



CAMBODIA

**MEMBERS OF THE NATIONAL
ASSEMBLY ELECTIONS
27 JULY 2003**

EU ELECTION OBSERVATION MISSION

FINAL REPORT

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I EXECUTIVE SUMMARY

In its preliminary statement after the elections on 27 July 2003 the European Union Election Observation Mission (EUEOM) concluded, “the 2003 Parliamentary Elections were well conducted” but there was “still some way to go to full democracy”.

This Report covers the whole EUEOM observation activities during the election process. It gathers the findings of the Mission that led to the conclusions given in the Preliminary statement.

Following previous elections in Cambodia, the legal framework regulating the electoral process had been substantially improved by incorporating changes derived from lessons learnt and to both clarify and strengthen the existing provisions. In particular these modifications referred to the seat allocation system, complaints and appeals proceedings and the establishment of a permanent voter register kept by Commune Councils. The National Election Committee (NEC) has shown a genuine commitment to improving the legal framework, in particular with the adoption of Regulations and Directives.

The consultative approach of the electoral administration increased the understanding of the process. NEC appeared to be willing to efficiently fill the gaps of the legal framework as they were emerging, especially when political parties, NGOs or the international community, raised them. However, the numerous NEC directives, whilst welcomed, were not fully enforced. The reluctance of political parties and election officials to fully comply with the revised complaints and appeals system made it less effective.

Compared with previous elections the atmosphere was less tense and there were fewer violent incidents, but concerns remained during the pre-election period over the number of alleged political killings. The inflammatory, anti-Vietnamese rhetoric of some political parties during the campaign caused concern as well as the anti-Vietnamese incidents during Election Day.

Several issues such as the interference of the Village Chiefs in the process, the widespread involvement of civil servants and officials in the campaign or the practice of distributing gifts during the campaign, sometimes referred to as "vote buying", are still not properly handled by litigation procedures. This contributed to create an environment for the political campaign, which was favourable to the ruling party.

Access of all political parties to state media was significantly improved in this election compared to the previous one. The time devoted to each political party was more balanced. In particular, the rules governing equal access and equity programmes were respected and thus provided a reasonable amount of coverage of all political parties. However, looking at the overall picture of state and private media, there remains a considerable imbalance in favour of the CPP. The other political parties have fared better than on the previous elections but in a country where the private media especially with its 6 TV channels dominating the scene and mostly supporting the CPP, it is hardly a level playing field.

The overall pattern on Election Day was of a smooth process with voters participating peacefully. Good technical preparations overcame the challenges posed by the adverse weather. A few minor irregularities were observed. The transparency of the election process was enhanced by the presence of Party Agents and national observers in Polling Stations throughout the country.

The complaints and appeals system has been substantially strengthened and better used and complied with by all stakeholders. Reconciliation mechanisms have been particularly successful and have contributed to ease the atmosphere of the campaign. Even if towards the end of the campaign, the Election Administration has shown signs that they were ready to tackle serious

violations of the Law, NEC's approach towards law enforcement has been mostly based on the issuing of Directives and on appeals from the Chairman, rather than on the imposition of sanctions.

The system for complaints and appeals related to polling and counting has been more successful, even if a high rate of complaints rejected on grounds of formalities indicates that knowledge of the procedures is still too low among the political parties, and that election commissions have been sometimes too stringent and legalistic when examining the formal conditions of the complaints.

The NEC announced the preliminary results on 8 August 2003: 5,168,837 voters cast their ballots on 27 July, which represents a turnout of 81.5%. Opposition parties and some NGOs noted that this is the lowest turnout in any election in Cambodia since 1993. While this is correct, it should also be noted that the actual number of people who cast their ballot in the 2003 election was a new record high.

II INTRODUCTION AND ACKNOWLEDGEMENTS

A. INTRODUCTION

Following an invitation from the Royal Government of Cambodia, the European Union took the decision to deploy an Election Observation Mission (EOM) from 11 June 2003 to 30 August 2003. This decision was taken following an Exploratory Mission carried out in February 2003 and reflects the European Union continuing involvement in Cambodia after the observation missions of 1998 and 2002. This was the third time that an EOM was established to observe an Election in Cambodia, after the observation of the National Assembly Elections 1998 and Commune Council Elections 2002

Mr. Robert Evans (UK), a Member of the European Parliament and of the EP Delegation for Relations with the countries of South Asia and South Asia Association for Regional Co-operation was appointed as Chief Observer for the European Union Election Observation Mission.

The Core Team for the EOM comprised 6 people: Deputy Chief Observer, Maria Rosaria Macchiaverna (Italy); Legal Analyst, Gilles Saphy (France); Elections Analyst, Stefan Krause (Germany); Media Analyst, Antonio Menezes (Portugal); LTO Co-ordinator, Paul Guerin (Ireland); Operations Expert, Alexandre Castanias (France).

GTZ was the Service Provider, responsible for the logistical and administrative support to the EOM. Karin Roeske acted as the GTZ Project Manager.

The key objectives of the European Observation Mission were to conduct a comprehensive and national analysis of the electoral process and to offer an impartial balanced and informed assessment of the election. In addition, by the presence of observers, the mission sought to reduce tension, minimise instances of fraud, intimidation and to give confidence to contestants and voters to participate freely.

The EOM deployed on the 26th of June 37 Long Term Observers (LTOs), forming 18 teams based in Phnom Penh, Siem Reap, Battambang, Kompong Cham, Kratie, Kandal, Kompong Chhnang, Prey Veng, Pursat, Takeo, Kampot, Sihanoukville, Kompong Thom, Kompong Speu, Svay Rieng, Banteay Meanchey. Five LTO Teams covered a second Province or Municipality including Kep, Koh Kong, Pailin, Oddar Meanchey and Preah Vihear. A mobile team covered the three remote north-eastern Provinces, Stung Treng, Ratanakiri and Mondulkiri.

Regular meetings were held throughout the country with election officials at the national, provincial and commune levels, and with political parties, candidates, other observer groups, national and international NGOs and the media. The EUEOM also maintained close contacts with representatives of EU Member States and co-operation offices of Member States present in Cambodia.

At the time of the election, the mission was joined by some 80 Short Term Observers (STOs) sent by all 15 EU Member States, five extra STOs bilaterally funded by Sweden, and 6 qualified STOs proposed locally by EU Member States' embassies who provided valuable support in covering the country during Election Day and counting day.

One LTO and five STOs from Switzerland were also fully integrated in the mission. A Delegation of four members from the European Parliament, arrived in Cambodia on the 23rd of July, though keeping its own identity, was also operationally, fully integrated into the EUEOM mission and its conclusion integrated in the EUEOM preliminary statement.

On Election Day itself observers visited 706 (5.5%) of the 12,826 Polling Stations, with reports from all 20 Provinces and 4 Municipalities. This report consolidates the findings of the entire EOM, taking account of all aspects of the electoral process.

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

Special thanks are due to the EC Delegation to Cambodia for its support during all the phases of the mission.

This final report presents the findings of the EU EOM covering the whole process, and it is the sole responsibility of the EU EOM team. The report includes also a number of recommendations for future elections.

B. COOPERATION WITH OTHER INTERNATIONAL ORGANISATIONS

Information sharing meetings with international and national observers organisations were held regularly in Phnom Penh, before and after the elections.

The EUEOM encouraged full cooperation between the different international observation organisations.

EU Long Term Observers in the field leased with the observers of the Asia Foundation (the only other observer mission with a long term component) and this exchange of information at Provincial level proved overall very successful. EUEOM Observation forms were presented and exchanged with the other international organisations, as were briefing materials, and the compilation of documents for the Long and Short Term observers.

The EUEOM though covering the 24 constituencies of the country, co-ordinated its deployment plans with all the other international observers organisations and offered briefings both at Headquarters level and at Provincial level to the following Observers delegations: European Parliament, bilateral delegation of the French Embassy, a delegation from the French Parliament, German Embassy, British Embassy, Francophonie, Australian Parliament, Japanese Observer mission.

An exchange of information on the content of the respective press statements as well as the scheduling of press statements took place after the election.

The full integration of the European Parliament delegation proved very successful and the result of a common statement presented by the EUEOM Chief Observers with the Head of the Parliamentary Delegation represented a model of fruitful co-operation and showed a strong political message that should be encouraged for future EU Election Observation Missions.

Originally the European Parliament Delegation was comprised of five members. Due to a late withdrawal and the substitution of Mr Marco Pannella, it became more complicated. On his arrival in Cambodia Mr Pannella refused to be bound by the agreements of the rest of the MEPs, in particular those of the Head of the Delegation Mr Glyn Ford MEP, and so Mr Pannella withdrew.

However, Mr Pannella stayed in Cambodia issued press releases and held his own media conference. Bearing in mind his well-documented close links with one political party, the potential for complications and confusion was immense. Great precautions were taken to ensure that any problems were minimised and whilst Mr Pannella cooperated with the EUEOM, the circumstances were clearly far from perfect and the European Parliament needs to take action to ensure that a similar situation does not arise again.

III POLITICAL BACKGROUND

Following the 1998 elections, three parties were represented in the National Assembly. After a difficult post-electoral process, a coalition government was formed where the Cambodian's People Party (CPP) was joined by the FUNCINPEC in coalition to rule the country. Prime Minister Hun Sen (CPP) led the government, while Prince Norodom Ranariddh (FUNCINPEC) was elected President of the National Assembly. The Sam Rainsy Party (SRP) was the only opposition party represented in the National Assembly.

The attack on the Thai embassy and Thai-owned buildings on 29 January 2003, highlighted the volatile security situation and a climate of targeted xenophobia, together with assassinations allegedly politically motivated, and provided an uneasy political background in the few months preceding the elections.

The overall lack of convictions and even of investigation into cases of alleged political killings since last year Commune elections has contributed to a feeling of impunity. The investigation undertaken on the murder of Om Radsady, senior advisor to the HRH Prince Norodom Ranariddh has not yet led to a conclusion.

Fear of local authorities, is still widespread through Cambodian society especially among rural and uneducated people.

In the Commune Council Elections held on February 2002, CPP took about 60% of the national vote, compared with 40% in 1998, followed by FUNCINPEC with 22% compared with 32% in 1998, and SRP with 17% (14% in 1998). All other parties combined reached less than 0.3%.

After the Commune Council Elections, the FUNCINPEC and the SRP confirmed that they would use the lessons learnt from their participation for the upcoming parliamentary elections in July 2003, from this exercise their Party Agents and staff became more familiar with the electoral proceedings and mechanisms and on how to write and lodge complaints.

The SRP and FUNCINPEC were affected by defections from their own ranks while all three main political parties were affected by rumours about internal splits or tensions. De facto, leaders of the three main parties multiplied public appearances before the official start of the campaign and conducted various activities aimed at attracting voters.

Having shared government responsibilities with the CPP, FUNCINPEC after the Commune elections acknowledged the loss of popularity and the downwards trend of the party since 1993 and tried to dissociate itself from the ruling coalition partner and targeting especially Hun Sen, in an attempt to regain popular support.

On the other hand SRP support from 1998 has risen particularly in urban areas with a very active campaign.

NICFEC also reported five killings of party activists, although it remains unclear whether these killings had a political background.

IV LEGAL FRAMEWORK

A. RELEVANT LEGISLATION¹

The Constitution of the Kingdom of Cambodia (24 September 1993 – 8 March 1999) contains several provisions contributing to the shape of the elections legal framework: It bears a reference to Fundamental Freedoms and Human Rights (UN Charter, Universal declaration of HR), to the shape of the regime (Parliamentary Monarchy), to the right to vote and to run as a candidate, to the number of Members of the National Assembly or the duration of the Legislature (5 years). It also contains provisions on the functioning of the National Assembly (2/3 majority for a vote of confidence and for any revision of the Constitution), which has contributed to the shape of the current regime, in particular by making the formation of coalition governments almost compulsory. Moreover the Constitution provides that the sessions of the National Assembly are only valid if a quorum of 7/10 of the members is present. This provision gives possibilities to 36 members of the Assembly to block its functioning by their absence.

Finally, it gives the Constitutional Council the responsibility to be the judge of last resort of the Election of the Members of the National Assembly.

The Law on the Election of the Members of the National Assembly (or LEMNA) (Promulgated on 26 December 1997 and 17 September 2002) describes the electoral system (proportional representation - highest average) with provincial/municipal constituencies, the establishment, appointment and responsibilities of Election Commissions, the registration of voters, political parties and candidates' lists, as well as details of Election Administration proceedings.

The National Election Committee (NEC) has the power to adopt Regulations and Procedures. They follow the same chapter structure as the Law and provide guidelines for Electoral Officials at all levels. They can also be referred to as "by-laws". The NEC has promoted the adoption and use of a set of Codes of Conduct for various actors of the process (political parties, security forces, observers, Election officials)². The NEC also

¹ The legal framework regulating the Media is described in the media section below

² NEC, *Code of Conduct for Election Officials*, *Code of Conduct for International Observers*, 06 December 2002, *Code of Conduct for Political Parties*, 9 December 2002, *Code of Conduct for Security Forces*, 22 January 2003

adopted, together with the Ministry of Interior, a Joint Directive³ aimed at regulating the cooperation between the Election Commissions and the local administration.

Also relevant to the understanding of the legal framework for the elections are, among others, the Law on Political parties, dated 28 October 1997 and The Law on the Organisation and Functioning of the Constitutional Council, 19 March 1998.

B. AMENDMENTS TO THE LAW

Some amendments to the Electoral Law were made by the legislator in 2002 in order to incorporate changes derived from lessons learnt during the past elections and to clarify or strengthen already existing provisions.

The seat allocation system: During the 1998 elections a strong controversy emerged over the issue of the seat allocation. Some political parties alleged that the seat allocation system, which was specified (highest average) but not detailed in the Law, had been changed by the NEC at the last minute for a formula favourable to the CPP. The inclusion of details on the seat-allocation formula in the amended Election Law (art.118) is a welcome change; all stakeholders know in advance how seats will be allocated.

Voter Register: The primary objective of the amendments to the Law was to be able to rely on a permanent list of voters with a yearly registration period to be carried out by Commune Councils. One must admit it was quite a challenge for legislators to grant such a heavy responsibilities to newly elected Commune Councils, with little means and little experience in the matter. In addition, one of the great improvements in the Law has been the introduction in art.54 (new) of a detailed list of conditions to meet in order to register as a voter and in particular a complete list of the documents acceptable as proofs of identity, including the use of two witnesses to prove identity, age and residence⁴. This new procedure removed all discretionary power from the Registration Officers and is a substantial improvement compared to the previous system, which allowed them some discretion in accepting and rejecting applications and was heavily criticised.

Counting: The Law introduces provisions for conducting the counting process at commune level in counting centres, but only makes it specific to the 2003 election process (Art.137 new). Ballot papers from 3 Polling Stations should be mixed and counted together so as to increase the secrecy of the vote. In practice, this system did not work due to the fact that as an additional security measure, ballot papers were marked with a stamp specific to each Polling Station, hence nullifying the secrecy effect expected from mixing the ballots.

Sanctions: Penalties established in Chapter XI of the Law have been strengthened, in particular with the adoption of the rules of Chapter 11 of the By-laws. It is one of the particularities of the Cambodian system to grant the National Election Commission with quasi-judicial competences with regard to penal offences related the electoral process (destruction of someone's property, injuries, intimidation, etc.) that under other circumstances would fall under the jurisdiction of the ordinary tribunals. Among other reasons, a very high lack of trust in the judiciary in Cambodia accounts for such a choice.

³ *Joint Directives On the Cooperation of Local Authorities at all Levels in the Conduct of the Third Parliamentary Election*, NEC – Ministry of Interior, N.004 S.N.N, 27 May 2003

⁴ The LEMNA introduces a broad definition of the residence to allow, in particular, workers, students and militaries to register in the commune where they have a (temporary) residence at the moment of registration, e.g. factories and pagoda. There is no legal requirement for a certain time of residency before the registration.

This implication of the NEC in matters of penal nature is yet creating some confusion as regards the division of labour between NEC and the Courts. NEC would only be competent for offences related to the electoral process. However, the penalties that the NEC can pronounce according to art.124 (deprivation of the right to vote and/or to be a candidate, fines) do not preclude the Courts to impose criminal penalties to the offender, provided the plaintiff(s) would lodge a parallel complaint before the Courts.

In practice, the existence of dual complaints proceedings raises several questions; in particular, the conformity of the system to the Constitution is unclear: The Constitution seems to keep all judicial competences with the judiciary and exclude any form of justice administered *inter alia* by the Executive or the legislative branch⁵. This is particularly true considering the fact that the NEC has the power to deprive a person from the right to vote and to be a candidate, which are constitutional rights.

Moreover, NEC rulings implying the imposition of such type of sanctions on offenders⁶ are not subject to possible further appeal with any higher judicial body (Supreme Court or Constitutional Council). Either one considers that these cases are above all related to the election of the Members of the National Assembly, then the Constitution clearly demands that a possibility of appealing to the Constitutional Council should be offered⁷, or one considers that these cases are first of all of a criminal nature, and there should therefore exist a possibility to appeal with the Supreme Court.

Finally, there is no specific provision on the division of responsibilities between the NEC and the Courts in case parallel complaints are introduced. Which institution is in charge of the investigation? Does one institution take precedence over the other? What if, when adjudicating on the same case, the Courts and the Election Administration do not reach the same conclusion on the facts? The provisions of Chapter 11 of the Regulations and Procedures (the by-law specifically adopted in order to clarify the details of Chapter XI of the Law that is dealing with sanctions) seem to indicate that the authorities in charge of law and order should conduct the investigation⁸.

It seems clear that the quasi-judicial competences of election commissions should be evaluated taken into consideration the fact that this is a provisional solution adopted with the view that law enforcement would be better ensured by the NEC than by the Courts.

In the end, apart from the still existing defects of the complaints and appeals system, the Law and various additional pieces of legislation provide a workable legal framework for the conduct of the electoral process.

⁵ *Constitution of the Kingdom of Cambodia*, 24 September 1993, 8 March 1999:

Art.128 (ex-art.109): "(...) The judiciary shall have jurisdiction over all lawsuits, including administrative ones".

Art.129 (ex-art.110): "(...) Only the judge shall have the rights to adjudicate".

Art.130 (ex-art.111): "The judicial power shall not be granted to the legislative or executive branches".

Art.131 (ex-art.112): "Only the Department of Public Prosecution shall have the rights to file criminal suits."

⁶ Cases resorting to Chapter XI of the Election Law

⁷ Ibid. Art.136 (ex-art.117): "The Constitutional Council shall have the right to examine and decide on contested cases involving the election of assembly members and of the Senate."

⁸ Chapter 11, art.11.1.3.3.5: "If the CEC found that the complaint is of a purely criminal offense, not related to an offense as referred to in Chapter 11 of the Electoral Law, the CEC shall advise the complainant to lodge the complaint with the court". Art.11.1.3.3.6: "If the CEC found that the complaint is of an aggravated felony or misdemeanor offense and this offense is also mentioned in Chapter 11 of the Electoral Law, the CEC shall follow Point 11.1.3.3.5 and shall closely cooperate with the authority in charge of security and public order of the election to push for an investigation to be immediately conducted."

C. ELECTORAL SYSTEM

The National Assembly consists of at least 120 members who are elected for a five-year term in “general, universal, free, fair, equal, direct and secret elections” [LEMNA, Art. 5] Members of parliament are elected by proportional representation in 24 constituencies (20 Provinces and 4 Municipalities).

Prior to each election, a special government-appointed commission determines the total number of seats for the next National Assembly, based on changes in the population since the last elections. For the 2003 National Assembly elections, the total number of seats was 123, up from 122 in the 1998 elections. The additional seat was allocated to Oddar Meanchey Province, which was formed after the 1998 elections. Mandates are awarded at the constituency level. The number of mandates per constituency varies from one (in nine constituencies) to 18 (in Kampong Cham Province), with an average of 5.1 seats per constituency. While there is no threshold specified in the law, the small number of seats to be awarded in most constituencies creates a rather high “natural” threshold.

Seats are allocated using a formula that yields the same results as the widely used d’Hondt formula. Several small parties complained to the EUEOM that the current formula disadvantages them and favours the bigger parties. While none of these parties received enough votes to win a mandate under any of the commonly used allocation formulas, a different formula would have changed the distribution of mandates for the three main parties, which will be represented in the new Assembly. Using the formula specified in the law, the CPP won 73 seats, FUNCINPEC 26, and the SRP 24. Had the equally common Hare formula been used, the CPP would have won 64 mandates; FUNCINPEC would have received 28 seats, and the SRP, 31. Regardless of these differences, the fact remains that ultimately the choice of a seat allocation system is sovereign and that it is up to Parliament to decide which formula will be used for seat allocation.

D. ADAPTATION OF THE LEGAL FRAMEWORK BY THE NEC

The NEC has a complete jurisdiction over the adoption of a set of Rules and Regulations detailing the provisions of the Law: the by-laws. In addition, the NEC has developed a set of Codes of conduct for all stakeholders as well as a co-operation mechanism between the NEC and local authorities⁹.

The NEC has shown genuine commitment in clarifying and strengthening the legal framework. It has also been very receptive in responding quickly to emerging issues, such as that of campaign activities in certain places, the role of Village Chiefs, or the poor performance of the complaints and appeals system, by adopting directives regulating campaign activities, reminding Village Chiefs of their obligations of neutrality and of the sanctions provided for in the Law, or by formulating a "quick action" complaints procedure¹⁰. Many of these directives were adopted after issues were raised by political parties, NGOs, or the international community¹¹.

⁹Joint Directives On the Cooperation of Local Authorities at all Levels in the Conduct of the Third Parliamentary Election, NEC – Ministry of Interior, N.004 S.N.N, 27 May 2003

¹⁰ Directive on Serious Violations of the Electoral Law for which no Complaint was Lodged, No. 07.1416/03 NEC, signed on 09 July 2003

¹¹ A good example of the NEC's capacity to quickly address emerging issues is the one of campaign activities in market places. Directive on Campaign Activities, N 07.1377/03 NEC

In the end, the NEC appeared as willing to efficiently fill the gaps of the legal framework as they were emerging¹². As the electoral process reaches its end, little remains unregulated. However, one thing is to formulate a comprehensive legal framework, another thing is to make sure this framework is efficiently abided by.

V ELECTION ADMINISTRATION

National Assembly elections are administered by a four-tier Election Administration. At the highest level is the National Election Committee (NEC), which has overall responsibility for the election process. Below the NEC are 20 Provincial Election Commissions (PECs) and four Municipal Election Commissions (MECs)¹³, 1,621 Commune Election Commissions (CECs), and 12,826 Polling Station Commissions (PSCs). Overall, 72,408 persons served as members of election commissions.

The NEC was reformed in 2002 following the amendments to the Election Law enacted on 17 September 2002. The NEC “shall be an independent and neutral body” whose five members are selected “from among dignitaries who are experienced in politics and in professional life, and have good reputation” [LEMNA, Art. 12, 13]. The previous NEC was composed of 11 members, including representatives of political parties represented in the National Assembly and two representatives of the Ministry of Interior.

Royal Decree appointed the current NEC members on 30 October 2002 upon the request of the Council of Ministers, after having been proposed by the Interior Minister and approved by the absolute majority of the National Assembly. They took office on 15 November. NEC members have to resign any positions they may hold in political parties, NGOs, trade unions or government service for the length of their NEC mandates. The NEC is assisted in its work by a General Secretariat, which oversees the work of five departments – Operations, Administration, Finance, Training and Public Information, and Legal Services.

The previous NEC was widely criticized for lacking independence and impartiality. While the technical aspects of its work were generally regarded positively, questions were raised over some of the more political decisions, both in the 1998 National Assembly elections and in the 2002 Commune Council elections. One particular area of concern was the handling of complaints. Many critics of the previous NEC demanded a reform, which would remove party influence from the NEC in favour of the inclusion of society at large. Others argued in favour of an openly multi-party NEC with sufficient checks and balances.

The current NEC also came under criticism from opposition parties and sections of civil society. While acknowledging that it handled the technical side of the elections well, they accused the NEC of pro-CPP bias and lack of independence. The EUEOM does not share this assessment. Throughout the election period, the NEC worked in a transparent manner, seeking contact with political parties and civil society.

¹² In addition to the already mentioned directives, one can cite the following:

Directive on the neutrality of chiefs of villages, their deputy and members, N. 07.1499/03 NEC, 17 July 2003,
Directive on Cooling-off Period, N 07.1508/03 NEC, 19 July, 2003,

Additional Directive on Examination of Identity Documents of Voters and How to Watch for Unusual Ballots,
No. 07.1534/03 NEC, 21 July 2003,

Directive On Prohibiting Villages' Chiefs And Subordinates from Acting As Political Parties' agents, N. 07-1558/03 NEC, 22 July 2003.

¹³ For simplicity's sake, PECs and MECs will be referred as PECs throughout this report. All references to PECs equally apply to MECs.

PECs are composed of a chairperson, a deputy chairperson, and three to five members. For the 2003 elections, the NEC determined that all PECs would be composed of seven persons. PEC members are appointed by the NEC and stay in office until 60 days after the announcement of the final results. In addition, the NEC designates one or two officials of the PEC secretariat to maintain the continuity of electoral work in the Province between elections. CECs are made up of a chairperson, a deputy chairperson, and three members. CEC members are appointed by the NEC at the request of the relevant PEC and stay in office until the announcement of the final results. PSCs consist of a chairperson, a deputy chairperson, a secretary, and two members. The NEC at the request of the PECs appoints PSC members. PSCs stay in office until they deliver all election material from their Polling Station to the CEC and complete the verification of the number of ballots cast in their Polling Station. Some PSC members may be selected to work an additional day as members of counting teams.

The overall women participation at all levels of the Election Administration, although higher than in 2002, still remains low (20.7%). This average of 20.7% is the result of a higher percentage of women working at Polling Station level (23.8%) and a low percentage of women appointed as PEC or CEC level. According to NEC, more women applied for working with the Election Administration at all levels than in previous elections, but only few passed the selection procedures, mainly due to a low level of literacy and written command of the Khmer language, especially outside big urban areas.

Gender balance – Election Commissions - 2003

Description	Total*	Women	%
NEC members	5	2	40.0
NEC Staff	460	87	18.9
PEC chairpersons & deputies	48	3	6.2
PEC members and staff	1193	109	9.1
CEC chairpersons	1621	131	8.1
CEC members and assistants	9873	1169	11.8
PS members	40125	9544	23.8
Total	53325	11045	20.7

* Figures above were provided to the EUEOM by the NEC and take into account all persons who worked for the Election Administration at all phases of the process.

PEC and CEC members must be citizens eligible to vote and may not be members of the armed forces or national police, court officials, monks, provincial or district governors or deputy governors, members of Commune Councils, Village Chiefs, Deputy Village Chiefs, or Village chiefs subordinates. To serve on a PSC, persons must meet the same criteria and in addition not be working in Commune administration.

Although the Election Law provides for a non-partisan Election Administration, many NGOs and political parties have questioned the independence and impartiality of election administrators, especially at the PEC and CEC level. COMFREL and NICFEC claimed that some 70% of all PEC and CEC members were affiliated with the CPP, and another 28% with FUNCINPEC and 2% with the SRP. Positions on PECs, CECs and PSCs were filled after a selection and interview process, which was publicly advertised and open to anybody who fulfilled the criteria, outlined above. As prior election experience was considered a key asset for applicants, some two thirds of the successful candidates had worked in previous elections, which contributed to the perception that the senior ruling party dominated the Election Administration. The EUEOM long-term observers found most PECs to be professional, efficient and unbiased, although the impartiality of some CECs was in question. This concerned mainly the handling of complaints, while the technical and organizational aspects of the elections were managed professionally.

Overall, PECs and CECs administered the technical aspects of the elections efficiently and professionally, despite logistical challenges and a sometimes difficult working environment. Every single member of the Election Administration received training. PEC and CEC members were trained on the election law, complaints procedures and election campaign rules in May and June 2003, while PECs, CECs and PSCs received training on polling and counting procedures in June and July. EUEOM LTOs attended training sessions for CECs and PSCs and found them adequate. It became apparent on election and counting days that some PSCs and counting teams had problems packing and unpacking election material according to NEC instructions and properly verifying and reconciling numbers of ballots and of voters who voted. This suggests that more training may be needed on some aspects of the complex procedures. Manuals detailing the election law and NEC Regulations were distributed to all electoral bodies, as was a manual on handling complaints.

PECs and CECs held weekly meetings with political parties running in the election. In many places, these meetings contributed to the openness of the process and may have enhanced confidence in the process and increased dialogue between the stakeholders.

VI PRE- ELECTION PERIOD

A. VOTER EDUCATION

Both the NEC and numerous NGOs engaged in voter and civic education in the run-up to the National Assembly elections.

During the voter registration period, the NEC produced public announcements, posters, illustrated leaflets, banners, audio and video spots. NGOs that published reports on the voter registration complained that the NEC voter education program was of low quality, failed to provide voters with the necessary information. NICFEC reported that public information posters were not posted long enough, and that in some remote areas, there was no voter information at all. COMFREL also noted that NGO access to media during voter registration period was limited and that the NEC discouraged the SRP from providing voter information, on the basis that the campaign period had not yet started. However, some political parties took the initiative to help their known supporters to find out whether they were already registered.

NEC voter information during the pre-election period included leaflets calling on voter to go and vote, posters on the election date and on ID documents, which could be used to prove identity, posters, banners, audio spots, and video spots. Loudspeakers were distributed for dissemination of the audio spots in all communes. NEC produced also posters, leaflets and spots on the secrecy of the vote, on complaints procedures and against intimidation and violence.

Most voter education material was readily understandable, even to citizens who could not read or write. This was an improvement over previous efforts (such as a leaflet on the secrecy of the vote issued days before the 2002 Commune Council elections) when some material consisted mostly of text and therefore failed to reach a significant segment of the population. Generally, voter education was more intense and of better quality than in previous elections. However, thought should be given to more targeted voter education, especially with regards to outreach to rural and remote areas where voters are less informed and more vulnerable to pressure.

The NEC's efforts to expand voter education to include not only technical information but also a campaign against violence in the campaign period were commendable. They should continue during the annual voter registration period and be intensified before the next elections.

B. VOTER REGISTRATION

Among the significant amendments to the election law was the introduction of a permanent voter register. This was a positive step that removes the need to register the entire electorate ahead of each election. The voters' register is now kept permanently in each commune and will be updated annually. A copy of each register will be kept at the NEC. If properly maintained, a permanent voters register will not only ensure that a high number of people will be able to vote but will greatly reduce the amount of work required before each election and will also result in a reduction of expenses.

To be eligible to register, a person must have Cambodian citizenship, be 18 years old on Election Day, have residence in the commune where he or she will vote, not be serving a prison sentence, and not have been declared mentally unfit or been placed under legal guardianship. To be registered, a person has to produce proof of identity, citizenship, age and residence to the registration clerk appointed by the Commune Council. Voters may only be registered under one name and in one Polling Station; voters with more than one residence must choose where they vote. Candidates who stand in a Province outside their place of residence may vote there, as may their spouses and children.

The registers from the 2002 Commune Council elections were used as a basis, therefore only citizens who had not registered for these elections or who had turned 18 in the meantime, or who had changed their commune of residence¹⁴, were required to register.

Initially, voter registration was supposed to take place between 17 January and 15 February throughout the country. Due to a large number (over 1 million) of potential eligible voters who had not yet registered, the NEC extended the registration period for two days in all the 1621 communes, to five days in some others. The extensions criteria were based on the overall estimated figures of the NEC of people aged 18 on polling day not yet registered, and on the demands received from the commune councils considering the situation on the ground (their estimation of people who are not yet registered but want to do so), compared to the NEC estimated figures.}

The whole registration process was completed 20 February. Citizens denied voter registration had the possibility to appeal against the decision of the registration clerk with the Commune Council, and the Commune Council decision with the NEC, whose decision could be appealed against to the Constitutional Council. Further complaints and appeals could be lodged before the NEC and the Constitutional Council after preliminary voters list was published.

After the registration period, including the posting of the preliminary voter lists, and the settlement of registration-related complaints and objections, the total number of registered voters for the National Assembly elections was 6,341,834. This represents an increase of 1,151,527 registered voters compared with the 5,190,307 voters registered in 2002. Ultimately, 93.95% of the estimated number of potential voters was registered for the 2003 elections.

¹⁴ Those latter citizens had to be deleted from the voter list of their previous registration's commune (67,603 names deleted) as well as deceased people (4,933 names deleted), if duly documented – source: NEC.

Complaints/objections against a refusal to register are heard by commune councils in first instance. Their rulings can be appealed directly to the NEC. Complaints and appeals related to voter registration are reported to have been smoothly handled. The settlement of complaints and appeals was facilitated by the fact that rejected applicants were given a document explaining the reason for the rejection¹⁵.

A total of 604 objections and appeals were lodged before commune councils during the registration period. 159 appeals were lodged before the NEC. As it was already the case in 2002, most cases relate to objected registered voters, with highest numbers of objected registrations in the provinces of Kandal (4,550 voters), Prey Veng (1,309), Pursat (1,228), Siem Reap (606), Phnom Penh (436), etc.

Several NGOs issued reports on the voter registration process. COMFREL reported that while the process ran smoothly in 83% of registration stations, there were 1,294 cases of irregularities at 342 stations. Most of these irregularities were of a minor nature, such as inadequate training of registration officials, insufficient publicity of the registration process, and cases of short suspension of registration due to lack of material and equipment. Serious irregularities, such as illegal confiscation of ID documents, obstruction, threats and intimidation, or refusal to address complaints, were observed in limited cases. COMFREL found serious problems in only one commune in Kampong Chhnang Province. NICFEC's report lists 162 cases of irregularities, again mostly minor in nature, with the exception of 13 cases of intimidation. NICFEC also reported five killings of party activists, although it remains unclear whether these killings had a political background.

The requirement to prove one's residence created problems for some Buddhist monks. Under a Circular issued by the Interior Ministry on 20 December 2002, monks needed a certificate from the Head of their pagoda in order to receive a certificate of residence from the Commune Chief, rather than two witnesses who testify on the registrant's behalf. This requirement turned into a dead end when the Chief Monks of Cambodia's two Buddhist sects issued a directive exhorting monks not to vote. Many heads of pagodas felt they were not authorized to issue the necessary papers after the directive was issued, and the NEC was not authorized to modify the Interior Ministry's Circular. Ultimately, however, many heads of pagodas started issuing certificates to monks after the NEC negotiated with the heads of some important pagodas and after the King issued a letter defending monks' right to vote. The number of monks who were unable to register is unknown, but only monks who did not register in 2002 and those whose ID card showed a pagoda residence were affected.

It must be reminded that people had been invited to check their name on the voter list posted during registration and on the preliminary voter list (second phase); according to the NEC 57,476 registered people in 2002 requested changes in the voter list, either because of wrong spelling of the name or for change of polling station within the commune, for distance reason.

It became apparent on Election Day that a number of voters had failed to understand the registration procedures. These voters, who had registered for the 1998 National Assembly elections but not for the 2002 Commune Council elections, thought that they had been automatically included on the voter register and only found out that this was not the case when they came to their Polling Station. This indicates that many people failed to check whether they were on the list when the preliminary voter registers were posted. The NEC in cooperation with the Commune Councils should consider undertaking an extra effort,

¹⁵ See *Report on Voter Registration 2003*, Phnom Penh, UNDP Cambodia, 2003, p.22

including public information, ahead of the next updating of voter lists in order to reach this category of citizens.

One problem that became apparent after the conclusion of the registration process was that some voters never had photographs attached to their voter registration receipts. This meant that persons without other identity documents approved by the NEC would have been unable to vote. The NEC had decided to use conventional film cameras instead of Polaroid cameras; as a result, some photos were of poor quality, film went missing or was damaged during development, or pictures that were returned to Commune Councils could not be matched up with the person on the photo. Once this problem was identified, the NEC took immediate action to remedy the situation and sent out cameras so that new pictures could be taken. According to NEC data, 70,067 voters were affected by this problem. As of 17 July, Commune Councils and CECs had retaken 47,599 photos, and by the 25 July deadline set by the NEC, less than 10,000 voters were left without pictures on their registration receipts.

In order to facilitate voting, the NEC approved a wide range of identity documents, which could be used on Election Day to prove a voter's identity, unlike in previous elections, where voters could only use voter cards issued at the time of registration. This represented a genuine attempt to ensure voters would not be disenfranchised due to lack of valid documents.

C. CANDIDATE REGISTRATION

To be eligible for candidature, a person must be a "Cambodian national by birth", at least 25 years old on Election Day, eligible to vote and be registered as a voter, resident in Cambodia, and included in a party's list of candidates. Civil servants, court officials, members of the armed forces and the national police, members of the Constitutional Council or the Supreme Council of Magistracy, and priests are not eligible to stand as candidates unless they resign from their functions at the latest seven days before the start of the election campaign. If elected, they are given leave of absence for the duration of their mandate and are entitled to return to their previous position afterwards. In addition, persons convicted of a felony or misdemeanour and not yet rehabilitated, persons deprived of their right to vote, mentally unfit persons placed under legal guardianship, and members of the NEC or any election commission are not eligible to run in elections¹⁶.

Only political parties may submit candidate lists for National Assembly elections. There are no independent candidates or independent lists. Political parties submit separate lists for each constituency in which they intend to run. A party's total number of candidates must be at least one third of the total number of National Assembly seats (i.e. 41 for the 2003 elections). The number of candidates on each constituency list must equal the number of mandates to be distributed. In addition, parties must submit a list of alternate candidates whose status or role is not defined anywhere in the election law or in NEC Regulations. The number of alternate candidates equals that of regular candidates, but it must be at least three in one and two-seat constituencies.

Parties must submit candidate lists at the latest 70 days before the elections. In addition to their lists of candidates, they must submit a number of documents detailed in LEMNA, Art. 37, including a receipt proving that the party paid a deposit of 15 million riels (€3.200) which will only be returned if the party wins three percent of the vote or a seat in the National Assembly. Candidates who are found to be on more than one list of candidates will be deleted from all lists. If the NEC rejects a party's candidate lists, the

¹⁶ LEMNA, art.33 (new), 34 (new) and 35 (new)

party has five days to appeal to the Constitutional Council. The Constitutional Council must rule on such appeals within ten days, and its ruling is final.

For the 27 July 2003 elections, 25 parties filed for registration. The NEC registered 23 parties and rejected two, the National Construction Party and the Khmer Prosperity Party. The Khmer Prosperity Party failed to submit a list with a sufficient number of candidates, and both parties failed to produce a receipt showing that they had paid the financial bond. Both parties appealed to the Constitutional Council, which upheld the NEC decision.

Of the 23 parties running in the National Assembly elections, only seven fielded candidates in all 24 constituencies. At the other end of the spectrum, the Rice Party had only four constituency lists, and another four parties ran in five constituencies. One small party, the Khmer Help Khmer Party announced on 22 June it was withdrawing from the elections, saying they would not be free and fair.

The average percentage of women presented in the lists of all the parties reaches 25.4%, with considerable differences between parties; the percentage of women candidates presented by the three main parties varies from 11.38% (CPP) to 12.2% (SRP and FUNCINPEC). Among the smaller parties, three presented a majority of women (Cambodian Women Party: 90.38%, Nationalist Khmer Party: 55%, Khmer Angkor Party: 54.5%). The party, which presented the lowest percentage of women, is the Hang Dara Party, with 6.5%. It has to be noted that numbers of women candidates in absolute terms is not meaningful, as it depends on the position of the women on the lists, knowing that often only candidates from position 1 to 3 on each list could have a chance to be elected. [For details, see Annex Chapter VI (a)]

D. ELECTORAL CAMPAIGN

1. Rules of the campaign

The official election campaign period lasted for 30 days. It began on 26 June and ended on 25 July. No campaigning was allowed on 26 July and on Election Day. Campaign rules were defined in the Election Law (Chapter VII), NEC Regulations (Chapter 7 and 11), and a binding Code of Conduct for Political Parties adopted by the NEC. In addition to the binding NEC Code of Conduct for Political Parties, 17 parties signed the Principles of Conduct for the campaign, which had been drawn up by the NEC and the National Democratic Institute (NDI), in consultation with the political parties.

Under Chapter VII of the Election Law and the relevant NEC Regulations, parties and candidates “shall avoid using threats, intimidation or violence against citizens, other political parties and candidates”¹⁷ and shall not obstruct their competitors’ campaign activities. Contestants are required to comply with the election law, NEC Regulations and Procedures, and the Code of Conduct for political parties adopted by the NEC. The law specifically states that parties shall refrain from acts “that may cause fear and confusion or could undermine confidence in the secrecy of the vote”¹⁸. Parties must pay all campaign expenses themselves and must keep an account book, which is open to inspection by the NEC at any time. All revenues and expenditures must be affected through the same bank account.

Public venues must be made available to all contestants on an equal basis¹⁹. Parties must request use of such venues in writing three days in advance and must copy the request to

¹⁷ LEMNA, art. 71 and 72

¹⁸ LEMNA, art. 76

¹⁹ LEMNA, art. 77

the relevant CEC. Meetings in private venues can be held at any time without prior official permission but the relevant CEC must be informed. Party signs can be installed in public places, based on the principle of equality, but they may not be installed on state buildings and offices. The use of the King's picture, speeches, messages, achievements or name for campaign purposes, was prohibited²⁰.

Under the NEC – Ministry of Interior Joint Directive, civil servants, village chiefs, were barred from participating actively in the campaign while on duty, to use their power and position to influence the election process, and to mobilize their peers in order to gain votes for a political party. Civil servants were allowed to participate in campaign activities when off duty, provided they were not wearing uniform and carrying arms.

2. Summary of the Campaign

The campaign was dynamic and all three main parties and the smaller ones were able to actively campaign and generally meetings took place in a peaceful environment.

The promotion of spaces of political debates like the Fora between the main parties sponsored by the National Democratic Institute (NDI) marked by a peaceful and constructive interaction between the candidates and the audience contributed to the improvement of the electoral environment.

Observers reported throughout the country, that the campaign climate was more free in comparison with the previous elections, with voters no longer afraid to demonstrate their political opinion or attend meetings and rallies of different political parties.

A considerably higher number of banners and signs was displayed throughout the country, and even in small villages the three main parties had offices, often side by side with their opponents. Some of the new parties, such as the Khmer Front Party, the Rice Party, the Indra Buddha City Party were also represented in the Provinces (mainly Battambang, Kampong Cham, Kompong Speu, Phnom Penh).

In comparison with previous elections, SRP and FUNCINPEC conducted a more vigorous campaign than CPP in urban areas as well as in the most remote villages. CPP carried on a lower key campaign without emphasis on program, consolidating its support through network of commune and Village Chiefs, choosing to ignore rather than contradicting the rhetoric of the opposition parties on key campaign issues such as corruption, illegal immigrants, or rural development promises and to focus its campaign on the achievements of the CPP led Government.

CPP activities though intensified during the last few days of the campaign: huge rallies of students, women, workers were organised in the capital and in its suburban areas as in other main cities in Cambodia where CPP had to face a serious challenge by the SRP showing that the party could gather impressive number of trucks filled by supporters. To capitalise on positive achievements of the infrastructure of the country, the Prime Minister Hun Sen had been intensified inaugurations of public works, schools and pagodas.

Regrettably, among the main political parties, SRP and FUNCINPEC, as well as the NCPK made an extensive use of xenophobic rhetoric targeting essentially the Vietnamese community. No distinction was made between Cambodian citizens of Vietnamese origin, legal immigrants, or illegal immigrants. Radios (FM 105 MHz, FM 93.5 MHz, VOA,

²⁰ Although not prohibited in the Law, the use of the picture and the name of the King is prohibited by the Code of Conduct for Political Parties, 9 December 2002

RFA and FM90.5) broadcasted anti Vietnamese messages during the campaign as well as some newspapers (Moneakseka Khmer News and Udomkate Khmer News).

NEC Chairman, on 30 June issued an appeal to the parties contesting the elections to abide by the Election Law, NEC Regulations and the Code of Conduct for Political Parties. HE Mr Im Suosdey said some parties in their campaign speeches incited ethnic hatred, denigrated ethnic groups, insulted other candidates and used the picture and name of the King for campaign purposes.

In addition, the campaign showed that several unsolved issues limit the development of grass root democracy and contribute to creating an imbalance in favour of the ruling party. These questions are the influence of village chiefs on political activities in grass root communities under present appointment system, the lack of neutrality of the administration and the widespread practice of incentives distribution. [These focal points are described in details below in part E.4.]

E. LAW ENFORCEMENT – COMPLAINTS AND APPEALS

Ever since the first Cambodian elections after the Paris Accord, it seems that election-related complaints and appeals have always been a matter of concern. During past elections, observers noted a clear reluctance to use institutional/formal systems of dispute resolution and to punish offenders: This trend has several possible causes, including a reluctance of the Electoral Administration (especially at local level) to be involved in potentially conflicting issues, a tendency of the electoral administration to underestimate its competence, the fear of the victims to lodge complaints, of witnesses to testify, of election officials to enquire, a lack of knowledge of the procedures on all sides (victims, defendants, political parties, election officials), recurrent difficulties to substantiate the complaints, and a strong preference for informal/conciliation-type mechanisms for the settlement of disputes (avoid face losing problems but inappropriate for criminal offences). Then, there also existed a tendency to turn the complaints and appeals system into a political instrument, in particular a tendency of some parties to lodge complaints with a view to "making a statement" out of it, or the use (in 1998 in particular) of complaints in high numbers in order to paralyse the functioning of Electoral Commissions.

This year, even though the Law has been amended in order to strengthen sanctions for serious violations of the Law (Chapter IX) and even though a wide range of legal documents have been adopted in order to regulate the conduct of all stakeholders, the reluctance from both political parties and election officials to properly use and follow the complaints and appeals system have limited the expected progresses. In the end, the NEC's approach towards law enforcement was based on the issuing of Directives and on appeals from the chairman, rather than on the imposition of sanctions.

The NEC and some election commissions did however show signs towards the end of the campaign period that they were ready to also impose sanctions on offenders. In addition to that, the level of knowledge of complaints and appeals procedures was higher this year both among election officials and political parties. This could explain why the system was used more than previously.

1. Complaints system on campaign events

The architecture of the complaints and appeals system has been designed taking into account some lessons of past elections and in particular with a view of reaching certain contradictory objectives, such as to offer legal remedies for violations of the Law and the Regulations without opening ways for parties to block the system with a flow of

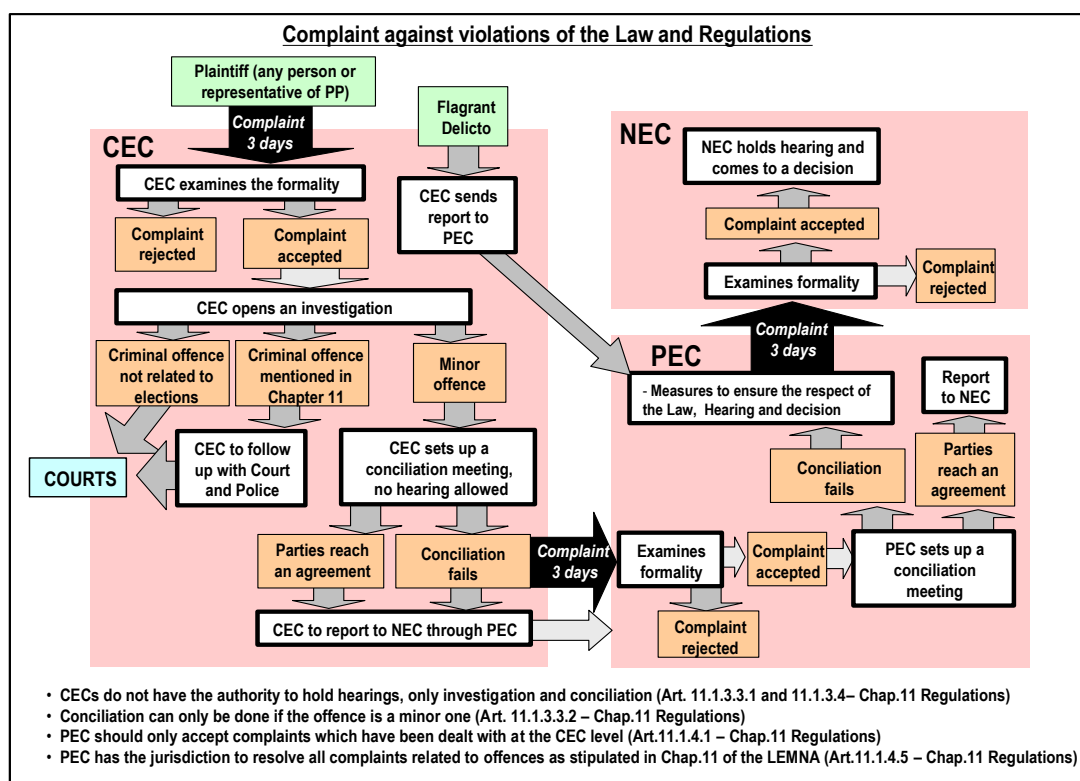
complaints. The system also incorporated traditional conciliatory systems of settling disputes but restricted its use to minor offences.

The CEC and PEC began handling complaints at the start of the campaign period. The By-Laws adopted for the implementation of the LEMNA, and especially Chapter 11, have given jurisdiction to sub-levels (PEC and CEC) to also deal with complaints under certain conditions and by delegation from the NEC.

In the overall complaints and appeals system, CECs were expected to act as filters before PEC level, by organising formal conciliation meetings between the plaintiff(s) and the defendant(s) and to work out dispute settlement. CECs were also expected to conduct investigation and gather evidence to substantiate the cases. However, they were neither supposed to carry out formal hearings, nor to make decisions. Their role was rather to facilitate the settlement of a dispute between two parties. Conciliation could only be used for minor offences.²¹

In 2002, though having a competence over disputes involving a possibility of sanction, PECs were extremely reluctant to hold formal hearings and to adjudicate on complaints.

The provisions of Chapter 11 of the Regulations and Procedures establish a two step procedure: for each case submitted, PECs must first try to solve the dispute by reconciliation and only if it fails should they hold a hearing and make a formal decision. This means that before holding a hearing, election commissions would have tried twice (at CEC and PEC level) to reach reconciliation. As a result very few cases ended up being the object of a hearing session.



²¹ Art.11.1.3.4: "The CEC has the jurisdiction to resolve complaints related to offences as provided for in Chapter 11 of the Electoral Law out of the hearing system only through the conciliatory process. The CEC does not have the authority to hold hearings".

During the campaign, it appeared that as numerous allegations were made by parties and NGOs on serious violations of the Law, in particular cases involving Village Chiefs, the complaints and appeals system did not seem to be able to offer legal remedy for these cases. In particular, the system was impeded by the reluctance of victims to lodge complaints and by the difficulties to substantiate cases, but also by the reluctance of election officials to take any sanction.

The NEC decided to strengthen the mechanism with the adoption of a new directive²² bringing about new possibilities to tackle violations of the law through several new provisions, in particular one creating an obligation on election officials when they witness a serious violation to note the violation and report immediately to the PEC, even if no complaint was lodged. The PEC should only organise an emergency hearing, but not come to a decision on a sanction but communicate its conclusions to the NEC, which would then examine the case and decide on sanctions. It was expected that by removing the obligation to have a complaint as a start of a procedure, and by relieving the PECs from the burden of having to impose sanctions, the system would bring about better Law enforcement.

2. Reconciliation rather than law enforcement

Commune Election Commissions generally managed to handle minor disputes through conciliation. The conciliation system was usually efficient when having to deal with political parties behaviour during the campaign (insults, campaign disturbance, destruction of signboards, etc). This conciliation mechanism has certainly contributed to ease the atmosphere of the campaign.

It must be remembered that formal litigation is not widespread in the Cambodian culture, which uses as a rule, consensus building system rather than legal proceedings. Secondly, a certain fatigue has been observed with PECs unfamiliar with legal proceedings and overwhelmed with administrative duties. Thirdly, and most importantly a certain reluctance to issue decisions against officials or hierarchically superior authorities was noted. In addition, the Regulations and Procedures (Chapter 11) might have been too complicated and ambiguous to implement for not sufficiently trained legal officers.

The table below was worked out by the EUEOM based on the information provided by PECs and the NEC.

Parties	Total	Reject for formalities		Conciliation				Response		Referred to court		Sustained		Dismissed		Pending	
		CEC	PEC	CEC		PEC		CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC
				Yes	No	Yes	No										
<i>FUNCINPEC</i>	71	10	2	32	5	10			3	1	2						2
<i>SRP</i>	195	19	18	81	12	20			11	4	4		12	3	4		4
<i>CPP</i>	63	6	1	22	4	9			4		6	1	1	2	4		4
<i>KFP*</i>	3					1		2									
<i>Individual</i>	14	2	1	7		3					1						
<i>Authority</i>	2			1													
<i>NGO</i>	1																1
Total	349	37	22	143	21	43		2	18	5	1	12	1	13	6	10	

*Khmer Front Party

[For details on complaints lodged by parties, see ANNEX Chapter VI (b)]

²² Directive on Serious Violations of the Electoral Law for which no Complaint is Lodged, No. 07.1416/03 NEC, signed on 09 July 2003

According to PEC reports to NEC, a total of 349 complaints were lodged during the campaign period at both CEC and PEC level. The SRP lodged most complaints (195, i.e. more than half) against 71 for FUNCINPEC and 63 for CPP. 60 cases (17%) were rejected for reasons of formality, with no apparent pattern of bias in favour of one party on this point.

Statistics also show a high instance of allegations of "threats", "vote buying" and "gift distribution" being lodged by SRP and FUNCINPEC, many of which were solved by conciliation at CEC level. Complaints lodged by CPP tended to relate to breaches of the code of conduct by other parties. One cannot conclude from the statistics on the complaints that Election Commissions handled complaints differently depending on who were the plaintiffs and the defendants.

Out of the total 349 complaints lodged on campaign related events, 143 were solved by conciliation at CEC level and an additional 43 cases were solved by conciliation at PEC level. It does seem that the conciliation mechanisms have efficiently acted as they were expected to, i.e. as filters preventing too many cases to require the holding of a formal hearing session.

The PECs' overall performances as regards complaints and appeals have been more disappointing, as generally they were not being able to offer proper response to more serious violations of the Law. They managed to settle some complaints by conciliation, but still seem to keep a low profile when cases involve serious offences or officials.

Yet, towards the end of the campaign period, few PECs took sanctions against offenders, imposing a 5 million Riels (approx. 1250 USD) fine to a Village Chief for obstructing a FUNCINPEC rally in Battambang, and similarly against a citizen who disturbed a FUNCINPEC rally in Kampong Cham and injured a party supporter. Both defendants appealed to the NEC, which confirmed the sanctions taken by both PECs. PEC Kampong Cham also imposed a 10 million Riels (approx. 2500 USD) to SRP for having distributed money to voters. The SRP appealed to the NEC, which should rule on the appeal during the first week of September.

3. NEC handling of cases related to the campaign period

From 26 June to 30 July, the NEC had received 33 complaints related to violations of the Law, Regulations or Codes of Conduct. Several further cases related to the campaign arrived at the NEC after the publication of the preliminary results.

Plaintiff	Type	Number	Appeals after preliminary results*	Rejected for formality	Conciliation and/or withdrawal	Referred to PEC	Response	Hearing		Pending
								Sustained	Dismissed	
CPP										
	Breach of code of conduct	4				1	2			1
	Defamation	5				1	4			
	Vote buying	1	1		1		1			
	Appeal against PEC sanction	1							1	
SRP										
	Obstruction to campaign	2	3						2	3
	Threat	1	1						1	1
	Vote buying		2							2
	Assault	1							1	
	Partiality of PEC or CEC	4	1				2		1	2
	Appeal against PEC sanction	2	1		1					2
	NEC violation		1							1
	Officials campaigning	1								1
FUNCINPEC										
	Breach of code of conduct	2					2			
	Vote buying	3	4						3	4

	Partiality of PEC	2	1						3
	Appeal against sanction PEC	1							1
KFP									
	Access to media	1			1				
Election Commissions									
	Defamation	1						1	
Citizens									
	Appeal against sanction PEC	1						1	
NGO									
	Threat		1						1
Total**		33	16		3	2	11	11	22

* These are also cases relating to campaign events. The NEC classified them as complaints received after preliminary result. For clarity, they are put together in this report.

** The figures are valid as of 29 August 2003. NEC expected few further appeals of PEC rulings.

Most common allegations are: Lack of neutrality of the election commissions, breaches of the code of conduct (mostly insults), defamation and "vote buying". CPP complaints tend to focus mostly on allegations that other parties' behaviour does not respect the rules of the campaign (in particular on cases of defamation and breaches of the code of conduct). Complaints lodged by FUNCINPEC and SRP are more focussed on victimisation issues (partiality of the election commissions, threats, assault...) and on the imbalance of means between parties (vote buying, officials campaigning).

The NEC frequently handles complaints by sending "responses" to both parties in dispute. These are explanations on the legislation or reminders of all parties' obligations under the Law. It avoids the holding of a hearing when the outcome is obvious.

Among the 10 cases for which a hearing was held, 3 were brought by the FUNCINPEC, all related to distributions of gifts and incentives including one against Mrs Bun Rany Hun Den, the Prime Minister's wife, 5 were brought by the SRP and were all related to campaign activities restrictions or violence. [*For further details on the hearings, see Annex Chapter IV (c)*]

One appeal was lodged by the CPP against a ruling of PEC Battambang deciding to fine a village chief 5 million Riels for having disrupted a FUNCINPEC campaign event. Finally, an appeal was lodged by an individual against a ruling of PEC Kampong Cham imposing him a five million Riels for having disturbed a FUNCINPEC rally and injured a truck driver. The NEC confirmed both PEC rulings.

Campaign-related cases submitted to NEC after campaign period:

Several cases arrived at the NEC after the end of the campaign period and in particular after preliminary results had been released. These are appeals from PEC rulings related to campaign complaints. NEC had to handle an additional 16 cases (as of 29 August), among which some politically sensitive:

An appeal by the SRP against a ruling of PEC Kampong Cham dated 21 August 2003, to impose a 10 million Riels fine to the SRP for having distributed 660,000 Riels to 66 families two days before Election Day. This is the highest fine ever imposed by a PEC.

Two appeals lodged by FUNCINPEC against 2 PEC Battambang's rulings not to sanction CPP officials, including HE. Sar Kheng, Deputy Prime Minister and Co-Minister of Interior, accused of having distributed money to voters.

An appeal against a ruling by PEC Kampong Chhnang imposing blame to Prince Norodom Rannariddh for having used contemptuous language during the campaign.

Several cases involve Province Governors who are tried for partiality.

NEC is expected to rule on these cases during the first week of September. Political parties will follow them as test cases for the NEC's resilience to political pressure.

Some progresses have been made since last year, when it seemed impossible any PEC or even the NEC would impose any sanction. However, there are still issues for which the complaints and appeals system does not seem to be able to offer proper legal remedy. The involvement of some village chiefs in acts of intimidation and psychological pressure, the widespread lack of neutrality of the administration, the issue of the distribution of incentives, and the issue of the misuse of state resources.

4. Focal issues (Village Chiefs, neutrality of administration, gift giving)

Several specific issues remain that impede the development of an open and transparent system, for which the complaints and appeals system has so far offered no real answers:

* **The involvement of civil servants and officials in the campaign:**

The involvement of civil servants and officials in the campaign has been widespread, including reports involving magistrates in Kampong Cham.

One must first have a look at the way the territorial and local administration is organised to try and understand this whole issue (see chart below):

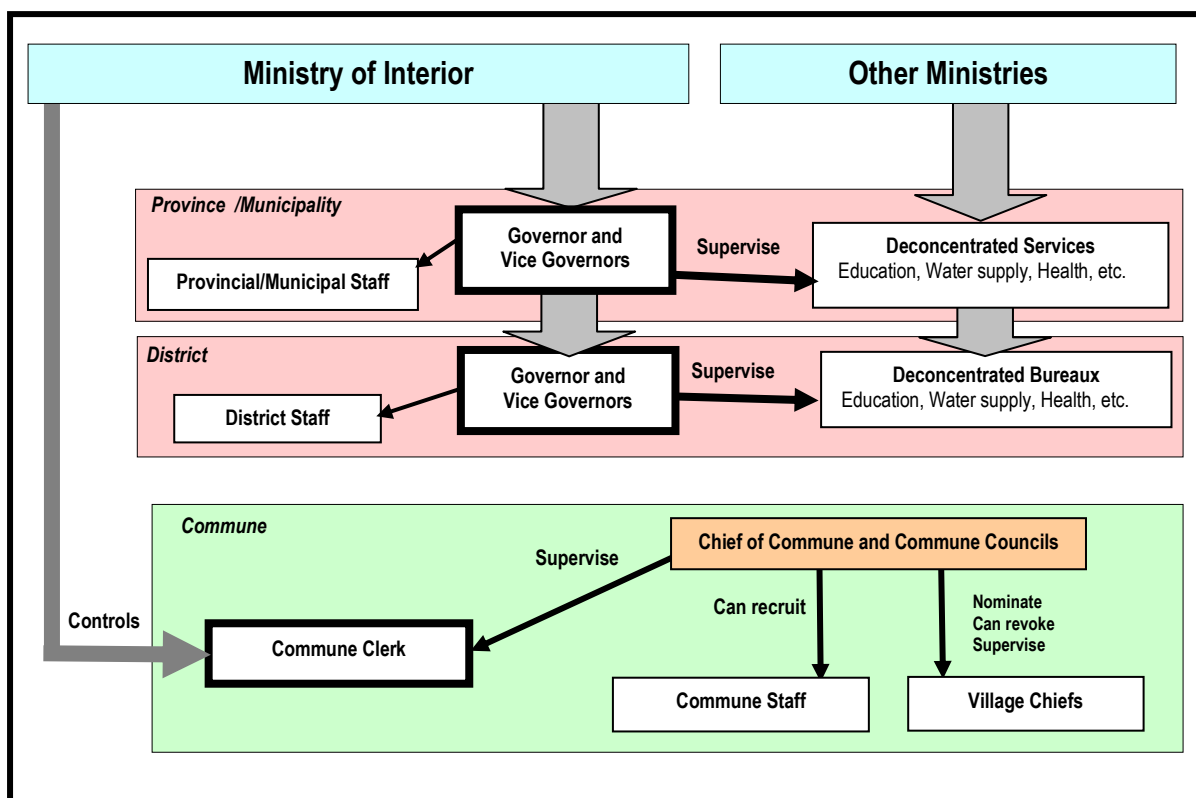
Provincial/Municipal and District administration:

Governors and Vice Governors of Provinces/Municipalities are under the supervision of the Minister of Interior. District Governors are under the supervision of the Governor of the Province/Municipality to which their district belongs. Governors and Vice-Governors are supported by a Provincial/Municipal or District staff under their supervision.

Decentralised service staff are nominated by the ministry that they represent, but are under the double supervision of Province/Municipality Governors, and of the ministry. Decentralised Bureaux operate in the same manner as Decentralised Services but at District level.

Commune Administration:

Commune Councils have been elected last year and elected Chiefs of Commune among them. Commune clerks are nominated by the Ministry of Interior and are under its direct supervision. They are State civil servants and are the eyes of the central government inside commune administrations. They are at the same time under the supervision of Commune Chiefs, who can request their revocation to the MOI. Commune Councils can recruit Commune staff. These have no particular status and can be recruited for a short period of time or for a particular task. This is left at the discretion of Commune Councils. Village Chiefs, even if they still have no proper status, are under the supervision of communes (see below).



Neutrality vs. involvement in the campaign

The issue of civil servants political activities is crucial to the understanding of the way the campaign operates. The state sector employs dozens of thousands of people in Cambodia. The sole administration of the Municipality of Phnom Penh counts more than 20,000 agents. Even if salaries are extremely low, the state sector recruits among the most educated parts of the population. This is particularly true in the Provinces where most literate people would actually work for the administration in a way or another. They would also constitute the most politicised part of the population.

As a result, the challenge for NEC regulations was to answer two contradictory objectives: Civil servants are not second class citizens, and as all other eligible voters should have the right to express their opinion and to get involved in the campaign in their capacity of citizens of Cambodia. In addition, political parties need their participation in the campaign in order to be able to fulfil their activities efficiently. However, this freedom creates a risk that civil servants would be used – in addition to state resources – by one particular party for which they would feel compelled to campaign. The solutions adopted by the NEC through its Regulations²³ or in cooperation with the Ministry of Interior²⁴ have tried to address this contradiction between neutrality and participation. The system adopted, although putting forward genuine and relevant principles did not reach the desired effect:

²³ Chapter 7 of the By-Laws (Election Campaign): art.7.6 to art.7.8

²⁴ Joint Directive on the Cooperation of Local Authorities in the Conduct of the Elections signed by NEC and Ministry of Interior on 27 May 2003.

The provisions Chapter 7 of the By-Laws (Election Campaign) specifically request civil servants to not "actively participate in the election campaign for any political party" when they are on duty. Therefore, civil servants, officials, Commune Council members, etc. should be on leave or resign to be able to get involved in the campaign.

A specific "*Directive on the Leaves of Commune Council Members*" (07/SNN/KKS) was issued by the Ministry of Interior on 25 June 2003 (one day before campaign started), in order to clarify the procedure on the leave. This directive facilitated the involvement of Commune Council Members in the campaign, contrary to the spirit of Chapter VII of the Regulations and Procedures and of the *Joint Directive*.

In addition, the Ministry of Interior issued 2 Directives on the issue of Neutrality of Civil Servant and on the issue of the leaves they take so as to be able to campaign²⁵. The first directive reminded officials their obligation of neutrality and established a mechanism of direct reporting to Province Governors whenever an official was accused of violating the Law. The second reminded Commune Councillors that even though they could go on leave to participate in the campaign, this should not adversely affect the normal functioning of the administration and Commune Councillors should write formal requests for leave to the Governor of the Province.

A quick study of parts of the Cambodian legislation on leaves for civil servants²⁶ clearly confirmed that, most authorizations for taking leaves – and for getting involved in the campaign – had to go through Governors. The system set up by the various above mentioned pieces of legislation on leaves, gives Governors an extended control over the involvement of civil servants and officials in the campaign and can allow them to only give permissions for leave to some particular parties' activists and to forbid others to get involved in the campaign.

Eventually, EU EOM LTO teams as well as other observer groups noted massive involvement of civil servants in the campaign. The incorporation of the well intended principle of neutrality of the administration in the legal framework²⁷ has not had the expected effect: not only did it not prevent civil servants and officials to get involved in the campaign to an outstanding degree, but it has indirectly - though surely - allowed Province Governors to keep a grip on who would go on leave and campaign, and to grant leaves selectively.

* **The role of Village Chiefs**

Village Chiefs' status (as well as that of Deputy Chiefs and assistant) is vague or non-existent. The Law on the Administration of Communes required that the Ministry of Interior would issue a *Prakas* (ministerial act) after Communal Elections to clarify the selection process for Village Chiefs. It has not been adopted yet. The current practice is that they are under the supervision of Commune Councils, which have the competence to propose District Governors to dismiss them. Even though no legal text regulates their status, they are paid by the state.

During the communist period, they had a particular responsibility in security issues and were supervising village militias. Their role nowadays is to act as a channel of communication between Commune Chiefs and the population. The population turn to

²⁵ No. 620 SCN and No. 621 SCN, both dated 11 July 2003.

²⁶ In particular of the Anukret (Decree) on the Duration of the Workweek of Civil Servants dated 30 January 1996 and of the Sechdey Nenorm (Directive) n.007 S.N.N. of the Ministry of Interior on Leave of Civil Servants of the Ministry of Interior dated 7 July 2003.

²⁷ Inter alia, the Joint Directive op.cit.

them if they have particular requests to the administration. They are also the arms of the Commune Chiefs in villages.

The issue of Village Chiefs interfering with political activities at grass root community level has become one of the main focuses of both the international community and local NGOs, concerned as they were by the numerous allegations of Village Chiefs getting involved in acts of intimidation or putting pressure on voters of their community, hence being increasingly perceived as parts of both the remnants of the old state control apparatus and of the current power's campaigning structure. Eventually, they appear as a major obstacle to grass-root democracy.

The question of Village Chiefs' role is also an interesting example on how the NEC would interact with the civil society and respond to their concerns:

Village Chiefs as Party Agents:

The concerns increased when the question of the possible presence of Village Chiefs inside Polling Stations on Election Day as Party Agents began to emerge among the international community and several NGOs around mid July. From the legal point of view, this issue is a difficult issue:

The right to be a party representative in a Polling Station is considered as a fundamental right. Every eligible voter, even candidates and officials, can be party representatives.²⁸ The selection is considered as political parties' internal affairs and any limitation could be considered as interference. Applications are processed by Commune Election Commissions. As for all other eligible voters, nothing in the Law prevents Village Chiefs from being Party Agents in a Polling Station. However, the already mentioned Joint Directive²⁹ was partly adopted in order to address the specific issue of Commune and Village Chiefs' influence on voters and formally requested them to be neutral, in particular in part 4 of the Joint Directive³⁰. Even though the Joint Directive does not specifically mention the issue of the nomination as Party Agent, the NEC's interpretation was originally that the provisions forbidding Commune and Village Chiefs to "show support" and demanding them to hold a "neutral and impartial stance", did prohibit them from being chosen as party representatives.

According to NEC's first position, Commune and Village Chiefs could only be Party Representatives if they temporarily resigned or took a leave. As the Ministry of Interior issued an act³¹ prohibiting Village Chiefs from taking leaves for the elections, those two combined made it *de facto* illegal for Village Chiefs to be party representatives inside Polling Stations.

Eventually upon request from several NGOs³², on 22 July 2003 the NEC adopted a *Directive Prohibiting Villages' Chiefs And Subordinates from Acting As Political Parties' agents*³³. This new NEC Directive confirmed with a text what was already achieved, but it raised a new legal question. Did the NEC legally have the power to issue such a directive?

²⁸ Chapter 12 (Regulations and Procedures) Point 12.1.3.2: "A political party representative shall: be an eligible voter, be capable to perform his/her work, be a trained political Party Agent by his/her political party".

²⁹ *Directive on the Cooperation of Local Authorities in the Conduct of the Elections* signed by NEC and Ministry of Interior on 27 May 2003

³⁰ "Village Chiefs, Deputy Village Chiefs and Village Board Members must hold on to the neutral and impartial stance in fulfilling their duties without showing any support or opposition against any party or candidate at all."

³¹ *Co-Ministers of Interior Addresses to His Excellency the Chairman of the NEC*, No. 646 SPN, 22 July 2003

³² Joint Statement ANFREL, COMFREL, NICFEC, Transnational Radical Party, 16th July 2003

³³ No. 07-1558/03 NEC

Some might argue that the NEC could not legally adopt that directive since it created a limitation of a fundamental right not limited in the Constitution or in the Law.

Finally, from the pure point of view of the integrity of the process, the question of whether or not Village Chiefs should be kept outside Polling Stations is not so clear either. Apart from a few exceptions, the NEC Directive effectively prevented Village Chiefs from being nominated as Party Agents and therefore from staying inside Polling Stations, but it did not prevent many Village Chiefs from wandering around Polling Stations, keeping record of voters coming in and out or from directing and advising them. Indeed it actually made it more difficult for observers (local observers and other Party Agents in Polling Stations) to keep an eye on them.

Village Chiefs' impunity

Even though numerous allegations have been made that Village Chiefs were a major obstacle to political freedom at grass root level³⁴; very few complaints were lodged and handled to address the issue. Lack of evidence, lack of witnesses and reluctance of the Commune Election Commissions made it almost impossible for cases to emerge.

On Friday 25 July, the NEC issued a press release on three Village Chiefs having been suspended by the Ministry of Interior in Kampong Cham, Kratie and Prey Veng Provinces. Interestingly, these cases did not come through the normal complaints and appeals procedure but were initiated on 23 July, when the UN Human Rights Office (UNCOHCHR) brought the three cases to the attention of the NEC.

The NEC sent a letter to the Ministry of Interior asking them to take steps to suspend the three Village Chiefs concerned and to initiate investigations.

The normal procedure for this type of case would have been the "quick action" procedure, detailed in a specific NEC Directive³⁵, which made provision for the NEC (and PECs) to initiate procedures on their own motion, without requiring a formal complaint. In each case, PECs would be required to establish emergency hearings, but not to make decisions. They would just report their conclusions to the NEC, which could, if considered appropriate, take sanctions.

This episode also shows that there was a common understanding among the international community, the NEC and the civil society that the example could only come from the top, i.e. the NEC. In this respect, it is interesting to note that only few hours after the NEC and the MoI took this initiative to suspend three Village Chiefs, the PEC in Battambang decided to take sanctions against a Village Chief who disturbed a FUNCINPEC rally.

It is unfortunate that these cases were brought to the attention of the NEC so late in the process (four days before Election Day), at a time when PECs were too busy with pre polling day logistics and operations to organise any hearings. There is no doubt the symbolic impact of the NEC taking sanctions against Village Chiefs would have been much higher and could have acted as a deterrence, had it been done during the campaign.

³⁴ See, among others, Report of the Special Representative of the Secretary General for Human Rights in Cambodia, 8 July 2003

³⁵ *Directive on serious violations of the electoral law for which no complaint was lodged*, No. 07.1416/03 NEC, dated 09 July 2003

However, this episode also revealed the possible shortcomings of the "quick action" procedure. It appeared later that before those cases had been brought to the attention of the NEC, formal "standard" complaints had previously been lodged against two of the three Village Chiefs in question (in Kampong Cham and in Kratie). Reconciliation had been conducted at CEC levels and parties in dispute had reached an agreement. The procedure was hence considered as terminated and there was no way the PECs in Kampong Cham and Kratie could implement the "quick action" proceedings and organise hearings, since the case was legally closed. This illustrates again that the multiplication of different complaints proceedings can be counterproductive.

Even if Village Chiefs' interference is still common practice, the simple facts that some PECs have decided to take sanctions, or that some initiatives were made by both the NEC and the Ministry of Interior to take sanctions against Village Chiefs misbehaving are, although still symbolic, indications that impunity is no longer total. Beyond the sole issue of Village Chiefs, what matters is that -too few- election commissions have shown they had the capacity to use the provisions of the law (art.124) and impose sanctions. The symbolic dimension of these decisions is very high.

Eventually, as the Law on Commune Administration provides that the Ministry of Interior must issue an act on the selection of Village Chiefs, one should take this opportunity to try and regulate the role and responsibilities of Village Chiefs, *inter alia* during the election processes³⁶.

* **The distribution of incentives:**

Widespread distributions of various types of gifts and incentives by the main parties have again taken place during the electoral campaign with numerous complaints being lodged alleging "vote buying".

The complaints and appeals system has not been able to tackle this issue, in particular due to the formulation of the prohibition: The Law establishes sanctions against whoever "offers material or monetary incentives to buy votes" (art.124), but "vote buying" is very difficult to establish, and is not defined in legal terms. Ideally, one should be able to prove that the beneficiary of the gift actually felt compelled to change his/her vote in favour of a certain party. As a result, the whole prohibition was not really enforced.

Only the NEC's so called "directive on the night of barking dogs"³⁷ established a complete prohibition of any kind of distribution of "cash or valuable objects" without referring to the objective of vote buying, but this prohibition only applied to the silence period. In the end, the decision of PEC Kampong Cham to condemn the SRP to a fine for having allegedly distributed 660,000 Riels to 66 families was the only ruling condemning a party for distribution of incentive or "vote buying". This decision was then appealed to the NEC, which overturned PEC Kampong Cham ruling. In the end, nobody has ever been sentenced for such an offence.

³⁶ Law on Commune Administration, Art.30: "In the objective to promote the effectiveness of commune/Sangkat management, each Commune/Sangkat Council shall select a village chief for each village subjected to the commune/Sangkat. (...) The Minister of Interior shall issue an instruction concerning the formalities and procedures for selecting the village chief, taking office, changing of village chief and appointment of village chief assistant".

³⁷ Directive on Cooling off Period", N 07.1508/03 NEC, dated 19 July 2003

VII POLLING, COUNTING AND TABULATION OF RESULTS

During polling on 27 July and counting the following day, 44 teams of Short-Term Observers deployed to all 24 constituencies reported to the EUEOM headquarters in Phnom Penh. In addition, the 18 teams of Long-Term Observers and the Core Team also observed polling and counting. In total, 706 voting observation forms and 59 observations of closing were submitted. On 28 July, teams observed the vote count in 67 counting centres and reported to mission headquarters.

A. POLLING DAY

Polling took place on 27 July from 07:00 to 15:00 hours. All 12,826 Polling Stations operated normally, although strong rainfall in the days before the elections had flooded parts of Cambodia and resulted in concerns that the elections may have to be postponed in some areas. Ultimately, election officials managed to transport election material to all Polling Stations in time, and on 27 July all Polling Stations were operational.

Voters and election officials understood the voting procedures. The regulations for the voting process included checks of voters' ID documents and the use of indelible ink in order to prevent double voting. Voters were given ballots with the names and logos of all parties running in their constituency and had to mark the box with the party of their choice.

An incident was reported to have occurred in Kandal province on polling day (while going to the polling station, several dozens of allegedly of Vietnamese origin registered voters, and allegedly non-registered voters, were prevented to vote, by a crowd of young people. The registered voters could not cast their ballot (some because they were then afraid to go to the polling station); no action was taken against the young. The EUEOM did not observe first hand the incident as when the observers reached the spot, the incident was over.

The overall analysis of polling was of a well-administered process. Observers rated the voting process as good or satisfactory in 96 % of Polling Stations visited. Only in 19 Polling Stations (2.8%) was the process rated as poor, and in three (0.4%) as very bad. Overall, the environment was peaceful. Observers noted tension or pressure on voters in 3.0% of all Polling Stations visited, and the presence of campaign material (usually banners and posters that had not been removed at the end of the campaign) in the vicinity of 3.5% of Polling Stations visited. The secrecy of the vote was ensured in 98.4% of all cases.³⁸ In the 11 Polling Stations where observers noted problems with the secrecy, it was usually due to bad Polling Station layout and did not necessarily mean that the secrecy was *de facto* compromised.

Observers noted that in 37.6% of all Polling Stations visited, not all voters were separately checked for ink upon entering the Polling Station. However, the indelible ink used was clearly visible, and no observers noted instances where voters whose finger had already been marked tried to vote a second time. On the other hand, all voters were marked with ink after they had voted in all but three (0.4%) Polling Stations visited. Observers reported that in 5.1% of Polling Stations, the ballot box had not been sealed properly. This appears to have been due to a design flaw, which allows the ballot box to be sealed even if the bolt securing the top cover has not been inserted properly. Observers said that the PSCs were not aware of the fact that the ballot box had not been closed properly before sealing.

³⁸ The statement in the EUEOM Preliminary Statement that the secrecy was ensured in 94% of Polling Stations visited is incorrect and due to error during the summarization of observation forms.

Party Agents were present in all Polling Stations visited during Election Day. The three parliamentary parties had agents in virtually every Polling Station, while agents of other parties were present in a smaller number of Polling Stations. Observers noted that in quite a few cases, Party Agents did not seem to be familiar with the electoral procedures. Domestic observers were present in 91.5% of Polling Stations visited. COMFREL observers were positively identified in 79.7% of Polling Stations, and NICFEC observers in 34.1%. Other domestic observers were seen during only 8.9% of all visits.

Observers clearly identified Village and Commune Chiefs inside Polling Stations or in their inner perimeter in 11.8% of all Polling Stations visited. Since there was often no way of identifying such persons and due to the short period of each individual observation, it is highly likely that Village and Commune Chiefs were actually present in a much higher percentage of Polling Stations. Such persons clearly are not entitled to being inside Polling Stations unless they cast their vote, and steps should be taken to address this problem and its potentially intimidating results.

Following the closing of the polls, PSCs had to perform an initial verification, which included a reconciliation of the number of received, spoiled and unused ballots and the number of names on the voter lists who had been marked as having voted. After the verification, PSCs packed and sealed the ballot box and other election material before transporting it to their CEC. The instructions for packing of material were elaborate and complex as the NEC made every attempt to ensure that the material could not be tampered with before the count. The complexity of the procedures, however, resulted in a time-consuming process, which at least some of the PSCs observed had problems following and understanding. EUEOM observers reported that verification and packing were generally done according to NEC regulations. With regards to the handover of election material to the CECs, observers noted that in some communes, the process was not well organized due to the number of PSCs delivering their election material at the same time.

After delivery to the CEC, ballot boxes and other material were locked in guarded rooms for the night. Party Agents and observers were allowed to stay overnight. All observers indicated that the premises and security arrangements were adequate for safekeeping of the ballots and other sensitive material.

B. COUNTING DAY

On 28 July, observers followed the ballot verification and count in counting centres in all 24 constituencies and sent 67 questionnaires back to headquarters. Before the count, each PSC opened the ballot box from its Polling Stations and counted the number of ballots cast without unfolding them to check whether the figure matched the number of people who had been marked as having voted. Observers noted that the verification procedures were followed strictly. In no case were ballots unfolded, and everywhere the seals used to pack the ballot box and other material were intact and their serial number matched the one in the voting records.

The vote count itself was carried out according to the rules and assessed as good or satisfactory in 98 % of all cases. Only one count was rated as poor, and none as very bad. In counting centres observed, there were few cases of disagreement over a ballot's validity. Only in two cases were complaints entered into the minutes, and everywhere Party Agents were willing to sign the counting record (Form 1104). Party Agents and domestic observers were presented in every count observed.

Opposition parties complained that in a number of cases their agents were not given the consolidated commune result summary (Form 1105). However, it turned out that in most cases Party Agents left shortly after the count they observed had finished and did not wait

for all counting teams in a commune to finish and for the CEC to prepare Form 1105. Only in one commune in Phnom Penh (Chaom Chau) did the NEC establish that the CEC refused to hand a copy of Form 1105 to SRP agents. In order to avoid allegations of tampering with the results, it would have been preferable if the NEC had included a provision that Party Agents receive not only Form 1105 but also a copy of Form 1104. While Party Agents received Form 1104 in many cases, there was not requirement for counting teams to issue copies of this form.

C. TABULATION OF RESULTS

Election results were tabulated at the various levels. At the lowest level, CECs consolidated the results for their commune from the result sheets of each counting team. Based on protocols submitted by the CECs in each constituency, the PECs then aggregated the results in each Province or Municipality. PECs sent their constituency results and all election material (including used and unused ballots) to the NEC. The NEC then examined the election results and decided on their validity and settled outstanding complaints before announcing the preliminary results.

Once the vote count had finished, result tabulation at the various levels was done swiftly and within the legal deadlines, enabling the NEC to announce the preliminary results on 8 August.

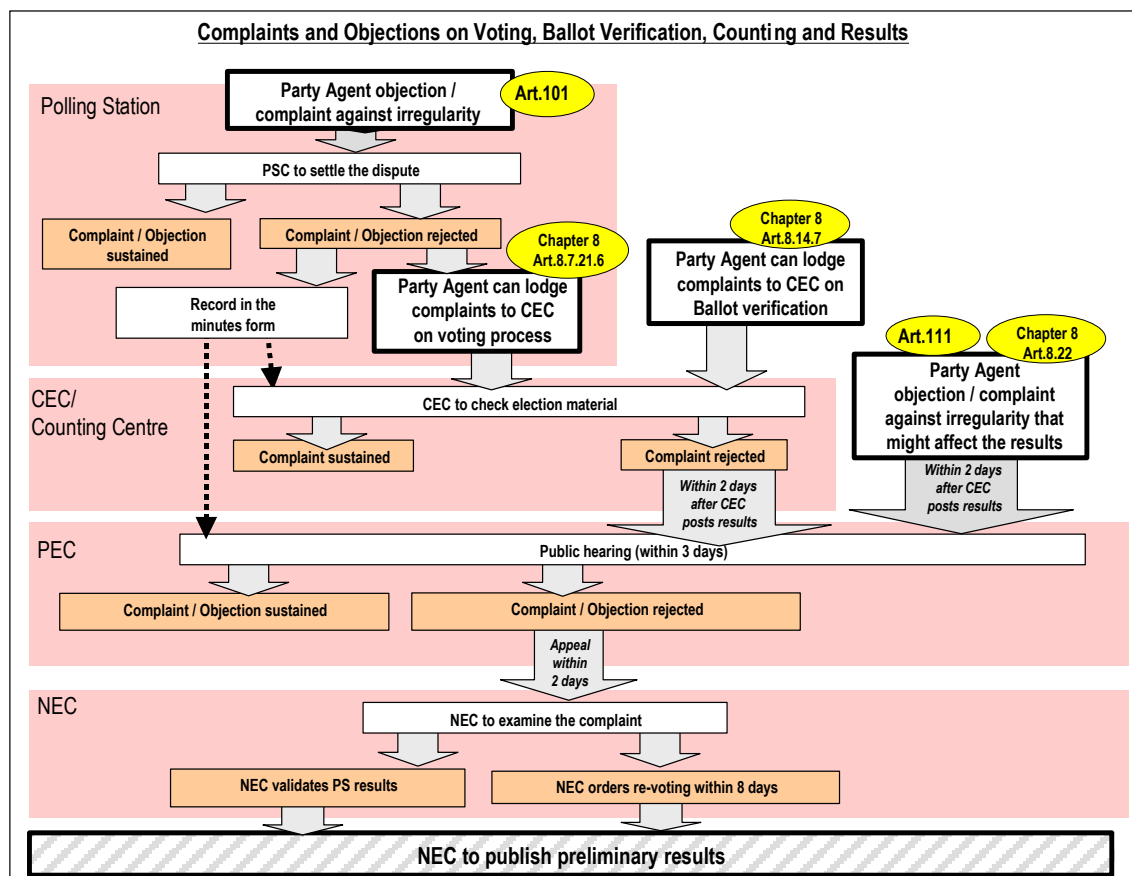
D. COMPLAINTS AND APPEALS FOR VOTING AND COUNTING

The complaints and appeals system for voting and counting operations comprises three possibilities to lodge complaints for Party Agents, each of them having its own path through the Election Administration level (see flowchart below):

Complaints against irregularities during polling: Party Agents can raise complaints during polling, inside the polling station. If not satisfied with the PSC response, the objection is recorded in the polling record (Art.101), which Party Agents must sign if they want their complaints to be taken into account (Chapter 8 – art.8.7.21.4). They can forward their complaints to the CEC (8.7.21.1 – 8.7.21.2) and appeal to the PEC of the CEC decision (art.111).

Complaints concerning ballot verification (on the morning of the 28th July): If a Party Agent attending the ballot verification thought any irregularity is being committed, he could raise the issue to the Chairperson. If he/she was not satisfied with the solution, he/she could lodge an objection to the CEC. Party Agents can appeal the decision of the CEC to the PEC (art.111).

Complaints against irregularities related to counting and results: These complaints had to be directly lodged at the PEC level (art.111) by Party Agents within 2 days after results were posted outside CECs.



* **Complaints lodged at CEC and PEC level:**

Most complaints nationwide come from SRP. They held a press conference on Friday 1st August indicating that among the various complaints they lodged at provincial level, they would follow more closely three particular cases where they hope they could get an extra seat: a complaint requesting a re-voting in the whole Poipet commune (Bantea Meanchey Province), and 2 complaints requesting verification of results forms in Svay Rieng and Kampong Thom Provinces where SRP is just 146 and 375 votes away to get an extra seat in both Provinces respectively.

Plaintiffs	Total	Rejected for formality	Conciliation	Response	Referred to court	Hearing		Pending
						Sustained	Dismissed	
FUNCINPEC	98	85	10				1	2
SRP	250	168	43			8	25	6
CPP	13	7	6					
Citizen	1		1					
Total	362	260	60			8	26	8

[See Annex Chapter VII (a) for detailed table of complaints by party]

The vast majority of these complaints are related to lack of posting of Commune consolidated results (form 1103) after the end of counting, failure to provide Party Agents with copies of the commune consolidated results (form 1105) after counting was completed, or about discrepancies between forms at various stages of the counting processes.

Many were rejected on lack of ground, evidence, legal basis, and etc. The particularly high number of cases rejected on grounds of formality is partly due to the tight delays to lodge complaints, to ignorance of the proceedings on the side of the plaintiffs and also on overly legalistic and stringent interpretation of conditions of formality by Election Commissions. The particularly high number of FUNCINPEC cases rejected for formalities (85.7%) is remarkable.

Apart from these complaints related to paperwork procedures, a few SRP and FUNCINPEC complaints (especially in Phnom Penh) claim that the counting process was intentionally slow to wear out the endurance of their Party Agents who frequently went home before the final consolidation was finished. Actually, some Party Agents did not even ask for a copy of the form until their superiors had ordered them to do so. Some complaints argued, on the contrary, that the counting was done too fast and that Party Agents could not follow it.

The use political parties have done of the complaints and appeals system is ambiguous. On the one hand, there is a genuine will among political parties that procedures have to be followed by the letter in order to act as safeguards of the integrity of the process. On the other hand, complaints lodged by Party Agents (either at their initiative or upon instruction from their head quarters) often express excessive claims and unsubstantiated allegations, in order to impede the credibility of the process rather than to ensure law enforcement. However, one must acknowledge that parties have not tried to paralyse the election commissions with dozens of complaints, as one could have feared.

* **Complaints and appeals, NEC level:**

What makes this period very critical for the NEC legal department is that it must process the new complaints or appeals related to voting and counting in short deadlines (before preliminary results are issued by NEC), while several complaints or appeals from the campaign period still remain pending.

Between 31 July and 7 August, the NEC has received 34 appeals of PEC decisions:

Plaintiff and Type	Number	Appeals after preliminary results	Rejected		Conciliation/ withdrawal	Verification	Response	Hearing		Pending
			Delays	No Ground / Evidence				Sustained	Dismissed	
CPP										
Appeal against PEC sanction	1									1
SRP										
Disorder during polling	2		1	1						
Results forms 1103 and 1105 not posted or distributed	11	2	2	2	1	2	6			
Village Chiefs presence around PS	2		1	1						
Village chiefs and police presence in PS	1						1			
Irregular Ballot paper	1			1						
Voter turnout / relocations of PS	1								1	
Counting too fast	1								1	
Forms 1105 signed by Commune Council	1							1 (sanction against CEC)		
Not providing 1202	1			1						
CEC not handling SRP complaints	3		2	1						
CEC delaying counting	1		1							
CEC expelling SRP agents from guarding ballot boxes	1			1						

Party agents kept far from counting, could not see	2		1	1						
PS stamp on complaints forms	1			1						
Swindle to vote		1	1							
FUNCINPEC										
Partiality of CEC or PEC	2			1			1			
Village Chiefs presence around PS	1		1							
Citizens										
Obstruction from voting	1									1
TOTAL	34	3	10	11	1	2	8	1	2	2

Several trends appear from the table above: First of all one can notice that most cases (32 out of 37) were brought by SRP, 19 of which have been rejected for reasons of formality, including 9 for having been lodged after the deadline. FUNCINPEC only lodged 3 appeals before the NEC. The party's current divisions and lack of clear direction may explain this low figure.

The high number of cases rejected for reasons of formality is due to the surprisingly poor quality of the complaints and appeals prepared by political parties. This particular weakness of the cases brought by political parties is increased by a clear tendency of election commissions at lower levels to adopt a legalistic approach of the conditions of admissibility of complaints and appeals. The usual distinction between "substantial formalities" (delays to lodge the complaint, capacity of the plaintiff, etc.), which must be observed, and "unsubstantial formalities" (use of a complaint form 1202, number of copies to make of the complaint form, spelling mistakes, etc.) that exists in most legal systems, seem to be ignored by Election Commissions, hence enabling them to reject many complaints as not admissible with regard to the respect of formality.

The most important cases have been handled by holding hearings: [See Annex Chapter VII (b) for detailed report on hearings]

In **Poipet** (Bantea Meanchey Province), SRP requested a re-vote of the entire Commune, claiming that the low turnout had been the consequence of successful attempts to create confusion among voters as to where they should go and vote, by changing the location of many polling stations. They claimed that with a higher turnout in a city favourable to them (they hold the seat of Commune Chief); they could have won an extra seat in the Province. As it appeared during the hearing, which was held at the NEC on 4 August, that the SRP did not present evidence of their allegations and that they actually agreed locally to the changes of Polling stations location, the NEC dismissed the complaint.

On 5 August 2003, the NEC examined an appeal against PEC **Siem Reap** lodged by SRP and alleging that the counting in several counting centres had been done too quickly, that Party Agents could not follow and that there were discrepancies between results forms. The NEC rejected the appeal on the ground that discrepancies between results forms 1102 (ballot verification form), 1103 (results forms to be posted outside CECs) and 1104 (results of a counting table) were minor and not significant. NEC also noted that these forms, once corrected, had all received the agreement and signatures of the appropriate political parties' representatives including the Sam Rainsy Party.

On 7th August, NEC held a hearing session on a case involving the CEC of **Chom Chao** commune (Phnom Penh), where results forms had not been handed to Party Agents and where, contrary to the provisions of Chapter 8 of the Regulations and Procedures (Voting and Counting), the results forms were signed by the members of the Commune Council at the request of the CEC chairman. The NEC confirmed the sanction imposed by the PEC Phnom Penh on the defendant: five years ban from being an election official.

The NEC also conducted verifications of report forms: upon a request from SRP, the NEC undertook verifications of report forms in several communes of **Svay Rieng** and **Kampong Thom** Provinces. In both Provinces, the differences between forms 1104 (results of a particular counting table within a counting centre) and 1105 (consolidated results of a commune, i.e. addition of all 1104) were minor and the total number of ballots on the different forms remained the same

Having observed and followed the cases settlement, the EUEOM considers that for both complaints related to the campaign and complaints related to voting and counting, the NEC handled cases according to the Law and the Regulations.

VIII POST-ELECTION PERIOD

A. PRELIMINARY ELECTION RESULTS

The NEC announced the preliminary results on 8 August 2003. According to these results, 5,168,837 out of 6,341,834 voters turned out on 27 July. This represents a turnout of 81.5%. Opposition parties and some NGOs noted that this is the lowest turnout in any election in Cambodia since 1993. While this is correct, it should also be noted that the actual number of people who cast their ballot in the 2003 election is a new record high.

According to the preliminary result, the CPP received 2,447,259 votes or 47.35%. The SRP gained 1,130,423 votes or 21.87%, and FUNCINPEC received 1,072,313 votes or 20.75%. All other parties received less than two percent of the vote. The NEC will determine the seat allocation in the new National Assembly only after the final results have been issued. The final results confirmed the preliminary ones, the CPP has 73 seats (nine more than in the previous National Assembly), SRP 24 mandates (+9), and FUNCINPEC 26 (-17).

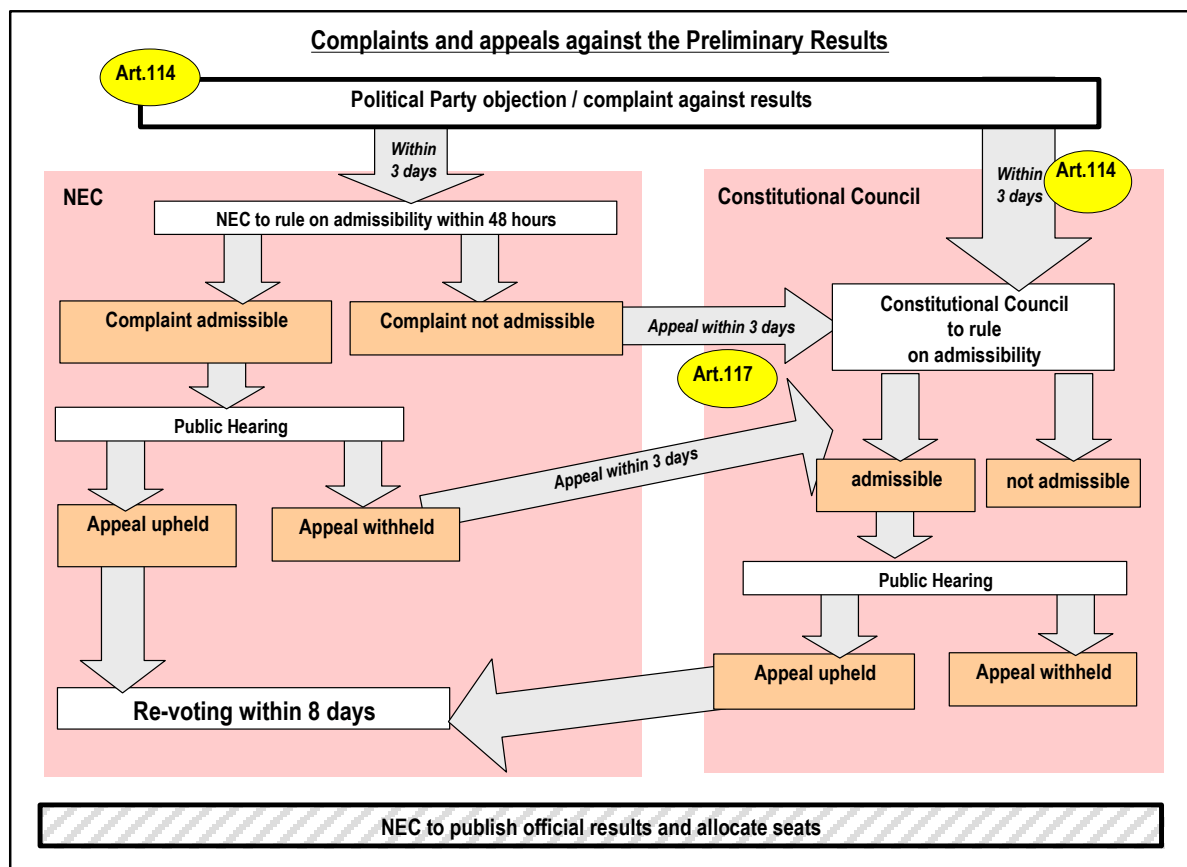
The CPP emerged as the biggest party in all constituencies except for Phnom Penh, which was won by the SRP. In addition, the CPP maintained or increased its mandates in all constituencies apart from Kampot and Prey Veng, where it lost one seat.

[See Annex Chapter VIII (a) for detailed results]

B. COMPLAINTS AFTER PRELIMINARY RESULTS

The announcement of the Preliminary results by the NEC on Friday 8 August opened a 72 hours period for political parties to lodge appeals against the results either to the NEC or to the Constitutional Council (art.114), a somehow unusual system that could create confusion if both the NEC and the Constitutional Council receive simultaneously cases raising similar legal questions and give them different responses.

Eventually, the consistence of case law is still guaranteed by the fact that the Constitutional Council is the judge of last resort of the election process.



The Constitutional Council consists of nine members with a 9 years term renewed by 1/3 every 3 years. Three members are appointed by the King, three by the Supreme Council of Magistracy and three must be elected by the National Assembly by an absolute majority of votes of all members³⁹. The members elect the President of the Constitutional Council with an absolute majority.

Contrary to the 1998 elections scenario, this time political parties only lodged complaints against the preliminary results before the Constitutional Council. The Law provides that the Constitutional Council must rule on these complaints between 10 and 20 days after receiving complaints.

In total, political parties have lodged 3 complaints against the preliminary results before the Constitutional Council.

Hearings held on election related disputes are public.

Complaints lodged with the Constitutional Council

[See Annex Chapter VIII (b) for unofficial translation of the 3 complaints]

On Friday 8th August, **FUNCINPEC** party lodged a complaint to the Constitutional Council against the NEC for "lack of neutrality, negligence, incompetence and irresponsibility". Prince Norodom Sirivudh signed the complaint.

³⁹ Law on the Organisation and Functioning of the Constitutional Council, 19 march 1998, art.3

It contained several allegations of violations or shortcomings on the part of the NEC, namely:

- 1- Recruitment of PEC and CEC members among CPP activists.
- 2- CEC officials refusing to handle complaints lodged by FUNCINPEC against CPP.
- 3- Obstruction to FUNCINPEC complaints, in particular by delaying the distribution of complaint forms 1202 and/or requalifying the object of the complaints.
- 4- Difference between the sanctions imposed on CPP activists and on FUNCINPEC activists.
- 5- Disorder in voters lists and posting not on time
- 6- Confusion among FUNCINPEC voters as to where they should go and vote due to PS relocations.
- 7- Illegal presence of village officials, candidates, local authorities near Polling Stations to frighten the voters and incite them to vote for CPP.
- 8- Some voters were being given a "form 17" by Village Chiefs enabling them to vote without any verification
- 9- CECs allowed some Village Chiefs to be party representatives in PS.
- 10- Illegal Vietnamese immigrants were allowed to vote
- 11- FUN member names were crossed out before they have voted.
- 12- Some PS officers allowed CPP observers to stay near the PS, but refused to FUN agents to stay close.

The list did not refer to any specific case corresponding to the above-mentioned points.

On Sunday 10th August, **SRP** lodged a complaint before the Constitutional Council against the results in the whole country and more specifically on the results in 4 Provinces/Municipalities: Phnom Penh, Bantea Meanchey, Kampong Thom and Svay Rieng.

- In Phnom Penh, SRP alleged that many voters did not find their names on the lists due to late relocations that were not indicated on their registration receipts. They also alleged that the NEC refused to sell SRP a copy of the preliminary voters list, as the Law provides for in art.63§2.
- As regards Bantea Meanchey, the SRP refers to the case of Poipet (relocations of Polling Stations and voters not finding their names on the lists) as not having been properly handled by the NEC.
- In Kampong Thom, their request is also similar to the complaints they had lodged previously before the NEC, this time asking for the recount of 39 communes instead of 26. They claim the NEC did not perform the verification according to the procedure.
- In Svay Rieng, they request the recount of 15 communes on the ground that there were discrepancies between figures at various stages of the results aggregation. They alleged that the NEC did not perform a first verification of the figures (done on 5th August) in accordance with the Regulations.

On Monday 11th August, half an hour before the deadline, **FUNCINPEC** lodged another complaint against the NEC for not having conducted the electoral process according to the Law and Regulations. The complaint raised 5 particular points as evidences of violations: (1) the fact that "vote buying" activities took place during the campaign, (2) the presence of Village Chiefs and officials in front of Polling Stations, (3) disorder in voters' lists in a great number of PS in the country, (4) relocation of PS, and (5) CEC and PECs failed to handle $\frac{3}{4}$ of complaints lodged by FUNCINPEC. This FUNCINPEC 2nd complaint was lodged by Nhek Bun Chhai, Deputy Secretary General. Attached to the complaint is a table recapitulating their allegations (91 cases of "vote buying", 155 cases of threats, 47

cases of irregularities in the voters' lists, 189 cases of partiality, 26 cases of Vietnamese citizens voting, and 41 "others"). However, the complaint contains no reference to any specific case.

Conditions of formality:

The Law on the Organisation and Functioning of the Constitutional Council (LOFCC) establishes criteria of formality⁴⁰. In particular, it allows not only political parties, but also "any individual" to contest against an election result or against "a decision of the NEC". On these two points, the LEMNA is in contradiction with the LOFCC, since according to its art.114, only political parties are offered the possibility to lodge complaints, and complaints can be lodged against "all or part of the results", but not against "a decision of the NEC" as provided in art.28 of the LOFCC. According to the provisions of art.114 of the LEMNA, irregularities committed by election commissions can only be challenged before the Constitutional Council, in so far as they are part of a complaint challenging results⁴¹.

In addition to the legal uncertainty created by these legal contradictions, the Constitutional Council adopted, during the 1998 post election crisis, and face to the high number of complaints, an instruction detailing the formal conditions that complaints had to meet in order to be formally received⁴². The conditions of formality were made more stringent.

As the Constitutional Council is the ultimate judge on the constitutionality and legality of legal texts, the conflicting provisions of these three pieces of regulation actually gives the constitutional judges some flexibility to rule on whether or not they accept to receive a complaint on grounds of formality. The Constitutional Council used this flexibility to accept to receive all 3 complaints, even though the conformity of both FUNCINPEC complaints with the conditions set forth in the LEMNA, the LOFCC and in the Instruction.

Preparatory work:

The LOFCC provides that when investigating on disputes related to the election of the members of the National Assembly, the Constitutional Council shall be divided in 3 teams of 3. As the Constitutional Council only received 3 complaints against the preliminary results, each team investigated one case. The investigations consisted of requests for further information, documentation and evidences from the plaintiff and from the defendant. In addition, the investigating teams conducted closed-door examinations of plaintiffs and defendants arguments and recorded the answers of both parties in dispute. These examination records have been used during the three hearings.

Handling of cases:

[See Annex Chapter VIII (c) for unofficial translation of the 3 CC decisions and (d) for report on the Hearing sessions]

⁴⁰ *Law on the Organisation and Functioning of the Constitutional Council*, 19 march 1998, art.28

⁴¹ LEMNA, Art.114: "After the announcement of the provisional result of the election, not more than seventy-two (72) hours, a political party that has been registered for participation in the election may file a complaint against all or part of the results of the election directly either to the National Election Committee or the Constitutional Council by indicating irregularities caused by Commissions or members of Commissions, the date and place of irregularities, the names and addresses of witnesses, and other documents or evidence."

⁴² *Instruction on the modalities of complaints filing to the Constitutional Council*, Constitutional Council, General Secretariat, 7 August 1998

* **Hearing of the first FUNCINPEC complaint before the Constitutional Council**

On 25th August, the Constitutional Council held the first hearing on the post-preliminary results complaints.

Conditions of formality: In this case, the CC has formally accepted to receive the complaint (even though it had legally the possibility to reject it) on the ground that the complaint had been lodged on time and that the plaintiff had the capacity to lodge a post-preliminary result complaint before the Constitutional Council. This is clearly an interpretation *a minima* of the conditions of formality. If the CC had rejected this complaint on grounds of formality, no hearing would have been held, and the plaintiffs would have been given no chance to voice their concerns. In the current political context, it could have given way to stronger criticism and distrust in the process.

Hearing: The hearing session started at 08.00, and unfolded in a rather confused way, with the 6 lawyers representing FUNCINPEC failing to bring in witnesses then leaving the hearing after 30 minutes, so that the hearing had to continued without any representation of the plaintiff's side, the CC Chairman using the examination records of the plaintiffs done on 15 August as a source of information. It appeared from the interrogation report that the substance of the complaint was not against the electoral results but only against the NEC's performances. (See Annexes for further details)

Decision: The CC has considered that the complaint lodged on 8 August by Prince Norodom Sirivudh on behalf of FUNCINPEC was not a complaint against the results in the sense of art.114 of the Election Law, but against the NEC as an institution. The decision recalled that the Constitutional Council had no jurisdiction to sanction the NEC, and therefore had to dismiss the complaint.

Indeed, under the Election Law (art.15), detailed in Chapter 11 of the By Laws (point 11.2.8), the NEC is under the supervision of the National Assembly and complaints against members of the NEC should be filed to the National Assembly. The decision of the Constitutional Council to dismiss the complaint was hence in full accordance with the Law and regulations. In fact the Constitutional Council even showed some openness in accepting to receive a complaint that could have easily been rejected without a hearing for defect in form.

* **Hearing of the second FUNCINPEC complaint before the Constitutional Council**

On 26th August, the Constitutional Council held the hearing on the second post-preliminary results complaint lodged by FUNCINPEC on 11th August 2003 and signed by Nhek Bun Chhai, Deputy General Secretary.

Hearing: The hearing started at 08.00. The plaintiff was absent and had sent neither lawyers nor representatives. In their absence, the CC preceded the questioning of the plaintiff and defendant by using the examination reports made on 15 August and comparing their content with the answers of the NEC representative. (See Annexes for further details)

Decision: The Constitutional Council concluded that the plaintiff did not provide enough evidence to support his allegations. Although the wording of both FUNCINPEC complaints were very close, the CC estimated that, contrary to the first FUNCINPEC complaint, the second one was challenging the results and not the NEC, and therefore was

covered by art.114 of the Election Law. The Constitutional Council dismissed the complaint on lack of evidence.

* **Hearing of the SRP complaint before the Constitutional Council**

The hearing session took place on 27 August and lasted from 08.00 AM to 11.00 AM. The object of the complaint was to contest the results in the whole country and more specifically the results in 4 constituencies (Phnom Penh, Bantea Meanchey, Kampong Thom and Svay Rieng). It was detailed and made several references to the Law and to the by-laws. Mr. Ou Bun Long, SRP Senator, represented the plaintiff and H.E. Mean Satik, Member of the NEC, represented the defendant. Sam Rainsy attended personally the hearing session.

Hearing: (see Annexes for details) The hearing was conducted without any apparent timetable or agenda, debates on the various sections of the complaint and concerning different Provinces took place without any apparent order, passing frequently from one issues to the other and back again. The way the hearing was conducted gave the observers an overall impression of disorder. However, the CC Chairman examined and effectively gave both parties an opportunity to support their allegations and to fulfil their right of defence, systematically listening to both versions of the facts.

Decision:

The CC members withdrew at 11.00 to deliberate and gave their decision at 13.20. It concluded that the Constitutional Council could formally receive the complaint under the provisions of art.114 of the LEMNA.

It dismissed the charges related to Phnom Penh on the ground that new Polling Stations had been created due to the increase of the number of voters and in accordance with the Law.

On the issue of the discrepancies in Svay Rieng and Kampong Thom, the Council rejected the request for a recount because SRP Party Agents had signed the results forms at CEC level.

This justification raises questions with regard to the legal value of these signatures: According to art.106.3 of the LEMNA: "The Chairman and members of the Polling Station Commission shall sign the minutes of the ballot count. The minutes may be signed by representatives of political parties as witnesses." One can find further details on the signatures in the provisions of Chapter 8 of the Regulations and Procedures (Polling and counting): Art.8.18.7.1: "The CEC Chief shall display the consolidation record as mentioned above to political party representatives and observers as well as invite them to jointly sign or thumbprint on the record as witnesses." Art.8.18.7.2: "The refusal to sign or thumbprint on the consolidation record by any political party representative or observer cannot invalidate the record." One can conclude from these provisions that Party Agents' signature of the results is a one-way commitment: the refusal to sign has no consequence on the validity of the results. Yet the presence of the signature prevents the political party from objecting to the results later in the process. Once Party Agents have signed, they commit the party to accept the results.

The EUEOM considers that this decision could create a precedent deterring political parties' agents from signing the results forms.

Finally, as regards Bantea Meanchey (Poipet), the CC considered that the very low turnout did not entitle the plaintiffs to demand a re-voting. They estimated that the particularities of Poipet (border city) accounted for the low turnout.

In conclusion, the Constitutional Council dismissed all the elements of the SRP complaint. In addition, the Constitutional Council added a second point to their decision announcing that all complaints related to the preliminary results had been handled and that as a consequence, the NEC could confirm the validity of the preliminary results.

This second point has been discussed several times between the EUEOM and the Legal department of the NEC and relates to the interpretation of art.118-A of the Election Law. Art.118-A provides: "After having resolved all complaints and received all results of the election, including result of re-election, if any, the National Election Committee shall make public the official results of the election and determine and allocate seats for each constituency to political party base on the number of valid ballot papers."

The question was whether when saying "all complaints", the Law was referring to all the complaints related to the electoral process since the beginning, or was only referring to the complaints lodged under art.114 of the LEMNA, i.e. post-preliminary results complaints.

This question of interpretation was crucial at that stage of the process: According to the first interpretation, the NEC could not release final results before it had solved all pending complaints (22 cases as of Wednesday 28th August). According to the second interpretation, the NEC could release the final results immediately after the Constitutional Council decision.

The Constitutional Council decided to use its ruling on this case to give its interpretation of the Law on this issue and enable the NEC to release final results quickly.]

SRP Press conference after the Hearing session:

At 14.00, Sam Rainsy held a press conference claiming that the complaints process at the CC was a farce and that the CC members only ratified the position previously taken by the NEC when ruling on SRP complaints.

However, Sam Rainsy said he would not call for any demonstration and that their aim now was to strengthen SRP alliance with FUNCINPEC. "There is no need for any street protest" says the press release. He said they would continue to negotiate between parties and reach an agreement before the king calls for the new National Assembly members to meet.

This is quite a change in attitude compared to the previous electoral processes, in particular in 1998. SRP is showing signs that they are choosing an institutional strategy.

C. FINAL ELECTION RESULTS

On 30th August, NEC held a press conference announcing the final election results. The preliminary election results announced on 8th August were confirmed.

[See detailed results per province on Annex Chapter VII (a)]

The National Assembly shall hold its first session no later than sixty days after the election upon notice by the King. Before taking office, the National Assembly shall

decide on the validity of each member's mandate and vote separately to choose a Chairman, Vice-Chairmen and members of each Commission by a 2/3-majority vote.

At the recommendation of the Chairman and with the agreement of both the Vice-Chairmen of the National Assembly, the King shall designate a dignitary from among the representatives of the winning party to form the Royal Government. This designated dignitary along with other colleagues chosen from members of the National Assembly or from the political parties represented in the National Assembly, then present themselves to the National Assembly and request for a vote of confidence.

The Constitution does not provide any specific step to follow in case the National Assembly denies the vote of confidence.⁴³

After the National Assembly has given its vote of confidence, the King shall issue a Royal Decree appointing the entire Council of Ministers.

IX MEDIA

A. MEDIA LANDSCAPE

Written media

Despite a growing number of publications (one counted recently some 70 dailies, weeklies, monthlies and periodicals); the quality of the Cambodian press is still poor because of insufficient resources and the enduring legacy of political patronage. Journalists lack proper training, are poorly paid and are often subservient to political power. Newspapers are deeply politicised, with an overall imbalance in favour of the CPP. Although a source of information for other media, the printed press has a limited impact due to high levels of illiteracy and a diffusion essentially concentrated in the urban areas.

The most widely read newspapers are: *Rasmei Kampuchea* (some 20,000 copies), *Koh Santepheap* (5,000) both generally pro-CPP, *Udamkate Khmer* (4,000), pro-Funcinpec, and *Moneaksekar Khmer* (4,000), pro-SRP. The bilingual English/Khmer *Cambodia Daily* is mainly read by the expatriate community, and the French language daily *Cambodge Soir* and the fortnightly Phnom Penh Post cater for the same audience.

Broadcast media

According to a recent survey⁴⁴, Cambodians watch television and listen to the radio much more than they read newspapers. Overall, 52% watch TV three or more times a week, while 38% listen to the radio three or more times a week while only 9% read a newspaper on a regular basis.

The CPP largely dominates Cambodia's broadcast media: apart from the state-owned TVK and the recently established CTN, the 5 other national TV stations are CPP-owned or affiliated. TVK can reach almost 90% of the population, and TV5 (Royal Armed Forces Television, privately owned) almost 80%. The other stations are: TV3 Phnom Penh, TV9 Khmer, TV Bayon and TV11 Apsara.

Besides AM 918 and FM96, the two state radios with nationwide coverage, there are 16 private stations, most broadcasting on FM with a variable reach. With the exception of FM102, run by the Women's Media Centre, and FM105 *Radio Beehive*, all are directly linked to one of the three main

⁴³ Constitution of the Kingdom of Cambodia, art. 119 (new)

⁴⁴ Democracy in Cambodia – A survey of the Cambodian Electorate, the Asia Foundation, May 2003 (survey from 20 February to 14 March 2003)

parties, mostly in favour of the CPP. As they were denied a licence, *Voice of America* and *Radio Free Asia* broadcast in Khmer from neighbouring countries on AM, which allows a wide geographical coverage. Parts of their programmes were rebroadcast on *Radio Beehive* (FM105) during the election campaign. Apart from these two, the most listened radio stations are FM95, FM103 and AM918.

BBC World Service and *Radio France International* (RFI) in foreign languages are relayed by two local stations on FM, but received only in Phnom Penh. There are no restrictions on satellite dish ownership, and cable operators offer a wide choice of channels from Asia and Europe. Internet can be used for diffusion of political material, as it was done during the campaign albeit to a very limited extent.

B. LEGAL FRAMEWORK

1. General Framework

With the multiplication of printed publications in Cambodia, the National Assembly adopted a first-ever *Law on the Press* in July 1995, to regulate the sector. Yet, there exist no law regulating the electronic media despite their prime importance in disseminating information to Cambodian citizens.

As regards the *Law on the Press*, journalists had voiced concerns that, in contradiction of the spirit of the 1993 Constitution, the Law was allowing the government to censor newspapers and journalists should any published information be considered to adversely “affect national security and political stability” (Art.12), or “humiliate or contempt national institutions” (Art.13). Though such vague clauses have already provided ground for the government to shut down defiant newspapers – in particular during periods of political violence, no action has been taken in recent months against publications critical of the ruling parties.

2. Election-related legal framework

In relation to the election campaign, the particular responsibilities of the media are set under Chapter VII of the LEMNA and the subsequent regulations. Under articles 74 and 75, the law stipulate that all media shall make their services available free of charge to the NEC for voter education and publicizing electoral work, and gives the NEC the responsibility to facilitate equal access to media of all registered parties.

Article 7.13 of the NEC regulations provides for an equal access of political parties to state media, but also mentions for the first time private media as another venue for political advertising (see below section). As regards the media coverage of the election, article 7.20 states that the right of voters to make an informed choice requires both the state and private media to abide by the *Guidelines for the Media* set by the NEC.

These guidelines stipulate, among other, that the media must provide an accurate, impartial and pluralistic coverage of the election, refrain from using inflammatory or offensive language and, like all other stakeholders in the election process, comply with the Electoral Law and NEC regulations. They also confer to the state media the specific responsibility to apply principles of equity and distinguish between government and party activity in their news coverage.

As for private media, however, legal uncertainties remain on the enforcement of these provisions. Though it appears that broadcasters cannot be held accountable for the content of political party spots, their responsibilities as regards the broadcasting of other political material (e.g. inflammatory speech) is not clearly defined in case it infringes the

regulations and *Guidelines for the Media*. Moreover, the division of responsibilities between the NEC and the Ministry of Information is unclear as regards law enforcement and, if required, the imposition of sanctions. The absence of a specific law regulating the electronic media indeed accounts for these legal uncertainties.

C. ACCESS TO MEDIA

A survey on the Cambodian electorate⁴⁵ indicated in March that most voters were still unaware of the political choices available to them, with 91% saying they would welcome radio or television broadcast that illuminate platform and policies of the different parties. In a context where opposition access to both state and private media is usually extremely limited, the NEC introduced new measures to create the conditions for a more balanced news coverage by state media and an increased access of all political parties to private media.

Equal Access Programmes

As in 1998, equal access for all parties was provided free of charge on the state media (TVK, National Radio AM918 and National Radio FM98). During the entire campaign period 2003, these Equal Access programmes were broadcast 2 hours daily on the state media, with a daily repeat divided between political advertising spots (5 minutes for each party) and extracts of roundtable debates. Though several small parties did not take full advantage of the time allocated to them for advertising spots, all attended the roundtable debates co-produced by the NEC and the state media.

Special Elections News Bulletin

The state electronic media ran for the first time a *Special Elections News Bulletin* within their news programmes, produced with the technical assistance of UNDP. The apportionment of time in these programmes was based on the principle of equity, reflecting a party's strength in previous elections and the number of its elected candidates at the National Assembly, and slightly adjusted to boost the opposition and emerging parties. Hence, the distribution was: 44% for CPP, 27% for FUNCINPEC, 19% for SRP and 10% for the other parties. These quotas were largely respected by the state media (see *EU EOM Media Monitoring*), correcting a bias in their news coverage otherwise overwhelmingly dedicated to the Government and CPP.

Political Advertising on Private Media

Private media were mentioned for the first time in the regulations as another venue for party political advertising. Private media could provide airtime and space at equal rates on an equal opportunity basis: they had to be open to all political parties or none. The NEC offered to facilitate negotiations between political parties and the private media. The impact of this innovative measure remained however limited as a number of private media refused to open their airtime to political advertisement. In particular, none of the six private TV stations accepted to broadcast any party's spot, but all devoted a large political coverage to Prime Minister Hun Sen and the Government.

NGO Roundtable Debates

Local and international NGOs were free to organise equal access roundtable debates and other programmes on the political party platforms during the campaign period. These programmes required previous approval from the NEC for being broadcast, so as to

⁴⁵ *Ibid*

ensure that they provided equal access and did not contain images or language that could incite to violence or intimidation. Extracts of roundtable debates sponsored by NDI were thus broadcast on TV Channel 9.

Overall, access of all political parties to the state media was significantly improved in this election compared with the previous ones.

D. EU EOM MEDIA MONITORING

Methodology

The EU EOM Media Monitoring Unit, composed of a media analyst and eight local monitoring assistants, carried out the analysis of a selection of the most popular state-owned and private media from 16th June to 1st August 2003: before (16th to 25th June), during (26th June to 25th July) and after (26th July to 1st August) the official campaign period. The methodology applies quantitative criteria, i.e. the time dedicated to each stakeholder of the election, while considering the quality of this time: the tone is assessed as neutral, negative or positive, along pre-defined criteria. The lack of reliable and accurate statistical data as regards the estimated audience of each media monitored does not allow a scientific weighting for the presentation of aggregated data for several media (e.g. all state media). Given human and material resource constraints, the electronic media to be monitored were selected as follows: the state-owned television TVK, and the 3 most watched⁴⁶ private ones; the state-own radio with the largest audience on FM, and a cross section of private, independent and foreign stations. As regards the Press, the three largest circulations reflecting the three main parties opinions were selected.

The following media were monitored:

TV Channels (monitoring: every day from 17:00 to 24:00 pm)

1. TVK – National Television of Cambodia (State-owned, nationwide geographical coverage: approx. 90%)
2. TV5 – Cambodia Royal Armed Forces Television (Private, CPP, nationwide geo. coverage: approx. 80%)
3. TV3 – Phnom Penh Municipal Television (Private, CPP)
4. TV11 – Apsara (Private, CPP)

RADIO STATIONS (monitoring: main editions of the news) (*)

1. FM96 MHz – National Radio (State-owned, largest FM coverage) News at 10:30-10:35 AM (**)
2. FM 97MHz – Radio Apsara (private, CPP) News at 10:00-11:00 AM, 2:00-3:00 PM
3. FM 105 MHz – Beehive (independent) News at 8:00-9:00 AM
4. VOA – Voice of America (large AM coverage) News at 8:30-10:00 AM, 5:00-5:30 PM
5. RFA – Radio Free Asia (large AM coverage) News at 5:30-6:30 AM, 7:30-8:30 PM

NEWSPAPERS (daily newspapers)

1. Rasmei Kampuchea (pro-CPP, approx. 20,000)
2. Oudom Kate Khmer (pro-SRP, approx. 4,000)
3. Moneakseka Khmer (pro-FUNCINPEC)

(*) A short observation of FM90.5 (pro-Funcinpec), FM95 (pro-CPP) and FM 93.5 (which sold its airtime exclusively to the SRP) was also undertaken during the week preceding Election Day.

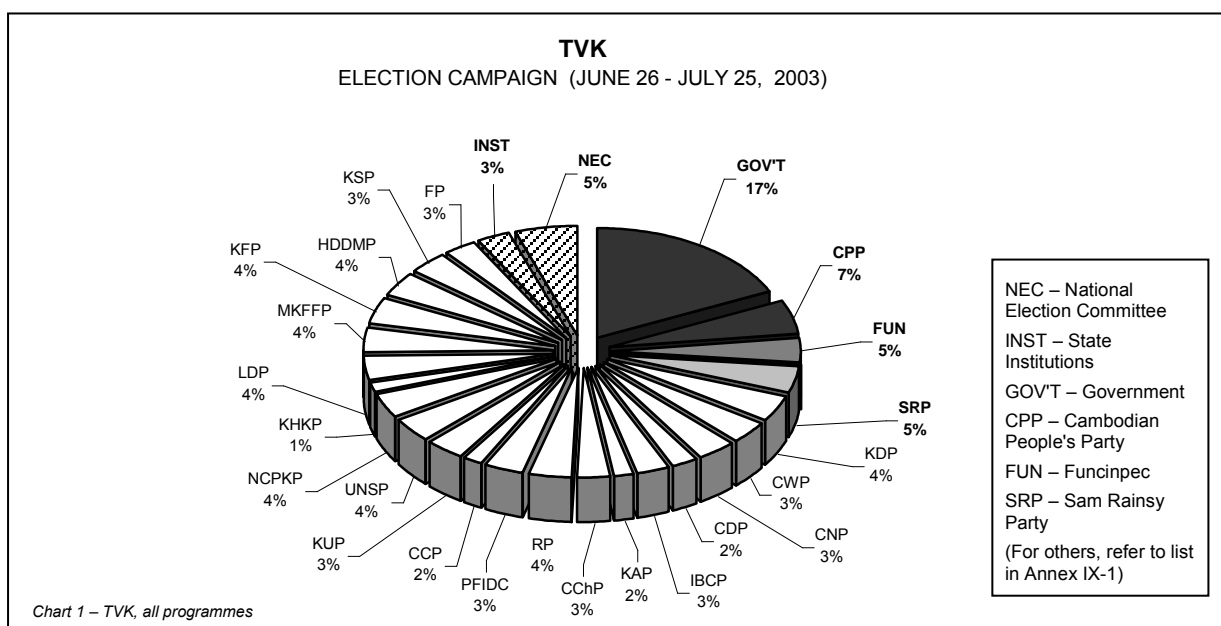
(**) For FM96, state media, the Equal Access (15:00-17:00) and Equity (12:05-12:15) programmes are also monitored.

⁴⁶ Cf. Democracy in Cambodia – A survey of the Cambodian Electorate, the Asia Foundation, May 2003

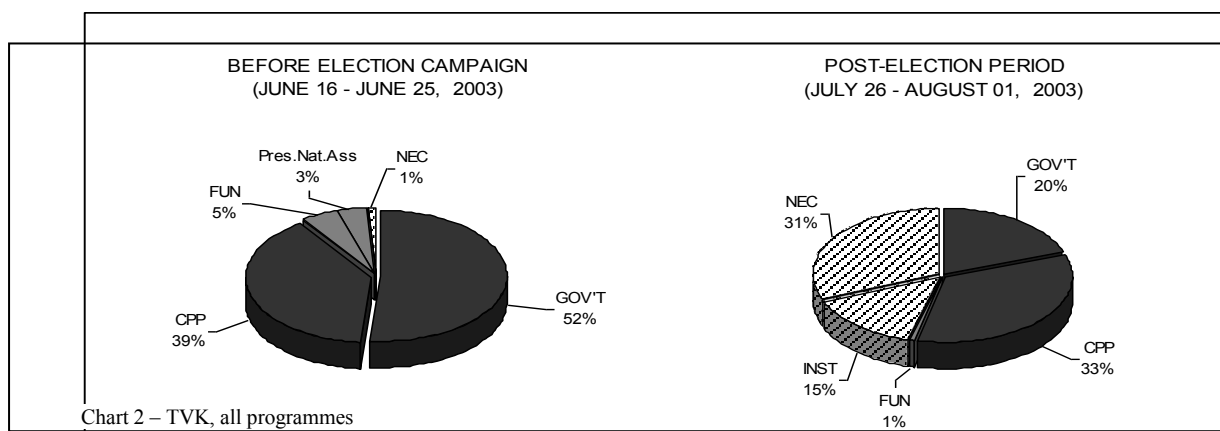
1. State Broadcast Media⁴⁷

TVK – National Television of Cambodia

Main source of information for Cambodians, the state-owned TVK offered by far the widest coverage of politics. During the official election campaign period, the Government received 17%, the CPP 7%, FUNCINPEC 5%, SRP 5% and the other parties average between 2 and 3%. The tone was neutral for the government and all positive for the other parties⁴⁸. Although this is an improvement in comparison to the previous election, there remains an imbalance in favour of the CPP, as the coverage of government activities features almost exclusively Prime Minister Hun Sen and CPP Ministers, and rarely FUNCINPEC ones. Hence, special programmes granted the incumbent Prime Minister occasions to address Cambodian citizens for long periods of time.



After the elections, TVK reverted to its pre-election ways, giving CPP and the Government an overwhelming share of the space, and almost none to the other parties. NEC got 31% because of the coverage of the tabulation of preliminary election results, and the administration of complaints.



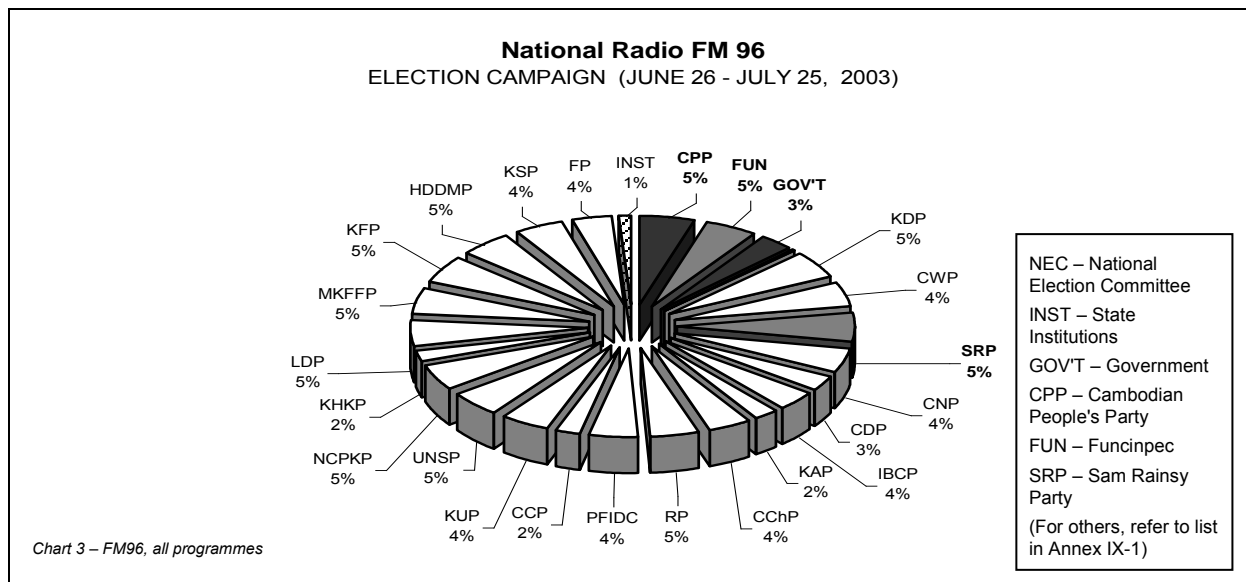
Note: The period of silence 26-27 July was respected by all channels.

⁴⁷ The following data refer to all programmes: news, *Equal Access* programmes, and *Special Election News Block*.

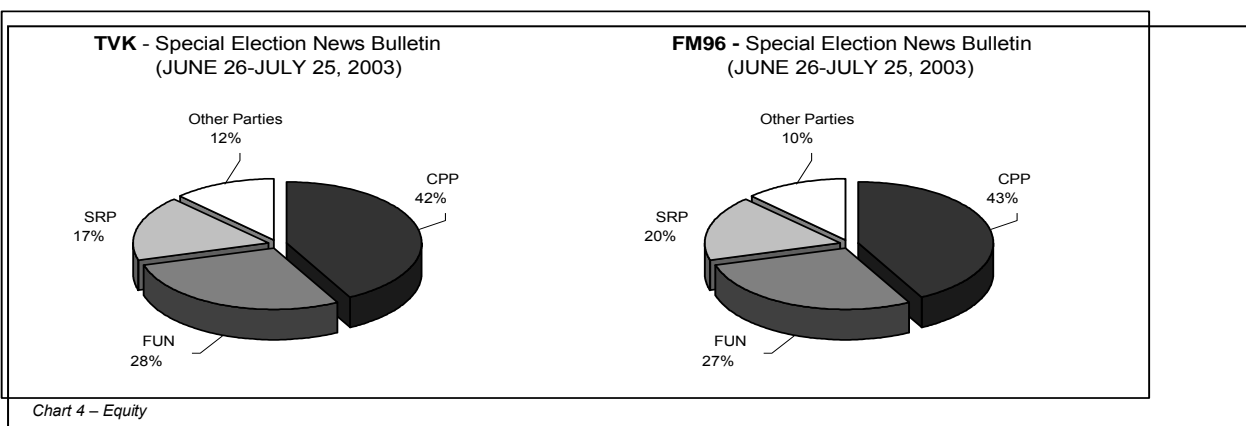
⁴⁸ Coverage of small parties was ensured by the *Equal Access* programmes, featuring political advertising spots and self-presentations for which the tone is necessarily positive.

FM96 - National Radio of Cambodia

The National Radio FM96 gave a more balanced coverage during the election campaign, but also reverted, after the election, to an almost exclusive coverage of the Government activities.



Special Elections News Bulletin (TVK and FM96)

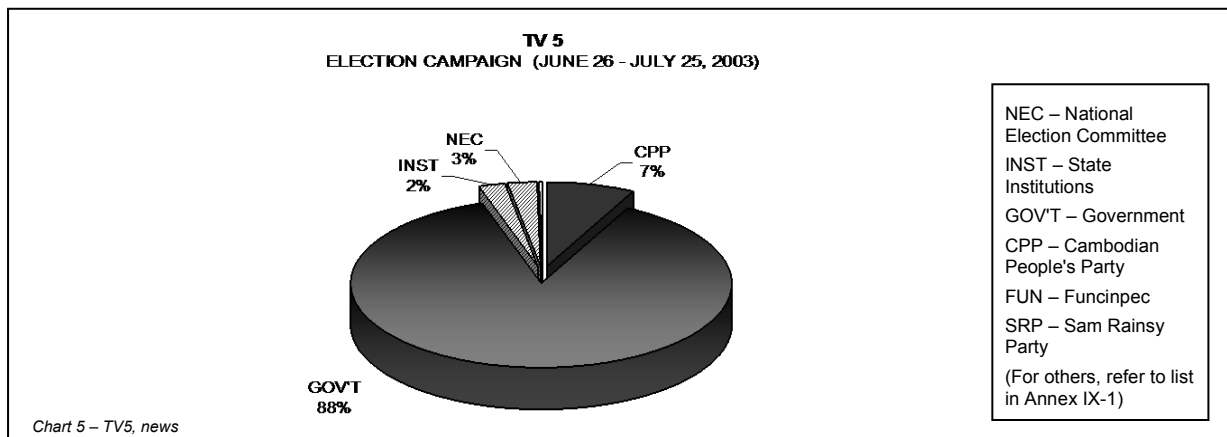


2. Private Broadcast Media

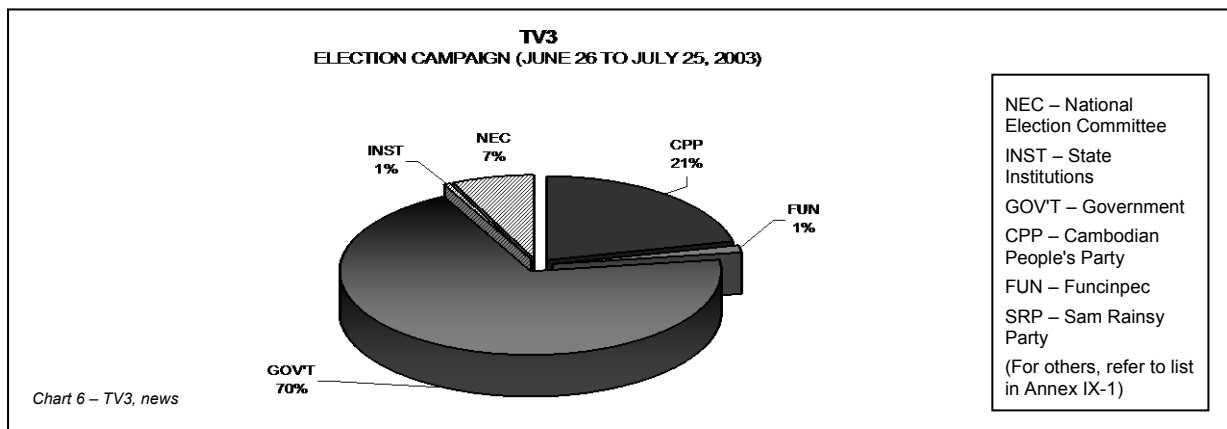
The two most watched television channels in Cambodia⁴⁹, TV5 and TV3, dedicated an overwhelming coverage to the Government and Prime Minister Hun Sen – and the CPP is the only party mentioned. The CPP coverage was almost exclusively positive on TV5, and 71% positive, 29% neutral on TV3. On TV11 Apsara Television, the CPP gets an overwhelming coverage (62%, exclusively positive), and the tone used for the coverage of FUNCINPEC (6%) and the SRP (2%) is almost all negative. The other parties together received less than 1%.

⁴⁹ *Ibid*

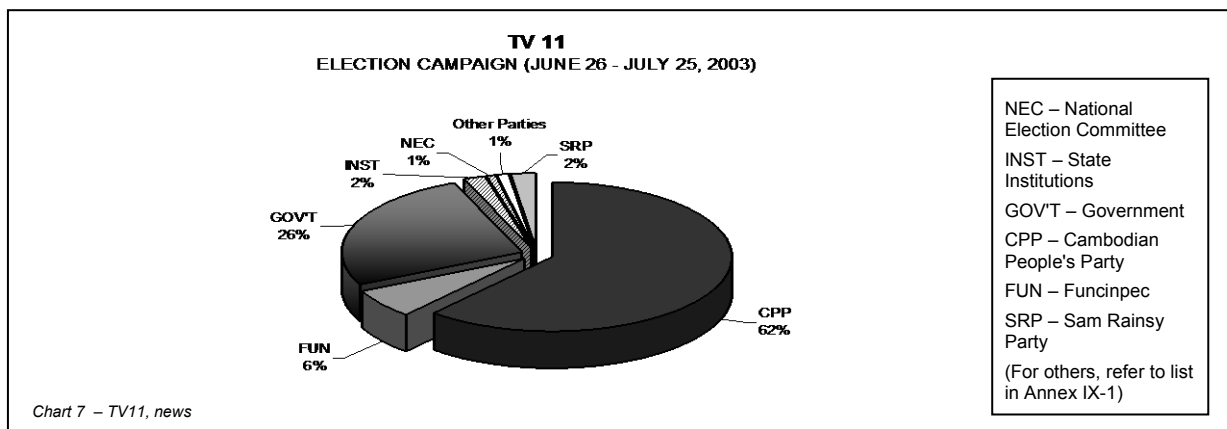
TV5 – Cambodia Royal Armed Forces Television



TV3 – Phnom Penh Municipal Television



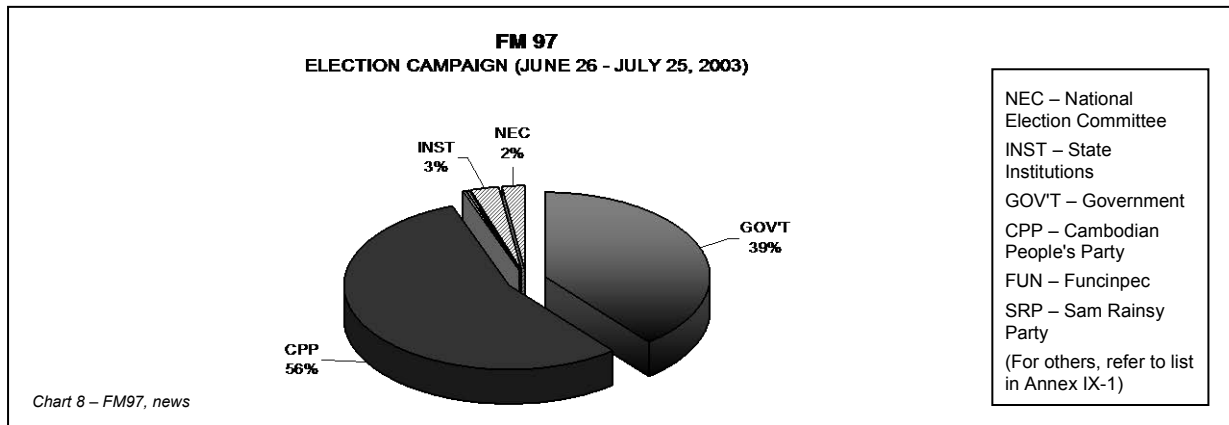
TV11 – Apsara Television



The private radio environment appears more pluralistic: though a number of stations such as FM97 Radio Apsara reproduce the bias prevailing in private televisions, more political parties have access to the news coverage of FM105, *Voice of America* and *Radio Free Asia*. During the election campaign, the three latter stations dedicated most of their news coverage to political parties, with an overall unbalance disfavouring the CPP, and much less airtime to the coverage of the Government's activities. It should also be noted that the present findings of the EU EOM Media Monitoring do not cover stations such as FM90.5 Radio Ta Prom (FUNCINPEC).

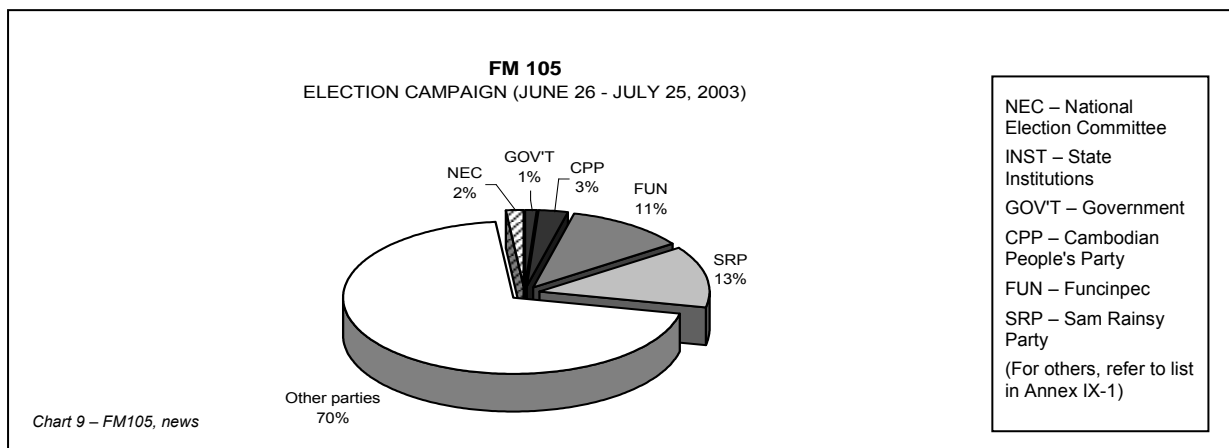
FM97 - Radio Apsara

The news coverage of the private station FM97 follows a pattern similar to the private TV. The CPP received more than 56% of coverage (almost exclusively positive), and the Government 39% (72% of which was positive, 28% neutral). Other parties did not get access.



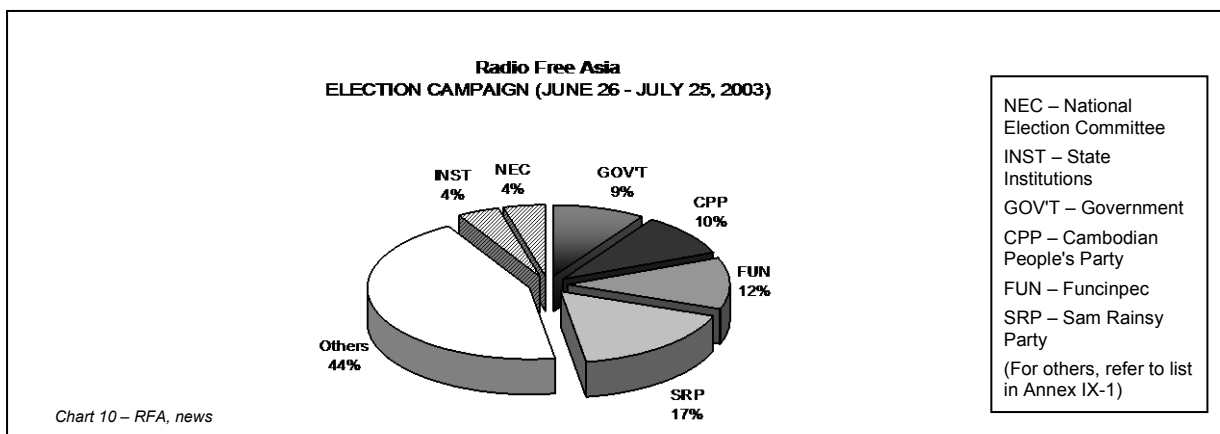
FM 105 – Beehive Radio

Beehive Radio was the only private electronic media monitored that came close to provide a rather balanced coverage of all parties (70% for small parties), although clearly disadvantaging the CPP which received only 3%. The tone was exclusively positive for most parties, including the CPP. The tiny coverage of the Government (1%) was entirely negative.



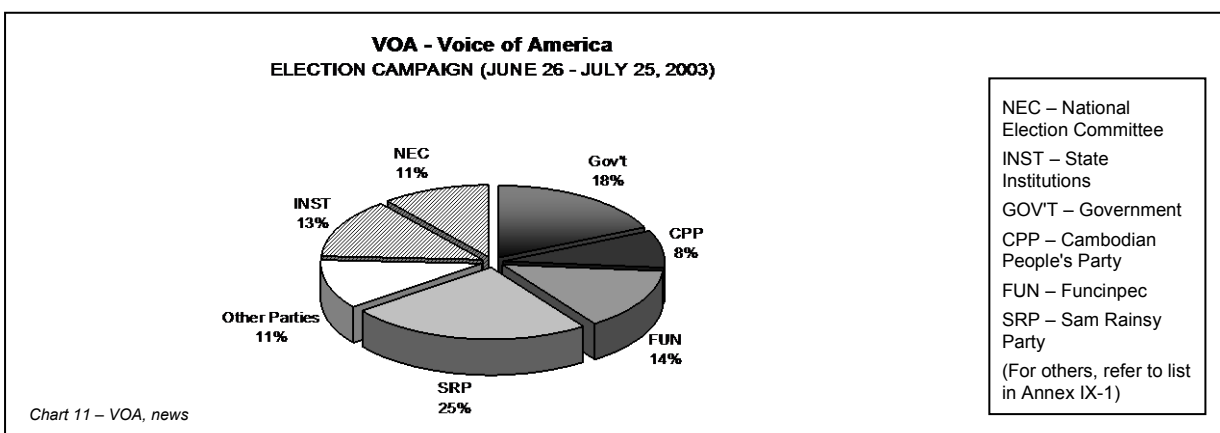
RFA - Radio Free Asia (in Khmer)

Broadcasting on short waves from neighbouring countries, Radio Free Asia broadcasts draws a considerable audience. It provided reasonable coverage to small parties (44%, all positive). The SRP receive 17% (all positive), the FUNCINPEC 12, and the CPP 10%.



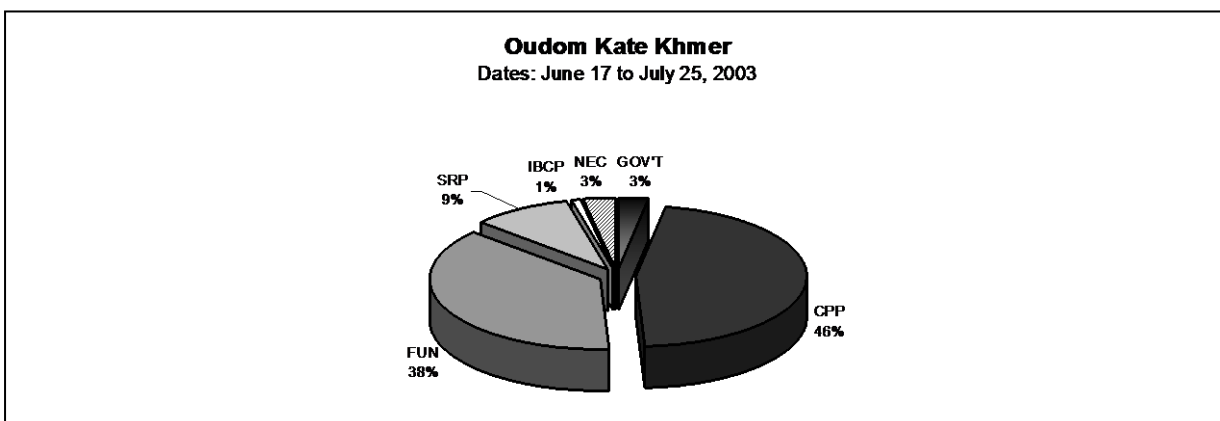
VOA - Voice of America (in Khmer)

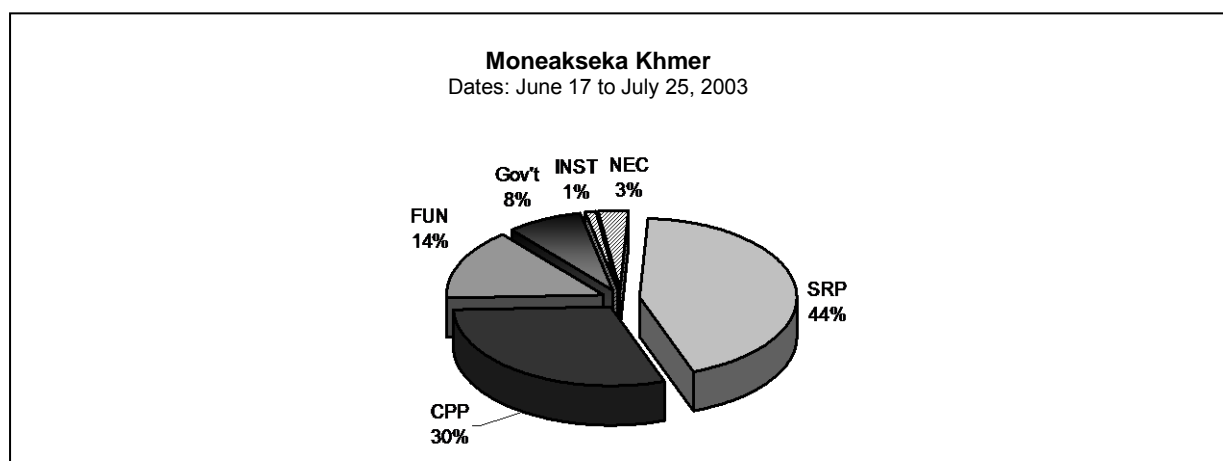
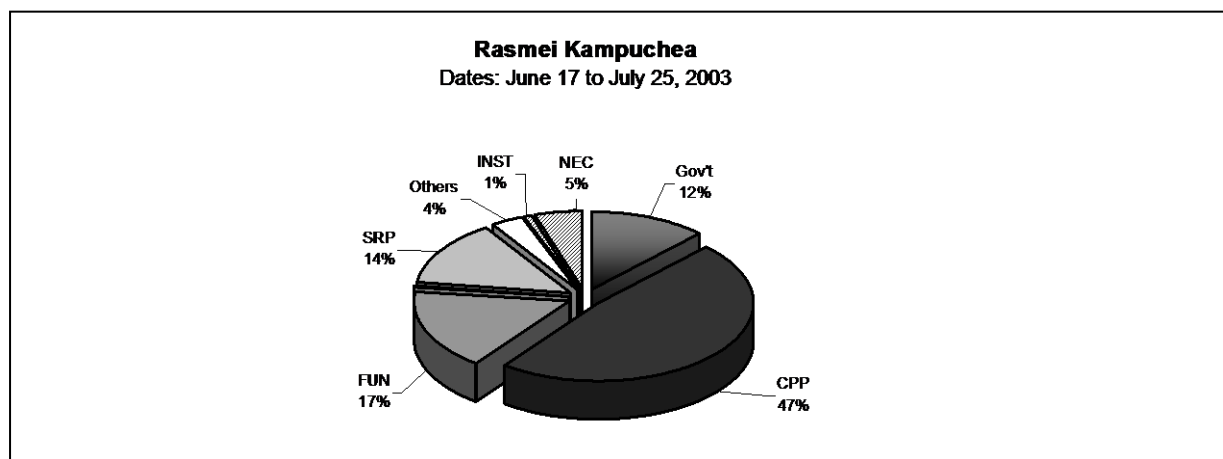
Voice of America also draws a very large audience. It often features interviews with the various political actors. The opposition SRP received large coverage (25%), almost exclusively positive.



3. Written Media

Of the three newspapers monitored, *Oudom Kate Khmer* reflected Funcinpec position. The tone of its coverage of CPP (46%) and SRP (9%) was totally negative. Its coverage of Funcinpec (38%) was exclusively positive. Although close to the CPP to which it gave 48% of coverage, *Rasmei Kampuchea* was relatively more balanced with regard to other parties: Funcinpec had almost 17% and SRP 13%. Reflecting SRP positions, *Moneakseka Khmer* dedicated to the Government 8% of its coverage, CPP 30% and Funcinpec 14%, all negative in tone. The 44% for the SRP was all positive.





E. EUEOM CONCLUSIONS ON THE MEDIA

- Access of all political parties to state media was significantly improved in this election compared to the previous one. In particular, the rules governing Equal Access and the Equity programme (*Special Election News Bulletin*) were largely respected, thus providing a reasonable amount of coverage for competing parties.
- In spite of this, the state media and particularly TVK continued to show an imbalance in favour of the CPP, as the large coverage given to the Government's public engagements featured essentially Prime Minister Hun Sen and CPP Ministers and therefore could be taken as disguised campaigning.
- While private television stations decided they would not broadcast political advertising material from any party, all nonetheless devoted a large political coverage to the Government, namely Prime Minister Hun Sen, and the CPP.
- FM90.5, FM95 and FM93.5 showed unreserved political bias, respectively for FUNCINPEC, CPP and SRP, broadcasting slanderous - sometimes xenophobic - speeches or phone-ins, in clear breach of the Regulations and *Guidelines to the Media*. The NEC issued warnings to infringing stations, but legal uncertainties as regards law enforcement⁵⁰ however prevented it from taking action.

⁵⁰ See B.2. *Legal Framework*

- The non-affiliated radio station FM105 and the foreign broadcasters *Radio Free Asia* and *Voice of America* provided a more balanced coverage of all political parties.
- The overall findings of the EU EOM Media Monitoring⁵¹ for the state and private media highlight a substantial imbalance in favour of the CPP.
- The NDI (*National Democratic Institute*) sponsored debates were a welcome contribution to adversarial debates, hitherto unknown in this country. Their broadcasting on TV9 contributed to compensate for the lack of debate between the political parties in the roundtable sessions on the state media, most of which were pre-recorded at the start of the campaign.

X RECOMMENDATIONS

A. LEGAL

The wide variety of norms of different levels and nature (Law, Regulations, Codes of Conduct, Directives, Instructions, etc.) sometimes creates confusion as to which rule should prevail. Some Directives adopted by the NEC, in particular the one related to campaign activities and the one on the "quick action" procedure should be incorporated in the Law.

The Electoral Law's provisions on the statute of election officials should clearly state their obligation to enforce the Law, even when no complaint is lodged. This additional responsibility should be accompanied by deeper training sessions at CEC and PEC levels on litigation procedures.

The division of responsibilities between the NEC and the Courts with regards to dealing with cases of a penal nature but politically connected should be clarified. Eventually, when sufficient trust in the judiciary will exist in Cambodia, the Courts should be fully in charge of penal offences related to the elections, the NEC only remaining in charge of implementing the administrative part of the judgements, e.g. removal from voter list.

Offenders condemned by the NEC to penalties pursuant to art.124 and Chapter 11 of the Regulations and Procedures should be offered the possibility of appealing to either the Supreme Court or the Constitutional Council.

As the Law on Commune Administration foresees that the Ministry of Interior should issue an act specifying how Village Chiefs should be selected, one should use this opportunity to better regulate their role and responsibilities, *inter alia* during election processes.

As distributions of gifts and incentives seem to be a widespread and deeply rooted political habit in Cambodia, a prohibition of distribution of incentives does not seem to be a workable option. For future elections, two directions should therefore be explored: a clear definition of what constitutes vote buying as well as a system of control of the amounts distributed and of the modalities of distributions.

The Election Law should be amended to define the role of "alternate candidates" clearing their position and when and under which circumstances they replace outgoing members of the National Assembly.

⁵¹ The Media Monitoring did not take into account FM90.5 (pro-FUNCINPEC) or FM93.5 (pro-SRP)'s one-sided coverage, but includes a cross section of the most watched and listen broadcast media.

The legal value of party agents' signature of the results forms should be clarified, taking into accounts the consequences on both the validity of these results and the possibility for political parties to reject them later in the process.

B. ELECTION ADMINISTRATION

The NEC should ensure that political parties are provided with copies of protocols at all stages of the voting and counting process. Some of the problems witnessed in these elections stem from the fact that voting and counting took place on different dates, which if the Election Law is not amended will not be the case in future elections. Nonetheless, providing stakeholders with documentation at each and every step is important for the transparency and the integrity of the process.

The introduction of a permanent voter register is a major improvement. The NEC and the Commune Councils must ensure that the register is properly updated every year. The NEC and commune councils should strengthen voter education before and during the annual updating of the register in order to enable as many eligible voters as possible to register.

The NEC should be given authority to issue regulations and instructions pertaining to all aspects of voter registration, including certification of residency. On this particular issue, the Ministry of Interior could formally delegate to the NEC the power to regulate the process of certification of residence by Commune Chiefs during the registration period. This could prevent problems such as these encountered by a number of Buddhist monks during the registration for the 2003 elections.

The NEC and Commune Councils should make sure that registered voters are provided with photo IDs required for voting. Although more expensive, Polaroid cameras could be used.

The criteria for the appointment of PECs and CECs should be reconsidered. Observers and opposition parties have questioned the independence of the members of the Election Administration. Appointing experienced persons is justified, but without jeopardizing the performance of the election administration, the employment of qualified candidates without prior election experience should be considered.

The role of Village Chiefs, their appointment, responsibilities and dismissal should be defined. Although Article 30 of the Law on Commune Administration foresees that the Minister of Interior issues guidelines on the qualification required, such guidelines have yet to be issued.

To improve the filing of complaints and to avoid their rejection on formal grounds, parties should enhance competences of their agents with a thorough training.

C. MEDIA

Though the NEC Regulations have enhanced political parties' access to the media, a long-term process is necessary to create a culture of pluralism that would lead to an environment favourable to the conduct of democratic elections. Therefore the general environment of the media should be strengthened.

The principles introduced by the UNDP-sponsored "Equity" programmes were considered as groundbreaking and important, and should be further developed beyond the election campaign period to introduce an ethic of pluralism in the treatment of news. The idea that the state media should follow objective journalistic criteria in the treatment of the news

should be strengthened. Donors might wish to consider the funding of projects that would sustain a pluralistic access to the media.

The state media still showed an imbalance in favour of the CPP in as much as many of the reported Government activities related almost entirely to the Prime Minister. To correct this situation a system should be envisaged in order to secure media coverage also for other parties of the ruling coalition as well as parliamentary parties not present in the government.

In the absence of a law regulating the electronic media, NEC guidelines should clearly spell out that the broadcasting station is responsible for the material broadcast. The regulations should also clarify, in case of infringement, the division of responsibilities between the NEC and the Ministry of Information as regards law enforcement and the imposition of sanctions.

The imbalance in the private media goes back to the issue of granting broadcasting licences. These are mainly weighed in favour of CPP. At present the Ministry of Information grants the licence after it is cleared by the Ministry of Communications. In order to make this system fairer and subject to public scrutiny, a Parliamentary Committee for the Media could be established. Its advice would be required before granting the licences. Legislation would have to be enacted to this effect.

XI ANNEXES

ANNEX Chapter V – Election Administration

Structure of the Election Administration



ANNEX Chapter VI – Pre Election Period

(a) Gender Balance - Political Parties' Candidates

No	Name of Parties	Number of Seats parties are running for	Percentage of seats parties are running for	Candidates					
				Titular Candidates			Alternate Candidates		
				Total	Female	Percentage of Women	Total	Female	Percentage of Women
1	Union of National Solidarity Party	55	45%	55	27	49.09%	71	41	57.75%
2	Molina-k and the Khmer Freedom Fighters Party	78	63%	78	30	38.46%	78	52	66.67%
3	Khmer Help Khmer Party	45	37%	45	9	20.00%	45	10	22.22%
4	Cambodia Free Independent Democratic Party	53	43%	53	7	13.21%	53	4	7.55%
5	The Rice Party	52	42%	52	15	28.85%	52	37	71.15%
6	Khmer Front Party	85	69%	85	6	7.06%	87	22	25.29%
7	Khmer Angkor Party	123	100%	123	67	54.47%	141	61	43.26%
8	Cambodia Development Party	51	41%	51	21	41.18%	51	14	27.45%
9	Hang Dara Democratic Movement Party	123	100%	123	8	6.50%	141	15	10.64%
10	Khmer Spiritual Aspiration Party	123	100%	123	19	15.45%	136	46	33.82%
11	Khmer Democratic Party	123	100%	123	47	38.21%	141	45	31.91%
12	Khmer Citizen's Party	47	38%	47	2	4.26%	49	10	20.41%
13	Indra Buddha City Party	121	98%	121	11	9.09%	135	7	5.19%
14	Nationalist Khmer Party	60	49%	60	33	55.00%	70	38	54.29%
15	Norodom Chakrapong Proloeueng Khmer Party	116	94%	116	11	9.48%	120	15	12.50%
16	Khmer Unity Party	73	59%	73	23	31.51%	77	29	37.66%
17	Cambodia People's Party	123	100%	123	14	11.38%	142	25	17.61%
18	Kon Khmer Party	61	50%	61	30	49.18%	63	33	52.38%
19	Cambodia Women Party	52	42%	52	47	90.38%	58	48	82.76%
20	Sam Rainsy Party	123	100%	123	15	12.20%	146	14	9.59%
21	Liberal Democratic Party	49	40%	49	14	28.57%	49	12	24.49%
22	Farmer's Party	46	37%	46	13	28.26%	52	15	28.85%
23	Funcinpec Party	123	100%	123	15	12.20%	144	11	7.64%
Total : 23 Parties				1905	484	25.41%	2101	604	28.75%

(b) Table on Complaints lodged by parties during the Campaign at CEC and PEC level

Party		Total	Rejected for formalities		Conciliation				Response		Referred to court		Sustained		Dismissed		Pending	
			CEC	PEC	CEC		PEC		CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC
					Yes	No	Yes	No										
FUNCINPEC	Threat	15	1		10	1	1				2							
	Threat and injury	2					1				1							
	Steal of banner	1			1													
	Destruction of banner	1			1													
	Abuse of Code of Conduct	3			2		1											
	Disturbing campaign	2					1						1					
	Gift incentive	16	6	1	5		1											
	Defamation	4	1		1		1				1							
	Violation of NEC regulation	3					2											1
	Campaign prohibition	1	1															
	Injury	1											1					
	Destruction of signboard	3			3													
	Partiality	1			1													
	Campaign disturbance	5			3													1
	Contemptuous insult	7	1	1	3	2												
	Vote buying	2				2												
	Confiscation of lottery paper	2			1		1											
	Confiscation of voter cards	2			1		1											
	Total	71	10	2	32	5	10				3	1		2				2

Party		Total	Rejected for formalities		Conciliation		Response		Referred to court		Sustained		Dismissed		Pending	
			CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC
SRP	Threat	57	5	5	23	6	6		6	2		1		1	1	1
	Contemptuous insult	13			9	3										
	Threat and injury	1		1												
	Abuse of Code of Conduct	4	1		3											
	Injury	7			1				4	1						
	Disturbing campaign	1					1									
	Campaign prohibition	19	2	2	9		2									1
	Tear of tracts	14	2		8	2	1					1				
	Campaign disturbance	7	1		3	1								1		1
	Anticipated campaign	1		1												
	Persuasion	1			1											
	Gift incentive	16		1	5		5					1		3		1
	Partiality	8	2	1	3		1									
	Instigation	2			2											
	Banner destruction	8		2	5											1
	Violation of NEC regulation	11	1	1			2					1				6
	Relocation of PS	3	2		1											
	Steal of banners	2		1	1											
	Unauthorized banners	2	1		1											
	Vote buying	2			1											
	Signboard destruction	2	1		1											
	Violation of citizen rights	1			1											
	Destruction of party property	1					1									
	Confiscation of private property	1		1												
	Use of State' car to campaign	1														1
	Press freedom deprivation	1		1												
	Armed robbing	1								1						
	Attempt of murder	1								1						
	Total	195	19	18	81	12	20		11	4		4		12	3	4

Party		Total	Rejected for formalities		Conciliation		Response		Referred to court		Sustained		Dismissed		Pending	
			CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC	CEC	PEC
CPP	Threat	6	1		3	1			1							
	Abuse of Code of Conduct	9	1		1		2					1	1	1		1
	Instigation	2	1		1											
	Contemptuous insult	5			3		2									
	Gift incentive	5			4		1									
	Violation of NEC regulation	6			2	1						3				
	Partiality	2			1		1									
	Illegal photo taking	1			1											
	Banner destruction	3	1		2											
	Campaign disturbance	4			1							2				1
	Vote buying	10	1	1	2	2	2									2
	Campaign prohibition	1														
	Defamation	2							1							
	Voter card confiscation	1	1													
	Injury	2			1				1							
	Unauthorized banners	1					1									
	Distribution of lottery card	2														2
	Attempt of murder	1							1							
	Total	63	6	1	22	4	9			4		6	1	1	2	4

(c) Hearings at the NEC
Complaints related to the campaign
(Chapter 7 and 11 of the Regulations)

23 July: First NEC hearing session on 5 cases related to the campaign:

- Two cases were submitted by the **SRP** and concerned restrictions/prohibition from fulfilling campaign activities in **market places** (the O'Russey Market and the Central Market in Phnom Penh). For both cases, the NEC confirmed that restrictions were legitimate, that prior authorisation should have been requested and cited art.7.15 of Chapter 7 as the legal basis for their decision, hence implying that they considered markets as private places.
- One case involved a village chief in **Kampong Thom** Province who insulted a **SRP** activist. The NEC confirmed the PEC decision, which was a warning. The NEC recalled the defendant of the possible sanctions (art.124) in case he relapses into the same offence.
- One case involved **SRP** activists being injured by stones thrown at them by inhabitants of **Tonle Bassac Commune (Phnom Penh)** after an SRP leaflet distribution. The SRP had not requested prior authorisation for the rally. In its decision, the NEC cited this lack of prior notification as a violation of art.7.14.1 of Chapter 7, recalled that the plaintiff and the witnesses declared that the rocks had been thrown after the end of the distribution of leaflets, that both parties in dispute had stated that they did not have a fight with each other, and decided that therefore the injuries fell under the jurisdiction of the judicial court. One might regret the fact that the NEC did not initiate its own investigation and adopted such a narrow interpretation of the scope of its jurisdiction.
- Finally, the last hearing followed a complaint lodged by **FUNCINPEC** concerning a distribution of sarongs in **Kampong Chhnang** Province by Kong Samol, Vice Prime Minister (Minister in charge of the Royal palace). The NEC confirmed the PEC decision that there was no violation of the Law since the distribution took place within a CPP HQ compound, only CPP activists received one, and no message related to the elections was disseminated.

07 August: Second NEC hearing session on 5 cases related to the campaign:

- The **FUNCINPEC** party lodged a complaint at the PEC of **Kompong Thom** against three men, the chief and the deputy chief of the Prasat Sambor Prey Kuk rubber plantation and a policeman, for having organized a distribution of krama (Cambodian traditional scarves) for workers during the campaign. The FUNCINPEC argued that the distribution intended to influence the workers to vote for the CPP. The PEC's decision was to send a warning to these persons and to state that such event was "contrary to the NEC's rules and regulations and the Law". The NEC confirmed that decision.
- The **FUNCINPEC** party lodged a complaint at the PEC of **Kampot** against Her Excellency Bun Rany Hun Sen for having organized a donation of gifts during the campaign on behalf of the Cambodian Red Cross, accused to be in favour of the CPP. The PEC decided that this donation was not a political purpose, but a humanitarian one. The NEC confirmed that decision.
- The **Sam Rainsy Party** lodged a complaint at the PEC of **Phnom Penh** against a chief of village accused of having forbidden the SRP to organize an electoral meeting in Borey Keila. The PEC decided that the accusation was groundless. The NEC confirmed that decision.

- The **CPP** lodged a complaint at the PEC of **Battambang** to dispute its decision to fine a CPP's chief of village. This CPP member was accused of disturbing with his boat a FUNCINPEC campaign activity that took place on the river. The PEC fined this person 5,000,000 Riels (approximately 1,280 US dollars). The NEC confirmed that decision.
- A **citizen** lodged a complaint at the PEC of **Kompong Cham** to dispute its decision of fining him after having insulted and beaten a FUNCINPEC truck driver during a FUNCINPEC procession. Accused by a FUNCINPEC member who witnessed the scene, this person was fined 5,000,000 riels for obstructing the electoral campaign and creating injuries, and deprived from his electoral rights by the PEC. The NEC confirmed the decision.

ANNEX Chapter VII – Polling, Counting and tabulation of Results

(a) Complaints related to polling and counting lodged before PECs

Plaintiffs	Total	Rejected for formality	Conciliation	Response	Referred to court	Hearing		Pending
						Sustained	Dismissed	
FUNCINPEC								
Form 1105 not provided	2	1	1					
Partiality	36	31	4					1
Voting obstruction	26	25	1					
Foreigners allowed to vote	10	9	1					
Violation of NEC regulations	10	7	2					1
PS relocation	2	2						
Threat on voters	2	2						
Fraud on voter cards	1	1						
1105 issued twice with different figure	1	1						
Not allowed to guard the ballot boxes	1	1						
Forcing people to vote for a party	1	1						
Transporting voters to PS	1		1					
Extra ballot	1							1
Violation of observer code of conduct	1	1						
Instructing people how to vote	1	1						
Use of PS stamp on ballot in place of secret stamp	2	2						
Total	98	85	10					1
								2

SRP								
Form 1105 not provided	19	16	2					1
Partiality	58	43	10			3		2
Voting obstruction	7	3	2			1	1	
Foreigners allowed to vote	12	11	1					
Violation of NEC regulations	40	26	9			1	2	2
Relocation of PS	1	1						
Fraud on ballot papers	8	5	3					
Transporting voters to PS	2		2					
Extra ballot	2	1	1					
Foreigners vote	4	3	1					
Use of PS stamp on ballot in place of secret stamp	2					1	1	
Vote buying	5	2	3					
Detaining people	1	1						
Irregularity	2	2						
Requests for recounting	41	21	3			2	15	
Violation of Code of conduct for the security officials	2	2						
Fraud on voter cards	1	1						
Unfolding ballot papers	1	1						
Delay in posting 1103 and providing 1105	3						2	1
Recheck	19	19						
Defamation	1							1
Insult	2	1	1					
Re voting	7	1	3					3
Threat on voters	1	1						
1102 not provided	3	3						
Voter card confiscation	1	1						
1103 not posted	3	2	1					
Ballot with no secret stamp	1	1						
Obstruction of counting	1		1					
Total	250	168	43			8	25	6

Plaintiffs	Total	Rejected for formality	Conciliation	Response	Referred to court	Hearing	Pending
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CPP								
	Partiality	1	1					
	Obstructing vote	1		1				
	Violation of code of conduct	1		1				
	Lottery	3	2	1				
	Vote buying	2	2					
	Insult	1	1					
	Counting obstruction	1	1					
	Voting disturbance	3		3				
	Total	13	7	6				

Citizen								
	Disturbing voters	1		1				
	Total	1		1				

(b) Hearings and verifications at the NEC
of
Complaints related to Voting and Counting
(Chapter 8 of the Regulations)

4 August: First hearings session on complaints related to voting and counting

- **Poipet** has been the first case the NEC has organised a hearing session for. A complaint requesting a re-voting in the whole Poipet commune (Banteay Meanchey Province) was lodged by SRP on 1 August, alleging that short noticed changes of Polling Stations locations account for the particularly low turnout, 45.3% to compare with the average 83% nationwide. Poi Pet is the only big commune where SRP is holding the seat of Chief of Commune. They claim that with a higher turnout in a city favourable to them, they could have won an extra seat in the Province. NEC sent the head of the Legal Department to Poi Pet to enquire and report back to the NEC before the hearing. The hearing took place on 4 August 2003; the National Election Committee rejected the complaint for lack of evidence.
- During the hearings session, where Sam Rainsy was present, SRP Senator Ou Bunlong complained that a number of voters in Poipet commune were unable to vote as they could not find the locations of Polling Stations because the relocation of Polling Stations was not publicized, while others didn't find their names on the voter lists, although they had their voter cards.
- It actually appeared throughout the hearings that the relocations of PS (27 in November 2002 and 3 on 25 July 2003) had been agreed between the three main parties and publicized several times through posters and loudspeakers.
- It also appeared that, in addition to the official announcement of relocations, CPP had widely undertaken a campaign of information for their own supporters in order to tell them where they had to vote. One must keep in mind that PS voters' lists in Cambodia are not sorted in alphabetical order but according to the voter number, hence making it difficult for voters to find where they must vote when there are relocations. It is likely that CPP supporters were as a result much better informed of the changes in PS locations than SRP or FUNCINPEC voters.

5 August: Second hearing related to voting and counting

- On 5 August 2003, the NEC examined an appeal against PEC **Siem Reap** lodged by SRP and alleging that the counting in several counting centres had been done too fast, that Party Agents could not follow and that there were discrepancies between results forms. The NEC rejected the appeal on the ground that discrepancies between results forms 1102 (ballot verification form), 1103 (results forms to be posted outside CECs) and 1104 (results of a counting table) were minor and not significant. NEC also noted that these forms, once corrected, all received the agreement and signatures of all political parties' representatives including the Sam Rainsy Party.

7 August: third hearing on voting and counting

- On 7th August, NEC held a hearing session on a case involving the CEC of **Chom Chao** commune (Phnom Penh), where results forms had not been handed to Party Agents and where, contrary to the provisions of Chapter 8 of the Regulations and Procedures (Voting and Counting), the results forms were signed by the members of the Commune Council at the request of the CEC chairman. The NEC confirmed the sanction imposed by the PEC Phnom Penh on the defendant: 5 years ban from being an election official.

Verifications of results forms:

5 August: verification of results forms

- Verification in **Svay Rieng** and **Kampong Thom** Provinces were also requested by SRP due to the fact that there were allegedly discrepancies between results consolidation forms at various levels and also that these were two Provinces where SRP was just 146 and 375 votes away to get an extra seat respectively. During the re-checking session, carried out on 5 Aug, it appeared that some minor mistakes in the reporting of results in 14 communes of Svay Rieng Province.
- As regards kampong Thom Province, the verification was carried out on the same day. SRP was requesting the verification of the results of 26 communes of the Province, but the NEC agreed for only 11 of them because reconciliation had already been done at the PEC level for 15 communes.
- In both Provinces, the differences between forms 1104 (results of a particular counting table within a counting centre) and 1105 (consolidated results of a commune, i.e. addition of all 1104) were minor and the total number of ballots on the different forms remained the same. Afterwards, the SRP made no official request for a recounting of these communes.
- In a public statement, on 7th August, the SRP denied having agreed with the NEC over the conduct and the result of both verifications and claimed they would bring the case further to the Constitutional Council, which they did.

ANNEX Chapter VIII – Post election Period
(a) Preliminary Election Results

Nationwide per party

Political Party	Number of Votes	Percentage
Cambodian People's Party	2,447,259	47.35%
Sam Rainsy Party	1,130,423	21.87%
FUNCINPEC	1,072,213	20.75%
Khmer Democratic Party	95,927	1.86%
Rice Party	76,086	1.47%
Indra Buddha City Party	62,338	1.21%
Norodom Chakrapong Proloeuung Khmer Party	56,010	1.08%
Cambodia Development Party	36,838	0.71%
Khmer Angkor Party	26,385	0.51%
Cambodian Women Party	23,538	0.46%
Khmer Front Party	20,272	0.39%
Khmer Unity Party	18,309	0.35%
Hang Dara Democratic Movement Party	15,671	0.30%
Khmer Soul Party	14,342	0.28%
Cambodian Children's Party	14,018	0.23%
Union of National Solidarity Party	11,676	0.23%
Khmer Help Khmer Party	9,482	0.18%
Farmer's Party	9,449	0.18%
Molinaka and the Khmer Freedom Fighters Party	6,808	0.13%
Party of Free Independent Democratic Cambodia	6,806	0.13%
Cambodia Citizen's Party	6,526	0.13%
Khmer Nationalist Party	4,232	0.08%
Liberal Democratic Party	4,129	0.08%

Seat Allocation (based on preliminary results)

Constituencies	Number of Seats	CPP	FUNCINPEC	SRP
Banteay Meanchey	6	4	4	4
Battambang	8	5	1	2
Kompong Cham	18	8	5	5
Kompong Chhnang	4	3	1	0
Kompong Speu	6	4	1	1
Kompong Thom	6	4	1	1
Kampot	6	3	2	1
Kandal	11	5	3	3
Kep***	1	1	0	0
Koh Kong	1	1	0	0
Kratie	3	2	1	0
Mondulkiri	1	1	0	0
Oddar Meanchey**	1	1	0	0
Pailin***	1	1	0	0
Phnom Penh***	12	4	2	6
Preah Vihear	1	1	0	0
Prey Veng	11	6	3	2
Pursat	4	3	1	0
Ratanakiri	1	1	0	0
Siem Reap	6	4	1	1
Sihanoukville***	1	1	0	0
Stung Treng	1	1	0	0
Svay Rieng	5	4	1	0
Takeo	8	5	2	1
Total	123	76	26	24

** Newly created Constituency

*** Municipalities

(b) FUNCINPEC and SRP Complaints lodged before the Constitutional Council

Kingdom of Cambodia
Nation Religion King

FUNCINPEC

No: 1657

Secretary General of FUNCINPEC

TO:

His Excellency the President of the Constitutional Council

(Unofficial translation of the EU EOM)

Object: Complaint contesting the NEC of bias, incapacity and irresponsibility caused the results oppose the people will.

Re:

- Article 12, 16 and 126 new of the parliamentary election law.
- Article 1 new of the constitutional council
- Article 117 of the constitution
- Press release No 646, dated on 22 July 2003 of the Ministry Interior on the supporting of the recommendation of national and international observers about the prohibiting the chief, deputy chief and members of the villages to be a representative of the party.

As mentioned in the above object and reference I have honor would like to inform your excellency the president of the constitutional council that: Following thoroughly check the complaints and the reports from FUNCINPEC representatives from all provinces / municipals, and actively observe the NEC process I have evidence which can be emphasized that in the third mandate of the parliamentary election 2003 the NEC had partiality, incapacity, irregularity and did not respect its own rule and regulation. The reason is as following:

1. 1. Recruit the PEC officials; CEC officials and PS officials mostly are from CPP activists.
2. CEC officials refuse to receive legally lodge from FUN agents against CPP members. When the complaint is from the CPP against FUN the CEC warmly welcome although they are groundless. We believe that the CEC was willing to hide the mistakes committed by the CPP members and did not respect their own duty as imposed in the procedure and the article 12 of the election law.
3. The NEC had the intention to obstruct the FUN complaints, which has clear legal ground and sufficient evidence by deciding in contradiction with the law and by delaying to provide the 1203 causing expiration of the deadline to lodge the complaint. The decision made during a hearing was usually not related to the object of the complaint. The object of the complaint is intentionally changed to a different one.
4. The NEC has tiny will to sanction the offenders belonging to CPP, but if they belong the FUN, the sanction will be serious.
5. The posting of the voter list and PS location list was not done on time and according the regulations and procedures. The voter lists were in disorder, causing easily the loss of voter rights.
6. The PS relocation and voter list modification were done without respect to the procedures and causing confusion among the FUN supporters and many other people, because some new PS were very far from their residence. They could not go to vote on time.
7. The election administration allowed the village officials, candidates, local authorities, armed forces affiliated to CPP, to make their activities near and around the SP in contradiction to the directive of the Ministry of Interior causing fear to voters in casting freely their will. This caused a trend to vote fro the CPP.
8. In many places, anyone who has the paper numbered 17 provided by the village chiefs and security agents of CPP will be allowed to vote by the SP officials without any verification.
9. SPO in almost all places came from the CPP. The CEC allowed the deputy village chief to be observers. This is in contradiction to the directive No 646 dated 22 July 2003 of the Ministry of

Interior about the recommendation of the national and international observers on prohibition of chief and deputy chief and members of villages to be party agent.

10. The illegal Vietnamese immigrants were allowed to vote.
11. FUN member names were crossed out before they have voted. They were not allowed to vote even their finger were stained with the undeletable ink.
12. The PSO allowed CPP observers to stay near the PS, but refused to FUN agents to stay close.

The commitment of all level of electoral administration was biased in favor of the CPP. This is contrary to the article 12, 16 new of the National Assembly Election Law and the joint directive of the NEC and the Ministry of Interior.

All levels of the NEC administration must be independent, neutral and impartial. Conversely, the electoral officials did not respect the rights of FUN members and refused to comply with the law.

The abusive act, full of incompetence, irresponsibility, effectively provoked the wrong result.

On behalf of the President of the FUN party, I would like to request to the CC to render justice for us and sanction the NEC accordingly.

Phnom Penh, 7 August 2003
FUNCINPEC Secretary General
NORODOM Sereyyth

Copied to:

- *Cabinet of the Royal Palace*
- *Cabinet of Prince Ranariddh*
- *National NGO*
- *IPU*
- *NDI*
- *IRI*
- *CDI*
- *AIPO*
- *IFES*
- *IDEA*
- *NEC*
- *File, chronicles, archives*

KINGDOM OF CAMBODIA
NATION-RELIGION-KING

FUNCINPEC
SECRETARY GENERAL

TO
HIS EXCELLENCY THE PRESIDENT
OF THE CONSTITUTIONAL COUNCIL

(Unofficial translation of the EU EOM)

OBJECT: Complaint against the NEC who has not fulfilled its duty in organizing the elections in compliance with the regulations, procedures, codes of conduct and the electoral law.

REFERENCE:

- Art 16 of the law on the third national assembly election;
- Art 73, chapter 7 on the campaign, of the law on the third national assembly election
- Regulations and procedures of the election, chapter 7 on campaign, 7.10 from 7.10.7 to 7.10.8.13 on vote buying and the code of conduct on bribe and commission, chapter 9, point 1.3.2;
- Directive of NEC No 071558.03 dated 22 July 2003 and the Joint directive of the NEC and the ministry of Interior No 004 dated 27 July 2003, paragraph 4;
- Election law, art 26, paragraph 2;
- Regulations and procedures for the third national assembly election 2003, section 6.3, paragraph 6.30.4.3 and 6.30.4.4 on voter list publication and polling station relocation;
- Election Law, Chapter 8, art 86 on the polling, counting, consolidations;
- Election Law, Chapter 6, art 68 on voter registration and voter list.

According to the above-mentioned object and reference, I would like to inform Your Excellency the President of the Constitutional Council that after the preparation of complaints and report of Funcinpec agents from all over the country, I have proof and evidence that can lead to a conclusion that the NEC has not fulfilled its mission pursuant to the law, regulations, procedure and codes of conduct. 5 particular points should be here after raised:

1. Prior to the campaign and during the electoral campaign until 26 July 2003, lots of CPP members distributed gifts in form of money, material to the people. This constitutes the vote buying and is in contradiction to the art 73 of the law on the third national assembly election law and the regulations and procedure, section 7.10, paragraph 7.10.7 et code of conduct chapter 9 on bribes and commissions, section 1.2 and 1.3.2.
2. The territorial authorities, such as the district governors, the chiefs of communes and the chiefs of village, have appeared in front of the polling station, violating the joint directive of the NEC and the Ministry of Interior. The wandering presence before the polling station caused fear to the voters. Somme of them go to vote with fear that the vote buyers realized for whom they vote. Some others turned back home without voting. Furthermore, they caused fear to their neighbors and discouraged them to go to vote. Some local authorities acted as CPP agents, this is in contradiction to the regulations and procedures of the Ministry of Interior and the NEC.
3. A great number of Voter lists and PS all over the country were in complete disorder:

a-Voter list:

- Name lost from the list,
- Wrong name,
- Name repeated twice,
- Sexes wrongly specified,
- Wrong dates of birth,
- Wrong addresses,
- Some voters with voter cards were not allowed to vote, since someone has voted on their name,
- Some voters registered in one PS found their names in other PS far away from their registration station,

- Some found their name in the PS situated outside their village of residence, and this is in contradiction of the article 46 of the election law.

b-PSO and counting officials:

- The form 1202 were not provided to the party agents,
 - Local authorities were allowed to enter the PS,
 - Voter lists were not posted on time,
 - The complaints (1202) were rejected,
 - The CPP members were given priority to cast their vote,
 - They authorized the Vietnamese people to vote,
 - They did not provide the form 1105 as ordered by the election regulation,
 - According to the art 46 new, 56, 67, 86, 94 and 105, the NEC has provoked disorder during the polling day and was biased in favor of the CPP, in the detriment of the other political parties, in particular the FUNCINPEC party.
4. The relocation of the PS and PS posting did not follow the article 86 of the election procedure and the voters list posting did not inform 24 hours ahead of the polling day, that is in contradiction of the election regulation in article 6.30.4 point 6.30.4.3 and 6.30.4.4 and it causes the voters can not find their name and the PSO did not assist to pursue their name to cause many voters turn back home without voting.
 5. All FUNCINPEC complaints during the campaign, Polling and counting, CEC officials and PEC officials solved only $\frac{1}{4}$. The other $\frac{3}{4}$ that relating to the irregularity the CEC officials and PEC officials did not settle.

In all above five cases emphasized that the NEC did not fulfill its duty follow the election rule and regulation and the code of conduct for the third mandate of representative election. FUNCINPEC would therefore like to require the constitutional council offer the just to people and FUNCINPEC and denounce rejecting the results which held on the 27 July 2003. For all cases as per mentioned above FUNCINPEC would like to ask permission from the constitutional council to bring the representatives and witnesses from each province to word answer.

Best regards,

Phnom Penh 11 August, 2003
General Secretary of FUNCINPEC

Nhek Bun Chhai

Copies to:

- Cabinet of king
- Cabinet of senate president
- Cabinet of Samdach Krom Preah, President of National Assembly
- National non-government organization
- IPU
- NDI
- CDI
- AIPO
- IFES
- IDEA
- NEC
- File

Complaint of Sam Rainsy Party

(Unofficial translation of the EU EOM)

Object: Complaint contesting the preliminary result of the parliamentary election 2003

Re: - art 136 new of the Constitution
- art 114 of the law on amendment of the parliamentary election law;

SRP contests the preliminary result as proclaimed by the NEC on the 8 August 2003, in particular, Phnom Penh, Svay Rieng, Kampong Thom, Banteay Mean Chey, as detailed in the attached annexes by province

The reason of this complaint is found in the attached annexes by province et the evidence and the list of witnesses are also attached to this complaint.

Phnom Penh 10 August, 2003

President
Sam Rainsy

copied:

- *Cabinet of the royal palace*
- *Foreign Embassies*
- *Human Rights organization in Cambodia*
- *National – International media*
- *File*

Phnom Penh (12)

Object:

SRP requests an investigation into the irregularities committed by the NEC in relocating the polling stations and in modifying the number of the receipt certifying the voter registration without prior information.

Reasons

Reason 1:

In almost all PS in Phnom Penh, voters (the majority are registered in 2003), did not find their name at the polling stations (following the number indicated on the registration receipt) as their name have been changed to other PS. In other cases, both the number of the PS and that of the receipt were changed. (Evidence attached)

Reason 2:

The NEC refused to sell the preliminary voter lists to the SRP as requested, this constitutes a violation of the parliamentary election law (article 63) and as the result, the SRP was not informed about the modification of the number of polling stations and the registration receipt. (Evidence attached)

Phnom Penh 10 August, 2003
Designated plaintiff

Mao Yourann
(012) 857 551

Svay Rieng 20

Object:

Recounting of all valid ballots for each political parties and invalid ballots in 15 communes of Svay Rieng Province: Thnot commune 022, Kampong Chork commune 025, Sambath Mean Chey commune 046, Trapaing Sdao commune 047, Popet commune 074, Svay Rieng commune 066, Matess Thngok commune 005, Nhor commune 012, Prasot commune 076, Prey Ta Ei commune 075, Chrok Matess commune 070, Svay Yea commune 064, Thmei commune 021, Ang commune 161, Daung commune 039.

Reasons:

Reason 1:

After receiving the form 1105, SRP found some discrepancies in number when checking on that form. SRP filed a complaint to NEC, requesting a recheck of the number on 1105 and that on 1104. At 7.30 am of August 5, 2003. NEC authorized SRP agent and NEC's commission to recheck the concerned communes. During the recheck, SRP found many discrepancies which affected the results of the counting:

1	Thnot Commune	022	Khmer Angkor Party No 7 did not receive any figure in 1105
2	Kampong Chork	025	Khmer Angkor Party No 7 has 7 votes on 1104, 5 votes on 1108 and 9 votes on 1105
3	Sambath Mean Chey Commune	046	Khmer Democratic Party No 1 did not receive any figures. No 12 no party's name and figures. Total valid ballots in 1105 is 3037 with 46 extra votes.
4	Tropaing Sdao commune	047	in group 1, Molinakar party No 2: 3 votes in 1104, 3 votes, in 1108, 3 votes marked but 15 votes were written, in 1109: 15 votes. In group 2, Khmer Angkor Party No 7: 24 votes in 1105, 29 votes in 1104.
5	Popet Commune	074	-COMFREL noted that the CPP received 1307 votes but on 1105, they had 1312 votes. - In group 1: 1400 votes should be marked on the 1104, but in the same form 1104 they filled with 999 votes. - National Solidarity Party No 1: 22 votes on 1105 and 21 votes on 1104.
6	Svay Rieng Commune	066	-Group 5: two copies of 1108, one in group 4 and one in group 5 - Group 4: they have 1104 but not 1108, they have 1108 of group 5, having seen this, election official has found 1108 (from nowhere) of group 4 for changed. why were there two copies of 1208 and 1208 of group 4 were out of the package. NEC Procedure: there must be only one copy of 1208 and of the table to mark the score in each group. - Khmer Soul Party No 10: 20 votes in 1105, 4 votes in 1104.
7	Matess Thngok Commune	005	Iddra Buddha City Party No 13, has 1105 form nine votes and 1104 nineteen votes. - There are 1154 voters but there are 1155 ballot papers in the ballot box.
8	Nhor Commune	012	-Khmer Soul Party No 10. Has 1104 form four votes and 1108 three votes and 1105 seven votes. - Iddra Buddha City Party No 13, has 1105 form four votes and 1104 forty votes.
9	Prasot Commune	076	-Group 1: No figure filled on 1104 - Hang Dara Democratic Movement Party No 9: two votes on 1108, one vote on 1109 and three votes on 1105. - Iddra Buddha City Party: 43 votes in 1105, 43 votes in 1103 but rectified to 49 votes and 49 votes in 1104.
10	Prey Ta Ei Commune	077	Khmer Front Party No 6: 3 votes in 1105, 7 votes in 1104 and 7 votes in 1109.
11	Chrok Matess Commune	070	Khmer Citizen Party No 12: No figures filled by group two - Parties No 9, 10, 14: No figures filled in 1104 of group 4 - Party No 6: 38 votes in 1105 and 35 votes in 1104.
12	Svay Yea	064	-Group 2: - Party No 9: 1104=2, 1108= 1, 1109=1 - Party No 11: 1104= 1, 1108=12, 1109=12 - Party No 12: 1104=8, 1108=1, 1109=1

			- Party No 17: 1104= 622, 1108=622,1109=620 rectified to 622. -Invalid ballots: 1104=6, 1108=16, 1109=16 -Group 3: -Party No9: 1104=2, 1108=2, 1109=12 rectified to two -Group 4: - Party No 11: 1104=14, 1108=14,1109=12 rectified 14. -Party No 19: 1104=0, 1108=13, 1109=13 -1105=7050, 1104=4838 only.
13	Thmei Commune	021	-Group 1 -CPP No17: 1104 No figures, 1108 =495, 1109=495 -Party No 11: 1105 no figures, 1104=17 -Part 2 of 1105 was not filled
14	Svay Angkor Commune	061	1105 given to party agent was not filled with figures at all

Concerning the irregularity SRP had requested to control the ballot papers but NEC official rejected our requests.

Allegation

In case that NEC did not allow SRP to check the ballots with all parties, we can conclude that the NEC has defrauded the ballot papers from the small parties add to the big parties that cause SRP loses its seats. In evidence there has some discrepancy figures in 1105 and 1108 as per mentioned above.

Reason 2:

The total ballots in the ballot boxes for Svay Rieng is 236.707, and SRP only 146 ballots (0.06%) to receive one more seat. According the new article 16 of the parliamentary electoral law,"....."

Power, duty and responsibility and planning, managing and the monitoring the election as following:

1. Take all form of measure to ensure Free, Fair election according to secret election.

Referring to the above irregularities, pursuant to the election law, the principle of a free and fair election and the communal election law previously implemented, if there has only 0.5% different gap the NEC must recheck the valid ballots of each party and the invalid ballots of each commune, which is irregular or the irregular figures before the party agents and national and international observers.

Reason 3:

In many communes the form 1103 was not immediately posted and form 1105 immediately handed to political party agents in conformity of the regulation and procedure (8.18.8.1 and 8.18.9). Those communes are : Prasot Commune 076, Pre Ta Ei Commune 075, Svay Rumpea Commune 080, Romaing Thkol commune 077, Monorum Commune 073, Chrok Matess Commune 070, Chan Trey Commune 037, Po Reach Commune 060, Am Pil Commune 033, Don Sor Commune 056, Dong Commune 039, Angdong Trabek Commune 035, Kampong Trach Commune 040, Sam Bour Commune 045, Ang Dongpo Commune 034, Sambath Meanchey Commune 046, Tros Commune 048, Kor Ky Commune 041, Tra Paing Sdao Commune 047, Kra Saing Commune 042. The witnesses are political party agents and observers.

In other communes, party agents received form 1105 after 28 July 2003, in opposition to the rule and regulation of the NEC at 8.18.9. Those communes are Nhor commune 012, Svay Tayean commune 019, Kampong Chork commune 025, Chrok Matess commune 070, Popet commune 074, Sambath Meam Chey commune 046, Bavith commune 002, Chan Trea Commune 003, Sam lei commune 017, Thmei Commune 021, Thnout commune 022, Prey Ta Ei commune 075, Matess Thngok commune 005, Prasot Commune 076, Ang Prosre commune 036, Banteay Kranh commune 016, Koy Trabek Commune 068. Witnesses are political party agents and observers.

Reason 4:

The preliminary results proclaimed officially by NEC on 8 August 2003, are different from those declared by PEC Svay Rieng and from those recorded on 1105 received by party agents evidence is here enclosed.

Reason 5:

CEC of Dong Commune (039) issued the form 1105 twice on different day with different figures, one on the 28 and another on 29 August 2003. For this late issue of 1105, the NEC argued that the procedure did not determine the duration within which the form 1105 must be given to political parties. Pursuant to 8.18.9 of the regulation, "CEC shall copy correctly the figures of the consolidation of the election in the commune (1103) in sufficient copies to be handed to each political party agent and observer." Pursuant to 18.18.8.1, "immediately post the report on results consolidation in the commune (1103), one copy in front of the counting center of the CEC....."

In reference to the above two points, NEC can not argue that there is no limited time for 1105 to be copied from 1103 which must be immediately posted. To be immediately publicized, are the figures of 1103 which must be imperatively checked and correctly copied to 1105 also at that time, i.e before the transport of the ballot boxes to the respective PEC. The issue of 1105 is imposed to ensure transparency, mutual confidence among NEC official, political party agents and observers. Evidence in Svay Rieng and Siem Reap attached.

Phnom Penh 10 August 2003
Designated plaintiff

OU Bunlong
011 902 9015

Kampong Thom (06)

Object:

Recounting in 39 commune: Phan Nhem 041, Kol 047, Sandann 057, Chreab 061, Dong 039, Sakream 042, Prasat 066, Sochitr 058, Achaleak 036, Banteay Stong 069, Ngon 056, North Kampong Chin 072, South Kampong Chin 073, Korky Thom 010, Chroneang 006, Chong Dong 008, Balang 002, Salavisai 043, Tipo 068, Taing Krasaing 067, Treal 018, Chhuk Khsach 007, Cheng Deng 005, Chamnar Leu 071, Pralai 077, Trea 081, Sam Proch 080, San Kor 025, Trapaing Russei 027, Kampong Svay 022, Svay Phleng 016, Kampong Thom 029, Kdei Dong 032, Kra Yea 042, Moul Krel 045, Chamnar Krom 070, Preah Damrei 078, Baksna 001, Kor Koh 063.

Reason 1:

SRP lodged 13 complaints (form 1203) with NEC in appeal against the PEC Kampong Thom decision rejecting SRP complaint related to irregularity, which affect the results of 30 communes. At the NEC this complaint receive the entry code No 00224.

In the NEC invitation (here enclosed), NEC authorized the checking only for 11 communes without précising which commune and why the other 19 communes will not be checked. This groundless decision is a grave mistake, which affect the results of the counting. Furthermore, according to the note of the NEC controlling group, only two commune (080, 057) correspond to the complaint of SRP at Kampong Thom Province. Please find the 13 decision of Kampong Thom PEC and note of the controlling group of the NEC.

Reason 2:

When checking the result, the NEC controlling group made a note, which is contrary to reality. In fact, 11 communes have been checked but the controlling group has recorded only 8 communes. The other three communes have not been marked. This is another serious mistake committed by the NEC. Please find the attached note of the controlling group.

Reason 3:

The three communes, which were not recorded by the NEC controllers, are Bak Sna commune (001), Sandan commune (057) and Kakoh commune (063). In reference to the note made by the SRP agents who assisted in the control process, the 1104 of Bak Sna commune was altered and corrected in several parts of the form. In form 1104 of Sandan commune (057), the figures of 8 parties were rounded off and the figures of the used ballots were also rectified. In form 1104 of Kakoh (063) of the Counting group I, there was the rectification of figure of the party No 17 from 187 to 487, whereas the 1104 of Group II, there were also rectifications of the figure of parties No 1, 7 and 23. Please find the attached evidence.

Reason 4:

In the note of the NEC controller (here attached), point 7 (Preah Damrei commune 078), it is marked "many figures on 1104 were rectified but the figures on 1108 were correct" But according to the mark of SRP agents who were participated to check in the NEC have seen that the note of (1104) of the first group of Dam Rei commune was rectified and make the totally new figures with very ugly

rewrite, i.e to rectify for many time in ambition to rectify the figures. Though the figure on 1104 is the same to the figures on 1108 but on 1108 has also many rectified point on it. (Evidence is all the participator).

Reason 5:

As in the SRP appeal to NEC concerned 30 communes and among the 11 communes that the NEC authorize to check, there are 9 communes that still have problem. The total communes whose results need to be recounted are 39.

Reason 6:

According to the decision of Kampong Thom PEC (PEC 06) on 1 August 2003, relating to the complaints of SRP No 00014, 00015, 00018 and 00019 (Requesting to check and recount the ballot papers for the communes with code number 041, 047, 057, and 061), Kampong Thom PEC has "simply" recounted two communes 039, 042 for a test. The evidence is enclosed.

Reason 7:

Concerning to commune 039, SRP has lodged a complaint No 23 dated 30 July 2003 contesting the 63 extra ballots compared to the number of total ballots received and requesting a recount of all valid ballots in the communes. But on 31 July 2003 Kampong PEC counted the invalid ballots in complete contradiction to what has been asked, i.e. the recount of all ballots. Please find the attached report of Kampong Thom PEC on recount of spoiled ballots in CEC 039.

Reason 8:

According to 1203 of PEC Kampong Thom (1 August 2003) corresponding to the SRP complaints No 00016, 00035 (30 July 2003) to check and recount the ballots in Communes 039 and 042, PEC Kampong Thom did not solve the raised problems in CEC 039 (only the recount of spoiled ballots), and increase 4 votes for SRP, one vote for Party FUN, and reduce one vote from CPP. According to the report relating to problem in commune 042, SRP received 5 more votes, FUN one more vote and CPP lose 4 votes. Evidence is here enclosed.

Reason 9:

To the SRP complaints number 00020, 00022, 00024, 00029, 00030, 00031, 00032, 00034 (30 July 2003) contesting the serious discrepancy our total ballots, PEC Kampong Thom issued 8 different 1203, without mentioning the number of the used ballots and the different between the number of voters and the number of the total of the ballots in the boxes. PEC simply rejected our complaints without any motivation. Evidence here is enclosed.

Reason 10:

The 1203 of PEC Kampong Thom (1 August 2003) recognized the election result in which there are a difference of 1002 votes for the CPP if compared the record made by SRP agents at CEC 010 and the number recorded by PEC 06. This is not acceptable. Evidence here is enclosed

Reason 11:

The 1202 of PEC Kampong Thom (1 August 2003) rejected a recount in 19 communes under a pretext that in two communes 039, 042 among the 19 communes, no irregularities were found. It shows the irresponsible stance of the PEC, furthermore, the two communes 039, 042 that PEC mentioned that it did not have irregularity but actually these two communes also have irregularities.

Phnom Penh 10 August 2003
Designated Plaintiff

La Daravuth
012 685 171

Banteay Mean Chey No 1

Object: Recount in all PS in Poipet communes

Reason 1:

In BMC, there are 307.811 registered, only 228 440 turnout to vote (74%).
- In Poipet commune registered 40561 and the turnout 18695 (46%). According to criteria Of a Free and Fair election:
- All voters have equal rights to enter the polling station to use their voter rights.
- All voters have equal possibility to use their rights.

- Everyone who is not authorized to vote has the rights to make a complaint to the competent authority so that the wrong decision can be quickly and efficiently corrected.
- There is no one having the rights to vote who is banned to vote or has his/her name deleted from the registration unless it is in compliance with the law, the expression of the state obligation toward the international law.

In reference to the above principle, the election in which voters who are willing to vote but can not find the polling station or are rejected by the election officials and less than 50% of registered voters could vote, can not be considered by the international media as Free and Fair election unless the competent authority rectify the errors committed timely and efficiently.

Reason 2: The authority had sold a school sheltering 27 PS and relocated them. During the polling a huge amount of voters could not find their PS at the old place since there is no indication of the new place and there is no local authority or CEC agents to provide them information. Evidence is here enclosed.

Reason 3: Some polling stations are farther than 5 Km as determined by the NEC regulation, for example: 10Km, 12Km (Evidence: the copies of voters list)

Reason 4: Some villages name found in the Poipet voters list do not exist in reality. They are recognized by the ministry of interior. (Evidence: the copies of voters list)

Reason 5: Some voters could not vote even though they have their voter card 2002 and the ID certificate with photo and their name are found in 20003-voter list. The authority did not provide any reason for their refuse. Evidence 4 voters enclosed.

Reason 6: 554 voters request the re-voting. Evidence list of the thumb print

Reason 7: The solution of CEC and PEC did not abide by the NEC regulation and procedure. CEC transfer to PEC. PEC refuses to settle considering the competence on voter list belongs to the NEC. Evidence: the enclosed 1203

Reason 8: NEC rejected all the SRP complaints requesting the re-vote in all Poipet communes and valid date the results checked by PEC BMC. Evidence noted of NEC hearing.

Reason 9: Competent authority refused to provide the form 1018 certifying the vote identity. Some people were not allowed to vote this form must be given to the interested person after the registration and the photo taking session. Evidence: form 1008: 819 copies collected by SRP at commune headquarter Poipet

Reason 10: SRP requested the copies of preliminary voters list by paying the fee of reproduction of the NEC. But NEC rejected violating then the article 63 of the election law. Evidence: communicate to NEC and SRP

Phnom Penh 10 August 2003
Designated plaintiff

OU Bunlong.

(c) Decisions of the Constitutional Council

Kingdom of Cambodia
Nation Religion King

Constitutional Council *(Unofficial translation of the EU EOM)*

File No:
070/ 014/ 2003
Date: 08 August 2003

Decision
No: 055/006/2003
Date: 25 August 2003

Constitutional Council

- Having seen the **constitution** of Cambodia
- Having seen the royal decree No 0498/06 dated on 08 April 1998 promulgating the law of preparing and acting the constitutional council
- Having seen the royal decree No 1297/06 dated on 26 December 1997 promulgating parliamentary election law
- Having seen the royal decree 0902/017 date on 17 September 2002 promulgating the law of amendment of the parliamentary election law
- Having seen the letter No 682 dated on 06 August 2003 of Samdach Krompreah Norodom Ranariddh, chairman of FUNCINPEC delegated to Secretary General, Sdach Krom Khun Norodom Sereivuth, to be representative in the complaint against NEC, complaint No 657 dated on 07 August 2003
- Having seen the complaint of Sdach Krom Khun Norodom Sereivuth, Secretary General dated on 07 August 2003 complain against the NEC of partiality, incapability, neglect and irresponsibility caused the election results oppose to the people will, which the Constitutional Council received on 08 August 2003 at 11h.30
- Having seen the letter of FUNCINPEC No 667 dated on 11 August 2003 appointing Mr. Sun Arun as chairman of the party's law offices and Mr. Mei Chan Veasna as administrative chairman of the party's law department to lodge a complaint and keep in touch with the Constitutional Council
- Having seen the interrogative report to add on the complaint of FUNCINPEC on 15 August 2003
- Having seen the interrogative report from NEC on 15 August 2003
- Having seen the mandate No 678 dated on 20 August 2003 of Secretary General, Sdach Krom Khun Norodom Sereivuth requested 6 lawyers as representative in the hearing of Constitutional Council.
- Having seen letter No 08.1686/03 NEC, dated on 20 August 2003 of NEC chairman, Im Suosdey organized its representative to attend the hearing of Constitutional Council and the letter on adding 3 members of NEC to participate the hearing of Constitutional Council, No 08.1690/03 NEC dated on 22 August 2003 of HE. Im Suosdey, chairman of NEC

Having listened to the report of the members

Having listened to the answer of the both sides

Having correctly debated

- Given that Sdach Krom Khun Norodom Sereivuth, Secretary General of FUNCINPEC lodged a complaint No 657 dated on 07 August 2003 to Constitutional Council. According to the article 136 new of constitution and article 25 of royal decree No 0498/06 dated on 08 April 1998 about the acting of the constitutional council the complaint can be formally receivable
- Given that the complaint had been lodged in 72 prior after the preliminary results were announced by NEC
- Given that FUNCINPEC filed a complaint against NEC, which it (FUNCINPEC) deemed that it was partial, incapable, negligent, and irresponsible caused the electoral results oppose to the people will. This complaint requested to take legal measure against the NEC
- Given that Mr. Sun Arun, firstly answered he is not the plaintiff representative but he is the lawyer of the plaintiff with other 5 lawyers. After HE. Chief of Constitutional Council asked if the plaintiff comes. At the mean time Mr. Sun Arun responded I was a representative of

the plaintiff then HE. Chief of Constitutional Council allowed him to speak on behalf of the plaintiff. Then Mr. Sun Arun complained to the Constitutional Council about the NEC of partiality, incapability, negligence and irresponsibility caused the results opposed the people's will.

- Given that Mr. Mean SoTi, the NEC representative answered before the constitutional council that the NEC had organized the election in accordance with the parliamentary election law and its regulation and procedures.
- Given that HE. Chief of Constitutional Council asked Mr. Sun Arun whether he has witnesses or not. At that time, Mr. Sun Arun said he had 176 witnesses but only 99 witnesses were present. Then HE. Chief of Constitutional Council asked Mr. Sun Arun to bring in one of the witnesses from any provinces to explain any cases related to the bias of the NEC. Instead Mr. Sun Arun asked for the letter of appointment of the NEC's lawyer. At that time, HE. Bin Chhin asked NEC's representative of defendant to show their witnesses but Mr. Mean Soti said he had no witness, he has only documentation and NEC officials of all level.
- Given that Mr. Sun Arun raised up his hand and asked HE. Bin Chhin about the regulation of the constitutional council. HE. Bin Chhin told that the constitutional council already had it.
- Given that Mr. Sun Arun alleged the constitutional council of hiding the regulation not to give to the plaintiff. HE. Bin Chhin told Mr. Sun Arun that the regulation has been produced and published since 1998. Meanwhile, one of the lawyers raised his hand and said no one is the chairman among the six of us.
- Given that at the same time all the six lawyers as representative of the plaintiff leaving the hearing room at 8.32 am
- Given that after a while the chairman proceeded with the regulation requesting the member of constitutional council questioned the plaintiff and defendant. HE. Prak Sok asked the secretary to read the interrogation report of Mr. Sun Arun at page 4 on 15 August 2003. The secretary read that Mr. Sun Arun did not complain about the electoral results but he complained about the partiality of the NEC in both such as behavior and their duty.
- Given that though the lawyers, representative of the plaintiff, withdraw themselves from the hearing but the constitutional council has sufficient validity to carry on the hearing.
- Given that the complaint is not lodged against the electoral results but it totally complained about the behavior of NEC
- Given that the article 126 new-clause 3 and article 15 new of royal decree No 0902/017 dated 17 September 2002 promulgating the law amending the election law do not provide that the punishment against the NEC is under the jurisdiction of the constitutional council.
- Given that no provision of any law give competence to the constitutional council to solve and take legal action against NEC on the complaints of any parties, which complain against the behaviors or activities of the NEC. Constitutional council therefore, cannot respond the request of FUNCINPEC at all.

Decision Before the both sides

Article 1 : The constitutional council receives the complaint No 657 date on 07 August 2003 of Sdach Krom Khun Norodom Sereivuth, general secretary of FUNCINPEC is in the correct form in accordance with regulation, but rejects because the complaint is not under the constitutional council jurisdiction.

Article 2: The decision is announced in public hearing in Phnom Penh on 25 August 2003 as a final decision is applicable to all power enshrined in the constitution and is published in the official gazette.

Phnom Penh 25 August 2003
Constitutional Council and Hearing Council
Chairman

Bin Chhin

Kingdom of Cambodia
Nation Religion King

Constitutional Council
(Unofficial translation of the EU EOM)

File No:
072/ 016/ 2003
Date: 11 August 2003

Decision
No: 056/007/2003
Date: 26 August 2003

Constitutional Council

- Having seen the **constitution** of Cambodia
- Having seen the royal decree No 0498/06 dated on 08 April 1998 promulgating the law of preparing and acting the constitutional council
- Having seen the royal decree No 1297/06 dated on 26 December 1997 promulgating parliamentary election law
- Having seen the royal decree 0902/017 date on 17 September 2002 promulgating the law on the amendment law on the election of the national assembly.
- Having seen the letter No 681 dated on 06 August 2003 of Samdach Krompreah Norodom Ranariddh, chairman of FUNCINPEC delegated to Deputy Secretary General, **Nhek Bunchhai**, to be representative in the complaint against NEC, complaint No 665 dated on 11 August 2003
- Having seen the complaint of **Nhek Bunchhai**, Deputy Secretary General No: 665 dated on 11 August 2003 complained against the NEC of not fulfilling their duty for the parliamentary election in accordance with the regulation and procedure, code of conduct and election law, which the Constitutional Council received on 11 August 2003 at 08h35
- Having seen the letter of FUNCINPEC No 667 dated on 11 August 2003 appointing Mr. Sun Arun as chairman of the party's law offices and Mr. Mei Chan Veasna as administrative chairman of the party's law department to lodge a complaint and keep in touch with the Constitutional Council
- Having seen the interrogative report to add on the complaint of FUNCINPEC on 15 August 2003
- Having seen the interrogative report from NEC on 15 August 2003
- Having seen the mandate No 679 dated on 20 August 2003 of Deputy Secretary General, HE. **Nhek Bunchhai** requested 6 lawyers as representative in the hearing of Constitutional Council
- Having seen letter No 08.1686/03 NEC, dated on 20 August 2003 of NEC chairman, Im Suosdey organized its representative to attend the hearing of Constitutional Council and the letter on adding 3 members of NEC to participate the hearing of Constitutional Council, No 08.1690/03 NEC dated on 22 August 2003 of **HE. Im Suosdey**, chairman of NEC

Having listened to the report of the members
Having listened to the answer of the defendant
Having correctly legal debated

- Given that **HE Nhek Bunchhai**, Deputy Secretary General of FUNCINPEC lodged a complaint to Constitutional Council. According to the article 136 new of constitution and article 25 of royal decree No 0498/06 dated on 08 April 1998 promulgating the law of preparing and acting of the constitutional council, the complaint can be formally receivable
- Given that the complaint had been lodged in 72 prior after the preliminary results were announced by NEC
- Given that FUNCINPEC filed a complaint against NEC of not fulfilling their duty in accordance with the regulation and procedure, code of conduct and election law, there are 5 points in order which could be considered
- Given that during the pre-campaign period there is no any law to restrain any political parties from gift giving to people. During the campaign period until 26 July 2003 appearing the case of gift giving for vote buying but some of these cases had been resolved by parties and electoral committee in all level and others had no sufficient evidence for accusation. In this hearing did not see the referent evidences about these cases

- Given that the present of the local authorities as provincial governor, commune chief and village chief within some accusation places, where had been accused of violating the joint directives of the Ministry of Interior and the NEC were resolved already in places by political parties and electoral committee in all level
- Given that the voter list in some polling stations are un-intentional fault and computer technical problem but the heavy irregularity haven't taken place at all in over the country
- Given that the accusation of relocation and posting the location of the polling stations were not complied with the article 86 of the election law, and the posting of the voter lists were not 24 hours before the polling day are the complaints without enough sources (evidences), except some little cases- which had been agreed by the parties particularly the three main parties-as relocation some polling stations a head of the polling day to the nearest place to comply with the law and according to the real situation and flood areas as the god-act. In fact, in some case for who did not go to check their name before the polling day but they still can vote. These cases did not produce heavy irregularities and affect on the results.
- Given that FUNCINPEC claimed the complaints of this party was only $\frac{1}{4}$ that PEC and CEC officials coped but the other $\frac{3}{4}$ was not. All the complaints of FUNCINPEC have already solved as mentioned above in some places there is a very little irregularity but it has legally sufficient reason and the real situation and it would not be affected on the electoral results. For all these matters the resolution of the NEC in the hearing certified that: some complaints were finished at CEC and PEC and some little complaints they lodged to the NEC and the NEC has also finished the settlement. For the $\frac{3}{4}$ complaints that FUNCINPEC claimed that was not solved did not have enough evidence to certify at all.

Decision
Before the defendant but behind the plaintiff

Article 1 : Reject the complaint of **HE. Nhek Bunchhai** No: 665 dated on 11 August 2003, which complained against the NEC of not fulfilling their duty in accordance with the regulation and procedure, code of conduct and election law.

Article 2: Reject the complaint of **HE. Nhek Bunchhai**, which requested the constitutional council to refuse the results of the parliamentary election, held on 27 July 2003.

Article 3: The decision is announced in public hearing in Phnom Penh on 26 August 2003 as a final decision is applicable to all power enshrined in the constitution and is published in the official gazette.

Phnom Penh 26 August 2003
Constitutional Council and Hearing Council
Chairman
Bin Chhin

Kingdom of Cambodia
Nation Religion King

Constitutional Council
(Unofficial translation of the EU EOM)

File No:
071/ 015/ 2003
Date: 10 August 2003

Decision
No: 057/008/2003
Date: 27 August 2003

Constitutional Council

- Having seen the **constitution** of Cambodia
- Having seen the royal decree No 0498/06 dated on 08 April 1998 promulgating the law of preparing and conducting of the constitutional council
- Having seen the royal decree No 1297/06 dated on 26 December 1997 promulgating parliamentary election law
- Having seen the royal decree 0902/017 date on 17 September 2002 promulgating the law of amendment of the parliamentary election law
- Having seen the letter without number dated on 10 August 2003 of **HE. Sam Rainsy, chairman of Sam Rainsy Party** complained against the preliminary results of the parliamentary election 2003
- Having seen the letter without number date on 10 August 2003 of **HE. Sam Rainsy, chairman of Sam Rainsy Party** delegated **HE. Ou Bun Long , chairman of election committee of Sam Rainsy Party** to lodge a complain to constitutional council against the preliminary results of the parliamentary election, which announced by NEC on 08 August 2003
- Having seen the interrogation report of the two group members of constitutional council dated on 13 August 2003, which questioned **HE. Tep Nitha, Secretary General of NEC** to certify on the complaint letter without number of **Sam Rainsy Party** dated on 10 August 2003
- Having seen the interrogative report dated on 13 August 2003 at 15h30 of the two group members of constitutional council, which questioned **Mr. Lun Chhengkai, Phnom Penh election committee chairman** to certify on the complaint without number of **Sam Rainsy Party** dated on 10 August 2003
- Having seen the interrogative report on 15 August 2003 at 08h00 of the two group members of constitutional council, which questioned **HE. Tep Nitha** to certify on the complaint without number dated on 10 August 2003
- Having seen the interrogation report dated on 15 August 2003 at 15h30 of the two group members of constitutional council to question **HE. Ou Bun Long, chairman of election committee of Sam Rainsy Party** to certify on the complaint without number of **Sam Rainsy Party** dated on 10 August 2003
- Having seen letter No 08.1686/03 NEC, dated on 20 August 2003 of **NEC chairman, Im Suosdey** organized its representative to response in the constitutional council hearing of the complaints related to the parliamentary election 2003
- Having seen the letter No 08.1690/03 NEC dated on 22 August 2003 of **NEC chairman, Im Suosdey** about adding 3 NEC members to response in the constitutional council hearing of the complaint related to the parliamentary election 2003

Having listened to the report of the member
Having listened to the answer of the both parties
Having listened to the both witnesses
Having correctly legally debated

- Given that the complaint without number dated on 10 August 2003 of **HE. Sam Rainsy, chairman of Sam Rainsy Party** was the direct complaint during 72 hours after NEC announced the preliminary results of the parliamentary election, while the constitutional council received on 10 August 2003 at 10h30 is formally receivable in accordance with the rule and regulation

- Given that the registration in 2003 was registered at the commune/sangkat stations different from the previous election, which registered at the polling stations over the country
- Given that firstly, registration some CEC members registered more than 700 voters that the election had limited for each polling. After the NEC **presented** there had some alternation by sending the extra voters to the new nearest polling station and it was the reason to change the polling code number and the receipt number
- Given that the request of the voter list that have not updated and were not provided by NEC not relating to the article 63 new of the royal decree No 0902/017 dated on 17 September 2002 promulgating the law on amendment on the parliamentary election law at all.

Svay Rieng Case (20)

- Given that after **Sam Rainsy Party** received the form 1105 to check the figures and there had different with the total figures, it complained to NEC to request to recheck on the form 1105 with form 1104 for 14 communes in Svay Rieng
- Given that NEC agreed with the monitors to recheck all 14 communes complied with the compliant of SRP attending by 14 persons of party agents and observers
- Given that the CEC officials were careless for quoting the figures in the form 1105 without rechecking properly with the form 1103 it made confusing the figures with the small parties, but the confusion did not affect on the electoral results at all
- Given that SRP lost 146 votes equal 0.06% to receive one seat and required to recount and recheck was not logical
- Given that the election law did not write to recount and recheck by comparing the percentage that the parties received
- Given that the preliminary results that announced by CEC was different to the figures in the form 1105 with the preliminary results that announced by the NEC it was the lack of the CEC in quoting the figures from the form 1105 but the form 1103 was not different. The difference had rectified after the NEC monitors found these lacks
- Given that the CEC of Dong commune (039) issued twice of the form 1105 and the figures was different it was also the lack of the CEC but the special reason the form 1105 was rectified and rechecked already. For the form 1103 was correct
- Given that each form 1104 (total report of the CEC results) seen that the counting groups from the party agents included SRP in all 15 communes have signed on the form 1104, except five counting groups as:
 - Prosot Commune there are 3 counting groups, group 1 and group 3 signed included SRP representative, except group 2 did not have signature of SRP but it did not have any complaint
 - Dong Commune there are 4 counting groups, group 1, 2, 3 have signed except group 4 did not have SRP signature
 - Chrok Matess there are 4 counting groups, group 2,3,4 have signed included SRP, except group 1 did not have any party agent signatures
 - Nhor commune there are 3 counting groups, group 1,3 signed included SRP representative but group 2 no signature
 - Trapaing Sdao commune there are 2 counting groups, In fact, the representative of SRP did not sign on the form 1104 but they signed on the form 1103
- Given that on the form 1108 in all 15 communes that SRP requested to recount but it had the signatures from party agents included SRP, except in some as:
 - Prosot commune group 2 had no SRP signature
 - Dong commune group 2,3 had no SRP signature, but it did not have any complaints, but on the form 1109 and 1103 had SRP signature
 - Chrok Matess commune, group 1 SRP did not sign on 1104 but they signed in 1103
- Given that on the form 1103 in all 15 communes that SRP requested to recount but it had signatures from party agents included SRP, except Prosot commune (076) that had no SRP signature but it did not have any complaints as well
- Given that on the form 1109 in all 15 communes that SRP requested to recount found that:
 - Prosot commune (076) had no SRP signature
 - Kampong Chork commune (025) had no SRP signature but in the form 1108 had SRP signature and in the form 1103 there are 3 signatures from SRP
 - Thmei commune (021) no signature of any party agents but in the form 1108 had SRP signature
 - Trapaing Sdao no signature of SRP but in 1103 and 1108 it had SRP signature
- Given that the form 1103 in all 15 communes that SRP requested to recount it all had SRP signature, except only one Prosot commune (076). And some lack of the quotation of the figures in the form 1105 it was not affected to the electoral results.

- Given that all 15 communes that SRP requested to recount it all signed and accepted by SRP as in the form 1108, 1109, 1104 and some in 1103. Therefore the requesting to recount by SRP it was not necessary.

Kampong Thom Cases (06)

- Given that there were 23 complaints that SRP lodged a complaint to PEC for recounting but after recounting and rechecking such as in Dong commune (039), (042), (011), (010), (013), (006),(065) it had no irregularities
- Given that there were 26 communes that SRP filed a complaint to NEC for rechecking and the NEC decided to recheck 11 communes such as (016), (029), (032), (040), (045), (070), (078), (080), (001), (057), (063) there had no irregularities and in the form (1108), (1104), (1109), (1103) and (1105) were properly check and at that time when recheck also had SRP to attend and other organizations.
- Given that Mr. Mao Phearith, representative of SRP requested to recount for 6 communes such as: (041), (039), (047), (057), (061), (042) but the PEC asked him to choose the two which he thought it had heavy irregularities then he agreed to do that but after recounting and rechecking it had no irregularities that affected on the electoral results at all
- Given that the extra ballots 63 caused by the confusion of the quotation in the form 1105 that the invalid ballots is 18 but written 81 ($81-18=63$) it was the lack of the CEC
- Given that in the form 1104 had the signatures from the parties included SRP, except some counting groups without SRP signature as: group 1, group 2, and group 4
- Given that in the form 1108 that NEC monitors rechecked for 11 communes among 26 communes that requested to recheck by SRP it had SRP signature, except the counting group 3, Chamnar Krom commune (070) four counting groups that had no SRP signature but in all of these communes in the form 1109 had SRP signature
- Given that on the form 1103 for 39 communes SRP signed for 38 communes, except (070) there are four counting groups but the counting group 3 had no SRP signature but it had on the form 1109
- Given that in the form 1109 that the NEC monitors rechecked 11 communes among the 26 communes had signatures from the parties and included SRP
- Given that the form 1103 is the important form to be the base for rechecking and the total of the electoral results for the PEC had the signatures from the parties and included SRP, except (073) but SRP signed in the form 1104. Therefore, the request for recounting was not necessary.

Banteay Mean Chey Cases (01)

- Given that only 46% of voters went to vote, we acknowledge was low turnout if compared to 74% turnout in the province, but in the election law did not mention that how many percent of voters can be acceptable and how many percent of voters can not be acceptable, because the people have their right assured by law it was not an obligation. This point was mentioned in clause 2, article 34 new of the constitution
- Given that 27 polling station have been relocated to the other place since 2002, it had sufficient time to inform the people and also perfectly posted in accordance with the article 135 new of the royal decree No 0902/017 dated on 17 September 2002 promulgating the law on amendment on the parliamentary election law. Pursuant to the verification of Mrs. Lay Hongky, chairman of Ban Teay Mean Chey PEC in the hearing
- Given that the verification on 14 August 2003 of Mr. San Seanho, on behalf of Poipet commune chairman, all the polling stations in Poipet commune are not further than 5 kilometers like the accusation of Mr. Mean Sarith, plaintiff from SRP
- Given that some voters' name on the list were mistake in the villages' name (had no villages in Poipet commune) but for this case the NEC said it was the mistake of the technical
- Given that those who have previous election (2002) voter card and identification card and the name in the voter list in 2003 but not voted, according to the checking one of the four witness **Mr. Koeun Sarin** in his voter card his name turns to **Mr. Koeung Sarin** in the voter list of NEC
- Given that 554 voters thumb prints to request to revote because they could not find the polling station, loss the name. etc. most of then could not find the polling station but it was their fault because the security was stable as usual
- Given that Mr. Bout Silon accused that the authority did not provide the form 1018 it was not true, because the voters who had the form 1018 are 3210, but only 2000 voters who came to take this form and the other turned back to their homeland, some died, some went to Thai border for their business. During the registration it was the same time with the riot against Thai Embassy caused to close Thai border. Then some workers had been asked to register by some party activists, then when the border were reopened they turned back to work in Thailand without vote
- Given that the requesting of the voter list which did not yet update and

- the NEC refused to provide did not relate to the article 63 new of the royal decree fNo 0902/017 dated on 17 September 2002 promulgating the law on amendment on the parliamentary election law
- Given that all reasons and documentations as the references mentioned above could not consider that the voting in Poipet commune was irregularity and need to revote at all

Therefore
Decision before the both parties

Article 1: Receiving the complaints from **HE. Sam Rainsy** for the cases of Phnom Penh, Svay Rieng, Kampong Thom and Ban Teay Mean Chey meets the legal conditions of the formality but rejected because it is not legally ground.

Article 2: Keep the decision of the NEC on the announcement of the preliminary results of the parliamentary election on 27 July 2003 No 08.504/03 NEC dated on 08 August 2003 is correct.

Article 3: **Article 3:** The decision is announced in public hearing in Phnom Penh on 27 August 2003 as a final decision is applicable to all power enshrined in the constitution and is published in the official gazette.

Phnom Penh 27 August 2003
Constitutional Council and Hearing Council
Chairman

Bin Chhin

(d) Report on Hearings at the Constitutional Council **Complaints after Preliminary Results**

*** Hearing of the first FUNCINPEC complaint before the Constitutional Council**

On 25 August 2003, the Constitutional Council held the first hearing on the post-preliminary results complaints.

FUNCINPEC party had lodged this complaint on Friday 8th August against the NEC for "lack of neutrality, negligence, incompetence and irresponsibility". Prince Norodom Sirivudh signed the complaint, which was mentioning 12 points of alleged violations and shortcomings by the NEC (see above):

Conditions of formality:

As previously mentioned in Weekly Report 9, the Constitutional Council had some flexibility in examining the formality of the complaints, due to different requirements in the Law on the Organisation and Functioning of the Constitutional Council (art.28), in the Election Law (art.114) and in the Instruction on the Modalities of Complaints Filing to the Constitutional Council, adopted by the CC in during the crisis in 1998.

In this case, the CC has formally accepted to receive the complaint (even though it had legally the possibility to reject it) on the ground that the complaint had been lodged on time and that the plaintiff had the capacity to lodge a post-preliminary result complaint before the Constitutional Council. This is clearly an interpretation *a minima* of the conditions of formality. If the CC had rejected this complaint on grounds of formality, no hearing would have been held, and the plaintiffs would have been given no chance to voice their concerns. In the current political context, it could have given way to stronger criticism and distrust in the process.

Hearing session:

The hearing session took place at 08.00 AM on Monday 25th August at the Constitutional Council.

FUNCINPEC was represented by 6 Lawyers led by Mr Sun Arun. After a short discussion on whether or not Mr Sun Arun had a clear mandate to represent the plaintiff (Prince Norodom Sirivudh), he was able to speak on behalf of the plaintiff and explain the substance of the complaint.

The plaintiff's lawyer failed to bring in witnesses he claimed he had and complained about the fact that he was not given a copy of the Constitutional Council Proceedings. The CC Chairman answered that the document was available and public since 1998.

Some confusion followed among the 6 lawyers, some seemingly contesting the leadership of Sun Arun. They then left the hearing together at 8.30.

The hearing continued without the lawyers or any representatives of the plaintiff. The chairman proceeded with the regulation requesting the member of the CC to question the plaintiff and defendant. As no one was there to answer on behalf of the plaintiff, the CC members asked the CC secretary to read the interrogation report of Mr. Sun Arun done on 15 August 2003. It appeared from the interrogation report that the substance of the complaint was not against the electoral results but only against the NEC's performances.

Decision:

The CC has considered that this was not a complaint against the result in the sense of art.114 of the Election Law, but against the NEC as an institution.

The CC recalled that the provisions of the Election Law (art.126 in particular) did not give jurisdiction to the CC to take any sanction against the NEC and that the CC was only the judge of the election's results, not of the NEC.

Indeed, under the Election Law (art.15), detailed in Chapter 11 of the By Laws (point 11.2.8), the NEC is under the supervision of the National Assembly and complaints against members of the NEC should be filed to the National Assembly.

*** Hearing of the second FUNCINPEC complaint before the Constitutional Council**

On 26 August 2003, the Constitutional Council held the hearing on the second post-preliminary results complaint lodged by FUNCINPEC on 11th August 2003 and signed by Nhek Bun Chhai, Deputy General Secretary (see above).

The hearing started at 08.00 on 26th August. The plaintiff was absent and had sent neither lawyers nor representatives.

In their absence, the CC proceeded the questioning of the plaintiff and defendant by using the interrogation reports made on 15 August. The NEC was represented and could answer the CC members' questions. The CC compared the defendant's answers with the interrogation report of the plaintiff and concluded that the plaintiff did not provide enough evidence to support his allegations.

Strangely, although the wording of both FUNCINPEC complaints were very close, the CC did not reach the same conclusion in the second case as in the first case with regard to its jurisdiction. The CC estimated that the second complaint was challenging the results, and therefore was covered by art.114 of the Election Law. The CC dismissed the complaint on lack of evidence.

*** Hearing of the SRP complaint before the Constitutional Council**

The hearing session took place on 27 August 2003, started at 08.00 AM and ended at 11.00. The object of the complaint was to contest the results in the whole country and more specifically the results in 4 Provinces/Municipalities: Phnom Penh, Bantea Meanchey, Kampong Thom and Svay Rieng:

In Phnom Penh, SRP alleged that many voters did not find their names on the lists due to late relocations of Polling Stations that were not indicated on their registration receipts. They also alleged that the NEC refused to sell SRP a copy of the preliminary voters list, as the Law provides for in art.63§2.

In Bantea Meanchey, the SRP referred to the case of the commune of Poipet (relocations of PS and voters not finding their names on the lists) as not having been properly handled by the NEC. In addition, the complaint mentioned the fact that the Commune Council refused to provide voters with statements of identity (form 1018).

In Kampong Thom, their allegations were similar to the complaints lodged previously before the NEC asking for a recount in 26 communes. This time SRP was asking for the recount of 39 communes. They claimed the NEC did not perform the verification according to the procedure.

In Svay Rieng, they requested the recount of 15 communes on the ground that there were discrepancies between figures in the different stages of the aggregation of the results. They alleged that the NEC did not perform a first verification of the figures (which was done on 5 August) in accordance with the Regulations.

The complaint was detailed and made several references to the Law and to the by-laws.

Hearing session:

The hearing session lasted between 08.00 and 11.00. The CC members withdrew to deliberate and gave their decision at 13.20. One of the members of the CC (Chao San Kosal) was absent due to illness. Mr. Ou Bun Long, SRP Senator, represented the plaintiff and H.E. Mean Satik, Member of the NEC, represented the defendant. Sam Rainsy attended personally the hearing session.

The hearing was conducted without any apparent timetable or agenda, debates on the various sections of the complaint and concerning different Provinces took place without any apparent order, passing frequently from one issues to the other and back again. The way the hearing was conducted gave the observers an overall impression of disorder. However, the CC Chairman examined and effectively gave both parties an opportunity to support their allegations and to fulfil their right of defence, systematically listening to both versions of the facts.

Phnom Penh:

Mr. Mao Yourann (SRP member) was called to appear as a witness. He supported the claim of the SRP that relocation of Polling Stations in Phnom Penh had disenfranchised voters who could not find their names. Ou Bun Long, later in the hearing session voiced the SRP allegation that the NEC refused to provide them with a copy of the voters list contrary to art.63 of the Election Law. He said they only received a copy of the preliminary Voters list, but not of the final one. [art.63 of the LEMNA only provides that parties are entitled to get a copy of the preliminary VL].

Bantea Meanchey

This is again the Poipet case. Mr Ou Bun Long spoke on behalf of the plaintiff and cited the very low turnout in the commune (46%) as a justification to have a re-vote. He added to the charges the fact that many voters were disenfranchised because disorientated by the relocation of Polling Stations. According to him, the Election Administration did not inform the voters of such changes. In addition, he claimed that, as a result of the relocation, some voters had to walk up to 10 km to reach their Polling Station. A contradictory debate engaged between SRP representative and NEC Secretary general Tep Nitha on the issue. It appeared that the relocation had been agreed between the main parties in November 2002 and had been publicised.

Then Ou Bun Long mentioned the issue of the forms 1018 (statements of identity).

[These were filled by the registration clerks when a registrant did not have any document to prove his/her identity. Registrants had to come back to pick them up at the Commune Council after processing].

The SRP alleged that they found 819 filled forms 1018 at the Commune Council that had not been distributed to the voters. NEC Secretary General said he had been aware of the issue and that they did all they could to solve the problem.

[One has to be aware that Poipet is a border city, with thousands of cross-border workers working on the Thai side. Voter registration took place at the time when an anti-Thai riot destroyed the Thai embassy and Thai belongings in Phnom Penh. The Thai authorities decided to expel many Cambodian cross-border workers back to Poipet and to close the border. As a consequence, many potential voters were in Poipet when registration was going on. When the border opened again, they went back to Thailand and many did not return to collect their form 1018 and/or to vote. The turnout for the 2002 Commune elections was around 57%].

Kampong Thom

Mr. La Daravuth (SRP member) was called as a witness to appear before the CC. He claimed the Kampong Thom PEC had only agreed to recount the ballots of two communes after SRP had asked 4 to be recounted. He criticised the decision of the NEC to only carry out a verification of the results of 11 communes instead of 26 as requested by the SRP at that time, forgetting to mention that the other 15 cases had previously been the object of a reconciliation at PEC level. Finally, he listed a series of alleged clerical mistakes in 39 communes of the Province, blaming the Election Commissions for the errors.

Svay Rieng:

Ou Bun Long, SRP gave an extensive list of discrepancies noted by SRP agents in the 15 communes at stake, in particular clerical mistakes between various results forms (1103, 1104, 1105). In addition, he claimed many CECs did not give Party Agents the results forms 1105.

Sam Rainsy stood up and claimed that clerical errors should not be considered as "minor" issues, because small clerical mistakes at commune level could have a great impact if multiplied by the number of communes.

The NEC Secretary general, Mr. Tep Nytha, answered these clerical mistakes had been corrected and did not affect the results.

Decision:

The Constitutional Council justified decision referring to both contents of the debates and to the examination reports done on 15 August.

It concluded that the Constitutional Council could formally receive the complaint under the provisions of art.114 of the LEMNA.

It dismissed the charges related to Phnom Penh on the ground that new Polling Stations had been created due to the increase of the number of voters and in accordance with the Law.

On the issue of the discrepancies in Svay Rieng, the Council considered that the Election Commissions at stake in the complaint had indeed made mistakes by filling forms 1105 (consolidated results at commune level) without double-checking with forms 1104 (results of one counting table, i.e. 3 Polling Stations). It admitted that several forms 1104 had not been signed by the SRP representatives. However, for all communes at stake, SRP representatives present during counting signed at least one of the result forms (1104, 1105 or 1103). The Council added that the fact that the SRP was only 146 votes short of getting an extra seat was not a valid justification for a recount. The Constitutional Council dismissed the request for recounts.

As regards Kampong Thom, the Constitutional Council took into consideration that clerical mistakes had occurred but noted that the NEC had corrected these mistakes. It also recalled that SRP representatives had signed all results forms in the Communes at stake. The Constitutional Council dismissed the request for recounts.

Finally, as regards Bantea Meanchey (Poipet), the CC considered that indeed 46% is a very low turnout but noted that nothing in the Election Law would entitle the plaintiffs to demand a re-voting to take place on the basis of a low turnout. They estimated that the particularities of Poipet (border city) accounted for the remaining forms 1018 (statement of identity) and for the low turnout.

In conclusion, the Constitutional Council dismissed all the elements of the SRP complaint.

The Constitutional Council added a point to their decision announcing that all complaints related to the preliminary results had been handled and that as a consequence, the NEC could confirm the validity of the preliminary results.

This second point has been discussed several times between the EUEOM and the Legal department of the NEC and relates to the interpretation of art.118-A of the Election Law. Art.118-A provides:

"After having resolved all complaints and received all results of the election, including result of re-election, if any, the National Election Committee shall make public the official results of the election and determine and allocate seats for each constituency to political party base on the number of valid ballot papers."

The question was whether when saying "all complaints", the Law was referring to all the complaints related to the electoral process since the beginning, or was only referring to the complaints lodged under art.114 of the LEMNA, i.e. post-preliminary results complaints.

This question of interpretation is crucial at this stage of the process: According to the first interpretation, the NEC could not release final results before it solves all pending complaints (26 as of Wednesday 27th August). According to the second interpretation, the NEC could release the final results right now.

The Constitutional Council has used the opportunity of this case to give its interpretation of the Law on this issue and enable the NEC to release final results quickly.