was signed 17 years ago, conflicts of the past are still very much present in Cambodian contemporary life with a sizable majority of the population claiming to be traumatized, a large amount of literature on the Khmer Rouge and Vietnamese occupation eras, political discourses containing regular references to past conflicts and the proceedings of the Khmer Rouge Tribunal followed closely by many Cambodians.

### *Recent political history 1953-2003*

After 90 years as a French protectorate, Cambodia gained independence in 1953. Although the country experienced growth and prosperity during the first decade of independence under the leadership of King Norodom Sihanouk, Cambodian contemporary history has been marked by almost 40 years of political disorder and conflict. Cambodia's attempt in the 1960s and early 1970s to pursue a neutral course was undermined by the spill-over of regional and international power struggles and a gradual polarization of domestic politics.

The first signs of turbulence occurred in 1970, when Army General Lon Nol deposed Prince Sihanouk, abolished the monarchy and assumed power. As the Vietnam War spilled further

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<sup>6</sup> The distribution of seats in constituencies are as follows: Kampong Cham - 18 seats; Phnom Penh - 12 seats; Kandal, Prey Veng – 11 seats; Battambang, Takeo – 8 seats; Banteay Meanchey, Kampot, Kampong Speu, Kampong Thom, Siem Reap – 6 seats; Svey Reing – 5 seats; Kampong Chnang; Pursat – 4 seats; Kratie 3 seats and finally nine single-seat constituencies: Koh Kong, Mondulkiri, Preah Vihear, Ratanakiri, Stung Treng, Sihanoukville, Kep, Uddar Meanchey, Pailin.

<sup>7</sup> Cambodia was ranked 131 out of 177 in the 2007/2008 UNDP Human Development Index (HDI) with a GDP per capita reaching USD 513 in 2006.

<sup>8</sup> Inflation rates of 18.7% over the period January 2007 to January 2008 according to statistics released by the Ministry of Planning.

<sup>9</sup> Transparency International's 2007 Corruption Perceptions Index placed Cambodia 162nd out of 180 countries. In comparison, Vietnam was placed 123rd, Laos 168th and Thailand as number 84th. In the 2008 report issued in September 2008, Cambodia dropped four places indicating further deterioration.



into Cambodian territory, the Khmer Rouge insurgency group expanded their small scale attacks and grip on the country reducing the control of the Lon Nol regime to small enclaves around the cities and main transportation routes. By 1974 an estimated 2 million people had sought protection in Phnom Penh and other larger cities. Following a strategic offensive, the Khmer Rouge captured Phnom Penh on 17 April 1975. The next four years of Khmer Rouge rule became the darkest chapter in Cambodian history turning Cambodia into a killing field marked by genocide, hunger and the complete destruction of political, economic, administrative and social structures as well as political isolation. In 1979, Vietnamese forces invaded Cambodia and pushed the Khmer Rouge regime out of the capital. A transitional government with support from Vietnam continued to fight the Khmer Rouge guerrillas and other Cambodian forces that objected to Vietnam's presence. Vietnam withdrew in the late 1980s and negotiations for a Peace Agreement commenced and with strong international support resulted in the signing of the Paris Peace Accord in October 1991. It provided the mandate for launching of the UN peace-keeping operation (UNTAC) to supervise a cease-fire, repatriate approximately 370,000 Cambodian refugees from Thailand, disarm and demobilize armed groups and prepare the country for democratic elections. The first National Assembly would also be tasked to draft a new Constitution for Cambodia.

The 1993-election was marked by high levels of violence but was widely celebrated as Cambodia's first step towards democracy, stability and rebuilding of an impoverished and ruined nation. Although the royalist leaning National United Front for Independent, Neutral, Peaceful and Co-operative Cambodia (FUNCINPEC) party was declared winner of the 1993 election, Hun Sen, a long-serving leader in the Vietnamese supported transitional government and a central leader of the Cambodian People's Party (CPP), negotiated a coalition government jointly headed by FUNCINPEC leader Prince Norodom Ranariddh as First Prime Minister and himself serving as Second Prime Minister. This was the beginning of a fragile alliance in which the CPP has always played a dominant role.

### *Political Background 1993-2003*

The coalition government faced enormous challenges in terms of reconstruction, curtailing of remaining pockets of Khmer Rouge insurgents<sup>10</sup> and internal disagreements over the political lines. Several political incidents sent signals that despite commitments to democratic transition, Cambodian politics would continue to be conflictual. As the 1998 National Assembly election came nearer, the FUNCINPEC-CPP alliance weakened and by early 1997, the coalition was practically falling apart with pockets of fighting between the governing parties that led to the so-called '1997 coup'<sup>11</sup>. Thus it was a weakened FUNCINPEC that stood for elections resulting in CPP emerging as the largest party with 41.4 per cent of the votes but lacked the two-thirds majority to form a government as required by the 1993 Constitution. Despite initial rejection of the results FUNCINPEC agreed to join a second coalition government with CPP accepting a less influential role. CPP's dominant position in Cambodian politics was further consolidated in the first local elections held in 2002 where CPP secured 60% of the votes and a large majority of Commune Councillor positions.

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<sup>10</sup> The government continued to curb the insurgents and assisted by internal splits among the remaining Khmer Rouge leaders, the movement was effectively defeated in 1998.

<sup>11</sup> For further reading reports by Human Rights Watch contain considerable details [www.hrw.org](http://www.hrw.org)

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*Key political developments 2003-2008*

The pre-election period of the third National Assembly election in July 2003 was marked by a number of high-profile killings and widespread reports of intimidations and threats<sup>12</sup>. CPP further distanced itself from political competitors by consolidating its support base through another election victory while the Sam Rainsy Party (SRP) emerged as the second largest party. The 2003 election result led to a political stalemate lasting more than 10 months, as CPP needed a coalition partner to form the government and was facing a united FUNCINPEC and SRP 'Alliance of Democrats' in negotiations demanding concessions. After several rounds of negotiations the incumbent Prime Minister, Hun Sen, offered Prince Ranariddh the position as Chairman of the National Assembly, which paved the way for a third CPP-FUNCINPEC coalition government formed in July 2004.

In February 2005, the National Assembly voted to lift the parliamentary immunity of three SRP opposition parliamentarians, including SRP leader Sam Rainsy, in connection with defamation claims and claims that they were contemplating launching an armed movement. Cheam Channy, was arrested and convicted for the charges related to militant activities while Sam Rainsy, who faced defamation charges, went into self-imposed exile<sup>13</sup>. In October 2005, the government arrested critics of the signing of a supplementary border treaty with Vietnam<sup>14</sup> and later detained four human rights activists. In January 2006, the tense political climate improved as Prime Minister Hun Sen decided to release all political detainees and removed the charges against the SRP parliamentarians and subsequently Sam Rainsy returned to Cambodia.

In March 2006, despite FUNCINPEC opposition, the CPP struck a deal with SRP to change the constitutional requirement of two-thirds majority to form a government to the much less demanding formula of 50 per cent + one<sup>15</sup>. In protest against this change, FUNCINPEC's President Prince Norodom Ranariddh resigned as Chairman of the National Assembly and his relations with the CPP leadership grew increasingly sour. In October 2006, a FUNCINPEC faction opposing Prince Ranariddh's leadership style called an extraordinary party congress that voted Prince Keo Puth Rasmey as the new party president. Following this, in November 2006, Prince Ranariddh created a new party, the Norodom Ranariddh Party (NRP), a move that meant he automatically lost his seat in the National Assembly.

The second Commune Council elections held in 2007 took place in the midst of demonstrations by Khmer Krom monks for the right to religion in southern Vietnam; defections of SRP activists to the CPP but also confirmed a trend towards less violent elections. However, concerns were raised over the presence of village chiefs in the vicinity of polling stations and distribution of Voter Information Notices (VINS)<sup>16</sup>. The turnout for these

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<sup>12</sup> For further details, please see the EU Election Observation Mission to Cambodia 2003 Final Report.

<sup>13</sup> The third SRP parliamentarian, Chea Poch, was charged with defamation but neither tried nor convicted.

<sup>14</sup> The Draft law on the agreement of the supplementary treaty between Cambodia and Vietnam on the 1985 border treaty was signed by Prime Minister Hun Sen in Hanoi on 10 October 2005 and subsequently adopted by the National Assembly on 11 November 2005 amidst criticism from the SRP.

<sup>15</sup> In April 2006, the previous requirement of support from 2/3 majority of that National Assembly members to form a government stipulated in article 89 of the Constitution of the Kingdom of Cambodia was amended to 50% plus one member.

<sup>16</sup> For more details see the report issued by UNDP Cambodia on the 2007 Commune Council elections available on: [http://www.un.org.kh/undp/index.php?option=com\\_docman&task=doc\\_details&Itemid=73&gid=68](http://www.un.org.kh/undp/index.php?option=com_docman&task=doc_details&Itemid=73&gid=68)

second Commune Council elections was a disappointing 67.87 per cent compared to the 87.48 per cent turnout in similar elections in 2002.

### C. Key Political Actors

The Cambodian political landscape currently counts 45 political parties formally registered with the Ministry of Interior; however, it is a mere handful that has influenced post 1993 political developments. Most political parties in Cambodia are characterised by a lack of permanent programmatic/ideological identity and are centred on the platform built around a charismatic party leader or emerging issues suggesting reliance on populist political strategies.

The political opposition to the long-standing coalition of the CPP and FUNCINPEC is largely composed of leaders and activists who, over the years, have gradually split from FUNCINPEC. Some of these have vanished while others have managed to reinforce their position. There have also been charges that new parties were purposely created to dilute the opposition vote and, during election campaigns, to reduce the amount of free airtime allocated to leading opposition parties. While internal party democracy is a new concept in Cambodia, several political parties have, since 2003, made efforts to conduct internal elections for national and local leadership positions and have experimented with candidate elections. Among the 11 contesting political parties<sup>17</sup> for the 2008 National Assembly elections, six were created as recently as in 2006 or 2007.

Cambodia's largest party is the CPP<sup>18</sup> which has formed part of the political leadership of the country since the Vietnamese invasion in 1979. The CPP front figure is CPP Deputy Chairman and Prime Minister Hun Sen. Since its creation the CPP has been the dominant party in Cambodian politics, a position it has reinforced in recent years; it won a majority of National Assembly seats in 2003, holds a two-third majority in the current Senate, and controls some 97 per cent of Commune Councils. The party has a strong relationship with the booming business sector in Cambodia and strong diplomatic relationships with neighbouring Vietnam and China. Internal party democracy and transparency are weak and leaks of information concerning internal controversies are rare. The CPP is often commended for its strong and very broad presence throughout the country down to the smallest villages. The CPP's political platform features its role in bringing stability, economic growth and new investments, including infrastructure, to Cambodia.

The Sam Rainsy Party (SRP) is a social-liberal party established in 1998 and led by Sam Rainsy, former FUNCINPEC Minister and Khmer Nation Party leader. The SRP came out of the 2003 elections as the third largest party in Cambodia with a 21.9 per cent share of the vote<sup>19</sup>. The party is an outspoken opponent to the CPP and promotes itself on a social agenda that includes salary increases for public sector employees, more investment in health and education as well as the fight against corruption. SRP achieved a 25.2 per cent share of votes

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<sup>17</sup> The contesting parties were: CPP, SRP, Norodom Ranariddh Party (NRP), FUNCINPEC, the Human Rights Party (HRP), League for Democracy Party (LDP), the Khmer Democratic Party, the Heng Dara Democratic Movement Party, Khmer Republican Party, the Khmer Anti Poverty Party and the Society of Justice Party.

<sup>18</sup> The party was established in 1979 as the Kampuchean People's Revolutionary Party and took its current name in 1991.

<sup>19</sup> Due to the seat allocation formula, SRP only became the third largest party in the National Assembly with 24 seats while FUNCINPEC with only 20.8 per cent of votes secured 26 seats.

in the 2007 Commune Council elections. In the run up to those Commune Council elections and again in the run up to the National Assembly election in 2008, the SRP suffered from significant defections to the CPP at local, provincial and national level. Several observers agree that this was a result of a dual strategy of financial encouragement and threats.

The Norodom Ranariddh Party (NRP) was established in November 2006 by the former FUNCINPEC leader, Prince Norodom Ranariddh following his departure from FUNCINPEC. In the 2007 Commune Council elections, the NRP fared better than its “parent party”, securing 8.1 per cent of votes. Norodom Ranariddh is currently in self-exposed exile due to a standing arrest warrant against him<sup>20</sup> concerning a widely reported breach-of-trust case raised by former FUNCINPEC allies. The NRP political platform for the election was based on addressing illegal immigration, inflation and corruption as well as increasing investments in rural development and education. Despite the NRP leader’s physical absence his political messages were transmitted through telephone recorded speeches in the NRP campaign.

FUNCINPEC is the French acronym for Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif, which translates to "National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia". FUNCINPEC is a conservative, royalist party previously led by Prince Norodom Ranariddh and since October 2006 led by Prince Keo Puth Rasmey. Compared to the CPP, FUNCINPEC has offered a more liberal political platform and in the election the party campaigned largely on messages similar to those of the declared opposition parties. FUNCINPEC has struggled to match the increasing support gained by the CPP and has suffered from continuous defections and splits that significantly rose around the change in leadership in 2006, the run up to the Commune Council election in 2007 and again during the run-up to the 2008 National Assembly election. In 1993 FUNCINPEC secured 45 per cent share of votes but popular support for the party dropped to 31.7 per cent in the 1998 National Assembly election, to 20.8 per cent in the 2003 National Assembly election and to only 2.4 per cent in the 2007 Commune Council elections.

The Human Rights Party (HRP) was founded in 2007 led by Kem Sokha, a human rights activist and former FUNCINPEC National Assembly and Senate member. The HRP leadership counts several former politicians including in its senior positions. Although Kem Sokha is known as a vocal critic of the ruling CPP some commentators alleged that the HRP was created to weaken the opposition parties. The 2008 National Assembly elections were the first elections contested by HRP and its political platform focused on anti-corruption, improved law enforcement (including curbing illegal immigration), investments in small-scale farming and vocational training.

#### **IV. LEGAL ISSUES**

##### **A. Cambodia’s Obligations under International and Regional Standards**

Cambodia has ratified/acceded to the most prominent international treaties related to elections, including the International Covenant on Civil and Political Rights (ICCPR), the

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<sup>20</sup> The arrest warrant was issued in connection with court hearings in the case of the sale of the former FUNCINPEC headquarters in connection with which the Prince has been convicted to an 18-month prison sentence. This was upheld by a Supreme Court ruling on 30 July following appeal. Prince Ranariddh has been charged and convicted at least twice since 1997 by the Cambodian courts and on each occasion left the country. However, royal pardons have previously paved the way for him to return to Cambodian politics.

International Convention on the Elimination of All forms of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW). The provisions included in these international treaties are binding for Cambodia, which therefore has the obligation to strive towards compliance.

The Universal Declaration of Human Rights, which is incorporated into the constitution of the Kingdom of Cambodia, contains six universal election standards: elections are to be held periodically, elections must be genuine, there has to be a right to universal suffrage, there is to be a right to equal suffrage, elections must be based on the free will of voters and there has to be the right to a secret ballot. Article 25 of the ICCPR, reiterates and expands those standards by granting to each citizen the right to vote and the right to stand for election. Article 25 has been interpreted in detail by the General Comments by the UN Human Rights Committee.

## **B. National Legal Framework**

The main national law governing the 2008 National Assembly election is the Law on the Election of Members of the National Assembly (LEMNA). Other laws that also have an impact on the election process include the Constitution of the Kingdom of Cambodia, the Political Party Law, the Press Law, the Law on Assemblies, the Law on Nationality, and the Penal Law 1992. Furthermore there are the National Election Committee (NEC) Regulations and Procedures and a number of NEC Directives, Joint Directives issued by the Ministry of Interior and the NEC, the NEC Internal Regulations, as well as Codes of Conduct for Political Parties, Media, Observers, Electoral Officials and for Members of the Armed Forces and Police.

The applicable laws generally provided a workable framework and overall conform to international standards and establish the necessary institutions for the conduct of elections. The Codes of Conduct regulate the rights and obligations of those concerned in an overall satisfactory manner. The problem in Cambodia lies rather in the sometimes inadequate implementation of the legal provisions and the real or perceived lack of independence of the institutions.

The legal conditions for registering as candidate in the National Assembly elections raise some concerns. According to LEMNA, a candidate must be a registered voter of at least 25 years of age, a Cambodian citizen from birth, have a residence in Cambodia and be nominated by a political party. LEMNA does not allow independent candidates to stand in elections and the law limits the possibility to stand as a candidate to citizens born in Cambodia, thus barring naturalized citizens. In this respect LEMNA does not entirely conform to international standards and best practices.<sup>21</sup>

The electoral regulations prohibit the use of state assets in the campaign. Despite these provisions, Election Commissions have been extremely reluctant to use their authority to

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<sup>21</sup> As has been established by judicature in numerous cases, the right to stand for election also includes recognition of the right to stand as an independent candidate. Cf. General Comment 25 (17): “The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties”. General Comment 25 (3): Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.

impose penalties under Chapter 11 of LEMNA for the use of vehicles with State, Police or Armed Forces number plates in campaign activities<sup>22</sup>.

There are very few rules governing the party finances, leading to a very non-transparent system of campaign financing. There are no limits to individual or total contributions and there is no ceiling on total campaign expenditures.<sup>23</sup> The LEMNA contains a provision requiring parties and candidates to have an account book showing sources of income and campaign expenses (art. 82). All contributions and expenses must be credited and debited to the same bank account (art. 83). That bank account may “if necessary” be checked by the NEC (art. 16, 82), but there are no sanctions defined in Chapter 11 (Penalties) of the LEMNA in case a party does not meet the requirements. In past elections, the NEC has never used its authority to check party account books, and according to its Secretary General it does not see any necessity to do it this time.

Despite the Political Party Law providing for the possibility of the Cambodian state to allocate equal amounts from the national budget as subsidies to all political parties to be used in the electoral campaign, the Cambodian state has never disbursed such allocations, which could help in providing for a level playing field and lessen the discrimination against less wealthier parties and candidates.

In previous elections the NEC was the highest level of jurisdiction for complaints and appeals related to the election campaign. However, in 2006 the LEMNA was amended and the Constitutional Council was made the highest level of jurisdiction. Although this can be considered a step in the right direction as it provides for a judicial review of NEC decisions, many interlocutors expressed their concerns about the independence of the Constitutional Council.

Overall, the legal framework remains fragmented, and the wide variety of norms of different levels and nature (including regulations, directives, reminder directives, manuals, guidelines, decisions and instructions developed by the NEC and relevant ministries) sometimes creates confusion as to which rule should prevail. The law does not set a clear hierarchy of norms. The lack of consolidation of the regulatory framework makes it difficult for any stakeholder to have access to the rules and to have a clear understanding of them.

As far as LEMNA is concerned, the primary concern is that the law remains very vague in many respects and thus leaves too much room for interpretation and the filling of legal gaps by the NEC, while at the same time it over-regulates other subjects. The NEC issued about 700 pages of Regulations and Procedures. These Regulations and Procedures tend to be very complicated and contain inconsistencies, flaws and ambiguities. The provisions concerning the complaints and appeals process in particular are too complex. The splitting of the generic procedures in the Regulations and Procedures of the 2003 elections into 8 different procedures for the 2008 elections resulted in contradictions, redundancies and gaps in the text.

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<sup>22</sup> Cf. Regulations and Procedures paragraph 7.4.1 and 7.4.2 as well as the Code of Conduct for Political Parties, Candidates, and Political Party’s Agents during the Election of the National Assembly Members, July 27, 2008, IV.27.

<sup>23</sup> International standards permit reasonable limitations to campaign expenditure and these may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party (cf. General Comment 25 (19)).

The Regulations and Procedures limit reconciliation in the complaints process to “minor offences”, but fail to define this term and do not determine the course of action to be taken if a case is election related but not a minor offence. Thus there is no clear instruction on how election-related serious crimes should be handled. Furthermore, a clause contained in the Regulations and Procedures for the 2003 elections which obliges the Election Commissions to follow up with the courts if a case has been referred to the judiciary was omitted in the current regulations.

There is no clear delineation between the LEMNA-based competence of the NEC to fine offenders and the Court System. The fact that the NEC is granted quasi-judicial competences with regard to penal offences related the electoral process (destruction of someone's property, injuries, intimidation, etc.) is a result of the widespread lack of trust in the Cambodian court system. Still, sentences pronounced by the NEC do not legally preclude the Courts from imposing criminal penalties on an offender, provided the plaintiff lodges a parallel complaint before the Court.

Many tasks and responsibilities of the lower levels of the electoral administration, for example the role of Commune Election Commissions (CECs) in consolidating the election results from the Polling Stations (PSs) and in the Complaints and Appeals process, are not defined in the LEMNA but only determined by NEC in the Regulations and Procedures.

### **C. Complaints and Appeals Concerning Polling, Counting and Consolidation of Results**

The NEC used two entirely different legal procedures for complaints related to irregularities on election-day. While some complaints (such as incorrect classification of invalid ballots) fall under the procedures for Polling and Counting related complaints, others (e.g. threats, intimidation, etc.) were dealt with according to Chapter 11 of LEMNA (Penalties) for which the NEC used the procedures for campaign related complaints. These two procedures differ in many respects.<sup>24</sup> Unfortunately the NEC failed to establish clear-cut rules which procedures had to be followed in which case. Furthermore, irregularities that relate to misbehavior by individual persons or parties could also affect the election outcome and thus should have been dealt with under both procedures. Most stakeholders were not aware that two different procedures would be used, as in all guidelines and training manuals produced by the NEC only the Polling and Counting related complaints procedures were described.

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1) Polling and Counting related complaints can only be filed by party agents, whereas Chapter 11 related complaints can be filed by everyone

2) Polling and Counting related complaints must be filed before 11:30 the day after the election, whereas Chapter 11 related complaints can be filed up to 3 days after the event

3) for Polling and Counting related complaints the CEC will decide on whether to conduct a recount, whereas in Chapter 11 related complaints the CEC can only hold an informal reconciliation meeting. If reconciliation fails and the case is appealed, the PEC has first to try again to reach reconciliation and if this is not possible has to hold a formal hearing.

4) Polling and Counting related complaints aim at conducting a recount or re-election, whereas Chapter 11 related complaints always target at a specific person to be sanctioned for a misbehaviour (possible sanctions range from warning letter to fines to the perpetrator's name being struck off the voter's list for 5 years)

5) For Complaints related to Polling, Counting and the Consolidation of Results the decision of the NEC is final, whereas for complaints concerning Chapter 11 of LEMNA an appeal to the Constitutional Council is possible.

The CECs received a total of 184 complaints related to the Polling and Counting and the Consolidation of the Results (unfortunately, the statistics provided by NEC make no distinction according to the procedure used). The highest number of complaints to CECs are reported from the provinces of Battambang and Banteay Meanchey (24 each), followed by Svay Rieng (23), Pailin (16), Kampot (14), Phnom Penh (13) and Takeo (11).

The vast majority of these complaints (150, equalling 82% of all complaints) were filed by SRP. 45% of the complaints were rejected on formal grounds.

A total of 111 cases reached PECs, 18 of them were complaints filed directly to PECs as they were directed against CEC officials, the others concerned appeals against decisions of CECs. 47% were rejected on formal grounds, 37% rejected after a hearing, and 12% rejected by letter without a hearing. In the end, only 6 out of 111 complaints were accepted by PECs. At CEC as well as PEC level, in some provinces 100% of the received complaints were rejected on formal grounds without a hearing.

55 cases reached the NEC, 52 of which were appeals from PECs and 3 filed directly to NEC as they concerned complaints against PEC officials. Hearings were held in only 8 cases, in which 5 appeals were accepted and 3 rejected. 47 appeals were replied by letter without a hearing. 36 of them were rejected, 1 partially accepted and 10 accepted.

In 16 cases the NEC acknowledged a misbehaviour of local administration officials (mostly fraudulent issuing of Form 1018), and referred the cases to the Ministry of Interior for disciplinary action.

Although none of the rejection letters by NEC informed the complainants about their right to appeal (in case of Chapter 11 related complaints) to the Constitutional Council, SRP launched five appeals with the Constitutional Council, who rejected them all without a hearing.

EUEOM observers reported that the practice of lower level electoral administrations dealing with complaints differed widely with the same type of problem dealt with under different procedures by different CECs. Some election commissions mixed elements of the two different procedures and others applied the incorrect procedure in the cases considered. In many instances CECs refused to take complaints on the grounds that they were filed after 11:30 am the day after the elections, while according to the law the deadline was actually 3 days after the event.

Although there was clear evidence that irregularities concerning Forms 1018 occurred, especially issuing Forms 1018 for persons that were not eligible to vote, election commissions at all levels were unwilling to deal with these cases. Most of the complaints concerning the fraudulent issuing of Forms 1018 were rejected for lack of competency of the electoral administration, only in the appeals process did the NEC accept in several cases its competency and ruled that local officials had misbehaved, but referred the cases to the Ministry of Interior for disciplinary sanctions.

A number of other problems were identified and reported by EU observers. Among such problems were: the timeline of 11:30 for complaints against the polling and counting operation is too short for party agents to gather the evidence required to launch a complaint;



the invitations for hearings sent out by the NEC sometimes gave extremely short notice to the parties; in some cases the complaint could not be launched because the CECs had closed their offices before 11:30; in other instances complaints were rejected by CECs because the case had not been brought up beforehand in the polling station, whereas in similar cases such complaints were accepted (the Regulations and Procedures give no clear instructions on this question); the reasons given for the decisions of the election commissions are extremely short, mostly simply stating that there was “lack of evidence”, without giving further explanations why the Commission arrived at that conclusion nor giving a legal assessment.

## **V. ELECTION ADMINISTRATION**

### **A. Structure and Composition of the Election Administration**

A four-level structure administers the National Assembly elections in Cambodia. The election administration is headed by the NEC supported in its work by a General Secretariat. Lower level election administration structures are only appointed during the election period and consists of 20 Provincial Election Commissions and 4 Municipal Election Commissions (PECs) and 1,621 Commune Election Commissions (CECs). The NEC identified a total of 15,255 Polling Station Commissions (PSCs) needed for the 2008 elections and recruited and trained over 100,000 members of election commissions and other election officials.

The LEMNA defines the NEC<sup>25</sup> as “an independent and neutral body”, and stipulates that members of the NEC and election commissions of all levels “shall be neutral and impartial in the implementation of their electoral duties”. However, the NEC faces some legal constraints that seem to affect its ability to ensure a fully independent administration of the elections: The NEC does not enjoy a constitutional status, its members have no fixed term of office and there are no safeguards against their arbitrary removal. NEC members are nominated by the Ministry of Interior and appointed by Royal Decree at the request of the Council of Ministers upon approval by an absolute majority of members of the National Assembly. All the institutions mentioned are currently dominated by the CPP. By a 2006 amendment to the LEMNA the NEC membership was enlarged from 5 to 9. In practice, this meant that the opposition SRP was allowed to nominate two persons with the CPP government coalition partners FUNCINPEC nominating the remaining two members (although according to the law all members of the NEC are independent and must relinquish their party affiliation). However, as decisions within the NEC are taken by simple majority, the opposition nominees can always be overruled. They cannot even put forward proposals, because the internal regulations require a minimum of 3 commissioners for a proposition.

There was a lack of confidence in the neutrality and impartiality of the NEC among election stakeholders. The majority of interlocutors, mainly from the opposition parties and civil society organisations, expressed concerns regarding the neutrality and impartiality of the election administration. They criticised the fact that the majority of the NEC members are affiliated to the ruling party and that all important decisions of the NEC are based on majority rather than by consensus. The NEC is responsible for the recruitment and appointment of

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<sup>25</sup> Art 12 of the LEMNA. The National Election Committee shall be an independent and neutral body in the carrying out of its duties. Members of the National Election Committee and those of Electoral Commissions at all levels shall be neutral and impartial in the implementation of their electoral duties.

lower level electoral officials. Opposition parties<sup>26</sup> claimed that the recruitment of the PECs<sup>27</sup>, CECs and the polling station members was not neutral and impartial and that almost all of the selected applicants were members of CPP. Most members of the electoral administration did not want to answer questions regarding their party membership<sup>28</sup>. Those members of CECs<sup>29</sup> who admitted a political party membership to the EU observers<sup>30</sup> were members of the ruling party.

Although there is a provision in LEMNA<sup>31</sup> which allows for the modification of the number of seats and the allocation of seats to each province/municipality no modifications were adopted despite the increased size of the population prior the 2008 elections. In 2006 The Committee for the Determination of National Assembly Seats did not recommend increasing the number of seats due to social and economic factors<sup>32</sup>. However, at the same time the Committee did not propose any modifications to the number of seats allocated per province although according to statistics provided by the National Institute of Statistics the number of citizens per province would require some modifications as there are significant variations among the constituencies in the size of population per seat. In some cases such variations do not comply with the principle of equal suffrage contained in UDHR Article 21.

## **B. Administration of the Elections**

The NEC proved its ability to organise technically good elections. The planning and execution of the recruitment and training of the election administration staff and other important electoral activities were timely and well conducted. The NEC has met all important deadlines regarding recruitment and training of the election staff and the delivery of election materials. The organisation of the polling and voting were assessed positively by the EU EOM.

The efficiency and professionalism of the PECs was assessed by EU EOM observers as good to very good. The vast majority of PEC officials demonstrated a good level of knowledge and understanding of electoral law and procedures. The performance of the majority of CECs was assessed positively but to a lesser extent compared with PECs. A significant number of CECs

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<sup>26</sup> According to opposition parties only a few of their members were able to pass the interview for polling staff.

<sup>27</sup> Several PEC members, either themselves or close members of their families were occupying high ranking positions in the provincial/municipal administration and they were directly or indirectly affiliated to the ruling party.

<sup>28</sup> Members of the PECs and CECs must resign from the party membership over election period (the length of the contract for a PEC member is 4 months and two months for a CEC member).

<sup>29</sup> Out of 11 CECs interviewed regarding their party membership, in 9 cases the majority of members admitted their membership to the CPP, in one case they claimed no party membership and in the other case they refused to answer. The interviews were conducted by EU observers with CEC chairmen and/or members in Kampong Chhnang province. Similar findings were reported by EU Long Term Observers in Battambang and Svay Rieng province.

<sup>30</sup> The governor of Svay Rieng, who is also the head of the CPP in the province, gave an explanation to EU EOM observers. On the question of why more than 90 per cent of the CEC and polling station personnel in the province were from CPP as claimed by the opposition parties, he answered that “members of his party are better educated and that it is therefore quite natural that they were selected as CEC and polling station staff members as many of them were teachers”.

<sup>31</sup> LEMNA, Art 7.

<sup>32</sup> In line with the LEMNA, the Committee has a right to take account of demographic, geographical, social, and economic factors.

are located in remote areas with low standards of infrastructure and their performance was marked by the lack of financial resources and inadequate equipment.

Many administrative functions related to the electoral process are not performed by the NEC. The law requires the NEC to delegate power over voter registration to the Commune Councils<sup>33</sup>. The Commune Council officials were issuing certificates of registration for the candidates of political parties and the Communes have a responsibility over issuing the Statement of Identity Form 1018 to voters. Several cases of unprofessional behaviour by Commune officials were noted and reported to EU observers. Given concerns raised in previous elections it was inappropriate for the NEC to continue to allow village chiefs to be involved in the distribution of VINs to voters, given their lack of impartiality: many village chiefs participated in the electoral campaign activities of the ruling party.

The planning and execution of all the electoral activities was timely and well conducted. The majority of polling staff were teachers and employees of local state administration with previous electoral experience. In a large number of communes the number of applicants was equal to the number of polling staff needed. In these cases, all applicants, regardless of qualifications, were selected. The low number of applications could be attributed to several factors such as the low remuneration for the training and work expected from them, the lack of human resources in some remote areas and fear of taking on responsibility.

The NEC began recruiting members of the polling stations commissions PSC/BCC<sup>34</sup> from 1 July. EU observers assessed the NEC training for all election administration staff on the election process (polling, counting and consolidation of the election results) as well conducted. In the first phase 24 NEC master trainers were trained at the end of June. The second phase consisted of three levels of cascade training for members of PECs, CECs and PSCs.

### **C. Distribution of Voter Information Notices**

The distribution of VINs to registered voters took place between 5 and 25 June 2008. The VIN informed voters of the date of the election, the polling station where they are registered to vote and their serial number on the voter register. According to NEC statistics 85 per cent<sup>35</sup> of all VINs were distributed and the remaining VINs were available for voters at the offices of the CECs. In the context of the results of the second Voter Registration Audit conducted by NDI, which assessed the accuracy<sup>36</sup> of the final voter register as 84.1 per cent, the distribution figure is relatively high. Despite this, EOM interlocutors complained about the non-delivery of VINs to their supporters and the partisan behaviour of the village chiefs involved in the process of distribution. The problem remained that a significant number of voters, especially

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<sup>33</sup> Art. 53 (new) LEMNA The National Election Committee shall delegate any of its power to Commune/Sangkat Council to perform functions on its behalf in order to review the list of voters, registration of voters in the voting list and electoral booklist for each Commune/ Sangkat.

<sup>34</sup> Members of the Polling Station Commission became members of the Ballot Counting Commission once the polling was over. The counting was conducted at the polling station and not at the commune electoral commission as was the case during previous National Assembly elections.

<sup>35</sup> The distribution figures differed significantly between provinces ranging from 60% in Phnom Penh to 95% in Svay Rieng province. Higher percentages of distribution were achieved in the rural provinces.

<sup>36</sup> The number of confirmed registered voters comprised 84.1 per cent of names on the voters list. See: NDI's VRA II, the results of verifying names on the voters list.

in the rural areas, were not aware that the VIN card cannot be used as an identity document to vote on election-day and believed that without it they will not be able to vote.<sup>37</sup>

#### **D. Statement of Identity (Form 1018)**

The statement of identity also known as Form 1018 is one of the eleven documents prescribed by the LEMNA<sup>38</sup> which can be used by the voter to identify herself/himself in the polling station. This statement is issued to the registered voter who does not possess any other valid ID document. In order to be issued a Form 1018, a voter must be accompanied by two eligible voters of that commune who can confirm the identity, age or residency of the applicant. Furthermore he/she has to provide two photographs, which have to be glued onto the forms and stamped. According to the law the Form 1018 could be issued by Communes clerk until 26 July, the day before election-day. Voters were also allowed to use the Form 1018 issued during previous elections.

A UNDP funded national programme had enabled the issuing of national ID cards to the majority of Cambodians<sup>39</sup>. Therefore, the need to issue Form 1018 should not have been as high as in previous elections.

Despite criticism of the issuing of Form 1018 during the previous election, the NEC and relevant authorities did not initiate and establish safeguards prior to the 2008 elections. As there were not sufficient safeguards (such as serial numbers, keeping records of the forms issued) regarding the issuing the form 1018 the process was open to manipulation. The lack of records on the use of forms 1018 made it impossible for political parties and other stakeholders to know where problems might have occurred and thus substantiate their complaints. And election commissions had no factual basis to decide on complaints.

Opposition political parties reported the extensive use of Form 1018 by voters on election-day. According to a Reminding Directive issued by the NEC, CECs have to cooperate with the Commune Councils to prepare a written report with the accurate number of people who had been issued Form 1018. This report shall be sent to the NEC and all stakeholders informed about the content. The NEC provided EU observers with a form containing the total numbers of Forms 1018 issued in each province which totalled 324,819 but could not say how this data was collected or provide a more detailed break down.

Many cases of irregular issuing of Form 1018 and several cases of voters using fraudulent Forms 1018 in order to vote were reported to EU observers after election-day. Opposition parties also complained about preferential issuing of Form 1018 to ruling party supporters.

EU observers saw evidence of more than 100 Forms 1018 issued to persons under a name other than that on their ID card. These forms were issued in different parts of the country. In interviews with the persons concerned, most of them indicated that the forms were issued

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<sup>37</sup> 49 per cent of citizens were not aware that voter information notices could not be used as an ID document to vote (NDI's Voter Registration Audit II, 13 June). This figure may have decreased due to information in the media and the NEC's information campaign. Each VIN contained information that it was non-mandatory for a voter to possess the VIN card to vote.

<sup>38</sup> LEMNA: Art. 54 (new) lit. b (3<sup>rd</sup> paragraph), d (2<sup>nd</sup> paragraph), e (2<sup>nd</sup> paragraph), Art. 92 (new);

<sup>39</sup> The total estimate of eligible Cambodians was 8,585,670 and as of 30 April 2008, the Ministry of Interior was able to issue 7,703,065 cards. Source: Ministry of Interior.

during the afternoon of election-day so that they could vote for another voter who had not turned up. Some said they were issued the form late afternoon on 26 July and told to vote early morning. All confirmed they were instructed by the issuing person to vote for CPP. EU observers believe that the issuing of fraudulent Forms 1018 was a relatively widespread phenomenon, although no precise figures could be established.

### **E. Transparency**

In general, the level of transparency of the electoral administration was assessed positively by the EU EOM. To improve communication the NEC held regular consultative meetings with representatives of political parties and civil society. Similar regular meetings were also held at the provincial and commune level and they were positively assessed by electoral stakeholders. The minutes of these meetings were openly available and given to any party or NGO organisations upon request.

A high number of political party representatives and domestic observers were accredited to observe the elections without any reported difficulties or obstacles. Six political<sup>40</sup> parties submitted lists of party representatives to the PECs and CECs. In total the NEC accredited more than 117,000 political party representatives<sup>41</sup> and the parties were able to submit their nominations until 26 July. Both party representatives and observers had access to lower levels of election commissions on and after election-day. Concerns remain regarding NEC sessions which are not open to observers and the minutes which are not made public. In a positive measure of transparency the NEC published the results for each polling station on its website. There was a significant marked improvement regarding information provided on the NEC's website.

## **VI. VOTER REGISTRATION**

### **A. The Right to Vote**

Every Cambodian citizens who is 18 years or older on election-day, who is registered in the commune where he/she will vote, and who is not serving a prison term or under guardianship has the right to vote. A permanent voter register was introduced in Cambodia after the 2002 Commune Council elections. Maintenance of the voter register, which is updated annually, is the responsibility of the NEC.

### **B. Voter Registration Procedures**

In comparison with previous elections, a significantly lower turn out in the 2007 Commune Council elections led stakeholders to question the quality of the voters' list. The controversy between political parties and the NEC did not led to a decision to conduct a scientific audit or any other internal assessment of the voters list by the electoral authorities. The NEC, convinced that the voter list contained a large number of invalid voter names, decided to update and clean the voters list of multiple registrants, people who had re-registered in other communes and dead voters by compiling a provisional "Deletion List" known as Form 1025.

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<sup>40</sup> Six political parties accredited their representatives: CPP, FUNCINPEC, NRP, HRP, SRP and HDDMP.

<sup>41</sup> This figure covers both full party representatives as well as substitutes as each party registered for the election could nominate two agents although only one agent could be present in the polling station.

The deletion list was compiled in August 2007 before the annual update took place between 15 September and 20 October 2007. During the update, the deletion list and preliminary voter list were posted throughout the country, allowing citizens to request corrections if necessary. The NEC validated the final voter list on 29 February 2008. According to the NEC 911,881 new voters were registered, 362,636 records were corrected, 79,688 voters were allowed to remove their names from the deletion list and 587,160 names were deleted. The total number of voters on the final voter list for the 2008 election was 8,125,529 up from 7,799,371 for the 2007 Commune Council elections.

The high number of deleted names from the register became an issue of controversy as opposition political parties and civil society organisations voiced serious concerns about the most recent voter list update, in particular with regards to the high number of deletions which were significantly higher in comparison to the 2006 voters register update<sup>42</sup>. Many EU EOM interlocutors criticised the process of the compilation of the deletion list stating that the prescribed process was not followed in the identification of the names slated for deletion and thus opening the possibility for incorrect deletions of voter names from the list. The opposition political parties claimed that the high number of deleted names consisted predominantly of opposition supporters.

As a quality check measure, it has become international practice that major revisions of voters' registers are followed by an audit to verify the margins of errors. In the case of Cambodia, the only such measure was a voter registration audit (VRA)<sup>43</sup> exercise in two steps conducted by the National Democratic Institute (NDI) and Cambodian NGOs with support from UNDP and international donors. The final results of the audit were delayed and only presented very close to the elections, in June 2008. The findings revealed that the final voters' list included 87.9 per cent of eligible voters. The results almost equalled the results of NDI's first VRA conducted before the last annual update. The audit also found the number of valid records had increased to 84.1 per cent from 77.3 per cent. The remaining records included 7.6 per cent of voters who may have relocated, 7.6 per cent invalid records and 0.7 per cent deceased voters. The results of verification of names on the deletion list, known as Form 1025, show that 9.8 per cent of eligible voters were removed from the list during this latest update representing a total of 57,401 voters or the equivalent of 0.7 per cent of the 2008 Voters List.

Following its findings, NDI and the Cambodian NGOs involved<sup>44</sup> released recommendations to the National Electoral Committee citing "that it is NEC's responsibility to safeguard the right to vote of every elector" and recommended the NEC to take the necessary measures possible to restore those voters whose names have been deleted to the 2008 voters list.

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<sup>42</sup> During the 2006 annual update a total of 160,260 names were deleted.

<sup>43</sup> The first NDI voter registration audit was conducted shortly before the annual update in September 2007 for the voter register used in the 2007 elections. The audit found that the list was relatively complete with 88.8 per cent of eligible voters included and relatively accurate. However, the audit also found that the list was less up-to-date, with only 77.3 per cent of valid records on the list. While this last figure supported the NEC's estimation that some 650,000 records should be deleted, the authors also warned that "the VRA findings create concerns that some of the 10.5 per cent temporarily or permanently relocated voters might end up on the NEC deletion list."

<sup>44</sup> Activists of COMFREL, NICFEC with the technical assistance of the Center for Advanced Study have been participating in the NDI VRA.

In reaction to NDI's audit the NEC conducted its own assessment of NDI's audit and criticised NDI and its partners for not providing results and recommendations to NEC in the timely manner as agreed at the end of April 2008 and for not using correct data<sup>45</sup>. According to the NEC the actual number of mistakenly removed voters in the NDI audit should be 49,340 or 8.4 per cent (0.6 per cent of total registered voters). The NEC also investigated the names which were identified by the audit as incorrectly removed from the list. The NEC has not provided any figures or internal assessment of the voter registration process and only officially "recognized that there may be a small number of voters whose names were improperly and unintentionally removed from the voters' list"<sup>46</sup>.

The NEC however has refused to act on the recommendations of NDI and domestic observers arguing that due to time, legal<sup>47</sup> and operational constraints it was not feasible to use supplementary voter' lists. In order to restore names to the voters' list, the NEC would have to investigate all cases individually and restore each individual name based on legal and proper document, produce/print supplementary voters lists for 15,255 polling stations, distribute new VINs, issue new complimentary procedures and guidelines for polling staff and organise new training to avoid potential confusion and error<sup>48</sup>.

NDI's VRA also evaluated the rate of error in entering data<sup>49</sup> on individual voters. Data regarding the accuracy of the voters' list shows that 87.9 per cent match in name, 90 per cent in address, 79 per cent in date of birth and 96.5 per cent in gender. In this regard, the NEC decided to compensate the accuracy shortfall in data entering to guarantee that no voter would be turned away from casting the ballot due to the mismatch of the four electoral data. The NEC issued a directive on how to decide on the voting requirement in cases where one, two or three of the four data do not match.

Despite strong criticism regarding irregularities and flaws in the voters' list by senior representatives of opposition parties, EU observers did not find evidence of the systematic deletion of opposition supporters. However, in 19 per cent of polling stations visited by EU EOM observers during the election-day voters complained regarding the voters list and the domestic observers stated in their reports that incorrect voter registration was one of the key problems of the 2008 election process.

During the voters' list revision and voter registration phase, 7 complaints were filed with the Commune Councils. At NEC level a total of 52 complaints were received, all of them filed by SRP, asking for thousands of names to be included in or deleted from the voters' list: 31 of these complaints were rejected, 21 were accepted.

During the phase of the review of the Preliminary Voters' list, a total of 759 complaints were filed with the Commune Councils of which 697 were accepted and 62 rejected.

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<sup>45</sup> According to the NEC the number of names on the deletion list (Form 1015) was only 503,470 as the remaining 82,253 deleted names were on Forms 1016 and 1017 which are filed in person by voters.

<sup>46</sup> See: the NEC response to NDI's VRA on the NEC website.

<sup>47</sup> In one case the NEC restored 1,138 voters in Stung Meanchey commune in Phnom Penh after the legal deadline in order to respect their right to vote. The NEC blamed the Commune officials for making errors during the registration.

<sup>48</sup> See: the NEC response to the NDI's VRA on the NEC website.

<sup>49</sup> There are four data regarding each voter on the register (name, address, date of birth and gender).

NEC received 6 appeals aimed at having names struck off the voters' list. NEC accepted 3 appeals, rejected one and partially rejected 2 (meaning they only accepted to delete some of the names listed in the appeal). 3 appeals were filed to the Constitutional Council, one of which was subsequently withdrawn. For the two other cases the Constitutional Council held hearings on 21 and 22 November 2007 in which it upheld the decision of the NEC on the grounds that the complainants did not provide sufficient evidence.<sup>50</sup>

In the absence of any relevant figure provided by the NEC and taking into account the results of the NDI voter registration audit and the fact that there were 79,688 voters who had to remove their names from the deletion list in order to vote, the EU EOM concludes that there were a significant number of mistakenly disenfranchised voters in the 2008 elections.

## VII. PARTY AND CANDIDATE LIST REGISTRATION

Candidates must be registered voter of at least 25 years of age, be a Cambodian citizen from birth, resident in Cambodia and nominated by a political party. Certain categories of voters, including civil servants, police and army personnel, monks, election administrators and members of several top-level courts may not be candidates. Should they wish to run in an election, they must resign their position at least seven days before the start of the election campaign.

Political parties submit separate candidate lists for each of the 24 constituencies. The number of candidates on each candidate list must be equal to the number of seats allocated to the constituency. Parties are not obliged to run in all constituencies, but the total number of registered candidates must be at least one third of the total number of seats in the National Assembly (i.e. 41). In addition, a party must submit the names of "alternative" candidates, whose number must be equal to that of the "titular" candidates but at least three in constituencies with only one seat. To be able to register candidate lists with the NEC, political parties must be registered with the Ministry of Interior. A total of 45 political parties were registered with the Ministry of Interior.

Twelve political parties submitted their candidates list for the National Assembly elections. The registration process took place from 28 April to 12 May 2008. In comparison to the 23 parties that competed in the 2003 National Assembly elections only 11 parties stood for this election. The United People of Cambodia Party (UPCP) was rejected by the NEC on the ground that several of the candidates that it fielded were not on the official voter register.<sup>51</sup>

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<sup>50</sup> In Kilometre 6 Commune in Phnom Penh 3,282 voters were deleted out of 10,688 voters registered. The Deputy Chief (SRP) of the Commune Council claimed that the deletion was based on the biased assessment of village chiefs. SRP commune councilors filed a complaint to the NEC against 2,000 of these deletions. The NEC decided to approve the deletions and consequently the commune councilors appealed to the Constitutional Council. The Constitutional Council confirmed the NEC's decision despite the presence of 50 villagers who came to the hearing to confirm their eligibility to be registered.

<sup>51</sup> The NEC rejected the registration of the UPCP list on the grounds that several of the party's candidates did not meet the requirement of being a registered voter. Only 38 candidates remained on the list, a figure below the 41 candidate threshold required under the LEMNA. The party's appeal against the NEC ruling was rejected by the Constitutional Council after a public hearing on 26 May.



Another three smaller political parties<sup>52</sup> were not able to submit a full list of candidates for each constituency. Out of the total number of 213 rejected candidates across the political party lists more than 200 candidates<sup>53</sup> were rejected due to the NEC not being able to find their name on the final voter list. A loss of one candidate due to rejection from the party list will invalidate the whole list of candidates for the particular constituency concerned. Only those parties that were able to replace rejected candidates succeeded in registering a full list.

The UCP and the three other political parties whose lists were not registered by the NEC complained about the misleading instructions and the unequal treatment of small parties by the NEC. The political parties were instructed to submit the certificates issued by the Commune Councils to prove the candidate registration on the final voters' list. In some cases political parties complained that certificates have not been given to the prospective candidates and in other cases despite certificates having been obtained by the prospective candidates their names have been rejected after the NEC conducted the verification of their names on the final voters' list. The EU observer assessment is that this issue did not significantly affect the rights of political parties to participate in the elections.

Major political parties, CPP, FUNCINPEC, SRP, HRP, NRP, League for Democracy Party (LDP), Khmer Democratic Party (KDP) and the Hang Dara Democratic Movement Party (HDDMP) fielded candidates in all provinces and for all 123 National Assembly seats.

The candidate list totalled 1,162 titular candidates (2,478 including alternates) of which 172 (14.8 per cent) were women.

## **VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT**

### **A. Background to the Election Campaign Environment**

The nature of election campaigns reflects the specific context in which they take place. In the case of Cambodia, previous EU EOMs identified a high level of politically motivated incidents during the campaign period and this EU EOM took note of reports issued by national and international human rights organisations since early 2008 categorising a number of violent incidents as election related and drawing attention to the defection of numerous opposition politicians towards the CPP<sup>54</sup>. Whilst the Constitution of Cambodia fully recognizes fundamental rights and freedoms, international and national human rights experts agree, that respect for these rights is broadly absent: there are simply too frequent and serious violations of human rights including incidents of intimidations, criminalisation of offences more appropriately treated as civil offences and excessive use of force. The situation is further aggravated by a culture of impunity towards perpetrators coupled with weak law enforcement and a biased judiciary. Worryingly, many serious criminal cases continue to be solved through reconciliation thus perpetrators are not sentenced in a manner proportionate with the

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<sup>52</sup> Society of Justice Party registered 46 titular candidates in eight constituencies, Khmer Anti-Poverty Party 60 titular candidates in 8 constituencies and Khmer Republican Party registered 72 titular candidates in ten constituencies.

<sup>53</sup> Many of those candidates presented the certificates issued by the Commune Councils that verified their registration status.

<sup>54</sup> See Human Rights Watch press statement issued on 23 March 2008 and the Joint Statement by COMFREL, NICFEC and CHRAC on 27 March 2008 for examples of these reports.

seriousness of their criminal act. There is also widespread agreement that many violent incidents have a political connotation.

At the time of the 2008 National Assembly election, Cambodia was six years behind schedule vis-à-vis submitting its report to the Human Rights Committee on the International Covenant on Civic and Political Rights (ICCPR).<sup>55</sup> The establishment of a National Human Rights Commission in Cambodia is under discussion but given the lack of commitment at senior political level to judicial reform<sup>56</sup> many interlocutors are doubtful such an initiative is meaningful in the current context.

Serious obstacles remain to achieving the constitutional goal of political pluralism through elections. In addition to the factors mentioned above, deficiencies in transparency and accountability as well as limitations imposed on civil society and political parties to operate outside of official campaign periods - forces necessary in a pluralist democracy - impedes these structures from developing and contributing towards the creation of a level playing field.

Finally, EU EOM observers were consistently told and shown examples of how communes or villages led by individuals affiliated with the opposition did not receive similar levels of government investments and how people assumingly affiliated with these parties were intimidated and threatened on a regular basis.

## **B. Overview of the Election Campaign**

The official campaign for the National Assembly election started on 26 June 2008. However, campaigning started several months earlier with senior leaders of the ruling CPP utilising opening of schools, hospitals and other infrastructure improvements<sup>57</sup> as campaign platforms. The SRP leader also undertook a campaign style tour of the provinces shortly in advance of the official campaign period. Across constituencies, EU EOM observers received numerous, credible reports of incidents of widespread distribution of money and goods prior to the start of the official campaign. Such activities were also noted by domestic observer groups in their reports.

While all 11 political parties organised campaign activities, the campaign environment in the larger cities and provincial capitals was dominated by the five larger parties. Competition sharply diminished in rural areas with mainly the CPP, and, to a lesser extent, the SRP having a wider presence. EU observers reported a more competitive and tense campaign environment in the populous multi-seat constituencies.

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<sup>55</sup> Cambodia should have submitted a report to the Human Rights Committee on 31 July 2002 and effectively a second report is also overdue as state parties are required to submit these reports every four years – for more details:

<http://www.unhcr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=29.2#29.2>

<sup>56</sup> The state of Rule of Law and shortcomings in the judicial branch are well described in the latest report of the UN Special Representative of the Secretary-General for Human Rights in Cambodia (A/HRC/7/42), the U.S. Department of State Report on Human Rights Practices in Cambodia 2007 as well as the ‘Human Rights in Cambodia: The Charade of Justice’ report issued by the Cambodian human rights organization LiCADHO. Furthermore, Transparency International’s 1997 survey of corruption in Cambodia found that corruption was most significant in the lower court systems.

<sup>57</sup> In several instances, these interventions are heavily financed by international donors.

The official campaign was generally perceived by all observers as more peaceful and open compared to previous elections. However, the overall impression of EU observers is that the CPP took advantage of its incumbency to dominate the campaign and EU observers witnessed and received consistent reports that freedom of speech, freedom of assembly and freedom of association in several instances were obstructed by individuals locally associated with CPP. Such incidents were directly observed in Kampong Cham on 16 July where CPP and FUNCINPEC campaign messages partly drowned out a SRP campaign event<sup>58</sup>, on 22 July in Phnom Penh where CPP loudspeakers drowned out NRP campaigning in front of the CTN television station. Both campaigns had been authorised by the CEC; who in the latter case reacted to a NRP complaint, conveyed by phone, by asking NRP to leave the site as the situation ‘could get out of control’ but refraining from asking CPP supporters to respect the Code of Conduct for Political Parties. In Takeo and Koh Kong, FUNCINPEC and SRP activists respectively were approached by their village chief (in Koh Kong the village chief was joined by CPP supporters, commune officials and policemen) following hosting party meetings in their home/party office. While ‘disappointment’ was expressed in Takeo, the incident in Koh Kong included violent and coercive measures to confiscate a camera containing important evidence of the incident and in both cases the activists reported abusive language and felt threatened.<sup>59</sup>

Similar incidents of harassment were directly observed by EU observers in Battambang and Stung Treng and credible reports were received from observers in other constituencies. The most widespread subtle intimidation cases related to threats and orders to people who had allowed opposition parties to place billboards, banners, posters and other campaign material on their property. These incidents and the lack of proactive measures<sup>60</sup> from the electoral authorities to prevent repetition of these incidents is in contravention with the international standard enshrined in Article 21 ICCPR guaranteeing – Universal Suffrage: *United Nations Human Rights Commission, General Comment No. 25 paragraphs 25* stating: “The full enjoyment of rights protected by article 25 of the ICCPR requires freedom to debate public affairs, hold peaceful demonstrations and meetings, criticize and oppose, publish political material, campaign for election and advertise political ideas”. Furthermore, *Article 25 ICCPR guarantees – Free Expression of Will. United Nations Human Rights Commission, General Comment No. 25 paragraphs 19 and 25*: “Persons entitled to vote must be free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind”. Taking into account reports of harassment of opposition supporters that had already appeared in the run up to the official campaign period for the 2008 election, EU observers regret that the NEC, a state institution, failed to take proactive steps to ensure safeguards for a free campaign environment.

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<sup>58</sup> A CPP Commune Council representative even went as far as stating over loudspeakers that villagers should not believe SRP messages and should make friends not enemies with current leaders.

<sup>59</sup> In the Koh Kong case the CEC actively attempted to prevent the filing of an official complaint but was not successful and following the rejection of the complaint at Municipal Election Commission MEC level (due to lack of evidence) the complaint was filed at NEC level. EU observations confirm that such attempts were widespread and consistent throughout the campaign period.

<sup>60</sup> This could have been done by issuing press statements or messages conveyed through the media.

Distribution of money and goods were widely reported in the media, by Cambodian observer groups, local interlocutors across the country and by EU observers. While this practice was carried out by most parties, there is evidence that the CPP engaged in such practices to a significantly greater extent than any other party. EU observers also received reports that voters were warned of negative consequences should they fail to vote for the ruling party<sup>61</sup>. There were also indications of CPP attempts to encourage opposition voters to abstain and attempts to buy political party agents by offering better remuneration. Prior to election-day, rumours of the ‘barking dogs’ nights<sup>62</sup> circulated. EU observers received 30 reports of vote-buying practices from 10 constituencies. Although many reports of vote-buying are difficult to confirm, continued reports of such activities raise concern of the respect of the fundamental freedom of right to participation in Cambodia. Vote-buying is prohibited by the LEMNA, which is reconfirmed in the Code of Conduct for political parties, candidates and political party’s agents during the election of the National Assembly.

The main campaign topics related to Cambodia’s continued stability, economic prosperity, inflation and improvements in rural livelihoods as well as sensitive issues such as land grabbing, border issues, corruption and illegal immigration. However from 15 July, many Cambodians turned their focus away from the election towards the dispute between Cambodia and Thailand over the Preah Vihear temple site.

EU observers generally assessed the tone of the campaign as positive although the use of anti-Vietnamese rhetoric by some of the opposition parties was noted when talking about illegal immigration, border disputes and land grabbing. Furthermore, EU observers consistently reported that CPP established direct links between opposition forces coming into power and the country going back into conflict, which in a post-conflict environment are perceived as very serious charges and could be seen as both an intimidating and coercive campaign tactic in breach of the Code of Conduct issued for Political Parties.

### **C. Use of State Resources**

During the official campaign period, the CPP consistently made use of several types of state resources including government property and vehicles as well as government employees. EU observers also noticed that local authorities and CPP offices were often placed next to each other and in a few instances even located in the same compound making it difficult to distinguish the political party from state institutions. During the official campaign period staff of the offices were observed on numerous occasions moving regularly between such offices during working hours.

There were also indications that CECs and PECs across the country abused security and administrative provisions, for example by demanding prior notification or the right to authorise campaign activities to hinder opposition parties from carrying out planned events. Such restrictions were not applied to the CPP. In Modulkiri for instance, the PEC even handed over this responsibility to the police and the military when an opposition party

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<sup>61</sup> Such threats were confirmed in Kandal province where a village had a water pump removed immediately after election-day when the allocation of votes from that location was known.

<sup>62</sup> According to Cambodian sources, the barking dogs’ nights cover practices from previous elections in which some political parties visited private houses late at night or during the nights just prior to election day (outside the legal campaign hours) to convince/buy people to vote for a particular political party causing village/ house dogs to bark.

protested against the practice. The police took no action against large numbers of vehicles without number plates used in CPP, and to a much lesser extent, FUNCINPEC campaign activities. Several reports indicated that these were government vehicles and EU observers in Kampong Cham were told by a CPP candidate that ‘civil servants who are CPP members are not discouraged from using government vehicles for campaign activities’. The same person further admitted the practice of removing number plates of government vehicles when these are used for private purposes’. Regardless of ownership, the practice is illegal under Cambodian law, and should not have been ignored. Similarly, in conversations with the EU Chief Observer, CPP representatives informed that they did not see any problem with senior military staff chairing CPP campaign events in working hours.

These practices represented a breach of the legal framework governing the elections, including codes of conducts for members of the armed forces and police and for political parties, as well as the various laws and directives addressing the role of Village Chiefs. The unequal application of the rules and laws governing elections demonstrated the extent of problems associated with Cambodia’s biased legal system. There is no international standard governing use of state resources; however, the Venice Commission<sup>63</sup> states as a best practice that if ‘*use of state resources is permitted, access must be provided to contestants on an equitable basis*’.

In addition, the pattern and frequency of opposition defections to the CPP would support claims that the CPP offered large sums of money, expensive goods such as motorbikes, and government positions to attract opposition leaders and key activists. While most of these defections occurred in the months of February, May and June, EU observers were able to follow some cases during the campaign period that seemed to imply levels of remuneration, gifts, intimidation and threats that would be difficult to resist. Furthermore, amid reports of increasing numbers of appointments of high level advisers to higher level executives, EU observers analysed such appointments from 1 January 2008 to 15 July 2008<sup>64</sup>. Among a total of 538 appointments<sup>65</sup>, EU observers were able to identify at least 28 names of reported defectors who had received such high-level positions. EU observers also received reports that in certain provinces, ministers serving in the third National Assembly mandate have had numerous advisers serving for them. As neither the overall number of such advisers, their actual tasks nor the remuneration levels for these positions are publicly available, the value of this potential abuse of state resources cannot be established.

EU observers have also taken note of a sub-decree<sup>66</sup> no. 94 issued on 21 July 2008 awarding all Civil Servants, Royal Cambodian Armed Forces, National Police Forces; and Retirees,

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<sup>63</sup> The Venice Commission is composed of independent experts with profound experience in democratic institution building or by their contribution to enhancement of law and political science. [http://www.venice.coe.int/site/main/Elections\\_Referendums\\_E.asp](http://www.venice.coe.int/site/main/Elections_Referendums_E.asp)

<sup>64</sup> In comparison, 178 advisers were appointed during the similar period in 2007. All information is based on royal decrees issued in the Royal Gazette, Volume 8 numbers 1-50 2008 (1 January – 2 July 2008) and Volume 7 numbers 1-46 (1 January – 20 June 2007).

<sup>65</sup> As a quick break-down, the appointments include 116 new personal advisers to the Prime Minister of which a large majority were appointments at the level of Secretary of State, Minister or Senior Minister and 36 new advisers to the Council of Ministers.

<sup>66</sup> Sub-decree on Awarding the Remuneration to Civil Servants, Royal Cambodian Armed Forces, National Police Forces; and Retirees, Disabled Civil Servants, and Disabled Soldiers, who are the Civil Servants and Veterans

Disabled Civil Servants, and Disabled Soldiers, who are the Civil Servants and Veterans a monthly salary increase of 20,000 Riel to be implemented during second half of 2008. While this may not be categorised directly as abuse of state resources it is a peculiar initiative to introduce in an election campaign just a few days before a national election.

#### **D. Campaign Financing**

Although the Law on Political Parties includes a provision that the state may allocate equal amounts from the national budget as subsidies to all political parties to be dedicated to campaign activities, this practice has not been applied. EU observers assess the requirement that political parties must deposit 15 million Riel (US \$ 3,750) with the National Treasury in order to stand for elections as an unjustifiably high entrance barrier for new and smaller political parties. This deposit is only refunded if the party receives at least 3 per cent of valid votes or wins at least one National Assembly seat.

The LEMNA requires that political parties and their candidates have a bank account from which sources of income and campaign expenditures can be checked. EU observers were informed that the NEC has never made explicit use of the authority provided in LEMNA article 82 to check accounts. The Law on Political Parties require that political parties send an annual report to the Ministry of Interior and the Ministry of Economy and Finance containing a bank statement as well as a statement of assets and liabilities. Failure to file the annual report can be sanctioned with a fine or orders to cease activities. Of further concern is that there are no limitations on campaign expenditure levels (per candidate, per constituency or overall) nor on individual monetary or in-kind contributions. This leads to a complete lack of sanctioning for false accounting. The lack of an effective and detailed legal framework to govern political party financing results in a lack of transparency and fosters suspicion.

Several political parties informed EU observers that they rely more on private donations than on internal membership fees. While this might be just an efficient financing measure, membership-based party financing has the advantage of built-in checks and balances and strengthens internal party structures. In parties where internal distribution of campaign financing among candidates take place, these allocations seem to follow lines of patronage rather than party-wide priorities. Some candidates informed EU observers that candidates are individually responsible for financing their campaign. As in previous election campaigns rumours and claims of certain parties tapping into government budgets and civil service salaries circulated prior to and during this election campaign. However, neither the government nor the NEC made any attempt to establish whether such rumours carry value or to deny them.

Several smaller and new political parties stated that inflation and in particular increasing fuel prices impacted severely on their campaign budgets and limited them from carrying out some planned activities.

## **E. Voter Education**

Despite the fact the EU observers assessed positively voters understanding<sup>67</sup> of the election-day procedures, voter education activities organised by the electoral authorities were assessed as insufficient as observers in conversations with individuals at many different levels found that they had very limited information regarding the voter registration process, the complaint process and democratic values generally.

The voter education activities of the electoral administration were assessed as inadequate by the EU observers. Although a number of locally based NGOs undertook some limited voter education activities, the political parties were by far the most active in this area providing information on how to mark the ballot paper “correctly”. In many cases CPP affiliated Village Chiefs were providing information to voters in a biased manner while distributing the voter information notices.

In a young democracy like Cambodia, it is too early to down-scale civic education initiatives, including voter education. EU observers therefore believe that several actors, including NEC, the education sector and civil society organisations should re-consider their role. A particularly important area is a revision of the means utilised to inform voters which polling station they are voting at as VIN distribution is not an adequate measure.

## **F. Complaints and Appeals Concerning the Election Campaign**

According to NEC, CECs had received a total of 244 complaints concerning alleged violations of the Electoral Law and the NEC Regulations and Procedures during the electoral campaign. Of these 145 were filed by SRP, 53 by CPP, 16 by NRP, 13 by FUNCINPEC, the rest by smaller parties or ordinary citizens. Out of those complaints, 40 were rejected on formal grounds, 72 cases were settled by reconciliation, in 128 cases reconciliation could not be achieved at CEC level and 4 cases were withdrawn. Looking at the regional distribution most complaints were filed in Battambang (43) province, followed by Svay Rieng (28), Kompong Cham (27), Phnom Penh (17), Pursat (17), Prey Veng (16), Kampot (13) and Takleo (13).

Most complaints of the opposition parties concerned the destruction of campaign material, interference with the electoral campaign of other parties, threats and intimidation, vote buying and use of state assets and civil servants in the campaign. The most frequent complaints by the CPP concerned defamation. There were also 10 complaints concerning alleged violations of Regulations and Procedures by CEC officials, which were filed directly with the relevant PEC.

133 cases reached the Provincial Election Commission (PEC) level. Of these 22 were rejected on formal grounds and 33 reached a reconciliation agreement. In 71 cases a formal hearing was held which resulted in 32 complaints being accepted and 39 rejected. Nationwide PECs pronounced 25 sanctions, of which 4 were warning letters, in 12 cases the right to vote of the offender was suspended and in 9 cases fines ranging from 5 million to 10 million Riels (US \$ 1,250 to \$2,500) were pronounced.

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<sup>67</sup> EU EOM overall assessment of the voters understanding of the polling procedures: Very Good 45.7 per cent, Good 44.2 per cent, Fair 8.7 per cent, Poor 1.2 per cent and 0.2 per cent Very Poor.

49 appeals reached the NEC and the NEC pronounced sanctions in 14 cases. A politically sensitive and legally disputed case was that of Sam Rainsy calling the three top CPP leaders “thieves”. Sam Rainsy had repeated the accusations in speeches in several parts of the country, and his speech was also recorded on video tape and played on numerous occasions during the election campaign. He had been fined by a total of 25 million Riels (US \$ 6,250) by different PECs. After consulting with its international advisers NEC took the decision to combine all 11 appeals concerning this case and issue only one decision, which resulted in the imposition of a fine of 10 million Riels (US \$ 2,500) on Sam Rainsy.

Nine appeals reached the Constitutional Council, one was later withdrawn and all the others were rejected, either by letter or after a hearing.

The number of complaints filed at CEC level is significantly lower than in 2003 (244 compared to 575<sup>68</sup>). PECs have proved more willing this year to impose sanctions on offenders than in 2003. The number of cases that reached the NEC remained almost the same (49 compared to 51 in 2003). EU observers have identified a number of reasons why fewer complaints were filed than 5 years ago: the level of conflict was lower in the 2008 electoral campaign than in 2003; there were cases where CECs refused to accept complaints or persuaded complainants to drop their charges; in many cases CECs and PECs exercised pressure on the parties to agree to a conciliatory solution rather than starting formal proceedings; a widespread lack of confidence in the electoral administration, which is widely perceived as biased towards the CPP and opposition parties had difficulties finding witnesses willing to testify in a hearing, particularly in politically sensitive cases. Furthermore, EU observers reported that many of the incidents which were taken up in complaints were of a minor nature, whereas more serious incidents, such as threats and intimidation, often went unreported for fear of reprisals.

## **IX. MEDIA AND THE ELECTIONS**

### **A. Media Environment**

Cambodia is often described as having the most vibrant and pluralistic media landscape in the region, surrounded as it is by countries with very limited media freedom. Cambodia was ranked 85<sup>th</sup> out of 169 countries in Reporters Sans Frontieres Media Freedom Index in 2007, compared to Thailand in 135<sup>th</sup> place, Laos 161<sup>st</sup>, Vietnam 162<sup>nd</sup>, China 163<sup>rd</sup> and Myanmar 164<sup>th</sup>. Historically, Cambodia has no tradition of media freedom; through its experience of French colonial rule, the dictatorship of the Khmer Rouge and the Vietnamese-backed communist regime which succeeded it, the media were used as mouthpieces of successive governments and were strictly propaganda tools.

In terms of importance, television and radio battle for first place. Despite widespread poverty and lack of electricity, an Asian Foundation study in 2003 found that 52 per cent of respondents got most of their news and entertainment from television, with 38 per cent saying they listened to radio more than three times a week. A more recent study financed by the International Republican Institute (IRI) in February 2007 found that 51 per cent of

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<sup>68</sup> The figures given for 2003 are the official figures provided by NEC. They differ from the figures stated in the EUEOM final report 2003.



Cambodians use radio as their primary source of information and 37 per cent use television. Televisions are present in poor areas of the country, sometimes powered by battery generators, and may be shared by many families who come together to watch it in the evenings. Televisions are also popular in public venues, like cafes. Radio has been popular since a United Nations (UN) free mass distribution of radios in the early 1990s.

In 2003, only 9 per cent said they read a newspaper regularly – the result of a combination of poverty and illiteracy. In February 2008 the IRI estimated only 1 per cent of the population had regular access to a newspaper. Figures published by Cambodia's National Institute of Statistics in 2004 gave levels of 73.6 per cent literacy for the country, but many people have only one or two years of schooling. Nevertheless, newspapers retain a certain level of influence, since they are often used as news sources by radio stations.

Professionalism in journalism is generally very low, partly because of lack of education and training opportunities, but also because journalists are, as a rule, very badly paid. Some journalists supplement their income by acquiring sponsorship of articles used to promote issues and there are also reports of journalists being involved with extortion. It is a difficult environment for independent journalism – while threats, violence and murder of media personnel have gone down in comparison to previous years – self-censorship amongst journalists is rife.

### *Television*

There are seven Cambodian television broadcasters – one state channel and six private – however all seven are considered to be affiliated directly or indirectly to the ruling CPP. According to market research carried out by Indochina in 2007, the newest television station in the country – CTN – is also the most popular. It is owned by a businessman who is widely believed to be close to the CPP. Vying for second place are Royal Armed Forces Television (TV5) and Bayon (managed by Prime Minister Hun Sen's daughter). Interestingly, the two channels most closely associated with the CPP – the state-owned TVK and Apsara – are also the least popular, coming last in recent ratings.

### *Radio*

In the early 1990s the UN distributed 346,000 free radios in Cambodia, which was the beginning of radio's popularity and influence in the country. The Ministry of Information had registered 53 radio stations according to data available in June 2007: 22 in Phnom Penh and 31 in the regions (including relay stations). With the exception of a few, including the state-owned national radio RNK, most are FM stations.

Government restrictions on television and radio broadcasting have ensured that almost all stations are pro-government or very careful about what they broadcast. The government directly or partly owns many radio stations, with several others being owned by government officials. However, international radio broadcasters experience quite broad popularity in Cambodia – a 2007 survey carried out by Intermedia for Radio Free Asia showed that 56 per cent of respondents living within 80km of Phnom Penh listened to RFA and similar broadcasters (like Voice of America, Radio France Internationale and the BBC) on a regular basis. RFA and VOA also rent airtime for their news broadcasts on independent radio stations Beehive FM105 and Women's Media Centre FM102.

Beehive has often experienced difficulties as a result of allowing opposition parties to broadcast on its airtime and the director has been arrested several times. Human Rights Watch reported that on 21 May, Prime Minister Hun Sen threatened Beehive over its opposition coverage, saying: "You have one channel; we have 39. If you curse me, you will receive bad merit. Those who [previously] cursed me have already disappeared from the world."

### *Newspapers*

Around 85 per cent of Cambodia's population lives in rural areas, where poverty and illiteracy are high and newspapers rarely penetrate. Nevertheless, newspapers proliferate in the more urban areas – the Ministry of Information has officially registered over 300, although far fewer appear on the news stands. Most newspapers are published irregularly and are highly politicised.

The three top-selling newspapers are the dailies *Rasmei Kampuchea*, *Koh Santepheap* and *Kampuchea Thmey*, with circulations of around 20,000 copies (circulation figures are unreliable). Most other newspapers are published in smaller circulations of around 3-4,000 or less.

The media environment in the run up to the elections was marred by the closure of Angkor Ratha radio station in Kratie in May, the arrest and temporary detention on defamation charges of *Moneaksekar Khmer* editor Dam Sithik in June, and the worst incident: the murder on 11 July of *Moneaksekar Khmer* journalist Khim Sambo, whose son also lost his life in the attack.

The summary closure on 28 May this year of the Angkor Ratha radio station in Kratie, when it began airing opposition political parties' programmes, was a decision which opened the government up to fresh criticism in relation to media freedom. The terms of the license did state that the radio station should not re-sell airtime to third parties without prior government approval however the immediate closure of the station was excessively severe. This is particularly the case since there are so few radio stations able to serve Kratie province, and therefore no outlet for diverse opinions to be aired there.

*Moneaksekar Khmer* is a newspaper of reportedly around 4,000 copies supporting the SRP. Its publisher and editor, Dam Sithik, who also stood as an SRP candidate in Phnom Penh, was arrested on 8 June on defamation charges. The charges related to an article in which Sam Rainsy was quoted making allegations that Minister of Foreign Affairs Hor Namhong was responsible for atrocities during the time of the Khmer Rouge. Dam Sithik was accused of violating Articles 62 and 63 of the UNTAC Penal Code, which allows for criminal prosecution of disinformation, defamation and libel. On Sunday 15 June, Prime Minister Hun Sen ordered his release from detention. Hor Namhong dropped the defamation charges against Dam Sithik after the editor excused himself in a letter published in *Rasmei Kampuchea* and *Koh Santepheap* on 28 June. This was part of a compromise agreed with the intervention of the Club of Cambodian Journalists.

The grossest violation of press freedom during the campaign was the murder of *Moneaksekar Khmer* journalist Khim Sambor and his son on 11 July. They were shot and killed by an unidentified gunman near the Olympic Stadium. Khim Sambor was well known for writing

articles critical of the ruling party, usually under pseudonyms for *Moneaksekar Khmer*. A review of his articles for June and July 2008 revealed a piece on 4 July describing Prime Minister Hun Sen's anger at a World Bank request for return of misspent funds on military demobilisation; a 20 June article exposing a provincial governor and two military police chiefs in Rattanakiri province for corruption; a 17 June article reporting on Ieng Sary's son, formerly head of the Khmer Rouge Youth wing, now a government official; and various articles on money laundering involving criminal groups, Korean and Chinese business people and Cambodian banks.

There were immediate calls for his killers to be brought to justice, including from the Minister of Information and government spokesman Khieu Kanharith, who attended his funeral. Human Rights Watch released a statement calling the murder "a message not to engage in politics" (Brad Adams, HRW Asia Director). The UN Office of the High Commissioner for Human Rights in Cambodia called on the government to conduct a prompt, thorough and credible investigation, particularly given that of the eight similar murders and attempted murders of journalists in Cambodia since 1994, none has ever been resolved.

This murder was particularly significant, given that it took the life of a journalist known for writing for the opposition party press, and occurring as it did during the election campaign itself. The effect of his murder was to increase fear in the journalistic community and the opposition of the consequences of criticising the government.

The NEC's Deputy General Sokolac Tipor, who was responsible for dealing with the media, called in 13 media companies on 10 July to warn them to stop breaking election rules with unbalanced broadcasts. Apsara TV and Apsara radio FM97, TV3 and its radio station FM103, CTN, Bayon TV and five other radio stations (FM88, FM95, FM98, FM99) were accused by NEC of being biased towards the CPP. Radio Free Asia and Voice of America were warned about devoting too much time to the opposition parties and criticising the CPP, while FM90 was warned for being biased in favour of the League of Democracy Party.

Apsara Radio Director's Sok Ey San rejected the NEC's criticism and said he would not change his programme. In a 14 July show broadcast simultaneously on 40 radio stations, Sok Ey San called Sam Rainsy a liar, said SRP Secretary General Eng Chhay Eang's gambling problem would drive the country into the ground, described the great job the CPP had done building schools and said the CPP was the only party with real vision.

In a meeting with the EU EOM, NEC Deputy General Sokolac Tipor repeated the view shared by Minister of Information Khieu Kanharith and NEC Secretary General Tep Nytha (published in the *Cambodia Daily* on 15 July and the *Mekong Times* on 17 July respectively), that pro-CPP media are balanced by the US-backed VOA and RFA, which are critical of the CPP. The government's tolerance of their rebroadcasts on FM102 and FM105, as well as the free time offered to all political parties on state media, form an important part of the ruling party's assertion that media freedom exists in the country.

The idea that the government's dominance of the state-owned and private airwaves is balanced by the existence of critical reporting on a few radio stations with limited reach, and by the opposition press, has no merit. The space for opposition or critical voices in the media is too narrow to provide any counter to pro-government propaganda.

On 26 July, the Ministry of Information, on behalf of NEC, sent a group of ministry officials, police and military police to the radio station FM93.5 to close it down. The radio station had received several warnings that day for broadcasting the SRP's Candlelight programme, which focused on the deleted names from the voter list, and also for a programme containing excerpts from Sam Rainsy's autobiography in the evening. The 26 July fell within the period of media silence ruled by the NEC for a period of reflection before the elections. The director of the radio station disagreed with the criticism from the Ministry, saying that neither programme constituted campaigning, and therefore took the decision not to discontinue broadcasting. The Ministry was within its rights to shut down programming which broke election regulations, although closing down the station entirely was a disproportionate show of enforcement in a campaign during which media routinely ignored election regulations on impartiality and access with no official consequences.

## **B. Legal Framework for the Media and Elections**

The Cambodian media are regulated by the instruments in the Constitution, the Press Law and the UNTAC Penal Code. Article 41 of the Constitution protects freedom of expression, the press, publication and assembly. In addition, Cambodia is signatory to the 1966 International Covenant on Civil and Political Rights.

The 1995 Press Law contains several provisions for the protection of journalists, including a ban on pre-publication censorship and the right to protect sources. It also contains prohibitions on inflammatory material affecting national security which carry fairly heavy penalties (civil fines up to US\$3,750, confiscation, a month's suspension of publication). The prohibition on offending a person's honour and dignity is rather vaguely worded, meaning that it could be used regardless of whether criticism was justified. It was considered a great step forward in 2006 when custodial sentencing was removed as an option for treating defamation. However, the civil law route is rarely used.

Instead, powerful people in Cambodian society have tended to use the 1992 UNTAC Penal Code to redress perceived media slights. Article 62 refers to the act of "disinformation", in the case of publication of false information with "malicious intent", which carries a penalty of up to three years in prison. Article 63 refers to publications which disturb the public peace. Newspaper editor and SRP candidate Dam Sithik was charged in June 2008 with violating both these articles.

There is no law on broadcasting and currently licenses are distributed by the Ministry of Information. Credible sources within CPP-aligned media have said publicly and to the EU EOM that licenses are allocated on the basis of a promise by the broadcaster to support government policies. Prior government approval is also required for the resale of airtime to third parties. The EU EOM could determine no basis in law for these provisions; on the contrary, they call the government's commitment to freedom of expression into question.

The rights and responsibilities of the media during elections are set out in Chapter 7 of the LEMNA. Equal access programming (in the form of adverts, roundtables, speeches and programmes) is to be implemented via state broadcasters (7.14.6.6). Private media are allowed to accept adverts in exchange for payment, but on an equal opportunity basis. If they choose to refuse advertisements to political parties, they must do so for all (7.14.5.3).

Opinion polls and publication of results of opinion polls should cease five days prior to polling day including polling day itself (7.2.5). The NEC announced on 17 June the rules for media campaigning during the 30-day campaign period:

- each party should receive a 10-minute promotional spot on state media per day;
- roundtable discussions should be broadcast daily, giving each party an additional 10 minutes of airtime to promote themselves;
- parties may purchase airtime from private broadcasters to rebroadcast their spots up to three times per day.

In the NEC's guidelines for media, the state media were obliged to broadcast election-related and voter education information free of charge as requested by the NEC. Private media were encouraged, but not obliged, to disseminate election information.

Since the 2003 elections, the NEC doubled the amount of free time available to the political parties on state media to 10 minutes per day. Effectively, they received much more free time than just 10 minutes. On state television company TVK:

- *Equity News*, sponsored by the United Nations Development Programme (UNDP), was a daily news show of around 20 minutes, with time divided between the parties on an equitable basis (according to previous election performance, whether they are fielding candidates to all provinces etc.). This was shown twice per day, with two *Equity Weekly* shows per week.
- The NEC's *Equality Programme* allowed the parties 10 minutes per day each to speak directly to the public without interruption. Some of the smaller parties did not use all of the time available to them, because they did not wish to speak for as long as 10 minutes per day and their presentations were therefore shorter.
- The NDI funded 22 hour-long debates between the political parties with time divided equally between them – eight of these were broadcast on TVK (with repeats). All 22 debates were broadcast on radio stations FM105 (Beehive), FM93.5 and FM90.
- The IRI also sponsored debates, but for the youth wing of the political parties, one of which was aired on private television station CTN out of prime time on 25 July 2008.

Several of the smaller parties, including Khmer Anti-Poverty and Society of Justice, complained at the beginning of the campaign to the NEC and eventually to the Constitutional Council about the division of their free airtime on *Equity News*. Their complaint related to the fact that *Equity News* allocated a greater percentage of time to the larger, more established parties, than to the newer, smaller ones (e.g. CPP had 20 per cent, SRP 13 per cent, FUNCINPEC 11 per cent, HRP 8 per cent, KAP 4 per cent and SJP 3 per cent). There was no real substance to these complaints, given that *Equity News* represents extra free time for all the parties anyway, and the complaint was dismissed. With repeats, the parties received closer to 20 minutes of free air time per day each on state television.

### **C. Monitoring of Media Coverage of the Elections**

The EU EOM media monitoring unit covered a representative sample of national broadcast and print media. Television and radio were monitored during prime time. Media were assessed for the amount of time and space they devoted to the political parties and

government, as well as the quality of the coverage (negative, neutral or positive). The following media were monitored during the course of the mission:

	<b>TV 1800-2300</b>
1.	TVK
2.	CTN
3.	Apsara
4.	Bayon
5.	TV5 Armed Forces
6.	TV9 Municipal
	<b>Radio 0600-0900</b>
1.	RNK FM96
2.	Apsara FM97
3.	Beehive FM105
4.	Women's Media FM102
5.	Phnom Penh FM103
	<b>Newspapers</b>
1.	Rasmei Kampuchea
2.	Koh Santepheap
3.	Kampuchea Thmey
4.	Moneaksekar Khmer
5.	Samleng Yuvachun Khmer

Results were collated from recordings of television and radio and copies of newspapers from 21 June to 27 July 2008.

Media coverage of the elections was dominated by the ruling party to a degree which was not consistent with international standards on free and equal access to the media for all electoral contestants.

All opposition parties received access to state television TVK and state radio RNK according to election regulations, as well as extra free time on Women's Media Centre FM102, with five parties receiving paid access to the airwaves on Beehive FM105. A small number of private or party-owned radio stations also broadcast opposition party coverage. Newspapers were free to cover the party of their preference. However in terms of overall coverage, the dominance of the CPP may have undermined the ability of the Cambodian electorate to receive a sufficient amount of information about the parties to make an informed choice.

Television broadcasters devoted minimal coverage, generally in a negative tone, towards the opposition parties, focusing instead on what were described as the many positive achievements of the CPP in government. The state television company TVK provided significant amounts of free airtime to all parties during the 30-day campaign period, fulfilling its technical obligations to the NEC and providing extra time to the parties in televised debates organised by the NDI. It also produced, with the assistance of the UNDP, the most professional election news programme on TV – Equity News. Nevertheless, it did not curtail its propaganda function during the elections, devoting more than 900 minutes in its news programmes to the government compared to four minutes for the opposition. The performance

of private television companies was worse, since almost no opportunity was provided to parties other than the CPP to accurately present their views.

Of the radio companies monitored by the EU EOM, all devoted the most time to the CPP and to the government. State radio company RNK devoted four hours of airtime per day to all the parties participating in the elections, but focused its own news programming on the contribution of the CPP-led government to the country, in a positive tone. Greater balance was achieved by the private Women's Media Centre FM102 and Beehive FM105 stations, which also rebroadcast the news of Voice of America (VOA) and Radio Free Asia (RFA). Some critical coverage of the government was registered on VOA and RFA, however their coverage of all parties was mainly neutral.

The three Cambodian leading circulation dailies – *Rasmei Kampuchea*, *Kampuchea Thmey* and *Koh Santepheap* – devoted by far the most coverage to the CPP, often in a positive tone. *Moneaksekar Khmer* and *Samleng Yuvachun Khmer* openly supported the SRP and the NRP respectively, publishing highly critical articles and opinions about the ruling party.

## **X. PARTICIPATION OF CIVIL SOCIETY**

Participation of civil society organisations and a large number of accredited observers was one of the positive features of the 2008 elections. The LEMNA provides for observation by national and international observers. A total of 72 Cambodian civil society organisations were accredited as domestic observers by the NEC. Between them they registered a total of 31,262 observers for election-day. Only the two main traditional networks of domestic observers, the Committee for Free and Fair Elections in Cambodia (COMFREL) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), recruited and deployed substantial numbers of long-term observers, an important component of a credible election observation methodology. Both organisations also participated in the voter registration audit organised by NDI whose results provided the only relevant data concerning the quality of the voter registration process.

COMFREL deployed more than 200 long term observers and by far the largest number of election-day observers<sup>69</sup>. The organisation presented several quality election reports related to the various stages of the electoral process. With NDI support COMFREL also conducted a parallel vote tabulation (PVT)<sup>70</sup> based on a sample of 1,319 polling station results which had a positive impact on the transparency of the elections.

NICFEC, the second largest network of observers, recruited 185 long term observers who observed the elections in all provinces of Cambodia. NICFEC also presented its sample based observation (SBO) based on a sample of observation of 400 polling stations.

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<sup>69</sup> The EU EOM observers deployed to all 24 provinces met COMFREL observers in 50% of polling stations visited on election-day. This percentage represents more than 7,500 observers. The number might be significantly higher as COMFREL decided to deploy their observers mainly to the provinces represented by more than one seat in the National Assembly.

<sup>70</sup> PVT is an observation methodology used for independent verification of election results which involves the independent tabulation of official polling station results, parallel to the election authorities.

Both COMFREL and NICFEC faced problems in the recruitment of their volunteer observers due to lack of financial resources. However, both organisations maintained that they had reached the planned number of election-day observers<sup>71</sup>.

A large number of other organisations were also accredited for election-day observation. Amongst them the largest network was the Cambodian Democratic Students and Intellectuals Federation (CDSIF)<sup>72</sup> which accredited some 1,700 election-day observers. The organization in its statement presented a positive assessment of the elections without stating any significant details of the electoral process.

## XI. PARTICIPATION OF WOMEN

Cambodia has ratified the 1979 CEDAW convention. As in many other countries, Cambodian women have historically been under-represented in political and administrative functions. While women constituted 60-64 per cent of the post-Khmer Rouge population in the early 1980s, efforts to increase their participation in electoral processes and national administration have not brought the expected fruits. Prior to the 2002 Commune Council Election a 30 per cent quota for women was discussed but dismissed by political parties. Quotas have several advantages: they secure seats and thus increase the number of women standing and being elected to office, they tend to increase women's capacity as decision-makers and they increase efforts by political party leaderships to attract and promote the participation of women. In 2003, an unprecedented number of 22 women (17.8%) were elected into the National Assembly providing a promising basis for increased participation. However, for the 2008 national Assembly election political parties only nominated 172 women as titular candidates which represented a disappointing 14.8 per cent of all titular candidates. Election results show that out of these, only 19 seats will be held by women in the fourth National Assembly mandate.

Several female candidates and politicians informed EU observers of the discrimination they experienced against them during the candidate nomination process and internal political party elections. However, many male politicians claim that they find it difficult to encourage women to enter politics. It is however noteworthy that no female politicians were present in any of the meetings EU observers held with political party leaders and senior representatives at national level prior to election-day.

According to the NEC, women account for 53.52 per cent of registered voters and observers agreed that many women came to cast their vote. Although 37 per cent of polling staff were women at polling stations visited by EU observers on election-day, women are generally under-represented within the election administration. As examples, only two out of a total of nine Election Commissioners serving on the NEC are women and only 15 per cent of the total NEC staff was women. This pattern was repeated at the PEC and CEC administration levels. Furthermore, women rarely hold decision-making positions within the electoral administration but tend to hold lower level administrative positions. Almost one third of accredited domestic observers were women whereas approximately 20 per cent of accredited party agents were women.

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<sup>71</sup> COMFREL planned to recruit and deploy 10,000 observers and NICFEC 7,000 observers. NICFEC observers were present in only 3.3% of polling stations visited by EU EOM observers.

<sup>72</sup> CDSIF observers were present in 6.2% of the polling stations visited by EU EOM observers.



## **XII. PARTICIPATION OF MINORITIES**

Cambodia has acceded to the 1966 CERD and should, as a United Nations member state, act in accordance with the General Assembly Declaration on the Rights of Indigenous Peoples.<sup>73</sup> More than 90 per cent of Cambodia's population is ethnic Khmer and the remaining population is divided between minority population groups of ethnic Chinese, ethnic Vietnamese, Cham (Muslim), and 17 indigenous peoples who live in more remote areas, mainly in the country's hilly northeast region. Among the ethnic Khmer, the Khmer Krom (Lower Khmer) that originate from the former Cambodian territory in the present-day Vietnamese Mekong delta area, form a distinct group.

The main reason for the lower representation of minority groups in Cambodian politics is the overall lower education level within these groups – most significant among the indigenous groups and the Khmer Krom community where illiteracy rates can be as high as 90 per cent and social conditions dire. Furthermore, the fact that indigenous peoples live in remote areas of the country brings them a further disadvantageous position due to poor access to information. These factors contribute to voter registration figures below average among minority groups. While ethnic Chinese are overall accepted in Cambodian society, ethnic Vietnamese are at times the target of animosity, with some ethnic Khmer seeing them as a threat to Cambodia's sovereignty and national culture. Several opposition political parties had, as part of their campaign messages, called for a revision of the immigration law which strategically could be seen as political capitalization on anti-Vietnamese sentiments<sup>74</sup>. EU observers have received reports of 'illegal issuing of ID cards and illegal registration' of Vietnamese immigrants who are not citizens of Cambodia; however, it has not been possible to establish whether this was actually the case.

While there are no legal obstacles standing in the way of electoral participation of national minorities, there is on the other hand no quota in place to guarantee their representation. In past elections most minority groups have been represented at national political level. 11 members of the outgoing National Assembly belong to national minorities, including two Cham and two indigenous people's representatives. Politicians with a minority background seek to hide this aspect of their identity and are not seen as voices speaking up for the rights and freedoms of minority groups. This is not a promising development for a pluralistic democracy in Cambodia; thus quotas for significantly underrepresented groups should be discussed and considered.

## **XIII. ELECTION DAY**

### **A. Voting**

On election-day the EU EOM deployed 130 observers to all 24 provinces and municipalities in Cambodia who observed opening of the polling stations, voting, closing, counting and the delivery of election materials from the polling stations to the CEC. The EU observers visited 719 polling stations on election-day.

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<sup>73</sup> UN General Assembly resolution A/61/L.67 adopted 7 September 2007.

<sup>74</sup> It has been confirmed to EU observers that this is indeed necessary as is improvements in monitoring of entries via bilateral border crossings; however, experts also find that many of the unofficial figures circulated are out of dimension.

In general, opening, polling and counting were conducted in a peaceful and orderly manner. All 15,255 polling stations were open and all the polling and counting was completed on the election-day. The preparations for the opening were concluded according to the time schedule foreseen in the Polling and Counting Manual and the opening was timely in all polling stations visited by EU observers. All essential materials required for the conduct of the poll were available and the full complement of NEC polling station staff was present. No significant irregularities were observed. The overall assessment of the opening process was assessed between good and very good (91 per cent).

Voting was generally conducted in an orderly manner in a very calm and peaceful atmosphere. The NEC polling staff proved to be committed, efficient, generally well trained and demonstrated a good understanding of the procedures. The representation of women in the membership of Polling Station Commissions (PSCs) in the polling stations visited was satisfactory (37 per cent), in comparison with the low percentage of women serving as electoral officials in higher levels of the electoral administration. However, in only 17 per cent of the polling stations visited, was the Chairperson a woman.

Although almost no campaign material or campaigning activities were observed on election-day EU observers in Takeo and Banteay Menchy provinces reported campaign activities taking place outside the polling stations and village chiefs or their deputies hanging around the polling stations during the opening.

Party representatives were present in all polling stations visited, mainly from CPP, FUNCINPEC, SRP, and to a lesser extent from NRP and HRP. However, EU observers reported that, especially in the rural communes, the party representatives were generally illiterate, had received no training or basic information about their tasks or duties and occasionally could not name the political party that they were representing.

Domestic observers were present in 58 per cent of visited polling stations. COMFREL was the biggest group and had observers in 50 per cent of visited polling stations.

An insignificant number of irregularities were observed regarding the implementation of polling procedures in the visited polling stations. In 41.5 per cent of polling stations visited members of the polling station staff were not checking the voters' fingers for traces of indelible ink, although the inking of the voters fingers was consistently applied in all polling stations. Other procedural irregularities such as ballot boxes not properly sealed and voters being allowed to vote without producing a proper ID were reported by EU observers in an insignificant number of polling stations visited. Overall, EU observers evaluated the performance of polling staff as good or very good in 92 per cent of visited polling stations.

The main problems that occurred on election-day was a significant number of voters whose names were either deleted from the voters list or found their name already ticked on the voters list and voters who could not find their polling station. This was observed in 19.4 per cent of visited polling stations. EU observers noted many cases of voters complaining that they could not find their name on the voter list or could not find their polling station. These polling stations were mainly concentrated in Kampong Cham and Kampong Speu Provinces and Phnom Penh Municipality.

Some indicative numbers of voters affected by these problems were provided by NICFEC in the results of their sample based observation<sup>75</sup>. NICFEC observers reported that in a quarter of polling stations (24.9 per cent) there were more than five cases of voters who had proper identity documents but could not find their names on the voters' list. As in the average polling station five voters would represent one percent of registered voters, their findings can be interpreted that in three quarters of polling stations the number of turned away voters was lower than one percent.

A less widespread but nevertheless significant irregularity identified and reported mainly by the political parties, was the illegal issuing of the Statement of Identity<sup>76</sup> known as Form 1018.

## **B. Counting**

The closing and counting was observed in 57 polling stations. All polling stations observed closed at 15:00 and no voters were queuing. The closure took place in a calm and peaceful atmosphere. Party representatives were present for the close and counting in all the polling stations visited and the domestic observers were present in 77 per cent of visited polling stations. The closure procedures were implemented appropriately with some minor irregularities concerning the reconciliation phase. The counting started immediately and no cases of disruption or intimidation were observed. While in the observed polling stations, the counting procedures were generally respected and implemented accordingly in 11 per cent of polling stations the total number of voters' names marked on the voter list did not equal the number of ballots found inside the ballot box. Notwithstanding these procedural lapses EU observers overall assessment of the closing and counting process was good or very good in 84 per cent of the visited polling stations.

In 91 percent of polling stations observed opposition party representatives were present and in only 2 per cent of polling stations did they raise complaints against the counting process. In 10 per cent of polling stations there were disagreement regarding the invalid ballots and in 3 polling stations invalid ballots were not determined according to the procedures. In 96 per cent of observed polling stations the party representatives received a copy of the Results Form 1104 and although in 46 per cent a copy of the protocol was not posted outside the polling station this irregularity was assessed as an unintentional mistake by the Ballot Counting Commission (BCC) members.

## **C. Collection and Consolidation of Results**

EU observers observed the delivery of material and collection of Result Forms (e-day) and the Consolidation of Results (e-day +1) in 49 Communal Election Commissions (CECs). Their

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<sup>75</sup> NICFEC findings are based on a Sample Based Observation in 378 polling stations in all provinces. In the 24.9 per cent of polling stations where voters could not find their on the voters' list NICFEC did not collect the exact number of voters affected.

<sup>76</sup> Although opposition political parties have alleged that communes were illegally issuing large numbers of the statements of identity COMFREL reported at its press conference only one example of the Form 1018 being issued to voters on election-day in Rattanakiri province. NICFEC observers have not reported on the issue so far. EU EOM observers reported one case of the illegal issuing of the Form 1018 on election-day in Banteay Meanchey province.

overall assessment was less positive than for the polling and counting process. The delivery of material and collection of Result Forms (e-day) was assessed 59 percent as good or very good and the Consolidation of Results (e-day +1) 77 per cent as good or very good, although no significant irregularities were reported. In many cases, the premises of the CECs were poorly organised and inadequate (lack of space, occasionally overcrowded) to proceed with reception of the materials and the consolidation of the results. The retrieval of the material was in some cases disorganised and lacking transparency. In spite of this CECs communicated immediately all the available results to the PECs. The process of collection of unofficial results based on the polling station Result Form 1104 started immediately the forms were completed at the polling station level and delivered to the CECs.

While the NEC began processing the results forms for the announcement of the unofficial preliminary results the process of delivering, checking and consolidating the official results based on all documents and forms from polling stations was ongoing in the CECs. The CECs finalised the consolidation of results from polling stations on 29 July. The consolidation of results process at the commune level was assessed less positively<sup>77</sup> than the counting process by EU observers, although no significant irregularities were reported. In general, CEC members did not demonstrate the desirable level of knowledge and understanding of the procedures proving some inadequacies in the training received and confirming the strong indications during the electoral process of the human resources weaknesses of the CECs.

The presence of party representatives was significantly lower in comparison to their presence at the polling station level. EU observers observed party representatives in only 25 per cent of CECs and almost no domestic observers were present observing the consolidation process at the commune level.

## **XIV. RESULTS**

### **A. Announcement of Results**

The first partial unofficial results were announced by TVK on election night. The next day the NEC announced unofficial preliminary results based on all (100%) polling station results forms. The same day the unofficial results per province were posted on the official NEC website.

Following the consolidation at the CEC level, the Provincial Election Commissions (PECs) were re-checking and consolidating results from the CECs for their respective provinces. According to the election calendar issued by the NEC the consolidation of results was finalised at the provincial level on 3 August and the consolidated official preliminary results were announced on 9 August.

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<sup>77</sup> Out of 48 CECs observed, the process of consolidation was assessed as good or very good in 74.9 per cent, fair in 18.8 per cent and poor in 6.3 per cent.

## **B. Political Overview of the Election Results**

According to the official preliminary results announced by the NEC on 9 August, the turnout of 71 per cent represents a significant decrease compared to the turnout of 81.5 per cent in 2003. The CPP emerged as a clear winner with approximately 58 per cent of the vote and the SRP became the clear main opposition party with approximately 21.9 per cent. The HRP attracted 6.61 per cent, while NRP secured 5.62 per cent and FUNCINPEC 5.05 per cent. Among the six smaller parties, the League for Democracy Party (LDP) did best with 1.14 per cent. This means that five parties will be represented in the new National Assembly translating into the following seat allocation: CPP: 90; SRP: 26; HRP: 3; NRP: 2 and FUNCINPEC:2.

The nine rural, single-seat constituencies were all won by CPP whereas SRP won new seats in Kampong Chhnang and Kratie. In the capital, Phnom Penh, CPP is up three seats while SRP lost a seat compared with 2003. All leaders of the five main contesting parties were elected.

The election result was contested by SRP, HRP, NRP and FUNCINPEC in a joint statement issued the day after the election amidst rumours of many voters not being able to find their names on voters' lists and claims of extensive use of the 1018 form. However, a few days later on 31 July, FUNCINPEC announced that the party now accepted the results. Three parties, SRP, HRP and NRP signed a letter to the King asking him to intervene to ensure that Cambodian citizens were guaranteed their constitutionally recognised right to vote. SRP, HRP and NRP filed official complaints to the NEC rejecting the official national result. All complaints were rejected. On 12 August NRP withdrew from the opposition alliance stating that it accepted the results.

## **C. Complaints relating to Election Results**

Five complaints were filed against the Provisional Results announced by NEC on 12 August 2008. All of them were rejected by NEC without a hearing. Three cases were further appealed to the Constitutional Council: 1) a request by SRP for recount in Svay Rieng province, where the CPP had won all 5 National Assembly seats. This appeal was based on different figures in the Form 1104 ('Counting Result Sheet from each Polling/Counting Station')<sup>78</sup> obtained by the SRP party agent and those collected by the NEC. The appeal aimed originally at a recount in the whole province of Svay Rieng, but was subsequently limited requesting a revote in 16 Polling Stations and eventually in one Polling Station.

2) a request by SRP to hold a re-election in the whole country, which was subsequently reduced to four provinces: Svay Rieng, Kampot, Pursat and Kompong Cham. According to the appellant, those provinces were chosen because the manipulations concerning the voter's list and Forms 1018 might have changed the election results there.<sup>79</sup>

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<sup>78</sup> Form 1104 contains the number of ballots that each political party has received from the respective polling station. According to the Regulations and Procedures for the Election of 2008, the chairperson of each polling station has to fill in the Form 1104 after the counting and hand a copy of this Form to each political party on the E-day.

<sup>79</sup> One additional seat in the National Assembly would have been very important for the opposition parties, as it would have enabled them to exercise certain rights: a motion of non-confidence as well as to request the Prime Minister or any member of the Council of Ministers to answer questions in the National Assembly.

3) a request by HRP to hold re-elections in the provinces of Kampong Cham and Kampong Speu (on the same grounds as the SRP appeal).

From 26 to 28 August the Constitutional Council held hearings on the 3 appeals. 8 members of the Constitutional Council were present. The hearings were very formalistic without a single question asked by any of the members of the Constitutional Council, no witnesses were heard and no examination of or discussion about the evidence took place in the courtroom. All statements by the Constitutional Council president seemed well prepared in advance. The perception of the EU observer was that no matter what evidence was produced, the Constitutional Council had already determined its decision.

The Constitutional Council decided to reject all 3 complaints, upholding the NEC's decision. Appeals were rejected either on the grounds that there was "not enough evidence" or that "the NEC decision was based on the law", without giving further explanations or reasoning.

The outcome of the appeals proceedings before the Constitutional Council is particularly worrying. If there are allegations that Forms 1104 have been tampered with, a recount in some selected polling stations would definitely have enhanced transparency. But the Constitutional Council refused to re-open even a single ballot box.

The SRP produced more than 100 fraudulently issued Forms 1018, including statements of the persons concerned. Among them for example was a form issued for a 82 year old man but used by a 24 year old on election-day without any problem. Furthermore, the picture of that form was not stamped with the stamp of the Commune Council, but with the NEC stamp. The SRP also produced thumb printed statements of more than 17,000 individuals who claimed that they had been disenfranchised. All this evidence would have justified a closer examination

Overall, the electoral complaints and appeals process did not appropriately address main problems of the electoral process and did not contribute to the confidence of electoral stakeholders in the process. The dealing with election-day related complaints and appeals and appeals against the provisional results fell short of the international standards, as the institutions did not conduct a proper investigation of the complaints. Thus the Cambodian state violated its responsibility to ensure the Right to an Effective Remedy.<sup>80</sup>

As the electoral complaints and appeals process proved ineffective, SRP filed two criminal charges in the ordinary courts against the commune chiefs of Phnom Penh and Battambang for having issued fraudulent Forms 1018 in violation of Art. 49 of the Criminal Code 1992 (Forgery of Public Documents).

#### **D. Political Impact of the Results**

While SRP and HRP may not be able to provide sufficient evidence to support their claims that the election should be re-run, the credibility of the election will probably continue to be questioned given the apparent inaccuracies in the voter register and claims that 1018 forms were used fraudulently on a large scale. The opposition parties maintained that recognition of

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<sup>80</sup> International Standard: The Right to an Effective Remedy: "Each State Party undertakes: to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity", cf. ICCPR Article 2(3) (a) and (c).

their fraud claims and organising re-election in one or two constituencies would be of high political importance. By obtaining one more seat in the National Assembly the opposition would reach the 30 seats required to introduce a motion of non confidence as well as to request the Prime Minister or any member of the Council of Ministers to answer questions in the National Assembly. At the end of the EU EOM, SRP and HRP threatened to boycott the first sitting of the National Assembly during which newly elected members will be sworn into office. However both parties later softened their stance on this matter. CPP confronted this proposal by stating that a boycott would equal intentions to give up parliamentary seats and proposed that the 29 SRP and HRP seats in that case should be divided between other parties. Given the Constitutional Amendment in 2006, CPP could form a new government on its own. However, it appeared that the new government will continue to include the now greatly reduced FUNCINPEC as well as NRP although CPP signalled that the smaller coalition partners should not expect ministerial positions.

## **XV. RECOMMENDATIONS**

The following recommendations are offered as a contribution to assist in the further development and improvement of the democratic, electoral and political processes of Cambodia prior to the next National Assembly elections scheduled in 2013. They are presented in two categories – essential and desirable.

### **A. Essential Recommendations**

The government of Cambodia must take credible steps to ensure that the NEC operates as a fully independent institution at all levels in order to enhance its credibility and acceptance among the electorate. Members of the NEC should be approved by a consensus among all political parties represented in the National Assembly. In particular the NEC chairperson should be a person acceptable to all political parties represented in the National Assembly. The limitation of the term in office of the chairperson and members of the NEC should be considered.

The legal and regulatory framework, particularly the NEC Regulations and Procedures, should be simplified and consolidated in order to eliminate inconsistencies, ambiguities, redundancies and gaps. Directives adopted by the NEC should as much as possible be incorporated in the Regulations and Procedures.

The use of the Form 1018 should be abolished prior to any future election.

The Ministry of Interior should increase the ID card distribution rate and improve monitoring of the process. In cases where voters do not possess an ID card or other ID document the state authorities should find an alternative solution to enable voters to identify themselves on election-day. Regardless of the solution, records of voters using alternative identification should be kept as a safeguard and as information to support further improvement of the Cambodian electoral framework.

The Village Chiefs should not be allowed to take a major part in the distribution of VINs. The NEC should find an alternative method of distribution that can take place with the presence of party agents and CEC members.

A free media environment is absolutely essential to ensuring that Cambodia's efforts to tackle corruption and protect fundamental human rights meet with success. The government must show its commitment towards this end by the establishment of an independent broadcasting regulatory authority, responsible for the distribution of licenses and frequencies to the broadcast media on an open and transparent basis.

The government of Cambodia and the NEC should launch a consultation process on options for simplifying and improving the voter registration procedures. There should be an additional involvement of NEC personnel during the annual update and registration period. Reasons for the deletion of voter's names should be properly documented.

Government institutions, including NEC and civil society organisations should prioritise comprehensive and targeted civic education initiatives taking into account the relatively low literacy rates in Cambodia. Such initiatives could be integrated in curricula offered by public and private education institutions at all levels.

State institutions, including incumbent governments, must make better efforts to sanction utilisation of state resources for campaign purposes. Each branch of government should make public how many staff are granted special leave for campaign purposes and use of state resources for campaign purposes must be sanctioned.

The deadlines for the submission and settlement of complaints should be revised. In particular the deadlines for submission of complaints at CEC level during the electoral campaign (3 days) as well as the deadline for submission of complaints against the Polling and Counting (11:30 am on the day after polling day) are too short and should be extended. Additionally, the 48 hour deadline for the NEC to decide on complaints against the preliminary election results does not allow the NEC to conduct a thorough investigation.

The general jurisdiction of the NEC to address all types of complaints related to the electoral process should be (re-)established. Because of the current compartmentalization of the complaints procedures, Chapter 11 of the LEMNA and the corresponding Regulations and Procedures fail to address the most serious irregularities observed on election-day (e.g. fraudulent issuance of electoral documents by local administration officials).

If the dual system on complaints on election-day and election-day+1 is maintained, there needs to be a comprehensive campaign informing lower level election commissions, party agents, and voters. The different procedures, including the different deadlines, must be explained clearly in all training related materials, such as the manuals for PSCs, CECs and PECs.

The NEC's obligation to enforce the law and redress serious electoral irregularities even in the absence of formal complaints should be more clearly formulated in the LEMNA, and corresponding procedures should be established.

The election results per polling station should be published within the legal framework for the complaint process against the results.



The NEC should be obliged to check the political parties' bank accounts. An obligation for political parties to publish their campaign related incomes and expenses would provide for much more transparency.

NEC needs to recognise its role in upholding the Codes of Conduct and take a much more a proactive role in preventing breaches in the pre-campaign period. Without any type of sanction mechanisms, Codes of Conduct are meaningless

## **B. Desirable Recommendations**

The law should set the hierarchy of norms (regulations, directives, reminder directives, manuals, guidelines, decisions and instructions developed by the NEC and relevant ministries).

If the Form 1018 is retained for the next election there need to be 'technical' safeguards to limit the possibilities for fraud, but also for allowing political parties to document their complaints and for the NEC to be able to properly adjudicate them. A tracking system on what authority issued how many forms to whom needs to be established, forms need to have serial numbers, and the PSCs have to keep a record of the number of forms used in each PS. These safeguards also have to apply to any other document that might be used for the same purpose in future elections.

The government must do more than give public assurances that the murder and intimidation of journalists will be properly investigated. The EU EOM strongly supports the call by the UN Office of the High Commissioner for Human Rights in Cambodia for the Cambodian government to conduct a prompt, thorough and credible investigation into the murder of *Moneaksekar Khmer* journalist Khim Sambo on 11 July 2008, as well as previous attacks. Of the eight similar murders and attempted murders of journalists in Cambodia since 1994, none has ever been resolved. This fosters an atmosphere of impunity for the perpetrators of such crimes, as well as a climate of self-censorship among journalists, who feel unable to act in the public interest and expose wrongdoing for fear of the consequences.

The EU EOM can find no basis in Cambodian law for the government's insistence, when providing licenses to Cambodian broadcasters, on support for government policies, or on prior government approval of some forms of content. The government should desist from this practice and thereby demonstrate its commitment to freedom of expression.

Political parties should make a real commitment to end coercive campaign practices including abstain from vote-buying and ensure that they comply fully with the Code of Conduct

The legal provisions for political party financing should be revised to include provisions that strengthen accountability and transparency – including making public annual audit reports. Public financing of political parties could be considered and NEC should take its control function much more seriously. Campaign financing ceilings should also be introduced.

Definitions for some important terms (such as "minor offence", "flagrant delicto", "affecting the election results") should be included in the LEMNA and/or the Regulations and Procedures.

The tasks and responsibilities of the lower levels of the electoral administration, for example the role of CECs in consolidating the election results from the PS and their role in the Complaints and Appeals process, should be more clearly defined in the LEMNA rather than only in the NEC Regulations and Procedures.

A legal obligation for the Election Commissions to closely cooperate with the court in case of election-related serious crimes should be established, in order to ensure that an investigation is conducted without delay.

Given the frequency of vote buying, the NEC in consultation with political parties and civil society should revise provisions in the LEMNA and/or the NEC Regulations and Procedures with a view to clearly define what constitutes vote buying. Furthermore, this revision of the legal framework should clarify which institutions monitor and sanction such practices.

Political parties should be allowed to register without the requirement to nominate a full list of alternative candidates. Furthermore, the requirement for parties to provide lists twice the size of the number of seats per constituency should be reduced.

The criteria for the appointment of the PECs and the CECs should be reconsidered. The appointment of experienced persons is justified, but without jeopardising the performance of the election administration, the employment of qualified persons without prior election experience should be considered.

The NEC and the commune councils should conduct intensive voter education before and during the annual updating of the voter register in order to enable as many eligible voters as possible to register.

The forms for polling and counting should be simplified. Party agents and observers should receive a copy of the counting record Form 1102 which should be posted immediately in all polling stations once the count is finalised.

Political parties should invest in developing their internal capacity and structures including knowledge-sharing to build a permanent presence across the country and in Cambodian political life at all levels.

There should be internal principles for candidate selection developed that encourage merit-based promotions

Political party representatives at provincial and communal level and candidates' agents should receive more profound training in key legal aspects of the election such as how to file complaints and their role in ensuring checks and balances in election periods

Law enforcement agencies should do their utmost to ensure that they operate independently in line with their constitutional obligations and allocate adequate resources towards fulfilling their role in upholding Cambodian law and regulations.

The international donor community should continue to support initiatives that contribute to the development and consolidation of a pluralist Cambodian society as prescribed in the Constitution of the Kingdom of Cambodia.