

# Cambodia: Tensions around the National Election Committee

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Under the 1991 Paris Peace Agreements, in May 1993 the United Nations, through the UN Transitional Authority in Cambodia (UNTAC), organized and administered Cambodia's first free and fair multiparty, democratic elections. They were marred by high levels of political intimidation that saw some hundreds of election-related killings. The Cambodian People's Party (CPP), which had ruled Cambodia since Viet Nam overthrew the Khmer Rouge regime in 1979, initially rejected the election results, but a coalition government was formed of the CPP and the royalist Funcinpec (United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia). An aborted attempt at secession by senior CPP members followed, after which King Sihanouk brokered a deal and the two parties agreed to share the management of the government on an equal basis.

The constitution promulgated on 24 September 1993 stipulated that elections to the National Assembly would be held every five years.

In July 1997 the CPP/Funcinpec coalition fell apart amid armed confrontation between their respective military units. Partly as a result of international pressure, the CPP began preparations for National Assembly elections, which took place in July 1998 – the first multiparty elections to be conducted by Cambodians in over three decades.

In January 1998 the National Election Committee (NEC) was established, based in the Ministry of the Interior. Eleven members were appointed to the NEC: a chair, a vice-chair and two other members who were to be independent, one representative from each political party represented in the National Assembly, two officials from the Ministry of the Interior, and one representative of local NGOs. Much jockeying took place as parties sought to ensure the choice of their sympathizers to fill the independent and NGO positions.

In May 1998 the Constitutional Council was established. In addition to establishing the constitutionality of laws, it was also the final arbiter for election complaints and appeals.

The 1998 elections were seen as a technical and logistical success, although Funcinpec and the Sam Rainsy Party (established following a split within Funcinpec) rejected the results because the formula eventually used to calculate the distribution of seats in the National Assembly was not expressed in a clear legal form and had been changed in the middle of the election process in a manner which subsequently appeared to favour the CPP. The CPP won a clear majority of seats. Street demonstrations against the election results followed in September 1998, and after three months a coalition government was again formed. The coalition then governed for the full five-year term.

In February 2002, multiparty elections were conducted for the first time ever for 1,621 commune councils – the lowest administrative unit in the country.

The 2003 National Assembly elections were followed by political deadlock as the CPP did not win the two-thirds majority required to govern outright, and Funcinpec and the Sam Rainsy Party again refused to recognize the results. Eventually, after 11 months, another CPP/ Funcinpec coalition government was formed.

## The Legislative Framework

The Election Law and the Political Parties Law were initially drafted and adopted by the National Assembly between October and December 1997, in the absence of the Funcinpec and Sam Rainsy Party leaders. In May 1998 important amendments were made to the law to enable the counting of votes to take place at commune level, as opposed to counting at the polling stations, in order to protect information on how individual villages voted.

Following the February 2002 commune elections, on 21 August 2002 the government enacted the Law on Amendments to the National Assembly Election Law, thus introducing several changes to the management of elections, including:

- the introduction of a permanent voter registration process, to be conducted each year between October and December, at commune offices, by commune clerks;
- the change in the composition of the NEC from the 11-member body created for the 1998 elections to a smaller, apolitical committee of five members; it assumed its responsibilities on 30 October 2002;
- new procedures for the appointment of members to the provincial election committees (PECs) and commune election committees (CECs);
- the introduction of equitable access to the state media for political parties during the campaign period; and
- the inclusion in the law of the seat allocation formula for the proportional representation (PR) system by province/constituency.

The law also included a transitional provision whereby from 2008 vote-counting would be done at the polling station (counting for the 2003 National Assembly elections would still be conducted at the CEC level).

## Institutional Structure

The NEC has a permanent committee of five persons – one chair, one vice-chair and three permanent members. The members are selected by the Ministry of the Interior, on the basis of strict neutrality, and the nominations are approved by the Council of Ministers and ratified by the National Assembly. The permanent committee is supported by a General Secretariat, which has five departments: operations, administration, finance, training and public information, and legal services. During and in the lead-up to election periods the NEC employs up to 460 staff, of whom 167 work on information technology (IT) tasks.

For the 2003 elections the NEC had 24 PECs, 1,621 CECs, and 12,826 polling station committees (PSCs), all staffed on a temporary basis. The total number of staff peaked at 73,539 during the polling and counting phase for the National Assembly elections.

## **Powers and Functions**

The NEC is responsible for planning, organizing and managing elections. Key duties include:

- publishing the election timetable;
- appointing members to the PECs, CECs and PSCs;
- establishing the areas covered by individual polling stations and their boundaries;
- receiving and deciding on the registration of political parties and the nominations of the candidates of political parties to stand for the National Assembly;
- monitoring and facilitating the organization of the electoral campaign;
- organizing and managing the voting and the vote-counting, and determining and announcing the results;
- auditing the income and expenditure of candidates and political parties during election campaigns;
- taking measures to ensure equal access to the public media; and
- deciding on all complaints and appeals relating to the election, except complaints which fall under the jurisdiction of the courts.

The power to determine the number and allocation of seats by province/municipality in the National Assembly rests with a special committee of the Council of Ministers, which is convened in the third year of every legislative term. The committee is composed of a representative from each political party currently represented in the National Assembly; two representatives of the Ministry of the Interior; and the director of the National Institute of Statistics. After the number of seats to be allocated has been determined, the special committee may recommend allocating them to any province(s), taking account of geographical, social and economic considerations.

## **Financing and Sustainability**

The NEC is funded by the Cambodian government, foreign donors, international organizations, charitable individuals and NGOs. Except for foreign funding, all other election funds are deposited under a special account in the National Treasury called the Trust Fund Account for Elections. Donor funding has been a significant source of support over the years but has decreased with each successive election while the government's contribution has increased.

The total expenditure of the UNTAC mission which was responsible for the preparation and implementation of the 1993 elections in Cambodia was around 2 billion US dollars (USD). Later figures are not directly comparable with this, but the cost of the 1998 national elections was around 24 million USD, that of the 2002 commune elections around 15 million USD, and that of the 2003 national elections around 12 million USD – of which only around 6 million USD was provided by external donors. Major progress has been made towards an electoral process that is financially sustainable.

The reduction in costs from 2002 to 2003 was, however, partly the result of a decision to change voter registration from an independent exercise implemented directly by the electoral authorities for each election to a process undertaken by the commune authorities involving a permanent electoral register. While this decision advanced the cause of sustainability, it was not without a downside. A perception remains that commune clerks may be linked to the governing party rather than being independent administrators, and some questions were therefore raised about the integrity of the electoral register.

## Accountability

By law the National Assembly delegates to the NEC the power to organize and manage elections as an independent and impartial body, with full rights to apply its own competence in order to ensure the conduct of free, fair and transparent elections. Financial management is carried out according to the procedures and modalities of the Ministry of Economy and Finance and in particular according to donor guidelines.

## Relations with Political Parties

Compared to the 1998 elections, the NEC is now better organized, more accessible and more transparent, and its duties and procedures are more clearly specified in the law and existing regulations. It has been more responsive to the needs and concerns of all the political parties through regular meetings at all levels. Criticisms, however, remain because the NEC has to rely on the commune council clerks (under the Ministry of the Interior) for voter registration. The NEC must now consult with the Ministry of the Interior on the delegation of power appropriate to the capacity and resources of commune councils and clerks for the continuous voter registration process. This also entails training, capacity building, the provision of facilities, supplies and materials, and budgetary assistance. However, final responsibility for preparing the electoral registers rests with the NEC. The final arbiter for the complaints and appeals process is the Constitutional Council.

## Relations with the Media

According to the election law, all the media, including the state-run press, television and radio, are to make their services available to the NEC at no cost for the purposes of publicizing electoral work and voter education. In practice, many of the private- and public-sector media are controlled by the CPP and continue to give the CPP overwhelming coverage.

The NEC has a media office and a web site, and has instituted regular information exchanges and coordination on the electoral process, at all levels, with the media, political parties and candidates.

## Relations with Other Institutions and Agencies

Since 1998 three key NGOs – the Coalition for Free and Fair Elections (COFFEL), the Committee for Free and Fair Elections in Cambodia (COMFREL) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) – have led civil society advocacy on the legal and institutional framework for elections in Cambodia through extensive public consultation exercises, a joint advocacy programme and regular meetings with the NEC during 2004.

Another NGO, the Cambodian Development Resource Institute (CDRI), initiated a four-year series of monthly meetings in 1999, known as the Committee for the Prevention of Conflict in Cambodian Elections (COPCEL). These meetings brought together key political stakeholders and parties, and the NEC, to discuss potential issues of conflict in the commune and National Assembly elections.

The International Republican Institute (IRI) and the National Democratic Institute (NDI), along with the Asia Foundation, have all played key support roles aimed primarily at improving voters' access to information and political platforms. In 2003 the NEC cooperated with the NDI to draft a code of conduct/ethics that was signed by the leaders of 18 political parties.

The United Nations Development Programme (UNDP) has played a lead role in coordinating donor electoral assistance, as has the European Union. Both organizations have also directly helped the NEC by providing technical experts.

## **Electoral Reform Management**

One consequence of the 11-month deadlock following the 2003 National Assembly election was a debate about electoral reform. The Sam Rainsy Party and Funcinpec both wanted to reinstate political party members to the NEC, as opposed to neutral candidates. Both also wanted to ensure the presence of representatives of political parties at all levels of electoral management on the basis that only this would ensure impartial delivery of future electoral management. However, after the CPP/Funcinpec government was formed in July 2004, no further action was taken.

Since 1993, elections have become familiar in Cambodia. Two National Assembly elections in 1998 and 2003 and one round of local elections in 2002 have been recognized as logistically and technically competent. Electoral costs continue to fall as technical competence develops. However, after each election, including the UNTAC-sponsored elections in 1993, the losing parties have rejected the results. This has led to attempted secession (in 1993), to violence and a three-month deadlock (in 1998), and to an 11-month deadlock before a government was formed (in 2003/2004). Problems related to these three elections include ongoing, although fewer, instances of political violence, unequal access to the media for opposition parties, and a perceived CPP bias concerning access to voter information. The key issue for future elections, noting the asymmetry between the parties and the dominance of the CPP, is how to ensure that party and state are separate in the administration of future elections.

Future challenges revolve around the Cambodian political community developing a consensual acceptance of the NEC and the electoral process, as well as the institutionalization of the NEC as an impartial, technically competent administrator of elections. This means providing an open space for debate and an exchange of views on all electoral issues, and particularly the ongoing management of the new continuous voter registration process involving the NEC, the commune councils and Ministry of the Interior staff. The imbalance between the political parties and the clear dominance of the administrative structures by the CPP will also have to be managed in future when vote-counting will take place at the polling station and not at the commune level.