



CAMBODIA'S ELECTIONS TURN SOUR

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EXECUTIVE SUMMARY

Cambodia's electoral process re-lit the candle of democracy that had first flickered into flame with the restoration of peace in 1991, after more than two decades of strife. The light was fanned by United Nations-organised elections in May 1993 and the establishment of a coalition government of former battlefield foes later that year, but it was almost extinguished by the bloody collapse of that fragile coalition in July 1997.

The Paris Peace Accords¹, signed by Cambodia's warring factions and underwritten by the international community in October 1993, committed its participants to take the democratic process a step further through elections organised by the Cambodians themselves in 1998. After a period of tense preparation, and in a climate tainted by allegations of voter intimidation and lack of opposition access to the media, the elections were finally held on 26 July 1998.

In many ways, it is a tribute to the determination of the international community and the Cambodians that these elections have taken place at all, given the enormous difficulties – both political and logistical – involved. But the optimism of election night rapidly gave way to anger and criticism as grave post-election problems have come to the surface.

The main opposition parties are refusing to accept the results of the elections until charges of wide-scale electoral fraud are adequately addressed. The Cambodian People's Party (CPP) of Second Prime Minister Hun Sen, keen to win power legitimately after forcing itself into a coalition in 1993 and taking sole power by force last year, insists the elections were free and fair and cites international support for this assessment.

The CPP, which officially won more than 50 percent of seats with less than 50 percent of the vote in these elections, and some foreign governments want to see a new coalition formed. The international community, keen to move on and frustrated at Cambodia's lingering internal political unrest, wants stability to return to the trouble-torn nation. Hun Sen seeks stability and legitimacy, but the current political impasse and increasing confrontation with the opposition jeopardises those goals. As the political battle over the election outcome grows more fierce, there is a mounting risk that unrest will boil over into violence. Cambodia is stalled in a highly precarious situation.

While some of the confrontational tactics of the opposition have been irresponsible and inflammatory, their demand for a more thorough and open investigation of complaints by the organisers and arbiters of the polls, the National Election Committee (NEC) and the Constitutional Council, cannot easily be brushed aside.

¹ The U.N.-brokered accords were signed on 23 October 1991 by Cambodia's four main warring factions and 19 nations (including the then six-member Association of Southeast Asian Nations (ASEAN), the five permanent members of the U.N. Security Council and important donors). The accords provided for building a liberal democracy under the rule of law.

The patent lack of transparency of these institutions and their stubborn refusal to address serious questions raised by the opposition have stoked the post-polls instability and put the credibility of the electoral process into question. They should make redress by adequately investigating and answering the complaints, both to restore their own credibility and to revive international and domestic confidence in the electoral process.

The opposition complaints, whether they prove to be substantiated or not, legally and morally deserve honest consideration. At the same time, the CPP should remain tolerant of dissent and not fear investigations if it has nothing to hide, while the rivals should seek compromise, rather than entrenching themselves in ever widening and confrontational positions.

Cambodia's bid to take up its suspended seat in the United Nations, join the Association of Southeast Asian and reopen the gates to millions of dollars in development aid are all at risk in the short term unless the current political crisis can be resolved². But democracy could be the long-term loser if Cambodia's problems are swept under the carpet.

The international community, meanwhile, should not see the elections as the end of its involvement in effort to steer Cambodia towards a brighter future. In developing a future strategy of support, it is essential that donors look at what is best for the medium- to long-term survival of the democratic process, and should not divorce the goal of stability from that of democracy.

This report, third in ICG's series on Cambodia's elections, examines developments before, during and since the 26 July 1998 polls and offers suggestions aimed at averting short term instability and at anchoring long term peace, reconciliation and development. Specific policy recommendations are set out in the final section of the report.

² The credentials committee of the United Nations is due to meet ahead of the annual U.N. General Assembly meeting later this month to discuss Cambodia's membership, while ASEAN had hoped to admit Cambodia as a member before its summit meeting in Hanoi in December. ASEAN foreign ministers are also expected to discuss Cambodia's application later this month and many expect them to follow the U.N. lead. The Thai Foreign Ministry warned in a statement on 18 August 1998 that continued delay in forming a new government could obstruct Cambodia's full entry into the nine-member regional body.

A. PRE-ELECTION

1. Background

Elections seemed a distant dream immediately after the weekend of 5-6 July 1997, when Cambodia's fragile coalition government disintegrated after fierce fighting between rival forces loyal to Prince Ranariddh of the royalist FUNCINPEC party and Hun Sen of the formerly communist Cambodian People's Party.

Hun Sen, the dominant partner in a coalition he had forced on the prince after losing landmark 1993 elections run by the United Nations, won total power after crushing FUNCINPEC's security structure and forcing his major political opponents into exile.

It was a Pyrrhic victory -- the international community responded by leaving Cambodia's U.N. seat vacant and ASEAN postponed Phnom Penh's application for membership alongside Burma and Laos in July 1997. The United States and other donor countries cut or suspended aid to the government, though there was never international unanimity on who was to blame for the factional fighting or on how far to penalise Hun Sen.

Hun Sen doggedly insisted that his actions were justified, claiming that Ranariddh had been trying to oust the government with the help of Maoist Khmer Rouge guerrillas. The prince denied the charge and said he was toppled by a *coup d'etat*.

A consensus soon arose among all parties that the best way out of the *impasse* was to organise an election to install a legitimate government. Hun Sen, desperate to win the legitimacy denied him by the CPP's power manoeuvring, ensure renewed aid flows to his cash-strapped government and lure back investors, began taking steps aimed at creating the right conditions for national elections in 1998.

Hun Sen and his new FUNCINPEC partner, Ung Huot³, wrote to U.N. Secretary General Kofi Annan on 22 October 1997 pledging commitment to the holding of free and fair, multi-party elections and asked the world body to co-ordinate international observers. By the end of the year, electoral legislation had been adopted and some exiled politicians, including Sam Rainsy of the Khmer Nation Party, had returned to test the waters.

³ Ung Huot, a FUNCINPEC parliamentarian and Cambodia's foreign minister, remained in coalition with Hun Sen and was controversially elected to replace Ranariddh as first prime minister at a National Assembly meeting on 6 August 1997. He set up a new party, Reastr Niyum, to contest the elections but came away empty-handed. Hun Sen has suggested he and Ung Huot could continue ruling if the current political deadlock is not resolved.

In January 1998, the European Union (EU) agreed to fund the registration of voters, dispatch of some observers and establishment of a media centre. It received flak for imposing only technical and not political conditions, especially when Ranariddh's participation in the elections was still uncertain.

The National Election Committee, the ostensibly independent 11-member body established to organise the elections, was launched at the beginning of February 1998. Three months later the Constitutional Council was finally set up amid controversy over the legality of the selection process for some of its nine members⁴

The Constitutional Council would be the ultimate judge of contested seats and the arbiter of the constitutionality of any laws that might be challenged, including the electoral laws. But membership of the council, like the NEC, was heavily tilted towards the CPP and analysts assumed party loyalty would prevail over independence.

Meanwhile, Japanese pressure on the Hun Sen government paved the way for Ranariddh's return on 30 March 1998 and his participation in the elections was sealed with the registration⁵ of his party by the NEC in June 1998.

Tokyo's so-called "four pillars" peace plan called for reintegration of royalist and government forces after securing a cease-fire and provided for Ranariddh to face trial in absentia on charges of arms smuggling and of colluding with communist Khmer Rouge guerrillas to bring down the government – charges he denied.

At two show trials in March, a military court sentenced the prince to a total of 35 years imprisonment and a fine of more than US\$50 million. In line with the Japanese plan, he received an immediate amnesty from his father, King Norodom Sihanouk, and was free to return with government guarantees to ensure his safety.⁶

Resolution of the prince's status opened the door to more electoral assistance and helped persuade the United Nations to mandate international observers for the polls. But Kofi Annan, in a 2 April 1998 letter to Ranariddh explaining his decision, said the world body was still

⁴ Three represented the king, three were selected by the National Assembly and three were appointed by the judiciary. The opposition only recognised the king's representatives.

⁵ Fears remained that the government might still try to bar Ranariddh from the polls on the grounds that he maintained a private army, but these eventually proved unfounded.

⁶ Sihanouk at first refused to issue the pardon and only agreed after receiving a direct request from a reluctant but pragmatic Hun Sen. But the prime minister refused to back pardons for two top FUNCINPEC commanders convicted at the same time as Ranariddh and they have been leading low-level armed resistance to the government from bases on the Thai border. Ceasefire talks have failed to date.

concerned about the failure to prosecute those responsible for human rights abuses; the absence of a lasting cease-fire; the presence of refugees in Thailand and the lack of equitable access to the media.

Annan added a warning that the world body reserved the right to withdraw or suspend assistance if there was a "fundamental" deterioration in the political situation, including barriers to participation of parties and candidates in the polls, intimidation, inequitable media access, restrictions on access for international observers and the inability of the Constitutional Council to function as an independent arbiter of poll disputes.

An opposition alliance, led by Ranariddh's FUNCINPEC and the newly renamed Sam Rainsy Party⁷, cited the conditions mentioned by Annan in justifying their May 18 threat to boycott the elections. Many of their concerns were valid, but donor nations refused to take the bait -- familiar rifts reappeared in opposition ranks and the boycott threat was later jettisoned.

Meanwhile, the CPP was organising a subtle recruitment campaign that bordered on intimidation at a time when the shattered opposition parties were struggling to revive their national networks. Opposition difficulties in the face of the well-oiled and financed CPP machinery were compounded by lack of access to the important electronic media.

Fears that some parties might not be able to register proved ill-founded and 39 parties were cleared to run for the 122 National Assembly seats, compared to the 20 parties that vied for 120⁸ seats in 1993. Voter registration, while marred by technical problems and marked by opposition complaints, saw some 5.4 million adults register or more than 90 per cent of the estimated electorate in a nation of more than 11 million people.

On the eve of the election campaign, the EU declared itself satisfied with voter registration and Sven Linder, the chief EU election observer, told a press conference on 23 June 1998 that the completed registration process could form "a satisfactory foundation for free and fair elections." He added, however, that Europe was concerned about continuing intimidation, violence and impunity for human rights offenders.

⁷ Sam Rainsy was forced to rename his party after facing a leadership challenge from a dissident. The courts refused to rule in the case and the opposition leader decided to rename the Khmer Nation Party after himself. A similar split within the Buddhist Liberal Democratic Party persuaded elder statesman Son Sann to rename his wing of the divided party after himself. These two parties, FUNCINPEC and a fourth smaller party were allied in the opposition National United Front, which was set up in early 1997.

⁸ Two municipalities, coastal Kep and the former Khmer Rouge headquarters of Pailin in the west, were added as new parliamentary seats.

The "Friends of Cambodia",⁹ the United Nations and independent foreign and local watchdogs, including ICG and the Committee for Free and Fair Elections in Cambodia (COMFREL), all voiced similar concerns about the political situation after registration.

2. The Election Campaign

On The Stump

The campaigning period for the polls, beginning on 25 June and ending on 24 July 1998, appears to have gone remarkably well. This is perhaps not surprising given that the CPP had had more than a year to blow its trumpet and was anxious for a trouble-free run-in to election day when international attention was focussing on Cambodia.

The opposition had effectively only been able to make their presence felt and canvass for support in the provinces since the start of the registration period. An ICG field trip to the eastern province of Kompong Cham¹⁰ in early May had shown they were inconspicuous in rural areas while CPP offices were seen in practically every village.

But FUNCINPEC and the Sam Rainsy party worked feverishly and effectively, under daunting conditions, to resurrect their provincial structures and by the end of the election campaign, signs and posters of all parties were to be seen around the countryside, especially in district towns though not so often in villages off the beaten track.

Several parties cited problems, mainly in the first week of campaigning when local officials loyal to the CPP tried to stop them putting up signs or staging rallies in certain areas. A foreign election observer¹¹ in the southern province of Takeo said this period of the campaign was marked by "massive province-wide misunderstanding about how permission for rallies works."

Some commune election commissions – the generally CPP-friendly grass roots branches of the NEC -- refused permission to political parties to campaign in their districts if they turned up without asking permission. Election regulations only require that parties give at least 72 hours notice of plans to organise a public activity, and does not require them to seek permission.¹² Things improved slightly when provincial

⁹ The Friends of Cambodia, an informal gathering of countries keen to see stability return to Cambodia, gathers Australia, Britain, Canada, France, Germany, Indonesia, Japan, New Zealand, the Philippines, Russia, South Korea and the United States. Representatives of the European Commission and the United Nations attend meetings. The group held a final pre-election meeting in Bangkok on 20 June 1998, where it gave backing for the elections while voicing certain concerns.

¹⁰ See Appendix I of ICG report, *Cambodia's Flawed Elections*, 16 June 1998.

¹¹ ICG field trip to Takeo on 13 July 1998.

¹² *NEC Regulations and Procedures for the Election of the Members of the National Assembly in the Kingdom of Cambodia*. Chapter 7.11.

election commissions intervened after complaints from observer groups and party agents, but room remained for wilful misunderstanding.

Ranariddh and Sam Rainsy drew impressive crowds when out on the stump in the provinces. Confident Hun Sen kept a low profile, insisting in public that it would be a conflict of interest for him to campaign while still prime minister¹³, but CPP rallies were better organised if less enthusiastic than those of the ruling party's poorer rivals.

Crowds were bussed to rallies and the party liberally handed out gifts such as local scarves, sarongs, T-shirts and monosodium glutamate.¹⁴ The opposition parties relied largely on door to door canvassing and leafletting and used colourful convoys of trucks, cars and motorbikes to spread their messages by megaphone and loudspeaker. There were few reports of confrontation between rival groups.

The CPP's surface message was that it was the provider of stability, development and welfare but the former communists played up their role in toppling the murderous 1975-79 Khmer Rouge regime and in vanquishing the remaining rebels in the past two years.

FUNCINPEC portrayed itself as the victim – the winner of the 1993 polls, brutally ousted by a dictator – and stressed the negative economic, political and diplomatic fall-out from the “*coup*.” It also relied heavily on its association with the popular Sihanouk.¹⁵

The Sam Rainsy Party posed as the party of change, democracy and anti-communism while all three leading polls contenders promised to fight corruption and social injustice, to promote development and raise living standards and to bring real peace and stability.

Ranariddh and Sam Rainsy also played on deep-rooted animosity and suspicion towards the Vietnamese, promising to expel illegal immigrants. Their ugly attacks on the ethnic Vietnamese in Cambodia, which they claim are generated by genuine concern about illegal immigration and not racially-based, are also back-handed slaps at the CPP leaders who were installed by Hanoi forces in 1979.¹⁶

¹³ Others have surmised that he kept a low profile because he was so unpopular with the public and his appearances could have damaged support for the CPP.

¹⁴ A popular Japanese-manufactured food seasoning in crystalline powder form.

¹⁵ An ICG team following royalist Prince Sisowath Sirirath on the campaign trail in the western province of Battambang on 18 July 1998 heard the prince telling villagers that FUNCINPEC was, “The party of His Majesty the King’s son.”

¹⁶ Ranariddh, for example, was quoted by the Phnom Penh Post as telling a rural rally on 14 July 1998 that, “If we vote for the right party, the yuon will leave; if we choose the wrong party, the yuon will be more.” Yuon is a derogatory term for the Vietnamese, many of whom have lived in Cambodia for generations. Vietnam and the United Nations have criticised Ranariddh and Sam Rainsy for their anti-Vietnamese rhetoric.

Pre-election Violence and Intimidation

Many observers have compared this year's elections favourably against the U.N.-run polls of May 1993 in terms of the levels of violence and intimidation. The human rights component of the U.N. Transitional Administration in Cambodia recorded 452 summary executions in 1992 and 1993, including 86 attributed to the CPP's State of Cambodia government and 244 (including 104 ethnic Vietnamese) blamed on the Khmer Rouge. It said politically motivated violence escalated between November 1992 and January 1993, when 96 activists of the opposition FUNCINPEC and Buddhist Liberal Democratic Party were killed or injured, and from March 1993 until the elections, when politically motivated attacks left at least 114 members of these two parties dead or injured. Many of the attacks were attributed to police or military officials of the government.¹⁷

Mobile monitoring teams from the Phnom Penh-based U.N. Centre for Human Rights (UNCHR), which was set up in late 1993, have been investigating cases of suspected intimidation and political violence linked to the polls since 20 May 1998.

The centre's latest report¹⁸ said investigations into more than 30 deaths found that "fewer than half a dozen of these cases may be politically motivated and that in a dozen other cases, no clear political motives could be found." It said political and other factors apparent in the remaining cases, made it more difficult to assess the motives.

The UNHCR had angered the government with a report¹⁹ released on July 1 that said the centre had received more than 140 allegations of human rights abuses, including killings, since mid-May. The report said these indicated widespread political intimidation and reflected a climate of fear, particularly noticeable in the countryside. It largely blamed local government and security officials acting on behalf of a political party – presumably the CPP. The centre had received more than 400 complaints by the time of its eve of election report²⁰ of which 82 had been deemed "credible."

A four-member Cambodian Human Rights Commission, established by Hun Sen and Ung Huot on 8 June 1998, has dismissed allegations of polls-linked politically-motivated killings and apparently done little to

¹⁷ *Human Rights Component Final Report*. United Nations Transitional Authority in Cambodia. Phnom Penh, September 1993.

¹⁸ Special Representative of the United Nations Secretary General for Human Rights in Cambodia. *Monitoring of Election-related Intimidation and Violence Post Election Period*. (Period July 26-18 August 1998).

¹⁹ Special Representative of the United Nations Secretary General for Human Rights in Cambodia. *Monitoring of Election-related Intimidation and Violence*. Report (15 to 27 June 1998).

²⁰ Special Representative of the United Nations Secretary General for Human Rights in Cambodia. *Monitoring of Political Intimidation and Violence*. Report (July 18-25 1998).

bring to justice the murderers of scores of FUNCINPEC members following last year's coalition collapse.

Independent human rights workers, while acknowledging the level of violence in the run up to these polls has been less than in 1993, say that assessment of the environment for the elections must take into account all events since at least 5-6 July 1998²¹ – not just the official campaign period and election day. This evens up the numbers, they say.

The UNCHR²² has confirmed the extra-judicial killings of more than 80 people, mostly FUNCINPEC security personnel, in the immediate aftermath of last year's fighting and the months following. During the same period opposition activists at grass-roots level nation-wide were cowed into silence by intimidation and harassment.

The rights workers and political analysts say the climate of fear generated by these killings, (and the lack of progress in prosecuting those responsible), together with subtle and direct intimidation by local authorities, polluted the neutral environment needed for free and fair elections before the official campaign even began.

Thus the relatively trouble-free campaign period and polling day did not come as a surprise. The CPP, which controls the security apparatus, would have nothing to gain from political violence ahead of polls that it wanted to be seen to win legitimately.

"The bulk of the damage had been done in the months preceding the campaign," a European diplomat said, citing a strategy of low-level, though effective, intimidation that included a recruitment drive by local CPP officials, who collected the thumbprints of potential voters nation-wide to encourage their support. The thumbprint campaign was often accompanied by distribution of gifts, seen by critics as *de facto* vote buying.

Local authorities in some areas were also accused of putting further pressure on the electorate by confiscating registration cards and only returning them after recording the registration data. A third tactic, seen from early July, was the organisation of mock elections in some areas, designed to train voters to pick the CPP on the ballot paper. A CPP

²¹ Many believe they should go back to the 30 March 1997 grenade attack on an opposition demonstration led by Sam Rainsy, the apparent target. The grenade blasts outside parliament left at least 16 people dead and scores injured.

²² Cambodia Office of the United Nations Centre for Human Rights, 21 August 1997: Memorandum to the Royal Government of Cambodia. Evidence of Summary Executions, Torture and Missing Persons since 2-7 July 1997 and Memorandum to the Royal Government of Cambodia submitted by the Special Representative of the United Nations Secretary General for Human Rights in Cambodia. 13 May 1998.

official said the lesson was repeated until everybody had marked the correct box.

The CPP, which has denied trying to manipulate and pressure voters, was also accused of circulating rumours that they had ways of knowing how people had voted, further compromising the principle of secrecy of the ballot.²³

While many complaints were raised with the NEC about abuses, critics charge that the body was reluctant to take firm disciplinary action against violators of its regulations though the body was still getting good marks overall for its general performance.

Media coverage and access

Already handicapped by a lack of resources and hostility from local authorities and with only a couple of months to resurrect their crippled national networks, opposition parties were also a major disadvantage to the CPP in broadcasting their message.

The ruling party²⁴ and its allies could, and did, take advantage of state radio and television and several ostensibly private stations to drum home its message, beam out images of its good works and attack its rivals, whose own radio and television stations had been forced to close or change allegiance after July 1997.²⁵

The United Nations, the Friends of Cambodia, the EU and others had regularly cited the opposition's lack of access to the broadcast media and lop-sided media coverage of political developments as a key factor that could poison the atmosphere for elections.

But they appeared to be satisfied with the NEC's decision in May to restrict parties to broadcasting their political messages through state media. The rule, giving each party five minutes daily air time on state-

²³ For instance illiterate peasants in some areas believed rumours that the authorities were using radars that could tell which parties they were voting for. ICG's second Cambodia report, Cambodia's Flawed Elections gives more detail on some of the intimidation tactics used. Meanwhile, ICG trips during the campaign period to the southern provinces of Kampot and Takeo and to Battambang province and Pailin municipality in the west indicated that things had improved though intimidation and, to a lesser extent, violence, remained a problem in some areas.

²⁴ See *Report of the Special Representative of the Secretary General for Human Rights in Cambodia on Access to the Media* (25 June 1998) and *Media and the Elections: Updated Statistics* (23 July 1998).

²⁵ The Sonn Sann Party was granted an FM broadcasting licence in May 1998 but has no resources to activate its station. FUNCINPEC was given a radio licence in mid-June 1998 but did not have enough time to go on air before the election campaign while it no longer has access to its former television station, TV-9. The Information Ministry on 12 June 1998 turned down a fifth bid by Sam Rainsy to win licences to run radio and television stations on the grounds that Cambodia's sparsely-used airwaves were too crowded and the stations could create unfair competition for limited advertising.

owned radio and television and participation in round-table discussions, applied only to the campaign period.

But the solution did nothing to correct the previous imbalance of media coverage and access at a time when the opposition was just getting the means to redress the balance. Meanwhile, the CPP continued to get more coverage on both state and private television and radio stations, according to surveys by the UNCHR and the NEC.²⁶

The Observers Scam

A gremlin crept into the electoral process when reports emerged mid-way through the campaign that the NEC had approved more than 60,000 national observers, raising fears that many of the almost 20,000 trained observers with three internationally-recognised local non-governmental organisations²⁷ would be barred from polling stations.

It soon became apparent that thousands of the "observers" were dupes of a money-making scam. They had paid up to US\$100 to shadowy non-governmental organisations on the promise that they would be given well-paid jobs as observers. But some feared this was a CPP ploy to crowd out the bona fide observers after reports linking the NGOs to the military and ruling party.

Those concerned about the phenomenon included the international observers – the EU began deploying observers in May and the Joint International Observer Group, (JIOG), gathering almost 500 observers from about 40 countries²⁸, opened office in June.

Pressure from the international and domestic observers as well as the opposition prompted the NEC to revoke the accreditation of the suspect observer organisations and to issue a formal order to polling station officials to give priority to the three established groups. There were no problems with sham observers on polling day -- the red herring was gutted, but questions remain about who was really behind this episode.

Meanwhile, the European Union had deployed some 15 long-term observers and most of the short-term observers from governments and overseas organisations arrived in the week ahead of the polls.

²⁶ The UNCHR's *Media and the Elections: Updated Statistics* (23 July 1998) and NEC statement of 27 July 1998, which concluded that "the electronic media generally complied with the media and NEC regulations."

²⁷ COMFREL, COFFEL (Coalition for Free and Fair Elections), and NICFEC (Neutral and Impartial Committee for Free and Fair Elections in Cambodia).

²⁸ The United Nations co-ordinated and serviced the JIOG observers through an Electoral Assistance Secretariat but did not send any elections observers of its own. However, the world body set up a team of 15 foreigners to monitor the safe movement of returned politicians around the countryside. U.N. officials, wearing blue arm bands to identify themselves, have been monitoring the opposition protest outside parliament.

The JIOG issued a statement²⁹ on the eve of the elections, saying that while it remained concerned about unsolved killings, intimidation and impunity, and access to the media it believed that “reasonable conditions exist for an election on Sunday 26 July that can be broadly representative of the will of the Cambodian people.”

The statement triggered charges that the international observers were lowering their standards by apparently no longer insisting on free and fair polls, and reinforced fears among some people that they were preparing to white-wash the electoral process despite protestations to the contrary.³⁰

²⁹ *Statement of the Joint International Observer Group*. 24 July 1998, Phnom Penh.

³⁰ The *Bangkok Post* quoted British Minister of State Derek Fatchett as saying in Bangkok on 29 May 1998 that the European Union, whose member states contributed more observers to JIOG than any other nation, would not “rubber stamp a process that is not clean, that is not fair and that is not free.”

B. ELECTION DAY

The 11,699 polling stations, many located in schools and pagodas, were scheduled to open at 7.00 a.m. and close nine hours later, but many enthusiastic voters were seen queuing up to cast their ballots shortly after dawn on the sunny Sunday holiday.

The historic day was marred when Khmer Rouge guerrillas attacked an army outpost in northern Cambodia early on Sunday morning, leaving 11 people dead, but no other major incidents of violence were reported and voters turned out in massive numbers around the country. The NEC later put the official turnout at 93.74 percent of all registered voters, or 5,057,679 people. The very healthy turnout apparently indicated that the Cambodian electorate, in spite of all the fears and problems, was determined to be heard.³¹

Voters were required to cast their ballot at the same station³² where they had been registered, unlike the 1993 polls where people could vote wherever they wanted. Polling station officials, after voting themselves, admitted the voters one at a time and checked their registration card against the list of voters for their station. They then handed each a ballot paper with the names, numbers and logos of the 39 parties and directed them towards a cardboard booth to mark their choice in secret. This done, the voter put their ballot paper in the metal, sealed and double-padlocked ballot box³³ then completed the process by dipping a finger in indelible ink to deter multiple voting.

The only other people allowed in the room, were accredited international and national observers and recognised party agents. Local authorities were barred from hanging around the station, while protection was provided outside the stations by some 60,000 security men wearing civilian clothes and NEC arm bands.

When polling closed at 4.00 p.m. the ballot boxes were moved to 1,588 commune centres for the counting on Monday. Party agents and domestic observers slept with the boxes. The three major domestic observer groups tried, between them, to cover all the polling stations as did party agents from the three main parties. Reports later emerged that in a few areas observers and agents had problems getting access.

More than 700 foreign observers from JIOG and other groups visited hundreds of polling stations, but most did not stay in any one polling station for long, while the bulk were short-term observers unfamiliar with the country and issues. ICG teams visited stations in the capital, the neighbouring province of Kandal and in Kompong Cham. Election literature was prominently displayed in

³¹ NEC Press Release, 13 August 1998. "93.74% of Registered Voters turned out on Polling Day."

³² Each station had registered about 600 voters though some had slightly more.

³³ The steel boxes were purchased by Japan, second largest elections donor with assistance worth almost US\$10 million. The EU assistance was worth almost US\$11.5 million.

stations visited, including a message from King Sihanouk stressing the secrecy of the vote and urging people to ignore intimidation and exercise their right to self determination.

The security presence was low key, while there was no overt sign of local officials in or outside the stations at the times that ICG visited. While none of ICG's monitors witnessed any thing that looked like major fraud on the day, they did note³⁴ some irregularities. It should be stressed that ICG, like other international observers, spent limited time at each station and was only able to open a small window onto the exercise.

COMFREL, COFFEL and NICFEC, with a greater presence and knowledge were in a far better position to make a valid assessment of the polls. They have noted irregularities in voting and counting but essentially judged them acceptable. The opposition were generally satisfied with polling day but were apprehensive of problems during the count.

³⁴ Officials in some stations had not sealed ballot boxes until gently prodded by ICG, while in one station an official appeared to help two old women mark their ballot papers. Election laws allow polling officials to help the handicapped. There was evidence in some stations that officials were not quite on top of their job, indicating innocent ignorance rather than deliberate manipulation of wrong-doing. Voters questioned by ICG said they were confident about the secrecy of the vote.

C. POST ELECTION

1. The Count and Rival Results

Counting, seen as the aspect of the elections most vulnerable to manipulation, began early on Monday under the watch of party agents and national observers³⁵, who were conducting their own independent counts and projections. It was soon clear that the election was a three-way race between FUNCINPEC, the Sam Rainsy Party and the CPP with the ruling party and the royalists in front.

First step at each counting centre was to verify the number of ballots in each box against the records from the polling station commissions. This done, ballots from at least three boxes were mixed and the count began. The count was originally slated to be conducted at each polling station, but opposition charges that this could lead to intimidation had led to the compromise of counting the ballots at commune level.

Initial and unofficial results floated late Monday indicated the CPP had done better than its rivals, but not enough to form a government on its own. The constitution requires a two-thirds majority to put together a government³⁶, implying that the CPP would have to form a coalition with one or other of its rivals, or both.

But there was a major discrepancy in the results estimates given out by CPP and those of the opposition and COMFREL and it soon became apparent that they were using different formulas to calculate the seat allocation in the National Assembly.

The CPP were confidently forecasting they had won up to 67 seats, or the absolute majority that would allow them to change legislation, while the others believed the CPP had taken less than 60, giving the combined opposition the absolute majority.

The NEC announced preliminary results on 5 August 1998, that gave the CPP 64 seats with just 41.4 percent of the vote, 43 seats (31.7 percent of the vote) to FUNCINPEC and the remaining 15 (14.3 percent) to the Sam Rainsy Party. NEC Chairman Chheng Phon officially confirmed the result on 1 September 1998, a day after the Constitutional Council had dismissed all opposition complaints. The CPP was entitled to appoint the prime minister and try and form a new government, even

³⁵ Many international observers also followed the first day of counting, but apparently less closely than their Cambodian counterparts.

³⁶ Article 100 of the Constitution calls on the king to ask a representative of the winning party to form a government and adds that this administration must seek a vote of confidence from the National Assembly. Article 90 says the National Assembly may pass a vote of confidence or no confidence in the government by a two thirds majority of all members.

though it had won a smaller share of the vote than its two main rivals combined.

But the row over the formula had become the focal point of post-election complaints and confrontation and the NEC, already swamped with charges of electoral fraud, soon came under intense fire for the way in which it had changed the formula.

2. The Seat Allocation Formula

Cambodia opted for a proportional representation system with provincial and municipal constituencies for the UNTAC elections, meaning a candidate needs pre-determined a proportion of the vote to win a seat. Typically, this system allocates seats to each party in broad proportion to the percentage of the vote they obtain.

The first step in allocating seats under such a system is to apply a quota, which is determined by dividing the number of valid votes in the constituency by the number of seats to be filled in that constituency. Under the original UNTAC system, any remaining seats are given, in decreasing order, to parties having the greatest numbers of unallocated votes. Parliament agreed last year³⁷ to jettison this system and opted for a formula of the highest average, which favours the parties with more votes as the percentage needed to win a seat is higher.

For example, if one party had won 2.4 seats and a second had won 0.6 seats in a province such as Kampot (six seats) the first would take two seats and the second party would win one. Under the highest average formula, the first party would win three seats.

But the opposition and independent electoral analysts say there are different formulas within the highest average system and they claim the NEC changed the original formula without telling anyone and introduced a less proportional version with a mathematical calculation that would give further advantage to the party that won the most votes.

The switch of formula makes a decisive difference to the outcome of the election. Had the NEC applied its first formula, the CPP would have won just 59 seats, with 44 going to FUNCINPEC and 18 to the Sam Rainsy Party³⁸. Under the revised, second formula, however, the balance is tilted with 64 seats going to the CPP against 43 for FUNCINPEC and 15 for the Sam Rainsy Party.

The opposition and election analysts say they believed the first formula contained in the widely distributed NEC regulations dated 6 May and 25

³⁷ Articles 5 and 118, Law on the Election of the National Assembly. 19 December 1998.

³⁸ See calculations provided by the Konrad Adenauer Foundation, Phnom Penh Office.

May 1998 was the definitive one. The NEC has said that version was only a draft that should not have been distributed as the mathematical calculation used therein was wrong³⁹.

NEC officials have said the amended and definitive formula and rule was approved by NEC chairman Chheng Phon on 29 May 1998 and included in the final rules and regulations handed in June to opposition parties, including FUNCINPEC and the Sam Rainsy Party, without any negative feedback.

This may be the case, but it does not explain the NEC's lack of transparency while it is quite feasible and likely that parties swamped with other election concerns gave no more than a cursory glance, if that, at regulations they thought had already been decided on.

A change of such fundamental importance demanded at the very least a public statement and a message to all recipients of the regulations, including political parties, embassies, non-governmental organisations, journalists and observers. The CPP, however, was clearly aware of the formula change and used it to calculate its preliminary results.

The NEC's image has been further tainted and its independence questioned by its failure to provide adequate documentary evidence proving that the elections adopted the second formula legally on 29 May 1998, or at any later date.

2. Domestic and Overseas Reactions

Joint International Observer Group (JIOG)

The major international observers have been accused of acting with almost indecent haste to release their initial, generally favourable, assessments of the elections. The JIOG led the way with a clear stamp of approval some 32 hours after the polls had closed.

Sven Linder, the JIOG spokesman, announced late on 27 July 1998 that "what could be observed by us on polling day and counting day was a process which was free and fair that enables it to reflect, in a credible way, the will of the Cambodian people."

³⁹ Theo Noel, a Canadian senior technical adviser to the NEC, and NEC legal adviser Sik Bun Hok, put the NEC case at a press conference on 8 August 1998, claiming that the formula had never been changed, only the mathematical calculation. The position of Noel, whom the opposition has accused of bias towards the CPP, further clarified his position in a leaked memo of 9 August 1998, which states: "There was never, at any time, attempt of manipulation by some individuals and parties. The revision of the formula was purely technical and was consistent with the spirit and letter of the election law." He also pertinently points out that the opposition parties would have done much better if they had run on a single ticket.

The JIOG statement called on all parties to accept and honour the election results and added that a final judgement would “be subject to full acceptance of the voters’ verdict through the appropriate conduct in the post-election period by all parties and subject to the vote tabulation and complaints and appeals process being carried out satisfactorily.”

Linder claimed that JIOG observers had covered 2,100-2,200 polling stations and almost 200 counting centres, adding: “The international community has passed these elections.” The JIOG statement was welcomed by the CPP but vilified by the opposition and greeted with disappointment by many analysts. A second statement on 29 July 1988 said the body had no reason to change its earlier assessment after debriefing sessions with observers, implying for some that the first announcement was pre-determined and based on a minimum of information.

The JIOG statement was clearly premature, coming at a time when the process was not over and as serious complaints were being raised about the count. The JIOG, which seemed determined to steer clear of politically sensitive issues⁴⁰, failed to put the elections in context while its ground role was ultimately belated and patchy.

For a more credible judgement the international community should have recruited many more experienced observers, sent them earlier, kept them on longer and made an assessment much later. The JIOG essentially limited its assessment to what happened on polling day, rather than treating it as one link in a chain. “You don’t pluck one day and say this is good, therefore the whole thing is good,” one analyst said, adding that no one was in a position to judge the polls as free and fair on 27 July 1998.

National Democratic Institute/International Republican Institute

A joint U.S. government-funded team from the National Democratic Institute and the International Republican Institute, which was observing the elections outside the JIOG umbrella, released a more substantial preliminary assessment on 28 July 1998 that tried to put the polls into context.

An earlier mission in June by the two groups had described the run up to the elections as fundamentally flawed, but the 60-member election team found that balloting and counting were “generally well administered, and the atmosphere on the polling and counting days was largely peaceful and upbeat.”

⁴⁰ The *Phnom Penh Post* on 27 July 1998 reported that some foreign ambassadors sitting on the JIOG at a meeting on 29 June 1998 prompted a rewrite of the first report from its own observers on the grounds that it was “too political and based too much on human rights.” JIOG demanded that the final report should contain only technical data. The original criticised the CPP.

It said voters appeared to have overcome obstacles of intimidation, violence, unfair media access and CPP control of the state machinery to "make possible a successful exercise in national self-determination". But the two groups also called for immediate and thorough investigations into opposition complaints of irregularities at counting centres and stressed that "final judgement on the entire election process is premature."

The National Democratic Institute, in a second statement released on 22 August 1998, found that pre-election fears about the impartiality and credibility of the NEC and Constitutional Council had been borne out by their handling of post-poll complaints.

It cited arbitrary rejection of complaints by the NEC and failure to provide official rejection notices to complainants, thus jeopardising their chances of lodging these complaints with the Constitutional Council. It also highlighted the NEC's lack of transparency over the seat allocation formula and noted continuing intimidation.

"Unless election-related complaints are addressed expeditiously, thoroughly and impartially, there can be little public confidence in the integrity of the overall process," said the statement, which added that the legitimacy of the next government and the prospects for democracy would be influenced by the manner in which post-election problems were resolved.

European Union

The EU special representative Glenys Kinnock, in the most measured and noble of the initial election assessments, said "the international community should only make its final position when the entire election process is completed." She stressed that the election campaign and the polling and counting processes had to be seen in their political and long-term context.

Kinnock, who acknowledged problems reaching a consensus among EU members, said any assessment must take into consideration the pre-election reports of intimidation and violence and should only be made after concerns about the count had been resolved.

The EU has released most of its personnel, but a handful of observers will remain in Cambodia under Linder's leadership until the end of September and are expected to make a final assessment on the electoral process.

Opposition Cries Foul

The opposition, perhaps predictably, began crying foul almost as soon as it became clear that they were going to be eclipsed by the CPP. The cries became shriller when the discrepancy about the count formula became clear.

The rocky relationship of on-off allies Ranariddh and Sam Rainsy split the opposition vote but the two men put aside their differences to claim fraud at a joint press conference on 28 July 1998. They complained of ballot tampering, voter intimidation, missing ballots and other poll irregularities and demanded recounts and fresh balloting in some areas. They vowed to reject the results and any coalition offers until their complaints had been satisfactorily addressed and threatened to boycott the new parliament.

Many analysts believed it was only a matter of time before one, most likely Prince Ranariddh, sought terms for a coalition with the CPP in the face of intense diplomatic and ruling party pressure. But the opposition leaders have doggedly stuck to their demands, recruited allies⁴¹, and raised the political temperature once more.

An increasingly frustrated Hun Sen has tried both threats and inducements in a bid to form a coalition and stave off the threat of a constitutional crisis if no government can be formed by 23 September 1998, when the current National Assembly's term ends.

But his rivals, faced with the stubborn refusal of the NEC and Constitutional Council to take their complaints seriously, have become increasingly entrenched in their position and, aware that the eyes of the world are still on Cambodia, have taken their protest to the streets of Phnom Penh.

An increasingly militant Sam Rainsy, likely stung by a possible attempt on his life on 20 August 1998, led up to 10,000 people in a stadium demonstration on 23 August 1998 to demand a thorough investigation into the fraud allegations. The opposition protest developed into a indefinite peaceful sit-in outside parliament the following day amid rising tension, exemplified when some of the crowd threatened to beat up a Norwegian national who was handing out leaflets critical of the royalists.

A small settlement has sprung up in the park opposite parliament, with food and drink hawkers, medical centres and money donation points.

⁴¹ Six more parties joined the opposition's National United Front on 21 August 1998 and the alliance members issued a statement the same day saying they did not recognise the results of the elections. Sam Rainsy claimed that the 10 NUF parties had collectively won 50.33 percent of the vote.

Sam Rainsy and other opposition leaders, including Ranariddh, have addressed the crowds gathered day and night at "Democracy Square." The protest leaders have ignored several government deadlines to move their demonstration elsewhere and increased tension with polemics. Sam Rainsy led an estimated 15,000 demonstrators through the capital on 30 August 1998, indicating that the grievances of the opposition enjoy significant support.

Meanwhile, Sihanouk, the only person with influence in all camps, announced he was ready to host informal negotiations between the rivals in order to fend off a constitutional crisis. The 75-year-old monarch held a first round of talks between the three major parties at his retreat in the northwest town of Siem Reap on 5 September 1998. The meeting ended without success.

3. The NEC and Constitutional Council "Address" Poll Complaints

The NEC was soon facing scores of opposition complaints of fraud and on 30 July 1998 formed a four-member ad hoc Election Results Control Commission chaired by Kassie Neou, a democracy activist seen as the only independent NEC member.

The first recounts, for three communes in Takeo province, got under way on 4 August 1998, but soon after dormant division in the NEC erupted when Kassie Neou quit as chairman of the sub-committee in a row over recounts and investigations of fraud. Kassie Neou, who once described working on the partisan NEC as "like pulling teeth all the time," continued as NEC vice chairman.

Opposition hopes that recounts could shore up their position were dashed, however, when the NEC rejected most of the hundreds of complaints on the grounds that they were baseless, repetitious or lacked merit. It completed just eight of 10 planned commune station recounts, abruptly stopping the process after two days while the opposition had wanted some 800 results re-examined.

The NEC, which would not address the seat allocation formula, said it had neither the staff nor the time to do more counts and found that slight discrepancies in the eight communes addressed would not affect outcomes. It wound up its role on 11 August 1998 after rejecting the 304 complaints that survived preliminary investigation and said parties should refer further complaints to the Constitutional Council, final polls arbiter⁴².

⁴² The opposition said they only recognised the authority of the king's three representatives.

The attitude of the controversial Constitutional Council provided further grounds for concern. FUNCINPEC and the Sam Rainsy Party submitted more than 850 complaints before the deadline for submissions ran out on 14 August 1998. The Council confirmed the CPP's election win on 31 August 1998 when it upheld the NEC's earlier decision and rejected all claims of vote rigging and corruption due to a lack of concrete evidence. It had earlier turned back many complaints on procedural grounds and refused the pivotal complaint about the seat formula, on the lame and debatable excuse that it had been submitted late.

Stonewalling over such a fundamental issue can only give weight to arguments that there is something to hide and that the NEC and Constitutional Council are acting in the interests of one party rather than in the interests of democracy and the truth. There are a lot of questions that must be answered for people to have confidence in the process but those in a position to provide illumination are keeping Cambodians and the international community in the dark.

While there is undoubtedly an element of the sore loser in many of the complaints raised by the opposition, some of their concerns have merit and deserve an honest hearing. The issue of the seat allocation has profound political significance, yet the NEC and Constitutional Council have cavalierly gone out of their way to avoid addressing it.

The erupting furore sadly tainted the image of the NEC, which had done a creditable job in organising the elections under immense time, financial and technical restraints. The criticism from those convinced that it and the Constitutional Council were CPP tools rather than independent organisations was beginning to look justified.

4. Post-election Intimidation and Violence

A recent UNHCR report⁴³ said that from 27 July 1998 several hundred opposition members fled their rural homes in at least a dozen provinces after "fearing retribution or directly receiving verbal death threats or armed threats from village or commune chiefs, and/or members of the police, militia and military."

The report said most victims sought shelter in district and provincial party offices or with relatives in another area from their homes. Dozens fled to Phnom Penh and sought refuge in FUNCINPEC or Sam Rainsy Party headquarters. It said a statement by Hun Sen on 2 August 1998 calling on people not to seek retribution against election opponents and urging security ministries and local authorities to maintain peace seems

⁴³ Special Representative of the United Nations Secretary General for Human Rights in Cambodia. *Monitoring of Election-related Intimidation and Violence Post Election Period*. (Report July 26-18 August 1998).

to have had a positive effect in reducing the problem. Most of the internal refugees began returning home by the end of the first week of August. The UNCHR concluded that "the intimidation was more likely a spontaneous reaction on the part of local authorities to the election process and outcome rather than a campaign co-ordinated (by the CPP) at the provincial or central levels." Senior government security officials have since asserted there was no evidence of post-election intimidation and said opposition supporters came to the capital for money.

Political violence returned to the country on the night of 20 August 1998, when gunmen fired shots and threw a grenade from a passing pickup truck outside the Interior Ministry, killing the Cambodian driver of a Japanese news agency.

Sam Rainsy, who was inside the grounds of the ministry with Japanese journalists at the time, claimed the unidentified assailants had wanted to kill him. He was the target of a grenade attack on 30 March 1998 that killed at least 16 people taking part in an anti-government demonstration.

Armed Interior Ministry guards detained Sam Rainsy and his supporters – who had planned to sleep outside the NEC headquarters to protest its decision to halt ballot recounts and to keep vigil over the ballots inside – after the shooting. They were released three hours later after the intervention of the United Nations. The ministry has said it will press charges against Sam Rainsy for illegally entering a government compound after hours even though guards had let him in. It blamed him for the death of the Kyodo News Agency driver, Sieng Sean.

A peaceful, though increasingly tense and confrontational, stand-off continued over the following two weeks. Protesters camped out outside the entrance to Parliament under the steady gaze of government security personnel. On 7 September, however, tensions boiled over into violence as two grenades exploded in front of the Phnom Penh residence of Hun Sen. No-one was killed in the attack and the leader himself was away, but the government responded by sending in the troops to clear protesters from the square in front of Parliament and issuing calls for the arrest of opposition figures, including Sam Rainsy⁴⁴. The capital has been in a state of high tension ever since, with soldiers patrolling the streets and frequent sounds of gunfire. As at the time of writing, 9 September 1998, at least two people are known to have died in the latest violence.

⁴⁴ Hun Sen claimed the grenade attack on his house was a tentative coup d'etat attempt. Speculation was rife in Phnom Penh, however, that the incident had in fact been orchestrated by the CPP leader to provide justification for the crackdown that followed. The attack on Hun Sen's house occurred at a time when it was well known the premier was away.

D. PICKING UP THE PIECES...

1. The Cambodian People's Party

The CPP attained two of its goals at the end of July 1998, winning the elections and gaining wide-spread international acceptance for the polls, which in turn implied legitimacy for the next CPP-led government. But an uncooperative opposition marred the Hun Sen's celebrations by refusing to contemplate swift formation of a coalition with the ruling party.

Most independent analysts agree that the CPP must be included in any future government given its dominance of the administrative and security mechanisms and they see a coalition as the inevitable way forward in the interests of national reconciliation.

A coalition, as the Hun Sen-Ranariddh alliance showed, is fraught with dangers, but much of this can be put down to personality rather than ideology. A new coalition, also, will not suffer from the anomalous solution of having dual prime ministers. Hun Sen and the CPP have made clear that a coalition is the option they seek and they would prefer an arrangement with FUNCINPEC that would safeguard CPP dominance in a new government.

But for a coalition to work, and in the interests of the continued growth of democracy, the CPP must be prepared to give a more equitable share of real power to any partner at the local level – something that never happened after 1993 and, consequently, helped fuel the tension between the two parties.

The CPP has said it should retain the five key ministries – defence, finance, foreign affairs, interior (home affairs) and justice – but was otherwise ready to split the cabinet 60-40 in its favour. This proposal seems unfair, given the performance of FUNCINPEC in the polls. In any case, the CPP's insistence that it retain control of the justice ministry is worrying, suggesting that the party is bent on minimising the impact of any effort to reform the judicial system and establish a genuinely independent judiciary.

Ranariddh's position poses a stumbling block as the prince has said he would not work under Hun Sen, who has himself ruled out a proposal that his nemesis be given the presidency of parliament and suggested, instead, that he become a "supreme adviser" to the government, with a rank equal to premier⁴⁵.

But the CPP's patience has clearly been tested by the opposition snubs and demonstrations and an angry Hun Sen has warned on several occasions that he would carry on ruling indefinitely if the opposition

⁴⁵ In an interview with the *Asian Wall Street Journal* published on August 1998.

refused to work with him. He threatened to change the constitution so that a new government would only need to be approved by a 50 percent plus one parliamentary vote⁴⁶.

Such a solution is unlikely at the moment as Hun Sen cannot rely on the two-thirds parliamentary majority needed to change the constitution and he cannot afford to, and probably does not want to, alienate international sentiment by using heavy-handed pressure to win enough opposition numbers to push through such a change.

Having said this, the possibility of changing the constitution should be given consideration down the line by any new administration as the current arrangement has certainly contributed to the political deadlock with no one party in a position to take up the reins of power on its own. There is no reason, either, why competent officials of opposition parties cannot be appointed to a cabinet in the interests of efficiency, reconciliation and the good of the nation. Political analysts argue that a coalition government is less stable than a homogenous one and that a coalition is the most difficult system for emerging democracies or for societies traditionally divided.

Under the current system, the CPP could only form a two-party government with FUNCINPEC, as an alliance with the Sam Rainsy Party would not give enough seats for approval. Hun Sen and Sam Rainsy are probably the two most able political leaders in Cambodia but a government of their two parties would probably be even rockier than the CPP-FUNCINPEC coalition.

Hun Sen proposed a tripartite government after meeting King Sihanouk at his retreat near the ancient Angkor temples in northwest Cambodia on 30 July 1998, but this was swiftly rejected by Ranariddh and Sam Rainsy and the premier has since ditched this idea and concentrated on winning over the royalists.

The CPP appeared to have settled for attrition until the events of 7 September 1998, which may sadly have heralded a decision by Hun Sen to resort to the use of force and dubious legal tactics as the best way forward. The latest developments are cause for deep concern. Up until 7 September, Hun Sen and his party had shown commendable restraint and patience in the face of mounting provocation and they must now be encouraged to return to such a tack if recent progress is not to be lost. The threatened arrests of opposition leaders on what many will see as trumped-up charges would further damage the CPP's position.

⁴⁶ Ranariddh, ironically, said on election day that he would propose amending the constitution if he won as the two-thirds rule forced parties into a coalition.

Hun Sen's wisest strategy would be to allow peaceful demonstration to continue if he is to retain domestic and international support and sympathy. But his party, by its refusal to countenance a more thorough investigation into election complaints, seems to be as intransigent as the opposition, and suspicions will inevitably remain about its motives and about the validity of its polls if it continues to resist.

Compromise is needed and Sihanouk remains the person best suited to mediate between the two sides and much will be expected of the talks he will host between the opposing sides.

A further strategy open to the CPP is to dump Hun Sen and nominate someone more acceptable to the opposition to lead the next government. The opposition have said they are ready to work with almost anyone else, but naive attempts to split the ruling party seem unlikely to succeed. The CPP's success lies to a great extent on its unity and while there are clearly divisions within the party, they have not been wide enough to create the kind of damaging rifts that tore apart FUNCINPEC and the Buddhist Liberal Democratic Party before July 1997.

The immediate aim of the CPP is clearly to form a coalition government that will give it the legitimacy it failed to win in the 1993 elections and almost put out of reach in July last year. This, in turn, would likely persuade the United Nations to unfreeze Cambodia's seat on the world body and open the door to membership of ASEAN.

Membership of these bodies would not only have political significance, a final stamp of international approval for the CPP, but would likely open the way for renewed flows of development aid to a government that has relied on donors for almost half its budget. But the government would also need to show evidence of good governance to win new grants from financial institutions such as the International Monetary Fund, which cut aid to the government because of forestry policies that did not bring money into the treasury and failure to trim the civil service and military.

Investors, scared off by the problems of the past two years, are also more likely to return with an internationally recognised government dominated by one strong party, as opposed to a one-party administration, in power. They may not return in droves, because of the regional economic crisis, but they are likely to come in sufficient numbers to add a kick to the ailing economy. Security is the number one concern of foreign investors and most believe Hun Sen is the leader most likely to bring it to the country.

Continuing political gridlock or deterioration in the political situation will detract from Cambodia's attractiveness as an investment destination, already hampered by its lack of infrastructure facilities, legal safeguards and other administrative systems.

2. FUNCINPEC and the Sam Rainsy Party

The two main opposition parties did a remarkable job in resurrecting their parties in the face of formidable obstacles and in such a short space of time. Their performance demonstrated there is a real desire for change among a substantial portion of the public, a desire that cannot and should not be ignored by the CPP or the international community.

The opposition aimed to win, but they warned before the elections that their votes could be compromised by pre-election intimidation and post-election fraud. There has been clear evidence of the former, enough according to one foreign analyst to "usurp" 10 percent of the opposition vote, while the opposition complained about widespread examples of the latter.

It is likely that the bulk of the opposition complaints to the NEC and the Constitutional Council would not have made a difference to the election results, but, as argued above, they had reasonable grounds for many complaints, including the seat formula that they say robbed them of an absolute majority.

The rejection of all their complaints by these two bodies, left the opposition with two options – concede defeat and seek a coalition or continue and expand their protest in the hope that the pressure would encourage the government and the international community to push for a proper review of their grievances. The opposition would have to accept the results of a reasonable response to their complaints or lose all credibility.

The latter course could also be used as leverage to win the best possible power-sharing arrangement with the CPP and of the two parties, FUNCINPEC seems to be more suited, more experienced and more likely to join a coalition. But, to avoid, the pitfalls of the previous government, all parties to a new coalition should negotiate a thorough and binding programme that will take them through to the next polls.

FUNCINPEC should seek to win a fair share of power, including one or two of the key ministries and could demand amnesties for senior military and political members of the party stuck in exile. The Sam Rainsy Party, on the other hand, seems best suited by experience and temperament to play an opposition role – a coalition between Ranariddh and Sam Rainsy would likely be as temperamental and doomed as that between the prince and Hun Sen. But these elections still hold out the promise the first real opposition party in Cambodia – a significant step forward on the democratic path.

However, there is a danger that the opposition may overplay its card and lose sight of original objectives by their increasing boldness and defiance. Their core aims are for used, unused and reserve ballots to be

reconciled; sufficient recounts be conducted to verify the results; re-voting take place in areas where there is strong evidence of polling and counting fraud; and that the first NEC seat allocation formula be used⁴⁷.

But these have been augmented by demands that a caretaker government be formed and that Hun Sen step down, while Sam Rainsy, perhaps because he is in the weakest position, has become increasingly militant and inflammatory in his attacks on the prime minister and continues to fan anti-Vietnamese sentiment⁴⁸. He urged the military and police to turn their guns on Hun Sen and police chief Hok Lundy if they were ordered to shoot civilians and later called on the United States to bomb Hun Sen's fortress home on the outskirts of Phnom Penh⁴⁹.

Such an approach might rouse the rabble, but it risks alienating the overseas support that the opposition so clearly craves and could trigger violence, which some think it also possibly seeks to blacken the image of the authorities. Some observers believe the opposition has given up the moral high ground in favour of slurs and taunts. It should tone down its rhetoric while both sides should compromise rather than stoking confrontation and closing the door on reconciliation.

The opposition should court and reassure foreign and domestic investors that it has their best interests at heart⁵⁰ and work to establish friendly ties with its neighbours, rather than poisoning relations from the start.

3. The International Community

The world community, through JIOG, essentially gave its blessing to the electoral process on 27 July 1998 and has since made it clear that it believes opposition complaints have been adequately investigated and the parties should form a coalition government as soon as possible and allow Cambodia to rejoin the international fold. France's President Jacques Chirac, the foreign ministers of Thailand and the Philippines and the head of the 1992-93 U.N. peace-keeping mission in Cambodia, Yasushi Akashi, have all said as much in public messages. They have refused to interfere in the disputes over alleged election fraud and the

⁴⁷ Joint Statement by FUNCINPEC and the Sam Rainsy Party – "The National Assembly Belongs to the People". September 1, 1998. Signed by Prince Ranariddh and Sam Rainsy.

⁴⁸ Demonstrators at opposition rallies have beaten up at least two suspected Vietnamese, while students defaced a monument to Cambodian-Lao-Vietnamese friendship with sledgehammers and fire during the big opposition rally on 30 August 1998.

⁴⁹ The U.S. Embassy issued a statement on 27 August 1998 condemning and disassociating itself from Sam Rainsy's remarks. The opposition leader has claimed his remarks were taken out of context and were not meant to be taken literally.

⁵⁰ A joint statement on 18 August 1998 from Ranariddh and Sam Rainsy warning investors that contracts signed with the post-1997. Such a threat was unlikely to win them support from the business world.

seat allocation formula, but have undoubtedly tried to put pressure on the opposition parties to come to an agreement with the CPP before the current term of parliament ends.

The United States, which had taken a tougher line than most other countries towards Hun Sen, provided funding towards JIOG but was not involved in drafting its final statement. It apparently preferred to rely on judgements made by the joint NDI/IRI mission, which the U.S. administration had funded, in making a final assessment. These, as described above, gave a more cautious approval to the vote and counting, but were critical about the NEC and Constitutional Council and post election developments. U.S. Secretary of State Madeleine Albright had said shortly after the elections that Washington must "stay engaged, keep the pressure on and make our assistance to any government conditional on its respect for international norms." Other American politicians have lobbied hard on behalf of the opposition.

But one cannot escape the feeling that most countries involved in the long peace process are tired of Cambodia and its bickering factions and feel that "acceptably" free and fair elections allow them a way out while some Western nations who should know better have been accused of taking sides or, at least, accepted different standards for Cambodia -- a phenomenon described by some as clientitis or localitis.

These pragmatic countries may not think the elections were perfect but feel they were just about acceptable while they see Hun Sen as the leader most likely to bring immediate stability, ignoring the fact that this might be at the cost of democracy and would not necessarily solve the country's underlying problems.

The primary moral and legal aim of those countries that signed the Paris Peace Accords must be to act in the best interests of democracy -- though some do not have a very good record themselves. The international community should support the opposition's demand for a fair hearing into their complaints and encourage the formation of a coalition government -- the two are not mutually exclusive.

It must surely be in the interests of the international community to ensure that stability is long term and in the interests of all sectors else it risks having to bail out Cambodia once more in the future. At any rate the international community should stay engaged and not pull out while the democratic process is still at such a fragile stage.

It should continue to use the benchmarks -- for continuing assistance and in assessing the electoral process -- originally raised by the United Nations, the Friends of Cambodia and the EU, but ultimately ignored in most preliminary poll assessments.

The international community still has the weapons of recognition and assistance to encourage the establishment of a more just, free and open society in Cambodia. Progress will be slow and piecemeal and will require donors and the wider international community to remain attentive and willing to wield their influence to help steer Cambodia in the right direction.

4. **Agreeing the Composition and Programme of the New Government**

Cambodia's next government is likely to be some form of coalition and this report has suggested that careful, honest and binding negotiations should precede its formation, however long these might take. Talks hosted by the king would provide a good forum to start exchanging views on the government platform for the next years, which should cover and tackle all areas so the government can announce a general policy at the start of its term.

In this respect, The Netherlands provides a possible model as its proportional representation system usually calls for formation of a coalition. The last elections were held in May but the three-party coalition government that emerged from them was not formed until mid-August. This was because each party came to the table with different manifestos and ideas and needed to bash out a comprehensive government programme through compromise and bargaining. The system seems to have worked for the Netherlands for most of the past two decades as the more agreement to start with the more likely a coalition is likely to survive its mandate without terminal problems.

This section will suggest some of the more important areas that should be addressed by a new government if it is to ensure long-term stability and democratic growth:

- **Security:** It should be noted that one major obstacle facing the new government in 1993 – the Khmer Rouge guerrilla movement – has virtually been removed, but royalist troops remain on the border and establishing a lasting cease-fire must be a priority. Peace would allow tens of thousands of refugees to return home, and their welfare must be addressed, but it should also free up funds from the military for boosting the education, health, rural development and agriculture sectors – areas that have been neglected for years.
- **Tackling the problem of impunity:** A key task and one that would boost international and domestic confidence in the government, will be to address the whole problem of impunity⁵¹. The governments of the past five years have failed to prosecute and convict any person suspected of major human rights abuses, including those behind the killing of several journalists, the protestors blown up outside

⁵¹ This problem has been addressed at length by ICG in its earlier reports.

parliament in March 1997 and the scores of royalists executed during and after the July fighting.

- **Establishing a rule of law:** Concrete action by the new government would show its commitment to fighting human rights abuses and upholding the rule of law by showing that those in positions of power are not immune from punishment. It would help instil new confidence in the judiciary, but comprehensive reform of the whole sector would have to be launched to ensure its true independence. In the same spirit, the trial of surviving Khmer Rouge leaders, the worst violators of human rights in Cambodian history, must be addressed.
- **Combating corruption:** In the interests of social justice and the economy, the problem of corruption must be tackled seriously, while the government should create a more level playing field for investors, including one tax for all, if it is to attract more blue chip investors.
- **Improving labour conditions:** addressing the chronic problem of poor and often highly dangerous labour conditions is a priority if Cambodia is to retain valuable trade privileges with the United States. The powerful U.S. union, AFL-CIO (American Federation of Labour-Congress of Industrial Organisations) in June called for the revocation of Generalised System of Preferences tax-free privileges for Cambodia as it had failed to protect workers' rights and showed prejudice against independent unions.
- **Environmental protection:** The new government must also take steps to protect the environment and Cambodia's dwindling natural resources, particularly logging, and introduce measures to raise revenues and wean itself off international aid, including trimming fat off the cumbersome state machinery.
- **Rebuilding relations with the region:** The administration should also make good relations with its neighbours a plank of foreign policy, while continuing efforts to settle outstanding border disputes.

E. CONCLUSIONS

Philippine Foreign Minister Domingo Siazon, speaking after a pre-election meeting on Cambodia, neatly summarised the flawed nature of the electoral process when he noted, "As in sport, if you are a top player but you are injured, you've still got to play."

In Cambodia, the opposition parties came into the finals after ten months of lying injured without treatment and were given barely three months to resurrect their shattered side and reach out to intimidated supporters without the benefit of publicity. They were clearly at a disadvantage but did well under the circumstances, (it should be remembered that 6 out of every 10 Cambodians voted for opposition parties). The referees changed the rules relating to the allocation of seats without telling anyone and later dismissed charges of fouls without adequate explanation.

While the electoral process was manifestly flawed, however, Cambodia's polls were probably the best the country could produce in the circumstances and certainly the best that foreign governments were willing to push for. After a rocky lead up to polling day, voters did appear to largely have the opportunity to vote for whom they wanted, although pre-election tactics may have led many to vote as instructed.

Nevertheless, it is clear the NEC and Constitutional Council have failed to live up to their commitments and the suspicion that they and the CPP are trying to hide something will always remain unless they take action to redress the damage. The opposition's claims of fraud may have had no merit, but at least they should have been shown as such after adequate investigation, while the crucial question of the seat allocation formula was simply and shockingly ignored. If corrective steps are not agreed, the CPP victory will be permanently tainted in the eyes of many and the party will only have itself to blame.

This report has dealt with the flaws of foreign observation at length and it is sufficient to conclude that the observers should have based their assessment on a larger context and with a larger and more experienced force.

F. RECOMMENDATIONS

Based on the observations and findings presented in this report, ICG believes a number of measures should be taken immediately and in the short- to medium-term to help bring an end to the current crisis, restore domestic and international confidence in the government, and reinforce both stability and democracy.

Reopen investigations into opposition complaints of electoral foul-play...

The CPP should support opposition demands that their election complaints be given an honest hearing rather than a cursory and dismissive glance. A full investigation is essential if lingering suspicion of manipulation is to be dispelled and doubts about the legitimacy of the new government set aside.

ICG recommends that the NEC and Constitutional Council review their earlier decisions to throw out all opposition complaints. The Council should direct the NEC:

- to conduct spot recounts in a few dozen communes;
- to produce clear reconciliation of unused ballots⁵² to allay charges of ballot stuffing; and
- to release preliminary results for all communes so they can be compared to those tallied by parties and observers to see if they merit investigation.

Pressure should be applied to both the ruling party and to the opposition to accept the NEC's rulings on the above matters, whatever the body's decision.

The Constitutional Council should also address the controversial seat allocation formula and order that the first formula be used if the NEC fails to provide concrete proof that the seat allocation was altered legally. This would go some way to buffing the tarnished image of these institutions.

Re-launch dialogue to end the current political impasse...

To help bring an end to the current political *impasse* and ensure a peaceful transfer of power to a new government, ICG supports the opening of a calm, constructive process of dialogue between the opposing parties. This process should not be rushed or limited to one or two meetings. Reaching agreement will take time and require negotiation between the top leaders of the ruling party and the opposition rather than their subordinates. The Siem Reap talks hosted by Sihanouk provided an ideal forum to kick-start these talks but the opportunity was missed. The king should be encouraged by all sides and senior diplomats to continue playing a mediatory role and to push for further talks.

⁵² Nine million ballot papers were printed.

Dialogue should initially focus on a compromise solution to the current deadlock and on how to ensure the peaceful establishment of a new government. ICG believes compromise should come from both sides. The opposition, while exercising their legitimate right to freedom of assembly and expression, should avoid escalating tension and the risk of confrontation with inflammatory speeches and insults of real and perceived foes.

Agree an equitable power-sharing arrangement as the basis of a new government...

There should be firm and binding agreement on an equitable sharing of power that accurately reflects the performance of each coalition partner in the polls. If the goals are established and laid down at the start, the likelihood of collapse lessens even if it does not evaporate.

The new government should, ideally, include senior officials in the administration, police and military that are acceptable to all coalition parties. Hun Sen is an exception, but those on both sides that are likely to cause friction by their presence in the government should be removed in the interests of reconciliation.

Hammer out a comprehensive policy programme...

To ensure a lasting and stable government, ICG recommends that parties to a new government conduct intense and thorough negotiations to come up with a comprehensive policy programme for all sectors. Earlier in the report, we refer to the Dutch practice of extended post-election negotiations aimed at producing a detailed policy programme as a possible model for Cambodia. In this case, the government must be prepared to tackle, disinterestedly and with determinedly, problems at the root of Cambodia's chronic instability, inequality and poverty. High on the government's list should be initiatives on judicial reform, corruption, illegal logging, environmental protection, education and economic and administrative reform.

Rebuild political trust...

Some measure of confidence and trust needs to be built between the partners at an early stage and, as the dominant party, the CPP needs to show proof of sincerity. One immediate step it could take would be to agree to the pardons of exiled politicians and military officials, including Prince Norodom Chakrapong, Prince Norodom Sirivudh, Sin Song, Nhiek Bun Chhay and Serey Kosal⁵³.

⁵³ Sihanouk's son Prince Chakrapong and former Interior Minister Sin Song were sentenced to long jail terms for their role in an alleged coup attempt in 1994, when both were CPP members. Prince Sirivudh, half-brother of the king was sent into French exile in December 1995 after he was arrested for allegedly plotting to assassinate Hun Sen. FUNCINPEC military leaders Nhiek Bun Chhay and Serey Kosal escaped to the Thai border after the July 1997 fighting and lead a resistance movement against the government.

A start can be made by a concerted and effective effort to bring to justice those behind the major political killings of 1997 and 1998, including the slayers of Kyodo employee Sieng Sean on 20 August 1998. ICG again calls for repeal of legislation giving civil servants immunity from prosecution⁵⁴ and believes committed and effective measures to ensure justice for the victims of rights abuses will boost confidence in the government and the maligned justice system.

World should wait until transition process is complete and new government has demonstrated its credentials before resuming development aid...

ICG believes the international community has a continuing an important role in Cambodia and that it can help ensure a lasting, stable and good government by using the pressure at its disposal.

It is essential that foreign governments avoid making final judgements on the electoral process until a new administration has been installed.

ICG recommends that international pressure be maintained on any new government until it has demonstrated that it is working in the interests of all its people and towards the goal of democracy, prosperity and true stability.

It would be certainly be premature for international donors to resume international aid to the Cambodian government until the present political crisis has been peacefully resolved and a new, balanced and stable government has emerged. Even then, the international community should continue to hold back, insisting the government produce a credible and relevant policy programme. International aid to the government should then made conditional on the implementation of such a programme, with release of funds tied to concrete indications of progress on the ground.

In the meantime, the country's seat at the United Nations should remain suspended and ASEAN members should not admit Cambodia to their ranks until it is clear that the government is working harmoniously, effectively and conscientiously. This needs several months to gauge.

**ICG Phnom Penh – Brussels
10 September 1998**

⁵⁴ The 1994 Law on Civil Servants provides that, unless caught red-handed, no civil servant may be arrested or prosecuted unless the government agrees in advance.